

## FIFTH AMENDMENT TO AMENDED AND RESTATED AGREEMENT

This Fifth Amendment to the Amended and Restated Agreement dated October 17, 2000 is entered into as of this 1<sup>st</sup> day of September, 2020 (“Effective Date”), by and between the City of San Gabriel, a municipal corporation (the “City”) and Arakelian Enterprises, Inc., d/b/a Athens Services (“Contractor”).

### RECITALS

A. WHEREAS, City and Contractor previously entered into the Amended and Restated Agreement dated October 17, 2000, which was amended by that certain First Amendment to the Amended and Restated Agreement dated December 5, 2006, that certain Second Amendment to the Amended and Restated Agreement dated December 16, 2008, that certain Third Amendment to the Amended and Restated Agreement dated January 7, 2014, and that certain Fourth Amendment to the Amended and Restated Agreement dated January 21, 2020 (collectively, the “Agreement”);

B. WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 1826 (“AB 1826”), requires each jurisdiction, on and after April 1, 2016, to implement an organic waste recycling program to divert organic waste from businesses, including multifamily dwellings of five or more units. Each business meeting specific organic waste or solid waste generation thresholds, phased-in beginning in 2016, is required to arrange for organic waste recycling services.

C. WHEREAS, the State of California, by enactment of Senate Bill 1383 (“SB 1383”), establishes a statewide 50-percent reduction in the amount of organic waste in landfills from the 2014 levels by 2020 and a 75-percent reduction by 2025, and requires that not less than 20 percent of edible food that is currently disposed of be recovered for human consumption by 2025.

D. WHEREAS, changes in law necessitate certain modified or additional services in order to bring the City into compliance with applicable law. As a result, the cost of collecting, disposing of, and diverting solid waste, recyclables, yard waste, and organic waste to Contractor is anticipated to increase, and the City and Contractor have agreed to implement certain operational changes pertaining to the provision of services in the City in accordance with this Amendment.

E. WHEREAS, the City and Contractor have evaluated and discussed several alternatives to the automatic term extension of the Agreement and determined that amending the term extension arrangement as described herein is in the best interest of the residents and businesses in the City.

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to amend the Agreement as follows:

1. **Effective Date and Term of Agreement.** Section 3.1 shall be deleted in its entirety and replaced with the following:

3.1 Effective Date and Term of Agreement

A. The term of this Amended and Restated Agreement shall be from October 17, 2000 and expire October 16, 2025, provided however, that commencing October 17, 2001 and every year thereafter, automatic one year extensions shall be applied to said Agreement so that the term of this Agreement shall thereafter remain at a constant twenty-five years, unless terminated or amended according to Section 3.1(B) .

B. Either party may terminate the automatic one-year extension provision set forth in Section 3.1(A) upon serving the other party a mandatory written notice of intent to terminate by certified mail or hand delivery (“Notice of Intent to Terminate Extension”) by January 31st of any year the provision is in effect. In the event any party delivers such Notice of Intent to Terminate Extension, the termination of the automatic one-year extension provision shall become effective October 15th of the year the Notice of Intent to Terminate Extension is transmitted, provided the terminating party complies with the following:

(i) For a period of at least one-hundred and twenty (120) days after which the Notice of Intent to Terminate Extension is received by the non-terminating party, the parties shall meet and negotiate in good faith (“Negotiations Period”); the City shall be represented by the City Manager or by other persons designated by the City Manager and Contractor shall be represented by a duly authorized senior management level representative. The purpose of such negotiations shall be to rescind the Notice of Intent to Terminate Extension in exchange for an amendment to the Agreement.

(ii) At least ten (10) days after the end of the Negotiations Period but no later than June 29th of the year the Notice of Intent to Terminate Extension is received, the terminating party must deliver written notice to the non-terminating party stating that no further negotiations will commence and the one-year extension provision is terminated as of October 16th of that year (“Notice of Extension Termination”). Upon the termination date specified in the Notice of Extension Termination, the Agreement will remain in full force and effect for a fixed term of twenty-five (25) years.

Notwithstanding the foregoing, the termination of the automatic one-year extension provision shall not become effective if the parties mutually agree to approve and execute an amendment to this Agreement as provided herein or the terminating party fails to issue its Notice of Extension Termination within the time prescribed, unless the prescribed time is waived or extended by mutual agreement between the parties. In the event the terminating party

issues a Notice of Extension Termination, Contractor shall be relieved of the obligation to pay the City the Extension Payment as provided in Section 4.4 in the year the terminating party issues such notice and for the remaining term of the Agreement.

2. **Extension Payment.** A new Section 4.4, entitled “Extension Payment” shall be added to the Agreement to read as follows:

4.4 Extension Payment.

Except as provided in Section 3.1(B), the automatic one-year renewal and extension provision under this Agreement shall remain in effect, provided Contractor pays the City an annual extension payment (“Extension Payment”) as follows:

(i) On June 30, 2021 Contractor shall pay the City the initial Extension Payment amount of Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00).

(ii) Commencing June 30, 2022, and continuing on June 30th of each subsequent year thereafter (or if falling on a weekend or holiday, the prior business day), the then current Extension Payment shall be adjusted annually by the change in CPI in the same manner and by the same percentage as used in the Contractor’s base rate provided in Exhibit F, Section B.

(iii) The Extension Payment will be paid by Contractor directly and shall not be charged to residential or commercial customers receiving services under this Agreement.

3. **Commercial & Multifamily Organic Waste Program (AB 1826 and SB 1383).** A new Section 5.15, entitled “Commercial & Multifamily Organic Waste Program” shall be added to the Agreement to read as follows:

5.15 Commercial & Multifamily Organic Waste Program.

Commencing on September 1, 2020, Contractor will provide staff, labor, and materials to assist the City with compliance of AB 1826 and SB 1383 as those laws relate to the collection of Organic Waste at commercial/industrial and multi-family premises within the City. “Organic Waste” shall mean food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste as set forth in Public Resources Code § 42649.8(c) as of the Effective Date. With respect to Organic Waste services, Contractor shall (i) conduct annual account site visits and reviews, (ii) engage in public education and outreach in

accordance with AB 1826 and SB 1383, (iii) meet with CalRecycle staff on behalf of the City as appropriate, (iv) provide Organic Waste tonnage data to both the City and CalRecycle, and (v) administer an Organic Waste services program, in accordance with each of the following:

A. Contractor shall collect and direct all source-separable or separated Organic Waste to American Organics processing facility located at 20055 Shay Rd, Victorville, CA 92394 or any other Contractor-selected organics processing facility capable of meeting the requirements of AB 1826 and SB 1383 and any other applicable Organic Waste diversion requirements.

B. Contractor will, to the extent required to comply with AB 1826, provide Organic Waste containers of up to 64-gallons in size to (i) commercial/industrial premises and multi-family premises that receive bin service and (ii) commercial/industrial and multi-family premises that are not required to comply with AB 1826, but can reasonably demonstrate to Contractor that customers at said premises are able to source-separate Organic Waste from their waste stream. In the event of any dispute between any customer and Contractor regarding participation in the Organic Waste program hereunder, the matter shall be resolved by the City Manager, whose decision shall be final.

C. Contractor may charge customers at commercial/industrial and multi-family premises as follows:

(i) Up to and through December 31, 2021, customers shall receive the Organic Waste Base Service at no additional charge above the general collection service rates provided in Exhibit E. "Organic Waste Base Service" shall mean the provision of Organic Waste collection services up to (i) twenty percent (20%) of the customer's regularly collected Solid Waste volumes or (ii) the customer's regular Solid Waste collection service level (with the service level determined based on the quantity of containers and frequency of pickup), [whichever the customer chooses]. For services that exceed the Organics Waste Base Service, Contractor may charge customers a fee not to exceed the "Organic Services" rates in Exhibit E. The fee shall be applied only to that portion of Organic Waste exceeding the Organics Waste Base Service.

(ii) Beginning January 1, 2022, Contractor may charge customers for Organic Waste collection services a fee not to exceed the “Organic Services” rates provided in Exhibit E, less the discount provided in the table below:

Calendar Year	Discount
2022	75%
2023	50%
2024	25%
2025 and beyond	0%

(iii) Notwithstanding anything in this Agreement to the contrary, if the Organic Waste volumes for a customer require roll-off capacity, Contractor may provide roll-off services at a fee, not to exceed those provided in the “Organic Services” rates in Exhibit E.

D. Contractor may collect Organic Waste from multiple cities within a single Organic Waste route and, if Contractor does so, will report Organic Waste tonnage among the cities by volume.

E. Notwithstanding anything in this Agreement to the contrary, Contractor reserves the right to inspect, audit, and review the service level (quantity of container(s) and weekly frequency of pick-up) for each customer receiving Organic Waste services. Contractor may decrease or increase the level of Organic Waste services based on its inspection and audit. In the event of any dispute between a customer and Contractor regarding the decrease or increase in the level of Organic Waste services, the matter shall be resolved by the City Manager, whose decision shall be final.

F. Organic Waste collected in accordance with this Section 5.15 must be clean. Organic Waste containers must contain less than 5% commingled garbage or recyclables per volume, or a lower percentage if Contractor’s designated Organic Waste facility requires less contamination (“Allowable Contamination Level”). If Contractor discovers, by visual inspection, any Organic Waste container(s) with more than the Allowable Contamination Level, Contractor will implement the following protocols to assist the customer in meeting the Allowable Contamination Level:

(i) Identify the source (i.e., customer) of contamination and contact customer with information explaining how to eliminate

contaminants from Organic Waste and meet the Allowable Contamination Level (“First Offense”).

(ii) If contamination continues ninety (90) days after the First Offense, contaminated Organic Waste container(s) will be “red tagged” for non-compliance and the container(s) will not be picked-up by Contractor until the customer removes the identified contaminants. Upon confirmation by Contractor that the customer has de-contaminated its Organic Waste container(s), Contractor will resume its normal Organic Waste pick-up service with respect to said customer. If the customer declines to decontaminate its Organic Waste container(s) by the next scheduled Organic Waste pick-up, Contractor may collect the container and charge the customer the “Organics Waste Contamination Fee” in Exhibit E for each noncompliant container and incident.

(iii) Upon the third or any subsequent offenses, in addition to the remedies described in Subsection 5.15(F)(ii), Contractor will notify the City and customer of the third or subsequent offense. Contractor will have the option to reduce the customer’s Organic Waste service level to a minimum of one Organic Waste container pick-up one time per week until the customer can demonstrate that the ability to regularly meet the Allowable Contamination Level.

G. Contractor shall provide equipment to collect all Organic Waste containers meeting the Allowable Contamination Level from customers receiving Organic Waste within the City. Notwithstanding the foregoing, prior to January 1, 2022, Contractor shall only be required to provide equipment to support the following: (i) 20% of the annual commercial and multi-family solid waste collected within the City per year (estimated at 3,652 tons), (ii) two (2) Organic Waste loads per day, or (iii) the equivalent of 700 total 64-gallon Organic Waste containers in use, [whichever provides the greatest amount of service] (“Initial Organic Waste Support Requirement”).

H. If the City’s Organic Waste needs require Contractor to increase the Initial Organic Waste Support Requirement, or if there are any future governing law changes in reference to the Organics Waste services provided hereunder, the City and

Contractor will meet and confer to discuss changes to the rates in Exhibit E, as needed.

4. **Organic Waste Services Rates.** Contractor shall be entitled to increase the services rates in Exhibit "E" in recognition of the implementation and administration of the Organic Waste Program specified in Section 5.15 of the Agreement. Commercial, multi-family customers that receive bin service, and roll-off services shall be increased seven percent (7%) effective September 1, 2020 and an additional seven percent (7%) effective July 1, 2021 to the then-existing schedule of rates. Exhibit "E" of the Agreement is hereby amended and replaced in its entirety with Attachment 1 of this Amendment.

5. **Compost Giveaway.** A new subsection 5.16, entitled "Compost Giveaway" shall be added to the Agreement to read as follows:

5.16 Compost Giveaway.

Contractor shall host two (2) compost giveaway events per year on dates, at locations, and at times selected by the City. At each compost giveaway event, Contractor shall make a total of ten (10) tons of compost available to interested City residents, provide personnel to assist residents load compost into their containers, and clean-up any location where compost is provided to the public. All compost activities provided hereunder will be provided to the City at no charge to the City or its residents.

6. **Due Execution.** The person(s) executing this Amendment on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment on behalf of said party, (iii) by so executing this Amendment, such party is formally bound to the provisions of this Amendment, and (iv) the entering into this Amendment does not violate any provision of any other agreement to which said party is bound.

7. **Full Force and Effect.** The parties further agree that, except as specifically provided in this Amendment, the terms of the Agreement shall remain unchanged and in full force and effect.

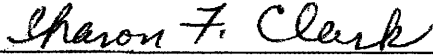
IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

CITY OF SAN GABRIEL

ATTEST:

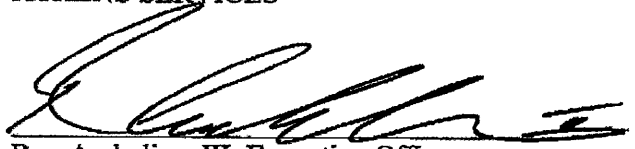


Denise Menchaca, Mayor



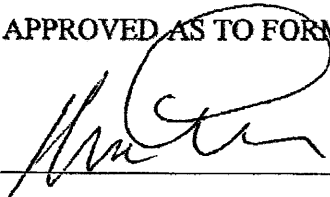
Sharon F. Clark, Chief City Clerk

ARAKELIAN ENTERPRISES, INC. DBA  
ATHENS SERVICES



Ron Arakelian, III, Executive Officer

APPROVED AS TO FORM:



, City Attorney



**ATTACHMENT A**  
**RATE SCHEDULE**  
**(AGREEMENT EXHIBIT "E")**

**CITY OF SAN GABRIEL  
RATE SCHEDULE - EXHIBIT E  
SEPTEMBER 1, 2020**

SERVICE	COLLECTION & TRANSPORTATION	STATE MANDATE RECYCLE FEE	RUBBISH DISPOSAL	NEW NET RATE	CITY FEE	TOTAL RATE
SINGLE FAMILY 90/90						
CURB 90/90	20.09	10.93	5.39	36.41	3.59	40.00
CURB 60/90	19.88	8.24	3.59	31.71	3.59	35.30
EXTRA GREEN				10.19	0.00	10.19
EXTRA BLACK				14.21	0.00	14.21
CONTAINER EXCHANGE				38.11	0.00	38.11
ROLLOUT SERVICE				19.07	0.00	19.07
MULTI-FAMILY BIN 1X						
10 OR MORE UNITS	10.12	4.89	3.59	18.60		18.60
PLUS PER BIN	49.28	0.00	0.00	49.28	12.47	61.75
COMMERCIAL 3 YARD						
1X	144.36	52.21	29.66	226.23	12.47	238.70
2X	188.07	97.33	59.30	344.70	24.94	369.64
3X	223.20	141.88	88.96	454.04	37.41	491.45
4X	269.09	187.12	118.60	574.81	49.88	624.69
5X	325.68	233.20	148.28	707.16	62.35	769.51
6X	382.24	279.24	177.87	839.35	74.82	914.17
COMMERCIAL 2 YARD						
1X	119.29	36.34	19.73	175.36	12.47	187.83
2X	170.49	68.06	39.54	278.09	24.94	303.03
3X	212.87	98.59	51.53	362.99	37.41	400.40
4X	255.25	129.05	63.48	447.78	49.88	497.66
5X	297.65	161.16	98.77	557.58	62.35	619.93
6X	340.03	192.16	118.50	650.69	74.82	725.51
COMMERCIAL 1.5 YARD						
1X	99.16	28.02	14.83	142.01	12.47	154.48
2X	152.56	52.78	29.66	235.00	24.94	259.94
3X	191.92	76.17	38.66	306.75	37.41	344.16
4X	231.29	97.32	50.30	378.91	49.88	428.79
5X	270.65	120.36	62.87	453.88	62.35	516.23
6X	292.53	142.18	75.44	510.15	74.82	584.97
COMMERCIAL 1 YARD						
1X	68.04	18.83	9.86	96.73	12.47	109.20
2X	104.69	35.42	19.72	159.83	24.94	184.77
3X	131.70	51.07	25.70	208.47	37.41	245.88
4X	158.71	65.24	33.44	257.39	49.88	307.27
5X	185.72	80.66	41.79	308.17	62.35	370.52
6X	200.74	95.23	50.15	346.12	74.82	420.94
COMMERCIAL BARRELS (CUSTOMER)						
EACH ADDITIONAL	22.91	5.14	5.39	33.44	6.24	39.67
	7.79	4.08	5.39	17.26	6.24	23.49
COMMERCIAL BARRELS (FURNISHED)						
EACH ADDITIONAL	24.63	5.26	5.39	35.28	6.24	41.51
	10.16	4.25	5.39	19.80	6.24	26.03
ROLL OFF	339.16	509.25	195.05	1043.46	12.47	1055.93
DEMURRAGE / DAY	16.66	0.00	0.00	16.66	0.00	16.66
OVERWEIGHT						

Athens Current MRF Tip Fee per Ton on all Loads over 5.0 Tons

**CITY OF SAN GABRIEL  
RATE SCHEDULE - EXHIBIT E  
SEPTEMBER 1, 2020**

SERVICE	COLLECTION & TRANSPORTATION	STATE MANDATE RECYCLE FEE	RUBBISH DISPOSAL	NEW NET RATE	CITY FEE	TOTAL RATE
<b>OPTIONAL SERVICES &amp; OTHER CHARGES</b>						
<b>ALL ACCOUNTS</b>						
Late Fees - 1.5% per Month (\$5.00 Minimum)	5.00	0.00	0.00	5.00	0.00	5.00
Declined Payment (Any Reason)	27.77	0.00	0.00	27.77	0.00	27.77
Stop Service	27.77	0.00	0.00	27.77	0.00	27.77
Resume Service	27.77	0.00	0.00	27.77	0.00	27.77
Account Site Estimate	10.07	0.00	0.00	10.07	0.00	10.07
Standby Time (Each 15 Minutes)	35.25	0.00	0.00	35.25	0.00	35.25
<b>RESIDENTIAL CART SERVICES</b>						
Cart Extra Pick-Up (Scheduled Day), Dead-Run or Go-Back	27.77	0.00	0.00	27.77	0.00	27.77
Cart Replacement (Customer Damage, Stolen)	95.67	0.00	0.00	95.67	0.00	95.67
<b>TEMPORARY BIN SERVICES</b>						
Temporary Bin Charge	149.94	0.00	0.00	149.94	12.47	162.41
Temporary Bin with Scout Service Charge	199.94	0.00	0.00	199.94	12.47	212.41
Temporary Bin - Extra Dump Charge	146.62	0.00	0.00	146.62	12.47	159.09
Temporary Bin - Dead-Run or Go-Back	55.54	0.00	0.00	55.54	0.00	55.54
Temporary Bin Demurrage (Per Day - After 7 Days No Dump)	10.07	0.00	0.00	10.07	0.00	10.07
<b>COMMERCIAL BIN SERVICES</b>						
Bin Lock-Lid Installation (Perm/Temp - Per Lock)	27.77	0.00	0.00	27.77	0.00	27.77
Bin Lock-Lid Service (Perm/Temp - Per Lock x Freq)	13.33	0.00	0.00	13.33	0.00	13.33
Bin Clean-Out/Wash-Out	49.98	0.00	0.00	49.98	0.00	49.98
Bin Enclosure Pressure Washing (Per Hr, 1 Hr/Min)	49.98	0.00	0.00	49.98	0.00	49.98
Bin Overflow, Overweight, or Extra Dump	55.54	0.00	0.00	55.54	12.47	68.01
Bin Dead-Run or Go-Back	55.54	0.00	0.00	55.54	0.00	55.54
Bin Delivery, Exchange, or Removal	55.54	0.00	0.00	55.54	0.00	55.54
Bin Exchange - Change of Service	75.53	0.00	0.00	75.53	0.00	75.53
Bin Exchange - Metal Lids	194.38	0.00	0.00	194.38	0.00	194.38
Bin Exchange - Burned Bin	402.80	0.00	0.00	402.80	0.00	402.80
Bin Fabrication (Custom - Per Cubic Yard)	255.47	0.00	0.00	255.47	0.00	255.47
Bulky Item Pick-Up - First Item, Dead-Run, or Go-Back	25.18	0.00	0.00	25.18	0.00	25.18
Bulky Item Pickup - Each Additional Item	15.11	0.00	0.00	15.11	0.00	15.11
<b>INDUSTRIAL ROLL-OFF SERVICES</b>						
Roll-Off Same Day Service - Expedited Request	50.35	0.00	0.00	50.35	0.00	50.35
Roll-Off Relocation, Dead-Run, or Go-Back	111.08	0.00	0.00	111.08	0.00	111.08
Roll-Off Demurrage (Per Day - 30 Days No Dump)	15.11	0.00	0.00	15.11	0.00	15.11
Roll-Off "Rocket Launcher" Service (Per Hour)	135.95	0.00	0.00	135.95	0.00	135.95
Roll-Off: Plastic Liners	35.25	0.00	0.00	35.25	0.00	35.25
Roll-Off Roll-Top Rental	55.54	0.00	0.00	55.54	0.00	55.54
Roll-Off Permanent Box Rental (2 Load Minimum)	151.05	0.00	0.00	151.05	0.00	151.05
Compactor Rental	553.85	0.00	0.00	553.85	0.00	553.85
Compactor Clean-Out/Wash-Out	99.96	0.00	0.00	99.96	0.00	99.96
Storage Box Rental Charge	111.08	0.00	0.00	111.08	0.00	111.08
Storage Box Delivery, Relocation, Removal	111.08	0.00	0.00	111.08	0.00	111.08

**CITY OF SAN GABRIEL  
RATE SCHEDULE - EXHIBIT E  
SEPTEMBER 1, 2020**

SERVICE	COLLECTION & TRANSPORTATION	STATE		RUBBISH DISPOSAL	NEW NET RATE	CITY FEE	TOTAL RATE
		MANDATE RECYCLE FEE	MANDATE RECYCLE FEE				
<b>ORGANIC CONTAINER SERVICES (Subsidized Rates Starting Jan. 1, 2022)</b>							
<b>30 Gallon - First Barrel</b>							
1X	0.00	74.20	0.00	0.00	74.20	3.59	77.79
2X	0.00	128.50	0.00	0.00	128.50	7.18	135.68
3X	0.00	182.82	0.00	0.00	182.82	10.77	193.59
4X	0.00	237.14	0.00	0.00	237.14	14.36	251.50
5X	0.00	291.46	0.00	0.00	291.46	17.95	309.41
6X	0.00	345.77	0.00	0.00	345.77	21.54	367.31
<b>30 Gallon - Each Additional Barrel</b>							
1X	0.00	63.07	0.00	0.00	63.07	3.59	66.66
2X	0.00	109.23	0.00	0.00	109.23	7.18	116.41
3X	0.00	155.40	0.00	0.00	155.40	10.77	166.17
4X	0.00	201.57	0.00	0.00	201.57	14.36	215.93
5X	0.00	247.74	0.00	0.00	247.74	17.95	265.69
6X	0.00	293.91	0.00	0.00	293.91	21.54	315.45
<b>60 Gallon - First Barrel</b>							
1X	0.00	98.93	0.00	0.00	98.93	21.54	120.47
2X	0.00	171.34	0.00	0.00	171.34	21.54	192.88
3X	0.00	243.77	0.00	0.00	243.77	21.54	265.31
4X	0.00	316.19	0.00	0.00	316.19	21.54	337.73
5X	0.00	388.61	0.00	0.00	388.61	21.54	410.15
6X	0.00	461.04	0.00	0.00	461.04	21.54	482.58
<b>60 Gallon - Each Additional Barrel</b>							
1X	0.00	84.09	0.00	0.00	84.09	21.54	105.63
2X	0.00	145.64	0.00	0.00	145.64	21.54	167.18
3X	0.00	207.20	0.00	0.00	207.20	21.54	228.74
4X	0.00	268.76	0.00	0.00	268.76	21.54	290.30
5X	0.00	330.32	0.00	0.00	330.32	21.54	351.86
6X	0.00	391.88	0.00	0.00	391.88	21.54	413.42
<b>ORGANIC BARREL CONTAMINATION</b>							
	0.00	250.00	0.00	0.00	250.00	0.00	250.00
<b>ORGANICS COMPACTOR HAUL</b>							
	0.00	339.16	0.00	0.00	339.16	12.47	351.63
<b>ORGANICS COMPACTOR DISPOSAL/TON</b>							
	0.00	135.00	0.00	0.00	135.00	0.00	135.00