

**AGREEMENT  
BETWEEN  
THE CITY OF SUNNYVALE  
AND  
SUSTAINABLE ORGANIC SOLUTIONS, LLC  
FOR  
ORGANIC MATERIALS PROCESSING SERVICES**

**FINAL**

**JUNE 2021**

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## EXHIBITS

- A. Reporting Requirements
- B. Performance Standards and Liquidated Damages
- C. Corporate 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                                   **SUSTAINABLE ORGANIC SOLUTIONS, LLC**  
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      Sustainable Organic Solutions, LLC (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 Organic Materials, 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.



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

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

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

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

**“Approved Processing Facility(ies)”** means Sustainable Organic Solutions, which is owned by and operated by Sustainable Organic Solutions, LLC, and approved by the City Contract Manager for Processing of Food Scraps, and other facilities approved by the City Contract Manager per Exhibit F

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

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

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

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

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

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

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

120 **“Commencement Date”** means January 1, 2022, or the date Contractor begins to provide all Services set  
121 forth in this Agreement, as provided in Article 4.

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

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

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

135 **“Contamination” or “Contaminants”** means “Incompatible Material” or “Incompatibles” and includes but  
136 is not limited to film plastic, hard plastics, rubber, textiles, rock, concrete, glass, metal, Non-Compostable  
137 Paper, and other non-organic, non-compostable substances. Contamination percentage or level refers to  
138 the percentage, by weight, of Contaminants present in Acceptable Materials when they arrive at  
139 Contractor’s Approved Processing Facility(ies). For Food Scraps, Contaminants also include Yard  
140 Trimmings, Food-Soiled Paper, and any Organic Materials other than Food Scraps.

141 **“Contractor”** means Sustainable Organic Solutions, LLC, and any Subcontractors and Affiliates listed in  
142 Exhibit F.

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

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

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

150 (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; or

(5) other felonies.

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

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

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

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

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

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

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

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

195 **“Food Scraps”** means material that will decompose and/or putrefy including all kitchen and table food  
196 waste scraps, and animal, or vegetable, fruit, grain, dairy or fish waste that attends or results from the  
197 storage, preparation, cooking or handling of food stuffs, with the exception of animal excrement. Food  
198 Scraps may contain paper waste contaminated with putrescible material and/or biodegradable food  
199 service ware designed to disintegrate and biodegrade quickly. Food Scraps are a subset of Organic  
200 Materials.

201 For purposes of this Agreement, Food Scraps has the same meaning as “Source-Separated Residential and  
202 Commercial Food Scraps” in Exhibit J, Initial Rates. Acceptable Food Scraps shall be Source Separated from  
203 Solid Waste and subsequently processed into food mash at the Station. Processing into food mash  
204 includes removal of plastic bags. A separate per-ton processing rate is established in Article 7 for Food  
205 Scraps that have not been processed into food mash.

206 **“Food Scraps Processing Overs”** means material that remains following Processing of Food Scraps to  
207 separate the portion of Food Scraps to be used in animal food processing. The remaining material, or  
208 “overs” consists of solids and liquids with relatively high organic content.

209 **“Food-Soiled Paper”** means compostable paper material that has come in contact with food or liquid,  
210 such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk  
211 cartons. Food-Soiled Paper is a subset of Organic Materials.

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

214 **“Gray Container Waste”** means, as provided in Exhibit H, Solid Waste that is collected in a Gray Container  
215 that is part of a three-Container Organic Waste Collection service that prohibits the placement of Organic  
216 Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b) or as otherwise defined in  
217 14 CCR Section 17402(a)(6.6). For the purposes of this Agreement, Gray Container Waste includes carpet  
218 and textiles.

219 **“Guarantor”** means Sustainable Organic Solutions, LLC.

220 **“Hazardous Substance”** means any of the following: (a) any substances defined, regulated or listed  
221 (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic  
222 waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the  
223 environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and

Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

**"Hazardous Waste"** means:

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

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

(3) radioactive wastes.

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

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

**"Implementation Period"** means the period between the Effective Date and the Commencement Date during which Contractor makes the necessary preparations in order to implement all Contractor Services and obligations set forth herein.

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

**"Infectious Waste"** means medical or biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25925117.5.

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

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

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

267 **“Maximum Vehicle Turnaround Time”** means an average weekly turnaround time of twenty (20) minutes  
268 for Station Operator vehicles Delivering Acceptable Materials to an Approved Facility, where the  
269 turnaround time for each vehicle is measured from the vehicle’s arrival time, as recorded by the motor  
270 vehicle scale upon entry to the Approved Facility property, until the vehicle’s departure time, when it exits  
271 that Approved Facility, and excludes driver personal time and mechanical problems.

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

274 **“Mulch”** means a layer of material applied on top of soil, and, for the purposes of the Agreement, Mulch  
275 shall conform with the following conditions, or conditions as otherwise specified in 14 CCR Section 279  
276 18993.1(f)(4):

277 (1) Meets or exceeds the physical contamination, maximum metal concentration, and pathogen  
278 density standards for land applications specified in 14 CCR Section 17852(a)(24.5)(A)(1) through  
279 (3).

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

281 i. A compostable material handling operation or facility as defined in 14 CCR Section  
282 17852(a)(12), that is permitted or authorized under Division 7 of Title 14 of the CCR, other  
283 than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);  
284 Guidance: Note that this criteria disallows Mulch produced from chipping and grinding  
285 operations to count toward fulfillment of a Jurisdiction’s annual Organic Waste product  
286 procurement target.

287 ii. A Transfer/Processing Facility or Transfer/Processing operation as defined in 14 CCR Section  
288 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR, Division 7,  
289 Chapter 12; or,

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

292 **“Non-Compostable Paper”** includes, but is not limited to, paper that is coated in a plastic material that  
293 will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

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

296 **“Organic Waste”** means Solid Wastes containing material originated from living organisms and their  
297 metabolic waste products including, but not limited to, Food Scraps, Food-Soiled Paper, Mixed Organics,  
298 MRF Fines, Yard Trimmings, organic textiles and carpets, lumber, wood, Paper Products, Printing and  
299 Writing Paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section

300 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 305  
301 18982(a)(16.5).

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

308 **“Paper Products”** include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging,  
309 file folders, hanging files, corrugated boxes, tissue, and toweling; or as otherwise defined in 14 CCR Section  
310 314 18982(a)(51).

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

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

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

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

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

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

330 **“Rate Period”** means a fiscal year commencing July 1st and concluding June 30th, except for Rate Period  
331 One which is an eighteen-month period from January 2022 through June 30, 2023, and Rate Period Seven  
332 which is a six-month period from July 1 through December 31, 2028. If the term is extended per Article  
333 4.1, Rate Year Seven will be extended through June 30, 2029

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

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

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

345 **“Release”** means activation by City of its right in Section 4.1 to change, after July 1, 2025, Contractor food  
346 scraps status from exclusive to on-call and related financial buyout provisions of Section 4.

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

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

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

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

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

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

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

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



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

377 (3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing  
378 with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste  
379 shall not be disposed of in a solid waste landfill, as defined in PRC Section 40195.1. Medical waste  
380 that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division  
381 30.

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

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

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

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

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

392 **“Subcontractor”** means a Person, who has entered into a contract, express or implied, with the Contractor  
393 for the performance of an act on Contractor’s behalf (i) that involves Accepting, Processing, Diverting,  
394 Marketing, Residue Disposal, and/or other handling of the Acceptable Materials, and (ii) that is necessary  
395 for the Contractor’s fulfillment of its obligations for providing service under this Agreement.  
396 Notwithstanding any other provision in this Agreement, vendors providing materials, supplies or  
397 professional services to Contractor, and Approved Facilities that are not owned or operated by Affiliates  
398 or Contractor, shall not be considered Subcontractors for any purpose under this Agreement.

399 **“Term”** means the duration of this Agreement, including extension periods if granted, as provided for in  
400 Section 4.1.

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

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

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

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

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

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

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

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

418 **“Unpermitted Waste”** means wastes or other materials that the Approved Facilities may not receive

419 under their Permits, including:

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

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

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

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

430 (5) Dead animals larger than 100 pounds;

431 (6) Hazardous Substances and Hazardous Waste;

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

434 (8) Infectious Waste including wastes that have disease transmission potential and are classified as  
435 Hazardous Wastes by the State Department of Health Services, including pathological and surgical  
436 wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades,  
437 tubing, bottles, drugs, patient care items that as linen or personal or food service items from  
438 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical  
439 purposes or with known infectious diseases;

440 (9) Liquid wastes that are not spadeable, usually containing less than 50% solids, including cannery  
441 and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease  
442 trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant  
443 byproducts, sewage sludge not meeting certain quality criteria (i.e. unclassified sludge less than  
444 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.

## 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 Source Separated Food Scraps generated by the Station, unless Released per Section 4.1.

In addition, the City, at its sole discretion, may direct the Contractor to Process Yard Trimmings generated by the Station. Contractor is the on-call contingency processor for Yard Trimmings and does not have an exclusive right to Process the City's Yard Trimmings. Contractor shall pick up Yard Trimmings from the Station within 48 hours of notice from the City.

If City requests regularly scheduled, on-going (as opposed to on-call) Yard Trimmings Processing, City and Contractor shall meet and confer to determine and further required operational, reporting, and contractual procedures for Yard Trimmings. Compensation for regularly scheduled Yard Trimmings Processing would be the same as for on-call.

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

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

A. Transporting Acceptable Materials from the Station to the Approved Processing Facility(ies); and

- 481 B. Processing Acceptable Materials at the Approved Processing Facility(ies);
- 482 C. Marketing of Recovered Materials;
- 483 D. Arranging for Disposal of Residue at the Approved Residue Disposal Facility;
- 484 E. Furnishing all labor, supervision, Processing equipment, rolling stock, other equipment, materials,  
485 supplies, and all other items and services necessary to perform its obligations under this  
486 Agreement;
- 487 F. Paying all expenses related to provision of Services required by this Agreement including, but not  
488 limited to, taxes, regulatory fees, governmental fees, and payments to the City, etc.;
- 489 G. Performing all Services in substantial accordance with the Contractor's Proposal and in full  
490 accordance with this Agreement. If the Contractor's Proposal and Agreement conflict, the terms  
491 and provision of the Agreement shall prevail;
- 492 H. Securing and maintaining all necessary Permits for operation of the Approved Facilities;
- 493 I. Complying with Applicable Law;
- 494 J. Providing reports in a timely manner;
- 495 K. Providing all Services required by this Agreement in a thorough and professional manner so the  
496 City is provided timely, reliable, courteous, and high-quality service at all times; and,
- 497 L. Performing or providing all other Services necessary to fulfill Contractor's obligations under this  
498 Agreement.

## 499 **2.2 City-Initiated Change in Scope**

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

504 Upon such City request, City and Contractor shall meet and confer to identify the parameters for a change  
505 in scope and to determine any potential changes to compensation. If the change in scope causes an  
506 increase or decrease in the cost of performing the services, an equitable adjustment in Contractor's  
507 Payment will be made in accordance with Section 7.5 in a manner that is consistent with Contractor's  
508 compensation for services defined in this Agreement. Any change in compensation shall be mutually  
509 agreed upon between both parties prior to the change in scope being implemented.

510 While Contractor has exclusive right to provide the services defined in the Agreement, as specified in  
511 Section 2.1, Contractor acknowledges and agrees that at any time during the Term of this Agreement, and  
512 without seeking or obtaining approval of Contractor, City may solicit proposals from, and may contract  
513 with other Persons besides the Contractor to Process any and all types of materials excluded from the  
514 scope of this Agreement and/or to provide services not contemplated under this Agreement. In the event  
515 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.

## **2.4 Subcontracting**

Contractor shall not engage any subcontractor(s) or 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 subcontractors and Subcontractors 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 Affiliates as subcontractors or 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 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 Subcontractor.

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.
- B. **Due Authorization and Binding Obligation.** Contractor has the authority to enter into and perform its obligations under this Agreement. Contractor has taken all actions required by law or otherwise necessary to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of Contractor have authority to do so, and this Agreement constitutes the legal, valid, and binding obligation of Contractor enforceable against Contractor under its terms.
- C. **Truth and Accuracy of Information.** The information supplied by Contractor in all written submittals made in connection with Contractor's Services, including Contractor's Proposal and any other supplementary information submitted to the City, and which the City has relied on in awarding and entering this Agreement, is true, accurate, and complete, and does not contain material omissions or misleading statements. Contractor will inform City Contract Manager of any change in that information within one (1) week of discovering any untruth or inaccuracy.
- D. **Contractor's Due Diligence.** Contractor has made an independent investigation and examination (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed hereunder. Relying solely upon its own investigation, advice, and counsel, Contractor has taken such matters into consideration in entering this Agreement to provide Services in exchange for the Contractor Revenue provided for under the terms of this Agreement.
- E. **Ability to Perform.** Contractor possesses the business, professional, and technical expertise to manage, Process, and Divert Acceptable Materials, and Contractor possesses the equipment, facilities, and employee resources required to perform its obligations under this Agreement.

- 595 F. **Voluntary Use of Approved Facilities.** Contractor, without constraint and as a free-market  
596 business decision in accepting this Agreement, agrees to use the Approved Facility(ies) it has  
597 proposed, or other location approved by City, for the purposes of Processing or Diverting all  
598 Acceptable Materials and for Disposal of Residue. Such decision by Contractor in no way  
599 constitutes a restraint of trade notwithstanding any Change in Law regarding flow control  
600 limitations or any definition thereof.
- 601 G. **No Warranty Regarding Volumes or Material Types.** Contractor recognizes that City expressly  
602 disclaims any warranties, either express or implied, as to the quantity, composition, volume, type,  
603 merchantability or fitness for any particular purpose of Acceptable Materials as Delivered and  
604 Accepted, and Processed by Contractor. Contractor acknowledges that the quantity and  
605 composition of Delivered Acceptable Materials will vary over the Term.
- 606 H. **Capacity.** Contractor warrants that as of the Commencement Date it has Transfer capacity at the  
607 Approved Transfer Facility, as applicable, and Processing capacity at the Approved Processing  
608 Facility(ies) to Transfer and to Process all Acceptable Materials Delivered to Approved Facility(ies)  
609 by the Station Operator. Contractor shall maintain such capacity throughout the Term as provided  
610 in Section 5.7.
- 611 I. **Permits and Approvals.** Contractor warrants that all licenses, Permits, qualifications, and  
612 approvals that are legally required or otherwise necessary for Contractor to perform its  
613 obligations under this Agreement shall be secured on or before the Commencement Date of this  
614 Agreement. Contractor further warrants that it shall, at its sole cost and expense, keep in effect  
615 or obtain at all times during the Term all licenses, Permits, and approvals that are legally required  
616 for Contractor to perform its obligations under this Agreement.
- 617 J. **Covenant Not to Sue.** For the Term of this Agreement, Contractor agrees that neither Contractor,  
618 its officers, employees, agents, Subcontractors, nor its Affiliates, will file any lawsuit against the  
619 City, its Partners, and/or the Station Operator that alleges any claims related to, arising out of, or  
620 in connection with the City's Request for Proposals process for the Contractor's Services or the  
621 Station Operator's services, including the award of any agreement or contract thereunder.
- 622 K. **Iran Contracting Act Certification.** Contractor represents and warrants that it is in compliance  
623 with and has completed all requirements necessary to become certified under the Iran  
624 Contracting Act (Public Contract Code Sec. 2200). Proof of certification shall be included as Exhibit  
625 G of this Agreement.
- 626 L. **No Default.** Contractor shall not be in breach or default under this Agreement or any other  
627 agreement with the City.
- 628 M. **Compliance with Laws.**
- 629 (1) Contractor shall not discriminate against, or engage in the harassment of, any City employee  
630 or volunteer or any employee of Contractor or applicant for employment because of an  
631 individual's race, religion, color, sex, gender identity, sexual orientation (including  
632 heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry,  
633 citizenship status, uniformed service member status, marital status, family relationship,  
634 pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and  
635 physical or mental disability (whether perceived or actual). This prohibition shall apply to all

636 of Contractor's employment practices and to all of Contractor's activities as a provider of  
637 services to the City.

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

641 **3.2 City**

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

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

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

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

653 **3.3 Both Parties**

654 By acceptance of this Agreement, the Parties represent and warrant that:

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

658 (1) Any Applicable Law;

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

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

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

669 (1) Materially adversely affect the performance by either Party of its respective obligations  
670 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. **No 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, Release, 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 seven (7) years, through and including December 31, 2028, unless the Agreement is extended in accordance with this Section or 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.

At the City's sole discretion, after July 1, 2025, with no less than six months' notice to Contractor, the City may Release Contractor from its obligation to exclusively provide the Services required by this Agreement in accordance with this Section. If the City elects to release Contractor from exclusively providing Services, the City may opt to utilize Contractor to provide the Services required by this Agreement periodically, on an on-call basis until the expiration date of this Agreement, December 31, 2028.

At the City's sole discretion, the Term of this Agreement may be extended for up to two additional seven-year (7-year) periods after December 31, 2028 (i.e., until December 31, 2042). Such extensions may be conditioned upon the Contractor's achievement of the two (2) performance standards defined in Section 4.2 in City's sole discretion. Should the City elect to exercise the option to extend, it shall give written notice to Contractor no less than one hundred eighty (180) Days prior to the then-effective expiration date, specifying the period of time for which it wishes to extend the Term.

The City has no obligation to renegotiate, renew, or extend the rights granted to Contractor beyond the initial seven-year (7-year) Term of the Agreement. However, in the case where the City opts to release Contractor in any year after year four, according to the provisions in this Section, from providing the Services required by this Agreement, both Parties agree to follow the release procedures outlined herein. In the case where the City opts to release Contractor from providing Services exclusively to providing Services on-call (non-exclusively) in any year after year four, the City has the right to reverse the on-call option and reinstate Contractor as the exclusive Service provider of the Services required by this Agreement. In the case of such a reversal, the Parties agree to meet and confer, working together in good faith to reinstitute the original term of the exclusive Agreement, including financial provisions.

The shift from Exclusive Processing Service to Non-Exclusive Processing Service is not a Change in Scope subject to the requirements of Section 2.2.

## 4.2 Release Conditions and Payment

At any time on or after July 1, 2025, City may notice Contractor of its intent to activate this Release provision, effectively shifting Contractor's provision of Services from an Exclusive Processing Agreement to a Non-Exclusive Processing Agreement.

No less than three (3) months prior to the effective date of the release, the Parties shall meet to determine the dollar amount of a one-time payment to Contractor using the calculation specified in this Section. City Contract Manager shall remit the resulting calculated one-time Release Clause payment to Contractor within thirty (30) days of the effective date of the shift to Non-Exclusive Processing Service in one lump sum.

To calculate the exact amount of the remittance to Contractor, as of the date of the City's Notice to Release, the Parties will calculate the previous 12 months of Contractor Revenue which will serve as a basis for calculating the Release payment amount the City must pay Contractor to enact the City's Release option. Using the prior 12 months of actual Revenue paid by the City to Contractor, the City Contract Manager will project out the Revenue that would have materialized between that effective date of the shift to Non-Exclusive Processing Service and December 31, 2028 if the City had not opted the Release provision. Ten (10) percent of that total amount will be paid to the Contractor as detailed in this Section. This calculation will utilize actual Tons Processed by Contractor in the prior 12 months - up to the 11,000 tons per year specified in the RFP - multiplied by the actual Per-Ton Processing rate(s) in effect during the past 12 months to determine the Revenue. Partial months remaining until December 31, 2028 will be rounded to the nearest whole month. An example of this calculation is given in the Table below.

Effective Release Date	Previous Year's Tons Processed (actual up to 11,000)	Previous Year's Per-Ton Rate (actual)	Previous Years' Revenue (on up to 11,000 tons)	Expressed as Monthly Revenue	Payment Factor	Remaining Months Until 12/31/28	Lump Sum Payment
January 1, 2026	11,000*	\$66.30*	\$729,300	\$60,775	10%	36	\$218,790

\*For example only. Future Tons Processed and CPI adjustments to the Per-Ton Rate are unknown

## 4.3 Extension Conditions

Any extension to the Term of the Agreement is conditional upon Contractor meeting the following two (2) requirements, each or either of which may be waived by the City:

**Organic Material Residue Level.** Contractor has maintained a monthly Residue level(s) in conformance with the requirements of Section 5.7.F.

**Overall Performance.** Contractor has not been assessed Liquidated Damages for the most recent three (3) years and has is not in breach of the Agreement as provided in Section 10.1.

Contractor's achievement of the conditions shall be determined by the City Contract Manager through review of reports provided pursuant to Article 8, and/or inspection of records pursuant to Section 8.2. For the purpose of this Section, the most recent three (3) years shall be defined as the most-recently

completed thirty-six (36) months ending twelve months in advance of the then-current end date of the Term. For example, if the City is considering an extension beyond the initial seven (7) year Term, the most-recently completed three- (3-) year period would be January 2025 through December 2027.

## 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. At a minimum, Contractor shall take Delivery of Acceptable Materials Monday through Saturday from 3:00 a.m. to 5:00 p.m., 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.
- B. **Extended Facility Receiving Hours.** Upon request of City Contract Manager, no less than one (1) Business Day in advance or any other mutually agreed time period, or in event of emergencies such as truck breakdown, poor weather or road conditions, Contractor shall Accept Acceptable Materials at times other than the Facility hours listed in Sections 6.2.A. Contractor may charge the Station Operator the hourly rate provided in Section 7.2.C, as escalated as provided in Section 7.2D., on a temporary basis and as directed by City Contract Manager.

### 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. 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, 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 each vehicles' license plate at 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 twenty (20) 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.

### 5.4 Scale Operation

A. **Maintenance and Operation.** Contractor shall maintain and operate two (2) 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, Contractor shall substitute portable scales until the permanent scales are replaced or repaired. Contractor shall arrange for any inoperable scale to be repaired as soon as possible and, in any event, within seventy-two (72) hours (excluding Holidays) of the failure of the permanent scale. If repairs to the permanent scale are projected to take more than twelve (12) hours, Contractor shall immediately obtain a temporary substitute scale(s).

D. **Estimates.** Pending substitution of portable scales or during power outages, 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 outbound 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. **Load Rejection for Contamination.** Should Contractor reject Delivery of a Load, Contractor shall segregate the Load from other Loads, and 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; Contractor's reason for rejection of the Delivered material; photographs of the material, and the identification number of the vehicle that Delivered the material. The Station Operator and City Contract Manager shall be given twenty-four (24) hours from receipt of written notice to inspect the Load. 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. Upon notification by Contractor, City Contract Manager shall have the option to require Contractor to Recycle or Dispose of the Unpermitted Waste and/or remediate any contamination resulting there from on Station Operator's behalf, and Station Operator shall pay the Direct Costs for such service.

- 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 Food Scraps generated by the Station. Upon fifteen (15) Business Days' notice, Contractor shall provide the City Contract Manager with sufficient documentation to demonstrate the availability of such capacity through the Term of this Agreement. 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 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.

The City is in no way obligated to compensate Contractor for any guaranteed Processing capacity that the City does not utilize if the Station is unable to generate sufficient Food Scraps. This Agreement does not provide Contractor with a "put or pay" tonnage guarantee.

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:

(1) Pre-processing activities shall include, at a minimum, the inspection for and removal of Hazardous Waste and removal of plastic bags.



(2) Composting shall be accomplished by the use of recognized Composting methods, which have been demonstrated to be able to consistently produce stable, mature Compost Product that is suitable for general purpose use, similar to the U.S. Composting Council's Class 1 rating.

(3) Post-composting processing activities shall include screening to remove plastics and other contaminants from the Compost Product.

(4) The Approved Processing Facility owner and/or operator shall cooperate with the City Contract Manager or their designee(s), should the City wish to collect data, perform field work, and/or evaluate and monitor Organic Materials Collection programs.

E. **Organic Materials Recovery; Disposal of Acceptable Materials Prohibited.** 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 deposition of Organic Waste at a Landfill or use of Organic Waste as Alternative Daily Cover (ADC) or Alternative Intermediate Cover (AIC).

F. **Residue Level and Disposal.** Contractor shall guarantee a Residue level of less than ten (10) percent for Organic Materials. For the purpose of this Residue guarantee, the Residue level shall equal the monthly Tonnage of Processing Residue requiring Disposal divided by the total monthly Tonnage of Organic Materials Accepted. Residue from Processing activities shall be Disposed of by Contractor at the Approved Disposal Facility selected by Contractor and approved by the City Contract Manager, and identified in Exhibit F. The Contractor shall not use Residue for Beneficial Reuse Purposes.

## **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 and none shall be deposited for Disposal or used for Beneficial Reuse Purposes.

Upon City Contract Manager request, Contractor shall provide documentation confirming that all Organic Materials are Marketed for use as Compost Products, and in such a manner that Marketed materials shall be considered as Diverted in accordance with the State regulations established by AB 939. No Organic Materials or Residue shall be used for Beneficial Reuse Purposes.

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. 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

1097 of Marketing records shall be used to allocate the total Tonnage of Acceptable Materials into various  
1098 categories of Recovered Materials and Residue.

1099 The Contractor shall cooperate in activities requested by the City Contract Manager to measure Diversion  
1100 of Acceptable Materials including, but not limited to, providing a location for conducting composition  
1101 analyses of the Acceptable Materials through sorting of materials at the Contractor's Facility.

1102 In accordance with Exhibit H-4, the City Contract Manager may upon thirty (30) days' written notice  
1103 require Contractor to conduct contamination monitoring waste evaluations at the Approved Processing  
1104 Facility(ies). If the City Contract Manager directs Contractor to conduct SB 1383-compliant contamination  
1105 monitoring waste evaluations, Contractor and Contract Manager shall meet and confer to determine  
1106 waste evaluation methodologies and procedures as described in 14 CCR Sections 18984.5.c and 18998.1  
1107 of the April 2020 draft SB 1383 regulations, and unit price compensation pursuant to Article 7 and Exhibit  
1108 H. Waste evaluation methodologies and procedures shall be approved by the City Contract Manager prior  
1109 to implementation by Contractor. Alternatively, and in accordance with Exhibit H, the City may engage a  
1110 third-party designee to conduct contamination monitoring waste evaluations at the Approved Processing  
1111 Facility(ies).

## 1112 **6.6 Reporting**

1113 Contractor shall submit reports in accordance with Section 8.5 and Exhibit A.

## 1114 **6.7 Right to Enter Facility and Observe Operations**

1115 The City Contract Manager, or their designee(s) may enter, observe, and inspect Approved Facilities during  
1116 Facility operations; conduct studies or surveys of the Approved Facilities; meet with the Approved  
1117 Facilities' manager(s) or his or her representatives at any time, provided that the City and its  
1118 representatives comply with Contractor's reasonable safety and security rules and do not interfere with  
1119 the work of the Contractor or its subcontractors or Subcontractors. However, if the Contractor  
1120 representative or Approved Facility manager is not at the Approved Facility when the City Contract  
1121 Manager or their designee(s) visit without prior announcement, Contractor may limit the visit of the City  
1122 Contract Manager or their designee(s) to a portion of the facility including, but not limited to, offices,  
1123 container and vehicle storage areas, or maintenance yard. In that event, Contractor shall arrange for City  
1124 Contract Manager or their designee(s) to return for a visit of the complete Facility within twenty-four (24)  
1125 hours of the City's visit. Upon City direction, Contractor shall make personnel available to accompany City  
1126 employees or representatives on inspections. Contractor shall ensure that its employees cooperate with  
1127 the City and respond to the City's reasonable inquiries. Contractor shall facilitate similar observation and  
1128 inspection at Approved Facilities owned by it or an Affiliate upon the City Contract Manager's request and  
1129 within three (3) Business Days of receiving such request.

## 1130 **6.8 Use of Alternative Facilities; Changes to Approved Facilities**

### 1131 **A. Emergency Conditions and Use of Alternative Facility(ies).**

1132 1. Type of Emergency Conditions. An emergency condition shall be a condition in which  
1133 Contractor is unable to use an Approved Facility due to any unforeseen operational  
1134 restrictions that have been imposed upon the Approved Facility by a regulatory agency or any  
1135 unforeseen equipment or operational failure that will temporarily prevent the Approved  
1136 Facility from Accepting, Transferring and/or Processing some or all Acceptable Materials

1137 Delivered by Station Operator, or Disposing of resulting Residue, under the terms of this  
1138 Agreement.

1139 2. Notification to City of Emergency Conditions and Use of Alternative Facility. In the event of an  
1140 emergency condition, the Contractor, or Subcontractor, shall notify the City Contract  
1141 Manager as soon as possible and no later than twenty-four (24) hours from the time of the  
1142 incident. The notification shall include the following: (i) name of the affected Approved  
1143 Facility; (ii) the Recycling and Disposal Reporting System Number of the Approved Facility; (iii)  
1144 date the Approved Facility became unable to Accept, Transfer, and/or Process Organic  
1145 Materials or Accept and/or Dispose of Residue; (iv) description of the operational restrictions  
1146 that have been imposed upon the Approved Facility by a regulatory agency or unforeseen  
1147 equipment failure or operational restriction that occurred, including a description of the  
1148 reasons for such failures or restrictions; (v) the period of time the Contractor anticipates the  
1149 temporary inability of the Approved Facility to Accept, Transfer, and/or Process Organic  
1150 Materials or Accept and/or Dispose of Residue; and (vi) the alternative facility information  
1151 specified below in subsection C, as applicable.

1152 3. Contractor-Proposed Non-Approved Alternative Facility. In the event Contractor cannot use  
1153 an Approved Facility as an alternative, as provided in Exhibit F, Contractor shall propose a plan  
1154 to deliver Acceptable Materials to an alternative facility for Transfer, Processing, and/or  
1155 Residue Disposal. Contractor may request a waiver from the City Contract Manager to deliver  
1156 Organic Materials to the Approved Residue Disposal Facility, which the City Contract Manager  
1157 may grant at its sole discretion.

1158 Any proposed alternative facility shall meet the applicable facility standards in this Agreement  
1159 and shall result in Acceptable Materials being sent to: (i) an allowable facility, operation, or  
1160 use specified in California Code of Regulations, Title 14 Section 18983.1(b) and not  
1161 subsequently sent to landfill Disposal; (ii) a Transfer facility for Transfer and delivery to an  
1162 allowable facility operation, or for use for an activity specified in California Code of  
1163 Regulations, Title 14 Section 18983.1(b); or, (iii) a Disposal facility. If Contractor is interested  
1164 in using a facility for Organic Waste technology that is not specified in California Code of  
1165 Regulations, Title 14 Section 18983.1(b) or not currently approved by CalRecycle, Contractor  
1166 shall be responsible for securing the approvals necessary from CalRecycle prior to the City  
1167 Contract Manager's final approval of such facility or activity, and shall do so in accordance  
1168 with the procedures specified in California Code of Regulations, Title 14 Section 18983.2.

1169 Contractor's notice to City Contract Manager provided under subsection 2 above shall include  
1170 the following information for the alternative facility: (i) name of the alternative Facility; (ii)  
1171 the Recycling and Disposal Reporting System Number of the alternative facility; (iii) name of  
1172 the facility and CalRecycle issued facility number, owner and operator and Affiliate, if any, to  
1173 the Contractor; (iv) the reason(s) for its selection; (v) the permitting status of and LEA  
1174 inspection records related to the facility; (vi) services to be provided by the facility (e.g.,  
1175 Transfer, Processing, Disposal); (vii) distance from the Station; and, (viii) other such  
1176 information as may be requested by the City Contract Manager.

1177 4. City Approval of Alternative Facility or Waiver for Disposal of Materials. Upon receipt and  
1178 review of the notification by Contractor pursuant to subsections 2 and 3 above regarding an  
1179 Approved Facility's emergency condition, the City Contract Manager shall approve

1180 Contractor's use of an alternative facility, or, in the case of Organic Materials, direct the  
1181 Contractor to Transport the Organic Materials to the Approved Residue Disposal Facility for  
1182 Disposal on a temporary basis for a time period specified by the City Contract Manager, and  
1183 will so notify the Contractor. Pursuant to California Code of Regulations, Title 14 Section  
1184 18984.13, if Organic Materials are Disposed, the approved Disposal period shall not exceed  
1185 ninety (90) days from the date the Approved Facility's Processing restriction or failure  
1186 commenced. In such case, the Contractor must receive written permission from the City  
1187 Contract Manager prior to Disposing of any Acceptable Material.

1188 5. Contractor Use of Alternative Facility. Contractor may use an alternative facility provided that  
1189 the Contractor provides verbal and written notice to the City Contract Manager and receives  
1190 written approval from the City Contract Manager at least twenty-four (24) hours prior to the  
1191 use of an alternative facility to the extent reasonably practical given the nature of the  
1192 emergency or sudden closure.

1193 6. Record Keeping and Reporting. Contractor shall maintain a record of all Approved Facilities'  
1194 emergency conditions and report this information to the City Contract Manager in accordance  
1195 with Exhibit A.

1196 B. City's Right to Designate Alternative Facility. If any Approved Facility specified in this Agreement  
1197 becomes unavailable for use by Contractor for Acceptable Materials Collected in the City for a period  
1198 of more than two (2) days, the City Contract Manager may designate Contractor's use of an alternative  
1199 facility as provided in Section 2.2 of this Agreement. The Parties agree that an Approved Facility shall  
1200 only be deemed to be "unavailable" if one or more of the following has occurred: (i) an Uncontrollable  
1201 Circumstance event has occurred; (ii) an Approved Facility has lost one or more permits to operate;  
1202 and/or, (iii) an Approved Facility has exhibited a pattern of violation through the receipt of repeated  
1203 notices of violation from one or more regulatory agencies. Unavailability of an Approved Facility due  
1204 to Contractor's negligence, illegal activity, neglect, or willful misconduct, is an event of breach. An  
1205 Approved Facility shall only be deemed to be "unavailable" if the lack of availability is not due to  
1206 Contractor's negligence, illegal activity, neglect, or willful misconduct.

1207 At the City Contract Manager's request, Contractor shall within five (5) Business Days notify the City  
1208 Contract Manager of any logistical changes that would be required to utilize such alternative  
1209 facility(ies). The City Contract Manager will designate the approved alternative facility(ies) and adjust  
1210 Contractor compensation for any change in cost as provided in Section 2.2. Such decision shall be  
1211 final.

1212 C. Contractor-Initiated Request to Change an Approved Facility. Contractor may request City Contract  
1213 Manager approval to add or delete an Approved Facility from the list of Approved Facilities identified  
1214 in Exhibit F, by submitting a written request at least six (6) months prior to the desired date to  
1215 commence use of a new facility addressing the information required for an alternative facility in  
1216 subsection A.3 above excluding item (vii). The City Contract Manager may grant such approval at their  
1217 sole discretion, and may be conditioned on factors including, but not limited to the performance of  
1218 the current Approved Facility versus the proposed facility, the permitting status of and LEA inspection  
1219 records related to the proposed facility, the distance of the proposed facility from the Station, review  
1220 of Contractor's proposed changes to Contractor's Revenue, any added costs incurred by the Station  
1221 Operator in Transporting Acceptable Materials, and any additional factors that may affect the value

of the Services received by the City. City may, at its sole discretion approve an increase or decrease 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). The initial governmental components are specified in Section 7.3.C.

- B. **Rates for Rate Period One.** Per-Ton Rates for Rate Period One (January 2022 – June 30, 2023) are as follows:

- (1) **Food Scraps Processing Rate (mashed)**  
(Includes transportation of Food Scraps from Station to Approved Facility by Contractor)

1256		Contractor Component for Rate Period One: \$65.15 +
1257		Governmental Component for Rate Period One: \$0.00 =
1258		<b>Total Per-Ton Rate for Rate Period One: \$65.15</b>
1259		The above rate assumes that Food Scraps are Processed into food mash at the Station
1260	(2)	<b>Food Scraps Processing Rate (not mashed)</b>
1261		(Does not includes transportation of Food Scraps from Station to Approved Facilities by
1262		Contractor)
1263		
1264		Contractor Component for Rate Period One: \$95.15 +
1265		Governmental Component for Rate Period One: \$0.00 =
1266		<b>Total Per-Ton Rate for Rate Period One: \$95.15</b>
1267		The above rate is for Food Scraps that are not Processed into food mash at the Station
1268	(3)	<b>Source-Separated Yard Trimmings Processing Rate</b>
1269		(Includes transportation of Yard Trimmings from Station to Approved Facilities by
1270		Contractor)
1271		Contractor Component for Rate Period One: \$62.50 +
1272		Governmental Component for Rate Period One: \$0.00 =
1273		<b>Total Per-Ton Rate for Rate Period One: \$62.50</b>
1274		The above rate assumes that Yard Trimmings are Processed (ground) to five-inch (5")
1275		minus at the Station.
1276		
1277	(4)	<b>Source-Separated Yard Trimmings Processing Rate</b>
1278		(Does not include transportation. Station Operator to transport from Station to Approved
1279		Facilities)
1280		Contractor Component for Rate Period One: \$30.00 +
1281		Governmental Component for Rate Period One: \$0.00 =
1282		<b>Total Per-Ton Rate for Rate Period One: \$ 30.00</b>
1283		The above rate assumes that Yard Trimmings are Processed (ground) to five-inch (5") minus
1284		at the Station



### 7.3 Per-Ton Rate Adjustments

Per-Ton Rates for Rate Periods Two through Seven shall be adjusted annually by CPI commencing July 1, 2023, in accordance with this Section 7.3.

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 February of the then-current Rate Period minus the Average Index Value for the 12-month period ending June of the most-recently completed Rate Period, divided by the Average Index Value for the 12-month period ending June 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 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.

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.

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 (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). 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.

1479 The foregoing indemnity is intended to operate as an agreement pursuant to 42 U.S.C. Section 9607(e)  
1480 and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify the  
1481 City from liability in accordance with this Section.

#### 1482 **9.4 Insurance**

1483 Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this  
1484 Agreement not less than the following coverage and limits of insurance:

1485 A. **Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1486 (1) The most recent editions of Insurance Services Office form number GL 0002 covering  
1487 Commercial or Comprehensive General Liability and Insurance Services Office form number  
1488 GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office  
1489 Commercial General Liability coverage ("occurrence" form CG 0001).

1490 (2) The most recent editions of Insurance Services Office form number CA 0001 covering  
1491 Automobile Liability, code 1 "any auto" and endorsement CA 0025.

1492 (3) Workers' compensation Employers Liability insurance as required by California Labor Code  
1493 §3700 et al.

1494 B. **Minimum Limits of Insurance.** Contractor shall maintain limits no less than:

1495 (1) Commercial or Comprehensive General Liability: Ten Million Dollars (\$10,000,000) combined  
1496 single limit per occurrence for bodily injury, Personal injury and property damage.

1497 (2) Automobile Liability: Ten Million Dollars (\$10,000,000) combined single limit per accident for  
1498 bodily injury and property damage.

1499 (3) Workers' Compensation and Employers Liability: Workers' compensation limits as required  
1500 by the Labor Code of the State of California and Employers Liability limits of One Million  
1501 dollars (\$1,000,000) per accident/occurrence.

1502 C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be  
1503 declared to and approved by City. At the option of and to the satisfaction of City in its sole  
1504 discretion, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions  
1505 as respects City, the Partners, and their officers, directors, employees, volunteers, and agents  
1506 (collectively, "Indemnitees"); or Contractor shall procure a bond or other acceptable security  
1507 device guaranteeing payment of losses and related investigations, claim administration and  
1508 defense expenses for the deductibles or self-insured retentions.

1509 D. **Other Insurance Provisions.** The policies are to contain, or be endorsed to contain, the following  
1510 provisions:

1511 (1) **General Liability and Automobile Liability Coverage.**

1512 a. The City, the Partners, and their officers, directors, employees and volunteers are to be  
1513 covered as additional insureds as respects: liability arising out of activities performed by or

- 1514 on behalf of Contractor; products and completed operations of Contractor; Premises owned,  
1515 leased or used by Contractor; or automobiles owned, leased, hired or borrowed by  
1516 contractor. The coverage shall contain no special limitations on the scope of protection  
1517 afforded to the City, its officials, directors, employees, or volunteers.
- 1518 b. Contractor's insurance coverage shall be primary insurance with regards to the circumstances  
1519 articulated in the preceding paragraph as respects City, the Partners, and their officers,  
1520 directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its  
1521 officials, employees, or volunteers shall be excess of Contractor's insurance and shall not  
1522 contribute with it.
- 1523 c. Any failure to comply with reporting provisions of the policies shall not affect coverage  
1524 provided to City, the Partners, and their officers, directors, employees, or volunteers.
- 1525 d. Coverage shall state that Contractor's insurance shall apply separately to each insured against  
1526 whom claim is made or suit is brought, except with respect to the limits of the insurer's  
1527 liability.
- 1528 e. Contractor's insurers shall agree to waive all rights of subrogation against City, the Partners,  
1529 and their officers, directors, employees, and volunteers for losses arising from work  
1530 performed by Contractor under this Agreement.
- 1531 (2) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all  
1532 rights of subrogation against City, the Partners, and their officers, directors, employees, and  
1533 volunteers for losses arising from work performed by Contractor under this Agreement.
- 1534 E. **Acceptability of Insurers.** The insurance policies required by this Section shall be issued by an  
1535 insurance company or companies admitted to do business in the State of California and with a  
1536 rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a  
1537 rating classification of A or better, unless the City's Risk Manager agrees in writing to alternative  
1538 ratings.
- 1539 To the extent permitted by law, all or any part of the required insurance may be provided under  
1540 a plan of self-insurance, only if, in the sole discretion of City, Contractor can provide adequate  
1541 assurances that the self-insured coverage provides commercially equivalent protection to City,  
1542 the Partners, and their officers, directors, employees, volunteers, and agents.
- 1543 F. **Verification of Coverage.** Contractor shall furnish the City's Risk Manager and Contract Manager  
1544 with certificates of insurance and with original endorsements affecting coverage required by this  
1545 clause. The certificates and endorsements for each insurance policy are to be signed by a Person  
1546 authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are  
1547 to be on forms provided by or acceptable to the City's Risk Manager and are to be received and  
1548 approved by the City's Risk Manager before work commences. City reserves the right to require  
1549 complete, certified copies of all required insurance policies for good cause, at any time, but shall  
1550 respect the confidentiality of such documents to the extent such confidentiality may be provided  
1551 for under California law.
- 1552 G. **Subcontractors.** Contractor shall include all Subcontractors as insureds under its policies or shall  
1553 furnish separate certificates and endorsements for each Subcontractor. All coverages for



1554 Subcontractors shall be subject to all of the requirements stated herein.

1555 H. **Required Endorsements.** Both the Workers' Compensation policy and Comprehensive General  
1556 Liability policy shall contain the following endorsements in substantially the following form:

1557 (1) "Thirty (30) days prior written notice shall be given to City's Risk Manager and the City  
1558 Contract Manager in the event of cancellation or non-renewal of this policy. Unless notified  
1559 of a different address, such notice shall be sent to:

1560 City Contract Manager  
1561 City of Sunnyvale  
1562 456 W. Olive Avenue  
1563 Sunnyvale, CA 94086"  
1564 With a copy to:

1565  
1566 Risk Manager  
1567 City of Sunnyvale  
1568 456 W. Olive Avenue  
1569 Sunnyvale, CA 94086"

1570 (2) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or  
1571 judgment brought or recovered against Contractor. This policy shall protect Contractor and City  
1572 in the same manner as though a separate policy had been issued to each, but this shall not operate  
1573 to increase Contractor's liability as set forth in the policy beyond the amount shown or to which  
1574 Contractor would have been liable if only one party had been named as an insured. Unless notified  
1575 of a different address, notices of cancellation shall be sent to:

1576 City Contract Manager  
1577 City of Sunnyvale  
1578 456 W. Olive Avenue  
1579 Sunnyvale, CA 94086"

1580 I. **Delivery of Proof of Coverage.** Thirty (30) Days prior to the Commencement Date, Contractor  
1581 shall furnish City certificates of each policy of insurance required hereunder, in form and  
1582 substance satisfactory to City. Such certificates shall show the type and amount of coverage,  
1583 effective dates, and dates of expiration of policies and shall have all required endorsements. If  
1584 City requests, copies of each policy, together with all endorsements, shall also be promptly  
1585 delivered to City. Renewal certificates will be furnished to City's Risk Manager and the City  
1586 Contract Manager when issued to demonstrate maintenance of the required coverages  
1587 throughout the term.

1588 J. **Other Insurance Requirements.**

1589 (1) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of  
1590 insurance shall not relieve Contractor from any obligation under this Agreement. If any claim  
1591 exceeding the amount of any deductibles or self-insured reserves is made by any third Person  
1592 against Contractor on account of any occurrence related to this Agreement, Contractor shall  
1593 promptly report the facts in writing to the insurance carrier and to the City's Risk Manager.



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

## **9.5 Performance Bond**

- A. Within seven (7) calendar days of the City's notification to Contractor that the City has executed this Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The Parties shall agree on the initial date of the bond, based on whether Contractor services begin on January 1, 2022, or if any Contractor activities necessary to provision of service under this Agreement begin on an earlier date. The principal sum of the bond shall be \$20,000 and shall be annually adjusted by the CPI as provided in Section 7.3. The bond shall be executed 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.
- C. The performance bond shall only pertain to the Processing of Food Scraps by Contractor and not to the on-call contingency Processing of Yard Trimmings by Contractor's Subcontractor. If City requests regularly scheduled, ongoing Yard Trimmings Processing (as opposed to contingency on-call) Parties shall meet and confer, and Contractor shall agree to reasonable performance bond requirements, related to both Food Scraps and Yard Trimmings Processing, without a change in compensation.

## 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 (other than Criminal Activity), 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

1669 Agreement does not relieve Contractor of its obligation to perform such act, or the service(s) dependent  
1670 on such act.

#### 1671 **10.4 Event of Default**

1672 Each of the following shall constitute an Event of Default, upon which City shall promptly or as soon as  
1673 practicable provide Contractor written notice of the default:

1674 A. **Failure to Cure Breach.** If Contractor fails to cure an Event of Breach as provided above in  
1675 Section 10.2.

1676 B. **Repeated Pattern of Breach.** A pattern of breaches of this Agreement over time such that the  
1677 combination of breaches constitutes a material failure by Contractor to perform its obligations,  
1678 even if each individual breach is later cured.

1679 C. **Fraud or Deceit.** Contractor practices, or attempts to practice, any fraud or deceit upon City.

1680 D. **False or Misleading Statements.** Any representation or disclosure made to City by Contractor in  
1681 connection with or as an inducement to entering into this Agreement, or any future amendment  
1682 to this Agreement, which proves to be false or misleading in any material respect as of the time  
1683 such representation or disclosure is made, whether or not any such representation or disclosure  
1684 appears as part of this Agreement. In addition, any Contractor-provided report containing a  
1685 misstatement, misrepresentation, data manipulation, or a deliberate omission of fact or content  
1686 explicitly defined by the Agreement, excepting typographical and grammatical errors.

1687 E. **Failure to Perform.** Except as provided under Section 10.10, Contractor fails to provide  
1688 Processing, Diversion, or any other Services as required under this Agreement for a minimum of  
1689 either two (2) consecutive Business Days or three (3) non-consecutive Business Days within one  
1690 (1) week. City may give notice of Contractor's failure to perform verbally by telephone to  
1691 Contractor at its principal office and shall be effective immediately. Written confirmation of such  
1692 verbal notification shall be sent to Contractor within twenty-four (24) hours of the verbal  
1693 notification.

1694 F. **Criminal Activity.** Contractor, its officers, or managers are found guilty of Criminal Activity related  
1695 to performance of this Agreement or any other Agreement held with the City. Contractor shall  
1696 immediately notify the City Contract Manager upon the occurrence of any convictions or pleas.

1697 G. **Assignment without Approval.** Contractor transfers or assigns this Agreement without express  
1698 written approval of the City Contract Manager, unless the assignment is permitted without City  
1699 approval pursuant to Section 12.6.

1700 H. **Insolvency or Bankruptcy.** Contractor becomes insolvent, unable, or unwilling to pay its debts, a  
1701 receiver is appointed or Contractor's assets are involuntarily assigned, or upon listing of an order  
1702 for relief in favor of Contractor in a bankruptcy proceeding.

#### 1703 **10.5 Event of Default Not Curable**

1704 Contractor shall have no right to cure an Event of Default but may submit any relevant documentation for  
1705 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. Within ten (10) Business Days of receipt of such notice of intention to assess Liquidated Damages, or within forty (40) Business Days if the intended assessment totals over thirty thousand dollars (\$30,000), no Liquidated Damages may be imposed on Contractor until Contractor has been given a reasonable opportunity to respond to allegations and to meet and confer with the City Manager. Any subsequent appeals by Contractor shall be addressed in accordance with Article 11.

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



1892 City of Sunnyvale  
1893 456 West Olive Avenue  
1894 Sunnyvale, California 94086  
1895

1896 To Contractor:  
1897

1898 Louis Pellegrini, Chief Executive Officer  
1899 Sustainable Organic Solutions, LLC (SOS)  
1900 1080 Walsh Ave.  
1901 Santa Clara, CA 95050

## 1902 **12.7 Assignment and Transfer of Agreement**

1903 Neither Party shall assign its rights or delegate, subcontract, or otherwise transfer its obligations under  
1904 this Agreement to any other Person without the prior written consent of the other Party. Any such  
1905 assignment made without the consent of the other Party shall be void and the attempted assignment shall  
1906 constitute a material breach of this Agreement.

1907 A. For purposes of this Section when used in reference to Contractor, "assignment" shall include,  
1908 but not be limited to (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all  
1909 of Contractor's assets dedicated to service under this Agreement to a third party; (2) a sale,  
1910 exchange or other transfer of outstanding equity interests of Contractor to a third party (other  
1911 than a transfer of equity interests in Contractor by the owner of such interests to members of the  
1912 owner's family or to a trust for the benefit of his family, or to another owner of equity interests  
1913 in Contractor) provided said sale, exchange or transfer results in a change of control of Contractor;  
1914 (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-  
1915 issuance, voting trust, pooling agreement, escrow arrangement, liquidation, subcontracting or  
1916 lease-back arrangement, or other transaction to which results in a change of control of  
1917 Contractor; (4) any assignment by operation of law, including insolvency or bankruptcy, making  
1918 assignment for the benefit of creditors, writ of attachment for an execution being levied against  
1919 this Agreement, appointment of a receiver taking possession of Contractor's property; and (5) any  
1920 combination of the foregoing (whether or not in related or contemporaneous transactions) which  
1921 has the effect of any such transfer or change of control of Contractor.

1922 B. Contractor acknowledges that this Agreement involves rendering a vital service to the City's  
1923 residents and businesses, and that City has selected Contractor to perform the services specified  
1924 herein based on (1) Contractor's experience, skill and reputation for conducting its materials  
1925 management operations in a safe, effective and responsible fashion, at all times in keeping with  
1926 Applicable Laws, regulations and good materials management practices, and (2) Contractor's  
1927 financial resources to maintain the required equipment and to support its indemnity obligations  
1928 to City under this Agreement. City has relied on each of these factors, among others, in choosing  
1929 Contractor to perform the services to be rendered by Contractor under this Agreement.

1930 C. If Contractor requests City's consideration of and written consent to an assignment, City may deny  
1931 or approve such request in its complete discretion.

1932 D. No request by Contractor for consent to an assignment need be considered by City unless and  
1933 until Contractor has met the following requirements. However, City may, in its sole discretion,

- 1934 waive one or more of these requirements:
- 1935 (1) Contractor shall undertake to pay City its reasonable expenses for consultants' fees,  
1936 attorneys' fees, and investigation costs necessary to investigate the suitability of any  
1937 proposed assignee, and to review and finalize any documentation required as a condition for  
1938 approving any such assignment;
- 1939 (2) Contractor shall furnish City with audited financial statements of the proposed assignee's  
1940 operations for the immediately preceding three (3) operating years;
- 1941 (3) Contractor shall furnish City with satisfactory proof that: (1) the proposed assignee has at  
1942 least ten (10) years of Acceptable Materials Processing, and Diversion experience on a scale  
1943 equal to or exceeding the scale of operations conducted by Contractor under this Agreement;  
1944 (2) in the last five (5) years, the proposed assignee has not suffered any citations or other  
1945 censure from any federal, State or local agency having jurisdiction over its Processing, and  
1946 materials management operations due to, in City's sole and reasonable discretion, any  
1947 material or significant failure to comply with State, federal or local materials management  
1948 laws and that the assignee has provided City with a complete list such citations and censures;
- 1949 (4) The proposed assignee has at all times conducted its operations in an environmentally safe  
1950 and conscientious fashion; (4) the proposed assignee conducts materials management  
1951 practices in full compliance with all federal, State and local laws regulating the Processing,  
1952 and Diversion of all Acceptable Materials; and (5) any other information required by City to  
1953 ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe, and  
1954 effective manner.
- 1955 E. Contractor shall provide City with any and all additional records or documentation which, in City's  
1956 sole determination, would facilitate the review of the proposed assignment. City shall not  
1957 unreasonably withhold its consent to any such assignment.
- 1958 F. On the date City approves Contractor's written request for an assignment, Contractor shall pay  
1959 City a transfer fee in the amount of \$20,000. City's approval of such an assignment shall be  
1960 conditioned on the receipt of the transfer fee.

## 1961 **12.8 Compliance Audit**

1962 The City may, at any time during the Term or within three (3) years following the expiration or early  
1963 termination of this Agreement, perform an audit of Contractor's compliance with the Agreement and  
1964 performance standards, Tonnage records, Residue level, and payment of monies due to the City.

1965 Contractor shall fully cooperate with the City in any such audit. Contractor shall, in addition to  
1966 compensating the City for lost payments and applicable delinquency penalties, reimburse the City's cost  
1967 if the audit demonstrates an error rate of equal to or greater than three percent (3%). The City shall pay  
1968 the cost of an audit that demonstrates an error rate of less than three (3%).

## 1969 **12.9 Binding on Successors**

1970 The provisions of this Agreement shall inure to the benefit of and be binding on the successors and  
1971 permitted assigns of the Parties.

1972    **12.10    Non-Waiver**

1973    Failure of either Party to exercise any of the remedies set forth herein within the time periods provided  
1974    for shall not constitute a waiver of any rights of that Party with regard to that failure to perform or  
1975    subsequent failures to perform, whether determined to be a breach, excused performance, or unexcused  
1976    defaults, by the other Party.

1977                                    **ARTICLE 13**  
1978                                    **MISCELLANEOUS PROVISIONS**

1979    **13.1    Entire Agreement**

1980    This Agreement, including the Exhibits and any attachments or appendices, represents the full and entire  
1981    Agreement between the Parties with respect to the matters covered herein.

1982    **13.2    Amendment**

1983    Neither this Agreement nor any provision hereof may be changed, modified, amended, or waived except  
1984    by written agreement duly executed by both Parties.

1985    **13.3    Section Headings**

1986    The article and section headings in this Agreement are for convenience of reference only and are not  
1987    intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

1988    **13.4    References to Laws**

1989    All references in this Agreement to laws shall be understood to include such laws as they may be  
1990    subsequently amended or re-codified, unless otherwise specifically provided.

1991    **13.5    Interpretation**

1992    This Agreement shall be interpreted and construed reasonably and neither for nor against either Party,  
1993    regardless of the degree to which either Party participated in its drafting.

1994    **13.6    Severability**

1995    If any clause, provision, subsection, section, or article of this Agreement is for any reason deemed to be  
1996    invalid and unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such  
1997    portion shall not affect any of the remaining parts of this Agreement, which shall be enforced as if such  
1998    invalid or unenforceable portion had not been contained herein.

1999    **13.7    Further Assurance**

2000    Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or  
2001    reasonably requested by the other in order to give full effect to this Agreement.

2002     **13.8     Electronic Signature and Counterparts**

2003     This Agreement may be signed electronically and executed in counterparts each of which shall be  
2004     considered an original.

2005     **13.9     Exhibits**

2006     Each of the Exhibits identified as Exhibits A through J is attached hereto and incorporated herein and made  
2007     a part hereof by this reference.

2008     **13.10    Actions of City in its Governmental Capacity**

2009     Except as provided above in Section 3.1.J, nothing herein shall be interpreted as limiting the right of  
2010     Contractor to bring any legal action against City, not based on this Agreement, arising out of any act or  
2011     omission of City in its governmental or regulatory capacity.

2012 IN WITNESS WHEREOF, the parties have executed this Agreement.  
2013

2014 ATTEST: CITY OF SUNNYVALE ("CITY")  
2015

2016  
2017 By \_\_\_\_\_ By \_\_\_\_\_  
2018 City Clerk City Manager  
2019

2020  
2021 SUSTAINABLE ORGANIC SOLUTIONS, LLC  
2022 ("CONTRACTOR")  
2023

2024  
2025  
2026 APPROVED AS TO FORM: By \_\_\_\_\_  
2027  
2028 Louis Pellegrini, CEO  
2029

2030  
2031  
2032 \_\_\_\_\_  
2033 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.

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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.

### Performance Area No. 1: Operations

1. Invalid Driver License. Failure to have a vehicle driver properly licensed: \$500 per incident or \$100per Day, whichever is greater
2. Unauthorized Disposal. For each individual occurrence of Disposal rather than Processing andMarketing of Acceptable Materials: \$500 per Ton
3. Delivery to Non-Approved Facility. 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.
4. Excessive Residue. Failure to meet the Residue percentage level requirements for Processing ofan Acceptable Material pursuant to Section 5.7.F: The current per ton compensation rate for the relevant Acceptable Material, applied to every ton of excess residue.

### Performance Area No. 2: Reporting and Other Requirements

1. Late Reporting. For each Day after a due date as specified in this Agreement, that anymonthly report or other report other than an annual report is submitted: \$50.00
2. Late Annual Reporting. For each Day after the due date specified in Exhibit A that anyannual report is submitted: \$200.00
3. Incomplete or Inaccurate Information. For each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under, or in regard tothis 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. Fraudulent Records. 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. Failure to Maintain, or to Provide Access to Records. 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. Other Failures. For each failure to perform any obligation of the Agreement notspecifically 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:\_\_\_\_\_





## ORGANIC MATERIALS PROCESSING PLAN: SOURCE SEPARATED COMMERCIAL AND RESIDENTIAL FOOD SCRAPS

SOS employs the Sustainable Alternative Feed Enterprises (SAFE) patented dehydration process which produces a dried granular ingredient suitable for animal feed and soil amendment purposes, FOG to sell into the biodiesel market, and process water, which may be discharged into the sanitary sewer as permitted by Santa Clara County.

As indicated on the following pages extracted from SOS' *Technical Proposal*, wet mash is pumped into holding tanks to maintain temperature and consistency via a gas-fired oil heater. Circulation pumps are used to keep mash from separating, and move it to the decanter, which removes water and FOG (centrate). A centrifuge separates the water, which is moved to a storage tank, and FOG, which is sent to an expeller.

A special type of dryer removes most of the remaining moisture and pathogens from the mash while retaining its nutritional value. An extruder eliminates pathogens from the dry meal to meet USDA standards for animal feed, after which it is bagged on premises then sold and transported directly to formulators or feeders.

Also as indicated in SOS' *Technical Proposal*, the following list constitutes current/available and potential material buyers.

Product	Market(s)
Dehydrated raw from source separated food scraps, granular form.	Various Animal Feed Markets: <ul style="list-style-type: none"> <li>• IFS</li> <li>• Imperial Western</li> <li>• Penny Newman</li> <li>• Foster Farms (in development)</li> </ul> Soil Amendment: Agromin
FOG	+ Imperial Western
Raw Mash Alternative Processing	EBMUD

The processing description follows on the next page in a graphical step-by-step format.



## Processing Description - 1

### Tanker Truck

- Tanker trucks deliver 25 tons of mash per load to storage tanks



### Holding Tanks

- Stores up to 5,000 gallons of mash each., maintains temperature and consistency



### Centrifuge

- Processes the centrate—a mixture of free water and FOG, from the decanter



### Water Holding Tank

- Collects water until it is used as process cooling water or reclaimed - nearly as clean as tap water



### FOG Expeller

- Presses warm meal into sheets, expelling fat, oil and grease (FOG) from the product



### Gas Fired Oil Heater

- Circulates synthetic heat transfer fluid to maintain consistent product temperature



### Utility Skid & Control Panel

- Provides access to mash flow, heating, and drying systems data and controls to set operational parameters



### Decanter

- Separates free water and fats, oils & greases (FOG) from solids in the mash



#### Dryer

- Utilizes a patented process that removes moisture from mash efficiently while preserving the nutritional viability of the product



#### Dry Product Staging

- Enables product throughput management for lot tracking and batch traceability. Provides up to two days of continuous isolated dryer runtime



#### Extruder

- Pushes through 800 pounds of dry meal per hour while effectively destroying pathogens



#### Mill

- Receives sheets of pressed meal from the expeller, grinds into fine particles for bagging

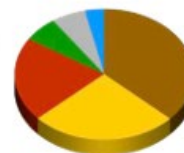


#### End Product

- Dry meal for animal feed, or as a soil amendment



- 36.9% Carbohydrate
- 26.3% Fat, Oil, Grease
- 20.8% Protein
- 6.3% Fiber
- 6.2% Ash
- 3.5% Minerals



## SOURCE SEPARATED RESIDENTIAL YARD TRIMMINGS

Source separated residential yard trimmings will be transported and composted by SOS subcontractor and strategic partner Agromin. Agromin will remove ground, - 5" yard trimmings<sup>1</sup> from the SMaRT Station and transport the material to one or both of its Northern California composting sites, both located in Dos Palos (El Nido Composting Facility-Synagro West) and (Agromin-Bowles Green Material Composting). Composting takes place in the open air in large, elongated, uniform prism shaped 'piles' of waste known as windrows.

The waste feedstock material is placed into long windrows on a non-permeable surface. Water may be added, depending on the moisture content of the waste. The windrows are turned regularly, either with a wheeled loader or by a specialist windrow turner machine (pulled along by a tractor / dedicated vehicle).

<sup>1</sup> With no more than 1% contamination – see limitation, *Form A*.

The windrows are turned several times during the compost process, which takes on average anywhere from thirty to ninety days.

As indicated in SOS' *Technical Proposal*, in anticipation of the SB 1383 requirement for finished compost, Sunnyvale source separated residential yard trimmings will be used to produce Agromin's OMRI Listed Compost 100®, a soil amendment that contains no animal materials or biosolids. COMPOST 100® is made from recycled organic materials and is a significant source of organic time-release nutrients including nitrogen, phosphorus and potassium and other micronutrients.

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Attachment 1 – Technical Proposal to:  
**CITY OF SUNNYVALE**  
For:  
**ORGANIC MATERIAL PROCESSING**  
December 1, 2020



Submitted by:  
**SUSTAINABLE ORGANIC SOLUTIONS**

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# 1 Cover Letter

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## TRANSMITTED VIA EMAIL

December 1, 2020

City of Sunnyvale  
Lisa Vo, Senior Buyer  
[lvo@sunnyvale.ca.gov](mailto:lvo@sunnyvale.ca.gov)

### ***Request for Proposals F21-024: Organic Material Processing***

Dear Ms. Vo and Evaluators:

Sustainable Organic Solutions, LLC (SOS) appreciates the opportunity to submit the following proposal in response to the *Request for Proposals (RFP)* as referenced above. SOS is submitting a *Technical* and *Cost Proposal* for each of the following services as per *Table 1* of the City's *RFP*:

#### **1. Source Separated Commercial and Residential Food Scraps**

*SOS is the current processor of the City's source separated commercial and residential food waste that is processed on site at the SMaRT Station into raw food waste mash. This proposal provides for the continuation of this service, which includes pick-up of the material using a tanker truck. As the incumbent service provider, only SOS can provide uninterrupted efficient service to the City with respect this material, as all administrative processes and a solid working are in place between the two parties. SOS is a pioneer in the food waste recovery space utilizing proprietary technology licensed through its affiliate Sustainable Alternative Feed Enterprises (SAFE), which was established in 2014 to tackle the food waste problem within the context of the solid waste industry.*

#### **2. Source Separated Residential Yard Trimmings**

*SOS will subcontract the processing of source separated residential yard trimmings to industry expert and strategic partner Agromin—a leader in organics processing throughout the State of California. The company was founded in 1972 and began recycling organic waste in 1993 to provide a solution to comply with California's AB 939. With nearly 30 years of experience, Agromin has since expanded its operations to manage organic materials for over 200 cities in California, including communities in Santa Barbara, Los Angeles, Orange, Riverside, San Bernardino, San Diego and in several Northern California counties including Merced, Yolo, Sacramento, and Solano. SOS has an existing relationship with Agromin as a marketer of end product generated at SOS.*

It is important to note that all facilities proposed are existing, properly permitted, and fully operational.

SOS is **not** bidding on either of the two remaining organic material streams considered in the City's *RFP*, namely: SMaRT Station 2-inch minus organic MRF fines and compostable/food soiled paper products.





SOS looks forward to continuing its relationship with the City of Sunnyvale through the award of a new *Agreement*. I am authorized to bind SOS in contract with the City as indicated in *Attachment C*, provided on the following page. Should the City have questions or be interested in site visits, please contact me directly on my cell phone listed below.

Sincerely,

A handwritten signature in blue ink that reads 'Louis Pellegrini'.

Louis Pellegrini




**Attachment C  
Secretary's Certification**

The undersigned, being the Secretary of Sustainable Organic Solutions, LLC., a California limited liability company ("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:

RESOLVED, that Louis Pellegrini be, and hereby is, authorized to 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.

Signed:

  
\_\_\_\_\_  
Louis Pellegrini, Secretary

Dated:

  
\_\_\_\_\_



## 2 Executive Summary

---

As provisioned in the preceding *Cover Letter*, SOS is bidding to remove and process two of the organic material streams listed in the City's *RFP*, namely:

### A. Source Separated Commercial and Residential Food Scraps

SOS is the current processor of this material stream and a pioneer in the emergent food scraps recovery technology space. With over six years of experience working with this particular organics stream, backed by generations of solid waste industry experience embodied in the ownership groups affiliated with SOS, the Company is extremely competitive from both a pricing and technology standpoint.

Sustainable Organics Solutions, LLC (SOS) was founded in 2014 to utilize technology later patented by affiliate company Sustainable Alternative Feed Enterprises, Inc. (SAFE). SAFE was founded in 2013 to provide a waste industry solution to the recovery of food waste. SAFE has developed, patented<sup>1</sup> and deployed a system for processing raw food waste into animal feed and a soil amendment/fertilizer product and currently has five projects which have been commissioned or are under development, including the pre-processing equipment currently in place at the SMaRT Station, successfully utilized for the past two years to process the source separated food waste received there.

---

*SOS is the current processor of the City of Sunnyvale's pre-processed source separated food waste. Currently, as stated in the City's RFP, SOS coordinates the removal of SMaRT Station raw food mash and invoices the SMaRT Station monthly for the removal by tanker truck and further processing of SMaRT Station source separated food scraps.*

---

It is SOS' intention and desire to continue to transport and further process the City's pre-processed food scraps under a new *Agreement*.

### B. Source Separated Residential Yard Trimmings

SOS will subcontract with Agromin for the removal, transport, and composting of this ground material. Agromin is a leader in organics recycling and one of the most trusted and recognized providers of sustainable organic waste solutions to meet California's diversion and recycling mandates. Agromin provides a full spectrum of organic waste recycling services and high-quality products, including premium soil and mulch products to meet the needs of its community partners and customers.

Agromin currently operates nine organic materials processing facilities in California with plans for additional facilities in the works. Furthermore, Agromin currently serves operations in the

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<sup>1</sup> U.S. Patent number 8,973,491 B1 issued March 15, 2017.



Bay Area. Each year, Agromin manages 750,000 tons of organic waste materials through its processing facilities. To date, Agromin has responsibly transformed over eight million tons of organic waste into nutrient-rich compost for use in agriculture, landscape and retail markets. Further, in addition to Agromin-operated facilities, Agromin also markets and distributes compost and other products for its strategic partners throughout the state of California to facilitate the successful movement of products to market with the goal of promoting healthy soils in the state.

---

*Agromin has an existing working relationship with SOS as a buyer of end product. Together, the SOS-Agromin team represent technological competency and innovation, administrative efficiency, ample processing operational capacity redundancy for the City of Sunnyvale in its quest to manage a complicated material stream as required by SB 1383 and an entire suite of related regulations.*

---

## The Food Waste Crisis

It is estimated that approximately 1.3 billion tons of food is wasted each year globally. Over 40 percent of food produced in the United States is wasted, most of which ends up in landfills – a loss equivalent to 1.3% of U.S. GDP<sup>2</sup>. Food makes up the largest percentage of waste going to landfills, nearly a quarter of all waste volume sent for disposal<sup>3</sup>.

As organic waste biodegrades, it produces methane, a significant greenhouse gas (GHG) contributing to climate change. At 376 m<sup>3</sup> gas/ton, food waste has three times the methane production potential as biosolids. A number of states are implementing regulations and policies to divert food waste from landfill, instead converting it into energy or other useful products. California is leading the charge, with a goal to reduce organics sent to landfill by 75% by 2025<sup>4</sup>. To accomplish this, a suite of regulations have been adopted in California to recover and divert organic material from the disposed waste stream, as depicted in this infographic:



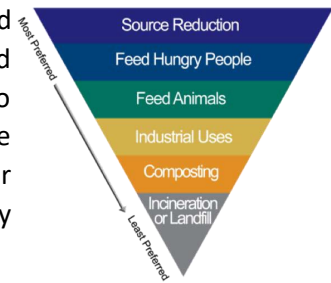
<sup>2</sup> NRDC, August 2017. <https://www.nrdc.org/sites/default/files/wasted-2017-report.pdf>.

<sup>3</sup> US EPA, Advancing Sustainable Materials Management: 2015 Fact Sheet, July 2018.

<sup>4</sup> Cal Recycle. <https://www.calrecycle.ca.gov/recycle/commercial/organics>



Furthermore, in 2015, the U.S. Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA) set a goal to cut food waste in half by 2030<sup>5</sup> food waste recovery process is designed to achieve two of the highest ranking uses of food waste according to the EPA’s Food Waste Recovery Hierarchy: the production of food for animals, and the production of fats, oil and greases (“FOG”), a key component of renewable biodiesel.



### SOS: Raw Mash from Food Scraps Processing Approach

Pre-processed raw mash from food waste is collected from waste transfer stations featuring SAFE technology, from dedicated food waste processing operations featuring SAFE technology, and, in some applications, commercial food production facilities (projects currently under development). The City described its SAFE system onsite at its SMaRT Station in *Addendum 1*. Food waste is shredded, sized, and screened to remove non-edible contaminants.

The wet mash is transported in tanker trucks to SOS in neighboring Santa Clara for the drying and production phase. It is pumped into holding tanks to maintain temperature and consistency via a gas-fired oil heater. Circulation pumps are used to keep mash from separating, and move it to the decanter, which removes centrate/process liquids. A centrifuge separates the centrate into water and FOG—which is sent to an expeller.

A special type of dryer—key to SAFE’s patented system installed at SOS—removes most of the remaining moisture and completely eliminates pathogens from the mash while retaining nutritional value through a time and temperature process and also through a mechanical one: an extruder kills remaining pathogens from the dry meal to meet USDA standards for animal feed. After this step, the material is bagged on premises then sold and transported directly to feeders or formulators in the animal feed market, or to brokers who produce fertilizer and soil amendments for local farming.

### SOS Subcontractor Agromin: Yard Trimmings Composting Approach

Over the years, Agromin has refined its infrastructure, processing technologies, and logistics network to support the statewide tons of organic material Agromin manages. In doing so, Agromin provides comprehensive diversion services of organic materials for waste haulers, landfills, and municipalities. Agromin transforms these organic materials into more than 250 types of value-added, sustainable products. These products are delivered to multiple markets with speed and efficiency. Some of the markets served include agriculture, commercial landscape, retail customers and waste-to-energy projects.

<sup>5</sup> USDA. <https://www.usda.gov/press-releases/2015/09/16/usda-and-epa-join-private-sector-charitable-organizations-set>



Agromin will pick-up source-separated, ground, residential yard trimmings (green material) from the SMaRT Station using a subcontracted hauler and will transport the material to the El Nido Composting Facility-Synagro West (Synagro) in Dos Palos for open windrow composting. Synagro will use the green material as a bulking agent to mix with biosolids prior to composting. The finished compost product will be marketed to the local agricultural community. Additionally, Agromin may have the green material delivered to the Agromin-Bowles Green Material Composting site, also in Dos Palos, to blend with agricultural waste materials for composting. Similarly, the finished compost product will be marketed to the local agricultural community.

Agromin can easily assist jurisdictions in meeting the SB 1383 requirement for recycled product procurement, which we believe may be of keen interest and of great value to the City. This may be accomplished through the procurement of Agromin's OMRI-Listed Compost 100®, which offers an excellent soil amendment that contains no animal materials or biosolids. COMPOST 100® is made from recycled organic materials and is a significant source of organic, time-released nutrients including nitrogen, phosphorus, potassium, and other micronutrients.

*A specification sheet on COMPOST 100® is included on the following page.*

### **Redundancy for the SMaRT Station and City of Sunnyvale**

Should the SMaRT Station food scraps pre-processing equipment become temporarily inaccessible, such as closing for repairs, SOS affiliate Mission Trail Waste Systems, also located in Santa Clara and in close proximity from Sunnyvale routes, can receive source-separated food scraps direct-hauled in route trucks at 1050 Memorex Drive. A parallel system to the one in place at the SMaRT Station is located at Mission Trail's transfer station, which is also equipped with certified scales.

As a contingency measure, SOS itself has an agreement with East Bay Municipal Utility District (EBMUD) where raw mash may be transferred for processing during equipment repair and downtime.

Agromin has access to a network of its own composting operations which provides additional processing capacity and assurance to the City.

The SOS-Agromin team, with its infrastructure of California operations and its strategic partnership in place, provides assurance to the City that, in case of an emergency, this duo can provide processing services for the options being bid on for **source separated commercial and residential food scraps** (raw mash) and **source separated residential yard trimmings**.





# COMPOST 100<sup>®</sup> BUILDING CARBON LEVELS FOR SOIL HEALTH

Manufactured Exclusively from Green Recycled Materials



Agromin's OMRI Listed Compost 100 may be used in certified organic production or food processing and handling according to the USDA Program rule.

Recommended Usage Rates				
Maximum yearly application 40 tons per acre				
	Soil Organic Matter, weight percent			
Tons of Compost	1%	2%	3%	4%
1" Depth	40 ton	30	20	10
2" Depth	80	60	40	20
3" Depth	120	90	60	30
6" Depth	240	180	120	60

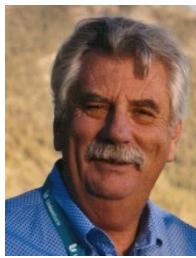




### 3 General

#### Key Personnel - SOS

SOS operates under the oversight of **Louie Pellegrini**, principal and General Manager, and **Christopher Martinez**, Plant Manager.



##### **Louie Pellegrini**

Direct: 408-727-5365 (Mission Trail Waste Systems)

Cellular: 650-814-9532

Email: [lpellegrini@missiontrail.com](mailto:lpellegrini@missiontrail.com)

Mr. Pellegrini has over 40 years of experience in the solid waste and recycling industry. Starting his career at Peninsula Sanitary Service in 1972, he branched out in the 90s and became a founder and the General Manager of GreenTeam of San José until 1998. Louie is an owner/manager of Alameda County Industries (Alameda, Castro Valley, San Leandro, San Ramon), Garden City Sanitation (San José), Livermore Sanitation, Milpitas Sanitation, and Mission Trail Waste Systems (Los Altos, Santa Clara). In addition to providing franchise collection services, these companies provide post-collection services including transfer and recyclable and organic material recovery processing. Louie is an expert in collection and processing system design and implementation, data flow and capture, and landfill diversion strategies. Louie is an active member of the California Refuse and Recycling Council (CRRCC) and holds multiple patents.

In 2014 Louie co-founded food recovery companies Sustainable Alternative Feed Enterprises (SAFE) and Sustainable Organic Solutions (SOS) to provide much needed source separated food scrap recovery technology to the waste industry.



##### **Christopher Martinez**

Direct: 408-988-4500 (Garden City Sanitation)

Email: [cdm@forktofeed.com](mailto:cdm@forktofeed.com)

Mr. Martinez started in the waste industry with SOS in 2016 assisting with plant operations. In 2018 became Christopher became Plant Manager building on his SOS operations background and also drawing on his six years of experience as a project manager in the construction industry. He ensures plant operations are in compliance with all laws and regulations and run safely and efficiently. Christopher's outside-the-box engineering talent has led to several equipment upgrades to maximize efficiency of the operations process.

Christopher is working concurrently on a bachelor's degree in Business Administration, and also served in the United States Marines for four years as a team leader.





### Jordan Ott

To provide plant operations redundancy, another employee of Louie's family business, Peninsula Sanitary Service, Jordan Ott, is fully cross-trained. SOS contracts with Jordan whenever Christopher cannot be present or for equipment maintenance. Jordan also operates the tanker truck that pulls pre-processed food waste from the SMaRT Station and provides technical assistance to SMaRT Station operators as needed.

## Key Personnel - Agromin

Agromin operates under the oversight of owner **Bill Camarillo**.



### Bill Camarillo

Direct: 805-485-9200

Email: [bcamarillo@agromin.com](mailto:bcamarillo@agromin.com)

Bill Camarillo remains passionate about his business after 28 years in the industry as the leader of one of the largest organics recyclers in California and the United States. He plays a key role in pioneering sustainability through organic waste conversion.

Agromin's more than 250 eco-friendly organic soil and mulch products are sold in retail, agriculture, landscape, and energy sectors. Its products are earth friendly and the result of more than eight million tons of organic waste materials recycled in California since 1991. Bill's charter is to build on Agromin's leadership in the organic waste material recycling market, including building new markets, developing strategic partnerships and extending the company's existing business, ensuring operational excellence, and creating continued brand awareness.

Under Bill's leadership, Agromin has received numerous awards recognizing its sound business practices, and its recycling and sustainability efforts. These include the CRRRA's 2009 *Environmental Excellence Award*. Agromin is also designated as a California Climate Action Registry *Climate Action Leader*.

Bill Camarillo remains passionate about his business after 28 years in the industry as the leader of one of the largest organics recyclers in California and the United States. He plays a key role in pioneering sustainability through organic waste conversion.



**Kimberly M. Cook**

Direct: 916-307-6114

Email: [kimberly@agromin.com](mailto:kimberly@agromin.com)

Kimberly joined the Agromin team to manage and expand the business in Northern California, as the Northern California Business Development Manager. A driven and influential leader, Kimberly is known for building high-functioning teams and turning her visions of sustainability into reality. She brings with her a wealth of knowledge and experience stemming from a dynamic background. Originally from Southern California, Kimberly voluntarily taught composting classes to her community nearly 20 years ago. After serving 12 years in the Navy, including 5.5 years as Naval Officer on warships around the world, she has come full-circle, now working in the organic materials composting industry for a sustainable planet. Her work with Agromin includes coordination with strategic partners in customer service, operations, facility oversight, reporting, and marketing finished products.



**Robert Ford**

Direct: 323-843-7265

Email: [Robertford@synagro.com](mailto:Robertford@synagro.com)

As regional Business Development Manager, Robert Ford leads in Synagro's strategy and execution to achieve successful outcomes in business, financials and driving personal performance, while exceeding customer expectations, in sustaining and growing Synagro's West Region business unit. The West Region includes the Arizona Soils Composting Facility, Central Valley Composting Facility, South Kern Composting Manufacturing Facility, including sourcing organics for Beneficial Use under SB1383, as well as supporting the compost product sales associated with these facilities.



### 3 General

#### B Subcontractors

##### Raw Mash Transportation

In connection with SOS' bid to process **source separated commercial and residential food scraps**, and as is currently the case, SOS will subcontract mash-hauling to affiliate company Peninsula Sanitary Service, Inc. (PSSI). PSSI owns, operates, maintains, and ensures the tanker truck utilized to pump raw food waste mash from the SMaRT Station's holding tanks and transports the material to SOS in Santa Clara for final processing and shipping to markets. PSSI may supply personnel as described in the previous subsection.



PSSI is a deeply experienced operator also is the subcontractor to SOS to move City of Santa Cruz material from its SAFE pre-processing system to SOS.

##### Composting

In connection with SOS' bid to process **source separated residential yard trimmings**, SOS will subcontract transportation and composting of this material to strategic partner Agromin. Agromin will remove ground, - 5" yard trimmings<sup>6</sup> from the SMaRT Station and transport the material to one or both of its Northern California composting sites, both located in Dos Palos (El Nido Composting Facility-Synagro West) and (Agromin-Bowles Green Material Composting). Composting takes place in the open air in large, elongated, uniform prism shaped 'piles' of waste known as windrows. The waste feedstock material is placed into long windrows on a non-permeable surface. Water may be added, depending on the moisture content of the waste. The windrows are turned regularly, either with a wheeled loader or by a specialist windrow turner machine (pulled along by a tractor / dedicated vehicle). The windrows are turned several times during the compost process, which takes on average anywhere from thirty to ninety days.

Because this subcontracted work represents a substantial segment of the City's scope of work, separate *Forms A* and *C* are provided. Because the associated facilities utilize open windrow technology, additional technical information is not included in *Section 4*, however. Benefits of the SOS – Agromin partnership are highlighted in the *Executive Summary*.

<sup>6</sup> With no more than 1% contamination – see limitation, *Form A*.



## 4 Technical Proposal

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### Overview

Please note: This *Technical Proposal* is divided into two parts to address the two separate proposals, where applicable or necessary. *Part A* is the proposal for the processing of raw mash derived from **source separated commercial and residential food scraps**, and *Part B* pertains to processing **source separated residential yard trimmings**.

Both proposals have their own associated *Form A* (all facilities featured in this *Technical Proposal* are existing), as well as their own associated *Form C* (provided as a separate attachment, as required).

To help eliminate redundancy, *Section 4B* will cross reference sections in *4A* where information is substantially the same.



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### 4 Technical Proposal

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#### A Source Separated Commercial and Residential Food Scraps

This section addresses all information requested in the *RFP Section 2.2* mostly in the order presented therein. Please note one exception to the order presented in the *RFP*: a graphical description of our full process is found at the conclusion of this section, to maintain presentation flow.

As per the City's request, SOS is presenting abbreviated information here but welcomes further inquiries and is also happy to host a site tour.

##### Processing Site Information

###### *RFP §2.2.1*

Sustainable Organic Solutions, LLC (SOS) is a California limited liability company that was organized in 2014. SOS is located at:

**Sustainable Organic Solutions**  
**1080 Walsh Avenue**  
**Santa Clara, CA 95050**

SOS is under the control and oversight of co-owner Louie Pellegrini, whose biography is given in *Section 3 – Key Personnel*. The plant is managed by Christopher Martinez, whose biography is also provided in that section. Contact information for team members are given in their preceding biographies.

SOS leases space from, and is conveniently co-located at, affiliate hauling company Garden City Sanitation in approximately 8,000 square feet under roof. SOS is both owner and processor of the above-referenced operation on Walsh Avenue.

The process of dehydrating the raw food mash is explained in the following subsection, per the *RFP* and not repeated here to avoid redundancy.



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### Available Processing Capacity

#### RFP §2.2.2

#### Description of Processing Operations and Table 1 Material

The following information pertains to the previously referenced facility, which is currently seeks to continue processing the City's **source-separated commercial and residential food scraps (raw mash)**, with an associated projected tonnage estimate of 11,000 tons annually in 2022, the start date of the new contract.

The SAFE patented process utilized by SOS is primarily a dehydration process that produces a dried granular ingredient suitable for animal feed and soil amendment purposes, FOG to sell into the biodiesel market, and process water, which may be discharged into the sanitary sewer as permitted by Santa Clara County. Other uses for the process water are currently being explored.

As an overview of the drying and production phase conducted at SOS, wet mash is pumped into holding tanks to maintain temperature and consistency via a gas-fired oil heater. Circulation pumps are used to keep mash from separating, and move it to the decanter, which removes water and FOG (centrate). A centrifuge separates the water, which is moved to a storage tank, and FOG, which is sent to an expeller.

A special type of dryer removes most of the remaining moisture and pathogens from the mash while retaining its nutritional value. An extruder eliminates pathogens from the dry meal to meet USDA standards for animal feed, after which it is bagged on premises then sold and transported directly to formulators or feeders.

SOS holds an animal feed license, obtained through the California Department of Food and Agriculture (CDFA), pictured below. Because the material received from the SMaRT Station is stable and no longer putrescible, and only one agency can provide regulatory oversight, CalRecycle relinquished oversight of our facility.

More information on this is found in *Section 4 – Permits and Regulatory Compliance*.

The processing description follows on the next page in a graphical step-by-step format.





## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### Processing Description - 1

#### Tanker Truck

- Tanker trucks deliver 25 tons of mash per load to storage tanks



#### Holding Tanks

- Stores up to 5,000 gallons of mash each., maintains temperature and consistency



#### Centrifuge

- Processes the centrate—a mixture of free water and FOG, from the decanter



#### Water Holding Tank

- Collects water until it is used as process cooling water or reclaimed - nearly as clean as tap water



#### FOG Expeller

- Presses warm meal into sheets, expelling fat, oil and grease (FOG) from the product



#### Gas Fired Oil Heater

- Circulates synthetic heat transfer fluid to maintain consistent product temperature



#### Utility Skid & Control Panel

- Provides access to mash flow, heating, and drying systems data and controls to set operational parameters



#### Decanter

- Separates free water and fats, oils & greases (FOG) from solids in the mash





## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### Processing Description – 2

#### Dryer

- Utilizes a patented process that removes moisture from mash efficiently while preserving the nutritional viability of the product



#### Dry Product Staging

- Enables product throughput management for lot tracking and batch traceability. Provides up to two days of continuous isolated dryer runtime



#### Extruder

- Pushes through 800 pounds of dry meal per hour while effectively destroying pathogens



#### Mill

- Receives sheets of pressed meal from the expeller, grinds into fine particles for bagging

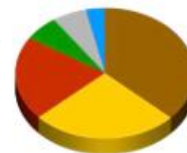


#### End Product

- Dry meal for animal feed, or as a soil amendment



- 36.9% Carbohydrate
- 26.3% Fat, Oil, Grease
- 20.8% Protein
- 6.3% Fiber
- 6.2% Ash
- 3.5% Minerals







## **Proposal 4A: Source Separated Commercial and Residential Food Scraps**

### **List of Acceptable Materials**

SOS has been processing the SMaRT Station's residential and commercial food scraps that are pre-processed using equipment developed by affiliate company SAFE. Acceptable materials include:

- Source separated commercial and residential food scraps pre-processed into raw mash.

It is important to note that plastic bags and various forms of packaging have enter the pre-processing system situated at the SMaRT Station. The allowance of these materials is thought to increase customer participation through the removal of a use barrier. Messaging around acceptable materials is a choice the City of Sunnyvale must make since this messaging impacts residual waste and hence, diversion. Without effective customer messaging, residual waste will be generated at a higher level. The cleaner and purer the source separated food scraps stream is, the higher quality the output.

### **Method of Tracking and Reporting**

Weight tags are required for all incoming materials and outgoing/sold product. These tickets are scanned and recorded in SOS' tanker weight database and physical copies are also filed away. SOS also maintains an inventory database of all finished product. All work and safety plans required are updated as needed. Database worksheets are utilized to generate invoices. SOS invoices for raw mash processing are checked and reconciled with SMaRT Station records prior to payment.

### **Commitment Guaranteeing Processing Capacity**

SOS is designed to accept and process approximately 70 tons of raw food mash daily. Current input varies but is never in exceedance of an approximate ten tons daily, an amount that includes the City of Sunnyvale's commercial and residential source separated food scraps.

I, Louie Pellegrini, certify that I am the designated representative for SOS, authorized to bind the company in contract as provisioned in *Attachment C*, and that I am an owner and the operator of the facility described herein.

I hereby guarantee processing capacity for the City of Sunnyvale's commercial and residential food waste stream that is pre-processed into raw mash, as is the current practice, for the term of the subject *Agreement*.

A handwritten signature in blue ink, reading 'Louie Pellegrini', with a long horizontal flourish extending to the right.

**Louie Pellegrini, General Manager, SOS**



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

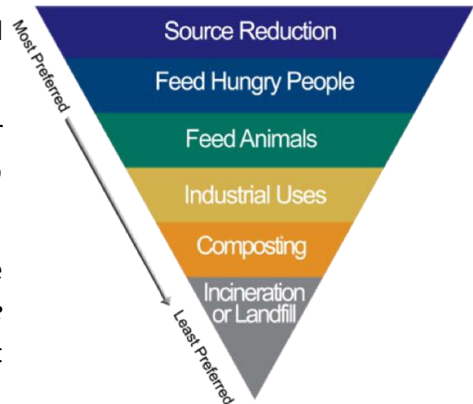
### List of Marketable Products

As described in the *Executive Summary*, SOS makes the following products from the raw mash produced from the City's commercial and residential food scraps at the SMaRT Station:

- A nutritious, pathogen free granular product that is used as an ingredient in animal feed as well as soil amendments.
- Fats/Oils/Greases (FOG) that is sold into the biodiesel market.

SOS also produces water that has a high pH. Options for neutralizing the pH/scrubbing the water to input into another process are being explored.

SOS is continually reviewing market options for the commodities it produces. As stated in the *Executive Summary* SOS/SAFE are interested in developing market options higher up on the EPA's food scraps hierarchy.



### Limitations

#### RFP §2.2.3

For as long as the City and/or its contractor maintains in excellent working condition and utilizes SAFE equipment at its SMaRT Station food scraps processing facility, there are no absolute restrictions for inputs. The SMaRT Station's SAFE equipment is robust and geared to screen out plastic bags and a diminimus amount of other types of packaging in various forms. Any contaminants that make it through the screening, sizing, and pressing operations associated with the SMaRT Station equipment are eliminated at SOS. SOS tests every batch for nutritional parameters and ash content. We also can make available to the City more extensive testing results obtained through an academic partnership.

Please also see the associated *Form A*.

SOS can accept and process up to 70 tons per day, or 25,640 tons per year of raw mash.

### Cost

#### RFP §2.2.4

This is provided as a separate attachment as per *RFP* instructions, in the revised *Form C* provided in *Addendum 1*. Please see that attachment.



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### Diversion Requirements

#### RFP §2.2.5

SOS has stated its desire to continue processing **source separated commercial and residential food scraps** as per *Table 1* on page 7 of the *RFP*, line item 4, as it has been for three years as of the operations start date associated with a new *Agreement* as provisioned by this *RFP*. Refer to the image below, taken from the *RFP*.

**Table 1: Estimated Tonnage of Organic Material that needs to be processed**

Organic Material tons for processing	Estimated Annual Tonnage in 2022
Source-separated residential yard trimmings	16,000
SMaRT Station 2-inch minus organic MRF fines	34,320
Compostable/food soiled paper products segregated at the SMaRT Station	9,300
Source-separated commercial and residential food scraps	11,000*

*\*Source-separated tonnages are likely to increase*

However, the product associated with source-separated commercial and residential food scraps that is produced from the system the SMaRT Station utilizes—as described in the City’s *Addendum 1*—is a raw mash derived from commercial and residential food scraps. This material is produced from food scraps but is no longer food scraps after being pre-processed. As associated with the raw mash processed at SOS, there are no residuals requiring landfilling. All solids derived from the raw mash are processed into the granular product previously described, FOG, and process water. This is affirmed in *Addendum 1* issued by the City which states: “The City has not been made aware of any contaminants in the food mash by the end user.”



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### Disposal of Residual Material

RFP §2.2.6

Following on to the above, there are no solids that are disposed. This section does not apply.

### Permits and Regulatory Compliance

RFP §2.2.7 and 2.2.8

As per the information previously provided in this *Section*, SOS currently is under the purview of the CDFA. Please see a copy of our feed license listed by the agency, below:



STATE OF CALIFORNIA  
DEPARTMENT OF FOOD AND AGRICULTURE  
FEED, FERTILIZER, LIVESTOCK DRUGS REGULATORY SERVICES  
1220 N STREET  
SACRAMENTO CA 95814

### COMMERCIAL FEED LICENSE NON TRANSFERABLE SUSTAINABLE ORGANIC SOLUTIONS

FIRM NO. 690748  
LICENSE NO. 691097

DATE OF ISSUE      EXPIRES  
Jul 3, 2020      Jun 30, 2021

#### Mailing Address

SUSTAINABLE ORGANIC SOLUTIONS  
1080 WALSH AVE  
SANTA CLARA, CA 95050  
United States

#### Licensed Location

1080 WALSH AVE  
SANTA CLARA, CA 95050



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

Because SOS is an existing site, there are no permits (or timelines) relating to building and construction. As per the *RFP*, SOS will maintain compliance with all regulations in effect during the term of the *Agreement*.

### Marketing of Products

#### *RFP §2.2.9*

SOS produces a high quality animal feed or soil amendment ingredient. Not only has this material been extensively tested through the University of Milan's School of Veterinary and Food Science, it has also been tested through several local brokers. Each batch is also tested for nutritional markers important to animal feed formulators.

The following list constitutes current/available and potential\* material buyers.

Product	Market(s)
Dehydrated raw from source separated food scraps, granular form.	Various Animal Feed Markets: <ul style="list-style-type: none"> <li>• IFS</li> <li>• Imperial Western</li> <li>• Penny Newman</li> <li>• Foster Farms (in development)</li> </ul> Soil Amendment: Agromin
FOG	+ Imperial Western
Raw Mash Alternative Processing	EBMUD

### Invoices

#### *RFP §2.2.10*

As per the above-referenced *RFP* section and *Section 7.4* of the draft *Agreement*, SOS will continue to invoice the City/SMaRT Station monthly. Based on the finalized *Agreement*, SOS invoices may be modified. An example of the current format is provided below.



Proposal 4A: Source Separated Commercial and Residential Food Scraps



INVOICE

1080 Walsh Ave  
Santa Clara, CA 95050  
Phone: (775) 682 4325  
Fax: (775) 682-4354  
cdm@forktofeed.com

Date	10/05/20
Invoice #	2008 BC
For:	Aug-20

**Bill To:**  
Sunnyvale Materials Recovery & Transfer Station

301 Carl Road  
Sunnyvale, Ca 94089

Quantity	Description	Unit price	Amount	Delivered	Freight	Total Pay
144.15	Food Waste Mash	\$ 52.27	\$ 7,534.72	✓	\$ -	\$ 7,534.72
144.15	Transportation	\$ 8.37	\$ 1,206.54			\$ 1,206.54
			\$ 0.00			\$ -
			\$ 0.00			\$ -
			\$ 0.00			\$ -
			\$ 0.00			\$ -
			\$ 0.00			\$ -
<b>Taxable Subtotal</b>			<b>\$ 8,741.26</b>			<b>\$ 8,741.26</b>
<b>Tax Rate</b>			<b>0.0%</b>			
<b>Sales Tax</b>			<b>\$ -</b>			<b>\$ -</b>
<b>Total Pay</b>						<b>\$ 8,741.26</b>

Make checks payable to:

SOS, LLC.  
1080 Walsh Ave  
Santa Clara, CA 95050

Credit	\$ -
Additional discount	0%
<b>Balance due</b>	<b>\$ 8,741.26</b>



## Proposal 4A: Source Separated Commercial and Residential Food Scraps

### Reporting Requirement

#### RFP §2.2.11

SOS is not currently required to supply reporting, however, we have carefully reviewed the above referenced section of the *RFP* as well as *Section 8.5* of the draft *Agreement*. Monthly summary reporting in a form and containing appropriate content as prescribed by the City Contract Manager will be provided as required. Once the raw mash is pumped into our tanker truck and leaves the SMaRT Station the material is no longer under CalRecycle oversight. Scale weights, which are included in our invoices (see previous section) are a compliance reporting input in and of themselves. Should further reporting be required, SOS will supply the information monthly.

Animal feed and soil amendments (as in the case of compost) are permitted under SB 1383 for purposes of diversion.

### Optional Requirement

#### RFP §2.2.12

As assurance to the City and as previously discussed, the SOS – Agromin team can provide the added assurance of a network of facilities and end markets should an unforeseen event arise. Not only does SOS has an agreement with East Bay Municipal Utility District (EBMUD) where raw mash may be transferred for processing during SOS equipment repair and downtime, but the permitted food scraps pre-processing system located at Mission Trail Waste Systems can serve as a contingency pre-processing facility if ever SMaRT Station equipment must be repaired during off-loading hours. Agromin has access to a network of its own composting operations in addition to the two facilities proposed herein, which provide additional composting capacity.

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*The SOS-Agromin team, with its infrastructure of California operations and its strategic partnership in place, provides assurance to the City that, in case of an emergency, natural disaster, or any unforeseen circumstance, processing services for the options being bid on—source separated commercial and residential food scraps (raw mash) and source separated residential yard trimmings—are assured through this team’s network of redundant facilities.*

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## Proposal 4B: Source Separated Residential Yard Trimmings

### 4 Technical Proposal

### B Source Separated Residential Yard Trimmings

#### Processing Site Information

##### RFP §2.2.1

SOS – Agromin will utilize two Merced County composting sites.

**Site No. 1: El Nido Composting Facility-Synagro West (Synagro)**  
**13757 S. Harmon Road**  
**Dos Palos, CA 93620**

Synagro is under the control and oversight of Robert (Bob) Ford, Regional Business Development Manager, Synagro. Bob will be responsible for the oversight of the biosolids composting operation and will use existing customer relationships to market and sell compost in the region. Bob's biography is provided in *Section 3 – Key Personnel*.

Ownership and operator information is provided below. Synagro holds a solid waste facility permit, which is included on the following pages. A letter guaranteeing capacity is included in the following subsection: *Available Processing Capacity*.

#### SWIS Facility/Site Summary

##### El Nido Composting Facility-Synagro West (24-AA-0011)

Summary	Details	Activities <b>1</b>	Inspections <b>132</b>	Enforcement Actions <b>0</b>	Documents <b>25</b>
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##### Site Information

El Nido Composting Facility-Synagro West  
 13757 S. Harmon Road  
 Dos Palos, CA 93620

Site Operational Status  
 Active

Site Regulatory Status  
 Permitted

Operator  
 Terra Gro Inc  
 1624 Pacheco Blvd.  
 Los Banos, CA 93635  
 Phone: (209) 826-3212





Proposal 4B: Source Separated Residential Yard Trimmings

<b>SOLID WASTE FACILITY PERMIT</b>		Facility Number: <b>24 – AA – 0011</b>																				
<b>1. Name and Street Address of Facility:</b> El Nido Central Valley Composting Facility Synagro West 13757 S. Harmon Road El Nido, CA 95317	<b>2. Name and Mailing Address of Operator:</b> El Nido Central Valley Composting Facility Synagro West P.O. Box 265 Taft, CA 93268	<b>3. Name and Mailing Address of Owner:</b> Jerry Menefee 1624 Pacheco Blvd. Los Banos, CA 93635																				
<b>4. Specifications:</b> <div style="margin-top: 10px;"> <p><b>a. Permitted Operations:</b></p> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Solid Waste Disposal Site  <input type="checkbox"/> Transfer/Processing Facility (MRF)  <input checked="" type="checkbox"/> <b>Composting Facility (Sludge)</b> </div> <div> <input type="checkbox"/> Transformation Facility  <input type="checkbox"/> Other: _____                         </div> </div> </div> <div style="margin-top: 10px;"> <p><b>b. Permitted Hours of Operation:</b> 6:00 a.m. – 5:00 p.m., seven (7) days per week (Exceptions are listed under EA Conditions.)</p> </div> <div style="margin-top: 10px;"> <p><b>c. Permitted Maximum Quantities:</b> (Definitions are given under Section 16 of this permit.)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td>Peak Daily Loading</td> <td>355 tons per day</td> </tr> <tr> <td>Raw Feedstock Capacity</td> <td>32,000 tons</td> </tr> <tr> <td>Site Capacity</td> <td>149,100 cubic yards</td> </tr> <tr> <td>Annual Loading</td> <td>129,575 tons per year</td> </tr> </table> </div> <div style="margin-top: 10px;"> <p><b>d. Permitted Traffic Volume:</b> 25 maximum hauling vehicles per day (round trips)</p> </div> <div style="margin-top: 10px;"> <p><b>e. Key Design Parameters (Detailed parameters are shown on site plans bearing EA and CalRecycle validations):</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Total</th> <th>Composting &amp; Truck Wash</th> <th>Chipping &amp; Grinding</th> <th>Storm Water Retention Basin</th> <th>Berms &amp; Access Road</th> </tr> </thead> <tbody> <tr> <td><b>Permitted Area</b> (in acres)</td> <td>35</td> <td>27.5</td> <td>2.5</td> <td>2</td> <td>3</td> </tr> </tbody> </table> </div> <p style="font-size: small; margin-top: 10px;">Upon a significant change in design or operation from that described herein, this permit is subject to revocation or suspension. The attached permit findings and conditions are integral parts of this permit and supersede the conditions of any previously issued solid waste facility permit.</p>			Peak Daily Loading	355 tons per day	Raw Feedstock Capacity	32,000 tons	Site Capacity	149,100 cubic yards	Annual Loading	129,575 tons per year		Total	Composting & Truck Wash	Chipping & Grinding	Storm Water Retention Basin	Berms & Access Road	<b>Permitted Area</b> (in acres)	35	27.5	2.5	2	3
Peak Daily Loading	355 tons per day																					
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	Total	Composting & Truck Wash	Chipping & Grinding	Storm Water Retention Basin	Berms & Access Road																	
<b>Permitted Area</b> (in acres)	35	27.5	2.5	2	3																	
<b>5. Approval:</b> Paul Wrighton, REHS  Approving Officer Signature		<b>6. Enforcement Agency Name and Address:</b> Merced County Division of Environmental Health 260 E. 15 <sup>th</sup> Street Merced, CA, 95341																				
<b>7. Date Received by CalRecycle:</b>		<b>8. CalRecycle Concurrence Date:</b>																				
<b>9. Permit Issued Date:</b> October 7, 2015	<b>10. Permit Review Due Date:</b> October 7, 2020	<b>11. Owner/Operator Transfer Date:</b>																				



## Proposal 4B: Source Separated Residential Yard Trimmings

### 12. Legal Description of Facility:

West side of Harmon Road, approximately 1.6 miles north of Hwy 152 APN 074-150-001  
The legal description of this facility is contained in Exhibit A of the Report of Compost Site Information dated September 29, 2004.

### 13. Findings:

- This permit is consistent with the Merced County Integrated Waste Management Plan, which was approved by the CIWMB on September 17, 2002. The location of the facility is identified in the Nondisposal Facility Element, pursuant to Public Resources Code (PRC), Section 50001(a).
- This permit is consistent with the standards adopted by CalRecycle, pursuant to PRC 44010.
- The design and operation of the facility is consistent with the State Minimum Standards for Solid Waste Handling and Disposal as determined by the enforcement agency, pursuant to PRC 44009.
- The Merced County Fire Department received and reviewed the conditional use permit application and had no comment.

CEQA documents were filed with the State Clearinghouse. SCH #1995022058 was submitted on 2/22/95. Review ended on 3/24/95. This CEQA document, a negative declaration with mitigation measures, describes and supports the design and operation that will be authorized by the issuance of this permit. A Notice of Determination (SCH #1995101451) was filed with the State Clearinghouse on 9/1/95.

### 14. Prohibitions:

The facility is prohibited from accepting the following wastes:

- Hazardous, radioactive, medical (as defined in Chapter 6.1, Division 20 of the Health and Safety Code), liquid, designated, or other wastes requiring special treatment or handling, except as identified in the Report of Composting Site Information and approved amendments thereto and as approved by the enforcement agency and other federal, state, and local agencies.
- Unprocessed avian tissue, including but not limited to, flesh, organs, hide, skin, blood, bone, and marrow.
- Dead animals, painted or treated wood.
- Mixed (municipal) solid waste, and construction and demolition materials.
- Burning material.
- Any sewage sludge that has not been treated.
- Manure from known infected herds or sources as monitored and reported by the California Department of Agriculture.

### 15. The following documents describe and/or restrict the operation of this facility:

Document	Date	Document	Date
Report of Compost Site Information Amendments	9/29/04 N/A	Conditional Use Permit #01007 Minor Modification #04006	10/30/01 7/14/04
Waste Discharge Requirements (Order No. R5-2003-0180)	12/5/03	CEQA documents: SCH #1995022058, Neg. Dec. SCH #1995101451, NOD	2/22/95 9/1/95



## Proposal 4B: Source Separated Residential Yard Trimmings

<b>16. Self -monitoring:</b> The owner/operator shall submit the results of all self-monitoring programs to the Enforcement Agency <b>within 15 days of the end of the reporting period, unless otherwise indicated below.</b> <i>For example, the 1<sup>st</sup> quarter report (January – March) is due by April 15, unless otherwise stated below. Information required on an annual basis shall be submitted with the 4th quarter monitoring report, unless otherwise stated.</i>	
Program	Reporting Frequency
a. <b>Peak Daily Loading:</b> The types and quantities (in tons) of waste entering the facility each day, including these categories: feedstocks, amendments, additives, and bulking agents.	Monthly
b. <b>Annual Loading:</b> A running total giving the total quantity (in tons) of all waste that has entered the facility, including all feedstocks, amendments, additives, and bulking agents, since the beginning of the current calendar year.	Monthly
c. <b>Raw Feedstock Capacity, Saleable Material, and Site Capacity:</b> The quantity (in cubic yards) of waste currently present at the facility in these categories: 1) raw feedstock capacity –compost that hasn't completed 15 day pathogen reduction plus all feedstocks, amendments, additives, and bulking agents not yet integrated into windrows, and 2) saleable material – curing compost plus finished product plus compost overs, and 3) site capacity – total of categories 1 and 2 (all compostable material on the site). Weight-to-volume conversion factors given in the RCSI should be used for any necessary conversions.	Every 6 Months
d. <b>Traffic Count:</b> The number of vehicles entering and the number of vehicles leaving the facility each day. ("25 maximum vehicles per day" means a maximum of 25 vehicles entering per day and a maximum of 25 vehicles leaving per day, or 25 round trips.)	Monthly
e. <b>Load Check:</b> Current results of each daily random waste load check.	Monthly
f. <b>Laboratory Results of Required Pathogen Monitoring:</b> Each report form shall clearly display the official name of the facility, the SWIS number of the facility, the date the sample was taken, the date the analysis was completed, where the sample was collected (windrow/pile identifier), and the results of the analysis, using units as given in Title 14, Section 17868.3(b)(1). Provided to the EA within 15 days of receipt by the operator.	As Specified by Title 14, Section 17868.1 (Table 1)
g. <b>Laboratory results of required metal concentration monitoring:</b> Each report form shall clearly display the official name of the facility, the SWIS number of the facility, the date the sample was taken, the date the analysis was completed, where the sample was collected (windrow/pile identifier), the results of the analysis, using units as given in Title 14, Section 17868.2 (Table 2), and listing the maximum acceptable metal concentration on the same line as the result. Provided to the EA within 15 days of receipt by the operator.	As Specified by Title 14, Section 17868.1 (Table 1)
h. <b>Injury/Health Effects and serious occurrence:</b> Any serious injury to, or complaint of adverse health effects on, the public [per Title 14, Section 17869(g)], any occurrence of fire, explosion, flooding.	Within 24 Hours of Event





## Proposal 4B: Source Separated Residential Yard Trimmings

- 17. Enforcement Agency (EA) Conditions** (these conditions are in addition to other applicable regulations and conditions and do not take the place of, or absolve from, compliance with such regulations or conditions):
- a. **Titles 14 and 27:** The operator shall comply with all State Minimum Standards for solid waste handling and composting as specified in Title 14 and Title 27, California Code of Regulations.
  - b. **Permits/Approval Required:** The operator shall not operate this facility without possession of all required permits and regulatory approvals.
  - c. **Permit Changes for Cause:** This permit is subject to review by the EA and may be suspended, revoked, or revised at any time for sufficient cause.
  - d. **Emergency Operational Changes by EA:** The EA reserves the right to suspend or modify waste receiving and handling operations when deemed necessary due to an emergency, a potential health hazard, or the creation of a public nuisance.
  - e. **Changes Prohibited:** Any change that would cause the design or operation of the facility not to conform to the terms and conditions of this permit is prohibited. Such a change may be considered a significant change, requiring a permit revision. In no case shall the operator implement any change without first submitting a written notice of the proposed change, in the form of an RFI amendment, to the EA at least 180 days in advance of the change.
  - f. **Additional Information Request:** Additional information concerning the design and operation of the facility shall be furnished upon request and within the time frame specified by the EA.
  - g. **Permits and Reports Available:** The operator shall maintain a full copy of this permit, all other required regulatory permits, all records required by regulations or this permit, the RCSI, and all regulatory inspection reports at the facility or other approved location readily accessible to facility personnel, EA staff, and other regulatory personnel during normal working hours.
  - h. **RCSI as Conditions:** All design and operation features in the RCSI shall be considered EA Conditions under this section of the permit, unless otherwise contradicted by this permit document or indicated by the EA in a written document, provided to the operator.
  - i. **Fire Regulations:** The facility shall be in full compliance with all applicable regulations administered by the Merced County Fire Department.
  - j. **Air Pollution Regulations:** The facility shall be in full compliance with all applicable regulations administered by the San Joaquin Valley Unified Air Pollution Control District.
  - k. **Operating Hours:** Only non-mechanical tasks, such as clerical duties, temperature monitoring, sample collection, and manual collection of litter, may be done outside of the official hours of operation. Operation of a water truck is allowed if weather conditions necessitate dust control. Such operation shall be recorded in the Daily Log. Dust control measures are to be accomplished as much as possible during operating hours.
  - l. **Transfer Station:** All compostable material brought to the facility shall be for the purpose of composting on-site. The facility shall not act as a transfer station.
  - m. **General Public:** The facility shall be closed to the general public (i.e. public feedstock deliveries and compost pickup), unless appropriate and approved changes are made to the RCSI, the facility, and the operation.
  - n. **Interaction with Adjacent Property:** No compostable material shall be transferred from the facility to adjacent Menefee Ranch property unless it has completed pathogen reduction. No compostable material shall be transferred to the facility from adjacent Menefee Ranch property unless it is an original product of the Menefee Ranch.



## Proposal 4B: Source Separated Residential Yard Trimmings

### 17. Enforcement Agency (EA) Conditions (continued)

- o. **Windrow Formation:** Incoming compostable material shall be placed into windrows within 24 hours of delivery, except for agricultural and green material requiring size reduction. Size reduction shall be accomplished within 24 hours of delivery, and then placed into windrows within 24 hours.
- p. **Windrow Identifier:** Upon formation, each windrow shall be clearly signed with a unique identifier. This identifier shall remain with the windrow until the 15 consecutive day pathogen reduction process is accomplished. Combined windrows should contain multiple identifiers. Other identifiers or a current facility map shall indicate the status of each windrow or pile that has completed pathogen reduction.
- q. **Wet Weather Storage:** During the wet weather season, compost having completed pathogen reduction shall be stored up-gradient of any waste not having completed pathogen reduction. Significant ponding of water, as determined by the EA, shall not occur at the facility.
- r. **Pile Height and Separation:** All piles of materials or wastes, including compost overs, feedstocks, bulking agents, and screened piles, shall not exceed 25 feet in height. A 20-foot wide fire equipment access lane shall be maintained around each pile.
- s. **Signs:** A legible sign shall be posted at the main entrance of the facility that indicates the name of the facility, the address of the facility, the name of the operator, and the phone number where the operator or designee can be reached in case of an emergency.
- t. **Litter:** Litter arriving with feedstock shall be kept from distributing throughout the facility and from leaving the site.
- u. **Daily Log:** The operator shall maintain a log of special/unusual occurrences per Title 14, Section 17869(b). Special occurrences include, but are not limited to: fire, explosion, unloading of unacceptable/unusual/hazardous/un-permitted waste, and significant injury, accident or property damage. Each log entry shall be accompanied by a summary of any actions taken by the operator to mitigate the occurrence. The absence of recordable occurrences shall be so indicated in the log. The log shall be available to site personnel and the EA during normal operating hours.
- v. **Training:** Current employee training log with dates of training and brief course descriptions.
- w. **Complaints:** The operator shall keep a copy of each written complaint and each operator-generated report for a verbal complaint regarding this facility, and a written summary of the operator's actions taken to resolve each complaint. All regulatory notices from other regulatory entities requiring corrective action shall be considered written complaints.



## Proposal 4B: Source Separated Residential Yard Trimmings

### Site No. 2: Agromin-Bowles Green Material Composting (Agromin)

13000 Carlucci Rd.

Dos Palos, CA 93620

Agromin is under the control and oversight of Bill Camarillo, CEO of Agromin. Kimberly Cook will manage and oversee the entire operation of green material transfer from the SMaRT station to both the Synagro and Agromin facilities. She will oversee the composting operation at the Agromin site as well as the marketing of compost from the Agromin site. Both biographies are provided in *Section 3 – Key Personnel*.

Ownership and operator information is provided below. Agromin-Bowles Green Material Composting facility has notification tier status with CalRecycle. Documentation is included on the following page. A letter guaranteeing capacity is included in the following subsection: *Available Processing Capacity*.

## SWIS Facility/Site Summary

### Agromin-Bowles Green Material Composting (24-AA-0042)

Summary	Details	Activities <b>1</b>	Inspections <b>6</b>	Enforcement Actions <b>0</b>	Documents <b>3</b>
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#### Site Information

Agromin-Bowles Green Material Composting	Operator
13000 Carlucci Rd.	Agromin
Dos Palos, CA 93620	201 Kinetic Dr.
Site Operational Status	Oxnard, CA 93030
Active	Phone: (209) 827-3000
Site Regulatory Status	
Notification	





## Proposal 4B: Source Separated Residential Yard Trimmings

State of California  
CIWMB 169 (Rev 4/04)

California Integrated Waste  
Management Board

### ENFORCEMENT AGENCY NOTIFICATION

Enforcement Agency: County of Merced - Division of Environmental Health		Official Use Only	
County: Merced		SWIS Number:	
		Date Received:	10/26/2016

I. GENERAL INFORMATION					
Operation Name: Agromin-Bowles Green Materials Composting Operation					
Address:	13000 Carlucci Rd.	City:	Dos Palos	State:	CA Zip: 93620
Phone:	805-485-9200	Fax:	805-485-9222	APN: 085-290-034	
Operator Name: Agromin					
Address:	201 Kinetic Dr.	City:	Oxnard	State:	CA Zip: 93030
Phone:	805-485-9200	Fax:	805-485-9222		
Land Owner: Bowles Farming Company					
Address:	11609 Hereford Rd	City:	Los Banos	State:	CA Zip: 93635
Phone:	(209) 827-3000	Fax:			
II. OPERATION INFORMATION					
Authorizing Eligibility (State Section of 14 CCR Division 7, Chapter 3 or 3.1): See back for more details					17857.1
Type(s) of Waste/Material Handled:	Green Materials				
Volume of Waste/Material Handled:	Up to 200 tons per day, not more than 12,500 cubic yards on site				
Peak Loading:	Up to 200 tons per day	<input type="checkbox"/> Cubic Yards or <input checked="" type="checkbox"/> Tons	Annual Loading:	62,000 tons	<input type="checkbox"/> Cubic Yards or <input checked="" type="checkbox"/> Tons
Days and Hours of Operation:	Monday – Saturday 8:00am – 6:00 pm			Operation Acreage:	10 acres
Brief Description of the Operation:					
This Green Material Composting Operation will be handling primarily local green materials and agricultural materials to produce a compost product. The operation is a Green Material Composting Operations, per Section 17857.1 of Title 14, accepting green materials up to 200 tons per day TPD peak, and 200 TPD averaged over one month, with storage of less than 12,500 cubic yards, where compost products are produced, with a maximum of 7 days storage prior to processing of feedstocks					
III. DOCUMENTATION OF LOCAL NOTIFICATION (check one and submit with EA Notification)					
<input type="checkbox"/>	Proof of Compliance with the California Environmental Quality Act (CEQA).				
<input type="checkbox"/>	Correspondence from the local planning department that compliance with CEQA is not required for the operation to obtain local land use approval.				
<input checked="" type="checkbox"/>	Written notice to the local planning department of the operator's intent to commence operations.				
IV. OWNER/OPERATOR CERTIFICATION					
I hereby certify under penalty of perjury that the information provided is true and accurate to the best of my knowledge and belief.					
Signature of Land Owner:	Bowles Farming Company - by: Carrion Michael - President			Date:	10/01/2016
Signature of Operator:				Date:	9.27.16



## Proposal 4B: Source Separated Residential Yard Trimmings

### Available Processing Capacity

RFP §2.2.2

#### Description of Processing Operations and Table 1 Material

This information pertains specifically to the previously referenced facilities associated with **source separated residential yard trimmings**, with a projected tonnage estimate of 16,000 tons annually in 2022, the start date of the new contract.

As previously stated, composting takes place in the open air in large, elongated, uniform prism shaped 'piles' of waste known as windrows. The waste feedstock material is placed into long windrows on a non-permeable surface. Water may be added, depending on the moisture content of the waste. The windrows are turned regularly, either with a wheeled loader or by a specialist windrow turner machine (pulled along by a tractor / dedicated vehicle). The windrows are turned several times during the compost process, which takes on average anywhere from thirty to ninety days.

The image, below, is of an open windrow composting site.







## **Proposal 4B: Source Separated Residential Yard Trimmings**

### **List of Acceptable Materials**

Green Material includes any plant material except food material and includes tree and yard trimmings, untreated wood wastes, and natural fiber products. Green material does not include food material, biosolids, and wood containing paint or wood preservative.

### **Method of Tracking and Reporting**

SOS and Agromin will both have a worksheet tracking system in place to ensure all certified weight tickets are logged and utilized in invoicing.



## Proposal 4B: Source Separated Residential Yard Trimmings

### Commitment Guaranteeing Processing Capacity

435 Williams Court, Suite 100  
Baltimore, MD 21220  
[www.synagro.com](http://www.synagro.com)



November 25, 2020

#### **RE: Request for Proposal (RFP) F21-024: Source Separated Residential Yard Trimmings Material Processing**

Dear Mr. Camarillo,

Synagro currently works collaboratively with Agromin in the organic waste diversion and recycling industry. Our partnership has been mutually beneficial in expanding our abilities to compost and market materials. We are pleased to continue our partnership by supporting you through the composting of Source Separated Residential Yard Trimmings from the Sunnyvale SMaRT Station. We bring our expertise in biosolids processing and look forward to receiving the green material bulking agent you would provide through this partnership. We can receive from Agromin 100 tons per day, and up to 30,000 tons per year of Source Separated Residential Yard Trimmings with less than 1% ~~inerts~~.

Founded in 1986, Synagro works to turn waste into worth by helping more than 800 municipal and industrial water and wastewater facilities in North America move toward safer, cleaner and more environmentally beneficial practices. We partner with them to process their waste for compost or energy pellets, creating healthy soil and sequestering carbon in the process. As the largest recycler of organic by-products in North America, we're trusted because we remove risks while keeping the logistics clean. Because we have the most experienced team in the industry, we offer tailored solutions that ensure no waste goes to waste.

This partnership provides us the opportunity to manage our materials in a cost-effective way for our communities that will result in the diversion necessary to meet the compliance requirements of SB 1383. We look forward to continuing our partnership with Agromin.

Best regards,

*Robert Ford*

Robert Ford

Business Development Manager



## Proposal 4B: Source Separated Residential Yard Trimmings



November 25, 2020

Louie Pellegrini  
Sustainable Organic Solutions, LLC  
1080 Walsh Ave.  
Santa Clara, CA 95050

### **RE: Request for Proposal (RFP) F21-024: Source Separated Residential Yard Trimmings Material Processing**

Dear Mr. Pellegrini,

Agromin appreciates the opportunity to submit the following proposal in response to the Request for Proposals (RFP) as referenced above. Agromin can receive 200 tons per day and 65,000 tons per year of Source Separated Residential Yard Trimmings with less than 1% inerts at the Agromin-Bowles Green Material Composting facility.

Agromin is a leader in organics recycling and one of the most trusted and recognized providers of sustainable organic waste solutions to meet California diversion and recycling mandates. We provide a full spectrum of organic waste recycling services and high-quality products, including premium soil and mulch products and customized waste-to-energy solutions to meet the needs of our community partners and customers. The company was founded in 1972 and began recycling organic waste in 1993. With nearly 30 years of experience, Agromin has since expanded its operations to manage organic materials for over 200 cities in California.

Best regards,

A handwritten signature in black ink, appearing to read 'Bill Camarillo', is written over a light blue horizontal line.

Bill Camarillo  
CEO, Agromin



## Proposal 4B: Source Separated Residential Yard Trimmings

### List of Marketable Products

For the City of Sunnyvale, in anticipation of the SB 1383 requirement for finished compost, Agromin's OMRI Listed Compost 100® is a great soil amendment that contains no animal materials or biosolids. COMPOST 100® is made from recycled organic materials and is a significant source of organic time-release nutrients including nitrogen, phosphorus and potassium and other micronutrients.

### Limitations

#### *RFP §2.2.3*

Agromin-Bowles Green Material Composting can accept and process up to 200 TPD, and 62,000 TPY.

El Nido Composting Facility-Synagro West can accept and process up to 100 TPD, and 30,000 TPY.

Please also see the associated *Form A*.

### Cost

#### *RFP §2.2.4*

These are provided as separate attachments—one for each facility—as per *RFP* instructions, in the Excel form provided in *Addendum 1*. Please see that attachment.

### Diversion Requirements

#### *RFP §2.2.5*

SOS has stated its desire process, through its strategic partner, Agromin, **source separated residential yard trimmings** as per *Table 1* on page 7 of the *RFP*, line item 1. Refer to the image below, taken from the *RFP*.



## Proposal 4B: Source Separated Residential Yard Trimmings

**Table 1: Estimated Tonnage of Organic Material that needs to be processed**

Organic Material tons for processing	Estimated Annual Tonnage in 2022
Source-separated residential yard trimmings	16,000
SMaRT Station 2-inch minus organic MRF fines	34,320
Compostable/food soiled paper products segregated at the SMaRT Station	9,300
Source-separated commercial and residential food scraps	11,000*

*\*Source-separated tonnages are likely to increase*

## Disposal of Residual Material

### RFP §2.2.6

Agromin-Bowles Green Material Composting: Residual material will be loaded into a truck and taken to the Merced County Regional Waste Landfill for disposal.

El Nido Composting Facility-Synagro West: Residual material will be loaded into a truck and taken to the Merced County Regional Waste Landfill for disposal.

## Permits and Regulatory Compliance

### RFP §2.2.7 and 2.2.8

The facilities SOS – Agromin will utilize for processing/composting of **source separated residential yard trimmings** are properly permitted through CalRecycle. Please see the SWIS information provided earlier in this section.

Because SOS - Agromin is proposing existing sites under its control, there are no permits (or timelines) relating to building and construction. As per the *RFP*, sites will remain in compliance with all regulations in effect during the term of the *Agreement*.



## Proposal 4B: Source Separated Residential Yard Trimmings

### Marketing of Products

#### *RFP §2.2.9*

While it may not look like much to the untrained eye, soil contains billions of living organisms that are essential to the health of plants. These naturally occurring organisms convert minerals and organic material into nutrients. When the soil is balanced, it will continue to produce healthy plants, season after season. Unfortunately, most commercial soil products are made using high-temperature processes and chemicals, which kill these delicate organisms and render the soil sterile. At Agromin, keeps the biology in the bag, preserving these organisms and cultivating a soil that will ultimately be able to sustain itself.

As previously stated, for the City of Sunnyvale, in anticipation of the SB 1383 requirement for finished compost, Agromin's OMRI Listed Compost 100® offers a great soil amendment that contains no animal materials or biosolids. COMPOST 100® is made from recycled organic materials and is a significant source of organic time-release nutrients including nitrogen, phosphorus and potassium and other micronutrients.

### Invoices

#### *RFP §2.2.10*

Invoicing will be submitted for these services by SOS as per the draft *Agreement*. To avoid redundancy, please refer to *Section 4A*.

### Reporting Requirement

#### *RFP §2.2.11*

To avoid redundancy, please refer to *Section 4A*.

### Optional Requirement

#### *RFP §2.2.12*

Please refer to the information provided in *Section 4A*.



## 5 Cost Proposal Forms

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As required by the *RFP*, a *Form C* for each service proposed is provided as a separate attachment.



## **6 Exceptions to the Draft Agreement**

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Please see the suggested alternative language included as a separate *Attachment*.





## 7 Completed Forms

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*Form A – Composting or AD Facility – Existing* is attached on the following pages – one for each facility. *Form B* does not apply since all proposed facilities exist. *Form C – Cost Proposal* is included separately as required.



## FORM A – COMPOSTING OR AD FACILITY - EXISTING

Company Name: Sustainable Organic Solutions, LLC (SOS) Facility Name: SOS

Operator: Sustainable Organic Solutions, LLC (SOS)

### **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

<b>PROCESSING SITE INFORMATION (Provide One Form Per Facility Site)</b>		
Processing Facility Name	Sustainable Organic Solutions	
Composting Facility Location and/or street address	1050 Walsh Ave., Santa Clara, CA 95050	
Proposer's role in the Facility	Owner/operator	
Name of owner and operator, contact name and phone number of the site manager	Sustainable Organic Solutions, LLC Louie Pellegrini: 408-727-5365	
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.	Proposer, owner, and operator are one and the same entity.	
Total Facility Daily Permitted Capacity	N/A: Not under CalRecycle oversight. Under CDFA oversight. Design capacity if 70 TPD.	
<b>Material Accepted</b>	<b>Type of processing method(s) – traditional windrows, CASP, AD etc.; used</b>	
Source-Separated Residential Yard trimmings	-	
SMaRT Station 2-inch Minus Organic MRF fines	-	
Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	-	
Source-Separated Residential and Commercial Food Scraps	<b>Raw mash as described in <i>Technical Proposal</i>, derived from feedstock at left.</b>	
<b>AVAILABLE CAPACITY AND LIMITATIONS</b>		
Proposed Daily Organics Acceptance Amount (TPD)	Source-Separated Residential Yard trimmings	
	SMaRT Station 2-inch Minus Organic MRF fines	
	Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	



Source-Separated Residential and Commercial Food Scraps		
Any restrictions, on the total maximum acceptable tons delivered per day, month, or year.	Max. Acceptable Tons	
	TPD	70
	TPM	2,120
	TPY	25,640
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.	As is current practice: tanker truck removes raw mash, weighs in and out at SMaRT Station.	
<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 <b>Not applicable – see Technical Proposal</b>	Accepted Contaminant(s)	% of contaminants
Source-Separated Residential Yard trimmings	N/A	%
SMaRT Station 2-inch Minus Organic MRF fines	N/A	%
Compostable/food soiled paper products segregated at the SMaRT Station	N/A	%
List of any other quality-based feedstock limitations	N/A	
<b>Permits and Regulatory Compliance:</b>		
List all relevant permits.	CDFA Feed License – see <i>Technical Proposal</i> . Required only to enable animal feed sales.	
CalRecycle Permit Type and Number	N/A	
List any issues, such as construction or permitting that may affect timing of the contract agreement start date.	N/A – existing facility.	
Number of violations received in the last three years and a description of the violations.	None.	
<b>Residue Disposal</b>		
Disposal location/Name of the landfill	N/A – No residuals from SOS	
Disposal method of residual material	N/A	
Material disposal tracking and reporting method	N/A	
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.	None.	
<b>Estimated residual amount by material type</b>	Quantity of materials disposed by material type (tpd), based on proposed daily organics acceptance amount	Percentage of residue



Source-Separated Residential Yard trimmings	0	%
SMaRT Station 2-inch Minus Organic MRF fines	0	%
Compostable/food soiled paper products segregated at the SMaRT Station	0	%
(Raw mash processed from) Source-separated commercial and residential food scraps	0	%
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	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	
Animal Feed or High-End Potting Soil or Soil Amendment	15%	
FOG	4%	
Reclaimed water or EBMUD Co-Digestion	80%	
Total Products Marketed	100%	



## FORM A – COMPOSTING OR AD FACILITY - EXISTING

Company Name: Agromin Facility Name: El Nido Composting Facility-Synagro West (24-AA-0011)

Operator: Synagro/Terra Gro Inc

### 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	El Nido Composting Facility-Synagro West (24-AA-0011)	
Composting Facility Location and/or street address	13757 S. Harmon Road Dos Palos, CA 93620	
Proposer's role in the Facility	Bulking agent supplier to the site	
Name of owner and operator, contact name and phone number of the site manager	Synagro/Terra Gro Inc, Robert Ford, 323-843-7265 Jerry Havens, Site Manager, (209) 725-2828	
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.	Agromin is the proposing entity with the strategic partner Synagro/Terra Gro Inc that owns and operates the facility.	
Total Facility Daily Permitted Capacity	355 tons per day	
Material Accepted	Type of processing method(s) – traditional windrows, CASP, AD etc.; used	
Source-Separated Residential Yard trimmings	Open windrow	
SMaRT Station 2-inch Minus Organic MRF fines	N/A	
Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	N/A	
Source-Separated Residential and Commercial Food Scraps	N/A	
AVAILABLE CAPACITY AND LIMITATIONS		
Proposed Daily Organics Acceptance Amount (TPD)	Source-Separated Residential Yard trimmings	100
	SMaRT Station 2-inch Minus Organic MRF fines	N/A



	Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	N/A
	Source-Separated Residential and Commercial Food Scraps	N/A
Any restrictions, on the total maximum acceptable tons delivered per day, month, or year.	Max. Acceptable Tons	
	TPD	100
	TPM	N/A
	TPY	30,000
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.		There is a worksheet tracking system in place to ensure all certified weight tickets are logged and utilized in invoicing. SMaRT station weight ticket tons (ie 23 ton) x \$52.50/ton = \$1,207.5
Contaminants in accepted material		
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		% of contaminants
Source-Separated Residential Yard trimmings		Inerts <1 % (W)
SMaRT Station 2-inch Minus Organic MRF fines		N/A %
Compostable/food soiled paper products segregated at the SMaRT Station		N/A %
List of any other quality-based feedstock limitations		N/A
Permits and Regulatory Compliance:		
List all relevant permits.		SWF
CalRecycle Permit Type and Number		SWF, (24-AA-0011)
List any issues, such as construction or permitting that may affect timing of the contract agreement start date.		NONE
Number of violations received in the last three years and a description of the violations.		0
Residue Disposal		
Disposal location/Name of the landfill		Merced / Merced County Regional Waste Landfill
Disposal method of residual material		Load into a truck and send to Merced Landfill
Material disposal tracking and reporting method		RDRS – Calrecycle tracking process
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.		<1% inerts





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	<1% <del>inertss</del>	%
SMaRT Station 2-inch Minus Organic MRF fines	N/A	%
Compostable/food soiled paper products segregated at the SMaRT Station	N/A	%
Source-separated commercial and residential food scraps	N/A	%
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	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	100%	
Mulch/Land Application (non-landfill)	0%	
Biomass /Co-generation fuel	0%	
Landfill Application (ADC or erosion control)	0%	
Others, from co-digestion, if any	0%	
Total Products Marketed	100%	



## FORM A – COMPOSTING OR AD FACILITY - EXISTING

Company Name: Agromin Facility Name: Agromin-Bowles Green Material Composting (24-AA-0042)  
Operator: Agromin

### **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

<b>PROCESSING SITE INFORMATION (Provide One Form Per Facility Site)</b>		
Composting Facility Name	Agromin-Bowles Green Material Composting (24-AA-0042)	
Composting Facility Location and/or street address	13000 Carlucci Rd. Dos Palos, CA 93620	
Proposer's role in the Facility	Operator	
Name of owner and operator, contact name and phone number of the site manager	Agromin, Bill Camarillo; (805) 485-9200 Kimberly Cook, (805) 846-6432, Site Manager	
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.	Agromin	
Total Facility Daily Permitted Capacity	200 tons per day	
<b>Material Accepted</b>	<b>Type of processing method(s) – traditional windrows, CASP, AD etc.; used</b>	
Source-Separated Residential Yard trimmings	Open Windrow	
SMaRT Station 2-inch Minus Organic MRF fines	N/A	
Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	N/A	
Source-Separated Residential and Commercial Food Scraps	N/A	
<b>AVAILABLE CAPACITY AND LIMITATIONS</b>		
Proposed Daily Organics Acceptance Amount (TPD)	Source-Separated Residential Yard trimmings	200 TPD
	SMaRT Station 2-inch Minus Organic MRF fines	N/A
	Compostable/food soiled paper products segregated from SMaRT Station 5-inch minus material	N/A






Source-Separated Residential Yard trimmings	<1% <u>inerts</u>	%
SMaRT Station 2-inch Minus Organic MRF fines	N/A	%
Compostable/food soiled paper products segregated at the SMaRT Station	N/A	%
Source-separated commercial and residential food scraps	N/A	%
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	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	100%	
Mulch/Land Application (non-landfill)	0%	
Biomass /Co-generation fuel	0%	
Landfill Application (ADC or erosion control)	0%	
Others, from co-digestion, if any	0%	
Total Products Marketed	100%	



## 8 Signed Addenda



**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>

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Received  
Review  
11-20-2020  
J. Bell



		<p>3. Do you have any photo on the material?</p> <p>4. Where this material is diverted/diverted to currently?</p>
A1.		<p>1. <b>Refer to Exhibit 1</b></p> <p>2. <b>The City has not been made aware of any contaminants in the food mash by the end user.</b></p> <p>3. <b>Refer to Exhibit 1</b></p> <p>4. <b>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.
A2.		<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>
Q3.	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?
A3.		<b>In lieu of "contamination", the agreement uses the terms "Incompatible Materials" or "Incompatibles" as defined in the SB 1383 regulations.</b>
Q4.	RFP Table 1	Tonnage: Information Table 1 estimates annual tonnage for 2022. Will the City please provide actual pre-COVID and current tonnages?
A4.		<b>Tonnage estimates are based on actual pre-COVID annual tonnages.</b>
Q5.	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?
A5.		<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>

28



		<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>

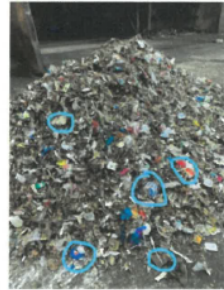
2.R



		<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.</p> <p>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	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"?
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>

2.0



		<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>		<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>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>		

2.0



<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.**

2.8





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

Company Name: \_\_\_\_\_ Facility Name: \_\_\_\_\_ REVISED : 11/17/2020  
Operator: \_\_\_\_\_

**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		
SMaRT Station 2-inch Minus Organic MRF fines	Contractor Component	Governmental Component	Contractor Component	Governmental Component		
			NA			
Compostable/food soiled paper products received at the SMaRT Station	Contractor Component	Governmental Component	Contractor Component	Governmental Component		
			NA			
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 +/- 60-25%

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

2.10



ADDENDUM NO. 1 - BIDS No. FY21-024 FOR Organic Material Processing

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

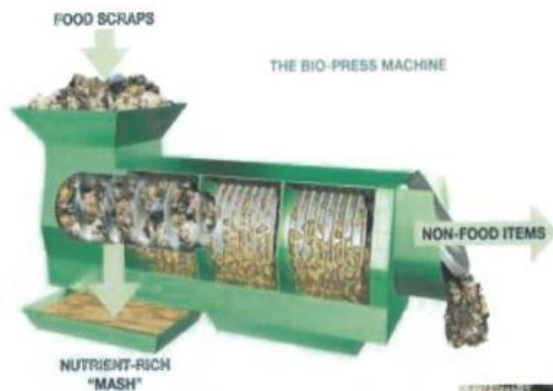


1

2.0



ADDENDUM NO. 1 - BIDS No. FY21-024 FOR Organic Material Processing



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.



2P



ADDENDUM NO. 1 - BIDS No. FY21-024 FOR Organic Material Processing

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.

2.P.





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

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

<b>Approved Facility/Subcontractor</b>	<b>Services</b>
Peninsula Sanitary Service, Inc. (PSSI)	Tanker truck operators/removal of raw mash from SMaRT Station derived from commercial and residential food scraps.
Tiger Lines, LLC	Alternate tanker truck operators/removal of raw mash from SMaRT Station.

<b>Approved Facility/Affiliate</b>	<b>Services</b>
Mission Trail Waste Systems, Inc. (MTWS)	Contingency processor of food scraps (in case of SMaRT Station pre-processing equipment being down)

<b>Approved Facility/Alternate</b>	<b>Services</b>
East Bay Municipal Utility District (EBMUD)	Contingency processor of food scraps/raw mash (via anaerobic digestion)
El Nido Composting Facility-Synagro West (Synagro)	Primary alternate composting site for residential yard trimmings.
Agromin-Bowles Green Material Composting (Agromin)	Secondary alternate composting site for residential yard trimmings.
East Bay Municipal Utility District (EBMUD)	Contingency processor of food scraps/raw mash (via anaerobic digestion)





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If City requests regularly scheduled, ongoing Yard Trimmings Processing (as opposed to contingency on-call) Parties shall meet and confer, and Contractor shall agree to meeting reasonable compliance and reporting requirements, related to City's compliance with SB 1383, without a change in compensation.





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

Company Name: Sustainable Organic Solutions, LLC Facility Name: SOS  
Operator: Sustainable Organic Solutions/Louie Pellegrini

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
- ☒ Pre-Processed Source-Separated Residential and Commercial Food Scraps

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				
Source-separated residential yard trimmings - Contingency pricing, Non-Exclusive	Contractor Component	Governmental Component	Total Per-Ton Rate	Contractor Component	Governmental Component	Total Per-Ton Rate		
	\$62.50*	N/A	62.50*	N/A	N/A	N/A		
	Processed <sup>(2)</sup>			Unprocessed				
SMaRT Station 2-inch Minus Organic MRF fines	Contractor Component	Governmental Component		Contractor Component	Governmental Component			
	Processed <sup>(3)</sup>			Unprocessed				
Compostable/food soiled paper products received at the SMaRT Station	Contractor Component	Governmental Component		Contractor Component	Governmental Component			
	Processed <sup>(4)</sup>			Unprocessed				
Source - separated commercial and residential food scraps	Contractor Component	Governmental Component		Contractor Component	Governmental Component			
	65.15*	N/A	65.15*	\$95.15	N/A	\$95.15		

<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> Source-separated food scraps processed into food mash at the SMaRT Station

\*Picked up from SMaRT Station. Yard Trimmings are \$30/ton if Station Operator delivers to Agromin Composting Facility.

Unprocessed food price does not include transportation and assumes City's hauler will deliver food scraps to Mission Trail Waste Systems for processing.