

AMENDED AND RESTATED AGREEMENT

BETWEEN

THE TOWN OF YUCCA VALLEY

AND

BURRTEC WASTE AND RECYCLING SERVICES, LLC.

FOR

SOLID WASTE & RECYCLING HANDLING SERVICES

EFFECTIVE JUNE 18, 2020

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- EXHIBIT A MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES**
- EXHIBIT B CONTAINER/BIN SPECIFICATIONS**
- EXHIBIT C ANNUAL SUSTAINABILITY & DIVERSION PLAN**

AGREEMENT

This Agreement (“Agreement”) is entered into to be effective as of June 18, 2020 (the “Effective Date”) by and between the Town of Yucca Valley, a California municipal corporation and general law town (“Town”) and Burrtec Waste and Recycling Services, LLC, a California limited liability company (“Contractor”) (collectively, the “Parties”) to provide an exclusive franchise for Solid Waste Handling Services within the Town.

RE C I T A L S:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

B. Pursuant to California Public Resources Code Section 40059(a)(1), the Town has determined that the public health, safety, and welfare require that an exclusive franchise agreement be awarded to a qualified Solid Waste enterprise for Solid Waste Handling Services within the Town Limits.

C. Waste Management of the Desert (“Assignor”) and the Town were parties to that certain Agreement For Solid Waste Refuse Services From All Residential Premises Within the Town of Yucca Valley dated November 21, 1996, and the First Amendment to Agreement for Solid Waste Refuse Services From All Residential Premises Within the Town of Yucca Valley dated July 1, 1998, that certain Agreement For Solid Waste Recycling Services From All Residential Premises Within the Town of Yucca Valley dated November 21, 1996, and the First Amendment to Agreement for Residential Solid Waste Recycling Services From All Premises Within the Town of Yucca Valley dated July 1, 1998, that certain Agreement For Solid Waste Refuse Services From All Commercial Premises Within the Town of Yucca Valley dated May 19, 1994, and the First Amendment to Agreement for Solid Waste Refuse Services From All Commercial Premises Within the Town of Yucca Valley dated July 1, 1998, and Assignor and the Town are parties to that Second Amendment to Agreement for Solid Waste Refuse Services from All Commercial Premises Within the Town of Yucca Valley dated June 20, 2002, and that certain Agreement For Commercial Solid Waste Recycling Services From All Premises Within the Town of Yucca Valley dated May 19, 1994, the First Amendment to Agreement For Commercial Solid Waste Recycling Services From All Premises Within the Town of Yucca Valley dated July 1, 1998, and Assignor and the Town are parties to that Second Amendment to Agreement For Commercial Solid Waste Recycling Services From All Premises Within the Town of Yucca Valley dated June 20, 2002 (collectively the “Prior Agreements”).

D. With the consent of the Town, the Prior Agreement we assigned to and assumed by Contractor pursuant to that certain Assignment and Assumption of Agreements for Commercial and Residential Solid Waste Refuse and Recycling Services dated May 11, 2006. Contractor has been providing Solid Waste Handling Services (as defined below) in the Town pursuant to the Prior Agreements, and in connection therewith Contractor has demonstrated that it is qualified and competent to perform and provide the Solid Waste Handling Services desired by Town as set forth in this Agreement.

E. Town and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, AB 341, AB 1594, AB 1826, SB 1383, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). Town and Contractor desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, Town is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not Town, who is “arranging for” the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the Town which may contain Hazardous Substances. Town and Contractor understand and agree that it is Contractor, and not Town, who will arrange to collect Solid Waste, that Town has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in Town, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with Town in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. By entering this Agreement, Town and Contractor further desire to confirm that Contractor has agreed to indemnify the Town in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of Hazardous Contaminants that may occur in connection with Contractor’s performance under this Agreement.

F. Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure Town complies with the requirements of all applicable laws and regulations including specifically, without limitation, AB 939, AB 341, AB 1594, AB 1826, SB 1383, Public Resources Code Section 40000, *et seq*, as it may be amended from time to time, and such other laws and regulations of the State of California as may be enacted from time to time concerning Solid Waste, Organic Waste, Recyclable Materials, or the collection, handling composting, recycling or disposal of such materials.

G. The parties now desire to amend and restate the Prior Agreements to memorialize certain new amendments, and account for recent California legislation, all as more fully set forth herein.

C O V E N A N T S:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, Town and Contractor hereby agree as follows:

**SECTION 1.
RECITALS**

The Parties acknowledge the above recitals are true and correct and incorporate them herein as if they were fully restated.

SECTION 2. DEFINITIONS

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1 AB 341.

“AB 341” shall mean Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

2.2 AB 939.

“AB 939” shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 *et seq.*, as it may be amended from time to time.

2.3 AB 1594.

“AB 1594” shall mean Assembly Bill 1594 from the 2013-2014 Regular Session of the California Legislature (Chapter 719, Statutes 2014).

2.4 AB 1826.

“AB 1826” shall mean Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).

2.5 SB 1383.

“SB 1383” shall mean Senate Bill 1383 from the 2015-2016 Regular Session of the California Legislature (Lara Chapter 395, Statutes 2016).

2.6 Affiliate.

“Affiliate” means a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) “ten percent (10%)” shall be substituted for “fifty percent (50%)” in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.7 Animal Waste.

“Animal Waste” shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.8 Applicable Laws.

“Applicable Laws” shall mean all federal, state, county, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirements of any governmental agency having jurisdiction over an aspect of this Agreement that are in force on the Effective Date, and as may be enacted, issued or amended thereafter, including without limitation, Town’s Municipal Code (to the extent future amendments do no materially impair the rights of Contractor hereunder), AB 341, AB 939, AB 1594, AB 1826 and SB 1383.

2.9 Bins.

“Bins” shall mean a metal Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

2.10 Bulky Items.

“Bulky Items” shall mean Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one (1) cubic yard per Collection); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include batteries, and items commonly known in the waste industry as “brown goods,” “e-waste” and “universal waste” (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Bulky Items do not include car bodies, Construction and Demolition (C&D) Debris or (with the exception of appliances/white goods described above) items that cannot reasonably and safely be loaded and unloaded into a vehicle by two people using equipment of the type which, pursuant to industry standards, would normally be carried in a vehicle used in Collecting Bulky Items. In the event a question arises as to whether specific items, or category of items meets the definition of Bulky Items, Town shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

2.11 CalRecycle.

“CalRecycle” shall mean the State of California Department of Resources Recycling and Recovery, the department within the State Natural Resources Agency responsible for the administration of the Integrated Waste Management Act of 1989, California Public Resources Code Section 40000 et seq. (“Act”), or any successor department or agency created or designated for such purpose pursuant to the Act.

2.12 Cart.

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.13 Collect/Collection.

“Collect” or “Collection” shall mean to take physical possession of, transport, and remove Solid Waste from a premises.

2.14 Collection Vehicle.

“Collection Vehicle” shall mean a vehicle used for the Collection of Solid Waste.

2.15 Commercial Customers.

“Commercial Customers” means Customers at Commercial Premises.

2.16 Commercial Premises.

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement Premises upon which hotels, and motels are operated, and Premises upon which four (4) or more Dwelling Units exist shall be deemed to be Commercial Premises.

2.17 Construction and Demolition (C&D) Debris.

“Construction and Demolition (C&D) Debris” shall mean Solid Waste generated, produced, or discarded in connection with construction, demolition, landscaping, land clearing, or general clean-up activities within the Town, including, but not limited to, concrete, plaster, drywall, Green Material, wood, wood scraps, dirt, rock and rubble, without regard to whether such materials are Recycled.

2.18 Container.

“Container” means any and all types of Solid Waste receptacles, including Carts, Bins, and receptacles provided by Customers.

2.19 Contractor.

“Contractor” shall mean Burrtec Waste and Recycling Services, LLC., the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof to become the successor or assignee thereof.

2.20 County Agreement.

“County Agreement” shall mean that certain County Flow Control Agreement, sometimes referred to as the Waste Disposal Agreement, entered into between various San Bernardino cities, including specifically the Town of Yucca Valley and the County of San Bernardino relating to the use of County landfills for the disposal of Solid Waste collected in such cities which is on file with the Town Clerk.

2.21 Customer.

“Customer” shall mean any person receiving Solid Waste Handling Services from Contractor within the Franchise Area.

2.22 Dwelling Unit.

“Dwelling Unit” shall have the meaning set forth in the Municipal Code.

2.23 Edible Food.

“Edible Food” means all food intended and usable for human consumption.

2.24 Environmental Laws.

“Environmental Laws” means all federal and state statutes, county, local and Town ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Federal Clean Air Act, USC §7401 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.25 Food Waste.

“Food Waste” shall mean compostable Organic materials, excluding Green Material, including but not limited to: (i) all food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells); (ii) food-soiled compostable paper (including napkins, paper towels, paper plates); and (iii) tea bags, coffee grounds and filters.

2.26 Franchise Area.

“Franchise Area” shall mean all Premises within the Town Limits.

2.27 Franchise Fee.

“Franchise Fee” shall mean the franchise fee set forth and more fully defined in Section 11 hereof.

2.28 Green Material.

“Green Material” shall mean any plant material that is kept separate from other Solid Waste at the point of generation and contains no greater than one percent (1%) of physical contaminants by weight. Green Material includes, but is not limited to, yard trimmings, untreated wood wastes, natural fiber products, and Construction and Demolition (C&D) Debris wood waste. Green Material does not include food waste, biosolids, plant material mixed with Solid Waste, material processed from commingled waste, wood containing lead-based paint or wood preservative, or mixed Construction and Demolition (C&D) Debris.

2.29 Gross Receipts.

“Gross Receipts” shall mean and include all monies, fees, charges, consideration, and revenue received by Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly Customer charges for Collection of Solid Waste, without subtracting Franchise Fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, transportation charges. Notwithstanding anything herein to the contrary, Gross Receipts shall not include revenues from the sale of salvageable or Recyclable Material.

2.30 Hazardous Substance.

“Hazardous Substance” shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “Hazardous Substances,” “hazardous materials,” “Hazardous Wastes,” “toxic waste,” “pollutant” or “toxic substances” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, 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 §7401 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 and/or regulated as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the 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.

2.31 Hazardous Waste.

“Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code

§25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

2.32 Holiday.

“Holiday” shall mean the following National holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.

2.33 Manual Service.

“Manual Service” shall have the meaning ascribed in Section 8.2.3 of this Agreement.

2.34 Multi-Family Dwelling.

“Multi-Family Dwelling” means either (i) any building or lot containing four (4) or more Dwelling Units, or (ii) any building or lot containing two (2) or more Dwelling Units which Contractor determines (and Town agrees) must receive Solid Waste Handling Services through the use of shared Bins, since they are not reasonably able to receive individualized Solid Waste Handling Service through the use of Carts or Customer provided Containers. Any ambiguity as to whether a Customer’s Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the Town Manager whose decision shall be final.

2.35 Municipal Code.

“Municipal Code” shall mean Town’s Municipal Code.

2.36 NPDES.

“NPDES” shall mean the National Pollutant Discharge Elimination System.

2.37 Organics Waste.

“Organics Waste” is defined by CalRecycle as including the following material: food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste

2.38 Person.

“Person” shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Bernardino, towns, cities, and special purpose districts.

2.39 Premises.

“Premises” shall mean any land, building, and/or structure within the Town Limits where Solid Waste is generated or accumulated.

2.40 Prior Agreements.

“Prior Agreements” shall have the meaning ascribed in Recital C of this Agreement.

2.41 Processing Fees.

“Processing Fees” shall mean charges paid to facilities for sorting, cleaning, treating, composting, and reconstituting collected materials at materials recovery facilities, composting facilities, electronic and universal waste facilities. Processing Fees for Recyclable Materials shall include the difference between the total revenues received by the Contractor from the sale of Recyclable Materials and the total amount of costs associated with the transportation of the material to a material recovery facility and the fees charged by the material recovery facility to process the material.

2.42 Recycle or Recycling.

“Recycle” or “Recycling” shall mean the process of Collecting, sorting, cleaning, treating and reconstituting materials that would otherwise be disposed of and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products.

2.43 Recyclable Material.

“Recyclable Material” or “Recyclables” shall mean that Solid Waste discarded within the Franchise Area which is capable of being Recycled.

2.44 Recycling Cart.

“Recycling Cart” shall mean a Cart designated for the Collection of Recyclable Material.

2.45 Refuse Cart.

“Refuse Cart” shall mean a cart designated for the Collection of Solid Waste.

2.46 Residential Premises.

“Residential Premises” shall mean all premises upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement Premises upon which hotels, and motels are operated, and Premises upon which four (4) or more Dwelling Units exist shall be deemed to be Commercial Premises.

2.47 Rolloff Box.

“Rolloff Box” means Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

2.48 Single Family Dwelling.

“Single Family Dwelling” means a building or lot containing one (1) Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one (1) Dwelling Unit where such Dwelling Units are determined by the Town to be reasonably able to receive

individualized Solid Waste Handling Service and the number of Dwelling Units on the premises is less than four (4). Any ambiguity as to whether a Customer's Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the Town Manager whose decision shall be final.

2.49 Solid Waste.

"Solid Waste" shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of "Nonhazardous Solid Waste" set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include Hazardous Contaminants, Hazardous Substances, Hazardous Waste, low-level radioactive waste, untreated medical waste, or Special Wastes.

2.50 Solid Waste Handling Services.

"Solid Waste Handling Services" means the Collection, and thereafter the transfer, transport, Recycling, processing, and disposal of Solid Waste.

2.51 Special Wastes.

"Special Wastes" shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, hazardous waste, Animal Waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.52 Temporary Service.

"Temporary Service" shall mean Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any Premises within the Town in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes or, with respect to concrete wash-out, a ten (10) yard Rolloff Box and/or pump.

2.53 Term.

"Term" shall have the meaning ascribed in Section 6 of this Agreement.

2.54 Town.

"Town" shall mean the Town of Yucca Valley, a municipal corporation of the State of California.

2.55 Town Indemnified Parties.

"Town Indemnified Parties" shall mean the Town and its past and present elected and appointed officials, officers, boards, commissions, members, employees, representatives, agents, consultants, and volunteers.

2.56 Town Limits.

“Town Limits” shall mean the territorial boundaries of the Town together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the Town Clerk of the Town of Yucca Valley, and which are from time to time amended to reflect changes.

2.57 Town Manager.

“Town Manager” shall mean the Town Manager of the Town of Yucca Valley or his or her designee.

**SECTION 3.
GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE
HANDLING SERVICES FROM ALL RESIDENTIAL AND
COMMERCIAL PREMISES, AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICE**

3.1 Scope of Franchise.

Except as hereinafter expressly set forth, Town hereby grants to Contractor and Contractor hereby accepts from Town, for the Term hereof, the exclusive franchise, contract, right, and privilege to Collect, transport, and dispose of all Solid Waste generated or accumulated within the Franchise Area.

3.2 Annexation of Territory Covered by an Existing Franchise.

The rights and obligations set forth herein shall apply to any territories incorporated into the Town Limits during the Term hereof, which upon incorporation shall become part of the Franchise Area. The forgoing provisions are limited by any legal right for preexisting solid waste enterprises to continue to operate within annexed territories, so long as any such legal right shall continue to exist, whether pursuant to the provisions of the Public Resources Code Section 49522 or otherwise.

3.3 Matters Excluded from Scope of Franchise.

Notwithstanding any other provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the Collection, transportation, Recycling, and disposal of:

(A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self Hauler as that term is used in the Municipal Code, or any other Town ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time (to the extent future amendments do not materially impair the rights of Contractor hereunder);

(B) the sale or donation of Recyclable Material by the person or entity that generated such Recyclable Material (the "Generator") to any person or entity other than Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

(C) any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or Recycling facility by Town employees in the course and scope of their employment with Town;

(D) the Collection, transportation, or disposal of Hazardous Waste, biohazardous waste, untreated medical waste, infectious waste, Animal Waste, or other materials which do not constitute Solid Waste;

(E) the Collection, transportation, and disposal of Construction and Demolition (C&D) Debris by a contractor, handyman, repairman, or other similar service provider, as an incidental part of the services provided to its Customers, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(F) the Collection, transportation, and disposal of Green Material and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its Customers, rather than as a hauling service provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials.

SECTION 4. ENFORCEMENT OF EXCLUSIVITY

Contractor shall be responsible for enforcing the exclusivity of this Agreement. Town shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but Town shall have no obligation to do so for the benefit of Contractor or otherwise. Town additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by Town. Should Town take administrative, law enforcement, or other legal action to protect Contractor's exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution, ordinance, a public outreach and/or education program) intended to facilitate the enforcement of the exclusive rights granted herein, Contractor shall actively participate in, and fund, the same, and shall reimburse Town for its all administrative, law enforcement, or other legal costs and fees related to any such action unless Contractor provides advance written notice to Town of its opposition to such activity.

SECTION 5. ACCEPTANCE; WAIVER

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to change the terms of this Agreement under Federal, State, or local law, or administrative regulation. Contractor waives any right or claim to serve the Town or any part of the Town under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code. Additionally, by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior Agreements as of the Effective Date, agrees to waive any and all rights under the Prior Agreements, and agrees to release and hold the Town harmless from any of the Town's obligations thereunder (excepting, however, the right to compensation for services provided at the rates approved by Town as of the Effective Date); provided, however, nothing contained in this provision is intended to or shall relieve Contractor from any obligation existing under the Prior Agreements pertaining to insurance, indemnification, or other legal obligations to Town or Customers (as opposed to obligations to provide service pursuant to the terms thereof) and all such obligations, including specifically those indemnification obligations relating to Environmental Laws, general liability, and AB 939 shall survive the termination of the Prior Agreements.

**SECTION 6.
TERM**

The term of this Agreement (the "Term") shall be for a period of ten (10) years commencing on Effective Date. The first anniversary of the Effective Date and annually thereafter, the initial term shall be automatically extended for one (1) year so that the remaining term of the Agreement shall always be ten (10) years, unless either party notifies the other in writing (the "Wind Down Notice") before June 30 in any year that it does not wish the term to be automatically extended in which case the Agreement shall terminate at the end of the Term, or ten (10) years from the date of the last extension pursuant hereto, whichever is later (the "Wind Down Period").

**SECTION 7.
CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by Town in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Contractor's continued right to the benefits conveyed herein:

7.1 Accuracy of Representation.

All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

7.2 Absence of Litigation.

There shall be no litigation pending in any court challenging the award of this Franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

7.3 Furnishing of Insurance, Bond, and Letter of Credit.

Contractor shall have furnished evidence of the insurance, bonds and letter of credit required by Sections 14 and 15, and shall comply with all ongoing requirements relating thereto.

7.4 Effectiveness of Town Council Action.

Town's Resolution approving this Agreement shall have become effective pursuant to California law.

7.5 Payment of Negotiation Costs.

Contractor shall make payment in the amount not to exceed \$75,000 to Town of all legal and consulting fees and costs incurred in connection with the negotiation, drafting and approval of this Agreement. Payment for such costs shall occur within 30 days of Town providing an invoice therefore to Contractor.

**SECTION 8.
SOLID WASTE HANDLING SERVICES
PROVIDED BY CONTRACTOR**

8.1 General.

8.1.1 Equipment.

Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

8.1.2 Performance Standards.

Contractor shall perform Solid Waste Handling Services as required hereunder in a professional manner consistent with industry standards and all relevant provisions of the Municipal Code. Contractor's equipment shall be water-tight, leak proof and maintained in good repair with the goal of preventing any leaks or spills onto public or private property, and eliminating objectionable odors. Contractor shall immediately clean up any spills from its equipment of which it becomes or is made aware.

8.1.3 Noise and Disruption.

Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. Contractor shall use its best efforts to coordinate its Collection schedules such that street sweeping on any given street shall occur the business day following Collection of Solid Waste by Contractor.

8.1.4 Collection Times.

All Solid Waste and Recyclable Material shall be Collected between the hours of 6:00 a.m. to 8:00 p.m., Monday through Friday for Residential Premises, and 5:00 a.m. to 7:00 p.m., Monday through Saturday, for Commercial Premises.

8.1.5 Collection Schedule.

Contractor shall establish Collection routes and a Collection schedule which shall be approved by the Town Manager such that Customers at all Residential and Commercial Premises within the Town will have not less than one (1) established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least one (1) weeks' notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection date fall on a Holiday, or on any other day in which San Bernardino landfills or other lawful disposal sites to which Solid Waste is taken for disposal are closed, or a Recycling facility to which Recyclable Material is taken are closed, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular pick-up schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday for Commercial Premises and Monday through Friday for Residential Premises. Contractor may not change its established Collection schedules without obtaining the prior written consent of the Town Manager.

8.1.6 Route Audits

Within the first 12 months of the new Agreement and then bi-annually thereafter, or as required by State legislation, Contractor will perform a route audit which will include, but is not limited to: 1) verification of container size, 2) collection frequency, 3) appearance of container, 4) documentation of containers in need of repair. A report of the findings will be submitted to the Town Manager, or his designee.

8.1.7 Replacement of Containers.

Contractor shall, whenever possible, place Carts or Customer-provided Containers on top of the curb, sidewalk, or parkway upon completing Collection to facilitate traffic and parking efficiency. Contractor shall replace all Bins in the location upon the property of each Customer utilizing Bins designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

8.1.8 Contractor's Containers.

(A) Contractor's Containers shall meet the minimum standards set forth on the attached Exhibit B, and shall be replaced as necessary by Contractor at its cost pursuant to the provisions of Exhibit B.

(B) Contractor shall be responsible to maintain and replace, as necessary, all of its Containers.

(C) All of Contractor's Containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the Town Manager.

(D) All Carts shall be maintained by Contractor in a watertight condition, as shall all Bins which are used primarily for the disposal of Solid Waste containing liquids, and shall at all times comply with the provisions of any applicable NPDES permit.

(E) All new Carts shall be properly marked to identify what is allowed inside. All Recycling Carts shall be hot-stamped "Recycling Only" with pictures of recyclables that are allowed inside cart. All Refuse Carts shall be hot-stamped "Trash Only".

(F) Contractor shall replace any damaged Carts at no charge to Customers, provided, however, Contractor shall be entitled to charge Customers for the replacement of any Cart that has been damaged by a Customer, ordinary wear and tear excepted, so long as such charges do not exceed the maximum rates set forth in Exhibit A.

(G) Contractor shall reasonably assist Customers in efforts to recover lost or stolen Carts, but Customers shall be responsible for charges associated with the cost of replacement of such Carts, which charges shall not exceed the maximum rates set forth in Exhibit A.

(H) Contractor shall at Customer's request annually refurbish, replace, and steam clean as necessary all Bins at no charge to Customers. Additional steam cleaning shall

be provided to any Customers who request it at a charge not to exceed the maximum rate set forth in Exhibit A, or alternatively Contractor shall provide a replacement Bin to Customers at no charge.

(I) Contractor shall remove any graffiti that appears on its Containers within twenty-four (24) hours after becoming aware of it. The cost of the first such removal in any calendar year at any Customer address shall be borne by Contractor. Contractor may charge Customers for any subsequent graffiti removal at the same address in the same calendar year, so long as the charge does not exceed the maximum rate set forth in Exhibit A.

(J) All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion, and shall be identified with Contractor's name and phone number, as set forth in Exhibit B. Contractor may change the color of its Bins and Rolloff Boxes should it desire, upon Town's approval of its color selection and time schedule for repainting.

(K) At a Customer's request, and for a one-time charge at a rate not exceeding the maximum rate set forth in Exhibit A, Contractor shall provide Bins with locking lids.

8.1.9 Missed Pick-ups.

In case of a missed pick-up called in by a Customer at a Single Family Dwelling, Contractor shall Collect Solid Waste and Recyclable Material from such Customer no later than the next day of the pick-up week following the date of the call. Records of the addresses of all missed pick-ups shall be maintained by Contractor, and shall be reported to Town upon request. If Contractor demonstrates to the satisfaction of the Town Manager a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder.

8.1.10 Record of Non-collection.

When Contractor refuses to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least 2" by 6" in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (i.e., checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non-collection, and a summary of any communications between Contractor and the Customer involved. Such notice shall be retained so that it may be conveniently inspected by representatives of Town upon request. A list of notices given shall be included on the monthly report to the Town.

8.2 Residential Solid Waste Handling Service.

8.2.1 Single Family Dwellings – Automated Collection.

Except for those Customers that choose to receive Bins for service, Contractor shall provide each Customer at a Single Family Dwelling with either one 96-gallon, 64-gallon or 35-gallon Cart designated for the Collection of mixed Solid Waste (a Refuse Cart). Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with an

option to obtain additional Refuse Carts at no charge; provided, however, Contractor's monthly rate for Solid Waste Handling Services to such Customers may be increased on a per Refuse Cart basis at rates that do not exceed the maximum rates set forth in the attached Exhibit A. Customers in hard to service areas will be charged "Zone C" rates in Exhibit A.

8.2.2 Single Family Dwellings – Manual Collection.

In cases where Town determines that Solid Waste Handling Services utilizing Carts is not feasible at Single Family Dwellings, Contractor shall provide either Solid Waste Handling Services by manual means (i.e., manually lifting Containers and dumping their contents into a Collection Vehicle) ("Manual Service") or have a central location, in the area, where customers can bring their trash and recycling for collection. Customers receiving Manual Service shall be entitled to place out three (3) standard size trash cans or up to six (6) standard sized plastic garbage bags each week for Collection. Contractor shall not be required to provide Refuse Carts or Recycling Carts to Customers receiving Manual Service, and such Customers shall provide their own Containers. If and when the Town determines that recycling will be mandatory for all residents; the rates in Exhibit A (Zone C) shall be adjusted for the addition of recycling services. Contractor shall maintain a record of all Customers receiving Manual Service, and shall Collect all Solid Waste placed in such Customer's Containers for Collection. Contractor shall provide a list of Manual Service customers as requested by the Town.

8.2.3 Single Family Dwellings – Bin Collection.

Contractor may not supply Customers at Single Family Dwellings with Bins in place of Refuse Carts, or otherwise use Bins for Solid Waste Handling Services at such Customer's premises; excepting, however, that Bins may be used for Solid Waste Collection when requested by Customers receiving service at Single Family Dwellings when the lot upon which service is provided is equal to or greater than one (1) acre in size, or is zoned Rural Living (RL), or is provided an exception permit from the Town Manager or his or her designee. Customers receiving service at Single Family Dwellings that are permitted by the Town to keep large animals on their property may apply for an exception permit from the Town Manager or his or her designee.

Recycling Carts must still be provided to any Single Family Dwelling provided with Bins in place of Refuse Carts. Recycling carts will be charged at rates set forth in Exhibit A. In each such situation, Bins may only be provided by Contractor if an enclosed storage area exists, or they are otherwise kept on the premises in such a manner as to not be visible from the public right of way.

8.2.4 Single Family Dwelling Recycling Program.

(A) Except as otherwise provided herein, each Customer at a Single Family Dwelling shall be provided with either one 96-gallon, 64-gallon or 35-gallon Cart designated for the Collection of Recyclable Materials (a "Recycling Cart"). Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one (1) or more additional Recycling Carts at rates that do not exceed the maximum rates set forth on Exhibit A. Contractor shall not be required to provide Recycling Carts to Customers that receive Manual Service.

(B) Contractor shall offer and provide a Residential Recycling Program to all Single-Family Residential customers (the “Residential Recycling Program”) that encourages and promotes recycling efforts per the Town and/or CalRecycle requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Residential Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable customers in the Town.

(C) Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer at a Single Family Dwelling on the same day as such Customers’ Refuse Cart is Collected. At a minimum the following materials shall be allowed to be deposited by Customers for Collection in Recycling Carts: aluminum cans; glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7; shrink wrap, juice boxes and milk cartons (aseptic packaging, Tetra Pak[®] and waxed cardboard); and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books. Customers at Single Family Dwellings receiving Collection in Bins shall receive a Recycling Cart for the Collection of Recyclable Materials.

8.2.5 Single Family Organics Collection SB 1383

(A) At such time Single Family Organics Collection is required by state law and regulations, Contractor shall offer and provide an Organics Collection program to all Single-Family Dwelling Customers (the “Single-Family Dwelling Organics Program”) that at a minimum meets the standards required under SB 1383. Contractor shall also assist the Town in identifying Single-Family Dwelling Customers that are not in compliance with the requirements of the Applicable Laws, including without limitation SB 1383.

(B) Contractor shall provide periodic on-site visits to such Premises to offer and promote the Single-Family Dwelling Organics Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the Town for potential follow up action where there is a repeated refusal to implement the Single-Family Dwelling Organics Program. Contractor shall keep records of all on-site visits including the date visit was conducted, who Contractor met with, services offered and any reasons explaining if customer refuses to implement the Single-Family Dwelling Organics Program and will be provided to the Town on a monthly basis, along with diversion compliance percentages of those who are and are not complying with the Applicable Laws, including without limitation SB 1383. Town agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to Single-Family Dwelling Customers regarding the Applicable Laws, including without limitation SB 1383 requirements, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation SB 1383 requirements, and occasional participation by Town personnel in meetings with Single-Family Dwelling Customers who repeatedly refuse to implement the Single-Family Dwelling Organics Program.

(C) Contractor shall be responsible for ensuring that its Single-Family Dwelling Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its existing program from time to

time, at no additional cost to the Town or Single-Family Dwelling Customers to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Single-Family Dwelling Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in Town. Town and Contractor shall work together to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing said Organics Program; and the Town Manager is authorized to approve the Organics Program and any associated increase to the maximum rates set forth on Exhibit A.

8.2.6 Use of Bins for Multi-Family Dwelling Customers.

Contractor shall supply Multi-Family Dwellings with Bins meeting the minimum standards set forth in Exhibit B for Solid Waste Handling Services (Refuse Bins). Contractor shall provide not less than one (1) Refuse Bin for every ten (10) Dwelling Units located at each Multi-Family Dwelling, to be Collected not less than one (1) time per week. Alternatively, if space constraints make this impractical, the Town Manager may approve the use of a lesser number of Refuse Bins if they are Collected with a sufficient frequency to ensure public nuisance conditions do not exist.

8.2.7 Multi-Family Dwelling Recycling Program.

(A) Contractor shall offer and provide a Multi-Family Recycling Program to all Multi-Family customers (the “Multi-Family Recycling Program”) that at a minimum meets the standards required under the Applicable Laws including without limitation AB 341. Contractor shall also assist the Town in identifying Multi-Family customers that are not in compliance with the requirements set forth in the Applicable Laws including without limitation AB 341.

(B) Contractor shall provide quarterly site visits to such Premises to offer and promote the Multi-Family Recycling Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the Town for potential follow up action where there is a repeated refusal to implement the Multi-Family Recycling Program. Contractor shall keep records of all on-site visits including the date visit was conducted, who Contractor met with, services offered and any reasons explaining if customer refuses to implement the Multi-Family Recycling Program and will be provided to the Town on a monthly basis, along with diversion compliance percentages of those who are and are not complying with the Applicable Laws including without limitation AB 341. Town agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to customers regarding the Applicable Laws including without limitation AB 341 requirements, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation AB 341 requirements, and occasional participation by Town personnel in meetings with customers who repeatedly refuse to implement the Multi-Family Recycling Program.

(C) Contractor shall be responsible for ensuring that its Multi-Family Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its existing program from time to

time, at no additional cost to the Town or Multi-Family customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Multi-Family Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable customers in the Town.

(D) Contractor shall provide specially designated Bins for Recycling (“Recycling Bins”) at all Multi-Family Dwellings. Contractor shall provide not less than one (1) Recycling Bin for every twenty (20) Dwelling Units located at each Multi-Family Dwelling. Contractor shall Collect Recyclable Material placed in Recycling Bins for Collection from each Customer at least once per week. At a minimum the following materials shall be allowed to be deposited by Customers for Collection in Recycling Bins: aluminum cans; glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7; shrink wrap, juice boxes and milk cartons (aseptic packaging, Tetra Pak[®] and waxed cardboard); and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

8.2.8 Multi-Family Dwelling Organics Program.

(A) Contractor shall offer and provide an Organics Collection program to all Multi-Family Dwelling Customers (the “Multi-Family Dwelling Organics Program”) that at a minimum meets the standards required under the Applicable Laws including without limitation AB 1826 and SB 1383. Contractor shall also assist the Town in identifying Multi-Family Dwelling Customers that are not in compliance with the requirements set forth in the Applicable Laws including without limitation AB 1826 and SB 1383.

(B) Contractor shall provide quarterly on-site visits to such Premises to offer and promote the Multi-Family Dwelling Organics Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the Town for potential follow up action where there is a repeated refusal to implement the Multi-Family Dwelling Organics Program. Contractor shall keep records of all on-site visits including the date visit was conducted, who Contractor met with, services offered and any reasons explaining if customer refuses to implement the Multi-Family Dwelling Organics Program and will be provided to the Town on a monthly basis, along with diversion compliance percentages of those who are and are and are not complying with the Applicable Laws including without limitation AB 1826 and SB 1383. Town agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to Multi-Family Dwelling Customers regarding the Applicable Laws including without limitation AB 1826 and SB 1383 requirements, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation AB 1826 and SB 1383 requirements, and occasional participation by Town personnel in meetings with Multi-Family Dwelling Customers who repeatedly refuse to implement the Multi-Family Dwelling Organics Program.

(C) Contractor shall be responsible for ensuring that its Multi-Family Dwelling Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its existing program from time to time, at no additional cost to the Town or Multi-Family Dwelling Customers, to meet

such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Multi-Family Dwelling Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in Town. Town and Contractor shall work together to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing said Organics Program; and the Town Manager is authorized to approve the Organics Program and any associated increase to the maximum rates set forth on Exhibit A.

8.2.9 Residential and Multi-Family Bulky Item Service.

Contractor shall provide Bulky Item Collection services to Customers at all Single Family Dwellings and Multi-Family Dwellings in Town on an on-call basis. On-call Bulky Item Collection service shall be responded to within a reasonable time but no longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item Collection service.

Bulky Item Collection service shall be provided to each Customer at Single Family Dwellings and Multi-Family Dwellings per unit at no charge (4) four times per year ("Free Bulky Item Collections.") In connection with each Free Bulky Item Collection, Contractor shall Collect up to four (4) Bulky Items per unit. Rates for Collection of Bulky Items at Single Family Dwellings and Multi-Family Dwellings that exceed either the four (4) Free Bulky Item Collections per unit in a year or the four (4) Bulky Item limit for a single Free Bulky Item Collection, shall not exceed the maximum rates set forth on Exhibit A.

Notwithstanding any provision herein to the contrary, Contractor shall also accept recyclables, bulky items as defined in 2.10 (excluding plumbing, residential waste, green material, and clothing), e-waste, and mattresses at their Yucca Valley Transfer Station at no charge from residents who are signed up for residential collection services and the Bulky items are generated from the service property of the person dropping them off, when proof of residency is provided.

In the event of more than 2,000 residents annually dropping off bulky items as listed above, the Town and Contractor will meet and confer on either, adjusting rates to cover the additional disposal costs or maintain a maximum limit of 2,000 uses annually or, another reasonable method of adjustment.

8.2.10 Collection Requirements for Customers Using Carts.

Contractor shall only be required to Collect Solid Waste and Recyclable Material which has been placed, kept, or accumulated in Refuse or Recycling Carts (excluding during the first two (2) weeks following Christmas at which time reasonable amounts of Solid Waste may be placed for Collection next to Refuse or Recycling Carts), and, subject to the terms of Section 8.2.11 below, Contractor is only required to do so with respect to those Carts that are placed at curbside or other designated pick-up locations pre-approved by Town and Contractor prior to the Contractor's normal weekly Collection time. If a Customer habitually leaves Refuse or Recyclable Materials next to or outside of a Cart, Contractor may, after obtaining Town's prior written consent either: (i) require such Customer to acquire one (1) or more additional Carts, as necessary, or (ii)

charge such Customer an additional charge, in accordance with Section 8.7 below (Special Services).

8.2.11 Walk-Out Service

Contractor shall provide “Qualified Customers” with “walk-out service” as set forth in this Section at no additional charge. This service shall require Contractor to use its own forces to bring a Customer’s Carts from a Customer’s backyard, side yard, or such other location at which the Customer’s Containers are regularly stored, to Contractor’s Collection Vehicle; and, after disposal of the contents thereof, return said Carts to the location where they are regularly stored. To be a “Qualified Customer” for purposes of this Section, a Customer shall have a DMV-issued disabled person placard/license plates, and provide a letter to Contractor from a physician confirming the Customer is unable to move his/her Carts to the curb, and that to the best of the physician’s knowledge there is no other capable persons living in Customer’s household to provide this service. Contractor may require each eligible Customer to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. Any dispute regarding a Customer’s eligibility for walk-out service shall be resolved by the Town Manager. Contractor may provide Customers who are not eligible for free walk-out service pursuant to the forgoing with walk-out service at a rate which shall not exceed the maximum rate set forth in Exhibit A. Contractor may require as a condition of walk-out service that a Customer sign a standardized agreement, the terms of which shall be subject to Town’s approval, which authorizes entry onto the Customer’s property and holds Contractor harmless from liability (including specifically liability related to pets escaping) associated with Contractor providing such service.

8.2.12 Collection Requirements for Residential Customers Using Bins.

Contractor shall only be required to Collect Solid Waste and Recyclable Material which have been placed, kept, or accumulated in Refuse or Recycling Bins, and is only required to do so with respect to those Bins that are placed at curbside or other designated pick-up locations pre-approved by Town and Contractor prior to the Contractor’s normal weekly Collection time. If a Customer habitually leaves Refuse or Recyclable Materials next to or outside of a Bin, Contractor may, after obtaining Town’s prior written consent either: (i) require such Customer to acquire one (1) or more additional Bins, as necessary, (ii) require such Customer to add an additional day or days of service, or (iii) charge such Customer an additional charge, in accordance with Section 8.7 below (Special Services). (Similar to 8.2.9)

8.3 Commercial Solid Waste Handling Services.

8.3.1 Contractor to Provide Containers.

Contractor shall provide Commercial Customers with either Refuse Bins or Refuse Carts, at no charge, which shall meet the minimum standards set forth in the attached Exhibit B. Commercial Customers utilizing Refuse Carts shall be issued, at no charge, and at the Customer’s choice, one (1) ninety-six (96) gallon Refuse Cart and one (1) ninety-six (96) gallon Recycling Cart. Upon a Customer’s request, Contractor shall provide additional Carts or Bins at no charge; provided, however, Contractor’s rate for Solid Waste Handling Services to such Customers may be increased on a per Refuse Cart or per Refuse Bin basis so long as the rates charged for such increase do not exceed the maximum rates set forth in the attached Exhibit A. Upon a Customer’s

request, Contractor shall provide an extra pick-up/dump at rates that do not exceed the maximum rates set forth in the attached Exhibit A.

8.3.2 Location for Collection and Replacement of Bins.

Bins shall be Collected by Contractor from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Contractor.

8.3.3 Collection Requirements for Commercial Customers.

Contractor shall only be required to Collect Solid Waste and Recyclable Material which have been placed, kept, or accumulated in Carts or Bins, and is only required to do so with respect to those Carts or Bins that are placed at curbside or other designated pick-up locations pre-approved by Town and Contractor prior to the Contractor's normal weekly Collection time. If a Customer habitually leaves Refuse or Recyclable Materials next to or outside of a Cart or Bin, Contractor may, after obtaining Town's prior written consent either: (i) require such Customer to acquire one (1) or more additional Carts or Bins, as necessary, (ii) require such Customer to add an additional day or days of service, or (iii) charge such Customer an additional charge, in accordance with Section 8.7 below (Special Services).

8.3.4 Commercial Recycling Program.

(A) Contractor shall offer and provide a Commercial Recycling Program to all Commercial customers (the "Commercial Recycling Program") that at a minimum meets the standards required under the Applicable Laws including without limitation AB 341. Contractor shall also assist the Town in identifying Commercial customers that are not in compliance with the requirements set forth in the Applicable Laws including without limitation AB 341.

(B) Contractor shall provide quarterly on-site visits to such Premises to offer and promote the Commercial Recycling Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the Town for potential follow up action where there is a repeated refusal to implement the Commercial Recycling Program. Contractor shall keep records of all on-site visits including the date visit was conducted, who Contractor met with, services offered and any reasons explaining if customer refuses to implement the Commercial Recycling Program and will be provided to the Town on a monthly basis, along with diversion compliance percentages of those who are and are not complying with the Applicable Laws including without limitation AB 341. Town agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to customers regarding the Applicable Laws including without limitation AB 341, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation AB 341 requirements, and occasional participation by Town personnel in meetings with customers who repeatedly refuse to implement the Commercial Recycling Program.

(C) Contractor shall be responsible for ensuring that its Commercial Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its existing program from time to time,

at no additional cost to the Town or Commercial customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its Commercial Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable customers in the Town.

(D) Commercial Customers that receive ninety-six (96) gallon Refuse Carts shall also be entitled to receive a ninety-six (96) gallon Recycling Cart at no additional charge, within which at least those Recyclable Materials set forth in Section 8.2 may be placed for Collection. Contractor shall make either ninety-six (96) gallon Recycling Carts or Recycling Bins (with a capacity of two (2), three (3) or four (4) yards), within which at least those Recyclable Materials set forth in Section 8.2 may be placed for Collection, available to all Customers at Commercial Premises. The maximum rates Contractor may charge for Recycling Bins made available to Customers pursuant to this provision shall be the service component and the processing fee component (net recycling) of the maximum rates for Refuse Bins set forth on Exhibit A, and Contractor shall not charge for disposal. The maximum rates Contractor may charge for Recycling Carts made available to Customers pursuant to this provision shall be as set forth on Exhibit A.

8.3.5 Commercial Organics Program.

(A) Contractor shall offer and provide a Commercial Organics Collection program to all Customers at Commercial Premises (the “Commercial Organics Program”), to be approved by the Town Manager, that at a minimum meets the requirements of the Applicable Laws including without limitation AB 1826 and SB 1383. Contractor shall also assist the Town in identifying Commercial Customers that are not in compliance with the requirements set forth in the Applicable Laws including without limitation AB 1826 and SB 1383.

(B) Contractor shall provide quarterly on-site visits to Commercial Customers to offer and promote its Commercial Organics Program, attempt to resolve any logistical detriments to providing services offered thereunder, and notify and request assistance from the Town for potential follow up action where there is a repeated refusal to implement the Commercial Organics Program. Contractor shall keep records of all on-site visits including the date visit was conducted, who Contractor met with, services offered and any reasons explaining if customer refuses to implement the Commercial Organics Program and will be provided to the Town on a monthly basis, along with diversion compliance percentages of those who are and are not complying with the Applicable Laws including without limitation AB 1826 and SB 1383. Town agrees to provide reasonable assistance to Contractor, which may include adding its name to materials prepared for distribution to Customers regarding the Applicable Laws including without limitation AB 1826 and SB 1383 requirements, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation AB 1826 and SB 1383 requirements, and occasional participation by Town personnel in meetings with Commercial Customers who repeatedly refuse to implement the Commercial Organics Program.

(C) Contractor shall be responsible for ensuring that its Commercial Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its existing program from time to time, at no additional cost, to the Town or Customers, to meet such diversion requirements. Contractor shall produce, keep current, and provide public information specifically outlining its

Commercial Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in Town. Town and Contractor shall work together to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit A in order to compensate Contractor for implementing said Organics Program; and the Town Manager is authorized to approve the Organics Program and any associated increase to the maximum rates set forth on Exhibit A.

8.3.6 Commercial Bulky Item Service.

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers on an on-call basis. Rates for such services shall not exceed the maximum rates set forth on Exhibit A. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service.

8.4 Temporary Services.

8.4.1 Temporary Services

Contractor shall provide Temporary Services on an on-call basis to any Customer requesting such service pursuant to the following conditions:

(A) Bins and Rolloff Boxes utilized in connection with Temporary Services shall meet the minimum standards set forth herein.

(B) Temporarily placed Bins and Rolloff Boxes may be used to provide Temporary Services at any Premises within the Town; provided, however, Bins and/or Rolloff Boxes used for such service shall not remain at a Premises for a period that exceeds fourteen (14) consecutive days, or for more than twenty-eight (28) days in any ninety-eight (98) day period, unless the Bin/Rolloff Box is necessary for a project for which the Customer has obtained a building permit from the Town for construction activity occurring at the Premises where the Bin/Rolloff Box has been placed. In such event, the Bin/Rolloff Box may remain at the Premises for the term of the Permit.

(C) No other charges (excepting rates not exceeding the maximum rates set forth in the attached Exhibit A) related to Bins or Rolloff Boxes utilized in connection with Temporary Services shall be imposed by Contractor, unless approved in accordance with Section 8.7 (Special Services).

(D) Bins and Rolloff Boxes used in connection with Temporary Services shall not be placed in any public rights-of-way unless an Encroachment Permit has been obtained from the Town, and in no event shall any such Bins or Rolloff Boxes remain in any public rights-of-way for a period exceeding two (2) consecutive weeks.

8.4.2 C&D Waste Recycling

Upon adoption of Town Ordinance and enforcement, Contractor shall divert and recycle a minimum of sixty-five percent (65%) of all C&D Waste Collected by Company. All mixed C&D Waste shall be processed. Contractor's program shall commence upon the Effective Date and continue during the Town's continuation and enforcement of existing and future CalGreen building requirements.

Roll-off Box Collection service shall be charged on a "pull-plus-cost" basis, with a service fee or "pull charge" and a per-ton fee component. The per-ton component for mixed C&D Waste loads shall be the actual per-ton gate fee charged at the Facility accepting the material for Diversion. Such loads shall be processed to recover materials that can be Recycled. The per-ton component for source-separated loads (e.g., concrete, dirt, asphalt, wood) shall be the actual per-ton gate rate at the Facility accepting the material for Diversion.

8.5 Recycling Obligations and Public Education Program.

8.5.1 Extent of Applicable Franchise Rights.

Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material which has not been discarded and placed for Collection by Contractor in the location designated for that purpose.

8.5.2 Obligations Under the Waste Management Act and Applicable Laws, Guarantee, and Indemnification.

8.5.2.1 Warranties and Representations.

Contractor warrants and represents that it is aware of and familiar with Town's Source Reduction and Recycling Element (the "SRRE"), that it is familiar with Town's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure Town will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Applicable Laws and the SRRE, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit A. Stated otherwise, Contractor acknowledges that it is responsible for ensuring that its various programs achieve the diversion requirements hereunder within the Franchise Area, and that it may be required to modify its programs from time to time, depending on the types of modifications required, at no additional cost to the Town or Customers, to meet such diversion requirements.

8.5.2.2 Waste Reduction and Program Implementation.

Contractor shall implement the programs identified in the Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) of the Town's General Plan immediately upon the Effective Date hereof, and will implement any programs required by any amendments or modifications thereto. Contractor shall provide Town with monthly, quarterly and annual written reports in a form adequate to meet Town's diversion and other obligations under the Applicable Laws, including without limitation AB 939, AB 341, and AB 1826 related filing and reporting requirements to CalRecycle and to the County of San

Bernardino throughout the Term of this Agreement wherein Town's performance under the above programs shall be set forth in detail. Contractor shall be responsible to prepare, or assist Town with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with the Applicable Laws including without limitation AB 939, AB 341, AB 1594, AB 1826, SB 1383 and any other similar regulatory provisions related to the services provided hereunder. Contractor shall reimburse Town for any costs Town incurs in reviewing and revising any such reports, and in appearing before CalRecycle and/or the County of San Bernardino in relation thereto.

8.5.2.3 Guarantee and Indemnification.

Contractor warrants and guaranties that it will carry out its obligations under this Agreement such that (i) both it and Town will at all times be in compliance with the requirements of all Applicable Laws, including specifically AB 939, AB 341, AB 1594 AB 1826 and SB 1383, and (ii) Town will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Applicable Laws including without limitation AB 939, AB 341, AB 1594, AB 1826, and SB 1383 and all amendments thereto. Contractor will agree to "good faith negotiations" to amend this Agreement if other diversion programs are required by CalRecycle in the future that are not currently addressed in this agreement, specifically SB 1383. In this regard Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(A) to the extent legally permitted, defend, with counsel approved by Town, indemnify, and hold harmless the Town Indemnified Parties from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or the Applicable Laws, including AB 939 and SB 1383 and such failure or refusal prevents or delays Town from submitting reports required by the Applicable Laws, including AB 939 and SB 1383 in a timely manner; or (2) the source reduction and Recycling goals, diversion goals, program implementation requirements, or any other requirements of the Applicable Laws including without limitation, including AB 939 and SB1383 are not met with respect to the waste stream Collected under this Agreement;

(B) assist Town in responding to inquiries from CalRecycle;

(C) assist Town in preparing for, and participating in, CalRecycle's annual review of Town's SRRE pursuant to the Applicable Laws including without limitation Public Resources Code Section 41825;

(D) assist Town in applying for any extension, including under Public Resources Code Section 41820, if so directed by Town;

(E) assist Town in any hearing conducted by CalRecycle relating to Town's compliance with the Applicable Laws including AB 939 and SB 1383;

(F) assist Town with the development of and implement a public awareness and education program that is consistent with the Town's SRRE and Household Hazardous Waste

Element, as well as any related requirements the Applicable Laws including AB 939 and SB 1383;

(G) provide Town with Recycling, source reduction, and other Applicable AB 939 and SB 1383 related technical assistance;

(H) defend, with counsel acceptable to Town, Town Indemnified Parties against the imposition of fines and/or penalties, or any other liabilities, issued by the CalRecycle pursuant to the Applicable Laws, including AB 939 and SB 1383;

(I) be responsible for and pay, any fees, penalties or other costs imposed against Town by CalRecycle, and indemnify and hold harmless Town from and against any fines, penalties, or other liabilities, levied against it for violation of the Applicable Laws, including AB 939's and SB 1383's diversion requirements, or violation of any other provision of the Applicable Laws, including AB 939 and SB 1383, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

8.5.2.4 Implementation of Additional Diversion Services.

In the event Town does not meet the current diversion goal of 75% imposed by the Applicable Laws, including AB 939, AB 341, AB 1826 and/or SB 1383 with respect to all waste generated in the Franchise Area, Town may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Contractor shall seek Town approval for the implementation of new diversion programs, which Town may deny, approve or conditionally approve in its reasonable discretion. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which Town may direct.

8.5.3 Organic Materials Capacity Guarantee.

Contractor shall maintain, or cause its affiliates to maintain, at the Edom Hill Compost Facility sufficient capacity to accept the Organics Waste to be collected and processed pursuant to this Agreement.

8.6 Additional Services.

As part of the consideration for entering this Agreement, Contractor shall provide the following additional services at no charge, and shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

8.6.1 Community/Neighborhood Clean-up Events.

The Town anticipates implementation of two clean-up events each year. This program may target various neighborhoods using roll off boxes at targeted locations or be a town-wide clean-up event where items will be dropped off at contractors transfer station, as designated by the Town. Contractor shall participate in such program two (2) times per year as requested by Town by providing Rolloff Boxes, as well as education material, collection, transportation and disposal for Solid Waste placed in such Rolloff Boxes, in connection with Town's clean-up events.

8.6.2 Document Shredding Events.

Up to two (2) times per year, on dates and at locations in Town agreed upon by Contractor and Town, Contractor shall hold a document shredding event for Customers in Town. This event shall be structured to allow any Town resident or the owner of any business in the Town to bring up to four (4) “banker boxes” of documents to the designated location for shredding. Contractor shall deliver the shredded materials to an appropriate Recycling facility, and shall not deliver such materials to a landfill for disposal. Contractor may require reasonable evidence that persons delivering documents for shredding in connection with this event are Town residents or the owners of businesses in the Town.

8.6.3 Town Sponsored Events.

Contractor shall provide Solid Waste Handling Services and up to six (6) portable restrooms for up to six (6) Town-sponsored non-profit events each year. This shall include providing Containers to Collect and dispose of all Solid Waste, using cardboard waste boxes with liners, and Bins or Rolloff Boxes as applicable and providing Containers to Collect source-separated Recyclable Materials, and portable restrooms.

8.6.4 Bin and Bin Enclosure Cleaning.

Contractor shall clean out any overflowing Bins or Bin enclosures within the Franchise Area within twenty-four (24) hours of notification by Town. Contractor may bill Customers for any such services when they are required by Town. Contractor shall work with the Town Manager in identifying continual problems in Customer Bins or Bin enclosures.

8.6.5 Public Service Calls from Town Departments.

Contractor shall respond to calls from Town’s Maintenance and Code Enforcement Divisions and from its Police Department, to provide Containers and dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters occurring within the Franchise Area at rates not exceeding the maximum rates set forth on Exhibit A. Contractor agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property owner by Town through abatement liens or otherwise, Contractor will provide billing information sufficient for Town to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by Town from the property owner.

8.6.6 Holiday Trees.

Contractor shall, free of charge, pick up all holiday trees placed out for Collection curbside by Customers during the first two (2) weeks following Christmas Day. Contractor shall additionally provide such Rolloff Boxes as may be needed to allow for the Collection of holiday trees which may be delivered to Town’s Town Hall/Community Center Complex following the above two (2) week period, and shall Collect and appropriately dispose of all trees so delivered at no charge.

8.6.7 Handling of Electronic Waste.

Contractor shall Collect electronic waste, or “e-waste,” placed for Collection by any Customer, but shall handle and dispose of such materials in accordance with all Applicable Laws.

8.6.8 New Customer Package

Contractor shall distribute a brochure to each new Commercial and Residential Customer that describes, at minimum, the services available, billing and payment procedures and the Town’s Diversion Programs. Contractor shall submit to Town for review and approval of the brochure not later than (90) days after the beginning of the Term.

8.6.9 Acceptance of Recyclable Materials.

(A) Contractor shall, free of charge, provide Containers in an amount and of a type as may be needed to allow for the proper Collection of any Recyclable Materials, small batteries, florescent or mercury light tubes, and materials commonly known as e-waste (CRT’s) that are dropped off by Residential Customers at Contractors Yard. Contractor shall use reasonable efforts to ensure that such materials receive the highest possible rate of Recycling, and, if necessary to avoid contamination of otherwise Recyclable Materials, shall establish sufficient Containers to allow for the storage of cardboard and paper separate from other Recyclable Materials. Contractor shall Collect materials deposited in such Containers at least once per week, and more often if determined necessary by Town.

8.7 Special Services.

Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Contractor, which rates are subject to approval by the Town Manager. Contractor shall notify the Town Manager of any such services prior to such time as they are provided in order to allow Town an opportunity to conduct necessary inspections, review the proposed rate, and impose appropriate regulations.

**SECTION 9.
MINIMUM STANDARDS FOR CONTRACTOR’S SOLID
WASTE HANDLING SERVICE COLLECTION VEHICLES**

9.1 Type and Quantity.

Contractor shall provide an adequate number of vehicles for all services required by this Agreement. Each Collection Vehicle utilized by Contractor shall be approved by the Town Manager prior to being placed into service by Contractor.

9.2 Specific Requirements.

All vehicles used by Contractor in the performance of its obligation to provide Solid Waste Handling Services hereunder, including Collection and transportation of Solid Waste and Recyclable Material, shall be kept and maintained so as to at all times comply with all applicable

Federal, State and local laws and regulations, including any that may be enacted during the term of this Agreement, and shall meet the following minimum standards:

(A) Each vehicle shall be inspected in accordance with the California Highway Patrol. A record of each vehicles inspections shall be kept by Contractor and the results of said inspections shall be made available to the Town Manager upon request.

(B) Each vehicle may operate on natural gas fuels or such other alternative fuel and vehicular technologies as are in-use in the Solid Waste hauling industry with the goal of reducing carbon emissions produced by waste hauling vehicles.

(C) Each vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle. Contractor is responsible for, and shall respond in a timely manner to, debris or spills resulting from the collection of waste from its vehicles as reported by the citizens or employees of the Town.

(D) Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all Applicable Laws, including, without limitation, the Vehicle Code and any applicable NPDES permit, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the Collection Vehicle.

(E) Each vehicle shall be painted periodically, and not less than once every three (3) years, which shall include all necessary body work, and shall be regularly cleaned, so that such vehicles do not become unsightly, as determined by the Town Manager.

(F) Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height on both sides of each vehicle.

(G) Each vehicle shall be maintained in a clean and sanitary condition both inside and out and shall be washed at least once every seven (7) calendar days and steam cleaned on a regular basis.

(H) Each vehicle shall carry a broom, shovel, and operable fire extinguisher. Additionally, upon request by Town, any vehicle used for Solid Waste Handling Services shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(I) Each vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies, and at a minimum shall have a video monitor based back-up system, or its equivalent. Contractor shall keep a sufficient supply of replacement parts and equipment on hand to ensure

adequate vehicle maintenance and timely and continuous performance of the services contemplated by this Agreement.

(J) Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating property. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its Collection Vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance has been properly performed, and shall make such records available to Town upon request.

(K) No vehicle shall be utilized if it is leaking break, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from their vehicles per the NPDES permit in effect at the time. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection vehicles must be equipped with absorbent for such cleanup efforts.

(L) Upon request, Contractor shall furnish Town a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(M) Contractor shall utilize vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties, as approved by the Town Manager.

(N) Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall no event exceed seventy-five (75) dba when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground.

9.3 Costs of Operation and Damages.

Contractor shall be responsible for any costs incurred in connection with ensuring all vehicles comply with all Applicable Laws, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.4 Town Inspection.

Town may cause or require any vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

9.5 Correction of Defects and Removal of Vehicles from Use within Town.

Contractor agrees to immediately remove from service, and replace or repair, to the Town's satisfaction, any Collection Vehicle which Town determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the Town Manager gives his written consent for its return.

**SECTION 10.
CONTRACTOR'S SOLID WASTE HANDLING
SERVICE PERSONNEL**

10.1 Uniforms.

Each of Contractor's Collection employees shall wear a clean uniform bearing the Contractor's name.

10.2 Identification of Employees.

Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the Town. Town may require Contractor to notify Customers yearly of the form of said identification.

10.3 Employee List.

Contractor shall provide a list of current employees and authorized subcontractors to Town upon request.

10.4 Driver's License.

Each employee operating a vehicle as part of his duties shall, at all times, carry a valid operator's license for the type of vehicle he is operating. All employees who may have contact with Customers in the course of performing their duties shall be able to speak English.

10.5 Discontinued Use of Unsatisfactory Employees.

No employee shall continue to have any involvement whatsoever with regard to any work in anyway relating to or arising from this Agreement if Town gives notice to Contractor that such employee is determined by Town to be discourteous, disorderly, inefficient, or otherwise objectionable.

10.6 Training and Legal Compliance.

Contractor shall provide operating and safety training that meet minimum OSHA standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel.

10.7 Customer Service.

10.7.1 Local Office; Local Participation.

Contractor shall maintain an office in the Morongo Basin that is open from 8:00 a.m. to 5:00 p.m, Monday through Friday, during Collection hours, exclusive of Holidays. Contractor may close the office during the lunch hour. At least one responsible and qualified representative of Contractor, capable of communicating in English, shall be present at all required offices and available during all times that an office is required to be open in the Morongo Basin as noted above (“Office Hours”), for personal communication with the public, and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

10.7.2 Telephone Customer Service Requirements.

(A) Contractor shall maintain a toll free telephone number during Office Hours. English speaking personnel will be available during Office Hours to assist Customers. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak Spanish to ensure their inquiries, questions, complaints and other matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor’s telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall also maintain a toll free telephone number for use at times other than Office Hours, which number shall be published in the Yucca Valley telephone directory at the Contractor’s expense. Contractor shall have a representative, answering or message providing/receiving (voicemail) service available at said non-Office Hours telephone number. Calls received at times other than during Office Hours shall be responded to on the next business day. Contractor shall provide Town with a 24-hour emergency number to a live person, not voicemail.

(B) Contractor shall make reasonable attempts to answer all phone calls within five (5) rings. If a call has been placed on hold for three (3) minutes, the caller will either be switched to a message center which shall be responsible to obtain the caller’s address and phone number, or a Customer service representative will obtain the Customer’s address and a number at which the call can be returned. Contractor shall make at least three (3) attempts within the next twenty-four (24) hour period to return the call, with the first such attempt not more than one (1) hour after the caller leaves the message. If Contractor is unsuccessful in contacting the Customer after following this procedure, it shall send a letter to the caller indicating its efforts.

(C) Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 10.7.3 below. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties relating to services performed under this Agreement.

10.7.3 Complaint Documentation.

(A) All service complaints shall be directed to Contractor. Contractor shall log all complaints received by telephone and said log shall include the date and time the complaint was

received, the name, address and telephone number of the caller, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint.

(B) All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day (Monday through Friday) of receipt. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

(C) Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to Town at all times upon request.

(D) All Customer service records and logs kept by Contractor shall be available to Town upon request. Town shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to Town on a monthly, quarterly, and annual basis, a complaint log, in a form approved by the Town, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.7.4 Resolution of Customer Complaints.

(A) At the sole discretion of Town Manager, disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the Town Manager. The Town Manager's decision shall be final and binding. Contractor shall, if requested, reimburse the Town for staff time at the fully benefited rate for each Town intervention in a dispute between Contractor and a Customer if the Town reasonably deems intervention is required, as also identified in Section 18.7.3.3(A).

(B) Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special services as set forth in Section 8.7, the matter shall be dealt with pursuant to this Section, and shall be determined by the Town Manager. The Town Manager's decision shall be final.

(C) Intervention by the Town is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to effect the remedies of third parties against Contractor.

10.7.5 Government Liaison.

Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with Town and/or Town's designated representative(s) to resolve Customer complaints. Town shall have the right to approve the Contractor's choice for a liaison.

10.7.6 Sustainability Representative.

Contractor shall designate in writing a dedicated "Sustainability Representative" to assist the Town in meeting the requirements of the California Integrated Waste Management Act (IWMA) of 1989, and all subsequent legislation enforceable by CalRecycle. This person shall be in addition to the Government Liaison (referenced above in Section 10.7.5). On an annual basis, Contractor will make a dedicated individual available to implement, in cooperation with the Town,

Recycling and Diversion programs. The cost of Representative shall be incorporated into Exhibit A in conjunction with the fist rate increase.

- (A) Duties of the Sustainability Representative shall include, but are not limited to:
- 1) identify customers that are not currently participating in Recycling programs.
 - 2) create a Sustainability & Diversion Plan that describes the strategic approach to market and promote Recycling programs to residents, businesses and multi-family units so as to increase the Town's Diversion Rate (as outlined in **Exhibit C**).
 - 4) meet with customers and provide waste assessments and customized recycling options in order to become compliant with required Recycling programs.
 - 5) create and disseminate public education materials that are approved by the Town.
 - 6) plan and implement, with the Town's assistance, new Recycling and Diversion programs to increase education and compliance.
 - 7) assist the Town in planning and holding events such as Community Cleanup and Document Shredding events.
 - 8) host booths to promote recycling education and awareness at Town events such as Earth Day, Concerts in the Park, etc.
 - 9) utilize a record keeping program that is supplied and/or approved by the Town, to keep track of all generator activity, public outreach activity, record keeping, etc.

10.8 Annual Sustainability and Diversion Plan.

Sustainability & Diversion Plan

(A) Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939, AB 341, and AB 1826, SB 1383 and Applicable Laws. Accordingly, Contractor agrees to take affirmative steps to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Solid Waste and Organics by preparing an Annual Sustainability & Diversion Plan, as outlined in **Exhibit C**.

SECTION 11. CONTRACTOR'S CONSIDERATION

In addition to any other consideration set forth herein, as part of its consideration for entering this Agreement, and for the exclusive franchise, contract, right and privilege to provide Solid Waste Handling Services within Town as specified herein Contractor shall provide the following:

11.1 Franchise Fee

(A) Contractor shall pay to Town, a franchise fee equal to ten percent (10%) of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the "Franchise Fee"). Notwithstanding the foregoing, on July 1, 2021 the franchise fee will be adjusted to twelve percent (12%) of Gross Receipts. Except with respect to Gross Receipts collected by the County Tax Assessor, said Franchise Fee shall be paid to Town monthly on or before the fifteenth (15th) day of each month for Gross Receipts collected in the prior month. Should any such due date fall on a weekend or Holiday in which the Town's business offices are closed, payment shall be due on the first day thereafter in which the Town's business offices are open. The amount of each payment shall be equal to ten percent (10%) of Contractor's Gross Receipts, up and until July 1, 2021 and then twelve percent (12%) thereafter, in the calendar month preceding the date payment was due (excluding amounts collected by the County Assessor). The Franchise Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to Town. The Franchise Fee due in connection with amounts that are collected by the County Tax Assessor shall be deducted by Town prior to Town forwarding funds it receives from the Tax Assessor for payment of Solid Waste Handling Services to Contractor.

(B) The Parties agree that the Franchise Fee set forth herein is the product of bona fide arms-length negotiations between the Parties that took place over a period of 10 months. Both Parties were represented by legal counsel and/or independent consultants. Based on a review and analysis of the franchise fees paid by other similarly situated municipalities in Southern California, the Parties have determined that the Franchise Fee is comparable, and that it reflects a reasonable estimate of the value of the franchise being conveyed to Contractor. Moreover, the Parties have reviewed and analyzed the solid waste handling services rates charged in other similarly situated municipalities in Southern California and have determined that the Solid Waste Handling Services rates set forth herein are comparable and representative of the actual service costs.

11.2 Other Contractor Considerations

(A) Contractor shall pay to Town, an annual administrative fee in the amount of twenty-five thousand dollars (\$25,000.00) (the "Annual Administrative Fee") to reimburse the City for the staff time and out-of-pocket costs it incurs in administering this Agreement. The Annual Administrative Fee shall be paid by Contractor to City on or before each anniversary of the Effective Date of this Agreement.

(B) Contractor shall retain all of the revenues received by it from the sale of Recyclable Materials except that any revenues shall be used in the calculation of the net cost of the recycling program.. "Net "Cost for purposes of this Agreement shall be determined annually, on a calendar year basis, and shall be calculated by subtracting from gross revenues earned from the sale of Recyclable Materials the sum of (1) direct operating cost incurred in collecting, handling, processing and transporting recyclable Materials and (2) indirect costs

properly attributable to the recycling programs under generally accepted accounting principles. Collection rates shall be adjusted annually for purposes of adjusting the 'net cost' of the recycling program.

(C) Contractor shall provide, at no cost to Town, Carts and Bins as appropriate and Solid Waste Handling Services, including, specifically, Collection of Solid Waste and Recyclable Material, to all Premises owned and/or operated by the Town.

SECTION 12. CHARGE FOR LATE PAYMENTS

In the event Contractor fails to timely make any of the payments provided for in this Agreement, Contractor shall pay to Town, as additional consideration, a sum of money equal to five percent (5%) of the amount due. This amount is required in order to defray those additional expenses and costs incurred by Town by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to Town of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to Town by Contractor within sixty (60) days of the due date shall be subject to interest in the amount of seven percent (7%) per annum, calculated on a daily basis for each day such sums remain past due.

SECTION 13. CONTRACTOR'S BILLING SERVICES AND SYSTEMS

13.1 Residential Customers.

13.1.1 General.

In connection with any Customer not billed on the County tax rolls for services provided hereunder, Contractor shall provide itemized bills for Solid Waste Handling Services, distinctly showing charges for all classifications of services, including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a Franchise Fee to Town as consideration for this Agreement. Accordingly, Contractor's bills shall not include separate itemization of a "franchise fee" or other similar designation. Billings may occur quarterly for Single Family Dwellings. Customers may be billed in advance of, or subsequent to services being provided at the option of Contractor. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

13.1.2 Tax Roll Billing.

Contractor shall have the option to have bills for Customers at Single Family Dwelling placed for collection on the tax rolls for the County of San Bernardino in accordance with Health & Safety Code Section 5473 . In such event Contractor shall be responsible to facilitate having all such bills placed for collection on the tax rolls. Contractor shall, by April 1st of each year or at such other time as Town and Contractor shall agree upon, notify Town in writing as to whether it will seek to have Town place and collect bills on the tax roll.

Contractor shall be responsible for timely preparing, at no cost to Town, all required information, reports, notices, and materials including without limitation, the report required by

Health & Safety Code section 5473, the notices required by Health & Safety Code section 5473.1, and paying for any publication costs. In addition, Contractor shall timely prepare and publish as required, at no cost to Town, all required information, reports, notices and materials necessary to comply with Proposition 218 and its implementing legislation and corresponding court decisions. Town agrees that it shall within sixty (60) days after the Effective Date of this Agreement adopt the necessary ordinance authorizing collection of eligible delinquent Single Family Dwelling bills on the tax roll, and to hold all hearings, timely publish all notices, and timely make all filings, required under the above sections, provided Contractor has timely provided the required information, reports, notices and materials to Town. If Contractor chooses to have bills placed on the tax roll in accordance with this section, each Customer at a Single Family Dwelling will be billed via the County tax rolls an amount for the service they receive (i.e., Automated via Carts or Manual Service); excepting those premises for which a Self Hauler exemption may have been established as provided in the Municipal Code. If, for any reason, billing for Customers at a Single Family Dwellings is not placed on the tax rolls as contemplated by the parties herein, such Customers shall be billed for services by Contractor in the same manner as other Customers, as set forth in Section 13.1.1.

13.1.3 Credit for Residential Customers Receiving Bin Service.

Any Customer at a Single Family Dwelling that has been approved to receive Solid Waste Handling Services in a Bin, rather than through the use of a Refuse Cart or Manual Service, shall be billed by Contractor for such service as if they were a Commercial or Multi-Family Dwelling Customer and, if such Customer is billed for Collection via Carts on the tax rolls, shall receive a credit from Contractor in an amount equal to the monthly charge for which they are billed on the tax rolls (with this credit clearly set forth on each billing statement).

13.1.4 Refunds for Vacant Properties.

Customers that own Single Family Dwellings which are vacant for more than sixty (60) days shall be entitled to a refund from Contractor for any amounts paid on the tax rolls for services hereunder for each thirty (30) day period during which the vacancy exists. Such Customers shall be responsible to provide reasonable evidence to Contractor, pursuant to such guidelines as the Town Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question and that payments for which reimbursement is sought was placed on the tax rolls for the Premises and paid. Requests for refunds shall be made within twelve (12) months of the date payment is due as established by the County Tax Assessor. Contractor shall be responsible to develop a methodology for evaluating and paying such refund requests, which shall be subject to the Town Manager's approval. Any Customer grievance regarding a request for a refund pursuant to this Section may be appealed by the Customer to the Town Manager whose decision shall be final. Contractor shall be entitled to receive a credit against future Franchise Fee payments for overpayments of Franchise Fees that may occur due to refunds provided pursuant to this Section.

13.2 Billing and Payment for Commercial and Multi-Family Customers.

13.2.1 General.

In connection with any Customer not billed on the County tax rolls for services provided hereunder, Contractor shall provide itemized bills for Solid Waste Handling Services, distinctly showing charges for all classifications of services, including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a Franchise Fee to Town as consideration for this Agreement. Accordingly, Contractor's bills shall not include separate itemization of a "franchise fee" or other similar designation. Billings shall be made monthly for Commercial Customers and may occur quarterly for Customers at Multi-Family or Single Family Dwellings. Customers may be billed in advance of, or subsequent to services being provided at the option of Contractor. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

13.2.2 Unoccupied Premises.

During any time when a Premises is unoccupied for more than sixty (60) days, and Collection services are not provided by Contractor, Contractor shall not bill such Premises for Solid Waste Handling Service. The Customer at any such Premises shall be responsible to provide reasonable evidence to Contractor, pursuant to such guidelines as the Town Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question. Any Customer grievance regarding a claim that a Premises was unoccupied and received no service, and hence should not be billed for a given period pursuant to this Section, may be appealed by the Customer to the Town Manager whose decision shall be final.

13.2.3 Minimum Requirements for Billing Statements.

In addition to any other pertinent data, billing statements mailed by Contractor shall be printed to contain the following information:

(A) A "statement date" indicating the date the bill is generated and mailed.

(B) A notice to Customers that payments are due upon receipt of the bill, an advisement that the Customer's account will become delinquent if payment is not received by the 30th day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (i.e., 4:00 p.m. on the 45th day following the statement date), and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time.

(C) An advisement to Customers that payments can be made in the following manner:

(1) by mailing payment to Contractor at such address as Contractor may designate; or

(2) by automatic withdrawal from a checking account; or

(3) by major credit card on-line (i.e., via the Internet).

(D) An advisement that inquiries relating to Solid Waste Handling Services should be directed to Contractor, including an address, phone number and internet site, for such inquiries.

13.2.4 Billing System.

13.2.4.1 Computerization of Account Information.

Contractor shall provide and maintain, at its expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a computerized billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.2.4.2 Minimum Computer Programming Requirements.

In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the billing system shall at a minimum be able to perform the following functions:

(A) create a permanent record of any adjustment to a Customer's account;

(B) work in connection with a backup system such that all Customer account data and records is protected from a computer failure and permanently preserved on not less than a daily basis;

(C) allow Customers to make payments on-line (i.e., via the Internet) by a major credit card.

13.2.5 Billing Inquiries.

All billing inquiries shall be entered into the computerized billing system. Contractor's computer programs shall keep a permanent record of all billing inquiries and all adjustments to Customer bills resulting therefrom.

13.2.6 Distribution of Public Information.

If requested to do so by Town, and at no charge to Town, Contractor shall insert any printed material prepared by Town into its billing statements for delivery to its Customers. Town shall not request Contractor to include any printed material in its bills if such material is of a size, shape, or weight that would increase Contractor's postage costs or if such material does not fit into the envelopes utilized by Contractor to mail the bills. Any printed material to be included in the bills to be mailed by Contractor shall be provided to Contractor within a reasonable time in advance of Contractor's scheduled mailing date, such that the insertion of such material into billing envelopes does not delay their scheduled mailing date.

13.3 Delinquent Accounts.

Any Multi-Family Dwelling or Commercial Premises receiving Solid Waste Handling Service that has an account unpaid by the due date listed on the Billing statement shall be deemed delinquent. Except to the extent otherwise provided herein, it shall be the sole responsibility of Contractor to take any authorized measures to collect any delinquent sums owed. Any delinquent fees or Solid Waste Handling Service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to Town Manager review. Contractor may charge a fee for any check returned for insufficient funds at a rate not exceeding the maximum rate set forth in Exhibit A.

Contractor may discontinue Solid Waste Handling Service to any Multi-Family Dwelling or Commercial Premises whose account is delinquent in the manner as set forth in this Section. Customers who have not remitted required payments within sixty (60) days after the date of Billing shall be notified on forms approved by the Town Manager. Said forms shall contain a statement that Solid Waste Handling Services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. If payment is not made by the expiration of said fifteen (15) day period, Contractor may discontinue Solid Waste Handling Services forty-eight (48) hours thereafter.

Contractor shall resume Solid Waste Handling Services on the next regularly scheduled Collection day for any Customer whose Solid Waste Handling Service is discontinued upon receipt of payment of all outstanding charges, including delinquent fees, any deposit required by this section, and any fees for redelivery of equipment (which may be imposed in accordance with the maximum rates set forth in Exhibit A), or at such sooner time as directed to do so by Town. Contractor may not charge for Solid Waste Handling Services during any period in which Solid Waste Handling Service was suspended. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and is subject to Town Manager approval.

A deposit equal to the maximum rate for one month's Solid Waste Handling Services as set forth in Exhibit A, as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to re-instituting Solid Waste Handling Service at such accounts.

Contractor shall not be permitted to discontinue Solid Waste Handling Services to any Single Family Dwelling on the basis of a delinquent account.

13.4 Payment, Accounting Systems.

13.4.1 Collection and Processing of Payments.

13.4.1.1 Accounting and Deposit of Funds.

All payments received by Contractor shall be appropriately credited to Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles. To facilitate audits and record keeping Contractor shall

make all withdrawals from its bank accounts by check, regardless of whether the withdrawal is to provide funds to Town, Contractor, or any permissible subcontractor of Contractor.

13.4.1.2 Allocation of Funds.

With respect to payments received from each Customer, unless a Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Handling Services, then to any related delinquency fees or other administrative charges, up to the amount of any outstanding balance. Any overpayment shall be credited to future bills in the same sequence, or returned to Customers as appropriate.

13.4.1.3 Allocation of Funds by Town.

Within sixty (60) days of Town's receipt of funds from the County Tax Assessor for payment of Solid Waste Handling Services, Town shall provide an accounting to Contractor of the funds received and Town's allocation of such funds. Town shall at the same time forward the amounts it received from the County Tax Assessor as payment for Solid Waste Handling Services to Contractor, but shall withhold any amounts due to Town as Franchise Fees, as well as an amount equal to any amounts due to Town pursuant to the terms hereof but not yet paid by Contractor.

SECTION 14. FAITHFUL PERFORMANCE

14.1 Performance Bond.

Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall (i) make a cash deposit in an interest bearing account in the sum of ten thousand dollars (\$10,000) in the name of Town alone (the "Deposit"); and (ii) provide an irrevocable letter of credit drawn upon a financial institution with an office within one hundred (100) miles of Town in the amount of one million dollars (\$1,000,000), and otherwise in a form acceptable to the Town Attorney or furnish a corporate surety bond in the amount of one million dollars (\$1,000,000), issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to the Town Attorney. Any of the forms of security listed in clause (ii) above shall be referred to herein as the "Performance Bond". The cost of the Deposit and the Performance Bond shall be the sole responsibility of Contractor. The Deposit and the Performance Bond shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

14.2 Use of Bond by Town.

Notwithstanding any provision hereof to the contrary, thirty (30) days following Town providing Contractor with written notice of its failure to pay Town any amount owing under this Agreement, either the Deposit or the Performance Bond may be utilized by Town for purposes including, but not limited to:

- (A) Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to Town.

(B) Reimbursement of costs borne by Town to correct violations of this Agreement not corrected by Contractor.

(C) If a letter of credit is utilized to meet Contractor's obligations pertaining to the Performance Bond, Town may draw upon the entire letter of credit and convert it to a cash deposit if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

(D) Contractor shall not have access to the account in which the Deposit is made. Upon request from Contractor, Town shall withdraw and provide to Contractor any interest earned on the Deposit.

SECTION 15. INSURANCE COVERAGE

Contractor shall procure and maintain during the entire Term of this Agreement insurance against claims for death or injuries to persons, damages to property, and economic loss which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various indemnification obligations set forth herein.

15.1 Scope of Insurance Coverage.

Contractor shall procure and maintain during the entire Term of this Agreement, the following insurance coverages:

15.1.1 Worker's Compensation Insurance and Employers Liability.

Worker's Compensation insurance to cover Contractor's employees as required by the California Labor Code. Employers liability limits of \$1,000,000 per accident, \$1,000,000 disease per employee, \$1,000,000 disease per policy. Prior to the Effective Date Contractor shall file with Town a signed Worker's Compensation Insurance Certification in substantially the following form:

"I am aware of, and will comply with Divisions 4 and 5 of the California Labor Code by securing, paying for, and maintaining in full force and effect for the duration of this Agreement, complete worker's compensation insurance, and shall furnish a certificate of insurance to the Town before commencement of work under this Agreement."

15.1.2 Commercial General Liability, Business Automobile Liability and Pollution Liability Insurance.

Commercial General Liability insurance no less broad than ISO form CG 00 01, covering death and personal injury and property damage liability, contractual liability, and independent contractor's liability, with minimum limits of Ten Million Dollars (\$10,000,000.00) per occurrence and \$10,000,000 general aggregate. The general aggregate shall apply separately to this contract Notwithstanding any provision herein to the contrary, limit requirements can be

satisfied with an excess liability policy to meet both the General Liability and Auto Liability requirements.

Business Automobile Liability limits of Three Million Dollars (\$3,000,000) combined single limit per accident. Coverage shall apply to all owned, hired and non-owned vehicles.

Pollution Liability. Contractor shall maintain Pollution Liability insurance with minimum limits of \$10,000,000 per pollution incident, \$10,000,000 aggregate. Coverage shall apply to pollution incidents at or from any location at which Contractor is performing work under this agreement. The insurance must continue for five years after completion of work. If the insurance is on a Claims-Made basis, the continuation coverage may be provided by: (a) renewal of the existing policy; (b) an extended reporting period endorsement; or (c) replacement insurance with a retroactive date no later than the commencement of the work

(A) Each such Policy of Insurance shall:

(1) Be issued by a company that holds a current policy holder's alphabetic and financial size category rating of not less than A VIII, according to the current Best's Key Rating Guide or an equivalent rating from a company of equal financial stability that is approved by the Town Manager.

(2) Cover the operations of Contractor pursuant to the terms of the Agreement.

(3) Be written on an occurrence and not a claims-made basis.

(4) Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Contractor shall forthwith obtain and submit proof of substitute insurance.

(5) The policies shall be endorsed to include a written waiver of the insurer's right to subrogate against the Town, its employees, agents, representatives, officials, volunteers, and officers.

(B) The general liability, pollution liability and automobile liability policies required hereunder shall contain, or be endorsed to contain, the following provisions:

(1) Town, its employees, agents, representatives, contractors, officials, volunteers, and officers shall be named as additionally insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to Town or its officials, employees, agents, representatives, contractors, or volunteers.

(2) This policy shall be considered primary insurance as respects Town, its officers, officials, employees, agents, representatives, contractors and volunteers. Any insurance

or self-insurance maintained by Town and its officers, officials, employees, agents, representatives, contractors, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(3) Inclusion of Town as an insured shall not affect Town's rights as respects any claim, demand, suit, or judgment brought or recovered against Contractor. This policy shall protect Contractor and Town in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable had been named as an insured.

(4) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to Town or its officers, officials, employees, agents, representatives, contractors, or volunteers.

(5) Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

15.2 Adjustments to Coverage.

The types of coverage, limits of coverage, and insurance companies shall be subject to review and approval by the Town Manager every year. Town may require that the coverage types or amounts, or companies of insurance, be increased or changed at that time such that they are at least equal to the quality, types, and amounts of coverage provided by Town's own liability insurance, or any self-insurance or risk sharing pool Town may have or participate in.

15.3 Deductibles and Self-Insured Retention.

Any deductible or self-insured retention amount must be declared to and approved by Town. At the option of Town, Contractor shall either:

(A) have the insurer reduce or eliminate such deductible or self-insured retention as respects Town, its officers, officials, employees, agents, representatives, contractors, and volunteers; or

(B) provide to Town a bond or irrevocable letter of credit in an amount and form acceptable to the Town Manager to guarantee payment of losses and related investigations, claims administration, and defense expenses which would otherwise be paid from Contractor's deductible or self-insured retention ("SIR").

15.4 Verification of Coverage.

Contractor shall furnish Town with certificates of insurance and original endorsements effecting coverage required by this Section prior to commencement of services provided hereunder. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to issue binding coverage on its behalf. The certificates and endorsements shall be on forms approved by Town. All certificates, letters, and endorsements shall be received and approved by Town before work commences. Town reserves the right to require complete, certified copies of all required insurance policies, at any time.

15.5 Subcontractors.

Contractor shall include any permissible subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

15.6 Loss or Reduction in Insurance.

In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, Town shall have the right, but not the obligation to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Deposit or Performance Bond to pay the cost of providing such coverage.

**SECTION 16.
ASSIGNMENT, SUBLETTING, AND TRANSFER;
REQUIREMENTS AND LIMITATIONS**

16.1 General.

The franchise granted by this Agreement shall not be sold, hypothecated, sublet, assigned, or otherwise transferred, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or otherwise transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except Contractor, either by action or inaction of Contractor or by operation of law (any of the foregoing, an "Assignment"), without the prior written consent of the Town which may be withheld with or without cause. For purposes of permitting Contractor to subcontract to assist in providing discrete services hereunder, and provided Contractor will continue to provide substantially all Solid Waste Handling Services hereunder with its own employees, the written consent of the Town Manager shall suffice. Any other Assignment shall require the written consent of the Town Council as expressed by a Resolution. Any attempt by Contractor to hypothecate, subcontract, lease, assign, sell, or otherwise transfer any right or interest in this Agreement without the written consent of Town shall be null and void and shall give rise to Town's right, but not obligation, to terminate this Agreement.

16.2 "Assignment" to be Broadly Interpreted.

For purposes of this Section the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to Solid Waste Handling Services under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest, capital stock or other voting securities of Contractor to a third party; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor, including, without limitation, (a) any actual sale, transfer, or acquisition of Contractor by any entity in which Contractor, or Contractor's principals as of the Effective Date, do not own a majority interest and control, (b) Contractor's grant of a management contract to any person or entity which is applicable to any aspect of Contractor's performance pursuant to this Agreement, or (c) transfer of the beneficial interest of the cumulative amount of ten percent (10%) or more of Contractor's voting securities to a person, entity, or group of persons

acting in concert who, as of the effective date hereof, own less than ten percent (10%) of such voting securities, and in which Contractor does not own a majority interest and control; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor or any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, transfer occurring in the event of a probate proceeding, foreclosure, retention of collateral in satisfaction of debt or other judicial or non-judicial remedy by a creditor; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) or any other circumstances which has the effect of any such transfer or change of ownership, or change of control of Contractor.

16.3 Nature of Agreement – Personal to Contractor.

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

16.4 Procedure for Consideration of Assignment.

If Contractor requests Town's consideration of and consent to an Assignment, the Town Council of Town may deny or approve such request in its sole and absolute discretion. Under no circumstances shall Town be obliged to consider any proposed Assignment if Contractor is in default at any time during the period of consideration. Should the Town consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the Town's approval have been met. Any request for an Assignment shall be made in a manner to be prescribed by the Town Manager, and no request by Contractor for consent to an Assignment need be considered by Town unless and until Contractor has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

(A) Contractor shall undertake to pay Town its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorney's fees and costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment (collectively the "Administrative Assignment Fee"). An advance non-refundable payment of Fifty Thousand Dollars (\$50,000.00) towards the Administrative Assignment Fee shall be paid to the Town prior to Town consideration of any Assignment request, although Contractor shall be responsible to pay all costs incurred by Town in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether Town consents to the Assignment.

(B) Contractor shall pay to Town a transfer fee (the "Transfer Fee") in the amount of two hundred fifty thousand dollars (\$250,000).

(C) If requested to do so, Contractor shall furnish Town with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

(D) Contractor shall furnish Town with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local laws, including the Environmental Laws and that the assignee has provided Town with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by Town to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(E) The proposed assignee shall execute an agreement assuming all of Contractor's rights and liabilities under this Agreement.

16.5 Assignment to a Family Member.

Contractor is a Limited Liability Company (LLC) the membership interests for which are divided equally among four (4) family members: Ed Burr, Cole Burr, Sandra Burr and Tracy Burr. Notwithstanding the fact it would otherwise fall within the provisions of this Section, any transfer of membership interests to an immediate family member of any of the above noted members may occur with the written approval of the Town Manager, and without any of the other provisions of this Section 16 applying if Contractor certifies and the Town Manager verifies that the transfer is in fact to an immediate family member or members; and, the Town Manager finds both of the following: (i) that the transfer of membership interest will have no adverse impact on Contractor's operations in Town, and (ii) that the transfer of membership interest will not result in any interest in Contractor being vested in any person who is not an immediate family member of the above noted four (4) initial members of Contractor. In the event the Town Manager is unable to make these findings, or has any concern regarding his ability to do so, he may refer the matter in whole or part to the Town Council for its consideration, approval, or other action, and the Town Council shall have the discretion to consider the matter as if it is a transfer as described in Sections 16.1 through 16.4.

SECTION 17.
REVIEW OF SERVICES AND PERFORMANCE

17.1 Performance Hearing.

(A) Town may hold a public hearing to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints and Contractor performance. Town and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing. This section shall not be interpreted as limiting the authority of the Town to conduct additional public hearings or meetings to review or discuss Contractor's services.

(B) In addition to the Solid Waste Services and Performance Review Hearings Town may hold in accordance with the immediately preceding paragraph, if the number of Customer complaints regarding Contractor's Solid Waste Handling Services are deemed by Town to be excessive, Town may, at any time (subject to the paragraph immediately below), hold a Solid Waste Services and Performance Review Hearing.

(C) Town shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. Forty-five (45) days after receiving notice from Town of a Solid Waste Services and Performance Review Hearing, Contractor shall submit a report to Town which may contain such information as it wished to have considered, and shall contain the following:

(1) Current diversion rates and a report on Contractor's outreach activities for the past year.

(2) Recommended changes and/or new services to improve the Town's ability to meet all applicable diversion requirements and to contain costs and minimize impacts on rates.

(3) Any specific plans for provision of changed or new services by Contractor.

(D) The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Hearing. In addition to the above, Town may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments

or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

17.2 Performance Customer Satisfaction Survey

If requested by the Town, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Services and Performance Review Hearing held pursuant to Section 17.1. Town shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Services and Performance Review Hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by the Contractor. The Survey shall be statistically valid. Contractor shall obtain Town's approval of the survey's content, format, and mailing list prior to its distribution. The Town may require that Contractor have Customer responses to the survey returned directly to the Town. Contractor may request copies or access to all surveys received by the Town. The Survey results shall be made available to the Town thirty (30) days prior to the Solid Waste Services and Performance Review Hearing.

SECTION 18. TOWN'S REMEDIES; DEFAULT AND TERMINATION

18.1 Notice of Default.

If the Town Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement has not met the standards set forth in this Agreement, the requirements of the Municipal Code, the requirements of CalRecycle, including, but not limited to, requirements for source reduction and Recycling (as to the waste stream subject to this Agreement), or any Applicable Laws including but not limited to the laws governing transfer, storage, or disposal of special wastes, or hazardous wastes, the Town Manager may provide written notice to Contractor of such default. The Town Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the Town Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure.

If Contractor fails to correct, to the reasonable satisfaction of the Town Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the Town Manager may refer the matter to the Town Council for review, or review the matter himself. Contractor shall bear the burden of proof where Contractor claims that a deficiency cannot be cured within thirty (30) days.

18.3 Review by Town Manager.

If the Town Manager reviews the matter and determines that Contractor has failed to cure any default to his or her reasonable satisfaction, the Town Manager, in the exercise of his

discretion, may terminate the Agreement, or take such other action as he deems appropriate to pursue any remedy available to Town. A decision or order of the Town Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the Town Clerk within five (5) business days of the date the notice of the Town Manager's decision is given. The Town Manager shall schedule any appeal for consideration by the Town Council at the earliest feasible Town Council Meeting following the date a Notice of Appeal is given to Town.

18.4 Town Council Review.

In the event an appeal of a decision of the Town Manager is filed, or if the Town Manager refers the matter to the Town Council without rendering a decision, the Town Council shall set the matter for consideration before the Town Council as a regular agenda item. In reviewing the matter the Town Council may consider any information reported by the Town Manager regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The Council shall determine whether Contractor has failed to properly or adequately perform as set forth above, and if so whether to terminate the Agreement, or to pursue any other remedy available to Town.

18.5 Performance During Reviews.

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure.

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to Town's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by Town to have materially breached this Agreement. Town shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (A) If Contractor practices, or attempts to practice, any fraud upon Town.
- (B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- (C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as Town's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.
- (D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over

all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.

(E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.

(F) If Town is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify Town against, relating to any diversion or other requirement of AB 939 and/or SB 1383.

(G) If Contractor, or any management level employee of Contractor having responsibility within the Counties of Riverside or San Bernardino California is convicted of a "Criminal Matter" (as defined herein). For purposes of this Section the term "Criminal Matter" refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

18.7 Liquidated Damages.

18.7.1 General.

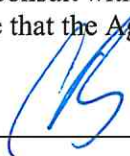
The Town finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by Town as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

18.7.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards.

The parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to Town and that Town has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, Town and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which Town will suffer. Therefore, without prejudice to Town's right to treat such breaches as an event of default, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of

the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to Town that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, 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 the liquidated damage provisions at the time that the Agreement was made.

Contractor
Initial Here



Town
Initial Here



18.7.3 Calculations for Liquidated Damages.

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below for each type of action warranting such damages:

18.7.3.1 Collection Reliability.

(A) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: One Hundred Fifty Dollars (\$150.00).

(B) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not Collected within the period described in this Agreement: One Hundred Fifty Dollars (\$150.00).

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: One Hundred Fifty Dollars (\$150.00).

18.7.3.2 Collection Quality.

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds ten (10) such occurrences annually: One Hundred Fifty Dollars (\$150.00).

(B) For each occurrence of excessive noise or discourteous behavior which exceeds ten (10) such occurrences annually: Two Hundred Fifty Dollars (\$250.00).

(C) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: Two Hundred Fifty Dollars (\$250.00).

(D) For each failure to clean up Solid Waste spilled from Containers within ninety (90) minutes that exceeds ten (10) such failures annually: One Hundred Fifty Dollars (\$150.00).

18.7.3.3 Customer Responsiveness.

(A) At the sole discretion of Town Manager, disputes between Contractor and its Customers regarding the services provided in accordance with this Agreement may be resolved by the Town Manager. The Town Manager's decision shall be final and binding. Contractor shall, if requested by Town, reimburse the Town for staff time at the fully benefited rate for each Town intervention in a dispute between Contractor and a Customer if the Town reasonably deems intervention is required.

(B) For each failure to initially respond to a Customer complaint within one (1) business day, which exceeds five (5) such occurrences annually, and for each additional day in which the complaint is not addressed: Two Hundred Fifty Dollars (\$250.00).

(C) For each failure to process Customer complaints to Town as required herein, which exceeds five (5) such occurrences annually: Two Hundred Fifty Dollars (\$250.00).

(D) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within twenty-four (24) hours of request from Town or Customers: One Hundred Fifty Dollars (\$150.00).

18.7.3.4 Timeliness of Submissions to Town.

(A) Any report shall be considered late until such time as a correct and complete report is received by Town. For each calendar day a report is late, the daily liquidated damage amount shall be:

- (1) Monthly Reports: One Hundred Dollars (\$100.00) per day.
- (2) Quarterly Reports: Two Hundred Fifty Dollars (\$250.00) per day.
- (3) Annual Reports: Three Hundred Fifty Dollars (\$350.00) per day.

18.7.4 Process for Assessment of Liquidated Damages.

(A) Town may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

(B) Prior to assessing liquidated damages, Town shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of Town relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with Town. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. Town will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of Town shall be final.

(C) Town may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

18.7.5 Timing of Payment.

Contractor shall pay any liquidated damages assessed by Town within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, Town may proceed against any security required by this Agreement to obtain payment, deduct amounts due from funds it receives from the County Tax Assessor which would otherwise be due Contractor, and/or find Contractor in default and exercise its right terminate this Agreement as set forth herein.

SECTION 19. CONTRACTOR'S REMEDIES; ADMINISTRATIVE HEARING

19.1 Administrative Hearing.

Should Contractor contend that Town is in breach of any aspect of this Agreement, it shall give the Town written notice specifying any breach of the Agreement. The written notice shall be provided at least thirty (30) days prior to giving notice to the Town Manager requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the parties, and shall be held before an impartial hearing officer to be determined by the Town Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by Town is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

19.2 Other Remedies; Claims.

Contractor shall be entitled to all available remedies in law or equity for Town's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against Town, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either Town or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

19.3 Actions for Damages.

As a prerequisite to the filing and maintenance of any action for damages by Contractor against Town arising out of this Agreement, Contractor shall present a claim to Town, as required by Government Code Section 910 *et seq.*, within 30 days of the date of the occurrence giving rise to the claim for damages.

SECTION 20. TOWN'S ADDITIONAL REMEDIES

In addition to any other remedies set forth herein, Town shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

(A) The right to use Contractor's Containers for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of Containers not owned by Contractor, Contractor shall assign to Town, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such Containers, the right to use and possess the Containers. If Town exercises its rights under this Section, Town shall pay to Contractor the reasonable rental value of the Containers for the period of Town's possession thereof;

(B) The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

(C) The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach of this Agreement by Contractor, Town will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement, and to enjoin the breach hereof.

SECTION 21. RIGHTS OF TOWN TO PERFORM DURING EMERGENCY

21.1 Provision of Service.

Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in Town to such an extent or in such a manner that the Town Manager finds that such accumulation endangers or menaces the public health, safety, or welfare, Town shall have the right, upon twenty-four (24) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with Town to effect such a transfer of possession for Town's use.

21.2 Possession of Equipment.

Contractor agrees, that in such event, Town may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving Town notice that it is able to resume its normal responsibilities under this Agreement Town shall relinquish possession of all of the above mentioned property to Contractor.

21.3 Exclusions from Right to Possession of Equipment without Compensation.

Specifically excluded from the circumstances in which Town may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances Town's right to utilize and possess Contractor's equipment shall be subject to the provisions of the above Section 20.

21.4 Disaster Preparedness Plan

Within twelve (12) months of the Effective Date, Contractor shall, with Town assistance, prepare a written plan detailing how Refuse services will be delivered in a time of emergency or natural disaster. For the plan, Town shall provide Contractor with a written list of critical facilities being those facilities that the Town deems in need of special consideration in a time of emergency because they are critical to Town's emergency response, of priority to the need of the community and/or represent a public health risk to the community. Contractor's written plan shall contain a protocol for contacting Contractor management in the event of an emergency, an overview of Contractor's resources available for emergency response, a plan for Collecting and Disposing of Refuse generated by critical facilities until the time of emergency passes and a plan for resuming normal operations following an emergency.

SECTION 22. PRIVACY

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 and SB 1383 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this Section shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

SECTION 23. MEETINGS, REPORTS AND ADVERSE INFORMATION

23.1 Annual Reports.

On or before June 30 of each year during the Term of this Agreement and within fifteen (15) days prior to the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by Town, which includes, but is not limited to, the following information:

(A) A summary of the total tons of Solid Waste, Recyclable Materials and Organic Waste collected in Town in the preceding year as well as a summary of the total tonnage diverted from the State's landfill systems during that time frame, broken down by Single Family and Commercial collection services;

(B) A public education summary identifying the public education and information activities undertaken by the Contractor during the year, including distribution of bill inserts, flyers or brochures, community information and events, onsite visits, waste assessments and other activities performed. This report will discuss the impact of these activities on Recycling program participation.

(C) Information and reports required by Town to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 341 and SB 1383, in a form and content approved by the Town Manager, and any future reports required by CalRecycle;

(D) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts;

(E) A list of Contractor's officers and members of its Board of Directors;

(F) A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Contractor and any subsidiaries unless Contractor is a public corporation whose annual reports are publicly available; and

23.2 Adverse Information.

Contractor shall provide Town two (2) copies of all reports and other material adversely affecting this Agreement submitted by Contractor to the United States Environmental Protection Agency, CalRecycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to Town simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to Town, but shall be made available to Town upon written request.

(A) Contractor shall submit to Town copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any Federal, State, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by Town and its authorized agents and shall not be made available for public inspection.

(B) Contractor shall submit to Town such other information or reports in such forms and at such times as Town may reasonably request or require.

(C) All reports and records required under this or any other Section shall be furnished at the sole expense of Contractor.

23.3 Tonnage Report.

No later than fifteen (15) days after the end of each calendar quarter during the Term of this Agreement, Contractor shall submit to the Town Manager quarterly reports setting forth the amount of tonnage of Solid Waste Collected from within the Franchise Area and disposed of pursuant to this Agreement for the previous quarter and setting forth the cumulative year-to-date total amount of tonnage of such Solid Waste. Contractor shall, upon demand by Town, provide true and accurate copies of landfill tipping receipts and similar such documents in order to enable Town to verify Contractor's quarterly reports.

23.4 Diversion Compliance Report.

No later than fifteen (15) days after the end of each calendar quarter Contractor shall submit, along with the Tonnage Report, a quarterly report listing compliance data regarding AB 341, AB 1826 and SB 1383 for the previous quarter. This report shall identify: 1) the number of accounts complying and not complying; 2) waste generation for residential, , commercial, bulky items, C&D, and rolloff's; 3) diverted tonnage identifying gross diversion and net diversion percentages; 4) and any outreach efforts to customers within the reporting period, including: dates, who was visited, topics discussed, and if any new service was implemented.

23.5 Format of Reports.

Each annual report shall be submitted to Town, addressed to the Town Manager or his or her designee. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by Town.

23.6 Failure to Report.

The refusal, failure, or neglect of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to Town under this Agreement or otherwise.

23.7 Meetings

The Contractor shall meet with Town Staff bi-monthly and/or on an as needed basis to provide updates on the status of solid waste collection, recycling activities, organic collection, education and outreach activities, current and pending reports, CalRecycle requirements and the overall compliance of collection operations within the Town.

SECTION 24. COMPENSATION

24.1 Contractor Rates.

Contractor shall provide services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed the maximum rate set forth in the attached Exhibit A, which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time pursuant to the terms hereof. The maximum rates set forth in Exhibit A are inclusive of all services to be provided, including transportation, disposal processing fees, and Bin costs, and no other charges shall be imposed by Contractor for such services. The maximum rates set forth in Exhibit A presume that tax roll billing and collection will occur for Customers at Single Family Dwellings.

24.2 Resolution of Disputes Regarding Rate Adjustments.

Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall be decided by the Town Manager. The rates in effect at the time such dispute is submitted to the Town Manager shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the Town Manager.

24.3 Annual Consumer Price Index Adjustments to Service Component.

Commencing on July 1, 2021, the service component associated with any of the maximum rates as set forth in Exhibit A shall be adjusted, and such rates shall be adjusted annually thereafter on each subsequent July 1st during the Term hereof (the "Adjustment Dates"), by a percentage equal to the percentage change in the Water and Sewer and Trash Collection Services in U. S. Consumer Price Index ("CPI") for the twenty-four (24) month period commencing thirty (30) months prior to the applicable Adjustment Date and ending six (6) months prior to the applicable Adjustment Date. At least forty-five (45) days prior to charging Customers any rate increased due to an increase in the CPI, Contractor shall notify the Town Manager of its intent to do so, and receive the Town Manager's approval therefor, which approval shall not be withheld unless such approval would conflict with the provisions hereof. Notwithstanding any of the above, the maximum service component annual CPI adjustment shall be five percent (5%) of the existing rate in effect immediately prior to the adjustment. In addition, no rate increases shall occur in any year in which Contractor has not fully complied with the terms of this Agreement.

24.4 Disposal Component Adjustments.

It is the intention of the parties that the disposal component associated with any of the maximum rates as set forth in Exhibit A shall be adjusted no more often than annually on each Adjustment Date such that they reflect each Customers pro-rata share of any increase or decrease in the actual tipping fees charged by the County of San Bernardino landfill system, and actual, reasonable processing fees paid by Contractor. In the event the tipping fees charged by the County of San Bernardino landfill system increase or decrease, the parties shall negotiate in good faith to determine the appropriate pro-rata increase for each Customer, taking into account all relevant financial data including processing costs and revenues for Solid Waste not taken to the landfill, and the disposal component of the maximum rates set forth on Exhibit A will thereafter be adjusted accordingly at the next Adjustment Date. The Town Manager may approve increases in the disposal component associated with any of the maximum rates set forth on Exhibit A, or, in his discretion, may refer such approval to the Town Council.

24.5 Discretionary Adjustments.

In the event that Contractor's costs of Collecting, transporting, or disposing of Solid Waste and/or the cost of Collection or transport of Recyclable Material increases, Contractor shall be permitted to petition the Town Council to amend this Agreement to increase the maximum rates set forth in Exhibit A. The Town Council shall consider such increases within thirty (30) days after Contractor requests the Town Manager to place the matter on the Council's agenda. The Town Council may, in its absolute discretion, determine whether to consent to a request for a

maximum rate increase made pursuant to this provision. Said determination shall not be unreasonably withheld.

24.6 Additional Customer Rate Increase Procedures (Prop 218)

Town intends to comply with all applicable laws concerning Solid Waste Handling Services rates provided for under this Agreement. If the Town makes a good faith determination that the establishment of and/or increase to service rates for the Solid Waste Handling Services under this Agreement is subject to Proposition 218, Contractor shall timely prepare and publish as required, at no cost to Town, all information, reports, notices and materials necessary for the Town to comply with Proposition 218 and its implementing legislation and corresponding court decisions.

In the event a rate increase does not receive approval under applicable Proposition 218 procedures, the Town shall not be liable to Contractor for the failure to implement any such increases, nor shall Town be required to compensate Contractor for any requested rate increases or “pass through” rates. Contractor agrees to hold harmless and release the Town Indemnified Parties from and against any and all Claims Contractor may have against the Town Indemnified Parties resulting from the Maximum Rate Schedule for Solid Waste Handling Services provided for under this Agreement or in connection with the application of California Constitution Article XIII C and Article XIII D to the imposition, payment or collection of the rates under this Agreement. This Section will survive the expiration or termination of this Agreement for Claims arising prior to the expiration or termination of this Agreement. In the event of any of the foregoing circumstances, the parties shall nevertheless meet and negotiate in good faith a possible amendment to this Agreement to adjust the services provided hereunder or otherwise compensate Contractor for the services associated with the requested rate increase without increasing customer rates.

SECTION 25. IDENTIFICATION OF CONTRACTOR

Contractor has agreed to use the name “Burrtec Waste and Recycling Services, LLC” to identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by Town, this name shall be used for all correspondence, billing statements, directory listings, references, signs, and vehicle and Bin identification.

SECTION 26. COUNTY AGREEMENT AND TOWN’S FLOW CONTROL OPTION

Contractor expressly acknowledges its awareness of the County Agreement. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that Town complies with, and does not breach the terms of the County Agreement as a result of Contractor’s actions or inactions. Contractor may deliver Solid Waste Collected hereunder to any facility it deems appropriate to meet the requirements of this Agreement, provided Contractor shall at all times ensure the Town remains in compliance with the County Agreement and any extensions thereof (provided any facility used by Contractor shall be

properly permitted). Contractor expressly consents to Town's ability to direct the location for disposal of Solid Waste hereunder to the degree it does so by virtue of the County Agreement, and waives any and all rights to challenge Town's ability to do so, including without limitation any rights under the Commerce Clause of the United States Constitution.

SECTION 27. INDEMNIFICATION

27.1 General.

(A) Contractor hereby agrees to and shall indemnify and hold harmless the Town Indemnified Parties from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, and/or subcontractors to comply in all respects with the provisions of this Agreement, Applicable Laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnities negligence, but shall not extend to matters resulting from the indemnities sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of Town, at Contractor's sole cost and expense, defend (with attorneys acceptable to Town) the Town Indemnified Parties against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse the Town for any and all costs and expenses Town incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

(B) Contractor, upon demand of the Town, made by and through the Town Attorney, shall protect Town and appear in and defend the Town Indemnified Parties in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of Town's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Solid Waste Handling Services in the Town.

(C) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

27.2 Hazardous Substances Indemnification.

(A) Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to Town) reimburse, indemnify, and hold the Town Indemnified Parties harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Contractor that:

(1) results in any demand, claim, notice, order, or lawsuit, asserting that any of the Town Indemnified Parties is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

(2) relates to material collected, transported, Recycled, processed, treated or disposed of by Contractor.

(B) Contractor's obligations pursuant to this Section shall apply, without limitation, to:

(1) any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., the Carpenter-Presley-Tanner Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

(2) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

(3) any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor;

(4) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

(C) The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

(D) For purposes of this Agreement, the term “Hazardous Contaminant” shall mean any “hazardous material,” as that term is defined under California Health & Safety Code Section 25501(o); any “hazardous substance,” as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(p), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any “hazardous waste,” as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 25501(q); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term “Hazardous Contaminant” shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

(E) The provisions of this Section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

SECTION 28. CONTRACTOR’S BOOKS AND RECORDS; AUDITS

28.1 Maintenance and Inspection of Records.

Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, AB 939 compliance records, and other documents and materials which reasonably relate to Contractor’s compliance with the provisions of this Agreement (the “Records”), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. Town shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to Town at Contractor’s regular place of business, but in no event outside the County of San Bernardino.

28.2 Audits.

28.2.1 Examination of Services.

If requested by the Town, Contractor shall fund the cost of an independent audit by a certified public accounting firm of all accounts in Town for each category of Customers serviced by Contractor. The audit shall be completed and provided to Town within ninety (90) days following June 30th. The audit shall at a minimum include, but not be limited to, an examination of all Gross Receipts and Franchise Fees paid thereon. The request by the Town shall be limited to once in a calendar year.

28.2.2 Discretionary Audits

In addition to the audit request to be performed by Contractor, Town may request Contractor to make any or all Records available to an independent auditor or examiner, to be selected by the Town, at any time for auditing and examination purposes (a “Discretionary Audit”). Town shall bear the cost of any Discretionary Audit except as otherwise provided herein. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this

Agreement, the amount of such underpayment shall become due and payable to Town not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by Town, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with the Contractor's operations or billing systems, or an underpayment of Franchise Fees of more than three percent (3%), Contractor shall bear the entire cost of such Discretionary Audit.

SECTION 29. GENERAL PROVISIONS

29.1 Compliance with All Applicable Laws and Regulations.

Contractor agrees to provide such services as are necessary or desirable to ensure that Contractor and Town comply with the requirements of all applicable laws and regulations including specifically, without limitation, AB 939, AB 341, AB 1594, AB 1826, SB 1383, and Public Resources Code Section 40000, et seq, as such provisions may be amended from time to time, and such other laws and regulations of the State of California as may be enacted and amended from time to time concerning Solid Waste, Organic Waste, Recyclable Materials, or the collection, handling composting, recycling or disposal of such materials.

29.2 Force Majeure.

Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, and fires, or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor; or (iv) strikes, lockouts, and other labor disturbances.

29.3 Independent Contractor.

Contractor is an independent contractor and not an officer, agent, servant, or employee of Town. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between Town and Contractor. Neither Contractor nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to Town employees.

29.4 Pavement Damage.

Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets located within the Town resulting from providing the services required hereunder.

29.5 Property Damage.

Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced at Contractor's expense.

29.6 Right of Entry.

Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

29.7 Law to Govern; Venue.

The laws of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in a United States District Court, exclusive venue shall lie in the Central District of California.

29.8 Amendment.

This Agreement is intended to carry out Town's obligations to comply with the provisions of AB 939, AB 341, and AB 1826, as implemented by regulations of CalRecycle ("Regulations"), as they from time to time may be amended. In the event that after the Effective Date AB 939, AB 341, or AB 1826 is amended, or other state or federal laws or regulations are enacted and prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless in writing duly executed by the parties.

29.9 Notices.

All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Town: Town of Yucca Valley
 Attn: Town Manager
 57090 Twentynine Palms Hwy.
 Yucca Valley, CA 92284
 Phone: (760) 369-7207; Fax: (760) 369-0626

To Contractor: Burrtec Waste and Recycling Services, LLC.
 Attn: Chief Executive Officer
 9890 Cherry Ave
 Fontana, California 92335
 Phone: (909) 822-2397; Fax: (909) 355-7158

or to such other address or telecopier number as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed given on the date served if served personally or by Fax between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for Town's business offices. If served during other times, Faxed notice shall be deemed given the first business day following the day upon which it is so Faxed. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail.

29.10 Savings Clause.

If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

29.11 Exhibits Incorporated.

Exhibits A through C are attached to and incorporated in this Agreement by reference.

29.12 Joint Drafting.

This Agreement shall be interpreted as if it were drafted jointly by the parties to the Agreement.

29.13 Attorneys' Fees and Litigation Costs.

In the event either party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

29.14 Town's Authorized Agent.

Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for Town Council action or approval, the Town Manager is designated as the Town's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the Town.

29.15 Integrated Agreement.

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledges this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

29.16 Section Headings.

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

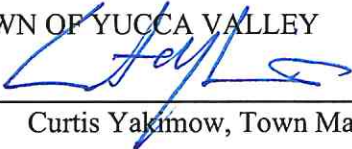
29.17 Compliance with Law.

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws, including the laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

[Signatures on following page]

"Town"

TOWN OF YUCCA VALLEY

By: 
Curtis Yakimow, Town Manager

ATTEST:

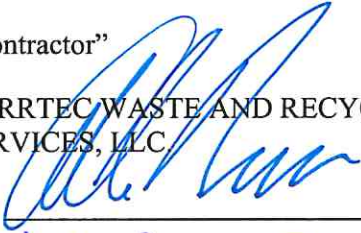
By: 
Lesley Copeland, Town Clerk

APPROVED AS TO FORM:

By: (See next Page)
Thomas D. Jex, Town Attorney

"Contractor"

BURRTEC WASTE AND RECYCLING
SERVICES, LLC

By: 
its: Cole Burr, President

"Town"

TOWN OF YUCCA VALLEY

By: _____
Curtis Yakimow, Town Manager

ATTEST:

By: _____
Lesley Copeland, Town Clerk

APPROVED AS TO FORM:

By: _____

Thomas D. Jex, Town Attorney

"Contractor"

BURRTEC WASTE AND RECYCLING
SERVICES, LLC.

By: _____

its: _____

EXHIBIT A

MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES:

Town of Yucca Valley
Rate Components - Residential Service

Exhibit A

Barrel Size	Service	Landfill	Recycle Processing	Total Rate
96 Gal - Basic	\$15.43	\$4.68		\$20.11
96 Gal - Low Income	\$12.72	\$4.68		\$17.40
64 Gal - Basic	\$16.01	\$3.12		\$19.13
64 Gal - Low Income	\$12.97	\$3.12		\$16.09
35 Gal - Basic	\$15.84	\$1.56		\$17.40
35 Gal - Low Income	\$13.60	\$1.56		\$15.16
96 Gal - Zone C	\$21.31	\$4.68		\$25.99
<u>Extra Containers</u>				
Refuse	\$8.11			\$8.11
Recycling	\$7.81			\$7.81
<u>Other Fees</u>				
Yard/Pull-out service	\$14.72			\$14.72
Special pick-up bulky item	\$38.71			\$38.71
Cart Replacement	\$67.10			\$67.10
New Start	\$16.21			\$16.21
Re-start - Vacation	\$16.21			\$16.21
Re-start - Delinquent	\$24.32			\$24.32
Returned Check	\$23.91			\$23.91

Town of Yucca Valley
Rate Components - Commercial Refuse Bin Service

Exhibit A

Bin Size/ Description	Freq	Service	Disposal	Total Rate
1.5	1	\$43.89	\$17.96	\$61.85
1.5	2	\$87.85	\$35.90	\$123.75
1.5	3	\$131.68	\$53.80	\$185.48
1.5	4	\$175.55	\$71.76	\$247.31
1.5	5	\$219.51	\$89.70	\$309.21
1.5	6	\$263.41	\$107.65	\$371.06
2	1	\$58.53	\$23.94	\$82.47
2	2	\$117.07	\$47.87	\$164.94
2	3	\$175.55	\$71.76	\$247.31
2	4	\$234.15	\$95.69	\$329.84
2	5	\$292.66	\$119.60	\$412.26
2	6	\$351.19	\$143.53	\$494.72
3	1	\$87.83	\$35.90	\$123.73
3	2	\$175.55	\$71.76	\$247.31
3	3	\$263.41	\$107.65	\$371.06
3	4	\$351.19	\$143.53	\$494.72
3	5	\$438.98	\$179.41	\$618.39
3	6	\$526.76	\$215.30	\$742.06
4	1	\$117.07	\$47.87	\$164.94
4	2	\$234.15	\$95.69	\$329.84
4	3	\$351.19	\$143.53	\$494.72
4	4	\$468.28	\$191.37	\$659.65
4	5	\$585.35	\$239.20	\$824.55
4	6	\$702.44	\$287.07	\$989.51
6	1	\$162.72	\$71.76	\$234.48
6	2	\$325.64	\$143.53	\$469.17
6	3	\$488.15	\$215.30	\$703.45
6	4	\$650.85	\$287.07	\$937.92
6	5	\$813.62	\$358.80	\$1,172.42
6	6	\$976.37	\$430.57	\$1,406.94
Extra Empty				
1.5		\$30.75	\$4.15	\$34.90
2		\$33.97	\$5.54	\$39.51
3		\$42.14	\$8.29	\$50.43
4		\$49.43	\$11.05	\$60.48
6		\$61.42	\$16.57	\$77.99
Temp 3yd Bin				
3	7 day	\$97.94	\$11.99	\$109.63
3	30 day	\$173.98	\$11.99	\$185.97
Other Fees				
New Start		\$14.59	-	\$16.21
Re-Start: Delinquent		\$21.89	-	\$24.32
Re-Start: Vacation		\$14.59	-	\$16.21
Locking Container		\$66.28	-	\$73.64
Returned Check		\$21.52	-	\$23.91
Pull-Out Charge		\$36.43	-	\$40.48
Saturday Service-less than 4X/wk		\$36.84	-	\$40.93
Commercial Bulky Item		\$38.71	-	\$38.71
Roll-out Casters		\$29.18	-	\$32.42
Temp Bin Relocate/Extra Trip		\$68.20	-	\$68.20

**Town of Yucca Valley
Rate Components - Commercial Recycling Bin Service**

Ehibit A

Bin Size	Freq	Service	Recycle Processing	Total Rate
1.5	1	\$41.90	-	\$41.90
1.5	2	\$83.85	-	\$83.85
1.5	3	\$125.70	-	\$125.70
1.5	4	\$167.58	-	\$167.58
1.5	5	\$209.52	-	\$209.52
1.5	6	\$251.44	-	\$251.44
2	1	\$55.86	-	\$55.86
2	2	\$111.73	-	\$111.73
2	3	\$167.58	-	\$167.58
2	4	\$223.51	-	\$223.51
2	5	\$279.35	-	\$279.35
2	6	\$335.21	-	\$335.21
3	1	\$83.83	-	\$83.83
3	2	\$167.58	-	\$167.58
3	3	\$251.44	-	\$251.44
3	4	\$335.21	-	\$335.21
3	5	\$419.02	-	\$419.02
3	6	\$502.80	-	\$502.80
4	1	\$111.73	-	\$111.73
4	2	\$223.51	-	\$223.51
4	3	\$335.21	-	\$335.21
4	4	\$446.96	-	\$446.96
4	5	\$558.73	-	\$558.73
4	6	\$670.48	-	\$670.48
6	1	\$154.74	-	\$154.74
6	2	\$309.46	-	\$309.46
6	3	\$464.19	-	\$464.19
6	4	\$618.91	-	\$618.91
6	5	\$773.69	-	\$773.69
6	6	\$928.42	-	\$928.42
Extra Empty				
1.5		\$30.30	-	\$30.30
2		\$32.97	-	\$32.97
3		\$40.73	-	\$40.73
4		\$47.62	-	\$47.62
6		\$58.82	-	\$58.82

**Town of Yucca Valley
Rate Components - Roll off Service**

Exhibit A

Container Size	Service	Disposal Processing	Total Rate
<u>Permanent</u>			
20yd	\$188.54	Actual	\$188.54
30yd	\$188.54	Actual	\$188.54
40yd	\$247.04	Actual	\$247.04
<u>Temp 7-day</u>			
20yd	497.79	4-tons	\$ 497.79
30yd	497.79	4-tons	\$ 497.79
40yd	556.29	4-tons	\$ 556.29
Additional tons >4 at actual Cost			
<u>Other Fees</u>			
Relocation	\$51.44		\$51.44
Trip Charge	\$53.10		\$53.10
Rental - 20yd/compactor	\$17.23		\$17.23
Rental - 30yd/compactor	\$25.88		\$25.88
Rental - 40yd/compactor	\$34.48		\$34.48
Compactor 3X charge			
New Start	\$16.21		\$16.21
Re-Start: Delinquent	\$24.32		\$24.32
Re-Start: Vacation	\$16.21		\$16.21
Returned Check	\$23.91		\$23.91

EXHIBIT B

CONTAINER/BIN SPECIFICATIONS

Contractor shall provide Container Specifications to Town for approval. All Containers utilized by Contractor shall perform to the reasonable satisfaction of the Town Manager in order to be utilized in Town.

Residential Carts

- 1) The body of new Refuse Carts shall be a uniform burgundy color and hot-stamped "Trash Only", and Recycling Carts shall be a uniform grey color and hot-stamped "Recycling Only" and include pictures of recyclables that are allowed inside.
 - a) Cart colors shall be changed in accordance with upcoming CalRecycle guidelines. A plan of when and how carts will be exchanged will be presented to the Town within at least two (2) years before mandatory implementation date, unless asked for sooner by the Town.
- 2) While Contractor may continue to utilize Carts which were distributed to Customers under the Prior Agreements as set forth in this Agreement, within six months of the Effective Date Contractor shall conduct an assessment of all Containers distributed within Town. Contractor shall develop an assessment criteria that shall be approved by the Town Manager whereby each Container shall meet one of two criteria "acceptable condition" or "poor condition." Any container falling within the "poor condition" criteria shall be replaced within one (1) year of the Effective Date. Following the initial assessment of Containers noted above, Contractor shall perform an ongoing assessment of all Containers distributed in the Town, and any Container that is found to be in the "poor condition" category shall be replaced within 60 days. If at any time a Customer complains that the condition of its Container is unsatisfactory, Contractor shall replace such Customer's Container within 60 days (although Contractor shall not be required to do so if, as determined by the Town Manager, the Customer's Container is in an "acceptable condition" and the Customer is being unreasonable.) Any Container replaced pursuant to the requirements hereof shall be replaced with a new Container, or a Container that has been refurbished such that it is like new to the satisfaction of the Town Manager.
- 3) Any Cart distributed by Contractor in Town after the Effective Date shall be newly manufactured and have never previously been used for the Collection of Solid Waste; excepting that Carts which have been refurbished such that they are "like new" may be used so long as their condition is satisfactory as determined by the Town Manager.

Commercial Bins

- 1) Commercial Refuse Bins shall be uniform in color and identified as a Trash bin. Commercial Recycling Bins shall be uniform in color and have a sticker placed on them which identifies them as a Recycling bin and has pictures of what can go inside.
- 2) Effective at the start of this agreement, a commercial bin audit will be conducted identifying trash bins that are not painted the same color throughout Town and all Recycling bins that are not painted the same color throughout Town. In addition, this audit will identify any bins that

need torn or missing stickers replaced, broken lids replaced or repaired, and wheels replaced or repaired. The contractor shall paint all trash and recycling bins in a uniform color as directed by the state within 48-months of the start date of this agreement. This audit will then be conducted every two years afterwards, with a report provided to the Town of findings and repairs conducted.

EXHIBIT C

ANNUAL SUSTAINABILITY & DIVERSION PLAN

ONGOING PROGRAMS

The following public education and outreach activities will be performed on an on-going basis throughout the term of the contract.

Annual Sustainability & Diversion Plan

Prior to December 31, 2020, Contractor will submit to the Town for review a comprehensive Sustainability & Diversion plan. Going forward, the plan will be due no later than December 1st for the following calendar year.

The plan will include proposed education focused on service information and recycling guidelines for both residential and commercial customers. The plan will also describe the Contractor's strategic approach to increase the Town's overall diversion rate.

The plan will include creation of education materials (to be approved by the Town), a schedule of when education material will be disseminated throughout the year, social media post calendar, and community event participation, as detailed below:

1. Outreach & Education Materials. Various forms of literature (flyers, bill inserts, brochures, hand-outs, to be approved by the Town) will be distributed to the community regularly throughout the year. The materials will inform residents and businesses what is accepted for recycling, advise them of holiday schedules, bulky waste pickup, waste and recycling events, community events, and special waste handling topics.
 - i) Annual Notices to Residential Customers. In addition to other forms of educational materials, Contractor will prepare and mail to each residential customer each year a notice or brochure promoting and explaining the following: programs (such as Recycling, Bulky Item Collection), proper Hazardous Waste disposal, changes in services, collection schedules, holiday schedules, and the procedures to begin or terminate services. These materials, and their precise content, shall meet the noticing requirements of CalRecycle and shall be subject to the Town's review and approval.
 - ii) Annual Notices to Commercial & Multi-Family Customers. In addition to other forms of educational materials, Contractor will prepare and mail to each commercial and multi-family customer each year a notice or brochure providing information on waste and recycling services and programs, recycling compliance support (waste audits and multi-family tenant education meetings), and communication regarding overage and contamination reduction efforts to support increased recycling practices. This notice will also be distributed to any new commercial customer.

2. Marketing Resources. Contractor will distribute video and images (social media education posts) geared towards residential and commercial customers annually to inform them about special programs, recycling initiatives such as AB 341, AB 1826 and SB 1383 for Town staff to incorporate into its social media platforms.
3. Social Media. Contractor will use its presence on social media to provide real-time information about local operations, enhance community conversations, promote recycling and engage more directly with customers and community organizations to address their questions.
4. Annual Assessment of Education & Outreach Efforts. Contractor staff will work cooperatively with the Town to monitor the effectiveness of existing public education and outreach programs and to identify and develop new public education and outreach programs as might be necessary to meet diversion targets.
5. Community Events. Contractor will provide waste and recycling services, at no charge, in a continuing effort to support Town programs and events and to promote recycling awareness to the public.
6. Corrective Action Notice or Tag. Contractor shall develop a corrective action notice or tag for use in instances where a Customer sets out inappropriate materials for collection. The notice or tag must identify the cart as contaminated, overfilled or unacceptable waste. The notice or tag must contain a listing of reasons why refuse or recyclables were left, or will be left in the future; a listing of materials that are acceptable; instructions on the proper procedures for sorting Recyclable materials, the appropriate manner for disposing of items, and a customer service phone number for the Contractor.

Additional Contractor Education Tools

1. Contractors Website. Contractor shall dedicate one page of its website to Town services, which will include at least the following information: a listing of contact names and phone numbers for customer service, information about routing, service levels, program offerings (community cleanups, bulky waste collections, etc.) proper cart usage, recyclable materials accepted, community events, and procedures to begin and terminate services. Contractor shall keep the website page current and updated.
2. Residential & Commercial Invoice Inserts. Bill inserts provide a simple and effective method to educate residents and commercial customers about service changes, recycling and sustainability programs, or other important information.

Outreach Materials for Town Facilities

- 1) Education Materials. Upon Town's request, Contractor will make available copies of education material created for Town staff distribution at Town facilities for both residential and commercial customers.