DATE: February 23, 2016

RE: City of San Bernardino Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services with Burrtec Waste Industries, Inc.

I have received an executed copy of the above agreement from the City Clerk's Office, City of San Bernardino.

I hereby acknowledge receipt of the above mentioned documents.

Signed: _____

Date: 2-23-16

PLEASE SIGN AND RETURN

ORIGINAL

By and Between

THE CITY OF SAN BERNARDINO

and

BURRTEC WASTE INDUSTRIES, INC.

Approved on: January 25, 2016

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This Exclusive Franchise Agreement for Integrated Solid Waste Collection, Processing, and Disposal Services ("**Agreement**") is hereby entered into by and between the City of San Bernardino, a California Charter City and a municipal corporation organized under the Constitution and laws of the State of California ("**City**"), and Burrtec Waste Industries, Inc. a California corporation organized under the laws of the State of California ("**Contractor**"), and is made on the terms and conditions provided below:

RECITALS

WHEREAS, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("**AB 939**" or the "**Act**") established a Solid Waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for Solid Waste attributed to sources within their respective jurisdictions; and

WHEREAS, the Legislature of the State of California, by enactment of its California Global Warming Solutions Act of 2006 ("AB 32"), requires that commercial generators statewide participate in recycling programs; and

WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 341 ("AB 341") adopted a goal that seventy-five percent of solid waste generated state-wide be diverted from landfill by the year 2020. Furthermore, AB 341 requires that each commercial solid waste generator, including multi-family dwellings of five or more units, provide for recycling programs, and each City or County implement recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units; and

WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 1594 ("AB 1594") eliminates cities and counties from receiving landfill diversion credit from green waste used being used as Alternative Daily Cover effective January 1, 2020; and

WHEREAS, the Legislature of the State of California, by enactment of Assembly Bill 1826 ("AB 1826") adopted requirements for each commercial solid waste generator, including multi-family dwellings of five or more units, to provide for organics recycling programs, and for each City or County to implement organics recycling programs for commercial solid waste generators, including multi-family dwellings of five or more units by April 1, 2016; and

WHEREAS, California Public Resources Code § 40059 provides that aspects of Solid Waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

WHEREAS, City is obligated to protect the public health and safety of the residents and businesses of the City of San Bernardino and arrangements made by solid waste enterprises and recyclers for the collection of residential and commercial Solid Wastes should be made in a manner consistent with the exercise of the City's police power for the protection of public health and safety; and

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("**RCRA**"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. §§ 9601 *et seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter 863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("**UWED**"), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

WHEREAS, City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is Contractor, an independent entity, not City, which will arrange to collect Solid Waste from SFD, MFD, City and Commercial Service Units in the City, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Organic Waste and collect and recycle Recyclable Materials from SFD, MFD, City, and Commercial Service Units in the City, and collect and recycle or dispose of Construction and Demolition Materials; and

WHEREAS, there are no places within the City limits of the City of San Bernardino where active landfills for disposal are located, or which are suitable for the siting of a landfill and therefore Solid Waste must be exported from the City; and

WHEREAS, City and Contractor agree that Contractor, not City, will select the landfill or transformation facility destination of the non-recyclable residential and commercial Solid Waste and Construction and Demolition Materials which Contractor will arrange to collect, that City has not, and by this Agreement does not, instruct Contractor on its collection methods, nor supervise Contractor in the collection of waste and nothing in this Agreement or other action of the City shall be construed to give rise to any inference that the City has any title, ownership or right of possession of such Solid Waste; and

WHEREAS, Contractor represents and warrants to City that Contractor has the experience and qualifications to conduct recycling and waste diversion programs, to provide City with information sufficient to meet the City's reporting requirements to CalRecycle and other agencies under the Act, to meet City's other requirements under the Act, to arrange with persons in charge of day-to-day activities of Service Units in the City for the collection, safe transport and disposal of Solid Wastes which may contain small amounts of household products with the characteristics of Hazardous Wastes, in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic, and that Contractor has the ability to indemnify City in accordance with this Agreement; and

WHEREAS, the City Council of the City of San Bernardino determines and finds pursuant to California Public Resources Code § 40059(a)(1) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, the implementation of measures consistent with the City's Source Reduction and Recycling Component, and in an effort to reduce the City's potential CERCLA liability, would be served if Contractor were to be awarded an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from Service Units in the City of San Bernardino.

NOW, THEREFORE, the City and Contractor, agree as follows:

Section 1. Definitions

Whenever any term used in this Agreement has been defined by the Municipal Code of the City of San Bernardino ("Municipal Code") or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or Public Resources Code shall apply unless the term is otherwise defined in this Agreement. For purposes of this Agreement the following definitions apply:

1.1 "**AB 341**" means State of California Assembly Bill No. 341 approved October 5, 2011. AB 341 requires businesses, defined to include commercial or public entities that generate more than 4 cubic yards of commercial solid waste per week or multifamily residential dwellings of 5 units or more to arrange for recycling services, on and after July 1, 2012. AB 341 requires jurisdictions, on and after July 1, 2012, to implement a commercial solid waste recycling program.

1.2 "Act" or **"AB 939"** means the California Integrated Waste Management Act of 1989, codified in part at Public Resources Code §§ 40000 *et seq.,* as it may be amended and as implemented by the regulations of the California Department of Resources Recycling and Recovery (CalRecycle), or its successor agency.

1.3 "AB 1594" means State of California Assembly Bill No. 1594 approved September 28, 2014. AB 1594 provides that the use of green material as Alternative Daily Cover does not constitute diversion through recycling and would be considered disposal.

1.4 "AB 1826" means State of California Assembly Bill No. 1826 approved September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert organic waste from businesses. Each business meeting specific organic waste or solid waste generation thresholds phased in from April 1, 2016 to January 1, 2020 is required to arrange for organic waste recycling services.

1.5 "ADC" or "Alternative Daily Cover" means cover material used to cover compacted Solid Waste in a Disposal Site, other than at least six (6) inches of earthen material, placed on the surface of the active face of the Solid Waste fill area at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging, as defined in Section 20164 of the California Code of Regulations as may be amended from time to time

1.6 "Agreement" or **"Franchise Agreement"** means this written Agreement between the City and Contractor, and all exhibits. See Section 2, below.

1.7 "Agreement Year" means each twelve (12) month period from April 1st to March 31st of each year beginning on the Service Commencement Date.

1.8 "Bin" or **"Bins"** means those 2, 3, 4, and 6 cubic yard containers provided by Contractor for the collection of Solid Waste, Recyclable Material and Organic Waste.

1.9 "Bulky Waste" means large and small household appliances, furniture, carpet, mattresses, white goods, brown goods, clothing, automobile tires, and oversized yard waste such as tree trunks and large branches if no larger than two feet in diameter and four feet in length and similar large items discarded by residential Service Recipients. Bulky Waste is a form of Solid Waste when discarded by the generator into the waste

stream. The term "Bulky Waste" does not include consumer electronics, such as televisions, radios, computers, monitors, and the like, which are regarded as Universal Waste Electronic Devices, the disposal of which is governed by regulation of the Department of Toxic Substances Control.

1.10 "Business Days" means Monday through Friday, during the hours of 8:00 a.m., through 5:00 p.m., except for holidays recognized by City.

1.11 "Cart" or "Carts" means those wheeled containers up to 96-gallon capacity provided by Contractor for the collection of Organic Waste, Recyclable Materials, and Solid Waste.

1.12 "City" means the City of San Bernardino, California.

1.13 "City Representative" means the City Manager, or the City Manager's designee, authorized to administer and monitor the provisions of this Agreement.

1.14 "City Service Unit" means those City properties or locations as set forth in **Exhibit 2**, "City Facilities", which is attached to and included in this Agreement.

1.15 "Commercial Service Unit" means, premises in the City, other than SFD, MFD and City Service Units, where Solid Waste, Recyclable Materials, and Organic Waste are generated or accumulated. The term "Commercial Service Unit" includes, but is not limited to, stores; offices; restaurants; rooming houses; hotels; motels; industrial and manufacturing, processing, or assembly shops or plants; hospitals, clinics, convalescent centers and nursing homes (non-medical waste).

1.16 "Commercial Organic Waste" means Green Waste and Food Waste separated at the source of generation for inclusion in the Commercial Organic Waste Collection Service program.

1.17 "Integrated Solid Waste Collection, Processing and Disposal Services" means the collection, transportation, processing, recycling, composting, conversion, retention and disposal of all Solid Waste, Organic Waste, (including Commercial Organic Waste, Food Waste, and Green Waste), Recyclable Materials, Construction and Demolition Materials, Bulky Waste, all as defined in this Agreement, produced, generated and/or accumulated within the City.

1.18 "Construction and Demolition Materials" or **"C&D Materials"** means discarded building materials, "inert wastes" as defined in Public Resources Code § 41821.3(a)(1) (rock, concrete, brick, sand, soil ceramics and cured asphalt), recyclable construction and demolition materials, packaging, plaster, drywall, rubble resulting from construction, remodeling, repair and demolition operations, but does not include asbestos-containing materials. Construction and Demolition Materials, but not asbestos-containing materials,

are within the scope of this Agreement, subject to the licensed contractor exception in Section 2.9, below.

1.19 "Consumer Price Index" or **"CPI"** means the twelve (12) month annual average percentage change for the most recent period of January 1st through December 31st, versus the prior most recent period of January 1st through December 31st, as published the U.S. Department of Labor, Bureau of Labor Statistics, Series ID: "CUURA421SA0, Not Seasonally Adjusted, All Items, Los Angeles-Riverside-Orange County, CA."

1.20 "Container" means Cart, Bin, or Roll-off.

1.21 "Contractor" means Burrtec Waste Industries, Inc. a California corporation, a party to this Agreement.

1.22 "Displaced City Employee" means an employee of the City as of March 31, 2016 who was principally employed in the operation or support of City's refuse enterprise (such as drivers, motor sweeper operators, maintenance workers, customer service representatives, and administrative support) and who would otherwise be discharged or laid-off as a result of City's grant of the Franchise to Contractor, or who has waived their bumping rights under the applicable collective bargaining agreement and decided to pursue a position offered by Contractor.

1.23 "Disposal Facility" means such place or places specifically designated by the Contractor as listed in **Exhibit 3** for the disposal, or processing as appropriate, of Solid Waste and other materials as appropriate.

1.24 "Effective Date" means the date by which Contractor and City have approved the Franchise Agreement (including all attachments) and their respective authorized representatives have executed the Franchise.

1.25 "Franchise" means the exclusive right and privilege granted by this Agreement.

1.26 "Payments to the City " means the negotiated payments as listed in Section 3 of this Agreement that are agreed upon by the City and Contractor in consideration of City's grant of the Franchise to Contractor and which, *inter alia,* is intended to offset the City's expenses in administering this Franchise and to compensate City for damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from Contractor's exercise of this Franchise, the expenses of administering the program for the Solid Waste stream, reporting requirements under the Act and other related expenses.

1.27 "Food Waste" means food scraps and trimmings from food preparation, including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, incidental food packaging and food soiled paper products. Food Waste is synonymous

with "garbage" as that term is defined by Section 17225.30 of Title 14, California Code of Regulations.

1.28 "Gross Receipts" means all monies, fees, charges, consideration received or imputed to Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the services set forth in this Agreement, including services carried out by any permissible subcontractor hereunder. Gross Receipts include, without limitation, any franchise fee imposed and collected pursuant to this Agreement. For purposes of calculating Monthly Franchise Fee Payments, Gross Receipts does not include revenue from the sale of Recyclable Materials.

1.29 "Green Waste" means leaves, grass clippings, brush, branches and other forms of organic materials generated from maintenance or alteration of landscapes or gardens including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush and weeds and incidental pieces of scrap lumber, separated from the Solid Waste Stream. "Green Waste" includes holiday trees (except such trees which are frosted, flocked or which contain tinsel or metal), but does not include stumps or branches exceeding four inches (4") in diameter or four feet (4') in length, or palm fronds, or yucca, which are not suitable for composting. "Green Waste" is not a "Recyclable Material" but may be a form of Solid Waste if discarded into the waste stream.

1.30 "Hazardous Waste" means any waste materials or mixture of wastes defined as a "hazardous substance" or "hazardous waste" pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 *et seq.*, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*, the Carpenter-Presley-Tanner Hazardous Substance Account Act ("HSAA"), codified at California Health & Safety Code §§ 25300 *et seq.*; the Electronic Waste Recycling Act of 2003 (SB 20, Sher, Chapter 526, Statutes of 2003; SB 50, Sher, Chapter 863, Statutes of 2004; AB 575, Wolke, Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("UWED"), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches, and all future amendments to any of them, or as defined by CalRecycle or the Department of Toxic Substances Control, or by their respective successor agencies. If there is a conflict in the definitions employed by two or more agencies having jurisdiction over hazardous or Solid Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.

1.31 "Household Hazardous Waste" means dry cell household batteries, cell phones and PDAs; used motor oil; used oil filters when contained in a sealed plastic bag; cooking oil; compact fluorescent light bulbs contained in a sealed plastic bag; E-Waste; cleaning products, pesticides, herbicides, insecticides, painting supplies, automotive products, solvents, stripes, and adhesives, auto batteries; and Universal Waste generated at a SFD or MFD Service Unit.

1.32 "Material Recovery Facility" means any facility, selected by the Contractor as listed in **Exhibit 3**, designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Materials for sale.

1.33 "Multi-Family Dwelling Service Unit" or **"MFD Service Unit"** means a multi-family dwelling unit such as mobile home parks, apartments, condominiums and town homes, which utilize Carts, Bins or Roll-offs for the accumulation and collection of Solid Waste, Recyclable Material, and Organic Waste.

1.34 "Organic Waste" means Green Waste and Food Waste. Organic Waste is a form of Solid Waste when discarded into the waste stream. The following list may be modified, by the mutual agreement of City and Contractor memorialized in writing executed by both Parties. As of the date of execution of this Agreement, Organic Waste includes, but is not limited to the following:

1.34.1 Plant material (branches, grass clippings, natural Christmas trees, palm fronds, leaves, shrubbery, tree trimmings, weeds);

1.34.2 Wood (non-toxic wood products without paint and foreign objects of appropriate size for the container); and,

1.34.3 Food Waste (cooked and uncooked food matter, incidental food packaging and food soiled paper products for commercial customers).

1.35 "Organic Waste Processing Facility" means any facility selected by the Contractor as listed in **Exhibit 3** that is designed, operated and legally permitted for the purpose of receiving and processing Organic Waste.

1.36 "Parties" means the City and the Contractor.

1.37 "Residence" or "Residential" means any and all dwelling units, as defined in the "Land Use Zoning Ordinance" of the City of San Bernardino, and other buildings used for residential or dwelling purposes.

1.38 "Recyclable Materials" is a part of the waste stream that can be reused or processed into a form suitable for reuse through reprocessing or remanufacture, consistent with the requirements of AB 939. The following list may be modified, by the mutual agreement of City and Contractor memorialized in writing executed by both

Parties. As of the date of execution of this Agreement, Recyclable Materials includes, but is not limited to the following:

1.38.1 Plastics (all numbered plastics);

1.38.2 Metals (aluminum cans, aluminum foil, empty aerosol cans, pie tins, tin cans);

1.38.3 Fiber materials (cardboard, cereal boxes, envelopes, file folders, frozen food boxes, junk mail, magazines, mixed paper, office paper, newspaper, telephone books, white paper); and,

1.38.4 Glass (all colors of glass jars and bottles, except light bulbs, mirror and window glass).

1.39 "Roll-off" means those 10 to 40 cubic yard containers that are normally loaded onto a motor vehicle and transported to an appropriate facility.

1.40 "**SB 20"** means the Electronic Waste Recycling Act of 2003.

1.41"Scavenging" means the unauthorized removal of Recyclable Materials from designated containers and/or place of collection. Scavenging is prohibited by Public Resources Code § 41950.

1.42"Service Commencement Date" means April 1, 2016, the date upon which Contractor becomes solely responsible for providing Integrated Solid Waste Collection, Processing and Disposal Services to City and within City's boundaries.

1.43"**Service Recipient**" means SFD Service Unit, MFD Service Unit, City Service Unit, or Commercial Service Unit receiving service by the Contractor as specified by the Agreement.

1.44"Service Unit" means SFD Service Units, MFD Service Units, City Service Units, and Commercial Service Units.

1.45"Single-Family Dwelling Service Unit" or **"SFD Service Unit"** generally means a detached dwelling, or each dwelling unit of a duplex, triplex, or quadplex, a townhouse, a condominium unit or a mobile home which utilizes Carts, or a Bin or Roll-off for the accumulation and collection of Solid Waste, Recyclable Material, and Organic Waste.

1.46"Solid Waste" means and includes any materials defined as "solid waste" by Section 40191 of the California Public Resources Code, and specifically includes, without limitation, Construction and Demolition Materials, Recyclable Materials, Organic Waste, Bulky Waste, and all other non-hazardous materials, excluding Universal Waste, that are discarded into the waste stream by the generator, or collected in exchange for a fee or any other consideration, regardless of form or amount.

1.47 "Temporary Bin or Roll-off Container Collection Service" means collection of a three (3) cubic yard Bin or ten (10) to forty (40) cubic yard Roll-off container placed in service by Contractor on a temporary basis for no more than seven (7) days between collections.

1.48 "Term" means the operative life of this Agreement as stated in Section 4.2, which is ten (10) years beginning 12:01 am on April 1, 2016 ending 11.59 pm on March 31, 2026.

1.49 "Transition Period" means the period of time between the Effective Date and the Service Commencement Date.

1.50 "Universal Waste" means and includes, but is not limited to, Universal Waste Electronic Devices" or "UWEDs," (i.e., electronic devices subject to the regulation of the Department of Toxic Substances Control, 23 CCR §§ 66273.1, et seq.), and other Universal Wastes, including, but not limited to non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches.

1.51 "Work Days" mean the days Monday through Saturday, during the hours of 5:00 a.m., to 6:00 p.m., which is the general period Contractor provides regular collection services.

Section 2. Grant of Franchise

2.1 Binding Agreement. In consideration of mutual promises and agreements made by the Parties and contained in this Agreement the Parties agree to be bound by the terms and conditions of this Agreement and that this Agreement shall be binding upon their successors-in-interest.

2.2 Prior Agreements.

2.2.1 Contractor agrees that the agreement between the City and Contractor titled ***"Professional Services Agreement For The Processing of Organic Materials, Recycling Materials and Municipal Non-Recyclable Solid Waste Between The City Of San Bernardino And Burrtec Waste Industries, Inc."*** dated January 1, 2013 regarding delivery of approximately one half of all City collected Organic Waste, Recyclable Materials, and non-recyclable Solid Waste delivered to Contractor's East Valley Recycling & Transfer Station located at 1150 & 1250 South Tippecanoe Avenue, San Bernardino, CA 92408 is

terminated and superseded on the Service Commencement date of this Agreement.

2.2.2 Contractor agrees that the agreement between the City and Jack's Disposal, Inc. ***"Agreement Between The City Of San Bernardino And Jack's Disposal, Inc. For The Collection, Transportation, And Disposal Of Solid Waste And Construction Debris And For Provide Temporary Bin/Roll-off Services"*** dated May 25, 1995 is terminated and superseded on the Service Commencement date of this Agreement

2.2.3 Contractor agrees to abide by the tonnage delivery and payment provisions terms and conditions as required in the agreement between the City and Republic Services of Southern California, LLC, d.b.a. Inland Regional Material Recovery Facility (IRMRF") titled ***"Professional Services Agreement For The Processing Of Organic Materials, Recycling Materials And Municipal Non-Recyclable Solid Waste Between The City Of San Bernardino And Republic Services of Southern California, LLC."*** dated January 1, 2013 regarding delivery of approximately one half of all City collected Organic Waste, Recyclable Materials, and non-recyclable Solid Waste delivered to the IRMRF located at 2059 E. Steel Road, Colton, CA 92324. Until such time that the agreement between the City and Republic Services of Southern California, LLC is terminated, Contractor is responsible for all payments due to Republic Services of Southern California LLC for Organic Waste, Recyclable Materials, and non-recyclable Solid Waste delivered by Contractor to the IRMRF. After such time that the agreement between the City and Republic Services of Southern California, LLC, is terminated, Contractor shall direct all Organic Waste, Recyclable Materials and Solid Waste collected by Contractor to permitted facilities as designated by Contractor. Contractor shall not be entitled to any additional compensation by the City or the City's rate payers for Organic Waste, Recyclable Materials, and non-recyclable Solid Waste delivered by Contractor to the IRMRF, except as may be provided in Section 21.1 of this Agreement.

2.3 Grant of Franchise; Exclusions. Except as expressly called out in this Agreement, Contractor is hereby granted the exclusive franchise, duty, right and privilege to control and direct all Solid Waste collected by the Contractor, including transfer, transport, recycling, processing and disposal of Solid Waste Organic Waste and Recyclable Materials generated within the boundaries of City subject to the terms and conditions set forth in this Agreement.

2.4 Exclusive Franchise. Contractor agrees that this Agreement is an "exclusive franchise" as that term is used in Public Resources Code § 40059.

2.5 Waiver of Rights. Contractor waives any right it may have to challenge the terms of this Agreement under federal, state or local law, or administrative regulation, except as provided in the dispute resolution provisions of Section 28 and Section 29 of this Agreement.

2.6 Recycling Agent. Contractor is hereby designated the City's authorized recycling agent as that term is used in Public Resources Code § 41950.

2.7 C&D Materials. The collection and disposal of Construction and Demolition Materials from Service Units through the use of Roll-offs or other Bins is within the scope of this Agreement. Accumulation, collection and recycling or disposal of Construction and Demolition Materials by a licensed contractor utilizing its own employees and equipment at its job site is permissible in accordance with the Municipal Code.

2.8 Sale or Gift of Recyclable Materials. This Agreement does not prohibit any person from selling Recyclable Materials or giving Recyclable Materials away to persons or entities other than Contractor; however, in either instance: (1) the Recyclable Materials must be segregated from and not mixed with Solid Waste; and (2) the seller/donor may not pay the buyer/donee any consideration for collecting, processing or transporting such Recyclable Materials, or as a consultation or broker's fee for recycling services. A discount or reduction in price for collection, disposal and/or recycling services for any form of unsegregated or segregated Solid Waste is not a sale or donation of Recyclable Materials and such Solid Waste does not qualify for this exception.

2.9 Self-Hauling. City Ordinance MC-1346, which modified Section 8.24.285 of the City's Municipal Code, permits that a construction contractor may self-haul recyclables or C&D waste generated by the construction contractor at the job site, utilizing its own employees and equipment, with the exception of roll-offs or other bins per the Municipal Code. In addition, San Bernardino Municipal Code section 8.24.010(B) provides that the City does not limit the right of an individual person, organization, or other entity from donating, selling or otherwise disposing of recyclable materials, provided that any such donation, sale or disposal is in accordance with the provisions of Chapter 8.24. In addition, San Bernardino Municipal Code section 8.24.050(E) provides that any person in the lawful possession of any property, other than a place of business, is not prevented from collecting and removing therefrom and, in a vehicle owned or lawfully possessed by him or her, from transporting any refuse, recyclable discards or green waste naturally accumulated upon such property so owned or lawfully possessed by him or her. As such, this Agreement does not prohibit such materials which are removed from any Service Unit in the City and which are transported personally by the owner or occupant of such premises to a processing or disposal facility pursuant to the City's Municipal Code. This Agreement shall not prohibit gardeners and landscapers from collecting,

transporting and composting or disposing of Green Waste, as long as they transport such Green Waste to an Organic Waste Processing Facility, or other site permitted (or exempt from permitting) by CalRecycle, or its successor agency, in accordance with all governing laws and regulations and submit reports required by City.

2.10 Annexation. Territory annexed to the City and which is zoned or rezoned for residential or commercial use and which is not within the service area of another Solid Waste enterprise which qualifies under Public Resources Code § 49521 to continue to provide Solid Waste services shall be added to the Service Area covered by this Agreement. In the event that an annexed area is added to the Service Area, City and Contractor agree that this Agreement shall supersede any previous franchise agreement, permit, or license granted to Contractor by another public entity with respect to the collection of Solid Waste Recyclable Materials, Bulky Waste and Organic Waste within the annexed area. In the event that an annexed area is within the service area of another Solid Waste enterprise which qualifies under Public Resources Code § 49521, City shall, within 30 calendar days of the effective date of annexation or at such time as may otherwise be required by law, mail a certified return receipt letter to the current Solid Waste enterprise informing them of the commencement of the five (5) year wind down notification per Public Resources Code § 49521.

2.11 Other Services; Niche Recycling Services. City reserves the right to enter into agreements with other entities for other collection, diversion and recycling services not provided for in this Agreement, including, but not limited to catch basin clean-outs, contract services and "niche" recycling services which Contractor does not currently provide. In the event the City wishes, to provide a niche recycling service, e.g., collection of water heaters, in residential or commercial areas, Contractor shall have the initial opportunity to provide such niche recycling service at an agreed upon rate by the City and the Contractor.

Section 3. Contractor's Payments, Reimbursements, and Additional Revenues to City

3.1 Contractor's Payments to City. In consideration of City's grant of the Franchise, Contractor shall pay and/or reimburse, as the case may be as provided in this Section 3, City in good and immediately available funds in United States Dollars.

3.2 Purchase of City-Owned Equipment/Personal Property. Contractor shall purchase all of City's equipment/personal property utilized in City's provision of Comprehensive Solid Wastes Services, as specified on the "List of City's Equipment/Property" attached to this Agreement as **Exhibit 9** for **Twelve Million Two Hundred Twenty Five Thousand Dollars ($12,225,000)** which represents the Contractor's value of the specific equipment/personal property. Conveyance of and

transfer of title to the personal property shall be effectuated by a Bill of Sale and title document deposited by City into an escrow and by Contractor's deposit of the Property Payment into the escrow. The Parties shall deposit their respective items into escrow within thirty (30) Business Days after the Effective Date of this Agreement. Escrow shall close on or before the Service Commencement Date. City represents that, as the date of conveyance of the equipment/personal property to Contractor, such equipment/personal property shall be free and clear of liens, encumbrances and of adverse claims of any kind. In addition, as of the date of conveyance, possession of equipment/personal property shall be deemed as being transferred to Contractor.

3.3 Procurement-Related Costs Reimbursement. Within twenty (20) days after the Service Commencement Date of this Agreement, Contractor shall pay City **a maximum amount not to exceed of Two Hundred Fifty Thousand Dollars ($250,000)** as reimbursement for City's actual procurement-related costs in undertaking the request for proposal process and for the costs it will incur in transitioning Comprehensive Solid Waste Service to Contractor. Within ten (10) days after the Service Commencement Date of this Agreement, the City shall provide an invoice to Contractor specifying the dollar amount incurred by the City for this procurement. Contractor's reimbursement payment to the City shall be reduced by the amount of any payments made directly by Contractor to City authorized consultants assisting with this procurement.

3.4 Payments to City. For the privileges granted to and conferred upon Contractor by City under the Agreement, Contractor shall pay to City the amounts set forth below ("City Payments"), over the Term of this Agreement, unless the Agreement is earlier terminated or specifically amended to require otherwise:

3.4.1 One-Time, Up-Front Franchise Payment. No later than five (5) business days prior to Service Commencement Date of this Agreement, Contractor shall pay City **Five Million Dollars ($5,000,000)** for the right to assume City services. If the **Five Million Dollars ($5,000,000)** payment is not received by March 25, 2016, this Agreement shall be null and void and the City may exercise its rights for the value of the Performance Bond is Section 26 of this Agreement.

3.4.2 Displaced City Employee Payments. Within 30 days of the Service Commencement Date, Contractor shall pay **Five Hundred Thousand Dollars ($500,000)** to Displaced City Employees in a method to be determined by the City.

3.4.3 Annual Value Added Franchise Payment. Beginning in Agreement Year 2, Contractor shall pay to City **Five Hundred Thousand Dollars ($500,000)** each Agreement Year, with the first annual payment due on April 1,

2017, and each succeeding installment payment due on April 1st of each year thereafter, with a final payment due on April 1, 2025. The total amount of all Annual Value Added Franchise Payments shall be **Four Million Five Hundred Thousand Dollars ($4,500,000).**

3.4.4 Host Fee Payment. Contractor shall pay the City a Host Fee as follows:

a) Contractor shall make quarterly payments in the amounts as specified in Sections 3.4.4.c, 3.4.4.d, and 3.4.4.e covering the periods January 1st – March 31st, April 1st – June 30th, July 1st – September 30th, and October 1st – December 31st.

b) The Host Fee Payment is due on the last calendar day of the month following the prior quarter for services rendered, unless such day is a weekend or holiday, then the Host Fee Payment is due the next Business Day.

c) For the period covering July 1, 2017 through December 31, 2017, the Host Fee Payment shall be **Eighty One Thousand Two Hundred Fifty Dollars ($81,250).**

d) For the period covering January 1, 2018 through March 31, 2018, the Host Fee Payment shall be **Eighty One Thousand Two Hundred Fifty Dollars ($81,250).**

e) Beginning April 1, 2018 and thereafter, Contractor shall pay to City **Three Hundred Twenty Five Thousand Dollars ($325,000)** each Agreement Year during the Term of this Agreement, and as the Term may be extended.

f) The Host Fee payment is based on an initial **Two Dollars ($2.00) per ton** applicable on City Solid Waste and Green Waste tonnage delivered to the East Valley Recycling & Transfer Station. The dollar amounts specified in Sections 3.4.4.c, 3.4.4.d, and 3.4.4.e are the amounts to be paid by Contractor. In addition, Contractor shall pay the City a higher amount if the actual annual tonnage delivered to the East Valley Recycling & Transfer Station when multiplied by a City approved per ton Host Fee results in a higher dollar amount. Contractor shall also pay the City a Host Fee for non-City Solid Waste and Green Waste tonnages delivered to the East Valley Recycling & Transfer Station that may be subject to an

approved City Host Fee, provided that the non-City jurisdictions have agreed to pay the Host Fee amount. Reconciliation of actual tons received and any increased payments to be made to the City for the prior calendar year will be on the subsequent April 1st payment period. The Host Fee Payment will increase in the same amount as any change to the Maximum Permissible Service Rates, and/ or in a percentage amount equivalent to any City approved Host Fee increase above the initial $2.00 per ton.

3.4.5 Landfill Maintenance Cost Avoidance Payment. Contractor shall pay to City **Five Hundred Thousand Dollars ($500,000)** each Agreement Year during the Term of this Agreement, and as the Term may be extended, in quarterly payments being due on July 1st, October 1st, January 1st, and April 1st, with the first quarterly payment being due by July 1, 2016. The Annual Landfill Maintenance Cost Avoidance Payment will increase in the same amount as any change to the Maximum Permissible Service Rates.

3.4.6 BioCNG Biofueling Station Payment. Contractor shall pay to City **Five Hundred Thousand Dollars ($500,000)** each Agreement Year during the Term of this Agreement, and as the Term may be extended, in quarterly payments being due on July 1st, October 1st, January 1st, and April 1st, with the first quarterly payment being due on July 1, 2016. The BioCNG Biofueling Station Payment will be a concession payment for Contractor's use of City owned Biofuel station. If Contractor wishes to purchase BioFuel, Contractor and City shall enter into a separate agreement for the purchase of BioFuel.

3.4.7 Infrastructure Repair Fee Payment. Contractor shall pay to City **Two Hundred Fifty Thousand Dollars ($250,000)** each Agreement Year during the Term of this Agreement, and as the Term may be extended, with the first annual payment due on April 1, 2016, and each succeeding payment due on April 1st of each year thereafter. The Annual Infrastructure Repair Fee Payment will increase at the same amount as any change to the Maximum Permissible Service Rates.

3.4.8 Monthly Franchise Fee Payment. Contractor shall pay City the Twenty Percent (20%) of the total Gross Receipts received by the Contractor for services provided by the Contractor under the terms of this Agreement. The Monthly Franchise Fee Payment is due on the last calendar day of the month for services rendered during the prior month, unless such day is a weekend or holiday, then the Monthly Franchise Payment is due the next Business Day.

3.4.9 Annual Recyclables Revenue Share Payment. Contractor shall pay City an amount equal to **fifty percent (50%) of net revenue** from the sale of

recyclable materials each calendar year during the Term of this Agreement, and as the Term may be extended, with the first annual payment due on April 1, 2017, and each succeeding payment due on April 1st of each year thereafter. For purposes of calculating the Annual Recyclables Share Payments, "net revenue" shall be the total dollar amount during each calendar year from the sale of Recyclable Materials collected and processed by Contractor under the terms of this Agreement less Contractor's cost for processing and marketing Recyclable Materials, and Contractor's cost for disposal of residual from processing Recyclable Materials. Contractor shall provide documentation accordance with Section 24.1.1. to allow the City to verify the amount of the Recyclables Revenue Share Payments

3.4.10 Final Payments. Any Contractor payments due to the City after March 31, 2026, or March 31, 2031 if this Agreement is extended, shall be made on the required scheduled day (April 1st for Sections 3.4.4, 3.4.5, 3.4.6, 3.4.7, and 3.4.9, or last calendar day of the month for Section 3.4.8).

Section 4. Term and Term Extensions

4.1 Effective Date. The Effective Date of this Agreement shall be the date entered on the first page of this Agreement which is the date by which Contractor and City have approved the Franchise Agreement (with all exhibits attached) and their respective authorized representatives have executed the Franchise Agreement.

4.2 Term of Agreement. The term of this Agreement shall begin on April 1, 2016 and shall expire on March 31, 2026, subject to early termination or extension as may occur pursuant to this Agreement.

4.3 Term Extension. At City's sole option, City may invite Contractor to meet, confer, and negotiate regarding one 5-Year extension to this Agreement, provided the Term has not been earlier terminated or has already been set for early termination, and Contractor is not then in material breach of the Agreement. The time period to negotiate any term extension shall commence April 1, 2023, and end no later than March 31, 2024, ("**Exclusive Negotiating Period**") All terms and conditions of the Agreement shall be open to negotiation, but neither Party shall be obligated to agree to an extension of the Term nor to any modification of the terms and conditions of the Agreement. In the event, the Parties have not mutually approved an agreement extending the Term by the end of the Exclusive Negotiating Period, then there shall be no further obligation to meet, confer, or negotiate with regard to such extension, and City shall have the right to conduct any solicitation process, negotiate with any other service providers, or to award or approve a contract to any other service provider or to recommence its own Integrated

Solid Waste Collection, Processing and Disposal Services, as it may deem appropriate in its sole and absolute discretion.

4.4 Continued Reporting. Section 23, Section 25, and Section 33 of this Agreement also require Contractor to provide services (e.g., access to landfill destination information, insurance and indemnification and an insurance policy repository) beyond the period during which collection services are to be provided pursuant to this Agreement.

Section 5. Warranties and Representations

Contractor warrants that it shall comply with all applicable laws, including implementing regulations, as they may be amended, specifically including, but not limited to RCRA, CERCLA, the AB 939, SB 20, AB 341, AB 1594, AB 1826, laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices ("**UWED**"), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries [burglar alarm and emergency light batteries] alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches, regulations and orders of the California Department of Toxic Substances Control, the California Air Resources Board, CalRecycle, and their respective successor agencies, and all other applicable laws of the United States, the State of California, the County of San Bernardino, ordinances of the City, the requirements of Local Enforcement Agencies and all other agencies with jurisdiction.

5.1 Minimum Diversion Requirements. The continued privilege of Contractor to provide Integrated Solid Waste Collection, Processing and Disposal Services to City and within City's boundaries is subject to the satisfaction of each and all of the conditions set below, each of which may be waived in whole or in part by City. The Contractor must achieve all of the following Minimum Requirements. Failure to meet one or more of these requirements is a material breach of this Agreement and subject Contractor to the assessment of liquidated damages, early termination, or other remedies provided for under this Agreement.

5.1.1 Diversion Guarantee. Contractor must achieve a diversion from landfill rate of thirty-one percent (31%) by December 31, 2016; forty percent (40%) by December 31, 2020, and fifty-five percent (55%) by December 31, 2025.

5.1.2 The Maximum Permissible Customer Rates contemplates these Diversion requirements. Should the law change subsequent to the Effective Date of this Agreement and require higher Diversion rates than provided herein, then

Contractor shall comply with such legally required Diversion rates and may adjust the Maximum Permissible Customer Rates as provided under Section 21.1.3(c) "Adjustment Due to Change In Law." The diversion rate will be calculated as the tons of materials collected by Contractor from the provision of collection services that are sold or delivered to a Material Recovery Facility or Organic Waste Processing Facility, recycler or re-user, net of all residue, as required by this Agreement, divided by the total tons of materials collected under this Agreement by Contractor in each 12-month calendar year (January 1st – December 31st). City may also consider documented third party non-franchised recycling programs conducted within the City in determining compliance with the Minimum Diversion Requirements. In calculating the diversion rate, Contractor may include documentation of Recyclable Materials, Organics, or C&D Materials collected or backhauled by customers for delivery to an end-use market, re-seller, food bank, or processing facility. Documentation may include reports, receipts or other written materials that lists the type of materials and tonnage diverted from the customers' place of business that would otherwise have been collected by the Contractor as ether Solid Waste, Recyclable Materials, Organics, or C&D Materials.

5.1.3 Failure to Meet Minimum Requirements. Contractor's failure to meet the minimum requirements set forth in this Section 5 may result in the imposition of liquidated damages as specified in Section 30.5 or denial of an extension to this Agreement as specified in Section 4.3 and City's exercise of the remedies provided in Section 28 and Section 30.3. In determining the appropriate remedy, City will consider the efforts put forth by the Contractor in implementing the required programs to meet the minimum diversion requirements and the methods, the level of effort of the Contractor to fully implement the work plans attached to and included in this Agreement as **Exhibits 5 – 8** and the City's current Per Capita rate as determined by CalRecycle.

5.1.4 Warranties and Representations. Contractor warrants and represents that it is aware of and familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion requirements as set forth in Contractor's Diversion Guarantee, as well as the diversion requirements of the Applicable Laws (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) governing this Agreement (including AB 341, AB 939, AB 1594, AB 1826, SB 1016 and all amendments and related subsequent legislation), and that it shall do so without imposing any costs or fees other than those set forth in **Exhibit 1** (including if new programs are implemented which are not called out herein). The programs identified herein

are minimum requirements that must be met, and Contractor shall be responsible for implementing any other programs that may be necessary to achieve the forgoing.

5.1.5 Guarantee and Indemnification. Contractor warrants and guarantees that it will carry out its obligations under this Agreement in a manner consistent with Applicable Laws including specifically AB 939, AB 341, AB 1594, AB 1826 and SB 1016, and Contractor's actions will provide for the City to 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 Contractor's Diversion Guarantee and the Applicable Laws including AB 939, AB 341, AB 1594, AB 1826, and SB 1016 and all amendments thereto. In this regard Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

a) To the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by CalRecycle or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or the Applicable Laws and such failure or refusal prevents or delays City from submitting reports required by the Applicable Laws including AB 939, AB 341, AB 1594, and AB 1826 in a timely manner; or (2) the source reduction and Recycling goals, diversion goals, program implementation requirements, or any other requirements of the Applicable Laws, including AB 939, AB 341, AB 1594, and AB 1826, are not met with respect to the waste stream collected under this Agreement;

b) Assist City in responding to inquiries from CalRecycle or any other regulatory agency;

c) Assist City in preparing for, and participating in, the CalRecycle's biannual review of City's SRRE pursuant to Public Resources Code Section 41825;

d) Assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;

e) Assist City in any hearing conducted by CalRecycle, or any other

regulatory agency, relating to City's compliance with the Applicable Laws including AB 939, AB 341, AB 1594, and AB 1826;

f) Assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and Household Hazardous Waste Element, as well as any related requirements of the Applicable Laws;

g) Provide City with Recycling, source reduction, and other technical assistance as may be needed to comply with the Applicable Laws including AB 939, AB 341, AB, 1594, and AB 1826;

h) Defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by CalRecycle pursuant to the Applicable Laws including AB 939, AB 341, AB 1594 and AB 1826;

i) Be responsible for and pay, any fees, penalties or other costs imposed against the City by CalRecycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of the diversion requirements, set forth in the Applicable Laws for services provided by Contractor under the terms of this Agreement, including AB 939, AB 341, AB 1594 and AB 1826, or for violation of any other provision of the Applicable Laws, including AB 939, AB 341, AB 1594 and AB 1826, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

Section 6. Types and Frequency of Service

6.1 Public Health and Safety - General. In order to protect the public health and safety, arrangements made by Contractor with its Service Recipients within the City for the collection of Solid Waste shall provide for the collection of such waste generated or accumulated in Service Units within the City at least once per week, on the regular collection day, or more frequently as Contractor and its customers may agree.

6.2 Hours of Collection. Subject to the exceptions in Section 6.5, Contractor agrees that, in order to protect the quiet enjoyment of residents of the City, Contractor's

collection of Solid Waste, Recyclable Material, and Organic Waste from SFD Service Units shall take place Mondays through Fridays and shall be made between the hours of 5 a.m. and 6 p.m. SFD collection may occur on Saturdays following an observed holiday. MFD and Commercial/Industrial Solid Waste, Recyclable Material, and Organic Waste collection shall take place Monday through Saturday between the hours of 5 a.m. and 6 p.m. City collection service shall be provided between the hours of 5 a.m. and 6 p.m., Monday through Saturday. The hours, days, or both of collection may be extended with the prior written consent of the City Representative.

6.2.1 Restricted Hours. The City may direct Contractor to restrict the collection hours in areas around schools and in high traffic areas during peak commute hours. When the City is conducting road overlay or slurry projects, the City reserves the right to temporarily redirect or restrict Contractor from collection in the affected areas or temporarily change the collection hours if needed. The hours of collection may be extended due to extraordinary circumstances or conditions with the prior written consent of the City Representative.

6.3 Service Units. Service Units shall include all the following categories of premises which are in the service area as of the Service Commencement Date, and all such premises which may be added to the service area by means of annexation, new construction, or as otherwise set forth in this Agreement during term of this Agreement:

6.3.1 SFD Service Units

6.3.2 MFD Service Units

6.3.3 Commercial Service Units

6.3.4 City Service Units

Any question as to whether a premises falls within one of these categories shall be determined by the City Representative and the determination of the City Representative shall be final.

6.4 Service Unit Changes. City and Contractor acknowledge that during the Term of this Agreement it may be necessary or desirable to add or delete Service Units for which Contractor will provide collection services.

6.4.1 Additions and Deletions. Contractor shall provide services described in this Agreement to new Service Units within five (5) work days of receipt of notice from City or new Service Unit to begin such service.

6.5 Holiday Service. Contractor observes January 1st, Memorial Day, 4th of July, Labor Day, Thanksgiving Day, and December 25th as legal holidays. Contractor shall not provide collection service on these designated holidays. In any week in which one of

these holidays falls on a work day, Service Unit collection service for the holiday and each work day thereafter will be delayed one work day for the remainder of the week with normally scheduled Friday collection services being performed on Saturday. MFD, commercial and City collection service shall be adjusted as agreed between the Contractor and the Service Recipient.

6.6 Processing and Disposal.

6.6.1 Compliance with Regulations. All materials collected under this Agreement shall be delivered to facilities that comply with the Department of Resources Recycling and Recovery regulations under Title 14, Chapter 3, Minimum Standards for Solid Waste, Recyclable Material, and Organic Waste Handling and Disposal (Article 5.9 – Sections 17380-17386). Contractor, and not the City, must assure that all disposal, transfer, and processing facilities are properly permitted to receive material collected under this Agreement. Failure to comply with this provision is a material breach of the Agreement and may result in the imposition of liquidated damages as specified in Section 30.5 of this Agreement, and subject Contractor to the remedies provided in Section 28 and Section 30.

6.6.2 Permits and Approvals. Contractor must assure that all facilities selected by Contractor shall possess all permits and approvals by local enforcement agencies to be in full compliance with all regulatory agencies to conduct all operations at the approved location. Contractor shall, upon written request from the City, arrange for the facilities selected by the Contractor to provide copies of facility permits, notices of violations, inspection areas or concerns, or administrative action to correct deficiencies related to the operation. Failure to provide facility information is a material breach of this Agreement and may result in the imposition of liquidated damages as specified in Section 30.5 and subject Contractor to the remedies provided in Section 28 and Section 30.

6.6.3 Disposal Facility. Beginning on the Service Commencement Date, except as set forth below, all Solid Waste collected as a result of performing collection services shall be timely transported to a fully permitted Disposal Facility as designated by Contractor, in accordance with applicable law. In the event the Disposal Facility is closed on a work day, the Contractor shall transport and dispose of the Solid Waste at such other legally permitted disposal facility. Failure to comply with this provision is a material breach of this Agreement and may result in the imposition of liquidated damages as specified in Section 30.5 of this Agreement and may subject Contractor to the remedies provided in Section 28 and Section 30.

6.6.4 Organic Waste Processing Facility. Beginning on the Service Commencement Date, Contractor shall timely deliver all collected Organic Waste to a fully permitted Organic Waste Processing Facility as designated by Contractor, in accordance with applicable law. In the event the facility is closed on a Work Day, the Contractor shall transport and deliver the Organic Waste to such other legally permitted facility. Contractor shall ensure that all Organic Waste collected pursuant to this Agreement, except residue resulting from processing, is delivered to an Organic Waste Processing Facility that operates in compliance with diversion and recycling legislation and regulations. Failure to comply with this provision is a material breach of this Agreement may result in the imposition of liquidated damages as specified in Section 30.5 of this Agreement and may subject Contractor to the remedies provided in Section 28 and Section 30.

6.6.5 Material Recovery Facility. Beginning on the Service Commencement Date all Recyclable Materials collected as a result of performing collections shall be delivered to a legally permitted Material Recovery Facility (MRF). In the event the MRF is closed on a work day, the Contractor shall transport and deliver the Recyclable Material to such other legally permitted MRF. Failure to comply with this provision may is a material breach of this Agreement and may result in the imposition of liquidated damages as specified in Section 30.5 of this Agreement and may subject Contractor to the remedies provided in Section 28 and Section 30.

6.6.6 Transformation Facility. At Contractor's option, Contractor may direct up to 10% of the City's total waste stream to a waste-to-energy facility for diversion purposes provided that such diversion is allowable and deemed to be diversion by CalRecycle. Contractor is not entitled to any additional compensation associated with Contractor's use of any Transformation Facility unless the City specifically directs Contractor to use a Transformation Facility.

6.6.7 Use of ADC (ADC). Contractor may utilize ADC for diversion of Green Waste provided that such diversion is allowable and deemed to be diversion by CalRecycle and higher use of Green Waste is not feasible.

6.7 Inspections. The City shall have the right to inspect the Contractor's facilities or collection vehicles and their contents at any time while operating inside or outside the City.

6.8 Commingling of Materials.

6.8.1 Source Separated Organic Waste and Recyclable Materials. Contractor shall not at any time collect source separated Organic Waste or source

separated Recyclable Materials with any Solid Waste collected pursuant to this Agreement, without the express prior written authorization of the City Representative.

6.8.2 Organic Waste, Recyclable Material or Solid Waste Collected in City. Contractor shall not at any time collect any Organics, Recyclable Materials, or Solid Waste collected pursuant to this Agreement, with any other material collected by Contractor outside the City without the express prior written authorization of the City Representative.

6.9 Contamination. Contractor shall only be required to collect Recyclable Materials if they have been separated by the Service recipient from Solid Waste and Organic Waste, and shall only be required to collect Organic Waste if it has been separated by the Service Recipient from Solid Waste and Recyclable Materials. If Recyclable Materials are commingled with Solid Waste or Organic Waste, or Organic Waste is commingled with Solid Waste or Recyclables, to the extent that renders the entire Recyclable Materials or Organic Waste container contaminated, then Contractor will leave the container unemptied along with a non-collection notice which contains instructions on the proper procedures for setting out Recyclable Materials or Organic Waste. The Service Recipient has the option of removing the contaminated materials and the Contractor shall collect the Recyclables Materials or Organic Waste at the next scheduled collection day for no additional charge. If, however, the Service Recipient does not remove the contaminated materials, then the Contractor shall collect the contaminated Recyclable Materials or Organic Waste as Solid Waste on the Service Recipient's next regularly scheduled Solid Waste collection day. Contractor may charge for this service at the applicable Solid Waste collection rate for the type of customer and size of container as specific in **EXHIBIT 1.**

6.10 Graffiti Removal

6.10.1 Graffiti Removal from Carts or Bins. If Carts or Bins have been marked or tagged with graffiti, within 48 hours of being identified by the Contractor or City, Contractor shall either remove the graffiti or replace any and all Carts or Bins that have been marked or tagged with graffiti. Contractor shall not deliver a Cart or Bin with any graffiti visible on the Cart Bin.

6.10.2 Graffiti Removal from Temporary Bins and Roll-offs. If Temporary Bins or Roll-offs have been marked or tagged with graffiti, by the next regular scheduled collection day, but no longer than seven (7) calendar days of being identified by the Contractor or City, Contractor shall either remove the graffiti or replace any and all Temporary Bins or Roll-offs that have been marked or tagged

with graffiti. Contractor shall not deliver a Temporary Bin or Roll-off with any graffiti visible on the Roll-off.

6.11 Spillage and Litter. The Contractor shall use its best efforts to not litter premises in the process of providing collection service or while its vehicles are on the road. The Contractor shall transport all materials collected under the terms of this Agreement in such a manner as to prevent the spilling or blowing of such materials from a Contractor's vehicle. The Contractor shall exercise all reasonable care and diligence in providing collection service so as to prevent spilling or dropping of Solid Waste, Organic Waste, or Recyclable Materials and shall immediately, at the time of occurrence, clean up such spilled or dropped materials.

6.11.1 Carelessness of Service Recipient. The Contractor shall not be responsible for cleaning up unsanitary conditions caused by the carelessness of the Service Recipient; however, the Contractor shall clean up any material or residue that are spilled or scattered by the Contractor or its employees.

6.11.2 Liquids from Operations. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the Contractor's operations or equipment repair shall be covered immediately with an absorptive material and removed from the surface. When necessary, Contractor shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. Contractor's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

6.11.3 Spillage and Litter from Operations. The above paragraphs notwithstanding, Contractor shall clean up any spillage or litter caused by Contractor within two (2) hours upon notice from the City.

6.12 Hazardous Waste.

6.12.1 Hazardous Waste. Under no circumstances shall Contractor's employees knowingly collect Hazardous Waste, or remove unsafe or poorly placed Hazardous Waste, from a collection Container. If Contractor determines that material placed in any Container for collection is Hazardous Waste, or other material that may not legally be accepted at the Disposal Facility or one of the processing facilities, or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such material. The generator shall be contacted by the Contractor and requested to arrange for proper disposal service. If the generator cannot be reached immediately, the Contractor shall, before leaving the premises, leave a non-collection notice, which indicates the reason for refusing to collect the material, and how the Hazardous Waste can be properly disposed or recycled.

6.12.2 Notification of City. If Hazardous Waste is found in a collection Container that poses an imminent danger to people or property, the Contractor shall immediately notify the City Representative and the City's Public Safety (Police) Department. The Contractor shall immediately notify the City of any Hazardous Waste that has been identified.

6.12.3 Disposal. If Hazardous Waste is identified at the time of delivery to the Disposal Facility, or one of the processing facilities and the generator cannot be identified, Contractor shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste.

6.13 Regulations and Record Keeping. Contractor shall comply with emergency notification procedures required by applicable laws and regulatory requirements. All records required by regulations shall be maintained at the Contractor's facility. These records shall include waste manifests, waste inventories, waste characterization records, inspection records, incident reports, and training records.

6.14 Transition. Contractor understands and agrees that the Transition Period is intended to provide the Contractor with ample and sufficient time to, among other things, order equipment, prepare necessary routing schedules and route maps, obtain any permits and licenses, establish/build facilities, and begin the public awareness campaign as part of the Contractor's transition program as specified in **Exhibit 5** which is attached to and included in this Agreement. Contractor shall be responsible for the provision of all collection services beginning on the Service Commencement Date.

Section 7. SFD Collection Service

In addition to the general requirements in Section 6, these services shall be governed by the following terms and conditions:

7.1 Conditions of Service. The Contractor shall provide SFD collection service to all SFD Service Units whose Solid Waste, Organics, or Recyclable Materials are properly placed in Carts, except as set forth in Section 7.8, Contractor shall offer Solid Waste Carts in 64 and 96-gallon sizes, and Recyclables Materials and Organic Waste Carts in 64 or 96-gallon sizes. Contractor may offer alternative services to recipients receiving on-premise service. If collection in Carts is not sufficient to accommodate the amount of Solid Waste generated, Contractor may offer Bins or Roll-offs in sizes as allowable under this Agreement.

7.2 Collection Service. SFD collection shall be done where Solid Waste, Recyclable Materials, and Organic Waste Carts are placed within two (2) feet of the curb, swale, or at edge of street pavement for streets without curbs. This shall apply to

both public and private streets. Contractor may charge for collection at the rates as set forth in **Exhibit 1**.

7.2.1 On-Premise Collection Service – Physical Disability. A SFD Service Recipient, and all other adults living at the Service Unit residing therein, who have disabilities that prevent him/her from being physically unable to place Carts at the curb for collection shall receive on-premise collection service where all Carts are collected from a side-yard, backyard, or other off-street location agreed on between the Contractor and the Service Recipient. Contractor shall provide this service at the collection rates as set forth in **Exhibit 1**.

7.3 Frequency and Scheduling of Service. SFD Solid Waste, Recyclable Materials and Organic Waste shall be provided one (1) time per week on a scheduled route basis. SFD collection services shall be scheduled so that a SFD Service Unit receives SFD Solid Waste collection service and SFD Recyclable Materials collection service, and SFD Organic Waste collection service on the same Work Day.

7.4 Non-collection. Contractor shall not be required to collect any Solid Waste, Recyclable Material, or Organic Waste that is not placed in a Cart. In the event of non-collection, Contractor shall affix to the Cart a non-collection notice explaining why collection was not made. Contractor shall maintain a copy of such notices during the term of this Agreement.

7.5 SFD Solid Waste Collection Service. This service will be governed by the additional following terms and conditions:

7.5.1 Additional Carts. Contractor shall provide additional Carts to SFD Service Recipients within five (5) working days of request at rates per Exhibit 1, provided that additional Carts are used by Service Recipients for the purposes of setting out additional Solid Waste Materials for regular Solid Waste Material collection service.

7.5.2 Solid Waste - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Solid Waste Materials, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

7.6 SFD Recyclable Materials Collection Service. This service will be governed by the additional following terms and conditions:

7.6.1 Additional Carts. Contractor shall provide additional Carts to SFD Service Recipients within five (5) working days of request at no additional cost provided

that additional Carts are used by Service Recipients for the purposes of setting out additional Recyclable Materials for regular Recyclable Material collection service.

7.6.2 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

7.7 SFD Organic Waste Collection Service. In addition to the requirements of Section 6, this service will be governed by the following terms and conditions:

7.7.1 Organic Waste Processing Services. Contractor shall ensure that all Organic Waste collected pursuant to this Agreement are diverted from the landfill in accordance with AB 939 and any subsequent or other applicable legislation and regulations. Contractor reserves the right to dispose, rather than divert, any Organic Waste that is contaminated to an extent it is not suitable for processing.

7.7.2 Organic Waste Disposal. Contractor shall ensure that the Organic Waste collected pursuant to this Agreement is not disposed of in a landfill, except as a residue resulting from processing. For purposes of this Agreement, the application of Organic Waste as Alternative Daily Cover ("ADC") shall not constitute disposal, so long as, it is applied in accordance with standards adopted by the State of California and is allowable under AB 1594.

7.7.3 Additional Organic Waste Carts. Contractor shall provide additional SFD Organic Waste Carts to SFD Service Recipients within five (5) working days of request. Contractor shall be compensated for the cost of additional Organic Waste Carts in accordance with the "Additional Organic Waste Cart" Service Rate as set forth in **Exhibit 1** or as may be adjusted under the terms of this Agreement.

7.7.4 Holiday Tree Collection Service. Contractor shall collect Holiday Trees from all SFD Service Units as part of the SFD Organic Waste collection services. Contractor shall provide this service beginning on the first work day after December 25 until the end of the second collection week in January, or dates approved by the City.

a) Contaminated Holiday Trees. Holiday trees that are flocked contain tinsel or other decorations or that do not have their stands removed may be delivered to the Disposal Facility at the discretion of the Contractor.

b) Trees must be no taller than six (6) feet in length. Trees taller than six (6) feet in length must be cut in half for safe collection.

7.7.5 SFD Food Waste Collection Service. At such time as State Law mandates a separate residential Food Waste Program, Contractor and City shall negotiate the specific program requirements and costs to implement such Food Waste Program.

7.7.6 Non-collection. Contractor shall not be required to collect any Organic Waste that is mixed with either Solid Waste, or Recyclable Materials. In the event of non-collection, Contractor shall affix to the Organic Waste Cart a non-collection notice explaining why collection was not made. Contractor shall maintain a copy of such notices during the term of this Agreement.

7.8 On-Call Bulky Waste Collection Service. This service will be governed by the following terms and conditions:

7.8.1 Conditions of Service. The Contractor shall provide On-Call SFD Bulky Waste collection service to all SFD Service Units in the service area whose Bulky Waste have been placed within two (2) feet of the curb, swale, paved surface of the public or private roadway, closest accessible roadway, or other such location agreed to by the Contractor and Service Recipient, that will provide safe and efficient accessibility to the Contractor's collection crew and vehicle. Each SFD Service Unit in the service area shall be entitled to receive free Bulky Waste collection service a maximum of two (2) collection times per calendar year, five (5) items per collection such as a TV, couch, or water heater. Automobile tires will be limited to two (2) tires per collection request. In accordance with the "Special Collection" service rate as set in **Exhibit 1**, Contractor shall be compensated for the cost of collecting Bulky Waste in excess of two (2) Bulky Waste collections per year, or more than five (5) items per collection during any single Bulky Waste collection.

7.8.2 Frequency of Service. SFD Service Recipients must call at least forty-eight (48) hours in advance to schedule SFD Bulky Waste collection service. Collection will occur on customer's next scheduled service collection day.

7.8.3 Bulky Waste Containing Freon. In the event Contractor collects Bulky Waste that contains Freon, Contractor shall handle such Bulky Waste in a manner such that the Bulky Waste is not subject to regulation as Hazardous Waste under applicable state and federal laws or regulations.

7.9 SFD Temporary Collection Service. Upon forty-eight (48) hours request by a SFD Service Unit, Contractor shall provide a 3 cubic yard Bin or Roll-off at the Service Unit. Such SFD temporary collection service shall be on a temporary basis not to

exceed seven (7) days without collection, emptying, and replacement of the Bin or Roll-off.

7.9.1 Bins or Roll-offs shall be transported by Contractor to an approved processing facility to achieve maximum diversion.

7.9.2 Charges for temporary Bins Roll-offs shall be in accordance with **Exhibit 1** of this Agreement.

7.9.3 The Contractor shall provide SFD temporary collection services with as little disturbance as possible and shall leave any Bins or Roll-off at a location without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. Contractor shall only place Bins or Roll-offs in strict adherence with the City's right-of-way requirements and Municipal Code.

Section 8. MFD Collection Services

8.1 MFD collection services for MFD premises utilizing Carts will be governed by all conditions of service as specified in Section 7 of this Agreement and those MFD premises utilizing Bins or Roll-offs will be governed by all conditions of service as specified in Section 8.4 and Section 9 of this agreement. Contractor may charge for collection at the rates as set forth in **Exhibit 1**. In addition, the following additional services shall apply:

8.2 MFD Organic Waste Collection Service. For MFD Service Units utilizing Bins or Roll-offs for collection, Contractor shall implement any required MFD Organic Waste Program in accordance with the schedule established under AB 1826.

8.3 On-Call MFD Bulky Waste Collection Service. The Contractor shall provide on-call MFD Bulky Waste collection service to all MFD Service Units in the service area whose Bulky Waste have been placed within five (5) feet of the curb, swale, paved surface of the public or private roadway, closest accessible roadway, or other such location agreed to by the Contractor and Service Recipient or property manager, that will provide safe and efficient accessibility to the Contractor's collection crew and vehicle. In accordance with the "Bulky Waste Collection" service rate as set in **Exhibit 1**, Contractor shall be compensated for the cost of collecting MFD Bulky Waste.

8.4 MFD Temporary Collection Service. Upon forty-eight (48) hours request by a MFD Service Unit, Contractor shall provide a 3 cubic yard Bin or Roll-off at the Service Unit. Such MFD temporary collection service shall be on a temporary basis not to exceed seven (7) days without collection, emptying, and replacement of the Bin or Roll-off.

8.4.1 Bins or Roll-offs shall be transported by Contractor to an approved processing facility to achieve maximum diversion.

8.4.2 Charges for temporary Bins Roll-offs shall be in accordance with **Exhibit 1** of this Agreement.

8.4.3 The Contractor shall provide MFD temporary collection services with as little disturbance as possible and shall leave any Bins or Roll-off at a location without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. Contractor shall only place Bins or Roll-offs in strict adherence with the City's right-of-way requirements and Municipal Code.

Section 9. Commercial Collection Service

9.1 Conditions of Service. The Contractor shall provide commercial Solid Waste collection service, commercial Recyclable Material collection service, Commercial Organic Waste collection service, and Commercial Roll-off collection service to all Commercial Service Units in the service area pursuant to the requirements of Section 6 and this Section 9. Contractor may charge for collection at the rates as set forth in **Exhibit 1**. For new customers, and any change in service, Contractor shall have a written service agreement with each Commercial Service Unit that specifies the services to be provided and the Maximum Permitted Rates to be charged for the agreed on services. The service agreement shall reflect any change in services as requested by the Commercial Service Unit.

9.1.1 Required Container Sizes. Contractor shall offer Solid Waste Carts in 64 and 96-gallon cart sizes, and Recyclable Materials and Organic Waste Carts in 64 or 96-gallon cart sizes. Contractor shall offer Bins in 2, 3, 4, and 6 cubic yard sizes. Contractor shall offer Roll-offs in 10, 20, and 40 cubic yard sizes.

9.1.2 Required Capacity. Contractor shall provide commercial Recyclable Materials collection service to all Commercial Service Units in the service area, and Commercial Organic Waste collection service provided upon subscription at the rates as set forth in **Exhibit 1**. For each Service Unit, Contractor shall offer a minimum capacity of commercial Recyclable Material collection as requested by the Service Recipient. The maximum capacity offered shall be measured as the total cubic yards collected weekly for commercial Solid Waste collection service.

9.1.3 Accessibility. Contractor shall collect all Containers that are readily accessible to the Contractor's crew and vehicles and not blocked. However, Contractor shall provide "pull-out services" as necessary during the provision of commercial collection services. Pull-out services shall include, but not be limited to moving manually or by a specialized "scout" truck the Containers from their

storage location for collection and returning the Containers to their storage location and will be charged as outlined in **Exhibit 1**.

9.1.4 Manner of Collection. The Contractor shall provide commercial collection service with as little disturbance as possible and shall leave any Container at the same point it was originally located without obstructing alleys, roadways, driveways, sidewalks or mail boxes.

9.1.5 Size and Frequency. The size of the Container and the frequency (above the minimum) of collection shall be determined between the Service Recipient and the Contractor provided it meets the City's development and permitting requirements. However, the size and frequency shall be sufficient to provide that no Solid Waste, Recyclable Material, or Organic Waste need be placed outside the Container. Commercial collection service shall be provided as deemed necessary and as determined between the Contractor and the customer, but such service shall be received no less than one (1) time per week with no exception for holiday(s) as set forth herein, except that collection service scheduled to fall on a holiday may be rescheduled as determined between the customer and the Contractor as long as the minimum frequency requirement is met. Service may be provided by Bin, Cart or Roll-off at the option of the customer. The Contractor shall provide Solid Waste, Organics Waste, or Recyclable Materials Containers as part of the commercial collection service rates set forth in **Exhibit 1**; however, customers may own their compactor provided that the customer is completely responsible for its proper maintenance and such compactor shall be of a type that can be serviced by the Contractor's equipment.

9.2 Commercial Solid Waste Collection Service. This service shall be governed by the following additional terms and conditions:

9.2.1 Commercial Solid Waste Overflow. Where Contractor identifies instances of overfilling of Container, it will document the overfilling through verbal or written reports and/or digital photography. Contractor will meet with the customer to review evidence of the overfilling of containers. Where such evidence was presented to the commercial/industrial account and Contractor documents another instance of overfilling within one (1) month of such presentation, Contractor is authorized to charge an overage fee as outlined on **Exhibit 1**. In addition, Contractor will contact the customer to discuss the option of delivering a next larger-sized Container to the commercial/industrial premises.

9.2.2 Non-collection. Contractor shall not be required to collect any commercial Solid Waste that is not placed in a Cart, Bin, or Roll-off. In the event of non-

collection or material overflow, Contractor shall affix to Cart, Bin, or Roll-off a non-collection notice explaining why collection was not made.

9.3 Commercial Recyclable Material Collection Service. This service will be governed by the following terms and conditions:

9.3.1 Additional Bins or Carts. Contractor shall provide additional Cart, Bin, or Roll-off to commercial Service Recipients within five (5) working days of request provided that additional Bins and Carts are used by commercial Service Recipients for the purposes of setting out additional Recyclable Materials for regular weekly Recyclable Materials collection service. Contractor may charge for additional Bins or Carts in accordance with **EXHIBIT 1**.

9.3.2 Recycling - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the type of items included as Recyclable Materials, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid before undertaking any changes or revisions to such work.

9.4 Commercial Organic Waste Collection Service. This service shall be provided on a customer subscription basis and will be governed by the following terms and conditions:

9.4.1 Conditions of Service. In accordance with the schedule established under AB 1826, Contractor shall provide Commercial Organic Waste Collection Service to all Commercial Service Units in the service area who have subscribed for service and whose Commercial Organic Waste materials are properly placed in Containers except as set forth below, where the Containers are accessible. Commercial Organic Waste Collection Service will occur Monday – Friday, and on Saturdays upon request and as necessary.

9.4.2 Commercial Organic Waste - Changes to Work. Should changes in law arise that necessitate any additions or deletions to the work described herein including the types of items included as Organic Waste, the parties shall negotiate any necessary cost changes and shall enter into an Agreement amendment covering such modifications to the work to be performed and the compensation to be paid.

9.5 Commercial Roll-off Collection Service. Upon request of a Commercial Service Unit, Contractor shall provide a commercial Roll-off collection service on a temporary basis or permanent basis.

9.5.1 Roll-offs shall be transported by Contractor to an approved processing facility to achieve maximum diversion.

9.5.2 Charges for Roll-offs shall be in accordance with **Exhibit 1** of this Agreement.

9.5.3 The Contractor shall provide commercial Roll-off collection services without obstructing alleys, roadways, driveways, sidewalks, or mail boxes. Contractor shall only place Roll-offs in strict adherence with the City's right-of-way requirements and Municipal Code.

Section 10. Collection Service for City Service Units

10.1 General. Contractor shall provide Solid Waste, Recyclable Material, and Organic Waste collection services, and Roll-off collection service to City Service Units as deemed necessary and as determined between the Contractor and the City, but such service shall be received no less than one (1) time per week. Contractor Service may be provided by Bin, Cart or Roll-off at the option of the City. Contractor shall offer Solid Waste Carts in 64 and 96-gallon cart sizes and Bins in 2, 3, 4, and 6 cubic yard sizes, and Recyclables Materials and Organic Waste Carts in 64 and 96-gallon cart sizes and Bins in 2, 3, 4, and 6 cubic yard sizes. Contractor shall offer Roll-offs in 10, 20, and 40 cubic yard sizes. The size of the Container and the frequency (above the minimum) of collection shall be determined between the City and the Contractor. However, size and frequency shall be sufficient to provide that no Solid Waste, Recyclable Materials, or Organic Waste needs to be placed outside the Container. City Service Units are listed in **Exhibit 2.** Contractor shall not charge for collection of Solid Waste, Recyclable Materials or Organic Waste generated within the normal course of business.

10.2 Public Containers Collection. Contractor shall provide collection, transportation and disposal or processing service to those public Solid Waste, Organic Waste or Recycling Containers in place or placed by the City, or as designated by the City, and other City properties during the term of this Agreement. Frequency of collection shall be a maximum of six (6) days per week per Container.

10.3 Accessibility. Contractor shall collect all Carts, Bins and Roll-offs that are readily accessible to the Contractor's crew and vehicles and not blocked. However, Contractor shall provide "pull-out services" as necessary during the provision of City collection services. Pull-out services shall include, but not be limited to, dismounting from the collection vehicle, moving the Bins or Carts from their enclosure location for collection and returning the Bins or Carts to their enclosure location.

10.4 Contractor **Additional Services**. Contractor will provide the following additional services at no cost to the City:

10.4.1 City Sponsored Events. Contractor shall provide collections services at City-sponsored events as requested by City. Such services shall be provided in such a manner that all collection, processing and disposal needs for the event are adequately and properly provided for by Contractor. City Sponsored Events are set forth on **Exhibit 4**, attached to and included in this Agreement. Contractor agrees to establish a program under which it will donate free or reduced cost services as a gesture of corporate good will to charitable or other non-profit community groups for events sponsored by such groups within the City's boundaries.

10.4.2 Neighborhood Watch Program. Contractor shall implement a neighborhood watch program in cooperation with the City Representative and City's Police Chief. The purpose of the program is to enhance the standard of living in City's neighborhoods by utilizing Contractor's drivers and supervisors to keep a watchful eye out for flagged activities or circumstances. Contractor will work with City to identify preferred reporting methodologies as well as the identification of certain problem areas or flagged actives or circumstances. Contractor will train drivers on how to safely report potential incidents of crime, vandalism or child safety.

10.4.3 Local Purchase Preference Program. Contractor shall make good faith efforts to purchase goods and services from businesses located within City's boundaries ("San Bernardino Business") that are reasonably cost effectively able to supply parts, services or support to Contractor in performing its obligations under this Agreement.

10.5 Community Development Department Reviews. Contractor, upon City's request, shall assist the City in the review of applicants' plans for projects covered by Public Resources Code § 42911, including commercial and multi-family projects, to provide for effective and economical accumulation and collection of Organic Waste, Recyclable Materials and Solid Waste.

10.6 Enforcement. Contractor and City will take reasonable measures, including, but not limited to, legal actions (*e.g.*, actions seeking to enjoin scavengers) to discourage Scavenging of Recyclable Materials from the Solid Waste, Recyclable Material, and Organic Waste Stream. Contractor agrees to assist the City to further develop or implement Anti-Scavenging Ordinances, Construction & Demolition Ordinances, and Mandatory Commercial and Multi-Family Recycling Ordinances to assist in meeting CalRecycle diversion program requirements, maximize the Exclusive Franchise provisions of this agreement, and to deter illegal hauling from occurring in the City.

Section 11. Street Sweeping

11.1 Street Sweeping Services. Beginning on the Service Commencement Date, and continuing until the expiration or termination of this Agreement, Contractor or Contractor's subcontractor as listed in **Exhibit 11**, shall provide street sweeping services at no additional cost in accordance with the terms and conditions of this Agreement.

11.2 Manner of Service. Contractor shall provide a complete sweep of all publicly maintained City Streets. Within any curb mile, Contractor shall be responsible for sweeping all curbs including median islands and the corners from any cross street intersecting the subject street. Contractor shall obey all laws governing the operation of the sweepers on a public street, and shall perform its operations so that sweepers are traversing their routes in the normal direction of traffic.

11.3 Water. Contractor may obtain water from City designed facilities at rates set by the City for the water necessary in the street sweeping operation within City. Alternatively, Contractor may make arrangements to obtain water from other water purveyors within the area at Contractor's sole cost and expense. To the extent possible, Contractor shall use reclaimed or recycled water.

11.4 Sweeper Speed. Contractor shall operate the sweepers at a speed of not more than six (6) miles per hour when sweeping or when the sweeper brooms are down, unless Contractor can demonstrate that the sweeper can operate efficiently and safely at a higher speed. City will use NPDES Permits requirements, Environmental Protection Agency information, generally accepted industry standards, and the sweeper manufacturer's recommendation on the speed of sweepers when considering speeds greater than six (6) miles per hour.

11.5 Width of Sweeper Path. Contractor shall sweep a path, with all brooms down, with a width of not less than eight (8) feet unless parked vehicles, structures, or other objects prohibit the safe sweeping of this path width. The path shall begin at the face of the curb, and include the flow line of the gutter. Unless blocked by parked cars or Containers the face of the curb and gutter shall always be included within the sweeper path. On those residential streets with no curb, the width of the sweeper path shall be not less than eight (8) feet measured from the edge of the pavement toward the center of the street.

11.6 Noise. To protect peace and quiet in service areas, the noise level generated by street sweepers during normal sweeping shall not exceed a single-event noise level of eighty-five (85) decibels (dBA) at a distance of twenty-five (25) feet from the street sweeper measured at an elevation of five (5) feet above ground level. Contractor shall, upon request, submit to City a certificate of vehicle noise level testing by an independent

testing entity of any street sweepers used by Contractor in the City, which has been the subject of more than one noise complaint within any twelve-month period.

11.7 Global Positioning Systems (GPS). Contractor shall provide street sweeping vehicles with fully functioning on-board GPS systems.

11.8 Frequency and Day of Service.

11.8.1 Residential Streets. Contractor shall provide street sweeping service for each curb mile of residential streets in the City twice per month on a scheduled route basis. However, in those instances where the scheduled street sweeping service day falls on a holiday, Contractor shall provide street sweeping services on the following work day.

11.8.2 Major Arterial Streets. Contractor shall provide street sweeping service for each curb mile of major arterial streets in the City twice per month on a scheduled route basis. However, in those instances where the scheduled street sweeping service day falls on a holiday, Contractor shall provide street sweeping services on the following work day.

11.8.3 Downtown Area Streets. Contractor shall provide street sweeping service for each curb mile of the downtown area streets in the City twice per month on a scheduled route basis. However, in those instances where the scheduled street sweeping service day falls on a holiday, Contractor shall provide street sweeping services on the following work day.

11.8.4 City Owned Parks Parking Lots. Contractor shall provide street sweeping service for each City owned parks parking lots in the City once monthly on a scheduled route basis. Parks parking lots shall be swept on the same day of the month that routine sweeping of the adjoining residential neighborhood takes place. However, in those instances where the scheduled street sweeping service day falls on a holiday, Contractor shall provide street sweeping services on the following work day.

11.9 Hours of Service. Contractor shall provide street sweeping service on major arterial streets commencing no earlier than 4:00 a.m. and terminating no later than 7:00 p.m., Monday through Friday with no service on Saturday (except for holiday service as set forth in Section 6.5 of this Agreement in which case normal sweeping hours may be utilized or as set forth in this Section) or Sunday. The hours, days, or both of service may be extended due to extraordinary circumstances or conditions with the prior verbal consent of the City Representative. Sweeping in residential areas shall be coordinated with collection services to ensure that sweeping occurs after collection of all Carts has been completed on a specific street.

11.10 Street Changes. City and Contractor acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete City streets for which Contractor will provide street sweeping service. City will provide notification of changes to Contractor through the customer service system. Conditions which may cause the City Representative to order a street or an area to be bypassed temporarily include the following:

11.10.1 Construction or development on or along a street.

11.10.2 Pavement maintenance activities, including the chip seal program or the slurry seal program.

11.10.3 Inclement weather when running water is in the gutter or street such that sweeping is ineffective.

11.10.4 Special sweeping on alternative schedule.

11.10.5 Consistent non-compliance of citizens to remove parked cars during sweep days.

11.10.6 Other legitimate reasons that make sweeping impractical as determined by the City Representative.

11.11 Street Additions. As new streets are constructed and accepted by City, City may, at City's sole option, designate such streets as part of the service area for the purposes of street sweeping service. If the City Representative designates such streets as part of the service area (after final cap has been laid down) Contractor shall provide street sweeping service on such streets under the terms and conditions of this Agreement within fifteen (15) work days of receipt of notice from the City Representative to begin service.

11.12 Street Deletions. City may require some City streets to be temporarily or permanently removed from the list of scheduled streets for which Contractor provides street sweeping service under this Agreement. Contractor shall immediately cease providing street sweeping service to any City street upon receipt of notice from the City Representative to stop such service. When a City street has been temporarily removed from the list of scheduled streets, Contractor shall resume street sweeping service on such street in the next regularly scheduled cycle following notification from the City Representative that normal street conditions exist in order to resume service.

11.13 Revised Maps. Contractor shall revise the street sweeping service route maps to show the addition or deletion of City streets as provided above and shall provide such revised maps to the City Representative as requested. The maps shall be provided in a format that can be posted to the City website.

11.14 Temporary Changes in Sweeping Schedule. In the event that the City Representative notifies Contractor not to sweep on a temporary basis, no liquidated damages will be assessed for failure to sweep such streets. The City Representative shall notify Contractor of the temporary suspension of service at least one day prior to the scheduled sweep, except that in the case where the reason for not performing service is because of inclement weather, the City Representative may notify Contractor at any time.

11.15 Parking Restrictions. The City shall also notify Contractor of any streets when permit parking may impact scheduled street sweeping service. Contractor may be required to adjust sweeping schedule to sweep prior to the parking permit hours' restrictions.

11.16 Signage. Should the City change street sweeping days, or add street sweeping signage Contractor shall be responsible for the cost and installation of any such modified or new signs as directed by the City.

11.17 Hazardous Waste. Contractor shall not be required to remove any Hazardous Waste from the street surface. If in the course of performing street sweeping services, any suspected Hazardous Wastes are encountered, Contractor shall immediately report the location to the San Bernardino Fire Department or any other responsible agency and to the City Representative.

11.18 Disposal of Sweeper Waste. Contractor shall transport and deliver all sweeper waste and debris collected as a result of performing street sweeping services to a facility as listed in **Exhibit 3.**

11.19 Spillage. During hauling, all sweep waste shall be contained, covered or enclosed so that leaking, spilling and blowing of the sweep waste is prevented. Contractor shall be responsible for the immediate cleanup of any spillage caused by Contractor.

11.20 Street Sweeping Service Routes. Within ten (10) days of the Effective Date of this Agreement, City shall provide Contractor with a street sweeping database for use in developing routes and maps. Contractor shall develop the routes and maps using this data. Within thirty (30) days of receiving City provided route maps, Contractor shall submit to the City Representative, service area maps, precisely defining the sweeper routes for review and approval by the City Representative. The route maps shall include the days of the month sweeping shall occur, the portions of the City to be swept, and any special needs such as early starts, and late finishes. The City Representative may provide written comments on the preliminary maps to Contractor no later than ten (10) work days after receipt of the maps from Contractor. Contractor shall revise the maps to reflect such comments and return them to the City Representative within ten (10) work

days after receipt of the City Representative's comments for City corroboration. Upon approval by the City Representative of the final sweeper route maps, Contractor shall develop and maintain the sweeping routes on a computerized mapping system that is compatible with City's mapping system to the extent possible. Street sweeping maps provided to the City shall be in a format that is suitable for posting to the City website.

11.21 Addition or Deletion of City Streets. Changes in maps due to addition and deletion of certain City streets shall be provided by City, and Contractor shall update the maps in Contractor's system every month. Such changes shall also be reflected in Contractor's printed route maps.

11.22 Service Route Changes. Contractor shall submit to the City Representative, in writing, any proposed route change (including maps thereof) not less than forty-five (45) calendar days prior to the proposed date of implementation. The City Representative may provide written comments to Contractor on such proposed change no later than ten (10) work days after receipt of the proposal from Contractor, and Contractor shall revise the routes to reflect such comments and return them to the City Representative within ten (10) work days of receipt of such comments, for City corroboration. Contractor shall not implement any route changes without the prior approval of the City Representative. If the approved route change will change the day on which street sweeping service will occur, Contractor shall notify the affected Service Recipients of route changes not less than ten (10) work days before the proposed date of implementation in a manner approved by the City Representative.

11.23 Other City Street Sweeping Service. If during the Term of this Agreement, circumstances exist which require work associated with the street sweeping service program that are not specifically provided for in this Agreement, the City Representative may require Contractor to perform such other associated work (OAW). When Contractor performs OAW, the labor, materials, and equipment used in the performance of such work shall be subject to the prior written approval of the City Representative and charged at an amount agreed to between the City and Contractor. Examples of OAW that Contractor may be required to perform include: flood clean-up and, construction clean up services caused private contractors, City requested clean-up services and any contingency where sweeper and supporting sweeper equipment could assist in a particular instance.

11.24 Street Sweeping Quality of Work. The standards of performance, which Contractor is obligated to meet, are those good street sweeping practices, which leave the serviced area in a debris and dirt free condition.

Section 12. Right-of-Way Clean-Up Service

12.1 Approach. Contractor will perform a proactive and comprehensive Right-of-Way Clean-Up Services at a high level of cleanliness at the gateway entry points of the City, Downtown and Civic Center District as well as other designated areas identified by the City.

12.1.1 Contractor's Right-of-Way Clean-Up Services will consist of seven (7) components:

a) Removal of litter, vegetation and accumulated roll-off from City gateways, alleys, major thoroughfares (including center islands and landscape medians), and the Downtown District;

b) Removal of memorials

c) Removal of waste generated at homeless/transient encampments;

d) Shopping cart, and tire removal;

e) Storm channel and storm drain cleaning;

f) Metrolink clean-up; and,

g) Warrant abatements, vacant lot clean-ups and illegal dumping clean-ups.

12.2 Personnel. Contractor will deploy ten (10) maintenance workers and one (1) maintenance supervisor fulltime to perform Right-of-Way Clean-Up Services. The workweek of the Right-of-Way Clean-Up crewmembers will be assigned so as to provide coverage from 6:00 AM to 6:00 PM, Monday through Friday and 6:00 AM to 2:00 PM on Saturdays.

12.3 Equipment. At a minimum, Contractor will perform this work with no less than four (4) vehicles, each equipped with a two-way radio, a flashing arrow sign (FAS), ten (10) 28-inch orange cones with reflective bands, two (2) "Roadwork Ahead" signs, each equipped with a caution light, and necessary commercial hand tools, including but not limited to, clippers, hand saws, chainsaw, rakes, brooms, shovels, pitch forks, weed eaters and personal safety equipment consisting of reflective garments, protective chainsaw chaps, gloves, helmets and eye and ear protection.

12.4 City Work Orders. Contractor will respond to the City's written Work Orders for Right-of-Way Clean-Up Services within two (2) business days. Emergency notifications

may be directed to Contractor's division office, which shall then dispatch Contractor's Right-of-Way Maintenance Supervisor to the scene for assessment and resolution.

12.5 Diversion. To the extent practical, Contractor will divert from disposal the materials collected.

12.6 Compensation. Work for components (a) through (f) will be performed at no additional cost to the City. Work for component (g) will be performed in response to a duly noticed code enforcement action with the expectation that the property owner will bear the cost of the service and that if payment is not made, the City will process the collection as a debt utilizing the County tax bill lien procedure available to it with compensation due to Contractor when collected by the City.

12.7 Scope of Services for Right-of-Way Clean-Ups

12.7.1 Routine Patrol. Contractor's Right-of-Way maintenance crews will complete routine patrols removing all litter, vegetation and accumulated debris from:

a) City gateway entry points and the Downtown and Civic Center District, once weekly; and,

b) Assigned Right-of-Way routes for major thoroughfares, center islands and landscaped medians from the centerline of the roadway in both directions to ten (10) feet off of the road edge, once every twenty (20) business days; and

c) Any public alley from the centerline in both directions to the property line as determined by fences, landscaping, changes in surface material, or line of sight once every twenty (20) business days.

12.7.2 Removal of Memorials. Within two (2) business days following written notification from City, Contractor will remove and dispose of memorials, which shall include but not be limited to trash, bedding and personal effects.

12.7.3 Removal of Homeless Encampments. Subject to the following provisions, within two (2) business days following written notification from the City, Contractor will remove and dispose of materials from homeless or transient encampments, which shall include but not be limited to trash, bedding and personal effects. In each such case, City will make its Police force available to Contractor to coordinate the removal of such materials in a lawful manner and in a manner, which ensures the safety of Contactor's employees. City will be responsible for complying with all applicable laws related to the removal of such

materials. In addition, City agrees to indemnify, defend, protect and hold harmless Contractor, its officers, employees and assigns from and against all losses, liabilities, claims, actual damages (including but not limited to special and consequential damages) and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, Contractor or its officers, employees or agents arising from or attributable to any act or omission of City or Contractor or Contractor's officers, employees or agents in the removal of such materials, and/or any failure to fully comply with all applicable laws in connection with the same.

12.7.4 Shopping Cart Removal. Contractor's Right-of-Way Maintenance Crews shall remove shopping carts as a part of its routine patrol and upon the direction of the City. Contractor will transport shopping carts to its facility and will attempt to contact the retail outlet from which shopping carts bearing identification originated. Retail outlets will be given five (5) business days after notification to retrieve their shopping carts subject to a recovery costs of $25.00 per shopping cart. Unclaimed shopping carts will be recycled.

12.7.5 Storm Channels and Storm Drains. Storm channels identified in a listing to be provided by City will be cleaned once annually not later than September 1st. Storm drains and drain easements identified in a listing to be provided and maintained by the City will be cleaned once annually between October 1st and December 1st.

12.7.6 Metrolink. The Contractor Right-of-Way maintenance crew will visit the Metrolink Station located at 1204 W. 3rd Street once each week to remove litter and accumulated debris from the grounds and parking lot. Twice annually, the Contractor Right-of-Way maintenance crew will patrol the Metrolink rail line within the City in coordination with Metrolink maintenance services.

12.7.7 Warrant Abatements, Vacant Lot Clean-Ups, Illegal Dumping Clean-Ups. Within two (2) business days of receipt of a written order of the City's code enforcement officer delivered by the City's Contract Administrator, the Contractor Right-of-Way maintenance crew will respond to perform clean-up on private property as part of an enforcement action. Contractor will maintain a record of hours worked, personnel and equipment utilized, and disposal expenses and shall issue a bill to the City for the services performed. The City shall follow its usual collection procedures, which may include causing a lien to be assessed against the property on the County property tax bill. The City will then compensate Contractor when the City collects payment.

12.8 Exceptions. Hazardous or toxic substances, motor vehicles, motor vehicle parts and objects larger than seven (7) feet in length or weighing more than two hundred (200) pounds are excluded from the Scope of Services for Right-of-Way Clean-Up.

12.9 Lease of Contractor's Vehicles. Contractor agrees that after the Service Commencement Date, the City may lease vehicle numbers 08223 and 739 as listed in **Exhibit 9** for an amount of **One Dollar ($1.00)** per Agreement Year. In the event that City leases vehicle numbers 08223 and 739, the City shall be responsible for the associated insurance, vehicle licensing, maintenance and fueling costs of vehicle numbers 08223 and 739 during the time these vehicles are leased by the City. The terms and conditions of any vehicle lease agreement shall be negotiated between the City and Contractor.

Section 13. Collection Routes

13.1 Collection Routes. During the Transition Period, but before the Service Commencement Date, Contractor shall coordinate with City staff to define the existing collection routes. Any proposed changes to current routing shall be reviewed and approved by the City prior to any notification or implementation with the customers.

13.2 Subsequent Collection Route Changes. During the first four to six months, no changes will be made to residential service route days. The Contractor shall submit to the City, in writing, any proposed route change (including maps thereof) not less than sixty (60) calendar days prior to the proposed date of implementation, except for route changes agreed to by City and Contractor. To the extent possible, Contractor will provide the map data in a GIS format that is compatible with the format used by the City. The Contractor shall not implement any route changes without the prior review of the City Representative. If the route change will change the collection day for a Service Recipient, the Contractor shall notify those Service Recipients in writing of route changes not less than ten (10) days before the proposed date of implementation.

13.3 Collection Route Audits. The City reserves the right to conduct audits of Contractor's collection routes. The Contractor shall cooperate with the City in connection therewith, including permitting City employees or agents, designated by the City Representative, to follow behind the collection vehicles in order to conduct the audits. The Contractor shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the City Representative to conduct such audits.

Section 14. Public Outreach Services

14.1 General. Contractor, at its own expense, shall prepare, submit and implement an annual Public Education and Outreach Plan that incorporates key feature of Contractor's Public Education Program **(Exhibit 6).** The proposed action plans must be submitted annually for City approval no later than sixty (60) days following the Service Commencement Date and each year thereafter. The program must include specific steps designed to increase diversion and participation, for the City's residents and businesses. A minimum of two (2) annual campaigns should target certain diverted materials or "problem" areas of the Contractor's service area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the City Representative and Contractor staff. The Contractor shall provide space in Contractor's public outreach materials, such as mailers, flyers and newsletters, for the City to include announcements, community information, articles, and photographs such that it does not impact the current mailing cost components.

14.2 Transition. Contractor will provide transition activities, during the Transition Period, including, at minimum, conducting eight (8) (one in each ward and one general at a location to be determined) community workshops and meetings outlining the transition to the services provided by the Contractor's services and how billing will be done. Contractor shall also provide information on proper how to participate in recycling and organics services, and where to take HHW materials for proper recycling or disposal, how to arrange for Bulky Waste Collection, and the days and hours that collection and Street Sweeping will occur.

14.3 Recycling Coordination Support. Contractor will provide staff resources to serve as recycling coordination support to promote Contractor's public education, recycling and waste diversion, waste prevention, and grant application and coordination programs provided to the City.

14.4 Annual Collection Service Notice. Each Agreement Year the Contractor shall publish and distribute notices to all Service Units regarding the types of services available. The notice can be in the form of a separate mailer, one of the quarterly newsletters distributed by Contractor, or as a billing insert. To the extent appropriate, based on the category of customer receiving the notice, it shall contain at a minimum: definitions of the materials to be collected, procedures for setting out the materials, collection and disposal options for unacceptable materials such as Hazardous Waste, and the Contractor customer service phone number and website address. The notice shall be provided in English, and in Spanish if requested by City, and shall be distributed by the Contractor each Year.

14.5 Additional Public Outreach Programs and Services. Contractor shall provide additional Public Outreach Programs and Services as requested by City at a price to be mutually agreed upon between the Contractor and the City within the City Manager's contract signing authority. In the event the Contractor and the City cannot reach a mutually agreed upon price for the requested service or program, City shall have the right to procure the service of other vendors or contractors to provide the requested service.

14.6 News Media Relations. Contractor shall notify the City Representative by Fax, e-mail or phone of all requests for news media interviews related to the collection service program within twenty-four (24) hours of Contractor's receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Service Recipient perception of services, Contractor will discuss Contractor's proposed response with the City Representative.

14.6.1 Copies of draft news releases or proposed trade journal articles shall be submitted to City for prior review and approval at least five (5) work days in advance of release, except where Contractor is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case Contractor shall submit such materials to City simultaneously with Contractor's submittal to such regulatory agency.

14.6.2 Copies of articles resulting from media interviews or news releases shall be provided to the City within five (5) Business Days after publication.

14.7 Website. Contractor shall develop and maintain a state-of-the-art website accessible to the public, dedicated to services provided in the City that is accessible by the public. The web site shall include answers to frequently asked questions, list of Recyclable Materials and Organic Waste, and other related topics. The Contractor's website shall provide the public the ability to e-mail complaints to Contractor and request services or service changes. Contractor's website shall also promote reuse and recycling, graphics and statistic illustrating the City progress toward meeting City's diversion goals, other City's environmental programs, and other materials as requested by the City. The City shall review and approve Contractor's website as it relates to the City of San Bernardino's page(s).

14.8 Waste Generation and Characterization Studies. Contractor acknowledges that City must perform Solid Waste generation and characterization studies periodically to comply with AB 939 requirements. Contractor agrees to participate and cooperate with City and its agents and to perform studies and data collection exercises, as needed, to determine weights, volumes and composition of Solid Waste generated, disposed, transformed, diverted or otherwise processed to comply with AB 939.

Section 15. Collection Equipment

15.1 General. Contractor warrants that it shall provide adequate numbers of vehicles and equipment for the collection, transportation, recycling and disposal services for which it is responsible under this Agreement. All collection vehicles used by Contractor in the performance of services under this Agreement shall be of a high quality. At the start of this Agreement, all collection vehicles utilized by Contractor pursuant to this Agreement shall be those outlined below in conjunction with vehicles owned by the Contractor.

15.2 Use of Purchased City Equipment. In accordance with this Agreement, Contractor shall purchase the City's personal property used as listed in **Exhibit 9.**

15.3 Vehicle Transition Plan. Contractor shall re-brand all previously owned City of San Bernardino vehicles as outlined in the Transition Plan attached in **Exhibit 5**.

15.4 Temporary Access to and Use of City Corporation Yard. Contractor contemplates requiring access to and use of City's Corporate Yard for up to ninety (90) days after the Service Commencement Date for temporary storage of Containers and collection vehicles. City and Contractor will separately meet and confer with regard to the scope and terms of conditions of such temporary use after the Effective Date of the Agreement, but City will not unreasonably refuse such access and use provided Contractor does not undertake any maintenance, repair, cleaning, or fueling of any vehicles, nor refurbishment or maintenance of Containers, does not store nor dispose of any Solid Waste, Hazardous Waste or Universal Waste at the Corporate Yard, maintains insurance acceptable to City, and repairs any damages caused by Contractor's use.

15.5 Long Term Use of City Corporation Yard. In the event that City wishes to provide long-term use or purchase of the City's Corporate Yard to Contractor, any such agreement will be done separately from this Agreement.

15.6 Noise. To protect peace and quiet in service areas, the noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall not exceed a single-event noise level of eighty-five (85) decibels (dBA) at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall, upon request, submit to City a certificate of vehicle noise level testing by an independent testing entity of any collection vehicles used by Contractor in the City, which has been the subject of more than one noise complaint within any twelve-month period.

15.7 Compliance. Contractor warrants that it will comply with all measures and procedures promulgated by all agencies with jurisdiction over the safe and sanitary operation of all its equipment.

15.8 Private Streets, Alleys and Parking Lots. Contractor agrees to use its best efforts to prevent damage to private streets, alleys and parking lots over which its collection equipment may be operated, to obtain all required approvals for operation of its collection vehicles on private streets, alleys and parking lots.

15.9 Vehicle Registration, Licensing and Inspection. Upon City request during the term of this Agreement, Contractor shall submit documentation to the City Representative 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 and will be subject to bi-annual inspections. Certificates for said inspection shall be filed with the City upon request.

15.10 Clean Air Vehicles. During the term of this Agreement, to the extent required by law, Contractor shall provide its collection vehicles to be in full compliance with local, State and federal clean air requirements that were adopted including, but not limited to, California Air Resources Board and South Coast Air Quality Management District.

15.11 Safety Equipment. All collection equipment used by Contractor shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and warning flags. All such safety markings shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time. All collection vehicles shall be equipped with audible back-up warning devices.

15.12 Vehicle Signage and Painting. Collection vehicles shall have with the Contractor's name, Contractor's customer service telephone number, and the number of the vehicle. No advertising shall be permitted other than the name of the Contractor except promotional advertisement of the Recyclable Materials and Organic Waste programs. Contractor shall repaint all vehicles (including vehicles striping) during the term of this Agreement on a frequency as necessary to maintain a positive public image as reasonably determined by the City Representative.

15.13 Vehicle Maintenance. Contractor shall maintain collection vehicles in a clean condition and in good repair at all times and ensure that no collected materials, oil, grease, or other substances will blow, fall out, escape or leak out of the vehicle, with the exceptions of vehicle emission. All parts and systems of the collection vehicles shall

operate properly and be maintained in a condition satisfactory to City. Contractor shall wash all collection vehicles at least once a week.

15.14 Maintenance Log. Contractor shall maintain a maintenance log for each collection vehicles. The log shall at all times be accessible to City upon request of City Representative, and shall show, at a minimum, each vehicle's Contractor-assigned identification number, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

15.15 Equipment Inventory. Upon City's request, Contractor shall provide to City an inventory of collection vehicles and major equipment used by Contractor for collection or transportation and performance of services under this Agreement. The inventory shall indicate each collection vehicle by Contractor assigned identification number, DMV license number, the age of the chassis, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, and the maintenance status. Upon City request, Contractor shall submit to the City Representative, either by Fax or e-mail, an updated inventory annually to the City or more often at the request of the City Representative. Each vehicle inventory shall be accompanied by a certification signed by Contractor that all collection vehicles meet the requirements of this Agreement.

15.16 Reserve Equipment. The Contractor shall have available to it, at all times, reserve collection equipment which can be put into service and operation in the event the disabled vehicle cannot return to service that day. Such reserve equipment shall correspond in size and capacity to the equipment used by the Contractor to perform the contractual duties.

15.17 Containers.

15.17.1 Carts. Carts may be new, existing or refurbished as of the Service Commencement Date, and are to be hot-stamped, embossed, or laminated, and in-molded with the type of materials to be collected (i.e., Solid Waste, Organic Waste, Recyclable Materials). In-molding on the Carts shall be on the lids. Contractor's name and/or logo shall be included on the body of Carts. Labeling and graphics of the Carts shall be approved by the City.

15.17.2 Bins. Bins may be new, existing, or refurbished at the start of the Agreement. Bins are to be painted and be labeled with either the type of materials to be collected (i.e., Solid Waste, Organic Waste, Recyclable Materials) or the type of material prohibited from being disposed in the Bin.

15.17.3 Roll-offs. Roll-off containers may be used, provided they are newly painted, properly marked and in good working order. The City retains the right to

inspect any such used Roll-off and direct the Contractor to replace such a used Roll-off if it is deemed to be not acceptable.

15.17.4 Purchase and Distribution of Carts and Bins. The Contractor shall be responsible for the purchase and distribution of fully assembled and functional Carts and Bins to Service Units in the Service Area throughout the term of this agreement. Contractor shall also distribute Carts and Bins to new Service Units that are added to Contractor's service area during the Term of this Agreement as required. The delivery of containers shall be completed within five (5) Work Days.

15.17.5 Replacement of Carts and Bins. Contractor's employees shall take care to prevent damage to Carts or Bins by unnecessary rough treatment. However, any Cart or Bin damaged by the Contractor shall be replaced by the Contractor, at the Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Service Recipient.

a) Upon notification to the Contractor by the City or a Service Recipient that the Service Recipient's Cart(s) and Bin(s) have been stolen or damaged beyond repair through no fault of the Contractor, the Contractor shall deliver a replacement Cart(s) and Bin(s) to such Service Recipient within five (5) Work Days. The Contractor shall maintain records documenting all Cart and Bin replacements occurring on a monthly basis.

b) Where such Cart is lost, stolen or damaged beyond repair through no fault of the Contractor, each SFD Service Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Solid Waste Cart, one (1) lost, destroyed, or stolen Recyclable Materials Cart, and one (1) lost, destroyed, or stolen Organic Waste Cart, during each of the ten (10) Agreement Years at no cost to the Service Unit.

c) Where such Cart or Bin is lost, stolen or damaged beyond repair through no fault of the Contractor, each MFD Service Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Solid Waste Cart or Bin, one (1) lost, destroyed, or stolen Recyclable Materials Cart or Bin, and one (1) lost, destroyed, or stolen Organic Waste Cart or Bin during each of the ten (10) Agreement Years at no cost to the Service Unit.

d) Where such Cart or Bin is lost, stolen or damaged beyond repair through no fault of the Contractor, each Commercial and City Service Unit shall be entitled to the replacement of one (1) lost, destroyed, or stolen Solid Waste Cart or Bin, one (1) lost, destroyed, or stolen Recyclable Materials Cart or Bin, and one (1) lost, destroyed, or stolen Organic Waste Cart or Bin during each of the ten (10) Agreement Years at no cost to the Service Unit.

e) Where such Bin or Cart replacement occurs through no fault of the Contractor, Contractor shall be compensated for the cost of those replacements in excess of the requirements set forth above in accordance with the "Cart or Bin" Service Rate, as appropriate, as initially set by the City or as may be adjusted by the City as provided under the terms of this Agreement.

15.17.6 Repair of Carts and Bins. Contractor shall be responsible for repair of Carts in the areas to include but not be limited to, hinged lids, wheels and axles. Within five (5) Work Days of notification by the City or a Service Recipient of the need for such repairs, the Contractor shall repair the Cart or Bin or if necessary, remove the Cart or Bin for repairs and deliver a replacement Cart or Bin to the Service Recipient.

15.17.7 Cart or Bin Exchange. Upon notification to the Contractor by the City or a Service Recipient that a change in the size or number of Carts or Bins is required, the Contractor shall deliver such Carts or Bins to such Service Recipient within seven calendar days to allow for the exchange to occur on the regular scheduled collection day. At no charge, each SFD, MFD, Commercial, and City Service Unit shall be entitled to receive one (1) Solid Waste Cart, Recyclable Materials, or Organic Waste Carts exchange, per Agreement Year during the term of this Agreement. Contractor shall be compensated for the cost exchanges in excess of one (1) per Agreement year, in accordance with the "Cart or Bin Exchange" service rate as Set forth in **Exhibit 1.**

15.17.8 Ownership of Carts, Bins and Roll-Off Containers. Ownership of Carts, Bins and Roll-Off Containers on the Service Commencement Date, and Carts, Bins and Roll-Off Containers distributed by the Contractor after April 1, 2016 shall rest with the Contractor. However, in the case of the termination of the Agreement prior to the expiration of the Term, or optional Term Extension, the City shall have the right to take possession of the Carts, Bins and Roll-Off Containers and shall retain such possession until satisfactory arrangements can be made to provide collection services using other equipment. Such time of

possession shall be limited to twelve months, and no monies will be owed to the Contractor from the City for the use of the equipment. Upon the receipt of written notice from the City, Contractor shall submit to the City Representative an inventory of Carts, Bins and Roll-Off Containers, including their locations.

Section 16. Hiring of Displaced City Employees and Local Recruiting

16.1 CONTACTOR shall offer employment to all "qualified" Displaced City Employees and shall hire such Displaced City Employees if they timely accept the offer of employment. An applicant is deemed "qualified" where he or she has undergone and passed the Contractor's required standard pre-employment physical, background check and drug screening. Displaced City Employees shall be hired in accordance the following and the provisions of **Exhibit 10.**

16.1.1 Contractor shall maintain all Displaced City Employees at the same level of pay as was paid to the displaced employee by the City as of the Service Commencement Date.

16.1.2 Displaced City Employees will be eligible for annual reviews.

16.1.3 In determining the rate of accrual for paid vacation and sick days for Displaced City Employees, Contractor agrees to apply each Displaced City Employee's years of service with City as if they were years of service with Contractor.

16.1.4 Contractor shall pay a total of **Five Hundred Thousand Dollars ($500,000)** as a hiring bonus distributed to Displaced City Employees who are hired by the Contractor within 30 days of Service Commencement Date. The allocation method for distributing the hiring bonus paid to Displaced City Employees will be determined by the City.

16.1.5 Contractor shall not discharge any Displaced City Employee hired by Contractor for at least one hundred eighty (180) days after the Service Commencement Date, except "for cause" as that term is defined in the employee personnel policies of Contractor effective as of the Effective Date of this Agreement. Thereafter, the continued employment of Displaced City Employees shall be under the terms and conditions established for all Contractor's workers in the particular classification.

16.2 Local Recruiting. Contractor's Human Resources Department will attempt to fill job openings with City residents through the following means:

16.2.1 All Contractor employees residing in the City will be advised of Contractor's job openings in advance of general postings and announcements and will be encouraged to refer friends and family residing in the City;

16.2.2 City publications will be included in any media job postings;

16.2.3 For special recruitments, Contractor will utilize a job fair;

16.2.4 Flyers and promotions for events sponsored by Contractor within the City will carry a message inviting residents to consider employment with Contractor; and,

16.2.5 When two or more equally qualified job candidates are considered for employment with Contractor in the City, preference will be shown to the candidate residing in the City.

Section 17. Privacy

17.1 General. Contractor shall observe and protect the rights of privacy of Service Recipients. Information identifying individual Service Recipients, or the composition or contents of a Service Recipient's Solid Waste, Recyclable Materials, or Organic Waste 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 Service Recipient. 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 which may be required by the Act, or preparing and distributing public awareness materials to Service Recipients.

17.2 Mailing Lists. Contractor shall not market or distribute mailing lists with the names and addresses of Service Recipients.

17.3 Privacy Rights Cumulative. The rights accorded Service Recipients pursuant to this Section shall be in addition to any other privacy rights accorded Service Recipients pursuant to federal or state law.

Section 18. Service Exceptions; Hazardous Waste

18.1 Hazardous Waste Inspection, Diversion and Reporting. Contractor reserves the right and has the duty under law, to inspect Solid Waste put out for collection and to reject Solid Waste observed to be contaminated with Hazardous Waste. Should Contractor find or observe reportable quantities of Hazardous Waste put out for collection with Solid Waste, Contractor shall notify all agencies with jurisdiction, including the California Department of Toxic Substances Control and Local Emergency Response Providers and, if appropriate, the National Response Center, of reportable quantities of

Hazardous Waste, found or observed in Solid Waste observed or collected 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 City property, including storm drains, streets or other public rights of way, Contractor shall notify the City Manager, or the City Manager's designee immediately.

Section 19. Customer Service

19.1 Office Hours. Contractor must maintain an office accessible by a local or toll free telephone number each Business Day.

19.2 Service Recipient Calls. At Contractor's expense, its regular telephone numbers shall be listed in San Bernardino-area telephone directories under Contractor's name. Contractor shall maintain a telephone answering system capable of accepting at least ten (10) incoming calls at once.

19.3 Emergency / After Hours Telephone Number.

19.3.1 For City. Contractor will provide cell phone numbers and/or other required contact information to City Staff to be used in case of an emergency. These emergency numbers can be used outside normal business hours and will be kept confidential.

19.3.2 For Service Recipients. Contractor shall have an after-hours message center where customers can leave messages. Contractor will also provide and maintain a website where customers may leave messages by e-mail. Contractor will retrieve all voice and email messages the following business day.

19.4 Multilingual. Contractor shall at all times maintain the capability of responding to all telephone calls in English, Spanish and such other languages City reasonably determines to be necessary for communication with service recipients.

19.5 Customer Service and Complaint Logs. Contractor shall update customer records with any inquiries, service requests and complaints into a customer data base which shall be maintained in a manner that it is reasonably available for inspection and review by City upon request. All calls shall be logged in the account record. Contractor shall note the name and address of the complainant, the date and time of the complaint, the nature of the complaint, the name of the Contractor's employee taking the complaint, and the nature and date of Contractor's resolution of the complaint. Contractor shall inform all Service Recipients that all complaints shall be directed to Contractor. The Complaint Log shall be maintained on a computerized data base format. The Complaint Log shall be available for inspection and review by City upon request. Contractor shall

provide a summary of the Complaint Log to City monthly during the first (1st) year of service and then quarterly thereafter for the duration of the Term.

19.6 Response to Calls. Contractor will use its best efforts to answer all incoming calls within five (5) rings. Any call "on-hold" will be placed in a queue and answered in the order in which it was received.

19.7 Service Responses. City and Contractor agree that the protection of public health, safety and well-being require that service complaints be acted on promptly. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Service Recipient complaints.

19.7.1 Missed Pick-Ups. In the case of a complaint of a missed collection, Contractor shall make the collection no later than the following collection day

19.7.2 Other Complaints. Contractor will respond to all complaints from Service Recipients, other than missed-pickups, within one (1) Working Day of receiving the complaint.

Section 20. Ownership of Solid Waste, Recyclable Materials, Organic Waste and Construction and Demolition Materials

Ownership of Solid Waste, Organic Waste, and Recyclable Materials shall pass, by operation of law, to Contractor at such time as said materials are placed for collection in Containers for collection by Contractor. Ownership and the right to possession of Solid Waste, Recyclable Material, Organic Waste and Construction and Demolition Materials placed for collection shall transfer directly from the Service Recipient to Contractor, by operation of law and not by virtue of this Agreement. At no time does the City obtain any right of ownership or possession of Solid Waste or any Hazardous Waste illicitly placed for collection in a Solid Waste Container, and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights.

Section 21. Customer Rates and Billing Procedures

21.1 Rates for Service.

21.1.1 Maximum Permitted Service Rates. Contractor shall not charge rates (or additional charges, fees, or penalties) in excess of the Maximum Permitted Service Rates specified on **Exhibit 1** attached to this Agreement.

21.1.2 City Service Units. Contractor shall not charge or bill City for services to City Service Units, Street Sweeping, or abandoned waste Collection and Right-of-Way Clean-Ups.

21.1.3 Adjustments To Maximum Permitted Service Rates. The adjustments to Maximum Permissible Customer Rates shall be calculated as follows:

a) Annual Adjustment. July 1, 2017, and each July 1st thereafter, Contractor may increase the Maximum Permitted Service Rates for all Service Recipients by CPI.

Any City Approved Host Fees shall be considered as pass-through cost and added to the CPI adjustment to the Maximum Permitted Service Rates.

Contractor shall send the proposed rate adjustment calculations and full rate schedule to the City Manager for review by March 1st of each Agreement year, or no adjustment shall be made for that Agreement Year. The City Manager shall respond to Contactor within thirty days (30) after receipt of Contractor's proposed changes to the Maximum Permitted Service Rates if the proposed percentage increase is calculated correctly in accordance with this Agreement. If the proposed Maximum Permitted Service Rates are correctly calculated, the new rates will be implemented by Contractor beginning July 1st of the Agreement Year.

If the City Manager finds that Contractor's proposed changes to the Maximum Permitted Service Rates are not correctly calculated, Contactor shall have thirty days (30) days to correct and resubmit proposed changes to the Maximum Permitted Service Rates. If Contractor does not resubmit corrected Maximum Permitted Service Rates within 30 days of notice by the City Manager, no adjustment to the rates shall be made.

b) Maximum Annual Increase. In no event may the increase in Maximum Permissible Service Rates increase by more than five percent (5%) during any July 1st – June 30th period regardless of the amount increase in the CPI. If, however, the changes to the CPI result in an increase above five percent (5%) or a negative number, any amount above five percent (5%) or below zero percent (0%), shall be carried forward or applied in subsequent years.

c) Adjustment Due to Change In Law. As used herein, "Change in Law" means the enactment, issuance, adoption, repeal,

amendment or modification of any federal, state or local statute, ordinance or regulation, or a regulatory agency or other administrative agency interpreting a regulation or statute, or a judicial decision interpreting a law, statute, ordinance or regulation, in a manner different than relied upon by municipalities and the solid waste and collection industry. Contractor may adjust the Maximum Permissible Service Rates by an amount equal to the increase or incremental increase, as the case may be, in the costs (i.e. on any direct or indirect cost, whether fixed or variable) of Contractor's provision of services under this Agreement that are caused by the Change in Law and that have been demonstrated to the City Council.

d) The City Council shall not unreasonably refuse to approve rate adjustments, nor shall the City Council unreasonably delay review and approve of any such adjustment.

21.1.4 Rounding. Calculation of rates and determination of any annual adjustments shall be made only in units of one cent ($0.01) and shall not result in a decrease to the rates currently in effect. Fractions of less than one cent ($0.01) shall not be considered in making adjustments. The indices shall be truncated at four (4) decimal places for the adjustment calculations.

21.2 Contractor Billing. The Contractor shall be solely responsible for the billing and collection of payments for all Integrated Solid Waste Collection, Processing and Disposal Services to Service Recipients, except as provided in the Transition Plan. The City's Representative may review the initial format for all Service Recipient bills.

21.3 Partial Month Service. If, during a month, a Service Unit is added to or deleted from Contractor's service area, the Contractor's billing shall be pro-rated based on the daily rate (monthly rate multiplied by 12 months and then divided by 365 days). The daily rate is assessed for the actual number of days the account was serviced.

21.4 Production of Invoices for Service Units Utilizing Cart Service. The Contractor shall produce an invoice for Service Recipients utilizing Carts received under this Agreement bi-monthly in arrears. The Contractor's invoice shall be remitted to the Service Recipient no earlier than the last day of the 2nd month of the period for which service is being billed. The payment due date will be the 15th day of the month following the close of the billing period. Contractor shall provide notice to affected customers of a proposed rate increase one full billing cycle in advance of implementing the rate increase. Where the exact amount of the increase proposed is not known a billing cycle in advance, Contractor may satisfy this requirement by referring to a measure by which

the rate will increase (e.g. by reference to the CPI or by reference to an increase caused by a Change in Law).

21.5 Production of Invoices for Service Units Utilizing Bin Service. The Contractor shall produce an invoice for Service Recipients utilizing Bins received under this Agreement in arrears but no fewer than twelve (12) times per year. The Contractor may invoice the Service Recipient no earlier than the last day of the month for which service is being billed. The payment due date will be the 15th day of the month following the close of the billing period.

21.6 Production of Invoices for Roll-off Collection Service. The Contractor shall produce an invoice for Roll-off collection services received under this Agreement in arrears for services during the prior month. The Contractor may invoice the Service Recipient no earlier than the last day of the month for which service is being billed. The payment due date will be the 15th day of the month following the close of the billing period.

21.7 Production of Invoices for Temporary Bin or Roll-off Collection Service. The Contractor may bill for temporary Bin or Roll-off Collection Services in advance on a Cash on Delivery basis (COD), or another billing arrangement mutually agreed on between Contractor and Service Recipient requesting Temporary Bin or Roll-off Collection Service. Contractor may also bill for collected tonnage in arrears based on the actual weight of materials by material type.

21.8 City Provided Billing Inserts. City may provide educational and other material to Contractor for inclusion in the invoices mailed by Contractor to SFD, MFD and Commercial Service Units for collection services. Contractor shall not charge the City for the inclusion of additional educational or other materials in the invoices provided the inclusion of such City requested materials does not exceed the cost for standard postage for any mailing. City shall be responsible for the additional postage costs if applicable.

21.9 Methods of Payment. Contractor shall provide the means for Service Recipients to pay bills through the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account. On-line (E-Pay) bill methods shall be password protected and comply with federal regulations protecting the privacy of customer credit information. Contractor shall provide evidence of such security certifications and advise the City of Contractor's security measures implemented for on-line payment.

21.10 Remitting Receivables. Contractor shall remit to City any payments received from service units for services provided by City prior to the Service Commencement Date, and City shall remit to Contractor any payments received from service units for

services provided by Contractor after the Service Commencement Date. Such remittance shall be made within fifteen (15) days of receipt of payment.

21.11 Delinquent Service Accounts.

21.11.1 Residential Accounts. Contractor agrees not to discontinue service to residential SFD and MFD (5 or fewer units) cart customers. Contractor may recover any and all payments in accordance with Section 21.11.3 below.

21.11.2 Commercial Accounts. Contractor agrees to not permanently discontinue service to a commercial or Roll-off customer for non-payment. Contractor may temporarily suspend services for maximum of fourteen calendar days if customer's account has been delinquent in payment for a period of at least forty-five (45) days. If Contractor temporarily suspends service to any non-paying person, corporation or entity, such person, corporation, or entity as a condition precedent to re-establishment of regular service, shall comply fully with all of the then billing policies and practices of the Contractor, including, but not limited to, requirement of payment by cash or cash equivalent, prepayment of one full billing cycle, a security deposit, payment of all costs of collection of monies owed to Contractor, and payment of a reinstatement fee. In addition, delinquent accounts shall be charged a 1.5% monthly late fee. If the Contractor temporarily suspends service for non-payment of the customer's account, Contractor shall, upon City request, give written notice to the City Manager of any suspension of service for nonpayment of account, giving the name and address of the customer(s). If payment is not received after the temporary suspension of services, Contractor shall resume regular services and shall be entitled to recover any and all payments in accordance with Section 21.11.3 below.

21.11.3 Non-Payment. Customers (Property owners or tenants) who have not remitted required payment within forty-five (45) days after the date of billing shall be notified by Contractor on forms that contain a statement that if payment is not received within fifteen (15) days from the date of the notice, the delinquent and unpaid charges, including a 10% penalty and 1.5% monthly interest, as well as all direct and indirect costs incurred by City and Contractor may be placed on the San Bernardino County annual secured property tax rolls and that any amount owing would then become a lien on the property. Contractor shall provide such notice to customers as is legally required, including notification via U.S. Mail to the current billing address on file. The City agrees to annually levy delinquent charges for the prior calendar year for collection with property taxes. The parties intend that while the City will elect in accordance with State Law to place delinquent and unpaid solid waste assessments on the secured property tax rolls, Contractor understands and agrees that the City has no obligation to

foreclose on any tax bill. Contractor shall pay all fees charged by San Bernardino County in connection with the establishment of this secured tax roll billing and collection program and shall pay all direct and indirect costs incurred by the City in processing delinquent and unpaid assessments through the secured property tax roll procedure.

Section 22. Contractor's Books and Records; Audits

22.1 Contractor shall maintain all records relating to the services provided hereunder, including, but not limited to, all costs of collection and disposal, customer lists, billing records, maps, records substantiating the information furnished by Contractor to City pursuant to Section 24 of this Agreement and Service Recipient complaints for the period during which collection services are to be provided pursuant to this Agreement and an additional period of not less than three years, or any longer period required by law. The City shall have the right, upon fifteen business days advance notice, to inspect, copy and audit all records relating to this Agreement, including, but not limited to, Service Recipient lists, billing records, maps, and customer complaints. Such records shall be made available to City at Contractor's regular place of business, or other place agreed to by City and Contractor, within the County of San Bernardino.

22.2 Should any examination or audit of Contractor records reveal an underpayment of any payment required to be paid to City under this Agreement, the amount of such underpayment, plus interest at the maximum rate permitted under California law, shall become due and payable to City not later than thirty days after written notice of such underpayment is provided to Contractor by City. Should an underpayment of more than five percent (5%) be discovered, Contractor shall bear the entire cost of the examination or audit.

Section 23. Integrated Waste Management Act; Reporting Requirements

23.1 Contractor-City Cooperation. Contractor shall cooperate with City in Solid Waste Disposal Characterization Studies and waste stream audits and shall implement measures adequate to achieve the diversion goals set forth in this Agreement. (See also Section 5, and Section 30.3 below.) During the Term of this Agreement, Contractor, at no expense to City, shall submit to City all relevant information and reports required to meet the reporting obligations imposed by CalRecycle under the Act, as amended. Contractor agrees to submit such reports and information by email or on computer discs, in a format acceptable to City at no additional charge, if requested by City.

23.2 Change in AB 939, RCRA, CERCLA and Related Laws. This Agreement is part of City's efforts to comply with the provisions of the Act as it may be amended and

as implemented by the regulations of CalRecycle, or its successor agency, as they may be amended, and the City's Source Reduction and Recycling Component, as it may be amended. In the event that the Act or other state or federal laws (including, but not limited to CERCLA and RCRA) or regulations enacted or amended after this Agreement has been executed, prevent or preclude compliance with one or more provisions of this Agreement, or significantly increase or decrease Contractor costs, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations.

23.3 Changes in Other Laws. In the case of changes in the laws other than amendments to the Act, which increase or decrease the cost of Contractor's service, Contractor or City may seek a rate increase or decrease to reflect the increase or decrease in costs directly attributable to the amended or newly enacted provision of law or regulations, specifying, in writing, the law to which the additional costs or savings are attributed, and how they would result in increased costs. City Council must approve any changes in the Maximum Permitted Service Rates resulting from any Change in Law.

Section 24. Activities and Financial Reports; Adverse Information

24.1 Reports. Contractor, at no additional expense, shall submit to the City such information or reports in such forms and at such times as the City reasonably may request or require, including, but not limited to the following, submitted not less often than as indicated:

24.1.1 Format and Type of Reports. Reports shall be submitted to City, transmitted in a format acceptable to City, as an attachment to e-mail. The following reports shall be submitted to City Monthly until the first anniversary of the Service Commencement Date and then Quarterly thereafter. Reports shall include the following:

a) Summary of Contractor Payments to the City. A summary of all payments made to the City under this Agreement for the reporting period.

b) Summary of Contractor Gross Receipts Received. A summary of all Contractor Gross Receipts received for services provided under the terms of this Agreement broken down by Residential, Commercial and Construction and Demolition Services.

c) Disposal and Diversion Summary. A summary table showing the total tonnage of Solid Waste, Recyclable Materials, Organic Waste, Construction and Demolition Materials, Bulky Waste

collected, processed or disposed, and the percentage of total diversion achieved as measured in accordance with Section 5.1.2 for each month during the reporting period.

d) Solid Waste Data.

(1) The report shall show (a) the number of tons collected each month broken down by Residential, Commercial, and City Service Units and (b) the total Solid Waste tonnage delivered to Disposal Facilities.

(2) All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period

e) Recyclable Materials Data.

(1) The report shall show (a) the number of tons collected each month broken down by Residential, Commercial, and City Service Units, (b) the tonnage delivered to Material Recovery Facilities (c) total tonnage by type of Recyclable Materials processed and marketed during each month and (d) total tonnage of Recyclable Materials' residual disposed at landfill, and (e) the revenue received from the sale of recyclables minus the cost for processing the Recyclable Materials and residual disposal.

(2) All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period.

(3) A narrative description of problems encountered and actions taken, including efforts to deter and prevent Scavenging. A report of recycling program promotional activities, including materials distributed by Contractor to its Service Recipients.

f) Organic Waste Data.

(1) The report shall show (a) the number of tons collected each month broken down by Residential, Commercial, and City Service Units, (b) the tonnage delivered to Organic Waste Processing Facilities, (c) total tonnage by type of Organic Waste processed and marketed during each month, and (d) total tonnage of Organic Wastes residual disposed at the disposal facility.

(2) All tonnage data should be compared to the corresponding tonnage data from the prior year comparable period.

g) Street Sweeping Data. The quarterly report shall show the total curb miles swept, gallons of water used, and tonnage of street sweeping fines collected and taken to a Disposal Facility or Organic Waste Processing Facility.

h) Bulky Waste Data. The number of Bulky Waste collections made, the tonnage delivered to the disposal facilities used for processing or disposal of Bulky Waste.

i) Construction and Demolition Materials Data.

(1) The total tonnage of C&D collections made, the type of C&D Materials collected, and the facilities used for processing or disposal of C&D Materials.

j) Local Purchase Preference Program Data. The dollar value, of purchases made from businesses that are located within the City.

k) Service Complaints. A summary of the type, number and disposition of complaints received during the reporting period. A copy of the customer complaint log may, upon City request, be submitted with the report not later than fifteen days after the close of the reporting period.

l) Certification. Contractor will provide a certification statement, to the best of their knowledge the report is true and correct.

24.2 Annual Report. By March 1st, beginning in 2017 and each year thereafter that collection services are provided pursuant to this Agreement, Contractor shall submit to City a written year-end Annual Report in a form approved by the City. The Annual Report shall include the following information for the year ending on the preceding December 31st.

24.2.1 General Information. General information about Contractor, including a list of Contractor's officers and members of its board of directors.

24.2.2 Prior Year's Activities. A cumulative summary of the Quarterly Reports and information and statistics with respect to City's compliance with AB 341, AB 939, AB 1594, and AB 1826.

24.2.3 Account Service Data. A table summary of the total number Residential, Commercial, Roll-off and City Service Units. The summary shall also show the net change in Service Units both as compared to the number of Service Units as of the Service Commencement Date and as compared to the prior Agreement Year. City recognizes that the data used to determine Service Date Commencement information will be generated in conjunction with City data bases. Contractor will work with the City to provide this information in a timely basis in order to comply with this initial reporting requirement.

24.2.4 Vehicle and Container Replacement Data.

a) The number, type, fuel type used and date placed in service of new collection vehicles purchased to service in the City.

b) The number, type, fuel type used and date returned to service of used collection vehicles refurbished to provide service within the City.

c) The number, type, fuel type used, date removed from service of collection vehicles permanently removed from providing service within the City.

d) The total number and type of new containers placed in service during the prior year of service.

24.2.5 Recommendations. Changes in integrated waste management, including projections and proposed implementation dates and costs, recommended by Contractor and recommended amendments to the City's Source Reduction and Recycling Element or this Agreement, based on developments in applicable law or technology. Contractor's recommendations with respect to compliance with AB 341, AB 939, AB 1594, and AB 1826 and shall state the specific requirement that the implementation of the recommendation is intended to satisfy.

24.3 Reporting Additional Matters. Contractor shall provide to the City Manager all correspondence, reports, pleadings, applications, notifications, notices of violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, or its successor agency, the California Department of Toxic Substances Control, or its successor, the Fair Political Practices Commission, the cognizant Local Enforcement Agency, or its successor, the Securities and Exchange Commission or any other federal, state or county agency, including any federal or state court. Copies shall

be submitted to City within a reasonable time subsequent to Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City upon written request.

24.4 Submission of Reports. Reports shall be submitted to:

Director of Public Works
City of San Bernardino
300 North "D" Street, 5th Floor
San Bernardino, CA 92418

24.5 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 the Agreement and shall subject Contractor to all remedies which are available to the City under the Agreement; provided, that the City must follow the dispute resolution provisions of Section 28 of this Agreement before declaring any material breach.

24.6 Costs. All reports and records required under this Agreement shall be furnished at the sole expense of Contractor

24.7 City's Right to Request Information. The City believes and Contractor agrees that cooperation between City and Contractor is critical to the success of this program. City reserves the right to request, and Contractor agrees to provide, additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.

24.8 CERCLA Defense Records. City views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where its Solid Waste was taken, 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 Solid Waste collected in the City was landfilled (and therefore establish where it was not landfilled) and a copy or summary of the landfill disposal reports required by Section 24 for twenty (20) years after the term during which collection services are to be provided pursuant to this Agreement and to notify City's Risk Manager and City Attorney before destroying such records. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

Section 25. Indemnification and Insurance

25.1 Indemnification re Certain Challenges to Agreement. Contractor, upon demand of the City, made by and through the City Attorney, shall indemnify, hold harmless, protect City and appear in and defend the City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Materials", asserting rights under the dormant Commerce Clause or any other federal or state law, including, but not limited to the anti-trust laws with respect to the provision of Integrated Solid Waste Collection, Processing and Disposal Services in the City, and challenges to the certification or implementation, imposition, adjustment or collection of any rate, interest, penalty or other fee under the Agreement. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement. City and Contractor agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event City and Contractor agree to appeal, or to oppose any appeal, City and Contractor agree to share equally the costs of appeals. Should either City or Contractor decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

25.1.1 Mutual Defense Regarding Certain Challenges to Agreement. In the event this Agreement, its approval, or its implementation, or the limits of City's authority with respect to the grant of the Franchise is challenged on the basis that it, or any of the payments made by Contractor to City, whether individually or collectively, is invalid or is otherwise contrary to the law as an impermissible general tax, special tax, assessment, or fee requiring compliance with any provision of Article XIII of the California Constitution, the various enabling and implementing statutes related to that Article, or any of the judicial decisions interpreting that Article and the enabling and implementing statutes, the Parties agree to conduct a joint and coordinated defense of such action making collective decisions regarding litigation strategy including decisions regarding motions, discovery, settlement, and trial. Each Parties agrees to bear its own costs of defense and shall have the right to choice their own independent legal counsel, provided that nothing herein prohibits the Parties from agreeing to retain one or more legal counsel to jointly represent and defend the Parties. In the event of an adverse legal determination or settlement of such action, the parties agree to cooperate and work in good faith to prepare such amendments or alternatives to the Agreement that will implement the original intent of the Parties while complying with any adverse legal determination or settlement.

25.2 Environmental Indemnification and Compliance. Contractor shall indemnify, defend, protect and hold harmless City, its elected officials, officers, employees, volunteers, agents, assigns and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its elected officials, officers, employees, volunteers or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste (including Household Hazardous Waste and Universal Waste) in any Solid Waste, Recyclable Material or Organic Waste collected by Contractor pursuant to this Agreement, which is or has been transported, transferred, processed, stored, disposed of or which has otherwise come to be located by Contractor, or its activities pursuant to this Agreement result in a release of a Hazardous Waste (including Household Hazardous Waste and Universal Waste)into the environment.

25.3 General Indemnification. Except in those cases when this Agreement requires City to indemnity, defend and hold harmless Contractor and it officers, employees and agents, Contractor further agrees to indemnify, defend, protect and hold harmless City, its elected officials, officers, employees, volunteers, agents, assigns and any successor or successors to City's interest from and against all losses, liabilities, claims, actual damages (including but not limited to special and consequential damages), demands, debts, liens, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its elected officials, officers, employees, volunteers or agents arising from or attributable to any act or omission of Contractor or its officer, employees or agents in the performance or failure to perform the services required under this Agreement, and/or failure by Contractor to fully comply with all applicable laws and regulations with respect to the operation of its collection vehicles, including, but not limited to applicable rules governing clean-burning and alternative fuel vehicles.

25.4 Effect of Environmental Indemnification. This indemnity is intended to operate as an agreement pursuant to § 107(e) of the Comprehensive Environmental

Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. § 9607(e), and California Health and Safety Code § 25364, to defend, protect, hold harmless and indemnify City from all forms of liability under CERCLA, RCRA, other statutes or common law for any and all matters addressed in paragraph B. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

25.5 Prospective Application of Indemnities. The indemnities and obligations to protect, defend and hold harmless provided by Contractor to City under Sections 25.1, 25.2, 25.3, and 25.4 are prospective to the Effective Date of this Agreement. The indemnities and obligations to protect, defend and hold harmless City shall not be interpreted to apply to City's own acts and omissions in the provision of Comprehensive Solid Waste Service but solely to the acts and omissions of Contractor, its owners, directors, officers, agents and employees.

25.6 Compliance with Laws. Contractor warrants that it will comply with all applicable laws and implementing regulations, as they may be amended, specifically including, but not limited to RCRA, CERCLA, AB 341, AB 575, AB 939, AB 1594, AB 1826, SB 20, and SB 50, and all other applicable laws and regulations of the U.S. Environmental Protection Agency, the State of California, the County of San Bernardino, the California Air Resources Board, CalRecycle, the California Department of Toxic Substances Control, ordinances of the City and the requirements of Local Enforcement Agencies and all other agencies with jurisdiction.

25.7 Workers' Compensation Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire Term of this Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Copies of policies and endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, or agents for losses that arise from work performed by the named insured for the City.

25.8 Liability and Vehicle Insurance. Contractor shall obtain and maintain in full force and effect throughout the entire Term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy (form CG 0001) and an Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, Code 1 (any auto) policy with minimum limits of **Twenty Million Dollars ($20,000,000)** aggregate and **Five Million Dollars ($5,000,000)** per occurrence, per year. Said insurance shall protect Contractor and City from any claims for damages for bodily

injury, including accidental death, as well as from any claims for property damage which may arise from this Agreement. Copies of the policies and endorsements evidencing the above required insurance coverage shall be filed with the City Clerk.

25.9 Required Language In Policies. The following language is required to be made a part of all of the insurance policies (except for Workers Compensation Insurance) required by this Section:

> "The City of San Bernardino, its employees, agents, franchisees and officers, are hereby added as additional insured's as respects to liability arising out of activities performed by or on behalf of Contractor "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."
>
> "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

25.10 Pollution and/or Environmental Impairment Liability Insurance. Contractor shall obtain and maintain in full force and effect for the entire Term of this Agreement, a Pollution and/or Environmental Impairment Liability policy covering liability arising from the release of Hazardous Waste, or other contaminants, pollutants or irritants with minimum limits of **Six Million Dollars ($6,000,000)** aggregate and **Six Million Dollars ($6,000,000)** per occurrence, per year. Contractor shall ensure that such coverage shall automatically broaden in its form of coverage to include legislated changes in the definition of Hazardous Waste. The policy shall stipulate that this insurance is primary and no other insurance carried by City will be called upon to contribute to a loss suffered by Contractor hereunder and shall waive subrogation against City and other additional insureds.

25.11 Required Rating. The insurance required by this Agreement shall be with insurers which are Best A: VII-rated and which are California-admitted. The limits of such insurance coverage, and companies, shall be subject to review and approval by the City's Risk Manager every year and may be increased at that time and match the coverage provided by the City's own liability insurance policy. The City shall be included as a named insured on each of the policies. The insurance required by this Agreement is in addition to and not in lieu or limitation of the indemnification provisions in Section 25.1, 25.2, 25.3 and 25.4 above.

25.12 Evidence of Insurance Coverage; Insurance Repository. Contemporaneously with the execution of this Agreement, Contractor shall file copies of

the policies or executed endorsements evidencing the above required insurance coverage with the City Clerk. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. Contractor also agrees to maintain copies of insurance policies required pursuant to this Agreement for seven (7 years) after the end of the term during which collection services were provided pursuant to this Agreement. Contractor shall notify City's Risk Manager and City Attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement.

25.13 Self-Insurance. To the extent provided by law, all or any part of any required insurance may be provided under a plan of self-insurance approved by the State of California.

25.14 Reduction of CERCLA and Other Liability. City and Contractor agree to meet annually in the fourth calendar quarter of each year to discuss ways to reduce potential CERCLA and other liabilities to third parties.

Section 26. Performance Bonds

Concurrent with the execution of this Agreement, Contractor shall deposit with City a Performance Bond or an irrevocable letter of credit or other such document (Performance Bond), from an institution satisfactory to City, in a form satisfactory to City's Risk Manager and City Attorney, evidencing an irrevocable commitment to City guaranteeing Contractor's faithful performance of the terms of this Agreement. The amount of the Performance Bond shall be **Four Millions Dollars ($4,000,000)** during the first Agreement Year, and shall be **Two Million Dollars ($2,000,000)** each year thereafter for the term of this Agreement. Such Performance Bond shall be maintained in effect throughout the period during which collection services are to be provided pursuant to this Agreement.

26.1 Upon Contractor's failure to pay the City an amount owing under this Agreement, the Performance Bond may be assessed by the City, for purposes including, but not limited to:

26.1.1 Failure of Contractor to pay the City sums due under the terms of the Agreement;

26.1.2 Reimbursement of costs borne by the City to correct breaches not corrected by Contractor, after due notice;

26.1.3 Monetary remedies or damages assessed against Contractor due to breach of this Agreement; or

26.1.4 To satisfy an order of the referee

26.2 Contractor shall deposit a sum of money or a replacement instrument sufficient to restore the Performance Bond to the original amount within thirty days after notice from the City that any amount has been withdrawn from the Performance Bond.

26.3 All of City's costs of collection and enforcement of the provisions relating to the Performance Bond called for by this Section, including City's attorneys' fees and costs, shall be paid by Contractor

Section 27. Emergency Service

27.1 Should Contractor, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 33.1, "*Force Majeure*," below, refuse or be unable for a period of more than forty-eight (48) hours, to collect a material portion or all of the Solid Waste which it is obligated under this Agreement to collect, and as a result, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager, in the exercise of the City Manager's sole discretion, should find that such accumulation results in any imminent and substantial threat to the public health, safety or welfare, then City shall have the right to contract with another solid waste enterprise to collect and transport any or all Solid Waste which Contractor is obligated to collect and transport pursuant to this Agreement. City shall provide twenty-four (24) hours prior written notice to Contractor during the period of such emergency, before contracting with another solid waste enterprise to collect and transport any or all Solid Waste which Contractor would otherwise collect and transport pursuant to this Agreement, for the duration of period during which Contractor is unable to provide such services. In such event Contractor shall identify sources from which such substitute Solid Waste services are immediately available, and shall reimburse City for all of its expenses for such substitute services during period in which Contractor is unable to provide collection and transportation services required by this Agreement. See also Section 33.1, below.

27.2 Contractor shall assist City in the event of terrorist attack or major disaster, such as an earthquake, storm, tsunami, riot or civil disturbance, by providing collection vehicles and drivers normally assigned to the City, at Contractor's actual costs. Disputes with respect to Contractor's emergency services or the costs of those services shall be resolved according to the dispute resolution provisions of Section 28 and Section 29 of this Agreement. Contractor shall cooperate with City, county, state and federal officials in filing information related to a regional, state or federally-declared state of emergency or disaster or terrorist attack as to which Contractor has provided equipment and drivers pursuant to this Agreement.

Section 28. Administrative Remedies; Imposition of Damages; Termination

28.1 Notice; Response; Resolution; Appeal.

28.1.1 Notice of Deficiencies; Response. If City's Representative determines that Contractor's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the California Integrated Waste Management Act (including, but not limited to, requirements for diversion, source reduction and recycling as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or disposal of solid and Hazardous Waste, the City Representative may advise Contractor in writing of such suspected deficiencies, specifying the deficiency in reasonable detail. The City Representative, in any written notification of deficiencies, shall set a reasonable time within which Contractor is to respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall correct any deficiencies it agrees have occurred and in any event shall respond to the written notification of deficiencies within thirty days from the receipt by Contractor of such written notice. Contractor may request additional time to correct deficiencies. City shall approve reasonable requests for additional time.

28.1.2 Review by City Representative; Notice of Appeal.

a) The City Representative shall review any written response from Contractor and decide the matter. If the City Representative's decision is adverse to Contractor, the City Representative may order remedial actions to cure any deficiencies, assess the Performance Bond or invoke any other remedy in accordance with this Agreement and, in the event the City Representative determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. The City Representative shall promptly inform Contractor of the City Representative's decision. In the event the decision is adverse to Contractor, the City Representative shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the City Representative's decision and any remedial action taken or ordered. An adverse decision by the City Representative shall be final and conclusive unless Contractor files a "Notice of Appeal" with the City Clerk (with copies to the

City Manager and City Attorney) within 30 days of receipt of the notification of the adverse decision by the City Representative.

b) In any "Notice of Appeal" Contractor shall state its factual contentions and include all relevant affidavits, documents, photographs and videotapes which Contractor desires to have considered by City. In addition, Contractor shall include all of its legal contentions, citing provisions of the Agreement or other laws to support its contentions.

28.1.3 Review by City Manager; Appeal.

a) Within thirty days of receipt by the City Clerk of a Notice of Appeal, the City Manager shall decide the matter. If the City Manager's decision is adverse to Contractor, the City Manager may order remedial actions to cure any deficiencies, assess the Performance Bond or invoke any other remedy in accordance with this Agreement and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. In addition to the foregoing actions, the City Manager may refer the matter to the City Council for proceedings in accordance with Section 28.2 and Section 28.3, below. The City Manager shall promptly inform Contractor of the City Manager's decision. In the event the City Manager's decision is adverse to Contractor, the City Manager shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the City Manager's decision and any remedial action taken or ordered.

b) An adverse decision by the City Manager shall be final and conclusive unless Contractor files a "Notice of Appeal to the City Council" with the City Clerk (and serves a copy, by mail, on the City Manager and the City Attorney) within 10 calendar days of receipt of the decision of the City Manager. A "Notice of Appeal to the City Council" shall state the factual basis, the evidence relied on and all legal contentions that Contractor may choose to submit. No new evidence not previously submitted in accordance with Section 28.1.2b) may be submitted.

28.2 City Council Hearing. If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Contractor, the City Council will set the matter for an administrative hearing and act on the matter. The City Clerk shall give Contractor fourteen (14) days written notice of the time and place of the administrative hearing. At the hearing, the City Council shall consider the administrative record, consisting of the following:

28.2.1 A Staff Report by the City Manager, summarizing the proceedings to date and outlining the City Council's options;

28.2.2 The City Representative's written Notification of Deficiencies;

28.2.3 Contractor's response to the Notification of Deficiencies;

28.2.4 The City Representative's written notification to Contractor of adverse decision;

28.2.5 Contractor's Notice of Appeal to the City Manager;

28.2.6 The City Manager's written notification to Contractor of adverse decision; and

28.2.7 Contractor's Notice of Appeal to the City Council.

No new legal issues may be raised, nor may new evidence be submitted by Contractor at this or at any further point in the proceedings, absent a showing of good cause. Contractor's representatives and other interested persons shall have a reasonable opportunity to be heard.

28.3 City Council Determination. Based on the administrative record, the Council shall determine by resolution whether the decision or order of the City Manager should be upheld. If, based upon the administrative record, the City Council determines that Contractor is in breach of any term of this Agreement or any provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may not terminate the Agreement unless it determines that Contractor is in material breach of a material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation. Contractor's performance under the Agreement is not excused during the period of time prior to a final determination as to whether or not Contractor's performance is in material breach of this Agreement, or the time set by City for Contractor to discontinue a portion or all of its services pursuant to this Agreement. The decision or order of the City Council shall be final and conclusive unless Contractor files a "Notice of Appeal to Referee" with the City Clerk (and serves copies, by mail, on

the City Manager and the City Attorney) within 10 business days of receipt of the decision or order of the City Council. With the exception of draws on the Performance Bond, the execution of City's remedies shall be stayed until Contractor has exhausted its appeals under Section 28 and Section 29 of this Agreement.

28.4 Notice of Appeal to Referee. Except as otherwise provided in this Agreement, Contractor may appeal any decision, order or action by the City Council or City Manager under this Section 28, as provided in Section 29, below, by filing a Notice of Appeal to Referee with the City Clerk within ten business days of receipt of the decision by the City Manager or City Council and following the procedures set forth in Section 29, below. In the case of a rate adjustment request made pursuant to Section 21, but not approved by the City, Contractor's sole remedy shall be as specified in Section 21.

28.5 Reservation of Rights by City. City further reserves the right to terminate this Agreement in the event of any material breach of this Agreement, including, but not limited to any of the following:

28.5.1 If Contractor practices, or attempts to practice, any fraud or deceit upon the City, or practiced any fraud or deceit or made any intentional misrepresentations in the negotiations which preceded the execution of this Agreement provided that City has provided Contractor with written notice of the alleged fraud or deceit and afforded Contractor a reasonable opportunity to refute and defend itself against such charge or claim;

28.5.2 If Contractor is convicted of, or pleads guilty, no contest, or *nolo contender* to a felony related to this Agreement.

28.5.3 As used in this Section, the term "Contractor" shall mean only the following: (a) the owner(s) of Contractor (whether shareholders, partners, or otherwise), (b) the members of Contractor's Board of Directors; and (c) Contractor's President, Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, and/or the Secretary.

28.6 Cumulative Rights. City's rights of termination are in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

Section 29. Referral to Referee; Hearing Procedures

Either party to this Agreement at any time after exhaustion of administrative remedies, and following the appeal procedure set forth in Section 28, if applicable, may refer a disputed matter for resolution under this Section 29 in the following manner.

29.1 Applicability. If either the City Manager or the City Council refers a matter to a referee, or Contractor appeals or refers a matter to a referee, the provisions of this

Section shall apply in order to obtain prompt and expeditious resolution of any and all disputes arising out of this Agreement.

29.2 Reference of Dispute. Any dispute seeking damages and any dispute seeking equitable relief, such as but not limited to specific enforcement of any provision hereof, shall be heard and determined by a referee pursuant to California Code of Civil Procedure §§ 638-645.1. The venue of any proceeding hereunder shall be in San Bernardino County, California.

29.2.1 Procedure for Appointment. The party seeking to resolve the dispute shall file in court and serve on the other party a complaint describing the matters in dispute. Service of the complaint shall be as prescribed by law. Within not more than fifteen business days after the date of service, the parties shall apply to the Judicial Arbitration and Mediation Service ("JAMS") of San Bernardino County to nominate a minimum of five prospective referees. If the parties are unable to approve a referee from the JAMS panel within ten business days after written request to do so by any party, then the parties, starting with City, shall alternate in striking one prospective referee at a time until only one referee remains.

29.2.2 *Ex Parte* Communications Prohibited. Neither party may communicate separately with the referee after the referee has been selected. All subsequent communications between a party and a referee shall be delivered simultaneously to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance or to confidential mediation or settlement briefs that the parties have agreed to submit to the referee.

29.2.3 Cooperation. The parties shall cooperate diligently with one another and the referee and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute. If either party refuses to cooperate diligently, and the other party, after first giving notice of its intent to rely on the provisions of this Section 29, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, or incurs expenses or attorney's fees and costs as a result of the other party's violation of Code of Civil Procedure § 128.5, the referee may award such additional expenses and attorneys' fee to the party giving such notice, even if such party is not the prevailing party in the dispute.

29.2.4 Discovery. The referee shall set a discovery schedule and shall schedule the matter for hearing within 60 days of filing, unless City and Contractor agree otherwise, or unless the referee shall determine otherwise. Any party to the hearing may issue a request to compel reasonable document production from the

other party, subject to the limitations of Section 22, limiting evidence to the administrative record. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of a document request, then by disposition by order of the referee. Any document request shall be subject to the proprietary rights and rights of privilege of the parties, and the referee shall adopt procedures to protect such rights. Except as may be agreed by the parties, or ordered by the referee, no other form of discovery shall be available to the parties.

29.2.5 Standards for Decision. The provisions of California Code of Civil Procedure, §§ 640, 641, 642, 643, 644 and 645 shall be applicable to dispute resolution by a referee hereunder. In an effort to clarify and amplify the provisions of California Code of Civil Procedure, §§ 644 and 645, the parties agree that the referee shall decide issues of fact and law submitted by the parties for decision in the same manner as required for a trial by court as set forth in California Code of Civil Procedure, §§ 631.8 and 632, and California Rules of Court, Rule 232. The referee shall try and decide the dispute according to all of the substantive and procedural law of the state of California, unless the parties stipulate to the contrary.

29.2.6 Evidence and Findings. The referee shall consider the administrative record, including the Notice of Deficiencies, Contractor's response to the Notice of Deficiencies, the decision of the City Representative, the Notice of Appeal, the decision of the City Manager, the Notice of Appeal to the City Council, and the decision of the City Council, in addition to other relevant evidence. Before issuing findings, the Referee shall submit a proposed ruling, setting forth proposed findings of fact and conclusions of law, to counsel for the Parties, for comment. When the referee has decided the dispute, the referee shall also cause the preparation of a judgment based on said decision.

29.2.7 Remedial Authority. A referee to whom a matter is referred shall have the authority to (i) order either party to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (ii) assess damages and/or levy a penalty consistent with the terms of this Agreement or (iii) find there has been no breach.

29.2.8 Stay Pending Entry of Final Judgment. Except as provided in Section 26.3 with respect to draws on a Performance Bond, until final judgment is entered from the referee proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in this Agreement and related

to the subject matter of the hearing shall be stayed. The referee may modify or cancel any proposed penalties or sanctions upon a finding that the party subject thereto acted with substantial justification, or if the interests of justice so require.

29.2.9 Allocation of Referee's Costs. The referee's costs for the proceeding shall be apportioned by the referee. The costs of the proceeding shall be borne equally by the parties to the dispute initially, but the prevailing party in such proceeding shall be entitled to recover reasonable costs of the referee as apportioned by the referee. If either party refuses to pay its share of the costs of the proceeding, at the time(s) required, the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest at the maximum rate permitted by law, even if that party is not the prevailing party. The referee shall include such costs in the judgment or award.

29.3 Decision. The decision of the referee may be excepted to in accordance with Code of Civil Procedure § 645.

Section 30. City's Additional Remedies

In addition to the remedies set forth above. City shall have the following rights:

30.1 Contracts with Others. The right to contract with others to perform the services otherwise to be performed by Contractor, in the event Contractor should be in material breach of its duties to provide those services, or is otherwise unable to provide the services addressed by this Agreement.

30.2 Damages and/or Injunctive Relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach.

30.3 City's Damages for Failure to Achieve Diversion Requirements. Contractor agrees that its failure to achieve the diversion requirements set forth in Section 5, arising from failure to make reasonable efforts to maximize diversion in accordance with the terms and conditions of this Agreement, or its breach of the requirements of Section 5.1.1 related to waste diversion, shall be a material breach of this Agreement. If CalRecycle, or its successor agency, were to impose administrative civil penalties against City, then the City's damages for Contractor's material breach in its failure to achieve the diversion goals for the City as required by this Agreement, shall include, but not be limited to such administrative civil penalties, attorneys' costs and fees and City's staff time devoted to the resolution of the administrative civil penalties against City.

30.4 Liquidated Damages. The parties further acknowledge that consistent and reliable collection 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 awarding the Agreement to 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 City's residents and businesses will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages. Therefore, in addition to City's right to treat such non-performance as a breach of this Agreement, the parties agree that the liquidated damages amount defined in this Section may represent reasonable estimates of the amount of such damages considering all of the circumstances existing on the effective date of this Agreement, including the relationship of the sums to the range of harm to City, customers and the community as a whole 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.

30.5 Procedure for Review of Liquidated Damages. If the City elects not to terminate this Agreement for breach, the City Representative may assess liquidated damages pursuant to this Section on a monthly basis. At the end of each month during the term of this Agreement, the City Representative shall issue a written notice to Contractor ("Notice of Assessment") of the liquidated damages assessed and the basis for each assessment.

30.5.1 The assessment shall become final unless, within ten (10) calendar days of the date of the notice of assessment, Contractor provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.

30.5.2 The City Representative shall schedule a meeting between Contractor and the City Manager or the Manager's designee as soon as reasonably possible after timely receipt of Contractor's request.

30.5.3 The City Manager or the Manager's designee shall review Contractor's evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Contractor.

30.5.4 In the event Contractor does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of Assessment, the City Representative's determination shall be final and Contractor shall submit payment to City no later than that tenth (10th) day

30.5.5 City's assessment or collection of liquidated damages shall not prevent City from exercising any other right or remedy, including the right to terminate this Agreement, for Contractor's failure to perform the work and services in the manner set forth in this Agreement.

Contractor agrees to pay (as liquidated damages and not as penalty) the following amounts:

LIQUIDATED DAMAGES		
Item		**Amount**
a.	Failure or neglect to address each complaint by the close of the next working day.	$100 per incident per Service Recipient.
b.	Failure to address concerns regarding maintaining the collection equipment in a clean, and sanitary manner.	$100 per incident per day.
c.	Failure to have a vehicle operator properly licensed.	$100 per incident per day.
d.	Failure to maintain office hours as required by this Agreement.	$100 per incident per day.
e.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Agreement.	$100 per incident per day.
f.	Failure to display Contractor's name and customer service phone number on collection vehicles.	$100 per incident per day.
g.	Failure to collect a missed collection by close of the next work day upon notice to Contractor.	$100 per incident per day.
h.	Failure to repair or replace damaged Carts or Bins within the time required by this Agreement.	$100 per incident per day.
i.	Failure to deliver or exchange Carts or Bins within the time required by this Agreement.	$100 per incident per day.
j.	Failure to meet vehicle noise requirements.	$100 per incident per day.
k.	Failure to maintain collection hours as required by this Agreement without prior City approval.	$250 per incident per day.

LIQUIDATED DAMAGES		
Item		**Amount**
l.	Failure to offer and provide adequate facility processing capacity of Recyclable Materials and Organic Waste.	$250 per incident per day.
m.	Failure to have field personnel in company/contractor uniform.	$250 per incident per day.
n.	Failure to repair damage to customer property caused by Contractor or its personnel.	$500 per incident per location.
o.	Failure to repair damage to City property caused by Contractor or its personnel.	$500 per incident.
p.	Failure to clean up spillage or litter caused by Contractor.	$500 per incident per location.
q.	Failure to properly cover materials in roll-off containers during transport.	$500 per incident.
r.	Changing residential collection days without proper notification to the City Representative.	$500 per incident per day.
r.	Commingling Solid Waste with Recyclable Materials, with the exception of contaminated recyclables	$500 per incident.
s.	Disposal of Recyclable Materials or Organic Waste in the landfill without first obtaining the required permission of the City.	$500 per load.
t.	Failure to deliver any collected materials to a non-permitted Disposal Facility, Materials Recovery Facility, or Organic Waste Processing Facility, as appropriate, except as otherwise expressly provided in this Agreement.	$5,000 each failure.
u.	Commingling of materials collected inside and outside the City of San Bernardino.	$1,000 per incident.
v.	Failure to meet and maintain minimum annual Diversion Guarantee for two consecutive years.	$50 per ton for each ton under the minimum requirements.
w.	Failure to remove graffiti as specified in Section 6.10.	$100 per Container per day.
x.	Failure to sweep a street after notification by City that street had not been swept in accordance with established schedule or sweeping did not meet generally accepted industry standards for sweeping.	$500 per block or lot.

Section 31. Billing Audit and Performance Reviews

31.1 Selection and Cost. The City may conduct billing audit and performance reviews ("reviews") of the Contractor's performance during the term of this Agreement, but not more often than one every 3 calendar years. The reviews, if performed, will be by a qualified firm under contract to the City. The City shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from the Contractor. The Contractor shall be responsible for the cost of one (1) review up to a maximum of **Seventy Thousand Dollars ($70,000.00),** with the exception of reviews required in accordance with Section 31.3, the cost for additional Billing Audits and Performance Reviews will be the responsibility of the City.

31.1.1 Purpose. The review shall be designed to verify that customer billing rates have been properly calculated and they correspond to the level of service received by the customer, verify that Franchise Fees, and other fees required under this Agreement have been properly calculated and paid to the City, verify Contractor's compliance with the reporting requirements and performance standards of the Collection Service Agreement, and verify the diversion percentages reported by the Contractor. The City (or its designated consultant) may utilize a variety of methods in the execution of the performance review and billing audit, including analysis of relevant documents, on-site and field observations, and interviews. The City (or its designated consultant) will review and document the items in the Agreement that require the Contractor to meet specific performance standards, submit information or reports, perform additional services, or document operating procedures, that can be objectively evaluated. This information will be formatted in a "compliance checklist" with supporting documentation and findings tracked for each of the identified items. The review will specifically include a determination of the Contractor's compliance with the diversion requirements of Section 5 and **Exhibit 7**, and the public outreach and education requirements of Section 14 and **Exhibit 6**. The City (or its designated consultant) may review the customer service functions and structure utilized by the Contractor. This may include the Contractor's protocol for addressing customer complaints and service interruption procedures. Complaint logs may be reviewed, along with procedures and systems for tracking and addressing complaints. On-site and field observations by the City (or its designated consultant) may include, but are not necessarily limited to:

a) Interviews and discussions with Contractor's administration and management personnel;

b) Review and observation of Contractor's customer service functions and structure;

c) Review of public education and outreach materials;

d) Interviews and discussions with Contractor's financial and accounting personnel;

e) Interviews with route dispatchers, field supervisors and managers;

f) Interviews with route drivers;

g) Interviews with vehicle maintenance staff and observation of maintenance practices; and

h) Review of on-route collection services, including observation of driver performance and collection productivity and visual inspection of residential routes before and after collection to evaluate cart placement and cleanliness of streets

31.2 Contractor's Cooperation. Contractor shall cooperate fully with the review and provide all requested data, including operational data, financial data and other data requested by the City within thirty (30) Work Days. Failure of the Contractor to cooperate or provide the requested documents in the required time shall be considered an event of default.

31.3 Additional Contractor Paid Billing Audit and Performance Review. In the event that the Billing Audit and Performance Review concludes that Contractor is not in compliance with all terms and conditions of this Agreement and such non-compliance is material, the City may conduct an Additional Billing Audit and Performance Review to ensure that Contractor has cured any such area of non-compliance. Contractor shall be responsible for the cost of any such Additional Billing Audit and Performance Review.

31.4 City Requested Program Review. The City reserves the right to require the Contractor to periodically conduct reviews of the SFD and MFD and Commercial collection programs to assess one or more of the following performance indicators: average volume of recyclable materials per setout per customer, average volume of organics per setout per customer, participation level, contamination levels, etc. Prior to the program evaluation review, City and Contractor shall meet and discuss the purpose of the review and agree on the method, scope, and date to be provided by the Contractor.

31.5 Cooperation with Other Program Reviews. If the City wants to collect program data, perform field work, conduct route audits to investigate customer participation levels and setout volumes and/or evaluate and monitor program results related to Solid Waste Recyclable Materials and Organic Waste collected in the City by the Contractor, the Contractor shall cooperate with the City or its agent(s). Contractor shall also cooperate with any waste generation studies conducted by the City or its agent(s).

Section 32. Franchise Transfer; City Consent; Fees

32.1 Contractor may not convey, assign, sublet, license, hypothecate, encumber of otherwise transfer or dispose of (collectively "Transfer"), this Agreement, the Franchise granted under it or any rights or duties under it, in whole or in part, whether voluntarily or involuntarily, without the City's prior written consent as expressed by written resolution of the City Council. Any dissolution, merger, consolidation, or other reorganization of Contractor, except as provided in Section 32.3, below, any sale or other transfer or change in ownership or control of any of the capital stock or other capital or equity interests, or any sale or transfer of fifty percent (50%) or more of the value of the assets shall be deemed a Transfer of this Agreement, the Franchise granted under it or any rights or duties under it. Any Transfer or attempted Transfer of this Agreement, the Franchise granted under it or any rights or duties under it made without the City's consent will be a material breach of this Agreement and, at the City's option, may be voided.

32.2 The City will not unreasonably withhold its consent to a Transfer of the Franchise granted by this Agreement. The prospective transferee shall have the burden of demonstrating that it has the financial and technical ability to provide the services required under this Agreement. The City may also require the prospective transferee to demonstrate that it, and its officers and managers do not have criminal records for environmental or public integrity offenses. If the City gives its consent, it may impose conditions, including, without limitation, requiring acceptance of amendments to this Agreement. Without obligating the City to give its consent, the proposed transferee must demonstrate to the City's satisfaction that it has the operational and financial ability to perform the terms of this Agreement.

32.3 Contractor's internal reorganization shall not constitute a Transfer provided that City consent to the reorganization is sought and received prior to any internal reorganization. An internal reorganization includes any change in control of any of the voting stock through its conveyance to an affiliate of Contractor, or by operation of law. Any request for an internal reorganization must be submitted in writing to the City Manager, no less than one hundred and twenty days prior to the proposed effective date of the internal reorganization. Contractor shall reimburse City for all of its costs to review

the request and to determine if it is an internal reorganization. City's expenses may include, but are not limited to, Staff, City Attorney's and Special Counsel's fees and costs and Accountants' fees and costs. Determination by the City Manager shall be final. Any attempt to implement an internal reorganization without the consent of City shall constitute a material breach of this Agreement.

32.4 Fees. Any application for a Franchise Transfer shall be made in a manner prescribed by the City Manager. The application shall include a deposit of **Five Hundred Thousand Dollars ($500,000)** to cover the estimated cost of all direct and indirect expenses, including City staff, consultants' and attorneys' fees, incurred by City to adequately analyze the application and the qualifications of the prospective transferee. Any costs incurred by the City in excess of $500,000 shall be reimbursed by the Contractor prior to submission of the proposed transfer to the City Council. In the event that the City's costs are less than $500,000, City shall retain any unused monies.

Section 33. General Provisions

33.1 ***Force Majeure.*** Contractor shall not be in breach of this Agreement in the event that the collection, transportation and/or disposal services of Contractor are interrupted temporarily or permanently for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of San Bernardino; acts of terrorists, sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; or other catastrophic events which are beyond the reasonable control of Contractor "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public agency where such failure occurs despite the exercise of reasonable diligence by Contractor In the event a labor disturbance interrupts collection and transportation of Solid Waste and/or disposal of Solid Waste by Contractor as required under this Agreement, City may elect to exercise its rights under Section 28 and Section 30 of this Agreement. Failure by City to exercise its rights under this Section shall not be deemed a waiver of its rights under Section 28.5

33.2 Extraordinary Circumstances. Notwithstanding any other term or provision hereof, nothing in this Agreement is intended, nor shall it be interpreted, to prevent or preclude Contractor from contacting City's officials, officers and representatives to request an amendment to, or other modification of, this Agreement due to the occurrence of an event or circumstance that substantially increases Contractor's cost of service, or otherwise substantially and negatively impacts Contractor's provision of services, under this Agreement.

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

33.4 Pavement Damage. In the event where damage to City streets is caused by Contractor's equipment, Contractor shall be responsible for all repairs to return the street to the same condition prior to the street damage. Repairs shall be performed in a manner satisfactory to the City Representative and at no cost to the City. Disputes between Contractor and its Service Recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Contractor as matters within its sole responsibility and as a matter within the scope of this Agreement.

33.5 Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees of Contractor to City or private property shall be repaired or replaced by Contractor, at Contractor's sole expense. Except as provided in Section 25 above, this Agreement does not purport to relieve, diminish, reduce, create or increase in any way, Contractor's civil liability to any third parties.

33.6 Law to Govern; Venue. The law of the State of California shall govern this Agreement without regard to any otherwise governing principles of conflicts or choice of laws. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in a U.S. District Court exclusive venue shall lie in the Central District of California.

33.7 Fees and Gratuities. Contractor shall not permit any officer, agent or employee to request, solicit, or demand, either directly or indirectly, any gratuity for the collection of Solid Waste, Recyclable Materials, or Organic Waste otherwise required to be collected under this Agreement.

33.8 Amendments. Except as otherwise provided in this Agreement, no other amendment of this Agreement shall be valid unless in writing duly executed by the parties, approved by the City Council by written resolution. Purported oral amendments shall be void and of no force or effect.

33.9 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and by email, addressed as follows:

To City: City Manager
City of San Bernardino
300 N. "D" Street, 6th Floor
San Bernardino, CA 92418

Copy to: City Attorney
City of San Bernardino
300 N. "D" Street, 6th Floor
San Bernardino, CA 92418

And to: Director of Public Works
City of San Bernardino
300 N. "D" Street, 5th Floor
San Bernardino, CA 92418

To Contractor: Cole Burr, President
Burrtec Waste Industries, Inc.
9890 Cherry Ave
Fontana, CA 92335

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or sent by email, or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

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

33.11 Construction. The language in all part of this Agreement shall be in all cases construed simply according to the fair meaning thereof and not strictly for or against any of the Parties hereto.

33.12 Pubic Records. All information received by City concerning this Agreement, including the Agreement itself, may be treated as public information subject to disclosure under the provisions of the California Public Records Act, Government Code Section 6250 et seq. (the "Public Records Act"). The Parties understand that although all materials received in connection with this Agreement are intended for the exclusive use of the Parties, they are potentially subject to disclosure under the provisions of the Public Records Act at the sole discretion of the City.

33.13 Transition to Next Solid Waste Enterprise. If in the final 12 months of the period during which Contractor is to provide collection services under this Agreement, Contractor and City have not entered into a succeeding agreement, Contractor shall

cooperate fully with City and all prospective subsequent Solid Waste enterprise(s), franchisee(s), licensee(s), permittee(s) or other Person seeking to provide services similar to the Services so as to assure an efficient, orderly, timely and effective transition. In that regard, Contractor agrees to make available to City and to prospective proposers in any competitive process used by the City to select a successor, route maps, customer lists, and all other records requested by City.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CITY OF SAN BERNARDINO

a California Charter City and Municipal Corporation

Jarrod Burguan
Interim City Manager

ATTEST:

Georgeann "Gigi" Hanna
City Clerk

APPROVED AS TO FORM:
Gary D. Saenz, City Attorney

By:

CONTRACTOR
BURRTEC WASTE INDUSTRIES, INC.

By: _____
Cole Burr
President

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Exhibit 1
Maximum Permitted Service Rates
April 1, 2016 – June 30, 2017

SFD/MFD/Commercial Cart Services	Service Level/Frequency	Monthly Rate
Single or Multi-Family Dwelling	1 – 64 or 96 gallon Solid Waste Cart 1 –96 gallon Organic Waste Cart 1 –96 gallon Recyclable Materials Cart	**$22.84**
Mobile Home	1 – 64 or 96 gallon Solid Waste Cart 1 –96 gallon Recyclable Materials Cart	**$15.24**
Commercial Unit	1 – 64 or 96 gallon Solid Waste Cart 1 – 96 gallon Recyclable Materials Cart	**$22.84**
Each Additional Solid Waste Cart	64-96 gallon carts	**$12.96**
Each Additional Extra Organic Waste Cart (residential only)	96 gallon cart	**$11.35**
Additional Recyclable Materials Cart (residential only)	96 gallon cart	**$0.00**

Solid Waste Bin Services	Collection Frequency/Monthly Rate						
Bin Size	**1/week**	**2/week**	**3/week**	**4/week**	**5/week**	**6/week**	**Extra Pickup**
1-2 CY	$112.10	$205.31	$304.44	$401.20	$495.60	$661.98	$25.28
3 CY	$119.18	$225.56	$335.11	$440.14	$547.51	$840.16	$27.50
4 CY	$130.98	$247.80	$364.61	$480.26	$595.90	$1,036.04	$30.11
6 CY	$189.98	$362.26	$535.71	$713.90	$876.74	$1,014.94	$35.68

Compactor	Collection Frequency/Monthly Rate

Exhibit 1
Maximum Permitted Service Rates
April 1, 2016 – June 30, 2017

Services							
Compactor Size	1/week	2/week	3/week	4/week	5/week	6/week	Extra Pickup
2 CY	$130.98	$245.43	$361.08	$476.71	$591.18	$786.35	$27.50
3-4 CY	$154.58	$287.91	$423.61	$553.41	$692.65	$925.11	$30.11

Recycling Bin Services	Collection Frequency/Monthly Rate					
Bin Size	1/week	2/week	3/week	4/week	5/week	6/week
2 - 6 CY Bin	$41.50	$83.00	$124.50	$166.50	$208.00	$249.50

Green Waste/Organics Bin Services	Collection Frequency/Monthly Rate					
Bin Size	1/week	2/week	3/week	4/week	5/week	Extra Pickup
1-2 CY	$107.38	$198.24	$291.46	$384.68	$476.71	$25.28
3 CY	$114.46	$215.94	$316.24	$416.54	$515.66	$27.50
4 CY	$125.08	$232.46	$341.01	$450.76	$558.14	$30.11
6 CY	$143.96	$267.86	$394.11	$505.04	$641.91	$35.68

Roll-off Services	Rate/How Charged	
Service/Item	Rate	How Charged
10 – 40 CY Roll-off	$335.11	Rate Per Pull
Recycling Compactor	$142.00	Rate Per Pull

Exhibit 1 Maximum Permitted Service Rates April 1, 2016 – June 30, 2017		
Water Reclamation Site	$115.00	Rate Per Pull
Temporary Roll-off	$335.11	Rate Per Pull – plus 4 tons of applicable disposal
Temporary Green Waste Roll-off	$335.11	Rate Per Pull – plus 6 tons of applicable disposal
Temporary C&D Roll-off	$335.11	Rate Per Pull – plus 6 tons of applicable disposal
Temporary Inert Roll-off	$335.11	Rate Per Pull – plus 6 tons of applicable disposal
Standby-Roll Back	$135.70	Per Occurrence **(in excess of 15 minutes)**
Dry Run/Relocate	$75.00	Per Occurrence
Roll-off Wood (Treated)	$102.88	Per Ton
Disposal Per Ton	$49.05	Per Ton
Green Waste Per Ton	$48.29	Per Ton
Wood Waste Per Ton	$42.50	Per Ton
Inerts (Clean)	$100.00	Per Load
Dry Wall	$40.28	Per Ton
Carpet	$50.00	Per Ton
Overweight Penalty	$12.00	Per Ton
Miscellaneous Compactor Repairs	$66.91	Per Hour

Temporary Bin Services	**Rate/How Charged**	
Item/Service	**Rate**	**How Charged**
7-day Bin	$69.00	Each Occurrence
Extra Pick-up 7 Day	$69.00	Each Occurrence
7-day Bin Extension	$69.00	Each Occurrence

Exhibit 1
Maximum Permitted Service Rates

April 1, 2016 – June 30, 2017

Misc. Services	Rate/How Charged	
Item/Service	**Rate**	**How Charged**
Clean-Up Service	$36.23	Per each 15 minutes
Late Set Out (Barrel)	$28.75	Per trip
On-Call Refuse Pickup (non service day)	$45.00	Each Occurrence 2 - 4 Cubic Yard
On-Call Recycling Pickup (non service day	$35.00	Each Occurrence 2 – 3 Cubic Yard
Cart Replacement	$74.75	Each Cart/Each Occurrence
Lock	$17.70	Each Lock/Each Occurrence
Bin Enclosure Cleaning	$37.16	Each Enclosure/Each Occurrence
Bin Roll Out Service	$67.26	Monthly
Bin Steam Cleaning	$37.16	Each Bin/Each Occurrence
Rent 3 Yard Tilt Hopper	$30.00	Each Tilt Hopper/Each Occurrence
Compactor Cleaning	$133.34	Each Compactor/Each Occurrence
Recycling Contamination	$59.00	Each Bin
Late Fee	1.5%	Per month

Exhibit 2 City Facilities	
Location	**Address**
Fire Department	
Fire Station #221	200 E. 3rd St
Fire Station #222	1201 W 9th St
Fire Station #223	2121 Medical Center Dr
Fire Station #224	2641 N E St
Fire Station #225	1640 W Kendall Dr
Fire Station #226	1920 N Del Rosa Ave
Fire Station #227	282 W 40th St
Fire Station #228	3398 E Highland Ave
Fire Station #229	202 N Meridian Ave
Fire Station #230	502 S Arrowhead Ave
Fire Station #231	450 E. Vanderbilt Way
Fire Station #232	6065 N Palm Ave
Fire Department Automotive Shop	120 D St
Police Department	
Police Department	710 N D St
Police Pistol Ranch	1100 E Highland Ave
Animal Control	333 W Chandler Pl
Parks Department	
Park & Recreation	1494 E Art Townsend Dr
Parks Dept – T	234 S Mtn View Ave
CID, TT, Parks Dept	8088 N Palm Ln
Lytle Creek Park	300 S. K St
Meadowbrook Park	2nd & Mt View Ave
Perris Hill Park	1100 E Highland Ave
Rio Vista Park	1399 N California St
San RI Fields/Nicolson Park	2nd & Meridian
Seccombe Park	5th & Belle
Hernandez Community Center	222 N Lugo Ave
Antil Garden Project	868 E 6th St

Exhibit 2 City Facilities	
Location	**Address**
Meadow Nutrition Center	123 N Mtn View Ave
Ruben Campos	1717 W 5th St
Senior Citizens Ser Center	600 W 5th St
Warner-Hodgedon Field	200 E 7th St
Al Guhin Park	3650 Little League Dr
Little League	
Doty Field	40th & Waterman Ave
Melton Field	300 E 40th St
Del Road Little League Park	Marshall/Mountain Ave
Carl Karper Field #39	3900 Severence Ave
Guiterrez Field	1291 W 14th St
Palm Field	790 E 6th St
Porterfield Little League	226 E 7th St
Blair Park	1466 W Marshall Blvd
Highland Fields North	1535 Arden Ave
Highland Fields South	Pacific & Arden
Nicholson Community Center	2750 W 2nd St
Guadalupe Field	8th & Western
Ann Shirrells Park	1367 N California St
Ballard Field	1700 W 5th St
Mill Community Center	503 E Central Ave
Nunez Park	1717 W 5th St
Delman Heights Center	2969 N Flores St
Speicher Park	1535 Arden Ave
Wildwood Elks Field	500 E 40th St
Post 777 Little League	Marshall/Little Mtn
City Yard	
Central Store/Yards	181 S Pershing Ave
Electrical Shop-T	182 S Sierra Way
City Garage	182 S Sierra Way

Exhibit 2 City Facilities	
Location	**Address**
Paint Shop-T	231 S Pershing Ave
Public Works Bldg	231 S Pershing Ave
Refuse Yard/Warehouse-R	180 S. Sierra Ave
Library	
Feldheym Central Library	555 W 6th St
Rowe Branch Library	108 E Marshall Blvd
Villasenor Branch Library	525 N Mt Vernon Blvd
Soccer	
Blast Soccer Field	3500 W Little League Dr
Arrowhead Stadium	280 S E St
City Hall	300 N D St
Pioneer Cemetery	7th & Sierra Way
Miscellaneous	
Norton Air Force Base Gym	1554 E Art Townsend Dr
Roosevelt Bowl	1001 E Highland Ave
Sturgis Auditorium	780 N E St
Homeless Access Center	247 E 7th St
Urban Conservation Corp	378 E Orange Show Rd
Other City facilities/buildings/locations as may be requested by the City.	

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Exhibit 3
Contractor's Facilities

Primary Facilities:

- San Bernardino Landfill System (Contractor's preferred disposal site)
- Burrtec East Valley Recycling & Transfer Facility
- Riverside County Waste System
- Salton City Landfill System

Backup Facilities:

- Burrtec West Valley MRF
- Robert A. Nelson MRF/Transfer Station (Agua Mansa MRF)
- Other additional facilities upon written notice to the City

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Exhibit 4
City Sponsored Events

- City Hall Food truck event held every Third Thursday.
- Movie in the Park held in June/July held every Wednesday night.
- San Bernardino Air and Car Show (October).
- Turkey Trot (November).
- Hoho Parade (December).
- Perris Hill Park Christmas in the Park (December)).
- Café Tuesdays.
- Downtown Farm Share Market.
- Rendezvous Route 66.
- Dump Days (11 days per Agreement Year).
- Secure Document Shred Event for City Residents (dates, locations and times to be agreed to between City and Contractor).
- Compost Give-Away Event (amount of compost to be delivered by Contractor, dates, locations and times to be agreed to between City and Contractor).
- Neighborhood/ Community Council Clean-Up Events (dates, locations and times to be agreed to between City and Contractor).

Other City Sponsored Events as requested by the City.

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Exhibit 5
Transition Plan

SOLID WASTE COLLECTION SERVICES

1. EMPLOYMENT ACTIVITIES

Contractor proposes to initiate the recruitment process immediately following award of contract by the City Council.

(1) Recruitment. Upon award of the contract, Contractor representatives will distribute an Employment Announcement to City employees who will be displaced by the outsourcing of Solid Waste Collection Services, Street Sweeping Services and Right-Of-Way Clean-Up Services to Contractor. The announcement will detail pay and benefits and describe the employment process.

(2) Hiring and Orientation. Following the award of contract to Contractor, all eligible City employees will be offered employment upon successful completion of the following items:

a. Criminal and driving background check

b. Post offer physical exam

c. Drug screening

(3) Job Fair. Contractor will host a job fair in San Bernardino for employees and their family. The job fair will provide additional information on Contractor, such as the employee manual, benefit information and give employees and opportunity to talk with management, supervisors and Contractor employees.

New hire orientation will be held 7-10 days prior to the contract start date.

(4) Start Date as Contractor Employees. On Service Commencement Date, the City's former IWMD employees will report for work as employees of Contractor retaining their seniority from their original dates of hire with the City.

2. TRANSITION ACTIVITIES

The transition period begins with the award of contract and ends thirty (30) days after services have been implemented.

(1) Transition Planning. Within five (5) calendar days following contract award, Contractor will meet with the City Staff to discuss the Implementation Plan.

(2) Ongoing Transition Team Meetings. Contractor's transition team liaison will meet with City Staff as needed to report on the progress, activities, and issues that may have surfaced and how the issues have or will be addressed.

Exhibit 5

Transition Plan

(3) After-Action Meeting. At the conclusion of the transition period, City and Contractor will meet to review the success of the transition as well as plans to address any unresolved matters.

3. OUTREACH ACTIVITIES

Contractor currently operates a local office within the City at 5455 Industrial Parkway, 909-889-1969, which shall be utilized in the interim for customer service activities.

(1) Contractor Website. The Contractor website (www.burrtec.com) will be updated to provide customers with information about Contractor services, programs and events.

(2) Community Meeting. In the month prior to the Service Commencement Date, Contractor will conduct community meetings for purposes of outlining services and answering questions from residents and businesses.

(3) Residential Service Brochure. Prior to the Service Commencement Date, Contractor will distribute a service brochure to each residential dwelling receiving individual collection to introduce them to services and promote recycling and organic material diversion.

(4) Chamber of Commerce Presentations. In the month prior to the Service Commencement Date, Contractor will contact a local Chamber of Commerce to schedule a presentation on the transition and commercial services offered.

(5) Media Advertising. One (1) week prior to the Service Commencement Date, Contractor will publish a print media advertisement to alert the community to the upcoming transition in service providers.

4. CUSTOMER SERVICE ACTIVITIES

During the transition, Contractor will utilize its existing, in-City facility located at 5455 Industrial Parkway, San Bernardino, 909-889-1969, empire@burrtec.com as its local customer service office.

(1) CSR Orientation/Training. Following the award of contract, all Contractor personnel having direct contact with the public will participate in an orientation session to familiarize them with the transition process and services offered in San Bernardino. This training will ensure that all Contractor customer service personnel are familiar with the upcoming services the company will render and can respond intelligently to any inquiry received.

(2) Account Information. Contractor will identify all customers and the services rendered to each.

a. City Record Upload. Within ten (10) working days of executing the agreement, City will provide and Contractor will upload City's Customer Management Record

Exhibit 5

Transition Plan

with the name, service address, billing address, subscribed services, including but not limited to, container size, pick up frequency, and account history.

b. Create Contractor CMR. Following the upload of the City's Customer Management Record, Contractor will create a Contractor Customer Management Record and perform a desktop audit of the records.

c. Field Verification. Contractor will visit each Commercial customer service location to verify the presence of containers, inspect container locations including enclosures and note the presence of containers for Recyclable Materials and Organic Materials collection services.

5. OPERATIONAL ACTIVITIES

Operational activities are to include all services dealing with collection operations.

(1) Collection Vehicles

a. Evaluation. Contractor will evaluate City-owned collection vehicle for immediate use and long-term use in the City.

b. Vehicle Signage. Contractor will rebrand each vehicle acquired from the City.

(2) Containers.

a. Residential Carts.

i. Labeling. Within the first four (4) weeks following the Service Commencement Date, Contractor personnel will re-brand every BLACK, BLUE and GREEN cart in service by affixing a Contractor identification sticker, with Contractor's name, website address and telephone number, so as to cover the City's identification. Additionally, stickers displaying acceptable materials will also be affixed to the lid of each BLUE and GREEN cart.

ii. Replacement. Any cart found to be in disrepair will be replaced with a cart employing the same BLACK-BLUE-GREEN color scheme.

b. Commercial Bins.

i. Labeling. Within the first four (4) weeks following the Service Commencement Date, Contractor personnel will label every bin in service by affixing a Contractor identification sticker, with Contractor's name, website address and telephone number, so as to cover the City's identification. Additionally, stickers displaying acceptable materials will also be affixed to front of bins used for collecting Recyclable Materials and Organic Materials.

ii. Short-Term Replacement Program. Any bin found to be in disrepair, will be repaired in the field or replaced with a clean and freshly rehabilitated bin.

c. Roll-off Boxes and Compactors.

Exhibit 5

Transition Plan

i. Re-Branding. Within the first four (4) weeks following the Service Commencement Date, Contractor personnel will re-brand every roll-off box by painting and stenciling, and compactors by affixing a Contractor identification sticker, with Contractor's name and telephone number, so as to cover the City's identification. Additionally, stickers displaying acceptable materials will also be affixed to front of compactors used for exclusively collecting Recyclable Materials and Organic Materials.

ii. Refurbishing. Any roll-off box or Contractor-owned compactor found to be in disrepair will be repaired or replaced with a clean and freshly rehabilitated replacement unit.

(3) Routing.

i. City Route Lists & Maps. Within ten (10) days of executing the agreement, City IWMD will provide Contractor with its complete route lists and route map.

Exhibit 6
Public Education & Outreach Plan

1. PRE-STARTUP PROGRAMS

The following public education and outreach activities will be performed prior to the Service Commencement Date.

(1) Contractor Website. The Contractor website (www.burrtec.com) will be updated to provide customers with information about Contractor services, programs and events.

(2) Chamber of Commerce. In the month prior to the Service Commencement Date, Contractor will contact a local Chamber of Commerce to schedule a presentation on the transition and commercial services offered.

(3) City Council Update(s). At the City's request, Contractor will provide periodic service updates to the City Council.

(4) Community Meeting. In the month prior to the Service Commencement Date, Contractor will conduct community meetings for purposes of outlining services and answering questions from residents and businesses.

(5) Media Advertising. One (1) week prior to the Service Commencement Date, Contractor will publish a print media advertisement to alert the community to the upcoming service transition.

(6) Residential Brochure. Prior to the Service Commencement Date, Contractor will distribute a brochure to each residential dwelling receiving individual collection to introduce residents to the services and to promote recycling and organic material recycling.

2. POST-STARTUP PROGRAMS

The following public education and outreach activities will be performed following the Service Commencement Date.

(1) Acceptable Materials Labels. Commencing with the Service Commencement Date, as a part of the container rebranding procedure, labels describing the materials accepted for recycling will be affixed to every container (carts and bins) used for collecting Recyclable Materials and Organic Materials.

3. ONGOING PROGRAMS

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

(1) Community Events. Contractor will provide the personnel, equipment, collection services, promotional items, and cardboard trash and recycling boxes, at no charge, in a continuing effort to support City programs and events and to promote recycling

Exhibit 6

Public Education & Outreach Plan

awareness to the public. Community events include those as listed in Exhibit 4.

(2) City's Program and Grant Funding. Public education and outreach activities which focus on beverage container recycling, used motor oil recycling, household hazardous waste disposal and waste tire collection, and are centered around such events as residential community clean-up days, Earth Day events, Public Works Week and the Orange Show Festival.

(3) School Outreach. School programs will be contingent on subscribing to City services.

(4) Customer Feedback. Information regarding disposal and diversion efforts will be used to give feedback to residential neighborhood organizations and commercial customers about rates of participation, contamination, waste generation and diversion.

(5) Product Stewardship. Contractor will encourage residents to donate or exchange reusable items to local thrift stores and/or second hand establishments rather than discarding them.

(6) Residential Newsletters. Newsletters will be mailed to residents four times per Agreement Year. The newsletters will remind residents what is accepted for recycling, advise them of holiday schedules, bulky waste pickup, waste and recycling events, community events, and special waste handling topics like sharps, used motor oil and electronic waste.

(7) Key Accounts. As a part of Mandatory Commercial Recycling (AB 341) and Mandatory Commercial Organics Recycling (AB 1826) programs, Contractor staff will identify key accounts such as property managers, multi-family site managers, and major commercial and industrial properties and develop outreach efforts designed to engage greater participation in these State-mandated programs.

(8) Other Education & Outreach Efforts. Throughout the term of the contract, Contractor staff will work cooperatively with the City to monitor the effectiveness of existing public education and outreach programs and to identify and develop new public education and outreach programs as might be necessary to meet diversion targets.

4. SCHEDULE & QUANTITY OF MATERIAL

(1) Brochures. Contractor will distribute brochures describing services, proper use of carts, and acceptable materials to all residential cart before the Service Commencement Date. Brochures will also be distributed to new customers when a change in occupancy is noted.

(2) Newsletters. Contractor will distribute newsletters to Residential customers four times per Agreement Year. Commercial newsletters will be distributed to coincide with special program notices such as AB 341 and AB 1826 on a semi-annual basis.

Exhibit 7
Diversion Plan

This Diversion Plan describes Contractor's the strategic approach to increase the City's overall diversion rate.

RESIDENTIAL SECTOR

Current residential programs will be augmented by:

(1) Brochures/Newsletters. Re-energizing the programs by re-introducing the concepts of single-stream recycling and green waste diversion through full color bilingual brochures distributed to every residential customer.

(2) Move-In Service. Collection of recyclable materials such as flattened cardboard and packing paper that would exceed the capacity of the recycling cart.

(3) Public Education/Outreach. The following activities will be performed on an ongoing basis throughout the term of the agreement:

a. Community Events. Contractor will provide the personnel, equipment, collection services, promotional items, and cardboard trash and recycling boxes, at no charge, in a continuing effort to support City programs and events and to promote recycling awareness to the public. Examples of events include, but are not limited to Café Tuesdays, Third Thursday Food Fest, Downtown Farm Share Market, Movie Night in the Park and Rendezvous Route 66.

b. City's Program and Grant Funding. Public education and outreach activities which focus on beverage container recycling, used motor oil recycling, household hazardous waste disposal and waste tire collection, and are centered around such events as residential community clean-up days, Earth Day events, Public Works Week and the Orange Show Festival.

c. School Outreach. School programs will be contingent on subscribing to City services.

d. Customer Feedback. Information regarding disposal and diversion efforts will be used to give feedback to residential neighborhood organizations and commercial customers about rates of participation, contamination, waste generation and diversion.

e. Product Stewardship. Contractor will encourage residents to donate or exchange reusable items to local thrift stores and/or second hand establishments rather than discarding them.

f. Residential Newsletters. Newsletters will be mailed to residents four times per Agreement Year. The newsletters will remind residents what

Exhibit 7
Diversion Plan

is accepted for recycling, advise them of holiday schedules, bulky waste pickup, waste and recycling events, community events, and special waste handling topics like sharps, used motor oil and electronic waste.

g. Key Accounts. As a part of Mandatory Commercial Recycling (AB 341) and Mandatory Commercial Organics Recycling (AB 1826) programs, Contractor staff will identify key accounts such as property managers, multi-family site managers, and major commercial and industrial properties and develop outreach efforts designed to engage greater participation in these State-mandated programs.

h. Other Education & Outreach Efforts. Throughout the term of the contract, Contractor staff will work cooperatively with the City to monitor the effectiveness of existing public education and outreach programs and to identify and develop new public education and outreach programs as might be necessary to meet diversion targets.

COMMERCIAL SECTOR

Contractor proposes to increase diversion from Commercial sources by:

(1) AB 341 Recycling Programs. Contractor will identify and report to the City annually on the AB 341 compliance status of each business. Contractor's recycling coordinator will work with each non-compliant business to establish programs. *(AB 341 defines "business" as any commercial entity, public entity such as a school or hospital, and multi-family dwelling of five (5) units or more.)*

(2) Recycling Rebates. Commercial establishments that generate large quantities of source-separated Recyclable Materials may be offered rebates based on the net value of the commodity.

(3) Organic Materials / AB 1826 Compliance. Contractor will identify and report to the City on the businesses impacted by AB 1826. Contractor's recycling coordinator will work with affected businesses to establish services that comply with the law.

INDUSTRIAL SECTOR

Contractor will to increase diversion from the Industrial sector by:

(1) AB 341 Recycling Programs. (Previously described.)

(2) Recycling Rebates. (Previously described.)

(3) Organic Materials / Mandatory Commercial Organics Recycling Law. (Previously described.)

Exhibit 7

Diversion Plan

(4) Construction & Demolition Waste.

a. Source-Separated Collection. Contractor will provide multiple containers on large job sites to enable developer/contractors to source-separate materials. Job sites with limited space might also source-separate material using containers phased to match the construction progress, i.e., rock, inerts, concrete & wood for demolition and flatwork phases, wood for framing phases, plastics & metals for plumbing, electrical & ducting phases, drywall for wall phases, carpet remnants, cardboard for HVAC, appliance and finish phases.

b. Mixed C&D Processing. Contractor will provide containers for mixed construction & demolition roll-off processing.

Below are Contractor's diversion targets by service sector and date

Year	*Refuse Disposal Target*	*Green Waste Diversion Target*	*Recyclables Diversion Target*	*Total Solid Waste Generated*	*Diversion Rate Target*
Current	150,000	30,600	21,000	201,600	26%
2016	138,100	38,500	25,000	201,600	31%
2020	120,600	48,000	33,000	201,600	40%
2025	91,600	63,000	47,000	201,600	55%

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Exhibit 8
Customer Service Plan

Customer Service Representatives will work from local division offices, not a regional call center. This localized customer service system promotes a better understanding of local programs and customer needs.

1. LOCATION

The customer service center for the City of San Bernardino will be initially located at Contractor's existing San Bernardino Division Office at 5455 Industrial Parkway.

2. STAFFING

Will consist of nine (9) fulltime Customer Service Representatives will be available to answer and process all incoming telephone calls from City residents and commercial enterprises.

Customer Service Representatives will receive in-house training on the programs and services to be provided.

3. CALL HANDLING

Customer Service Department will be accessible via a local, toll free telephone number, which will be listed under Contractor's name in the white pages directory servicing San Bernardino. Customer Service Department hours are 8:00 AM - 5:00 PM Monday through Friday and on Saturdays between 8:00 AM and 2:00 PM after recognized holidays.

Customer phone calls and customer issues will be recorded in a computerized log, including the date and time, customer's name and address, nature of concern, and resolution. Phone calls received via the message center will be recorded in the log and responded to no later than the following workday. The log will be available for review by City representatives during normal office hours.

Contractor will provide ongoing dispatch communications between drivers, route supervisors and customer service to address issues such as locked gates, equipment malfunctions, or missed collections.

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