

City of Rancho Cucamonga
CONTRACT NO.
CO 16 - 196

**AGREEMENT
BETWEEN
CITY OF RANCHO CUCAMONGA
AND
BURRTEC WASTE INDUSTRIES, INC.
FOR
INTEGRATED SOLID WASTE MANAGEMENT SERVICES**

* * *

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Exhibits

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AGREEMENT

This Agreement for Integrated Solid Waste Management Services (hereinafter the "Agreement") is entered into this 15th day of June, 2016, by and between the City of Rancho Cucamonga, California, ("City") and Burrtec Waste Industries, Inc. ("Contractor"), for the collection, transportation, recycling, processing, and disposal of solid waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("Act" or "AB 939") (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and,

WHEREAS, pursuant to California Public Resources Code Section 49300 and 49500-49524, the City of Rancho Cucamonga has determined that the public health, safety, and well-being require that an exclusive collection agreement, in accordance with Chapters 8.17 and 8.19 of the Rancho Cucamonga Municipal Code, be awarded to a qualified company for the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services related to meeting the diversion goals required by the Act, and other requirements of the California Integrated Waste Management Act; and,

WHEREAS, City declares its intention of maintaining reasonable rates and quality service related to the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services; and,

WHEREAS, City and Contractor ("Parties") desire to consolidate and update and restate the 1985 residential and commercial solid waste services permits, currently held by Contractor, including all amendments thereto, into an integrated Agreement; and,

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, processing and disposal of solid waste, including the Act, AB 341, AB 1826, the Resource Conservation and Recovery Act ("RCRA") (42 U.S.C. § 6901 et seq.), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. § 9601 et seq.); and

WHEREAS, City and Contractor desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for" the collection from Premises within the City, transport for disposal, composting or other processing, and recycling of municipal solid waste which may contain hazardous substances; and further to confirm that as a material inducement to City entering into this Agreement, Contractor has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions relating to the inadvertent or intentional collection, transportation

and/or disposal of hazardous materials that may occur in connection with Contractor's performance under this Agreement; and,

WHEREAS, Contractor has agreed, as part of this Agreement, acting as an independent contractor to provide such personnel, equipment and supplies as are necessary to ensure City complies with the requirements of Public Resources Code Section 40000, et seq.,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1.
DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this Article 1. In the event a term is not defined in this Article 1, then it shall have the meaning set forth in the Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the Municipal Code over conflicting definitions contained in the Public Resources Code). Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 341

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

1.2 AB 1826

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

1.3 Act

"Act" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

1.4 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business 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 (26 U.S.C. § 318(a)), 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.

1.5 Applicable Law

“Applicable Law” means all laws, regulations, rules, orders, directives, judgments, decrees, permits, approvals, or other requirement of the United States, the State of California, the County of San Bernardino, the City of Rancho Cucamonga (including, but not limited to, Chapters 8.17 and 8.19 of the Municipal Code), and any federal, state, regional or local administrative and regulatory agencies, that are applicable to any aspect of this Agreement or the provision of Solid Waste Services, that are in force on the Effective Date and as they may be enacted, issued or amended during the Term.

1.6 Backyard Service

“Backyard Service” is defined in Section 4.2.3.

1.7 Billings

“Billings” or “Billing” or “Bill” means the statement(s) of charges provided to Customers for services rendered by Contractor.

1.8 Bin

“Bin” means a metal Container with hinged lids and wheels with a capacity of less than ten (10) cubic yards.

1.9 Bin Overage Clean-up Fee

“Bin Overage Clean-up Fee” means a fee charged to a Customer who allows his or her Container(s) to overflow within a one (1) month period of receiving a written notice from Contractor that Customer had an overflowing Container incident.

1.10 Bin Service

“Bin Service” means Solid Waste Services in which a Bin is used for the Collection of Solid Waste.

1.11 Brown Goods

“Brown Goods” mean discarded electronic equipment such as, but not limited to, cellular telephones, video cassette recorders, compact disk (CD) players, CD recorders, digital video disk

(DVD) players, DVD recorders, stereos, audio receivers, video receivers, facsimile machines, central processing units (CPUs), laptop computers, and peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer printers), and other similar items commonly known as “brown goods” and “e-waste.”

1.12 Bulky Items

“Bulky Items” means 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, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Electronic Waste; and tires (up to four passenger car tires per twelve month period). Bulky Items do not include car bodies, car parts, Construction and Demolition Debris or items requiring more than two persons to remove. Other items not specifically included or excluded above will be collected provided that they are not more than eight feet in length, four feet in width, or more than one hundred and fifty (150) pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, the City Manager shall determine whether that definition shall apply, which determination shall be final and binding on the Parties.

1.13 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board, or CIWMB.

1.14 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than thirty-two (32) and no greater than one hundred and one (101) gallons.

1.15 Cart Service

“Cart Service” means Solid Waste Services in which a Cart is used for the Collection of Solid Waste.

1.16 City

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

1.17 City Council

“City Council” means the City Council of the City of Rancho Cucamonga, California.

1.18 City Facilities

“City Facilities” means all Premises owned or operated by City, now and in the future, including but not limited to, City Hall, City offices, parks, stadium, libraries, Cultural Center, and City yard.

1.19 City Manager

“City Manager” means the City Manager of the City of Rancho Cucamonga or the City Manager’s designee.

1.20 Collect/Collection

“Collect” or “Collection” means to take physical possession, transport, and remove Solid Waste within and from City.

1.21 Collection Vehicle

“Collection Vehicle” is defined in Section 4.6.3 of this Agreement.

1.22 Commercial

“Commercial” refers to services performed at or for Commercial Premises.

1.23 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; and City Facilities. In the event a question ever arises as to whether a specific Premises meets the definition of Commercial Premises, the City Manager shall determine whether that definition will apply, which determination shall be final and binding on the Parties.

1.24 Contractor

“Contractor” means Burrtec Waste Industries, Inc., a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors.

1.25 Contractor Compensation

“Contractor Compensation” means the revenue received by the Contractor from Customers in return for providing services in accordance with this Agreement.

1.26 Construction and Demolition Debris

“Construction and Demolition Debris” or “C&D Debris” means Solid Waste generated at a Premises that is directly related to construction or demolition activities occurring thereon.

1.27 Container

“Container” means any and all types of Solid Waste receptacles, including cans/barrels, Carts, Bins and Roll-off Boxes.

1.28 CPI

“CPI” means the Consumer Price Index for All Urban Consumers (CPI-U), for the Los Angeles-Riverside-Orange County Metropolitan Area, Series ID: CUURA421SA0.

1.29 CRV

“CRV” is defined in Section 3.2.3.

1.30 Customer

“Customer” means a Person receiving Solid Waste Services from Contractor pursuant to the terms of this Agreement.

1.31 Disposal

“Disposal” means the ultimate disposition of Solid Waste Collected by Contractor at a landfill or otherwise as permitted by Applicable Law.

1.32 Disposal Site(s)

“Disposal Site(s)” means the Solid Waste handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

1.33 Diversion

“Diversion” means any combination of waste prevention (source reduction), Recycling, reuse and composting activities that reduces waste disposed at landfills, provided such activities are recognized by CalRecycle as Diversion in its determination of City’s Diversion rate and compliance with the Act. CalRecycle may limit Diversion considered to be achieved through Transformation/waste-to-energy, use of Organic Materials as alternative daily cover and other activities.

1.34 Effective Date

“Effective Date” means the date first set forth above, and as further defined in Section 2.3.

1.35 Electronic Waste

“Electronic Waste” or “E-Waste” means “Covered Electronic Waste” as described in Section 42463 of Public Resources Code, and all Brown Goods.

1.36 Environmental Laws

“Environmental Laws” means all federal and state statutes, county, local and City 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 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Clean Water Act, 33 U.S.C. § 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Occupational Safety and Health Act, 29 U.S.C.; § 651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code § 25100 et seq.; the California 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.

1.37 Facility

“Facility” means any plant or site, owned or leased and maintained, operated or used by Contractor for purposes of performing under this Agreement.

1.38 Food Waste

“Food Waste” means all kitchen and table food scraps; animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; discarded paper that is contaminated with Food Waste; fruit waste, grain waste, dairy waste, meat, and fish waste, which have been Source Separated from other Solid Waste. Food Waste is a subset of Organic Materials.

1.39 Franchise Fee

“Franchise Fee” is defined in Section 3.1 of this Agreement.

1.40 Green Waste

“Green Waste” means leaves, grass clippings, brush, branches, and other forms of organic materials generated from landscapes or gardens, which have been Source Separated from other Solid Waste. Green Waste is a subset of Organic Materials.

1.41 Gross Receipts

“Gross Receipts” means any and all monies received from Billings, and compensation in any form, of Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the Collection and transportation of Solid Waste pursuant to this Agreement, including, but not

limited to, Customer fees for Collection of Solid Waste, without subtracting Disposal fees, City fees or other fees or any other cost of doing business.

1.42 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 waste”, “toxic waste”, “pollutants” 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 U.S.C. § 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (iv) the Clean Water Act, 33 U.S.C. § 1251 et seq.; (v) California Health and Safety Code §§ 25110.02, 25115, 25117, 25249.8, 25281, 25316, 25501 and 25501.1; (vi) the Clean Air Act, 42 U.S.C. § 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 as hazardous or toxic or regulated under any other applicable federal, state or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl’s (“PCBs”), petroleum, natural gas and synthetic fuel products, and by-products.

1.43 Hazardous Waste

“Hazardous Waste” means and includes wastes defined as hazardous by Public Resources Code Section 40141 as it now exists or subsequently may be amended, as well as 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 U.S.C. § 6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.44 Holiday

“Holiday” means the following days each calendar year: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

1.45 Household Hazardous Waste (“HHW”)

“Household Hazardous Waste” means any Hazardous Waste generated incidental to owning and/or maintaining a Residential Premises.

1.46 Indemnitees

“Indemnitees” means City, its public officials, officers, employees, consultants, agents, volunteers, and independent contractors.

1.47 Materials Recovery Facility (“MRF”)

“Materials Recovery Facility” means a fully permitted Facility where Solid Waste is sorted or separated for the purposes of Recycling, processing or composting.

1.48 Multi-Family Dwelling

“Multi-Family Dwelling” means any building or lot containing three (3) or more dwelling units. Multi-Family Dwelling units generally receive Solid Waste Collection through the use of shared Bins, or Carts.

1.49 Municipal Code

“Municipal Code” means the Rancho Cucamonga Municipal Code, as it now exists or may subsequently be amended.

1.50 Organic Materials

“Organic Materials” means Food Waste and Green Waste, collectively or individually.

1.51 Organic Materials Processing Facility

“Organic Materials Processing Facility” means a permitted Facility where Organic Materials are sorted, mulched or separated for the purposes of Recycling, reuse or composting.

1.52 Person

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

1.53 Premises

“Premises” means any land, or building within the City where Solid Waste is generated or accumulated.

1.54 Public Education Plan

“Public Education Plan” is defined in Section 5.3.2.

1.55 Rate Schedule

“Rate Schedule” means the approved schedule of maximum permissible monthly rates currently in effect on the date Solid Waste Service is provided. See Exhibit 4 for the initial maximum rates.

1.56 Rate Period

“Rate Period” means the twenty-four (24) month period beginning on July 1 and ending June 30 during which a Rate Schedule is effective.

1.57 Recycling

“Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting Solid Waste that would otherwise be subject to Disposal in a landfill, and returning them to the economic mainstream in the form of raw materials for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling does not include Transformation.

1.58 Recyclable Materials

“Recyclable Materials” means Solid Waste that is Source Separated, has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling, excluding Organic Materials. The initial list of Recyclable Materials to be collected pursuant to this Agreement is set forth in Section 4.3.1.1.

1.59 Refuse

“Refuse” means all Solid Waste except Source Separated Recyclable Materials, Source Separated Organic Materials, Construction and Demolition Debris and Bulky Items. Refuse does not include Hazardous Substances, Hazardous Waste, or Electronic Waste.

1.60 Residential

“Residential” refers to services performed at and for Residential Premises.

1.61 Residential Premises

“Residential Premises” means Premises upon which dwelling units exist, including, without limitation, Single Family and Multi-Family Dwellings, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units. In the event a question ever arises as to whether a specific Premises meets the definition of Residential Premises, the City Manager shall determine whether that definition will apply, which determination shall be final and binding on the Parties.

1.62 Roll-off Box

“Roll-off Box” means Solid Waste Collection Containers of ten (10) yards or larger.

1.63 Scout Vehicle(s)

“Scout Vehicle(s)” are defined in Section 4.2.7.

1.64 Seniors

“Seniors” is defined in Section 5.1.4.1.

1.65 Single Family Dwelling

“Single Family Dwelling” means a dwelling unit in a building containing two (2) or fewer Residential dwelling units. Single Family Dwelling units generally receive individual Cart Refuse Collection service.

1.66 Solid Waste

“Solid Waste” means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Recyclable Materials, Organic Materials, Construction and Demolition Debris, and Bulky Items, or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of “Non-hazardous Solid Waste” set forth in the California Code of Regulations.

1.67 Solid Waste Services

“Solid Waste Services” means the Collection, transfer, transport, Recycling, processing, and/or Disposal of Solid Waste and all other services required by Contractor under this Agreement.

1.68 Street Sweeping Services

“Street Sweeping Services” means the services described in Exhibit 1.

1.69 Performance Review Meeting

“Performance Review Meeting” is defined in Section 7.1.

1.70 Source Separated

“Source Separated” means the segregation by the Waste Generator of Recyclable Materials or Organic Materials, which otherwise would become Solid Waste.

1.71 State

“State” means the State of California.

1.72 Term

“Term” means the Initial Term (as defined in Section 2.4), together with any extension of the Initial Term.

1.73 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biomass conversion other than composting.

1.74 Transfer Station

“Transfer Station” means a Facility that receives Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not also include MRFs transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Organic Materials and/or Construction and Demolition debris, to processors, brokers or end-users.

1.75 Waste Generator

“Waste Generator” means any Person whose act or process produces Solid Waste, or whose act first causes Solid Waste to become subject to regulation.

1.76 Working Day

“Working Day” means any day of the week except Saturday, Sunday, and Holidays.

ARTICLE 2.
GRANT AND ACCEPTANCE OF RIGHTS

2.1 Grant and Acceptance of Rights, Indemnity of Award

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.9 hereof) and Applicable Law, and to the rights of State, county and school district facilities, and other entities that are permitted pursuant to State law, to use a Solid Waste enterprise other than Contractor, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive right and privilege to provide Collection, transport, transfer, processing, Recycling and/or Disposal of Solid Waste generated within the City.

Notwithstanding the preceding sentence, Section 2.3, or any other provision of this Agreement, the exclusive right to Collect Construction and Demolition Debris shall commence January 1, 2017, but only if Contractor has complied with the requirements in Exhibit 6 regarding generation and mailing of notification and mailing materials. Further, the exclusive right to Collect Construction and Demolition Debris is subject to the limitations set forth in Section 4.15 of this Agreement.

City may grant Collection agreements or permits or otherwise allow others to provide services exempt from this Agreement per Section 2.9. If there is a dispute as to whether the provision of a particular service to a particular customer is included under this Agreement, the City Manager will make the final determination, which determination shall be final and binding on the Parties.

Contractor agrees to and shall timely take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. Contractor shall defend, indemnify, protect and hold harmless, the Indemnitees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by City of this Agreement; provided, however, Contractor shall not be responsible for indemnifying City for any monetary damages which are awarded unless directly resulting from Contractor's misconduct. City shall promptly notify Contractor of any such claim, action, or proceeding. City and Contractor shall meet in good faith in an effort to come to a mutual agreement for a joint defense; provided that City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached.

Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this section shall not be altered in the event City retains separate counsel.

2.2 Enforcement of Exclusivity

City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City 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 City. If Contractor requests that City 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 or ordinance intended to facilitate the enforcement of the exclusive rights granted herein), Contractor shall reimburse City for its all administrative, law enforcement, or other legal costs and fees related to any such action. Notwithstanding the foregoing, City agrees to amend the Municipal Code to add a provision mandating compliance with the exclusivity provisions hereof. Nothing herein shall preclude Contractor from taking such legal action against third parties as it deems appropriate to enforce the exclusivity provisions hereof.

2.3 Effective Date; Commencement of Services

This Agreement shall become effective on the Effective Date. The exclusive rights granted Contractor hereunder, and the provision of Solid Waste Services by Contractor as described herein, shall commence on July 1, 2016.

If in the future, the City satisfies its obligations under the Myers-Milias-Brown Act with regard to contracting out the following services, Street Sweeping Services pursuant to Exhibit 1, Contractor agrees that, upon request of the City, it will amend this Agreement to provide Street Sweeping Services in accordance with the requirements set forth in Exhibit 1 and at no charge to City or Customers, within three (3) days after receipt of notice from City.

2.4 Term of Agreement

The initial term of this Agreement shall be twelve (12) years, commencing on July 1, 2016, and expiring June 30, 2028 (the "Initial Term"), subject to extension or earlier termination as provided herein.

2.5 Option to Extend Term

The Term of this Agreement shall automatically extend for successive five (5) year periods unless either Party hereto serves a notice of non-renewal to the other Party at least two (2) years prior to the expiration of the Initial Term or of any five (5) year extension of that Term.

2.6 Representations and Warranties of Contractor

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the Effective Date of this Agreement:

a) Contractor is duly organized, validly existing and in good standing under Applicable Law. Contractor is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

b) Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Contractor (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Contractor have authority to do so.

c) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

d) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor.

e) Contractor has no knowledge of any Applicable Law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.

f) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it,

and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.

g) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including but not limited to all materials in Exhibits to this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement.

h) Contractor's Contract Liaison, designated in Section 2.8.2, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

i) The Disposal Site(s) proposed by Contractor are properly permitted by the Regional Water Quality Control Board and CalRecycle/Local Enforcement Agency, are classified as Class III landfills (permitted to receive municipal solid waste), comply with Applicable Law (to the best of Contractor's knowledge), are not on or being considered for inclusion on a State or federal superfund list, or CalRecycle list of solid waste facilities failing to meet State minimum standards, and that (to the best of Contractor's knowledge) they are in fact able to accept all Solid Waste Collected from within the City during the Term.

j) The Designated Recycling Facility is properly permitted and, to the best of Contractor's knowledge, in compliance with Applicable Law.

k) The Designated Organic Materials Processing Facility is properly permitted and, to the best of Contractor's knowledge, in compliance with Applicable Law.

l) No elected official, officer, agent or employee of City has a financial interest, directly or indirectly, in this Agreement, the compensation to be paid under it and, further, no City employee who acts as a City "purchasing agent" as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of the Contractor.

m) Contractor is familiar with City's prohibition against acceptance of any gift by a City officer or designated employee. Contractor shall not offer any City officer or designated employee any gifts prohibited by City.

2.7 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 City 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:

a) Accuracy of Representations. All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true and correct in all material respects on and as of the Effective Date, and shall remain so during the Term hereof.

b) 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.

c) Furnishing of Insurance, Bond, and Letter of Credit. Contractor shall have furnished evidence of the insurance, bonds and letter of credit required by Article 9, and shall comply with all ongoing requirements relating thereto.

d) Effectiveness of City Council Action. City Council's approval of this Agreement shall have become effective pursuant to California law on or prior to the Effective Date.

2.8 Delegation of Authority

2.8.1 City Representatives

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by City shall be taken by the City Council except where this Agreement expressly delegates the authority to the City Manager, in which case the action shall be taken by the City Manager, or his or her designee. The City Council may also delegate, in writing, additional authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority so delegated to them.

2.8.2 Contractor Representative

Contractor shall, by the Effective Date, authorize and designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to this Agreement and who shall be responsible for working with City and/or City's designated representative(s) to resolve Agreement-related issues ("Contract Liaison"). Contractor shall include in the written designation any limitations upon the Contract Liaison's authority to bind Contractor. City shall have the right to approve the Contractor's choice for Contract Liaison. City shall be notified in advance of any change in Contract Liaison. Contractor acknowledges and agrees that City may rely upon action taken by the Contract Liaison as actions of Contractor taken on behalf of and with the full approval of the Contractor unless the action is outside the scope of the authority delegated to him/her by Contractor as communicated in writing to City.

2.9 Limitations to Scope

Notwithstanding any provision to the contrary contained herein, the exclusive franchise, right and privilege to provide Solid Waste Services granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor and which may be the subject of other permits, licenses, franchises or agreements issued or entered by City.

The Collection, transfer, transport, Recycling, processing, and/or Disposal of:

- a) Source Separated Recyclable Materials generated on Residential or Commercial Premises;
- b) Solid Waste, including Organic Materials and Bulky Items, and Recyclable Materials which are removed from any Premises by the Waste Generator, and which is transported personally by such Generator (or by his or her full-time employees) to a processing or Disposal Facility in a manner consistent with Applicable Law;
- c) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service;
- d) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- e) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- f) Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source;
- g) Construction and Demolition Debris which is removed by a duly-licensed construction or demolition company as part of a total service offered by that licensed company rather than as a hauling service, where the licensed company utilizes its own employees and equipment;
- h) Construction and Demolition Debris which is Collected by other hauling companies permitted and approved by City to operate within the City, consistent with the Municipal Code. This exclusion shall be suspended during any period that Contractor is authorized by Section 4.15 of this Agreement to provide exclusive Construction and Demolition Debris Collection services within the City;
- i) The casual or emergency collection of Solid Waste generated at City Facilities, or Collected from the public right-of-way by City through City officers or employees in the normal course of their City employment;
- j) The collection of Solid Waste from public works projects, during any period that Contractor does not have the exclusive right to provide Construction and Demolition Debris Collection Services pursuant to Section 4.15;
- k) Solid Waste generated by or at governmental agencies other than City, which may have facilities within the City, but over which City has no jurisdiction in connection with the regulation of Solid Waste; and,
- l) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et seq., California Public Resources Code.

m) Pre-consumer organic waste generated by industrial food processing facilities and/or food distribution diverted from landfill Disposal. Diversion may include, but is not limited to, agricultural use, use as animal feed, and composting.

While the grant contained herein shall not be exclusive with respect to the above noted matters, Contractor shall still be obligated to provide those services which may be included in the above (including but not limited to Collection of Refuse, Collection of Recyclable Materials, Collection of Organic Materials, Collection of Bulky Items, Collection at City Facilities and other services pursuant to Article 4) pursuant to the rates, and other terms, as set forth in this Agreement.

The exclusive franchise, right and privilege to provide Solid Waste Services within the City granted to Contractor by this Agreement shall be interpreted to be consistent with Applicable Laws, and the scope of this Agreement shall be limited by Applicable Law. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

2.10 City's Right to Direct Changes

2.10.1 General

City may direct Contractor to perform additional Solid Waste Services (including new Diversion programs, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State or City law may increase the Diversion requirement during the Term of this Agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services. If the City Manager and Contractor cannot agree on compensation for new or additional services, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.1.

2.10.2 New Diversion Programs

Contractor shall present, within sixty (60) days of a request to do so by City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Solid Waste handling/processing Facilities to be utilized, and the applicable cost per ton.
- Labor requirements (number of employees by classification).
- Type(s) of Collection Vehicles and Containers to be utilized.

Type(s) of material to be Collected.

Provision for program publicity/education/marketing.

Projection of the annual financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

The added cost for providing such additional or expanded Diversion services. The projected increase in City's Diversion rate.

2.11 Ownership of Solid Waste

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste; that City 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 Solid Waste Collected by Contractor within the City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Contractor which otherwise might exist in or with City 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. At no time does City obtain any right of ownership or possession of Solid Waste placed for Collection, and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights. Subject to the provisions of this Agreement, and Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it Collects. Ownership of Solid Waste shall transfer to Contractor when Customer places it at point of Collection.

2.12 Permits and Licenses

Contractor shall acquire and maintain, at its own expense, all permits and licenses required by Applicable Law for the Collection, transportation, processing, and storing of Solid Waste, disposing of Refuse, and the Recycling or processing of Recyclable Materials and Organic Materials, and maintain same in full force and effect throughout the Term. Contractor shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Manager. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Section 11.2. Contractor must follow requirements of the Municipal Code.

2.13 Contractor Name

Contractor name may not include "Rancho Cucamonga" or any other language indicating that the Contractor is a division of, or otherwise connected to, City.

ARTICLE 3.
FEES PAID TO CITY

In addition to any other consideration set forth herein, as part of its consideration for entering into this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Services as specified herein, Contractor shall pay the fees specified in this Article 3. If payment is not received by City within thirty (30) days of the due date, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) of the amount owing for that payment period.

3.1 Franchise Fee

In consideration of the exclusive franchise granted pursuant to this Agreement, the Contractor shall quarterly pay to City a "Franchise Fee," equal to fifteen percent (15%) of the Gross Receipts received by Contractor. The quarterly Franchise Fee payment to City is due on April 30, July 31, October 31, and January 31, of each calendar year.

The Franchise Fee shall be increased to seventeen percent (17%) of Gross Receipts commencing January 1, if in any prior year Contractor fails to achieve the Diversion requirements described in Section 4.14.1. Compliance will be measured, initially, for the period from July 1, 2016 to December 30, 2016, and subsequently on a calendar year basis. This increase shall apply irrespective of any liquidated damages that may be assessed pursuant to Section 11.3.

3.2 Household Hazardous Waste (HHW) Fee

In order to support City's efforts in HHW management, Contractor shall quarterly pay to City a Household Hazardous Waste Fee ("HHW Fee") equal to seventy-five hundredths of one percent (0.75%) of the Gross Receipts received by Contractor. The quarterly HHW Fee payment to City is due on January 31, April 30, July 31, and October 31 of each calendar year.

3.3 Construction and Demolition Debris (C&D) Contracting Fee

In order to support City's efforts in Construction and Demolition Debris management, Contractor shall pay to City a Construction and Demolition Debris Contracting Fee in an amount of fifty thousand dollars (\$50,000) per calendar year ("C&D Fee"). The annual C&D Fee payment to City is due on June 30 of each calendar year, except in 2016. The first annual payment is due by July 31, 2016.

ARTICLE 4.
DIRECT SERVICES

4.1 General

The work to be done by Contractor pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Contractor of the duty

to furnish all other items, as may be required, whether enumerated elsewhere in this Agreement or not.

The work to be done by Contractor pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this Section, whether such other aspects are enumerated elsewhere in this Agreement or not.

4.2 Refuse

4.2.1 Cart Refuse Collection

Contractor shall provide all Customers at Single Family Dwellings and Multi-Family Dwellings without Bin Service, with one Cart (“Refuse Cart(s)”), and shall Collect all Refuse placed therein for Collection not less than once per week. If there is a dispute between a Customer and Contractor as to whether Cart or Bin Service shall be provided, the City Manager will make the final determination, which determination shall be final and binding. Cart Customers shall be instructed to place the Cart(s) in the street gutter for Collection (“curbside”), or alley where paved alleys exist, unless the Customer receives Backyard Service. However, Contractor shall relocate Carts for Collection when necessary, and return them to their original position.

Cart Customers that regularly require more than one Refuse Cart may request additional Carts for an additional charge per Cart per month in accordance with the Rate Schedule.

A ninety-six (96) gallon Cart shall be the default Container size. Contractor shall provide smaller Carts of sixty-four (64) gallons upon Customer request, with no resulting reduction in Customer’s rate. See Section 4.6.4.1 for Cart selection procedures.

4.2.2 Refuse and Recycling Cart Overage

Residential Cart Customers may periodically generate more Refuse or Recyclable Materials than will fit in the designated Cart(s). Contractor shall Collect all additional Refuse and Recyclable Materials placed out for Collection in the Cart Customer’s own Containers (bags, barrels, etc.) at no additional charge during the same period as the holiday tree Collection period (see Section 4.3.2.4). This service is limited to Recyclable Materials that could otherwise be placed in the Recycling Cart (pursuant to Section 4.3.1) and Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items, which are Collected in accordance with Section 4.2.11. Cart Customers may be charged per pickup in accordance with the approved Rate Schedule for overage pickups that do not occur during the holiday tree Collection period.

4.2.3 Backyard Pull-Out Service

“Backyard Service” means the Contractor removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 4.2.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection,

and returns Carts and other containers when Collection is complete. Customer may request backyard service and Contractor may charge customers requesting Backyard Service in accordance with the Rate Schedule, unless the Customer falls under the exception for disabled customers described in Section 4.2.4 below.

4.2.4 Backyard Service for the Disabled

Contractor shall provide disabled Cart Customers with Backyard Service at no additional charge. Contractor will remove Refuse, Recyclable Materials and Green Waste Containers and Green Waste bundles from Customer's outdoor storage area, place them out for Collection, and return Containers to Customer's outdoor storage area after Collection, ensuring that all doors or gates are closed securely. Contractor shall not enter garages.

In order to qualify as disabled, versus able-bodied, under this Section, Customers must demonstrate to Contractor that they have been issued a handicap placard from the Department of Motor Vehicles, and received written confirmation from a medical doctor that the Customer is physically unable to reasonably wheel Carts to and from the curb. Doctors' letters should include the duration of this disability and Contractor may limit free Backyard Service to this time period. Backyard Service need not be provided if an able-bodied adult resides with the disabled Customer. Contractor may require annual confirmation that the disability continues and that no able-bodied adult permanently resides at the Premises.

4.2.5 Bin Refuse Collection

Contractor shall provide Bin Refuse Service to Residential Customers that do not receive Cart Refuse service, and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Bins from the property of Customers receiving Bin Service, at least as frequently as required per the Municipal Code and more frequently if required to handle the Solid Waste generated at the Premises where the Bins are located. Pursuant to the Municipal Code, Contractor shall Collect Refuse from food service establishments no less than the frequency specified in the Municipal Code. The size of Contractor-provided Bins may be determined by mutual agreement of Customer and Contractor; provided, however, the City Manager shall make the final determination as to the number and size of Containers, and frequency of Collection to be provided to Bin Customers. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

Contractor shall provide one and one-half (1-1/2), two (2), three (3), four (4), five (5), and six (6) cubic yard Bins to Bin Customers upon request. Contractor will service Bins equipped with compaction devices or "compactors" that attach to the Bins. The sale, lease or provision of the compaction device itself is outside this Agreement.

4.2.6 Overflowing Containers

Customers that regularly produce more Refuse than their current level of service can accommodate, may have their service level increased in accordance with the following procedure:

First Incident in Three Month Period – If more material is placed for Collection than fits in a Bin or Cart (unless Collection of the overage has been properly arranged under Section 4.2.1), Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and Billing addresses, if different) the picture and a letter instructing that subsequent instances of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Bin or Cart (unless Collection of the overage has been properly arranged under Section 4.2.2) in a three (3) month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and Billing addresses, if different) the picture and a letter instructing that a third incident in that same three (3) month period may result in an increase in the level of service. For Bin Customers, if the Bin overflowed sufficiently to require the driver to leave the Collection Vehicle to clean around the Bin, Contractor may charge the Bin Overage Clean-up Fee in the Rate Schedule. For Cart Customers, if Refuse was left beside the Cart for Collection other than as permitted under Section 4.2.2, Contractor may charge the Cart Overage Clean-up Fee in the Rate Schedule.

Third Incident in Three (3) Month Period – Upon the third event of an overfilled Bin or Cart (unless Collection of the overage has been properly arranged under Section 4.2.2) in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and Billing addresses, if different) the picture and a letter requesting that Customer increase its service level. If the Customer declines, Contractor may petition City to permit Contractor to increase the service level to accommodate the higher demand for service; the City Manager shall make the final determination of whether to implement such an increase, which determination shall be final and binding. If the Bin overflowed sufficiently to require the driver to leave the Collection Vehicle to clean around the Bin, Contractor may charge the Bin Overage Clean-up Fee in the Rate Schedule. If Refuse was left beside the Cart for Collection other than as permitted under Section 4.2.2, Contractor may charge the Cart Overage Clean-up Fee in the Rate Schedule.

4.2.7 Scout Vehicles

Scout Vehicles are defined as vehicles that transport a Solid Waste Bin to and from the point of Collection to provide access by a Collection Vehicle. Scout Vehicle service may be charged for in accordance with the Rate Schedule. Disputes between the Contractor and the Customer as to whether Scout Vehicle service will be used will be determined by the City Manager, which determination shall be final and binding.

Contractor shall make best efforts to minimize the amount of time Bins are staged on the street for Collection before being returned to their storage locations.

4.2.8 Bin Push-out Service

Contractor may charge a fee for push-out service in accordance with the Rate Schedule if the driver must move a Bin a minimum of twenty-six (26) feet from Customer's storage location to where the Bin must be positioned for Collection (without the use of Scout Vehicles). Disputes

between the Contractor and the Customer as to whether the Bin push-out service fee applies will be determined by the City Manager, which determination shall be final and binding. Customers receiving Scout Vehicle service shall not be subject to separate Bin push-out fees.

4.2.9 Locking Bins

Contractor shall provide locking Bin Service (providing the hasp and lock and servicing the lock) to Customers that request such service in accordance with the Rate Schedule. The approved fee may be charged for each locked Bin.

4.2.10 Return Trip Fee

Contractor may charge a fee, per the Rate Schedule, in the event that Contractor arrives on time for a scheduled Collection of Bins or Roll-off Boxes, is impeded from Collection due to Container being blocked or otherwise unable to be Collected due to factors within the Customer's control, and Contractor must return a second time for Collection. Charge may be assessed for the trip, not per Bin, in the event of a Customer with multiple Bins.

4.2.11 On-Call Bulky Item Pickup

Contractor shall provide Bulky Item pickup service to all Single Family Dwelling Customers receiving Cart Service. Each Single Family Dwelling unit with Cart Service shall be entitled to four (4) Bulky Item pickups per calendar year at no additional charge.

Single Family Dwelling Customers must contact the Contractor to schedule the service and may put out up to five (5) Bulky Items at each pickup. Pickup location will be curbside (or in alleys where paved alleys exist) for both backyard and curbside Cart Collection Customers (no Bulky Item pickups from backyards). Refuse Bin and Multi-Family complexes may arrange with Contractor for a Bulky Item pickup at the rates listed in the current Rate Schedule. Contractor may instruct Customers to provide Contractor with a minimum of two (2) Working Days' notice for the items that shall be Collected on the Customer's regular Collection day. Contractor shall Collect all Bulky Items as defined in Section 1.12 including Electronic Waste. The following provisions shall apply to this program:

- No single item that cannot be handled by two workers will be accepted.
- The following items will not be picked up as Bulky Items: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze. For the purposes of this Section, Electronic Waste is not considered hazardous and will be Collected by and disposed of in accordance with this Section as well as Sections 4.2.13 and 4.2.14 by Contractor.
- Contractor shall record by class and weight (in tons) the Solid Waste Collected from Bulky Item pickups. Contractor shall record the kinds and weights (in tons) of Solid Waste diverted, if any, from the Disposal in a landfill through Recycling, reuse, or other means of Diversion.

Customers that exceed the number of free pickups per dwelling unit may receive Bulky Item Collection under the same terms for a fee, in accordance with the Rate Schedule.

4.2.12 Bulky Item Diversion

Bulky Items Collected by Contractor in accordance with Section 4.2.11, or otherwise Collected under this Agreement, may not be landfilled or otherwise Disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- A. Reuse as is
- B. Disassemble for reuse or Recycling
- C. Recycle
- D. Disposal

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless either the compaction mechanism is not used to compact the Bulky Items, or unless they have been designated for Disposal.

4.2.13 Disposal of Electronic Waste and Other Special Wastes

Contractor shall divert waste requiring special handling, such as Electronic Waste Collected in accordance with Sections 4.2.11, 4.2.13, 4.5.2 or 4.5.4, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

Contractor may encourage Customers through public education materials to bring small items requiring special handling, such as fluorescent bulbs or batteries, to a local HHW drop-off location, but will properly process such material received through the provision of services under this Agreement at no additional charge.

4.3 Recycling and Organic Materials

4.3.1 Recyclable Materials Program

4.3.1.1 General

Contractor shall have a Recycling program whereby it, at a minimum, Collects: paper and cardboard (including cardboard egg cartons, cereal boxes (no liners), junk mail, magazines, paper bags, telephone books, wrapping paper); rigid plastic containers; glass bottles and jars; milk and juice containers; metal cans and trays (aluminum foil/food trays, food and beverage cans, aerosol cans (not including propellants and products)); expanded polystyrene food containers (meat trays, take-out food containers); and, any additional materials that can be recovered at the Designated Recycling Facility used by Contractor. Contractor will update public education materials accordingly as new items are added to those recovered by the Designated Recycling Facility.

4.3.1.2 Regulatory Compliance

Contractor shall provide all Customers required to participate in a Recyclable Materials Diversion program with a program(s) compliant with State and CalRecycle mandatory Commercial and Multi-Family Recycling requirements under AB 341.

4.3.1.3 Recyclable Materials Collection for Cart Refuse Customers

Contractor shall provide all Customers receiving Cart Refuse Collection with a Cart for Collection of Recyclable Materials (“Recycling Cart(s)”), and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Contractor shall Collect Recyclable Materials placed in Recycling Carts for Collection from each Customer on the same day as Customer’s Refuse Container is Collected. Recycling Cart Customers shall be instructed to place the Cart(s) in the same location as Refuse Carts. Following Collection, Contractor shall relocate Carts when necessary, and return them to their original position. Customers subscribing to Backyard Service for Refuse Containers, shall receive the same service for Recycling Containers, under the same terms, for a fee, in accordance with the Rate Schedule.

Customers that regularly require more than one (1) Recycling Cart may request additional Carts for Recyclable Materials Collection for an additional charge per Cart per month in accordance with the Rate Schedule.

4.3.1.4 Recyclable Materials Collection for Bin Refuse Customers

Contractor shall provide all Customers receiving Bin Refuse Collection with a Bin of equivalent size and Collection frequency as their Refuse Bin(s) for Collection of Recyclable Materials (“Recycling Bin(s)”), and shall Collect all Recyclable Materials placed therein for Collection. Contractor shall Collect Recyclable Materials placed in Recycling Containers for Collection from each Customer on the day(s) of service scheduled by the Contractor. Customers subscribing to Scout Service, or Bin Push-Out service for Refuse Bins, shall receive the same service for Recycling Bins, under the same terms, for a fee, in accordance with the Rate Schedule.

4.3.1.5 Additional Recyclable Materials Programs

In addition to the materials included above in Section 4.3.1.1, Contractor also agrees to make programs available for all other Recyclable Materials for which it has established markets. The Contractor shall notify all Customers of the availability of Recyclable Materials Collection programs via a mailed notice once prior to the start of services under this Agreement and at least once per year for the remainder of the Agreement.

4.3.1.6 Marketing and Sale of Recyclable Materials

Contractor shall be responsible for the marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor may retain revenue from the sale of Recyclable Materials, and shall report the amount of such revenues to City upon request, with actual CRV revenue separately reported to permit City to track Customer participation in Recycling programs.

4.3.1.7 Collection and Delivery of Recyclable Materials

All loads of Recyclable Materials shall be taken to the Designated Recycling Facility for material recovery. Under no circumstances shall such loads be delivered for landfilling, even temporarily. Recyclable Materials properly set out for Collection (excluding contaminated loads that have been red-tagged and recorded) shall only be Collected in vehicles on dedicated Recycling routes bound for Facilities capable of Recycling Recyclable Materials. Emptying Containers of Recyclable Materials that have been properly set out into a Refuse Collection Vehicle load is prohibited.

4.3.2 Organic Materials Program

4.3.2.1 Regulatory Compliance

Contractor shall provide all Customers required to participate in an Organic Materials Diversion program with a program(s) compliant with State and CalRecycle mandatory Organics Recycling requirements under AB 1826.

4.3.2.2 Green Waste and Manure Collection for Cart Refuse Customers

Contractor shall have a Green Waste Recycling program whereby it, at a minimum, Collects the types of Green Waste defined in Section 1.41. Horse stable matter, and livestock manure are also acceptable materials to be placed in Single Family Dwelling Green Waste Carts.

Contractor shall provide all Residential Single Family Dwelling Customers receiving Cart Refuse Collection, with a ninety-five (95) gallon Cart for Collection of Green Waste and manure ("Green Waste Cart(s)"). Contractor shall Collect all Green Waste and manure placed in Green Waste Carts and put out for Collection by Customers not less than once per week on the same day as Refuse Collection. Green Waste Cart Customers shall be instructed to place the Cart(s) in the same location as Refuse Carts. Following Collection, Contractor shall relocate Carts when necessary, and return them to their original position.

Contractor shall only be obligated to Collect additional seasonal Green Waste set out for Collection by Customers up to two (2) times per year, if it is tied, bundled and placed beside Green Waste Cart(s), and a maximum of four (4) feet long and eighteen (18) inches in diameter. Contractor may request Customer to call in unusually large Green Waste loads or bundled Green Waste in advance, but will Collect all material properly set out for Collection. The Collection of Green Waste bundles under this Section is not considered a Bulky Item pickup.

Customers may request additional Carts for Green Waste Collection for an additional charge per Cart per month in accordance with the Rate Schedule.

4.3.2.3 Organic Materials Collection for Commercial Customers

Contractor shall provide Customers receiving Bin Refuse Collection with a Container for Collection of Organic Materials ("Organics Container(s)"), upon Customer request, for a fee that does not exceed that authorized by the Rate Schedule. Such service may be for Green Waste only, Food Waste only, or commingled Organic Materials. Contractor shall Collect all Organic

Materials placed in Organics Containers and put out for Collection by Customers, not less than once per week on the scheduled service day(s).

If Customers request Carts for Organic Materials, Contractor shall provide and service up to three (3) Carts at a rate that does not exceed that authorized in the Rate Schedule for Organic Material's Bin service.

Customers subscribing to Scout Service, or Bin Push-Out service for Refuse Containers, shall receive the same service for Organics Containers, under the same terms, for a fee that does not exceed that authorized by the Rate Schedule.

4.3.2.4 Holiday Tree Collection Program

At no additional charge, Contractor shall operate an annual holiday tree Collection program from December 26 through January 15. During this period all holiday trees placed out for Collection by Cart and Bin Customers on Customer's regular Collection Days, at Customer's Collection location for Refuse Container Collection, shall be Collected by Contractor. After this period, trees will be Collected as Bulky Items under Section 4.2.11. Trees up to seven (7) feet in length will be Collected and diverted without Customers needing to cut them. Contractor may request that Customers with larger trees cut the trees to pieces no longer than seven (7) feet. Contractor will divert all holiday trees from landfilling.

Upon request of the Owner or property manager, provided Customer's property has sufficient space, Contractor shall place a Roll-off Box at Multi-Family complexes for the Collection of holiday trees to be diverted.

4.4 Roll-Off Box Service

Contractor shall provide permanent and temporary Solid Waste Roll-off Box Collection service upon request. Contractor must deliver a temporary Roll-off Box to a Customer within forty-eight (48) hours of request (Sundays and Holidays excluded). Failure to guarantee and/or provide forty-eight (48) hour delivery of a Roll-off Box within this timeframe may result in an assessment of liquidated damages for each day Contractor is late in providing the Roll-off Box.

Contractor will provide standard ten (10), twenty (20), thirty (30) and forty (40) cubic-yard standard Roll-off Boxes. The provision of compactor Roll-off Boxes, which are enclosed Containers attached to a compaction device, is not included in this Agreement. Providing Collection services for such compactor Roll-off Boxes is included.

Roll-off Box service shall be Billed at a rate inclusive of service and disposal or processing of up to six (6) tons for standard Roll-off Boxes, up to nine (9) tons for compactor Roll-off Boxes. Tonnage above included tons shall be billed at the approved per ton rate based on actual additional tonnage or fraction thereof.

4.5 City Services

4.5.1 City Facilities Collection

Contractor shall Collect and dispose of all Refuse, Recyclable Materials, and Organic Materials put in Containers for Collection at City Facilities, including public litter containers, at no additional charge. A list of City Facilities requiring service as of the Effective Date of this Agreement is included in Exhibit 2. Service levels and number of City Facilities serviced may increase during the Term without any additional compensation paid to the Contractor or increase in rates. Collections shall be scheduled at a time mutually agreed upon by Contractor and City, but not less than once per week. Contractor shall allow each City Facility to use Carts, Bins, or Roll-off Boxes for Solid Waste Collection, as determined by the City Manager. Contractor will provide locking Bin Service for City if requested at no additional charge.

4.5.2 E-Waste at City Facilities

Contractor shall Collect and Recycle or properly dispose of all Electronic Waste placed at City yard for Collection. This material includes both items generated at City Facilities and items abandoned in the public right-of-way, including items Collected by City crews and Contractor crews.

4.5.3 Special Events

Contractor shall provide Solid Waste Collection and Disposal/processing service for City-sponsored and community-driven events. This shall include providing Containers (Bins, Roll-off Boxes, clearly labeled Recyclable Materials Containers and cardboard waste boxes with liners) to Collect and Dispose of, or process, all Solid Waste, as determined by City. The Contractor shall provide these services at no cost to City, the ratepayers, or the event sponsors. City-sponsored events include, but are not limited to:

- Earth Day Celebration
- Movies and Concerts in the Park
- July 4th Celebration
- Founder's Day Parade and Celebration
- Community-driven events include, but are not limited to:
- Thoroughbred Avenue Holiday Lights

4.5.4 Annual Clean-Up Campaign

City holds approximately five (5) clean-up events per year. Contractor shall provide and service up to fifteen (15) forty (40) cubic-yard Roll-off Box pulls per year at no additional cost for these clean-up events. City estimates three (3) Roll-off Box pulls per event, but the number used at each event may be higher or lower, as determined by City. Contractor shall also provide

and service three (3) cubic-yard Bins at no additional cost for these clean-up events. City may exchange these Roll-off Box pulls for additional Bin pulls at a rate of six (6) Bin pulls per Roll-off Box pull.

4.5.5 Emergency Collection and Disposal Service

4.5.5.1 Emergency Collection

Contractor will assist City at City's request with emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by City, by providing Collection equipment and drivers normally assigned to City. Contractor may charge City for actual Disposal costs plus service rates per the Rate Schedule. Contractor shall develop an emergency action plan that will include items such as:

- Emergency contact names and numbers;
- A specific commitment of resources (such man-power, vehicles and refuse containers, to the extent not destroyed by the disaster) that would be made available to City in the event of a natural disaster;
- Optional resources that would be moved in from other locations should local resources be unavailable; and
- Contractor's plans for maximizing the amount of Recyclable Materials diverted from the waste and debris created by the disaster and to identify and secure disposal sites and capacity for such waste.

Contractor must obtain written City approval for this plan within sixty (60) days of the execution of this Agreement. City may ask Contractor to revise its submitted plan.

4.5.5.2 Alternative Service

Notwithstanding Section 4.5.5.1 or any other provision of this Agreement or the Municipal Code, Contractor agrees that, in the event that (i) Contractor is unable to respond within the time period requested by City for collection, cleanup and removal of debris resulting from an emergency or natural disaster, or (ii) the work requested by City is outside of Contractor's normal scope of Solid Waste and Recyclable Materials collection and disposal and sweeping operations, City shall have the right to engage other persons, firms, and entities to collect, cleanup and remove debris resulting from such emergency or natural disaster for a period ending on the date such collection, cleanup and removal is complete. Contractor shall not be required to pay any additional liquidated damages, fees, fines or other payments as a result of this Section 4.5.5.2.

4.5.6 Abandoned Item Collection

City crews provide abandoned item Collection services, delivering abandoned items to City yard for Collection and Disposal by Contractor.

4.6 Operations

4.6.1 Schedules

To preserve peace and quiet, Solid Waste in residential areas or in close proximity to residents shall only be Collected between 7:00 a.m. and 6:00 p.m. Solid Waste from Commercial Customers, not located within close proximity to residents, may be Collected between 6:00 a.m. and 6:00 p.m. No Sunday Collection is permitted without prior written approval from the City Manager. Collection is only permitted Monday through Friday for Cart Service, unless Contractor receives advance written approval from the City Manager. Saturday Cart Service Collection is permitted without advance approval if it is necessary due to Holiday scheduling or to Collect a missed pickup. Contractor shall notify City no later than 7:00 a.m. on the following Monday morning if it Collected from Cart Customers on a Saturday due to a missed pickup, and Contractor shall include the location of the missed pickup in the notice. If the regularly scheduled Collection day falls on a Holiday, Collection days for the remainder of that week shall all be postponed one Collection day, and regularly scheduled Collections shall resume by the following calendar week. If one of these Holidays falls on a Saturday, Contractor shall perform Collection on the following Monday. Holiday scheduling, including the addition or deletion of Holidays, is not permitted without advance written City approval.

Contractor shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with City at least once annually, and upon thirty (30) day written notice requesting a review of its operations plan. Contractor shall submit a copy of its Collection schedule and route map within seven (7) days if requested by City. If the plan is determined to be inadequate by City, Contractor shall revise it incorporating any changes necessary to make it satisfactory to City within thirty (30) days. No change in schedules and routing shall be implemented until fifteen (15) days after Contractor receives approval from City and notifies Customers.

4.6.2 Missed Pickups

When notified of a missed pickup, Contractor shall Collect the Refuse, Recyclable Materials, and/or Organic Materials that was not Collected no later than noon of the next Working Day.

4.6.3 Vehicles

A. General. Contractor is responsible for providing all vehicles required for the Collection of Solid Waste in sufficient number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor shall provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies.

B. Specifications. The fuel used by all Collection Vehicles shall be liquefied natural gas or compressed natural gas. Contractor shall observe and maintain a maximum vehicle age of ten (10) years for all Collection Vehicles. Contractor may use rebuilt Collection Vehicles, if the vehicles have been fully rebuilt to current standards and specifications; such vehicles may be

used for the ten (10) year period after the complete rebuild. All Collection Vehicles must be registered with the California Department of Motor Vehicles and shall have water-tight bodies designed to prevent leakage, spillage or overflow. Collection Vehicles that use other fuel than natural gas may be used as spares to replace Collection Vehicles that are unavailable for no more than a total of thirty (30) days per year per route, provided that the vehicles meet all other requirements of this Agreement.

At all times during the Term, Contractor's Collection Vehicles shall comply with all applicable air pollution control laws, including but not limited to South Coast Air Quality Management District (SCAQMB) emission standards for Solid Waste Collection Vehicles as established in the California Code of Regulations Title 13 Section 2020 et seq., and as they may be approved for Solid Waste removal vehicles, as well as other Applicable Law. Annually, Contractor shall provide City with documentation of such compliance for each vehicle. For example, with regard to SCAQMD regulations, such documentation shall demonstrate, at a minimum, the vehicle number, make, model, year, control technology used or planned, and the year that the control technology was applied or is planned to be applied.

C. Vehicle Identification and Labeling. Each Collection Vehicle shall be marked with Contractor's name, toll free phone number, and a vehicle identification number designated by Contractor for each Collection Vehicle which shall be prominently displayed on all such Vehicles, in lettering at least six (6) inches in height and in contrasting colors, on each side and the rear of all Collection Vehicles. City must approve truck labeling, and may place billboards with public notices on vehicles at no additional charge; no other advertising is permitted.

D. Cleaning and Maintenance.

1) Contractor shall maintain all properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.

2) Collection Vehicles shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. City may inspect Collection Vehicles or any other equipment used in providing service pursuant to this Agreement at any time to determine compliance with this Agreement. Contractor shall also make all Collection Vehicles available to the County of San Bernardino for inspection regarding health concerns and requirements, at any frequency it requests. Contractor agrees to replace or repair to City's satisfaction, any Collection Vehicle that City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

3) Contractor shall repaint any or all Collection Vehicles within thirty (30) days' notice from City, if City determines that their appearance warrants painting. City may not require a vehicle to be repainted if it has been repainted within the previous thirty-six (36) months.

4) 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 properly. Contractor shall perform all

scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all Collection Vehicle maintenance, recorded according to date and mileage, and shall make such records available to City upon request.

5) Contractor shall repair, or arrange for the repair of, all of its 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 maintain accurate records of repair, which shall include the date and mileage, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed and shall make such records available to City upon request.

6) Contractor shall clean up any leaks or spills from its vehicles per the National Pollutant Discharge Elimination System (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 clean-up efforts.

7) Upon request, Contractor shall furnish City 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, year of production, ID number, date of acquisition, type, capacity, and whether the vehicle is a spare.

E. Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Contractor's equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations (including but not limited to Section 17.66.050 of the Municipal Code), as well as other Applicable Law, and such noise control features shall be incorporated throughout the entirety of the Collection Vehicle fleet. Noise levels of equipment used for Collection shall comply with City ordinance and in no event shall the noise level exceed seventy-five (75) dba when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Contractor shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations.

Contractor shall be responsible for any damage resulting from or directly attributable to negligence or wrongful acts associated with any of its operations, and which it causes to: driving surfaces within the City, whether or not paved, public or private; associated curbs, gutters and traffic control devices; and all other public and private improvements.

F. Vehicle Certification. Contractor shall obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 et seq.) and regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 et seq.) and the regulations promulgated thereunder, as applicable to the vehicle. Contractor shall maintain

copies of such certificates and reports and shall make such certificates and reports available for inspection upon request by City.

G. City Inspection per Code. City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with applicable provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, and 42032. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms with Applicable Laws, and its return to service has been approved by City.

H. Vehicle Registration, Licensing and Inspection. Upon City request during the term of this Agreement, Contractor shall submit documentation to the City Manager to verify that each of the Contractor's Collection Vehicles is in compliance with all registration, licensing and inspection requirements of the California Highway Patrol, the California Department of Motor Vehicles, and any other applicable laws or regulations. Contractor shall not use any vehicle to perform Collection service that is not in compliance with applicable registration, licensing and inspection requirements. Each vehicle shall comply, at all times, with all applicable statutes, laws or ordinances of any public agency. Collection Vehicles will be subject to routine inspections by the California Highway Patrol. Certificates for such inspection shall be filed with the City upon request.

I. California Heavy Duty Inspection Program. No later than the start of service under this Agreement, Contractor shall submit to City verification that each Collection Vehicle has passed the California Heavy Duty Vehicle Inspection, to the extent applicable. Thereafter, Contractor shall cause each Collection Vehicle to be tested annually in the California Heavy Duty Inspection Program and shall submit written verification to City within ten (10) Working Days of the completion of such test. Contractor shall not use any vehicle that does not pass such inspection.

J. Correction of Defects. Following any inspection, the City Manager shall have the right to cause Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination shall be final.

4.6.4 Containers

Contractor shall provide Customers (including City Facilities) Containers to be used under this Agreement, at no extra charge, with the exception of compaction units and receivers.

4.6.4.1 Carts

A. Cart Selection, Distribution and Exchanges

Contractor shall provide Residential Customers with Containers as specified in Sections 4.2.1, 4.3.1.3, and 4.3.2.2

Customers may each request one (1) free Container exchange per calendar year. One exchange includes all Cart size changes included in the same Customer request and may include changes made to any number of the Customer's Carts. If a second request is made in any calendar year, Contractor may charge for each request, regardless of the number of Carts exchanged, in accordance with the Rate Schedule. This procedure shall be described in Contractor's public education materials.

B. Cart Design Requirements

Carts and Cart lids must meet color, size, uniformity, and quality requirements of City. City will not permit Carts and Cart lids with inconsistent colors or in poor condition to be used within the City at any time during the term of this Agreement, and may require Contractor to replace such Carts.

All Carts provided by Contractor utilized in the performance of this Agreement shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City's approval prior to Contractor placing order for Carts.

C. Capacity

The references in Sections 4.2.1, 4.3.1.3, and 4.3.2.2 to Cart sizes of ninety-six (96) and sixty-four (64) gallons may be approximate. The Cart size, excluding lid capacity, may fall within the following range:

- 60 – 70 gallons
- 90 – 101 gallons

The selected sizes must be consistent throughout City for a uniform appearance.

D. Cart Color and Appearance

The Refuse Carts shall be black or grey, the Recycling Carts blue and the Green Waste Carts green in color.

The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be approved in advance by City. Cart colors shall be consistent throughout City.

4.6.4.2 Cart Maintenance and Replacement Responsibilities

Contractor shall be responsible for Cart repair and maintenance, unlimited graffiti removal, and replacing lost, stolen, damaged, worn-out or otherwise unsightly Carts within two (2) Working Days at no additional charge to the Customer or to City, unless Contractor can demonstrate to the City Manager beyond a reasonable doubt that the damage or loss was due exclusively to the Customer's intentional or negligent behavior. The City Manager's determination shall be final and binding. If City permits a repair or replacement charge to be

assessed against a Customer, charge shall be no more than the actual cost of repair or the Contractor's purchase price for a new Cart, whichever is lower. No shipping/handling/delivery costs are to be charged to City or Customer. All repairs must restore the Cart to its full functionality.

Replacement of lost/stolen Carts at no cost to Customer may be limited to one of each type (Refuse, Recyclable Materials, Green Waste) for each dwelling unit during the Contract term.

4.6.4.3 Bins

A. Cleaning. Contractor shall provide Customers with Bins required during the Term at no extra charge. Contractor shall maintain Bins in a clean, sound condition free from putrescible residue. All Bins in use shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other apparatuses, which were designed for movement, loading, or unloading of the Bin shall be maintained in good repair.

Upon Customer or City request, or if required to maintain the Containers in a clean condition, Contractor shall clean all Bins for a fee in accordance with the Rate Schedule. When a Bin is removed for cleaning, Contractor shall replace the Bin, either temporarily or as a change-out, with another Container. Contractor shall remove graffiti from any Container within two (2) Working Days of request by City or Customer. Contractor is required to proactively look for graffiti when Collecting Bins, with all graffiti removed from Containers in no later than one (1) Working Day after any Collection without notification.

B. Bin Identification and Color. Each Bin placed within the City by Contractor shall have the name of Contractor and phone number high on the exterior of the Bin so as to be visible when the Bin is placed for use. Contractor shall label Bins with English and graphic instruction on what materials should and should not be placed in each Bin. Contractor shall repaint Bins upon City's request if City deems it necessary to maintain a neat appearance. All Refuse Bins shall be painted a uniform color of dark grey, all Recycling Bins shall be painted a uniform color of white, and all Organic Materials Bins shall be painted a uniform color of green.

4.6.4.4 Roll-off Boxes

Contractor shall provide sufficient Roll-off Boxes to meet City's demand throughout the Term of the Agreement, and will keep all Roll-off Boxes clean, free from graffiti, equipped with reflectors, and with the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of the Roll-off Box so as to be visible when the Roll-off Box is placed for use. Contractor shall properly cover all open Roll-off Boxes during transport as required by the State Vehicle Code.

4.6.4.5 Repair of Bins and Roll-off Boxes

Contractor shall be responsible for repair and maintenance of Bins and Roll-off Boxes at no additional charge, and replacing lost, stolen or damaged Bins and Roll-off Boxes within two (2) Working Days at no additional charge to the Customer or to City. All repairs must

restore the Bins and Roll-off Boxes to their full functionality. Unsightly/worn-out Bins and Roll-off Boxes shall be replaced by Contractor upon Customer request.

4.6.5 Litter Abatement

A. Minimization of Spills. Contractor shall use due care to prevent Solid Waste, or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste, or fluids leak or spill during Collection, Contractor shall promptly clean up all such materials. Each Collection Vehicle shall carry a broom, shovel, absorbent, and containment materials at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, or accidental damage to a vehicle, without prior written approval by City.

B. Clean Up. During the Collection or transportation process, Contractor shall clean up all litter spilled during Collection or otherwise caused by Contractor. Contractor shall leave a "red tag" notice for Customer if litter not caused by Contractor is found in Container enclosure or around Containers. Contractor may charge Customers in accordance with the Rate Schedule for the cleaning of Container enclosures or around the Container if it is littered due to overflowing Containers. Contractor may address habitual offenders in accordance with Section 4.2.6.

In the event of a spill of materials (vehicle fluids, etc.), Contractor shall provide a clean-up of the spill to the satisfaction of City and other governing agencies. Clean-up methods may include pressure washing (Contractor must capture and reclaim water) or other similar clean-up methods.

4.6.6 Personnel

A. Qualified Personnel. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. The Contractor shall be responsible for ensuring that its employees comply with all Applicable Law and meet all federal, State and local requirements related to their employment and position.

B. Hazardous Waste Employee Training. Contractor shall establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection Vehicles, nor knowingly dispose of such Hazardous Wastes at the processing Facility or Disposal Site.

C. Customer Courtesy. Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be

discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 5.2.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or, with City approval, disciplined and appropriately trained.

D. Unauthorized Material Removal. Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

E. Training. Contractor shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

F. Compliance with Immigration Laws. Contractor shall be knowledgeable of and comply with Applicable Law. Contractor warrants and represents that all of its employees, including any and all prospective employees hired to perform services for City under this Agreement and the employees of any subcontractor retained by the Contractor to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable State and federal laws, rules and regulations, including, but not limited to, the Immigration and Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor agrees to verify the legal status of all of its employees and provide documentation of such verification whenever requested by City. If Contractor discovers that any employee it has retained is not in compliance with Immigration Laws, Contractor agrees to terminate such employee.

G. Representations. Contractor's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of City. Contractor's employees shall wear a company uniform when performing services on behalf of Contractor within the City.

4.6.7 Identification Required

Contractor shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses within the City, including drivers. City may require Contractor to notify Customers yearly of the form of its identification. Contractor shall provide a list of current employees, companies, and subcontractors to City upon request.

City reserves the right to perform a security and identification check through applicable law enforcement agencies on the Contractor and all its present and future employees employed by Contractor to work within the City, in accordance with accepted procedures established by City, or for probable cause.

4.6.8 Fees and Gratuities

Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit 4 as updated and approved by City throughout the Term.

4.6.9 Non-Discrimination

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal, State or local law.

4.6.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

Contractor shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within one (1) Working Day of such observation.

4.7 Transportation of Solid Waste

Contractor shall transport all Solid Waste Collected to a Facility approved by City pursuant to Section 4.8. Contractor agrees to make all reasonable efforts to separate Recyclable Materials and Organic Materials from Refuse for Diversion from landfill Disposal.

Contractor shall maintain accurate records of the quantities of Solid Waste by material type (e.g., Refuse, Recyclable Materials, Organic Materials, Construction and Demolition Debris) transported to all Facilities utilized and will cooperate with City in any audits or investigations of such quantities.

Contractor shall cooperate with the operator of any Disposal Site or Facility it uses with regard to operations therein, including, for example, complying with directions from the operator to unload Collection Vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

4.8 Designated Facilities

Contractor shall designate each Transfer Station, processing Facility or other Facility used by Contractor in the fulfillment of this Agreement, unless City exercises its rights pursuant to Section 4.8.4. Contractor must receive written advance approval from City to use each

Transfer Station, processing Facility or other Facility used by Contractor in the fulfillment of this Agreement. When requesting approval for a new facility, Contractor shall provide the reasoning for such a change to City. Contractor is responsible for ensuring that each Facility it uses is properly permitted prior to requesting City approval to use such Facility.

Contractor guarantees City capacity at the West Valley MRF in the City of Fontana, CA, owned and operated by Contractor, for the Agreement Term for all of City's Refuse, Recyclable Materials and Organic Materials generated and required to be Collected under this Agreement.

4.8.1 Disposal Site

The Contractor shall dispose of Refuse Collected that is not required to be processed, at the Disposal Site designated by Contractor. Contractor has designated the Riverside County Landfills, Lamb Canyon Landfill, and El Sobrante Landfill as the Disposal Site(s) as of the Effective Date of this Agreement.

4.8.2 Designated Recycling Facility

Contractor has designated the West Valley MRF as the Recycling Facility as of the Effective Date of this Agreement ("Designated Recycling Facility"). Contractor shall deliver all Recyclable Materials collected within the City to the Designated Recycling Facility, at Contractor's expense and in accordance with Applicable Law. Contractor shall ensure that, after processing, residue material shall not exceed the amount permitted by Applicable Law. Contractor shall ensure that Recyclable Materials are used in a manner that is classified as Diversion.

4.8.3 Designated Organic Materials Processing Facility

Contractor has designated the West Valley MRF as the Organic Materials Processing Facility as of the Effective Date of this Agreement ("Designated Organic Materials Processing Facility"). Contractor shall deliver all Organic Materials collected within the City to the Designated Organic Materials Processing Facility. Organic Materials Collected under this Agreement shall not be used as landfill alternative daily cover ("ADC").

4.8.4 Facility Replacement Due to Non-Compliance with Applicable Law

Contractor shall ensure that the Disposal Site, Designated Recycling Facility, Designated Organic Materials Processing Facility, and other designated Facilities are properly permitted and in compliance with Applicable Law at all times during the Term. Contractor shall immediately inform City Manager in writing in the event of any non-compliance of which it has knowledge, and City, in its reasonable discretion, shall have the right to require the use of a different Disposal Site, Designated Recycling Facility, Designated Organic Materials Processing Facility, or other designated Facility, to be selected by Contractor.

City may also, in its reasonable discretion, require the use of a different site (to be selected by Contractor) at any time during the Term if the Disposal Site, Designated Recycling Facility, Designated Organic Materials Processing Facility, or other designated Facility is found to not be in compliance with the provisions of Sections 2.6.(i), 2.6.(j) or 2.6.(k) (as the case may

be), and City determines that the Disposal Site, Designated Recycling Facility, Designated Organic Materials Processing Facility, or other designated Facility is not acceptable due to a failure to comply with the terms of this Agreement or a finding by State or federal regulatory agencies that it is not in compliance with Applicable Law, including the Environmental Laws, and is unable to accept City's Solid Waste (or any portion thereof). Under no circumstances, however, shall a change in one (1) or more of Disposal Site, Designated Recycling Facility, Designated Organic Materials Processing Facility or other designated Facility pursuant to this Section provide a basis for an increase in Customer rates, unless the increased cost is 10% or greater.

4.9 Status of Disposal Site

Any Disposal Site utilized by Contractor, shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such Disposal Site shall have been issued all permits from federal, State, regional, county and city agencies necessary for it to operate as a Class III Sanitary Landfill and be in full regulatory compliance with all such permits.

4.10 Dedicated Routes

Solid Waste Collected within the City shall not be commingled in Collection Vehicles with Solid Waste from other jurisdictions unless and until Contractor has obtained written advance approval from City as to the Contractor's method of tonnage allocation.

4.11 Route Audit

Upon City request, but not more often than every three (3) years, Contractor shall conduct an audit of its Collection routes within the City at Contractor's expense. City may use information from the audit to develop a request for proposals for a new service provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. City will establish the deadlines by which Contractor will provide City with (A) routing and account information, and (B) the route audit summary report.

The route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver of each Customer within the City. This person(s) is to be approved in advance by City. The routing and account information shall include, as a minimum, the following information for each account:

For Cart Customers:

- Route Number;
- Truck Number;
- Number of Cart Customers;

- Number and size of Carts by material stream (Refuse, Recyclable Materials, Organic Materials); and,
- Cart condition.

For Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Service Level per Contractor Billing system (quantity, size, frequency);
- Observed Containers (quantity, size);
- Container condition;
- Proper signage; and,
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results of the audit. The route audit summary report shall include:

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Cart and Bin);
- Confirmation that all routes are dedicated exclusively to City Customers;
- Number and type of exceptions observed;
- Total monthly service charge (Cart and Bin), pre-audit; and,
- Total monthly service charge (Cart and Bin), post-audit (subsequent to corrections of identified exceptions).

The route audit summary report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The route audit summary report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or its representative.

4.12 Routing Plan Approval

Contractor's routing plan is subject to City approval and will limit cross-City traffic, traffic on major streets during rush hour, and avoid streets by schools at times when children are going to and coming from school.

4.13 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Solid Waste service recipient, Contractor shall notify its service recipient in writing, at the time Collection is not made, through the use of a "red tag" or otherwise, of the reasons why the Collection was not made, pursuant to Section 4.14.2.

B. Hazardous Waste Inspection and Reporting. Contractor reserves the right to inspect Solid Waste set out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste set out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control, Local Emergency Response Providers, and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify the City Manager. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Waste that may come into their possession.

C. Hazardous Waste Diversion Records. Contractor shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from service recipients within the City, but diverted from landfilling, and properly disposed at a licensed facility for such Hazardous Waste.

4.14 Diversion Requirements

4.14.1 Minimum Diversion Requirements

Contractor shall divert from landfilling a minimum of thirty percent (30%) of all Solid Waste it Collects under this Agreement. Compliance will be measured, initially, for the first

period from July 1, 2016 to December 30, 2016, and subsequently on a calendar year basis. Solid Waste Collected shall only be considered to have been Recycled or diverted as required under this Agreement if it is deemed to be Diversion by CalRecycle in connection with efforts to meet City's Diversion goals. Contractor shall provide documentation to City within thirty (30) days of the end of each calendar year stating and supporting that calendar year's Diversion rate. Diversion from sources other than Contractor's Collection and Diversion efforts (such as source reduction, reuse, or Recyclable Materials diverted by Solid Waste enterprises, Collection of materials that are not the subject of this Agreement or the efforts of self-haulers) is not to be counted as Diversion achieved by Contractor.

If these Diversion requirements are not met, City may instruct Contractor to initiate new programs in order for this goal to be met on a consistent basis.

4.14.2 Warning Notice

Contractor shall place a red tag or other warning notice approved by City on all Solid Waste Containers that are not properly set out, and on Recyclable Materials or Organic Materials Containers that are contaminated, indicating to the Customer why the load was not Collected and/or diverted, and providing Contractor's phone number. For Bin Customers, or Cart Customers with off-site management such as small apartment buildings, Contractor shall also mail a copy of the warning to the Customer's Billing address. The warning notice shall be affixed prominently onto the Container to ensure that it is not inadvertently removed due to weather conditions. The warning notice must be protected from rain, if precipitation is present or forecasted, by placing it in a clear plastic bag prior to affixing to Container. The warning notice shall be at least two (2) inches by six (6) inches in size. The warning notice must identify the steps the Waste Generator must take to recommence Collection service.

Contractor shall document warning notices, recording the date and time of issuance, address of service recipient, reason for issuance, name of employee who issued the notice, and truck and route numbers. Contractor shall notify City on a monthly basis of any warning notices issued pursuant to this Section, and shall provide copies of such warnings to City upon request. With prior written City authorization, Contractor may remove Recyclable Materials and Organic Materials Containers from habitual contaminators that have received a total of three (3) warnings on either or both Containers in any six-month period. Recyclable Materials and Organic Materials Containers for Cart Customers will be returned only after six (6) months, or upon direction of City, or if there is a change of occupancy. Recyclable Materials and Organic Materials Containers for Bin Customers will be returned upon written direction of City or if there is a change of occupancy.

4.14.3 End Uses for Organic Materials

Contractor shall divert Organic Materials Collected through weekly Cart (including Customer-provided Containers), Bin, and bundle Collection, and holiday tree Collection from Disposal. Contractor must provide end uses for Organic Materials that maximize Diversion credit for City according to regulations established by CalRecycle. Contractor shall not process Organic Materials as Alternative Daily Cover (ADC) unless City receives Diversion credit for that use. Contractor is responsible for monitoring how the Organic Materials will be diverted at

the Designated Organic Materials Processing Facility and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to obtain full Diversion credit for Organic Materials shall be considered a material breach and constitute an event of default by the Contractor. City has the option, but not obligation, to direct Contractor where to deliver the material. If Contractor is using an Organic Materials processing facility that is in full compliance with the terms of this Agreement and providing full Diversion credit, and City directs Contractor to use another facility at an additional cost to the Contractor, Contractor may request a rate adjustment for such additional costs. City may review the request for accuracy and reasonableness and shall grant a reasonable rate adjustment.

4.15 Construction and Demolition Debris Collection

Contractor shall provide Construction and Demolition Debris Collection services in accordance with the requirements set forth in Exhibit 6, at rates that do not exceed those set forth in the Rate Schedule. Failure to comply with the requirements of Exhibit 6 shall subject Contractor to all remedies available to City under this Agreement or otherwise, including but not limited to the liquidated damages described in Section 11.3. Further, if liquidated damages relating to Construction and Demolition Debris Collection services are assessed in any calendar year in an amount exceeding two thousand and five hundred dollars (\$2,500.00), City shall have the right to terminate the exclusive right to collect Construction and Demolition Debris, upon ten (10) days written notice to Contractor.

Contractor shall conduct and complete a comprehensive review of C&D rates (collection, processing, and disposal) by September 30, 2016. The C&D Rate Review shall include review of the rates charged by private haulers that specialize in collection and processing of C&D materials, as well as tipping and processing fees charged at facilities accepting C&D material.

Contractor shall provide a copy of the C&D Rate Review to the City. If the report shows that the rates charged by Contractor (including tipping and processing fees charged at facilities accepting C&D material) are not within the lowest third of those charged by private haulers that specialize in collection of C&D materials, Contractor shall deliver to City a written implementation plan to reduce C&D rates without decreasing the minimum diversion requirements. The implementation plan is to be submitted within thirty (30) days after receipt of the C&D Rate Review report. Any changes to C&D Debris Collection rates shall be submitted following the agreed upon rate adjustment schedule for adjustments effective July 2017.

City may require Contractor to hire a consultant (“Rate Consultant”), at no cost to the City, should the Contractor be unable to complete a comprehensive C&D Rate Review by September 30, 2016.

4.16 Street Sweeping Services

If in the future, the City satisfies its obligations under the Myers-Milias-Brown Act with regard to contracting out the following services, Street Sweeping Services pursuant to Exhibit 1, Contractor agrees that, upon request of the City, it will amend this Agreement to provide Street Sweeping Services in accordance with the requirements set forth in Exhibit 1 and at no charge to City or Customers, within three (3) days after receipt of notice from City.

ARTICLE 5.
OTHER SERVICES

5.1 Customer Billing

5.1.1 Residential Customer Billing

Contractor shall Bill Residential Customers on a bi-monthly basis (such that each Billing represents two (2) months of service) in advance of service. Contractor shall Bill any one-time charges, such as extra Bulky Item or overage pickups.

If payment is not made by the due date, Contractor shall notify Customer in writing that the payment is late. If payment is not made within thirty (30) days after the due date, Contractor shall notify Customer that the invoice is over-due and that non-payment will result in further collection action. If payment is not made within sixty (60) days after the initial due date, Contractor may submit a list of overdue Customers to the City Manager who shall pursue collection remedies in accordance with the Municipal Code.

Billings shall include Contractor's telephone number for Billing and service inquiries.

5.1.2 Commercial Customer Billing

Contractor shall Bill Commercial Customers monthly at the beginning of the month, with payment due no sooner than thirty (30) days after the invoice date. Contractor shall Bill any one (1) time charges, such as extra pickups or extra Bin cleanings.

If payment is not made by the due date, Contractor shall notify Customer in writing that the payment is late. If payment is not made within thirty (30) days after the due date, Contractor shall notify Customer that the invoice is over-due and that non-payment will result in further collection action. If payment is not made within sixty (60) days after the initial due date, Contractor shall submit a list of overdue Customers to the City Manager who shall pursue collection remedies in accordance with the Municipal Code.

Billings shall include Contractor's telephone number for Billing and service inquiries.

5.1.3 Senior Rate Discount

Special rates are available for qualifying Senior Cart Customers, as shown in the approved Rate Schedule. "Senior(s)" are defined as persons who are sixty (60) years of age or older. To qualify for this reduced rate, the Senior must reside at the Premises, own or lease the Premises in his/her name, and the Bill must be in the Senior's name. Senior landlords are not entitled to the discount. Contractor may request Seniors to re-confirm their entitlement to this reduction no more than once per year, using an application form that must be approved in advance by City. Contractor shall handle the administration of this reduced rate. In the event of dispute between Contractor and Customer as to the applicability of the Senior rate discount, the City Manager shall make the determination, which determination shall be final and binding.

5.1.4 Contractor's Invoices

Bills must include a customer service telephone number, itemized service description documenting each charge, including but not limited to, number and size of Containers, frequency of service, special services, and period billed for. City must approve Contractor billings as to content and format of invoice. All bills must carry a due date, and shall not use the phrase "due upon receipt." Bills must use the rates as they appear on the Rate Schedule, and will not separately itemize City fees, surcharges, Disposal components or other breakdown of rates without advance written approval from City.

5.1.5 Customer Billing Adjustments

Should Contractor determine that Contractor has under billed a Customer, or Customers, Contractor may back-Bill for no more than six (6) months. Amounts overbilled to Customers shall be refunded upon discovery and such refunds are not limited by time.

5.1.6 Late Payments

Contractor may charge a maximum of twenty dollars (\$20.00) per check fee for checks returned for lack of sufficient funds. In no event may Contractor charge an interest rate or a check fee in excess of that permitted by State or Federal law.

5.1.7 Electronic Billing and Payment

Contractor shall offer electronic invoice payment to Customers at no additional charge.

5.1.8 Public Hearing Notices

Upon City request, Contractor shall produce, manage and fund distribution of, and manage return correspondence related to public hearing notices regarding rate adjustments.

5.2 Customer Service

5.2.1 Local Office

Contractor shall maintain an office, which shall be open ("Office Hours"), at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of Holidays. Contractor shall also provide a telephone number for service calls. The telephone number shall be a toll-free number from all portions of City. Contractor shall be available to take live service calls at this telephone number between 8:00 a.m. and 5:00 p.m. on Monday through Friday, and between 8:00 a.m. and 12:00 p.m. on Saturday ("Telephone Service Hours").

Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. If City receives more than five (5) complaints in any thirty (30) day period that Customers are unable to contact Contractor by phone, City may require Contractor to increase capacity. Contractor shall have either a representative, a message machine, or an answering service available outside of Telephone Service Hours. Calls received outside of Telephone Service Hours shall be responded to on the next Working Day.

Contractor's route supervisor shall remain accessible by phone during Collection hours. The Contractor shall provide City with an emergency phone number where the Contractor can be reached outside of the required Office Hours. A live person, not voice-mail, shall be available at that number at all times, twenty-four (24) hours per day.

5.2.2 Complaint Documentation

Service complaints received by City will be directed to Contractor. Contractor shall keep daily logs of complaints forwarded to it for a minimum of three (3) years.

Contractor shall log all complaints received, including the date and time the complaint was received, the name, address and telephone number of the caller/complainant, 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. Log shall also include each instance that Solid Waste is not Collected and the form of notification used to inform the participants of the reasons of non-Collection and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received. All complaints, both oral and written, shall be initially responded to within one (1) Working Day of receipt. Contractor shall use commercially reasonable efforts to resolve complaints within two (2) Working Days. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request. City 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.

5.2.3 Resolution of Customer Complaints

Should Contractor and Customers not be able to resolve a complaint, not be able to establish a mutually acceptable fee to be charged for services not included on the Rate Schedule, or otherwise disagree, the matter shall be determined by the City Manager, and the City Manager's decision shall be final.

Intervention by City 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 affect the remedies of third parties against Contractor.

5.2.4 Service Liaison

Contractor shall designate in writing a "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints. City shall be notified in advance of any change in Service Liaison. Service Liaison shall be accessible to City daily by phone or in person.

5.3 Education and Public Awareness

5.3.1 General

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of the Act, including AB 341 and AB 1826. Accordingly, Contractor agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Solid Waste and to cooperate fully with City in this regard.

Contractor shall maintain its own program of providing information relevant to needs and methods to reduce, reuse and Recycle Solid Waste, including materials for inclusion with its Bills. All public education materials, including those listed in Section 5.3.2 below shall be approved in advance by City prior to reproduction and distribution.

5.3.2 Implementation and On-going Education Requirements

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in English and in graphics wherever applicable. All brochures, mailings, and other educational materials are to be approved by City in advance of distribution. A public education plan ("Public Education Plan") shall be submitted to City for review within sixty (60) days after the Effective Date. The plan shall address the items described in this Section.

- New Customer "How-to" Packets – An information packet shall be provided to each new Customer throughout this Agreement term. This packet shall: describe available services, including available Recycling and Diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail Holiday Collection schedules; and provide Billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions, and for Bulky Item pickups.

The packet should also clearly indicate what materials, such as syringes and other sharps, and other Household Hazardous Wastes (HHW), should not be disposed of in these Containers. This packet shall include instructions on how Customers should dispose of HHW, such as information on the HHW drop-off facilities and other available programs.

When new Customers contact Contractor to start service, Contractor shall provide new Customers with the option of receiving this new Customer "How-to" packet through electronic mail.

- Billing Inserts – Contractor shall insert notices in Contractor's Billings for each Customer type (Residential and Commercial). Content for such notices will be

provided by City and prepared by Contractor for production and distribution. Billing inserts for Residential Customers will be provided six (6) times per year and Billing inserts for Commercial Customers will be once per quarter. The Billing inserts shall be two (2) page, full color inserts. Additionally, City may periodically request that Contractor include informative language directly on the invoices it sends.

- Annual Brochures/Mailings – Not less than once per calendar year, Contractor shall prepare and distribute to each Customer a mailing to update Customers regarding program basics, program changes, Holiday schedules and other service related information. Mailings should promote and explain: all Solid Waste programs offered by City and Contractor (such as Recycling, Organic Materials, holiday tree and Bulky Item Collections) described in detail; the environmental, regulatory, and other benefits of participating in Recycling; how to properly dispose of Household Hazardous Waste such as syringes, paint, etc.; Collection schedules, including Holiday schedules; Customer service numbers; and the procedures to begin and terminate services. This brochure shall be at least four (4) pages, and printed in full color. Contractor is responsible for all associated costs.
- Multi-Unit Recycling Flyers – Not less than once per calendar year, Contractor shall prepare and distribute to each Multi-Family Customer a two (2) page, full color flyer in English and Spanish, that lists items that can be Recycled. Such flyers shall be distributed annually to property management for distribution by property management to occupant(s) of each unit.
- Container Labels and Hot Stamps – Refuse, Recyclable Materials, and Organic Materials Containers shall carry stickers/labels and hot stamps as described in Sections 4.6.4.1.E and 4.6.4.3.B.
- Corrective Action Notice – Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection, which explains the appropriate manner for Disposal of such items (“red tags”).
- Mandatory Recycling and Organics Notices – Not less than once per calendar year, Contractor shall work with City to prepare and shall distribute to each Commercial and Multi-Family Customer not in compliance with AB 341 and/or AB 1826, notification of the Customer’s non-compliant status.
- Commercial Recycling and Organics Outreach – Upon City request, Contractor shall participate in and/or present at community and trade organization meetings regarding achieving and maintaining compliance with AB 341 and AB 1826.
- Website – Contractor shall develop and maintain a website to enable Customers to contact Contractor and to display Holiday schedules, proper HHW disposal

procedures, which materials are to be placed in Refuse, Recyclable Materials, and Organic Materials Containers and other useful information.

- Contractor's website will provide Customers the means of entering their address to easily determine what their new Collection day will be.
- Facility Tours – Contractor shall offer tours of the Designated Recycling Facility and Designated Organic Materials Processing Facility to members of the public (including school groups, etc.) upon request.

5.3.3 Contractor Representative

Contractor shall retain on its staff an individual who shall, as part of his or her job function, routinely visit civic groups, school assemblies, homeowners' associations, Multi-Family complexes and businesses, to promote and explain the Recycling and other programs Contractor offers, and participate in demonstrations, and civic events.

5.3.4 Community Events

At the direction of City, Contractor shall participate in and promote Recycling and other Diversion techniques at community events and local activities. Such participation would normally include, but is not limited to, providing without cost, assistance with event set-up and break-down, document shredding services for Residential event attendees, and Collection, educational and publicity information promoting the goals of City's Solid Waste program.

5.4 Waste Generation/Characterization Studies

Contractor acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of the Act. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, diverted or otherwise handled/processed, by Customer type (Cart, Bin, Roll-off Box), to satisfy the requirements of the Act. Contractor will, at its sole expense, conduct such a waste generation and characterization study to be scheduled at least two (2) times per calendar year for each category of service (i.e., Residential, Commercial, Roll-off Box). In the event that City requests multiple distinct geographic service areas to be studied simultaneously, each geographic area studied shall count as a single study.

ARTICLE 6. **CONTRACTOR COMPENSATION AND RATES**

6.1 General

The maximum rates set forth in Rate Schedule attached hereto as Exhibit 4, and as more fully defined as Contractor Compensation in this Article, shall be the maximum amount Contractor may charge Customers as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, letters of

credit, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor shall impose no other charges for services provided to Customers unless approved in advance in writing by the City Manager.

Contractor shall not charge for Collection at Premises owned and/or operated by City now and in the future.

6.2 Schedule of Future Adjustments

Beginning with the Rate Period starting July 1, 2017 and ending on June 30, 2019 and for all subsequent Rate Periods, Contractor may request a bi-annual adjustment to the maximum rates shown in Exhibit 4. The Contractor shall submit its request in writing, to be received by City in Person or via certified mail or by other means approved by City, by the preceding April 1st, and shall be based on the method of adjustment described in Section 6.3 and Exhibit 5. Failure to submit a written request by April 1st shall result in Contractor waiving the right to request such an increase for the subsequent Rate Period. Missed rate adjustments may not be added to rate adjustment applications in ensuing years. Adjustment to the maximum rates is subject to the approval of the City Council at a public hearing, although the Council's discretion shall be limited to determining, based on substantial evidence, whether the requested maximum rate adjustment meets the requirements as set forth herein.

6.3 Method of Adjustments

6.3.1 General

Pursuant to Section 6.2, the Contractor may request an adjustment to the maximum rates according to the method described below and the detailed formulas shown in Exhibit 5, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

City may, but is not required to, implement the bi-annual rate adjustment if Contractor does not request it. If an annual adjustment that would have resulted in a rate decrease is not implemented for any reason, the next rate adjustment will be measured based on the change in indices from the last implemented rate adjustment; the intent is to ensure subsequent rate increases shall be offset with any decrease not previously implemented.

6.3.2 Minimum and Maximum Rate Adjustments

In no event may the adjustment in any rate pursuant to this Article 6 and Exhibit 5, be an increase of more than five percent (5%) compared to the previous Rate Period. In the event that calculations in accordance with Exhibit 5 result in an increase above five percent (5%), any amount above five percent (5%) shall be carried forward, or applied in subsequent Rate Periods.

For purposes of adjusting rates on July 1, 2017 only, for rates effective during Rate Period 2017-2019, the maximum increase allowed for Residential rates shall be three and one-half percent (3-1/2%) over the prior Rate Period.

6.3.3 Rate Adjustment Calculation

All rates (including Cart, Bin, Roll-Off Box and all other ancillary rates) will be adjusted using the methodology described in Exhibit 5. See Exhibit 5 for details, including an example calculation.

6.4 Extraordinary Adjustments

6.4.1 General

Contractor may request in writing an adjustment to maximum rates other than that allowed under Section 6.2 in the event of extraordinary changes in the cost of providing service under this Agreement. Contractor may submit a request not more frequently than once every twenty-four (24) months. Such changes shall not include changes in tipping fees for Refuse Disposal of less than 10%, changes in Recyclable Materials or Organic Materials processing costs of less than 10%, changes in the market value of Recyclable Materials of less than 10%, inaccurate estimates by the Contractor of its anticipated cost of operations, unionization of Contractor's work force, change in wage rates or employee benefits, or the inability of the Contractor to Dispose of any or all Refuse at a selected landfill, including due to closure of the Disposal Site. The only exception that would permit an extraordinary adjustment based upon changes to the Refuse Disposal gate rate of less than 10% would be an increase in a direct per ton surcharge assessed at the Disposal Site by federal, State or local regulatory agencies after the Effective Date. Contractor is expected to comply with SCAQMD Rule 1193, and the Air Resource Board's emission standards as they may be approved for Refuse removal vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the Term, with no additional compensation. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this Section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three (3) years for the services provided under this Agreement.

City shall review the Contractor's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. City may require Contractor to fund a review of any extraordinary rate adjustment, by a third party of City's choosing, up to thirty-five thousand dollars (\$35,000.00) per request.

6.4.2 Supporting Information

Any request for an adjustment to the maximum rates made pursuant to Section 6.4.1 shall be accompanied by a copy of Contractor's certified annual financial statements prepared by a Certified Public Accountant, which shall have been prepared in compliance with Rule 58 of the

“Rules and Regulations of the State Board of Accountancy,” as established by the California Code of Regulations, Title 16, Chapter I. Such Certified Public Accountant shall be entirely independent of the Contractor and shall have no financial interest whatsoever in the business of Contractor. City may specify the form and detail of the financial statements.

ARTICLE 7.
REVIEW OF SERVICES AND PERFORMANCE

7.1 Performance Review Meeting

City may hold a meeting or a public hearing annually to review Contractor’s Solid Waste Collection efforts, source reduction, processing and other Diversion services and overall performance under this Agreement (the “Performance Review Meeting”). The purpose of the Performance Review Meeting 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, 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 Performance Review Meeting 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 goals of the Act, including AB 341 and AB 1826, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Performance Review Meeting.

City shall notify Contractor of its intent to hold a Performance Review Meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from City of a Performance Review Meeting, Contractor shall submit a report to City which may contain such information as it wishes to have considered, and shall contain the following:

- a) Current Diversion rates and a report on Contractor’s outreach activities for the past year.
- b) Recommended changes and/or new services to improve City’s ability to meet the goals of the Act, including AB 341 and AB 1826, and to contain costs and minimize impacts on rates. A specific plan for compliance with the Act, including AB 341 and AB 1826, shall be included.
- c) Any specific plans for provision of new or changed services by Contractor.
- d) Reports on Customer complaints.

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 Performance Review Meeting. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Performance Review Meeting, and any

Customer may submit comments or complaints during or before the Meeting, either orally or in writing. Contractor shall be present at and participate in the Performance Review Meeting.

As a result of its findings following any Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof). Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 2.10.1.

7.2 Performance Satisfaction Survey

If requested by City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Performance Review Meeting held pursuant to Section 7.1, or for other City uses. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Performance Review Meeting, or other City deadline for results. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor and/or for the consideration of changes in/additions to Solid Waste Services offered. The survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Contractor to send out separate Single Family and Multi-Family/Commercial surveys. City will have final approval over content and format; City may edit Contractor's draft or draft the survey itself. Contractor must receive written approval of the surveys' content and format, and the distribution list, from City prior to mailing. City may require that Contractor have Customer responses to the survey returned directly to City. If the survey is conducted for the Performance Review Meeting, the survey results shall be made available to City thirty (30) days prior. City may require Contractor-funded surveys up to once annually.

ARTICLE 8. **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

8.1 General

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Law and to meet the reporting and Solid Waste program management needs of City. To this extent, such requirements set out in this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to exactly or comprehensively define the scope and content of the records and reports. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this Agreement shall be adjusted in number, format, or frequency.

Contractor shall maintain all records necessary to allow City to determine Contractor's compliance with the terms of this Agreement and compliance with the performance standards presented in this Agreement. The records shall be maintained in a manner that allows for easy verification of Contractor's performance.

8.2 Records

8.2.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected, backed up and stored at a separate site from the original data. All records shall be maintained for five (5) years, and shall continue to be available for five (5) years after the expiration of this Agreement, unless a shorter retention period is specifically provided in this Agreement (e.g., Section 5.2.2 "Complaint Documentation"). After minimum holding periods are met, Contractor will notify City ninety (90) days before destroying records.

Contractor agrees that the records of any and all companies conducting operations addressed in this Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to City by computer for a minimum of five (5) years. City may review or utilize any of the records described in this Section for any purpose whatsoever. Such records include, but are not limited to, financial, Solid Waste, CERCLA and Disposal records.

8.2.2 Financial Records

Contractor shall maintain financial records relating to its operations pursuant to this Agreement separate and segregated from such records relating to its other operations.

Contractor shall maintain at least the following records:

- Audited financial statements for Contractor;
- Financial statements of revenue and expense for this Agreement segregated from the other operations of Contractor (including without limitation those operations of Contractor in surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology (City may require this information to be at least compiled if requested under Section 6.4.2 or 8.3.5); and,
- Complete descriptions of related party transactions (corporate and/or regional management fees, inter-company profits from transfer, processing or Disposal operations).

8.2.3 Solid Waste Records

Contractor shall maintain and make available to City upon request the following records relating to its operations pursuant to this Agreement:

- a) Customer services and Billing/payment records;
- b) Records of tons Collected, processed, diverted and disposed by waste stream (Refuse, Recyclable Materials, Organic Materials, Construction and Demolition Debris), by Customer type (Cart, Bin, Roll-off Box), and the Facilities where such material was taken;
- c) Quantity of Recyclable Materials and Organic Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with the Act;
- d) Bulky Item results and Special Event tonnages, including tons Disposed and diverted;
- e) Routes;
- f) Facilities, equipment and personnel used;
- g) Facilities and equipment operations, maintenance and repair;
- h) Number and type of Refuse, Recyclable Materials and Organic Materials Containers in service;
- i) Complaints; and,
- j) Missed pickups.

8.2.4 CERCLA Defense Records

City views the ability to defend against actions arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, City regards the ability to prove where Solid Waste Collected in Rancho Cucamonga was taken for Disposal or processing, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Refuse Collected within the City was landfilled (and therefore establish where it was not landfilled), as well as where Recyclable Materials and Organic Materials Collected within the City were taken for processing and where any residual Refuse was taken for Disposal, for not less than five (5) years following the termination of this Agreement, and agrees to notify City's Risk Administrator and City Attorney at least ninety (90) days before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City within fifteen (15) days of City's request for such records. Records shall be in chronological and organized form and readily and easily interpreted. The requirements of this Section shall survive the expiration of the Term.

8.2.5 Other Programs' Records

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

8.2.6 Audit

City may conduct an audit of Contractor as provided herein. The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage, and verification of Diversion rate. The first audit, to be performed during 2018, will be based on the Contractor's reports and records from the Effective Date through December 31, 2017. Audits will be performed every other year thereafter, (e.g., the audit performed during 2020 will be based upon results of calendar years 2018 and 2019). Contractor will reimburse to City the cost of such audits up to fifty thousand dollars (\$50,000.00) in 2018 price levels. The fifty thousand dollar (\$50,000.00) amount shall be increased annually by the change in CPI using the formula for the change in the "all other" component of the rates in Exhibit 5. Costs incurred by Contractor for conducting its own route audits, as required under this Agreement, are not included as part of this audit cost.

Should an audit conducted or authorized by City disclose that fees payable by Contractor were underpaid by two percent (2%) or more, that tonnage was misreported by two percent (2%) or more, or that more than two percent (2%) of the Customers were inaccurately Billed based on the auditor's sampling, for the period under review, City may expand the scope of the audit and also recover additional audit costs from the Contractor.

8.2.7 Payments and Refunds

Should an audit disclose that fees payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of fees and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit. Contractor shall pay interest to City and/or Contractor's Customers, as applicable, for any underpayment or overcharges at an annual rate of ten percent (10%). Undercharges shall not be Billed in arrears for more than six (6) months of service, with any remaining undercharges absorbed by Contractor. Should an audit disclose that fees were overpaid, City shall credit such amounts against future fees payable by Contractor; provided that if such credit cannot be used prior to the expiration or termination of this Agreement, City shall pay the remaining amount of such overpayment to Contractor upon such expiration or termination.

8.3 Reports

8.3.1 Report Formats and Schedule

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

- a) Determine and set rates and evaluate the financial efficacy of operations;
- b) Evaluate past and expected progress towards achieving goals and objectives of the Act, including AB 341 and AB 1826;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by City, compatible with City's software/computers at no additional charge.

Reports shall be submitted within sixty (60) calendar days after the end of the reporting period. Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within sixty (60) calendar days after the end of the calendar year. If requested, Contractor's complaint summary, described in Section 5.2.2, shall be sent to the City Manager within five (5) Working Days of request.

All reports shall be submitted to:

City Environmental Programs Manager
City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, California 91730

8.3.2 Monthly Reports

The information listed below shall be the minimum reported for the preceding month:

- a) Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste Collected and diverted (Refuse, Recyclable Materials, Organic Materials, and Construction and Demolition Debris) in tons (including contamination and Diversion rates for each waste stream and Customer type), Customer type (Cart, Bin, Roll-off Box) and identifying by tonnage and type the Facilities where the Solid Waste was processed or disposed.
- b) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with the Act;

- c) Gross Receipts by sector (Cart, Bin, Roll-off Box).
- d) Documentation of Franchise Fee payments and calculations.
- e) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.
- f) Recycled commodity sales statement showing: kinds of material, quantity sold (in tons), costs incurred, revenues received, and, materials rejected for sale.
- g) Complaint summary summarized by nature of complaints.
- h) Description of Contractor outreach activities and copies of promotional and public education materials sent during the quarter.
- i) Warning notices issued for contaminated Solid Waste Containers.
- j) Other information or reports that City may reasonably request or require.

8.3.3 Annual Report

The Annual Report shall be in a format that may reasonably be presented to City Council.

The Annual Report shall contain a summary of the monthly reports, and shall also include:

- a) A summary of the number of accounts and of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Cart, Bin, Roll-off Box), service frequency, and type of service (Refuse, Recyclable Materials, Organic Materials, Construction and Demolition Debris).
- b) Number of routes and route hours per day by type of service as of December 31.
- c) Operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement.
- d) Documentation supporting that calendar year's Diversion rate.
- e) Other information or reports that City may reasonably request or require.

8.3.4 Financial Report

City may, at City's option, request and be provided with Contractor's financial reports for the most recently completed fiscal year in connection with any audit, extraordinary rate adjustment request, or verification of other information required under this Agreement. Contractor shall be required to provide City with its audited financial statements only in the event that Contractor requests an extraordinary rate adjustment under Section 6.4. City and Contractor agree to use reasonable efforts to protect the confidential nature of the Audited Financial Statements, subject to the provisions of Section 12.16.

Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with generally accepted accounting principles (GAAP) and audited, in accordance with generally accepted auditing standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by Contractor as a direct cost of service. In addition, Contractor shall provide to City the supplemental schedule on a compiled basis.

8.4 Reporting Adverse Information

Contractor shall provide City two (2) copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States, California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Contractor need not submit routine traffic and parking violations. Copies shall be submitted to City within thirty (30) days of receipt by Contractor, or sooner if reasonably apparent that to do so is materially relevant, and any responses by Contractor shall be submitted to City simultaneously with Contractor's filing or submission of such matters with these agencies. Contractor's routine correspondence to these agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

8.5 Right to Inspect Records

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Affiliates that City shall deem, in its reasonable discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by City as a part of any audit or other record review conducted by City, available for City's review, inspection and copying within five (5) days of receiving written notice from City requesting the same.

8.6 Failure to Report

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of this Agreement as described in Section 11.1 and shall subject Contractor to all remedies which are available to City under this Agreement or otherwise.

ARTICLE 9.
INDEMNIFICATION, INSURANCE, BOND AND LETTER OF CREDIT

9.1 Indemnification

Contractor hereby agrees to and shall indemnify and hold harmless Indemnitees from and against any and all loss, liability, penalty, damage, costs and fees (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs, and costs of exhibits, reports and other similar defense expenses), 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 or intentional acts or omissions of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, representatives, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, Applicable Law (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, representatives, contractors 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 to any such loss, liability, penalty, damage, cost, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage, except that which is caused by the negligence or willful misconduct of the Indemnitees', provided such willful misconduct or negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where an Indemnitee is determined by agreement between the parties or by the findings of a court of competent jurisdiction to have engaged in willful misconduct or been negligent and where the Indemnitees' willful misconduct or negligence accounts for only a percentage of the liability involved, the obligation of Contractor under this Section 9.1 will be for that entire portion or percentage of liability not attributable to the willful misconduct or negligence of the Indemnitee(s). Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees 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 City for any and all costs and expenses City 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.

Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the Indemnitees 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 "Refuse" or "Recyclable Materials," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, or

asserting rights under the United States or California Constitutions or any federal or state law to provide Solid Waste Services within the City.

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.

9.2 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 City), reimburse, indemnify, and hold harmless the Indemnitees 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, clean-up 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 Indemnitee 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 any Environmental Law;

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 of 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 Section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, 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 substances added by any and all amendments to any Environmental Laws defining the terms in the prior sentence, whether made before or after the date of execution of this Agreement.

E. In the event that City exercises its right in writing under Section 4.8 to direct Contractor to use a Disposal Site other than a site approved in this Agreement, and that site is not owned or operated by Contractor, this indemnification shall not apply for the tonnage directed by City to this Disposal Site.

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.

9.3 Indemnification for Failure to Meet Diversion Requirements; Guarantee

A. To the extent authorized by law, and subject to the limitations in Section 40059.1 of the Public Resources Code, Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and Recycling goals or any other requirement of the Act are not met by City with respect to the waste stream Collected under this Agreement.

B. Contractor warrants and represents that it is familiar with City's waste characterization study as set forth in City's Source Recovery and Recycling Element (SRRE), and that it has the ability to and will provide sufficient programs and services to ensure City 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 Act, with respect to that portion of the Solid Waste generated within the City that is the subject of this Agreement.

C. To the extent authorized by law, and subject to the limitations in Section 40059.1 of the Public Resources Code, Contractor agrees to protect and defend Indemnitees with counsel selected by Contractor and approved by City, to pay all costs and fees (including, without limitation, fees and charges of engineers, architects, attorneys and other professionals, and costs of exhibits, reports and other similar defense expenses) and to indemnify and hold Indemnitees harmless from and against all fines or penalties imposed by CalRecycle if the Diversion goals specified in the Act, including but not limited to California Public Resources Code Section 41780, as of the date hereof and hereafter throughout the Term are not met by City with respect to the Solid Waste Collected by Contractor and if the lack in meeting such goals is attributable to the failure of Contractor to implement and operate the Recycling or Diversion programs or undertake the related activities required by this Agreement.

9.4 Insurance

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any 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 defense and indemnification obligations or any other obligations as set forth herein.

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

- 1) Insurance Services Office Commercial General Liability form CG 00 01, or current equivalent as approved by the Insurance Services Office.
- 2) Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
- 3) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. Contractor shall maintain in force for the Term limits no less than:

- 1) Comprehensive General Liability: Ten million dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence for bodily injury, personal injury and property damage.
- 2) Automobile Liability: Ten million dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per accident for bodily injury and property damage.
- 3) Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California or provide evidence of State approval to be self-insured and Employers Liability limits of one million dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City, which approval shall not be unreasonably withheld. If, in the reasonable opinion of City, Contractor does not have sufficient financial resources to protect City from exposure with respect to any deductibles or self-insured retentions, at the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects City, its officials, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

1) General Liability and Automobile Liability Coverages

a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; and vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.

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

2) Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.

3) All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days (ten (10) days for non-payment) prior written notice has been given to City.

E. Acceptability of Insurers. The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. Simultaneously with the execution of this Agreement, Contractor shall furnish City certificates of each policy of insurance required hereunder, in form and substance satisfactory to City. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall have all required endorsements. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the Term.

G. Contractors and Subcontractors. Contractor shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each contractor and subcontractor. All coverages for contractors and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1) Insurance policies shall contain an endorsement in substantially the following form:

“Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Rancho Cucamonga
10500 Civic Center Drive
Rancho Cucamonga, California 91730

2) “City, its public officials, officers, employees, consultants, agents, volunteers, and independent contractors are additional insureds on this policy.”

3) “This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”

4) “Inclusion of City as an insured shall not affect City’s rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and City 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 if only one party had been named as an insured.”

I. Other Insurance Requirements

1) In the event any services are delegated to another company or subcontractor, Contractor shall require such Contractor or subcontractor to provide statutory workers’ compensation insurance and employer’s liability insurance for all of the Contractor or subcontractor’s employees engaged in the work in accordance with this Section 9.4. The liability insurance required by this Section 9.4 shall cover Contractor and all subcontractors or the Contractor or subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.4.

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

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

9.5 Faithful Performance Bond

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of one million five hundred thousand dollars (\$1,500,000), similar in form to that attached hereto as Exhibit 3, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement, unless such requirement is waived by the City Manager. The performance bond shall be executed by a surety company licensed to do business in the State of California, having an A: VII or better rating, and approved by City; and included on the list of surety companies approved by the Treasurer of the United States. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney. The bond shall be unconditional and remain in force during the entire Term, and during the continuation period after the Term as provided in Section 9.9.

9.6 Forfeiture of Performance Bond

In the event Contractor shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond which is necessary to recompense and make whole City forfeited to City. Upon partial or full forfeiture of the performance bond, Contractor shall restore the performance bond to its face amount within thirty (30) days of City's declaration. Failure to restore the performance bond to its full amount within thirty (30) days shall be a material breach of this Agreement.

9.7 Performance Security Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 4.14, will not be substantiated until after the final service date. Therefore, Contractor shall not terminate the performance bond, and will renew them to ensure continuous availability to City, until receiving a written release from City. Any performance bond will automatically expire at the end of thirty-six (36) months after the end of the Term. Permission from City to discontinue holding these performance securities does not relieve Contractor of payments to City that may be due, or may become due.

ARTICLE 10.
CITY'S RIGHT TO PERFORM SERVICE

10.1 General

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste as required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste should accumulate within the City to such an extent, in such a manner, or for such a time that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, (1) to perform, or cause to be performed, such services itself with its own or other personnel or firms without liability to Contractor; and/or (2) to take possession of any or all of Contractor's Containers, route lists, Billing information and other operating records used or useful in the Collection and transportation of Solid Waste, as well as keys, security codes and remote controls used to access garages and Bin enclosures, and to use such property to Collect and transport any Solid Waste generated within the City which Contractor would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of City's determination to effect its rights under this Section may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

A. It will take direction from City to effect the transfer of possession of such equipment and property to City for City's use, or for use by any Person or entity designated by City.

B. It will, if City so requests, keep in good repair and condition all of such equipment and property, and provide such other service as may be necessary to maintain this property in operational condition.

C. City may immediately engage all or any personnel or firms necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously employed by Contractor. Contractor further agrees, if City so requests, to furnish City the services of any or all management or office Personnel employed by Contractor whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the Billing and Collection of fees for these services.

City agrees that it assumes responsibility for the proper and normal use of such equipment and property while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.4, City shall pay to Contractor the reasonable rental value of the equipment and property, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered Bills in advance of service,

for the class of service involved. If the interruption or discontinuance in service is caused by any other reason, regardless of City's implementation of options under this Agreement, City may consider this a default.

10.2 Billing and Compensation to City during City's Possession

Contractor agrees that it shall reimburse City for any and all costs and expenses incurred by City, beyond that billed and received by City, in taking over possession of the above-mentioned equipment and property for Solid Waste Service in such manner and to an extent as would otherwise be required of Contractor under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than five (5) Working Days from and after each such submission.

10.3 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned equipment and property to Contractor and thereupon demand that Contractor resume the Solid Waste Services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

10.4 City's Possession not a Taking

The Parties agree that City's exercise of its rights under this Article (1) does not constitute a taking of private property for which compensation must be paid, (2) shall not create any liability on the part of City to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section provided that Contractor is not required to indemnify City against claims and damages arising from the sole negligence of City, its public officials, officers, employees, consultants, agents, volunteers, and independent contractors in the operation of Collection Vehicles during the time City has taken possession of such vehicles.

10.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

ARTICLE 11. **DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

11.1 Events of Default

All provisions of this Agreement to be performed by Contractor are considered material. Each of the following shall constitute an event of default by the Contractor:

A. Fraud or Deceit or Misrepresentation. If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.

B. Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

C. Failure to Maintain Coverage. If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement; or if Contractor fails to provide or maintain in full force and effect the faithful performance bond and faithful performance letter of credit required by Sections 9.5 and 9.6 of this Agreement.

D. Violations of Regulations. If Contractor violates any order, rule or regulation of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.

E. Failure to Perform. If Contractor ceases to provide all or a portion of the Collection, processing or Recycling services, or any other Solid Waste Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor. This includes, without limitation, any failure to perform by Contractor due to labor unrest, including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action, if not excused pursuant to Section 11.4.

F. Failure to Pay. If Contractor fails to make any payments required under this Agreement and/or refuses to provide City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in this Agreement.

G. Failure to Cooperate with Audits. Failure to complete, perform or cooperate with any audit as described by this Agreement.

H. Failure to Submit Reports or Documentation. Failure to complete or to provide required reports or documents to City as required by this Agreement.

I. Acts or Omissions.

1) Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or the Act, or any Applicable Law. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

2) Any situation in which Contractor or any of its officers, directors or employees are found guilty of any crime related to the performance of this Agreement, or of any

crime related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials. The term “found guilty” shall be deemed to include any judicial determination that Contractor or any of Contractor’s officers, directors or employees is guilty as well as any admission of guilt by Contractor or any of Contractor’s officers, directors or employees including, but not limited to, the plea of “guilty”, “nolo contendere”, “no contest”, and “guilty to a lesser charge.”

J. False or Misleading Statements. Any representation or disclosure made to City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

K. Attachment. The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof and such attachment is not released within thirty (30) days.

L. Suspension or Termination of Service. Any termination or suspension of the transaction of business by Contractor lasting more than three (3) consecutive days. This includes, without limitation, any termination or suspension of the transaction of business by Contractor due to labor unrest, including strike, work stoppage or slowdown, sickout, picketing, or other concerted job action, if not excused pursuant to Section 11.4.

M. Failure to Provide Assurance of Performance. If Contractor fails to provide reasonable assurances of performance as required under Section 11.6.

N. Commingling of Recyclable Materials with Refuse/Landfilling of Recyclable Materials. If Contractor empties a Container of properly set out Recyclable Materials or Organic Materials into a Refuse load, or transports Recyclable Materials or Organic Materials to a landfill or other location at which the material will not be diverted from landfilling.

O. Failure to Meet Diversion Goal. Contractor fails to divert at least thirty percent (30%) of all Solid Waste it Collects, per Section 4.3.6, for two (2) consecutive calendar years.

Contractor shall have forty-eight (48) hours from the time it is given notification by City to cure any default arising under subsections C, E, F, G, H, I, K, L, M and N provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has committed the same or similar breach within a twenty-four (24) month period. Contractor acknowledges that it is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, D, J and O above.

11.2 Right to Terminate Upon Default and Right to Specific Performance

If Contractor commits a material breach, including specifically any of the matters listed in subsections A through O of Section 11.1 above (and, if permitted to cure, does not cure it within the forty-eight (48) hours), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper. Should

City decide to terminate this Agreement upon a default by Contractor, City shall have the right to do so upon giving ten (10) days' notice to Contractor, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action).

City's rights to terminate this Agreement and to take possession of Contractor's Facility and/or equipment are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies that City may have.

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

11.3 Liquidated Damages

A. General. City 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 City 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 this 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.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Service is of utmost importance to City and that City 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, City 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 that City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 11, 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 City 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

AB.

City
Initial Here

AM

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1) Collection Reliability

a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceeds five (5) such failures annually: \$100

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 make up the Collection within the time allotted per Section 4.6.2: \$100

c) For each failure to provide a Roll-off Box within forty-eight (48) hours of request, and each day thereafter: \$50 per day

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 which exceeds ten (10) such occurrences annually: \$50

b) For each occurrence of excessive noise or discourteous behavior: \$250

c) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$100

d) For each occurrence of damage to private property in an amount that exceeds \$500: \$250

e) For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes that exceeds five (5) such failures annually: \$100

3) Customer Responsiveness

a) For each failure to initially respond to a Customer complaint within one (1) Working Day, and for each additional day in which the complaint is not addressed, which exceed a cumulative total for all Customers of ten (10) such days annually: \$50

b) For each failure to process Customer complaints as required by Article 5, which exceed a cumulative total for all Customers of ten (10) such failures annually: \$50

c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within two (2) Working Days of request from City or Customer: \$50 per day

d) For each failure to repair or replace a damaged or missing Container within two (2) Working Days of request from City or Customer: \$50 per day

e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$50

f) For each additional thirty (30) day increment of time in which Contractor has failed to resolve a claim for damages within thirty (30) days from the claim date: \$50

4) Diversion Efforts

a) For every Organic Materials or Recyclable Materials Container Collected as Refuse without issuing a "red tag" per Section 4.14.2: \$50 per Cart

b) For each ton short of the thirty percent (30%) Diversion requirement in a calendar year as described in Section 4.3.6: \$25 per ton

5) Construction & Demolition Waste Services

a) For each ton short of the 75% minimum Diversion requirement for mixed C&D Debris required by Exhibit 6: \$100 per ton

b) For each ton short of the 100% minimum Diversion requirement for clean loads of inert materials required by Exhibit 6: \$100 per ton

c) For each ton short of the 100% minimum Diversion requirement for clean loads of Green Waste required by Exhibit 6: \$100 per ton

d) For each failure to contact customer within two business days that exceeds five (5) such occurrences annually: \$100

e) For each failure to provide customer with a Diversion report within three (3) weeks of project completion that exceeds (5) such occurrences annually: \$100

6) Street Sweeping Services

a) For each failure, which exceeds five (5) such failures annually, to provide scheduled street sweeping and not make up the street sweeping within the time allotted: \$100

b) For each occurrence of Street Sweeping during unauthorized hours that exceeds five (5) occurrences annually: \$100

c) For each occurrence of damage to private property in an amount that exceeds \$500: \$250

d) For each failure to clean up spillage from vehicle (including water leakage from vehicles) within ninety (90) minutes that exceeds five (5) such failures annually: \$100

7) Timeliness of Submissions to City

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

a) Monthly Reports: \$50 per day

b) Quarterly Reports: \$50 per day

c) Annual Reports: \$100 per day

8) Accuracy of Billing

Each Customer invoice that is not prepared in accordance with the Rate Schedule, in excess of ten (10) such invoices annually: \$25 per invoice

9) Cooperation with Service Provider Transition

a) For each day routing information requested by City in accordance with Section 12.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service: \$1,000/day

b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.8: \$1,000/day

c) For delay in not meeting the requirements contained in Sections 4.11 (route audit) and 12.8 in a timely manner, in addition to the daily liquidated damages for breach under 9(a) and 9(b) above, liquidated damages of: \$10,000

City 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.

Prior to assessing liquidated damages, City 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 City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of its determination on each incident(s)/non-

performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

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

D. Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond or letter of credit required by this Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.2, or both.

11.4 Excuse from Performance

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is excused from performance only to the extent that the following requirements are met:

- Contractor has provided a contingency plan to City within thirty (30) days after the date of this Agreement, demonstrating how services will be provided during the period of labor unrest, and the contingency plan has been approved by the City Manager. The contingency plan is subject to City approval and Contractor shall amend the plan until it meets City requirements, including reasonably demonstrating how City's basic Solid Waste Collection and sanitary needs will be met to City's satisfaction.
- Contractor shall meet all requirements of this plan or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 11.1, 11.2 and 11.3, in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Contractor's services caused by one (1) or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, and in addition to the right to take possession of Contractor's property pursuant to Article 10, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) days

or more, City shall nevertheless have the right to terminate this Agreement by giving ten (10) days' notice.

11.5 Notice, Hearing and Appeal of City Breach

A. Administrative Hearing. Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. A hearing officer shall be appointed by the City Manager, and the hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the City Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City 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 of notice of the decision is given to both Parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

B. Other Remedies; Claims. Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, 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 City or Contractor has given timely written notice to the other that it will not accept the hearing officers decision.

C. Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by and within the time period specified in Government Code Section 910 et seq.

11.6 Assurance of Performance

City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.

ARTICLE 12. **OTHER AGREEMENTS OF THE PARTIES**

12.1 Relationship of Parties

The Parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the Solid Waste Services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, Affiliates, contractors, subcontractors and agents. Neither Contractor nor its officers, employees, Affiliates,

contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City, and Contractor waives any claim it may have or acquire to such benefits.

12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with Applicable Law, including but not limited to the payment of prevailing wages, if applicable.

12.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.4 Jurisdiction

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the Parties agree that this Agreement is made in and will be performed in San Bernardino County, Superior Court Southwest Judicial District.

12.5 Assignment

Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

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 service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided such sale, exchange or transfer may result in a change of control of Contractor; (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; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of 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, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

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

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an assignment must be approved by the City Council, and no request by Contractor for consent to an assignment need be considered by City 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 pay City its reasonable expenses for attorney's fees and investigation 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. An advance payment of fifty thousand dollars (\$50,000) towards expenses shall be paid to City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of this deposit amount, regardless of whether City consents to the assignment.

b) Contractor shall pay City a transfer fee equal to one percent (1%) of the Gross Receipts for the most recent twelve (12) months prior to the effective date of the change of ownership, multiplied by the number of remaining years, or fraction thereof, under this Agreement. This transfer fee shall be waived for a transfer to an affiliate. For purposes of this subsection, "affiliate" means an entity under the same management and Control as Burrtec Waste Industries, Inc. (the original contracting party). As used in this subsection, "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, trust, or other association.

c) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years.

d) A pro-forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro-forma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations.

e) Contractor shall furnish City 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 Environmental Laws and that the assignee has provided City with a complete list of any 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 Services 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 Hazardous Waste; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met. In the event of any permitted assignment, the assignee shall fully assume all the liabilities of the Contractor.

12.6 Contracting or Subcontracting

Contractor shall not engage any contractors or subcontractors for the Collection, transfer, processing, Recycling or Disposal of Solid Waste without prior written approval from the City Manager.

12.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the Parties.

12.8 Cooperation in Preparation for Termination or Expiration of Contract

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Services. Contractor's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least ninety (90) days prior to the transition date, and provide an updated list two (2) weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one (1) full Working Day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

12.9 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns.

12.10 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

12.11 Contractor's Investigation

Contractor has made an independent investigation (satisfactory to Contractor) of the conditions and circumstances surrounding this Agreement and the work to be performed by it.

12.12 Condemnation

City fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the Parties set forth in Article 10.

12.13 Notice

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City:	City Manager City of Rancho Cucamonga 10500 Civic Center Drive Rancho Cucamonga, California 91730
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If to Contractor:	President Burrtec Waste Industries, Inc.
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The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

12.14 City Free to Negotiate with Third Parties

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods during which this Agreement has expired or been terminated. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Solid Waste Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Organic Materials services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement pursuant to Section 11.1 or otherwise.

12.15 Privacy

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, 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 stream analyses that may be required by the Act. This provision shall not apply to reports or records provided to City pursuant to this Agreement.

12.16 Public Records; Exempt Information

Contractor is obligated to permit City inspection of its records on demand and to provide copies to City where requested. All documents that are provided to City will be subject to disclosure if requested by a member of the public pursuant to the Public Records Act (Government Code Section 6250 et seq.). There are a very limited number of narrow exemptions to this disclosure requirement. If Contractor believes the copies it provides to City are exempt from disclosure under the Public Records Act, Contractor must mark the portions considered as such and state the specific provisions of the Public Records Act that provides the exemption as well as the factual basis for claiming the exemption. City, if it concurs with Contractor's conclusion, will endeavor to maintain the confidentiality of documents so marked but will not guarantee to do so. If City chooses to withhold records from disclosure at the Contractor's request, and an action is brought against City to force disclosure, the Contractor shall pay all attorney fees and litigation costs associated with defending that action, including without limitation, City's and the prevailing plaintiff's attorney fees and litigation costs.

12.17 Pavement Damage

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

12.18 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.

ARTICLE 13.
MISCELLANEOUS PROVISIONS

13.1 Entire 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 acknowledge 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.

13.2 Section Headings

The article headings and 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.

13.3 References to Laws and Other Agreements

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

13.4 Interpretation

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

Where used in this Agreement, “shall” is mandatory and “may” is permissive. 13.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the Parties.

13.5 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.6 Exhibits

Each of Exhibits identified as Exhibit “1” through “6” is attached hereto and incorporated herein and made a part hereof by this reference.

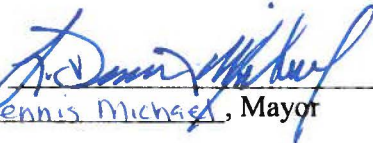
13.7 Attorneys' Fees

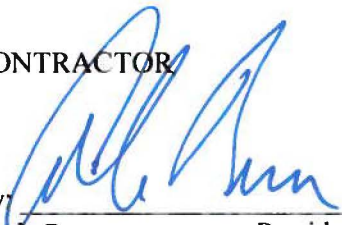
If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

CITY OF RANCHO CUCAMONGA a
municipal corporation and general law city

CONTRACTOR

By: 
Dennis Michael, Mayor

By: 
Cole Burr, President
Burrtec Waste Industries, Inc.

ATTEST:
ATTEST:

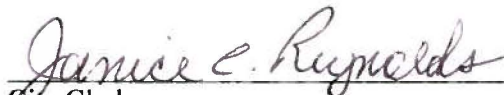

Janice C. Reynolds
City Clerk

EXHIBIT 1
STREET SWEEPING SPECIFICATIONS

A. Description of Work

1. Contractor shall provide street sweeping of City of Rancho Cucamonga public streets in accordance with these Street Sweeping Specifications, at no cost to City. All references in these Street Sweeping Specifications to the City's Public Works Services Director shall mean the Public Works Services Director, or his/her designee.
2. All regularly scheduled sweeping services of major arterials, medians, residential and industrial areas shall be performed twice per month. Street sweeping after a rain or wind event may be required at no cost to City, as provided in Section D.2.
3. Contractor shall use and furnish, at his own expense, all labor, equipment, materials, overhead, and insurance or bonding necessary for the satisfactory performance of street sweeping, including medians, curb and gutter, and edge of pavement sweeping work set-forth herein.
4. Street sweeping debris shall be properly disposed of, as described in Section C, at Contractor's expense.

B. Street Sweeping Specifications

1. When necessary for proper cleaning, Contractor shall make more than one pass on a street. The acceptable standard is no trash, leaves, sediment and/or debris remaining within sweeper path after completion of pass. All work shall be "broom clean" after completion of pass by street sweeper:
2. Contractor shall be required to perform all maintenance tasks as described in these Street Sweeping Specifications as outlined in sections A through Q.
3. Contractor shall be required to provide all street sweeping related maintenance labor, equipment, roll-offs, parts and supplies. To include all vehicles, street sweepers and equipment associated with the street sweeping program i.e., main brooms, gutter brooms, hydraulic motors, bearings, drag shoes, elevator parts, hydraulic hoses, water pumps and systems, safety lighting, etc.
4. Contractor shall provide a field supervisor. The field supervisor shall be available by cellular telephone which is able to clearly transmit and receive anywhere within the City Limits at all times during the workday for communication with City representative as needed. The field supervisor shall be authorized by Contractor to make necessary changes in operation procedures required by this Agreement. At City's request, the field supervisor shall meet or contact City's Public Works Services Director to determine if additional sweeping services will be requested, discuss quality of sweeping, areas that may require special attention to clean, and to discuss any complaints received by City about the sweeping.
5. All drivers shall meet applicable State and Federal commercial driver licenses for the designated equipment. Contractor shall provide proof of drivers' qualifications upon City request. Contractor shall be required to monitor on a day-to-day basis the status of the operator's driver's license and record and provide this information to City upon request. All contract employees/drivers shall wear the appropriate work attire and personal protective equipment (PPE) i.e., shirts, pants, boots, safety vests, safety glasses, ear plugs, works gloves, and any related PPE.

6. Contractor shall sweep all medians including the nose or gore point of each median, curbs and other locations. Along major arterials where there is no median and there is a center left turn lane, Contractor shall sweep the left turn median on the same frequency as the rest of the street segment. Contractor shall not allow trash, leaves, sediment and/or debris to build up in intersections.
7. Contractor shall operate the sweeper(s) at an appropriate speed equivalent to the manufacturer's recommended optimal sweeping speed; however, at no time shall the sweeper exceed twelve (12) miles per hour while sweeping.
8. Contractor shall operate the sweeper(s) flush with the curb or edge of pavement where no curb exists, unless parked vehicles, structures, or other objects or un-sweepable conditions prohibit the safe sweeping at this distance.
9. Contractor shall sweep a path of not less than eight (8) feet wide for every curb mile. Should additional passes of the sweeper be required to achieve the specified path width, these additional passes shall not be included in the total number of curb miles to be swept.
10. Contractor shall arrange with the Cucamonga Valley Water District at 10440 Ashford Street, Rancho Cucamonga, (909) 987-2591 to use fire hydrants to obtain the water necessary for the street sweeping operation.
11. Contractor shall be required to report obstructions such as low hanging tree branches, abandoned vehicles and signs to City's Public Works Services Department at (909) 477-2730 ext. 4100.
12. Large items, such as cardboard, palm fronds, rocks, etc., shall when possible be physically picked up and placed in the street sweeper by the driver or other personnel. Contractor shall notify City's Public Works Services Department of more excessively large items in the area to be swept.
13. Contractor shall not sweep areas the day garbage is being collected. Street sweeping shall take place a day or two after garbage is collected.

C. Recycling, Waste Reduction and Diversion

Contractor shall legally dispose of all debris and materials collected sweeping streets in Rancho Cucamonga. Roll-offs or refuse bins placed on City streets or City property shall be placed in locations that do not inconvenience the public and removed at end of each workday. The dumping of sweeper debris on the ground is not permitted. Contractor will be responsible for maintenance of the area used, including clean up the area to City's satisfaction upon City's authorized representative's request.

Contractor shall make all reasonable efforts to recycle all waste materials generated during sweeping operations such as green wastes, recyclables and inerts, through a permitted waste processor/composter and shall minimize the amount of materials landfilled. Contractor shall provide documentation on a monthly basis to City's Engineering Department, Environmental Program Manager or his/her designee regarding the recycling efforts. The documentation may include but not be limited to copies of weight tickets from a permitted waste processor/composter or other records as may be deemed acceptable. Contractor is encouraged to meet with City's Environmental Program Manager to identify available and appropriate waste diversion activities prior to commencing work.

D. Additional Work

1. New Streets: City anticipates extending the street sweeping program to include newly constructed streets. When this occurs, after the effective date of the Agreement, the additional sweeping required of Contractor, shall be included in the scope of work at no cost to City.
2. Extra Services: Requests for special (non-emergency) street sweeping may be made from time to time. Contactor shall provide twelve (12) On-Call emergency response street sweeping in addition to special events street sweeping as described in this Section D.2, at no cost to City.
3. Contractor shall provide street sweeping of the Founders Day Parade route in November, Holiday Lights area (Hillside Rd to Banyan St and west of Carnelian Ave to west City Limits) once-a-week in the month of December and four (4) Special Events a year (as needed) at no cost to City.
4. Contractor may be required to provide additional street sweeping after a rain or wind event as directed by the Public Works Services Director, at no cost to City.
5. Contractor shall be available within two (2) days of a request for special service made by City. Occasional requests for Emergency Services will be made by City of Rancho Cucamonga personnel. In the event of such emergency request Contractor shall respond within one (1) hour of receipt of notice.

E. Call Backs

After sweeping, curbs and gutters shall be left in a clean condition. A clean condition is defined as the absence of residue in the streets and gutters upon the completion of the sweeping operation. Whenever, in the opinion of the Public Works Services Director, a section of street is inadequately swept or has been missed for reasons other than parked vehicles, garbage containers, or other obstacles over which Contractor has no control, Contractor shall re-sweep the section of street at its cost.

F. Missed Streets

Streets left un-swept on the regularly scheduled day shall be rescheduled for sweeping the following day, or as mutually agreed upon.

G. Inspection

City intends to monitor the work to ascertain that the contract is proceeding in accordance with the requirements and intentions of these specifications. Specifically, City may select streets immediately prior to each sweeping schedule within the sweeping system for comparing the condition of the streets and then after the sweeping has been completed.

City may also randomly inspect routes on the day of the sweeping or the day following the scheduled sweeping. If any route has more than ten percent (10%) of its scheduled streets either un-swept or poorly swept, City may ask Contractor to re-sweep.

H. Establishment of Sweeping Schedule

Street sweeping services shall be conducted Monday through Thursday; however Contractor may schedule street sweeping on Fridays as needed. Contractor shall use the current street sweeping schedule and map provided by City. Deviation from the approved schedule is not permitted without the written consent of City of Rancho Cucamonga's Public Works Services Director. All

City of Rancho Cucamonga streets shall be swept at the frequency of twice per month. Street sweeping shall include all existing streets within the City of Rancho Cucamonga. No work will be permitted on residential streets or neighborhoods before 7:00 a.m. on any day of the week, except for emergency call out services. Major arterials, medians, and the industrial areas may be swept between the hours of 10:00 p.m. and 7:00 a.m.

Contractor shall schedule the hours of operations as approved by the Public Works Services Director, so as to sweep the streets when a minimum number of vehicles are expected to be parked at the curb, and to avoid sweeping on days that curbside refuse and recycling services are scheduled.

In the event Contractor is prevented from completing the sweeping as provided in the schedule because of equipment breakdown or reasons other than inclement weather, Contractor shall be required to provide replacement sweepers and resume the sweeping schedule within twenty-four (24) hours. Contractor shall notify the Public Works

Services Director of the revised schedule on or before the day that the schedule is interrupted.

I. Inclement Weather and Holidays

No street sweeping shall be performed on streets during or after rainstorms where standing or running water in the gutter makes sweeping impractical as determined by City. When inclement weather prevents adherence to the regular sweeping schedule, the sweeping areas so affected by the inclement weather shall be swept within seven (7) days from the date of the scheduled sweeping without interruption of the regular sweeping schedule. Should inclement weather continue for periods longer than seven (7) days, the Public Works Services Director shall decide when street sweeping will resume. Contractor may be required to provide additional street sweeping after a rain or wind event as directed by the Public Works Services Director, at no cost to City.

Contractor shall not be required to perform scheduled sweeping on the observed holidays listed below, but shall make up regularly scheduled sweeping days missed during those holidays. When any fixed holiday or observance occurs on a regularly scheduled sweeping day, the area shall be swept within two (2) working days from the regularly scheduled sweeping day. Observed holidays include: Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and New Year's Day.

J. Equipment and Maintenance

1. Operations of street sweepers are governed by AQMD Rule 1186, Paragraph (e) Street Sweeper Testing and Rule 1186-1 Less Polluting Sweepers. All sweepers used within the City shall comply with these rules, as they now exist or may subsequently be amended.

2. Contractor shall keep street sweeper(s) clean and maintained in proper working condition at all times.

3. All street sweeper(s) shall be clearly identified with the name of Contractor, address of local office and telephone number on each side of unit.

4. All street sweeper(s) and vehicle(s) amber safety lighting shall be operational and equipped in accordance with State laws while operating in the public right-of-way.

K. National Pollution Discharge Elimination System Requirements

1. Contractor shall comply with all applicable requirements of the National Pollution Discharge Elimination System (NPDES) as set forth under the permit for San Bernardino County as issued by the Santa Ana Regional Water Quality Control Board. Contractor shall institute appropriate Best Management Practices (BMPs) as appropriate for sweeping activities. Contractor shall ensure that any vehicle fluids leaking from contractor's equipment are promptly cleaned up and disposed of appropriately and in accordance with applicable state and Federal requirements.

2. Contractor shall train its staff on an annual basis relating to NPDES program requirements, including illicit discharge and illicit connection requirements, in accordance with requirements set forth in permit requirements and shall provide documentation to City regarding this training by July 15th of each contract year. New hires shall be trained regarding the NPDES program requirements within six (6) months of hire date.

3. During sweeping operations, Contractor's staff shall be alert for evidence of illegal discharges to City's streets from businesses and residences. Such evidence may include active discharge of liquids, oils, greases, soaps, or other potentially hazardous materials, staining of driveway aprons or street surfaces, or other illicit discharges. Contractor shall immediately notify City's Environmental Programs Manager or designee by telephone when evidence of illicit discharge is observed. Contractor shall provide the street address or nearest cross streets of the illicit discharge, and whether an active illegal discharge is occurring, and what is being discharged. Once information has been received by City and acknowledged, the sweeper may continue to perform their normal sweeping duties and routes. Contractor's staff may be interviewed for additional information relating to the discharge by City staff as needed.

4. During sweeping operations, in the event that Contractor notices locations in which illegal dumping or littering is occurring frequently or routinely, Contractor shall notify City of these locations for additional investigation by City staff by telephone as soon as possible but no later than twenty-four (24) hours to allow for investigation.

5. Contractor shall submit a NPDES report to Environmental Programs Section of the Engineering Services Department by July 15th of every year. This report shall include a total inventory of miles swept, frequency, percentage of miles swept for each area (Residential, Commercial, Industrial, and total debris collected in tons for each area (Residential, Commercial, Industrial). Report format to be approved by City.

L. Sound Control Requirements

The noise level from Contractor's operations, between the hours of 10:00 p.m. and 7:00 a.m., shall not exceed 86dbA, at a distance of fifty (50) feet in all residential areas. This noise level requirement shall apply to all equipment on the work or related work. The use of loud sound signals shall be avoided in favor of light warnings except those required by safety laws for the protection of personnel.

M. Record Keeping and Reporting Requirements

Contractor shall maintain full and complete books of account and other records showing all business transacted by Contractor in connection with services provided by Contractor pursuant to

these Street Sweeping Specifications. All such books and records shall be subject to audit and inspection at any and all reasonable times by City and its authorized officers, agents, or employees, and shall be made available at the office of Contractor upon request or demand of the authorized City official.

Contractor shall maintain a record, which indicates dates, times, streets, and miles swept. A copy of the record shall be made available upon request of City. In addition to the other data files with City, Contractor shall, on a monthly basis, file a report with City enumerating the following information for the previous weeks:

- Curb miles swept each day
- Scheduled areas missed
- Scheduled areas swept
- Percentage of Scheduled route swept
- Date and time missed areas were swept
- Number of complaints received each day to include Names, Address, and Route
- Reasons scheduled sweeping was not done or completed as scheduled

Daily Reports: Contractor shall report to the Public Works Services Director any equipment, mechanical, or other difficulties or problems experienced within one (1) working day of the incident when service or the sweeping scheduled is affected.

Street sweepers shall be equipped with a Vehicle GPS Tracking system. Upon request Contractor shall provide City with vehicle reports which provides the following data: date, vehicle unit number, start time, end time, idle time, travel details, travel speed, real-time snapshot of driver adherence to route and route history.

N. Telephone Answering Service

Contractor shall provide a local or toll-free answering service for routine business and service calls, twenty-four (24) hours a day, seven days a week, three hundred and sixty-five (365) days a year. The phone number must be local to the City of Rancho Cucamonga. The answering service shall have the capability of contacting contract supervisors, sweeper operators, pickup equipment requests and relaying instructions from City.

O. Protection/Restoration of Public and Private Property

Contractor shall be responsible for protecting existing improvements, adjacent property, utility, and other facilities, and trees and plants from injury or damage resulting from Contractor's operations.

Contractor shall repair or replace all existing improvements, property, utilities of other facilities which are damaged or removed as a result of sweeping operations.

Trees, lawns, and shrubbery which are damaged or removed because of Contractor's operations shall be restored or replaced in as nearly the original condition and locations as reasonably possible. That portion of trees or shrubs extend into the street past the face of the curb is excluded.

All costs to Contractor for protecting, removing, and restoring existing improvements, trees, lawns, and shrubbery shall be included in the proposal for the applicable proposal price and no other compensation will be paid.

P. Complaints

Complaints regarding the street sweeping operations, which the Public Works Services Director considers justifiable and the responsibility of Contractor, will be referred to Contractor for immediate attention. A report of the action taken on each complaint may be requested by the Public Works Services Director. If requested, Contractor shall submit the report in writing to the Public Works Services Director within one (1) business day.

Contractor shall report what actions were taken to resolve the complaint. Contractor is expected to keep complaints to the maximum level of two (2) substantiated complaints per week or less. Contractor shall provide a local or toll-free telephone number for the public to call for complaints or information about street sweeping services. This number shall be staffed from 7:00 a.m. to 6:00 p.m. each work day. Contractor shall investigate all public complaints concerning street cleaning and action will be taken to mitigate the cause of the complaint. Complaints brought to Contractor's attention after 3:00 p.m. shall be investigated before noon of the following day.

Q. Coordination with Other City Programs

The services required by these Street Sweeping Specifications require that Contractor establish and maintain good working relationships with various work units in the City. Contractor shall be responsible for cooperating and coordinating with the following City programs:

Refuse and Recycling Collection Program: This program consists of the collection of refuse and recyclable materials in residential, commercial, and industrial areas. The frequency of collection for residential refuse and recycling service is once a week and the days of collection are Monday through Friday. Frequency of refuse and recycling collection for commercial and industrial customers varies and the days of collection are Monday through Saturday. Contractor shall not sweep residential areas the day garbage is being collected.

Tree Pruning Program: City prunes street trees and removes trees as necessary. Tree crews work daily, Mondays through Fridays.

Road Work: City, County, and Utility staff or contractors may have projects or be working on repairs that could affect street sweeping operations.

Traffic Counters: Contractor is cautioned that at various times and locations City will temporarily install portable traffic counters, which utilize one or more hoses, placed in the roadway. Contractor shall work with City on its sweeping schedule to avoid sweeping areas with counters in place. If an area with a counter must be swept, care should be taken to avoid the traffic counter hose(s). If Contractor's equipment causes damage to such a counter or its

appurtenances, Contractor shall bear the entire cost of restoration, repair, testing, or replacement of the traffic counter.

EXHIBIT 2
List of City Facilities

Exhibit 2 - City Facility List 2016

City Facility	SVC_STREET_NO	STREET
ANIMAL CARE AND ADOPTION CENTER	11780	ARROW ROUTE
ARCHIBALD LIBRARY	7368	ARCHIBALD AVENUE
CENTRAL PARK	11200	BASE LINE ROAD
CHAFFEY GARCIA HOUSE	7150	ETIWANDA AVENUE
CITY HALL/POLICE STATION	10500	CIVIC CENTER DRIVE
EPICENTER	8408	ROCHESTER AVENUE
LIONS CENTER EAST	9191	BASE LINE ROAD
LIONS CENTER WEST	9161	BASE LINE ROAD
METROLINK STATION	11208	AZUSA COURT
PUBLIC WORKS FLEET SERVICES	9153	9TH STREET
RANCHO H.H.W	8800	HELLMAN AVENUE
RANCHO PUBLIC WORKS COPORATE YARD	8794	LION STREET
RC FAMILY RESOURCE CENTER	9791	ARROW ROUTE
RC FAMILY SPORTS CENTER	9059	SAN BERNARDINO ROAD
VICTORIA GARDENS CULTURAL ARTS CENTER	12505	CULTURAL CENTER DRIVE
FIRE STATION #171	6627	AMETHYST AVENUE
FIRE STATION #172	9612	SAN BERNARDINO ROAD
FIRE STATION #173	12270	FIRE HOUSE COURT
FIRE STATION #174	11297	JERSEY BOULEVARD
FIRE STATION #175	11108	BANYAN STREET
FIRE STATION #176	5840	EAST AVENUE
FIRE STATION #177	9270	RANCHO STREET
BEAR GULCH PARK	9094	ARROW ROUTE
BERYL PARK EAST	6524	BERYL STREET
BERYL PARK WEST	6501	CARNELIAN STREET
CHURCH ST. PARK	10190	CHURCH STREET
CITY OF RANCHO CUCAMONGA	7089	ETIWANDA AVENUE
COYOTE CANYON PARK	10987	TERRA VISTA PARKWAY
DAY CREEK PARK	12350	BANYAN STREET
ELLEN PARK	7139	KENYON WAY
ETIWANDA CREEK PARK	5939	EAST AVENUE
GARCIA PARK	13150	GARCIA DRIVE
GOLDEN OAK PARK	9345	GOLDEN OAK ROAD
HERITAGE PARK	5546	BERYL STREET
HERMOSA PARK	6787	HERMOSA AVENU
KENYON PARK	11481	KENYON WAY

Exhibit 2 - City Facility List 2016

City Facility	SVC_STREET_NO	STREET
LEGACY PARK	5858	SANTA YNEZ PLACE
LIONS PARK	9161	BASE LINE ROAD
MILLIKEN PARK	7699	MILLIKEN AVENUE
MOUNTAIN VIEW PARK	11701	TERRA VISTA PARKWAY
OLD TOWN PARK	10033	FERON BOULEVARD
OLIVE GROVE PARK	13931	YOUNGS CANYON ROAD
PACIFIC ELECTRIC ETIWANDA DEPOT	7092	ETIWANDA AVENUE
RALPH M. LEWIS PARK	7898	ELM STREET
RANCHO SUMMIT PARK	5958	SOLEDAD WAY
RED HILL PARK	7484	VINEYARD AVENUE
RTE. 66 TRAILHEAD	8500	FOOTHILL BOULEVARD
SPRUCE AVENUE PARK	7730	SPRUCE AVENUE
VICTORIA ARBORS PARK	7429	ARBOR LANE
VICTORIA GROVE PARK	6840	FAIRMONT WAY
VINTAGE PARK	11745	VICTORIA PARK LANE
WEST GREENWAY PARK	7756	MEADOWCREST COURT
WINDROWS PARK	6849	VICTORIA PARK LANE

EXHIBIT 3
Contractor's Faithful Performance Bond

EXAMPLE BOND LANGUAGE:

KNOW ALL MEN BY THESE PRESENTS:

That Burrtec Waste Industries, Inc., a California corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the City of Rancho Cucamonga, hereinafter called OBLIGEE, in the penal sum of one million two hundred fifty thousand dollars (\$1,250,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:
WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "AGREEMENT FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and dispose of Solid Waste generated within the City of Rancho Cucamonga, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of the contract to be performed by the PRINCIPAL, as in the contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by Obligee in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. Surety hereby waives any statute of limitations as it applies to an action on this Bond.

And the SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this ____ DAY OF ____, 200__.

a California Corporation

SURETY

By: _____
Title: _____

By: _____
Title: _____

By: _____
Title: _____

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(SEAL)

Note: This Bond must be executed in duplicate and dated, all signatures must be notarized, and evidence of the authority of any person signing as attorney-in-fact must be attached. DATE OF BOND MUST NOT BE BEFORE DATE OF CONTRACT. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

EXHIBIT 4
Initial Maximum Rates
(City to Insert Approved Rate Schedule)

EXHIBIT 4

RESOLUTION NO. 14-179

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CUCAMONGA, CALIFORNIA SETTING RATES FOR RESIDENTIAL AND COMMERCIAL/INDUSTRIAL REFUSE AND RECYCLING COLLECTION WITHIN THE CITY OF RANCHO CUCAMONGA, CALIFORNIA

A. Recitals.

WHEREAS, the City Council of the City of Rancho Cucamonga has previously adopted Chapter 8.17 and Chapter 8.19 of Title 8 of the Rancho Cucamonga Municipal Code establishing Refuse Service Rules and Regulations and authorizing that the rates, fees and charges arising, directly or indirectly, under said legislation be adopted pursuant to resolution, and thereafter, be amended from time to time by resolution; and

WHEREAS, pursuant to the Rancho Cucamonga Municipal Code Sections 8.17.040 and 8.19.040, and agreements between the City of Rancho Cucamonga and Burrtec Waste Industries ("Burrtec") for the collection, disposal, and processing of residential, commercial, and industrial refuse, recyclables, and green waste within the City of Rancho Cucamonga; and

WHEREAS, pursuant to the Rancho Cucamonga Municipal Code Sections 8.17.040 and 8.19.040, and the agreements, Burrtec has requested a change in the rates to be charged for residential, commercial, and industrial collection services, and has provided the City with the financial, operational, and other information; and

WHEREAS, based upon the amount of the rate changes requested and the information provided by Burrtec pursuant to Rancho Cucamonga Municipal Code Sections 8.17.040 and 8.19.040, the City Council has determined that such changes are justified and appropriate; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

B. Resolution.

NOW, THEREFORE, the City Council of the City of Rancho Cucamonga does hereby find and resolve as follows:

Section 1. The facts set forth in the Recitals, Part A of this Resolution, are true and correct.

Section 2. The City Council of the City of Rancho Cucamonga does hereby approve the proposed monthly rates for refuse and recycling collection as follows:

RESIDENTIAL RATES:

<u>Residential Barrel Service</u>			
Standard	\$22.48	Additional Green Waste Barrel	\$3.69
Senior	\$15.06	Additional Recycling Barrel	\$1.44
Multi-Family-Per-Unit	\$21.48	Backyard Pull-Out Service	\$47.94

Additional Refuse/Trash Barrel	\$7.13		
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Additional Residential Services	
Temporary Bins	\$103.56
Temporary Bins-Extra Pick-Up	\$103.56

Bulky Items: In excess of four collections/five items per collection	
Trip Charge	\$30.00
Per Item Charge	\$11.00

Residential Single and Multi-Family Bin Service						
*Rate includes one refuse bin and one recycling bin of the same size and service frequency.						
Bin Size	1X	2X	3X	4X	5X	6X
3 CY	\$149.36	\$241.43	\$333.48	\$403.00	\$488.13	\$573.87

COMMERCIAL RATES:

Commercial Barrel Service	
Standard	\$27.03
Additional Recycling Barrel	\$1.72

Commercial Refuse and Recycling Bin Service						
*Rate includes one refuse bin and one recycling bin of the same size and service frequency.						
Bin Size	1X	2X	3X	4X	5X	6X
1.5 CY	\$111.57	\$167.57	\$222.51	N/A	N/A	N/A
2 CY	\$126.22	\$195.87	\$265.81	N/A	N/A	N/A
3 CY	\$154.62	\$244.03	\$334.11	\$423.75	\$513.40	\$603.66
4 CY	\$182.62	\$296.33	\$409.80	\$523.19	\$636.56	\$750.20
6 CY	\$223.20	\$383.53	\$543.86	\$704.49	\$864.82	\$1,025.10

Green Waste Bins						
Bin Size	1X	2X	3X	4X	5X	6X
3 CY	\$143.94	\$222.69	\$302.13	\$381.14	\$460.07	\$539.72

Commercial Food Waste Bins						
Bin Size	1X	2X	3X	4X	5X	6X
3 CY	\$193.05	\$320.91	\$449.44	\$577.56	\$705.58	\$834.33

Additional Recycling Bins						
Bin Size	1X	2X	3X	4X	5X	6X
3 CY	\$48.13	\$82.97	\$109.90	\$138.04	\$165.41	\$193.76

Commercial Compactor Service						
Bin Size	1X	2X	3X	4X	5X	6X
3 CY	\$253.79	\$409.90	\$566.97	\$723.40	\$879.74	\$1,037.13

4 CY	\$303.40	\$502.98	\$702.45	\$901.77	\$1,101.09	\$1,300.55
6 CY	\$397.54	\$686.27	\$974.95	\$1,263.47	\$1,552.00	\$1,840.65

ROLL-OFF RATES:

Refuse Roll-Offs				
*Roll-off service rate is charged per service and subject to market rate disposal and processing fees charged per ton.				
10-yard	20-yard	40-yard	40-yard compactor	
\$550.37	\$550.37	\$550.37	\$798.19	

Additional Refuse Roll-Off Fees	
Relocation Fee	\$61.62
Rental Fee (per day after seven days)	\$24.46

Recycling Roll-Offs				
*Roll-off service rate is charged per service and subject to market rate disposal and processing fees charged per ton.				
10-yard C&D	40-yard C&D	20-yard Recycling	40-yard Recycling Compactor	40-yard Wood/Green Waste
\$228.03	\$178.67	\$178.67	\$178.67	\$178.67

Additional Recycling Roll-Off Fees	
Relocation Fee	\$61.62
Rental Fee (per day after seven days)	\$24.46

ADDITIONAL MISCELLANEOUS SERVICE RATES:

Additional Miscellaneous Services Fees	
Extra Pick-Up (barrel):	\$20.56
Extra Pick-Up (bin)	\$43.39
Extra Pick-Up (compactor):	\$86.79
Tilthopper Rental	\$39.97
Bin Lock	\$11.42

Push-Out Service	
*Rates per container, per service frequency	
0-25 ft.	No Charge
26-50 ft.	\$39.73
Over 50 ft.	\$79.45

- Section 3.** The proposed rates will become effective January 1, 2015.
- Section 4.** This Resolution shall become effective once adopted.
- Section 5.** The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 17th day of September 2014.

AYES: Alexander, Michael, Spagnolo, Steinorth, Williams

NOES: None

ABSENT: None

ABSTAINED: None


L. Dennis Michael, Mayor

ATTEST:


Janice C. Reynolds, City Clerk

I, **JANICE C. REYNOLDS, CITY CLERK** of the City of Rancho Cucamonga, California, do hereby certify that the foregoing Resolution was duly passed, approved and adopted by the City Council of the City of Rancho Cucamonga, California, at a Regular Meeting of said City Council held on the 17th day of September 2014.

Executed this 18th day of September 2014, at Rancho Cucamonga, California.


Janice C. Reynolds, City Clerk

EXHIBIT 5
Rate Adjustment Methodology

EXHIBIT 5
Rate Adjustment Methodology

General

Subject to the terms herein, the Contractor shall be entitled to a bi-annual adjustment of all Rates. Each Rate, excluding special charges, includes a "Service Component", "Disposal Component", "Processing Component", and "Fee Component" which are bi-annually adjusted (every other year).

Contractor shall submit its application for a Rate adjustment to the City Manager on or before April 1st preceding the start of each Rate Period that begins July 1 where Rates will be adjusted, or no adjustment shall be made for that Rate Period. Contractor's Rate application shall document all calculations and include all supporting schedules, documentation of Disposal or Processing tipping fee changes (including supporting calculations where applicable), documentation of tonnage calculations and/or assumptions, and any other documentation or evidence determined by the City Manager to be necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance with the requirements of this Exhibit 5.

The City Council shall make a good faith effort to approve Rates by June 1, and such Rates shall be effective on each subsequent July 1. If Rates are not effective by July 1 due to a delay caused solely by City, City shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of delay that is solely caused by City. If Rates are not effective by July 1 as a result of Contractor's error or delay in submitting the Rate application in a complete and accurate form, then prior Rates remain in effect and no adjustment shall be made for that Rate Period.

In no event may the adjustment in any Rate pursuant to this Exhibit, and Article 6 of the Agreement, be an increase of more than five percent (5%), compared to the previous Rate Period. In the event that calculations in accordance with this Exhibit result in an increase above five percent (5%), any amount above five percent (5%) shall be carried forward, or applied in subsequent Rate Periods.

For purposes of adjusting rates on July 1, 2017 only (for rates effective during Rate Period 2017-2019), the maximum increase allowed for Residential rates shall be three and one-half percent (3.5%) over the prior Rate Period.

Definitions

Certain terms which are specific to this Exhibit 5 are defined below:

1. Two-Year Percentage Change means the average value of an index for the twelve (12) month period ending December of most recently completed calendar year, minus the average index value for the twelve (12) month period ending December of the calendar year two (2) years prior (year before last), divided by the average index value for the twelve (12) month period

ending December of the calendar year two (2) years prior. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

For example, if the Contractor is preparing its Rate application for Rates to be effective for Rate Period 2, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for January 2016 through December 2016) – (Average CPI for January 2014 through December 2014)] / (Average CPI for January 2014 through December 2014)].

2. Bureau of Labor Statistics (BLS) shall mean the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.

3. City Fees shall mean the Franchise Fee and HHW Fee specified in Sections 3.1 and 3.2 of the Agreement.

4. Consumer Price Index (CPI) shall mean the All Urban Consumers Index (CPI-U) compiled and published by the BLS, using the following parameters:

- . Area – Los Angeles-Riverside-Orange County Metropolitan Area
- . Item – All Items
- . Base Period – Current 1982-84=100
- . Not seasonally adjusted
- . Series Identification Number – CUURA421SA0

5. Disposal/Processing Fee shall mean the fee charged per ton or unit of material delivered to an approved facility. The “Current Approved” Disposal/Processing Fee for any Approved Facility shall be the Disposal/Processing Fee in place on January 1 immediately preceding the submission of the Rate Application.

6. Rate means the maximum amount, expressed as a dollar unit, approved by City that the Contractor may bill for providing services under this Agreement.

7. Rate Adjustment Factor shall mean the amount, expressed as a percentage, by which the Service Component of each Rate is adjusted.

8. Service Component shall mean portion of Rate set by Contractor for costs related to service of Solid Waste as described in this Agreement, including, but not limited to fuel, personnel costs, and vehicle maintenance. The Service Component shall not include costs related to providing Street Sweeping services, Disposal and Processing Fees, Tipping Fees, or City Fees.

9. Tipping Fee shall mean the Rate or tipping fee charged for each ton or unit of material delivered to an approved facility. The “Current Approved” Tipping Fee for any Approved Facility shall be the Tipping Fee in place on January 1 immediately preceding the submission of the Rate Application.

General

The Rate adjustment methodology involves inflating: (A) the Service Component for the current Rate Period by CPI; (B) the Disposal, and/or Processing Component(s) by the actual changes to

those components; and, (C) the Franchise Fee and HHW Fee Components based on the agreed-upon percentage of Gross Receipts, to determine the Rates for the coming Rate Period.

If the CPI is discontinued or revised during the Term by the BLS, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

A. Service Component

Contractor shall calculate the adjustment to Single Family Dwelling, Multi-Family Dwelling, Commercial, and Roll-off Box Service Components using the following methodology:

Step 1: Calculate the "Service Component Factor" or "SCF".

Calculate the Two-Year Percentage Change in the CPI. The factor shall be rounded to the nearest hundredth (100th) percent.

Step 2: Calculate the adjusted Service Component, rounded to the nearest cent, for each Rate as follows:

Adjusted Service Component = Then-current Service Component x (1 + SCF) For example, assuming:

1. Then-current Service Component = \$13.54
2. SCF = 2.19%
3. Adjusted Service Component = $\$13.54 \times (1 + 0.0219) = \13.84

B. Disposal and/or Processing Component(s)

Contractor shall calculate the adjustment to Single Family Dwelling Disposal and Processing Components using the following methodology:

Single Family Dwelling Disposal and Processing Component Calculation

Step 1: Calculate the adjusted Single Family Dwelling Disposal Component, rounded to the nearest cent, for each Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, and the calculated average Tons of Refuse Collected per household per year, based on the actual tonnage of Single-Family Dwelling Refuse Collected in the prior calendar year and the average number of Single Family Dwelling units served, rounded to the nearest ten thousandth (10,000th). The adjustment shall be calculated as follows:

Adjusted Disposal Component = Disposal Site Tipping Fee x Average Refuse Tons per Household Per Year / 12 months

For example, assuming:

1. Current Approved Disposal Site Tipping Fee = \$41.80 per Ton

2. Average Refuse Tons per Household Per Year = 1.1449 Tons
3. Adjusted Disposal Component = $\$41.80 \times 1.1449 / 12 = \3.99

Step 2: Calculate the adjusted Single Family Dwelling Recyclable Materials Processing Component, rounded to the nearest cent, for each Rate to reflect any change in the Tipping Fee charge at the approved MRF and the calculated average Tons of Recyclable Materials Collected per household per year, based on the actual tonnage of Single-Family Dwelling Recyclable Materials Collected in the prior calendar year and the average number of Single Family Dwelling units served, rounded to the nearest ten thousandth (10,000th). The adjustment shall be calculated as follows:

Adjusted Recyclable Materials Processing Component = Approved MRF Tipping Fee x Average Recyclable Materials Tons per Household Per Year / 12 months

For example, assuming:

1. Current Approved MRF Tipping Fee = (\$30.00) per Ton
2. Average Recyclable Materials Tons per Household Per Year = 0.2963 Tons
3. Adjusted Recyclable Materials Processing Component = $(\$30.00) \times 0.2963 / 12 = (\$0.74)$

Step 3: Calculate the adjusted Single Family Dwelling Green Waste Processing Component, rounded to the nearest cent, for each Rate to reflect any change in the Tipping Fee charge at the approved Organic Materials Processing Facility and the calculated average Tons of Green Waste Collected per household per year, based on the actual tonnage of Single-Family Dwelling Green Waste Collected in the prior calendar year and the average number of Single Family Dwelling units served, rounded to the nearest ten thousandth (10,000th). The adjustment shall be calculated as follows:

Adjusted Green Waste Processing Component = Approved Green Waste Processing Facility Tipping Fee x Average Green Waste Tons per Household Per Year / 12 months

For example, assuming:

1. Current Approved Green Waste Processing Facility Tipping Fee = \$35.61 per Ton
2. Average Green Waste Tons per Household per Year = 0.7466 Tons
3. Adjusted Green Waste Processing Component = $\$35.61 \times 0.7466 / 12 = \2.22

Commercial and Multi-Family Dwelling Refuse and Recyclable Materials Disposal and Processing Component Calculation

Contractor shall calculate the adjustment to Commercial and Multi-Family Dwelling Refuse and Recyclable Materials Rate Disposal and Processing Components, using the following methodology:

Step 1: Calculate the adjusted Commercial and Multi-Family Dwelling Disposal Component, rounded to the nearest cent, for each Commercial and Multi-Family Dwelling Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, or a change in the estimated weight per cubic yard of Refuse Collected (which is initially established at one hundred fifteen

(115) pounds), and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

$$\text{Adjusted Disposal Component} = 115 \text{ lbs} * \text{Weekly Service Level in Cubic Yards} * 52 \text{ Weeks per Year} / 2,000 \text{ pounds per Ton} * \text{Approved Disposal Site Tipping Fee} / 12 \text{ months}$$

For example, assuming:

1. Current Approved Disposal Site Tipping Fee = \$41.80 per Ton
2. Service Level (size of container * frequency of service) = 3 cubic yards, 1x per week
3. Adjusted Disposal Component = $115 * 3 * 1 * 52 / 2,000 * \$41.80 / 12 = \$31.25$

Step 2: Calculate the adjusted Commercial and Multi-Family Dwelling Recyclable Materials Processing Component, rounded to the nearest cent, for each Commercial and Multi-Family Dwelling Rate to reflect any change in the Tipping Fee charge at the approved MRF, and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

$$\text{Adjusted Recyclable Materials Processing Component} = \text{Approved MRF Tipping Fee} * \text{Weekly Service Level in Cubic Yards} * 4.33 \text{ Average Weeks per Month}$$

For example, assuming:

1. Current Approved MRF Tipping Fee = \$1.46 per Cubic Yard
2. Service Level (size of container * frequency of service) = 3 cubic yards, 1x per week
3. Adjusted Disposal Component = $\$1.46 * 3 * 1 * 4.33 = \18.97

Commercial Green Waste and Food Waste Only Processing Component Calculation

Contractor shall calculate the adjustment to Commercial Green Waste and Food Waste Rates Disposal and Processing Components, using the following methodology:

Step 1: Calculate the adjusted Commercial Green Waste Processing or Food Waste Processing Component, rounded to the nearest cent, for each Commercial Green Waste or Food Waste Rate to reflect any change in the Tipping Fee charge at the Approved Organic Materials Processing Facility, the estimated weight per cubic yard of Organic Material Collected (which shall be one hundred fifty (150) pounds for Green Waste, and two hundred fifty (250) pounds for Food Waste), and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

$$\text{Adjusted Green Waste Processing Component} = 150 \text{ lbs} * \text{Weekly Service Level in Cubic Yards} * 52 \text{ Weeks per Year} / 2,000 \text{ pounds per Ton} * \text{Approved Green Waste Tipping Fee} / 12 \text{ months}$$

For example, assuming:

1. Current Approved Green Waste Tipping Fee = \$35.61 per Ton
2. Service Level (size of container * frequency of service) = 3 cubic yards, 1x per week
3. Adjusted Green Waste Processing Component = $150 * 3 * 1 * 52 / 2,000 * \$35.61 / 12 = \$34.72$

OR

Adjusted Food Waste Processing Component = 250 lbs * Weekly Service Level in Cubic Yards * 52 Weeks per Year / 2,000 pounds per Ton * Approved Food Waste Tipping Fee / 12 months

For example, assuming:

1. Current Approved Food Waste Tipping Fee = \$46.32 per Ton
2. Service Level (size of container * frequency of service) = 3 cubic yards, 1x per week
3. Adjusted Food Waste Processing Component = $250 * 3 * 1 * 52 / 2,000 * \$46.32 / 12 = \$75.27$

Commercial Recyclable Materials Only Processing Component Calculation

Contractor shall calculate the Commercial Recyclable Materials Only Processing Component, using the following methodology:

Step 1: The Commercial Recyclable Materials Only Processing Component shall be \$0.

Compactor Refuse and Recyclable Materials Disposal and Processing Component Calculation

Contractor shall calculate the adjustment to Compactor Refuse and Recyclable Materials Rate Disposal and Processing Components, using the following methodology:

Step 1: Calculate the adjusted Compactor Disposal Component, rounded to the nearest cent, for each Compactor Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, or a change in the estimated weight per cubic yard of Compacted Refuse Collected (which is initially established at three hundred forty-five (345) pounds), and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

Adjusted Disposal Component = 345 lbs * Weekly Service Level in Cubic Yards * 52 Weeks per Year / 2,000 pounds per Ton * Approved Disposal Site Tipping Fee / 12 months

For example, assuming:

1. Current Approved Disposal Site Tipping Fee = \$41.80 per Ton
2. Service Level (size of container * frequency of service) = 3 cubic yards, 1x per week
3. Adjusted Disposal Component = $345 * 3 * 1 * 52 / 2,000 * \$41.80 / 12 = \$93.74$

Step 2: Calculate the adjusted Recyclable Materials Processing Component, rounded to the nearest cent, for each Compactor Rate to reflect any change in the Tipping Fee charge at the approved MRF, and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

Adjusted Recyclable Materials Processing Component = Approved MRF Tipping Fee * Weekly Service Level in Cubic Yards * 4.33 Average Weeks per Month

For example, assuming:

1. Current Approved MRF Tipping Fee = \$1.46 per Cubic Yard
2. Service Level (size of container * frequency of service) = 3 cubic yards, 1x per week

3. Adjusted Disposal Component = $\$1.46 * 3 * 1 * 4.33 = \18.97

Roll-Off Box Disposal and Processing Component Calculation

Contractor shall calculate the adjustment to Roll-off Box Rates using the following methodology:

Step 1: Calculate the adjusted Roll-off Box Disposal Component, rounded to the nearest cent, for each Roll-off Box Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, and the estimated weight per pull (which shall be six (6) Tons for standard Roll-off Boxes, and ten (10) Tons for compactors). The adjustment shall be calculated as follows:

$$\text{Adjusted Disposal Component} = \text{Approved Disposal Site Tipping Fee} * 6 \text{ Tons}$$

For example, assuming:

1. Current Approved Disposal Site Tipping Fee = \$41.80 per Ton
2. Adjusted Disposal Component = $\$41.80 * 6 = \250.80

Step 2: Calculate the adjusted Roll-off Box Processing Component, rounded to the nearest cent, for each Roll-off Box Rate to reflect any change in the Tipping Fee charge at the Approved Processing Facility, and the estimated weight per pull (which shall be six (6) Tons for standard Roll-off Boxes, and ten (10) Tons for compactors). The adjustment shall be calculated as follows:

$$\text{Adjusted Disposal Component} = \text{Approved Processing Facility Tipping Fee} * 6 \text{ Tons}$$

For example, assuming:

1. Current Approved Processing Facility Tipping Fee = \$10.31 per Ton
2. Adjusted Processing Component = $\$10.31 * 6 = \61.86

C. City Fee Components

Contractor shall calculate the adjustment to Single Family Dwelling, Multi-Family Dwelling, Commercial, and Roll-off Box City Fee Components using the following methodology:

Step 1: Calculate the City Fee Components, rounded to the nearest cent, for each Rate. This Step requires first calculating the gross total Rate. The adjusted City Fees for each Rate shall be calculated as follows:

$$\text{Step 1A: Gross Total Rate} = (\text{adjusted Service Component} + \text{adjusted Disposal Component} + \text{adjusted Processing Component}) / (1 - (\text{Franchise Fee Percentage of Gross Receipts (15\%)} + \text{HHW Fee Percentage of Gross Receipts (0.75\%))$$

For example, assuming:

1. Adjusted Service Component = \$13.84
2. Adjusted Disposal Component = \$3.99
3. Adjusted Recyclable Materials Processing Component = \$(0.74)

4. Adjusted Green Waste Processing Component = \$2.22
5. Franchise Fee Percentage of Gross Receipts = 15%
6. HHW Fee Percentage of Gross Receipts = 0.75%
7. Gross Total Rate = $(\$13.84 + \$3.99 + \$(0.74) + \$2.22) / (1 - (0.15 + 0.0075)) = \22.91

Step 1B: Franchise Fee Component = Gross Total Rate * 15%

For example, assuming:

1. Franchise Fee Percentage of Gross Receipts = 15%
2. Gross Total Rate = \$22.91
3. Franchise Fee Component = $0.15 * \$22.91 = \3.44

Step 1C: HHW Fee Component = Gross Total Rate * 0.75%

For example, assuming:

1. HHW Fee Percentage of Gross Receipts = 0.75%
2. Gross Total Rate = \$22.91
3. HHW Fee Component = $0.0075 * \$22.91 = \0.17

D. Total Adjusted Rates

Contractor shall calculate the total adjusted Single Family Dwelling, Multi-Family Dwelling, Commercial, and Roll-off Box City Rates using the following methodology:

Step 1: Calculate the adjusted value for each Rate charged under this Agreement. Adjusted Rates shall be calculated as follows:

Adjusted Rate = Adjusted Service Component + Adjusted Disposal Component + Adjusted Processing Component + Adjusted Fee Components

For example, assuming:

1. Adjusted Service Component = \$13.84
2. Adjusted Disposal Component = \$3.99
3. Adjusted Recyclable Materials Processing Component = $\$(0.74)$
4. Adjusted Green Waste Processing Component = \$2.22
5. Franchise Fee Component = \$3.44
6. HHW Fee Component = \$0.17
7. Adjusted Rate = $\$13.84 + \$3.99 + \$(0.74) + \$2.22 + \$3.44 + \$0.17 = \$22.92$

Step 2: Verify that the adjusted Rate does not exceed the maximum percentage Rate increase as follows:

Total Rate Adjustment = $(\text{Adjusted Total Rate} - \text{Previous Rate Period Total Rate}) / \text{Previous Rate Period Total Rate} < 5.00\%$

For example, assuming:

1. Adjusted Total Rate = \$22.92

2. Pervious Rate Period Total Rate = \$22.57
3. Total Rate Adjustment = $(\$22.92 - \$22.57) / (\$22.57) = 1.55\% < 5.00\% = \text{OK.}$

EXHIBIT 6
Collection and Demolition Debris Collection Specifications

Notification and Education Materials

- By July 30, 2016 Contractor to create, and submit to the City Manager for review and approval, C&D education materials to be printed at Contractor's expense for distribution and to be posted on Contractor website. The content and final product must be approved by the City Manager before use.
- August 2016 – Contractor to print and mail C&D education material with cover letter from City to developers and permit holders, at Contractor's expense. City to provide mailing list.
- August 2016 – Information about C&D program to be included in the mailings required by Section 5.3.2, both residential and commercial. C&D program info should then be included in the mailings on an annual basis at minimum.

Specific Performance Requirements

Minimum Diversion Requirements

Contractor shall guarantee the following minimum diversion rates to customers, for C&D from each demolition, remodeling and construction project:

- Minimum Diversion for mixed C&D – 75%
- Minimum Diversion for clean loads of inert material, including concrete, asphalt, soil – 100% (less any contaminated or non-conforming materials)
- Minimum Diversion for clean loads of landscape (greenwaste) materials – 100% (less any contaminated or non-conforming materials)
- Contractor will provide a higher C&D diversion rate for customers requiring that level of processing. Prevailing per ton processing rates would apply for this extended level of service.

Customer service

- Customer service staff will be required to explain City's C&D diversion requirements to all customers requesting roll off service.
- In addition to the diversion guarantees required by the preceding section, all customers shall be offered a combination of services that will result in each demolition, remodeling and construction project having a minimum of 50% overall diversion (projects that source separate materials may have lower rate of diversion than those with a mixed C&D).
- Customers requesting a Contractor representative call back related to a C&D project are to be called back with two business days.

Waste Evaluation/Site Visits

- Requests for a site visit, meeting or waste evaluation must be scheduled within two business days, and must occur with five business days at a date and time of day that is reasonably convenient to the Customer, or such later date and time of day that is reasonably convenient to the Customer.
- Inability by Contractor to complete a request, or difficulty contacting a customer must be reported to the City representative via email on a weekly basis.

Diversion Reports

- Contractor shall provide every C&D customer with a waste diversion report within three weeks of project completion.
- Format of report and data to be included in the report to be approved by the City, and must comply with requirements of Chapter 8.19 of the Municipal Code.
- Contractor shall retain weight tickets and report for minimum of three (3) years from project completion date.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT
OF NOTARY PUBLIC

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

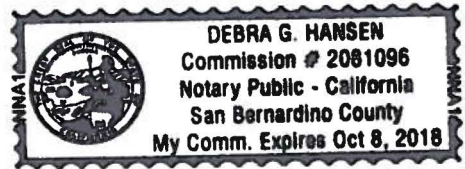
State of California)
) SS.
County of San Bernardino)

On June 6, 2016 before me, Debra G. Hansen, Notary Public, personally appeared Cole Burr who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 
Notary Public



(Seal)