



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** October 25, 2016

From: Joseph Moon, Public Services Manager **Item No:** 8
Public Services Department

Subject: AGREEMENT FOR PROCESSING OF MATERIALS AT BURRTEC
EXPANDED FACILITY (MRF)

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

That the Town Council approve the attached Processing Agreement and authorize the Mayor to execute the agreement and authorize the Town Manager to negotiate and accept rates for processing services.

ANALYSIS:

The attached Processing Agreement is between Burrtec and the Town of Apple Valley. It allows for the Town's use of Burrtec's Expanded Facility for assorted material processing/handling services including composting, construction and demolition recycling, mixed waste processing, fuel production and/or transfer station.

This Agreement is a critical component of the Town's effort to comply with the State of California's new, more stringent mandatory commercial recycling and commercial composting laws, as well as other initiatives furthering the state's seventy-five percent (75%) recycling goal. The Agreement does not include rates at the present time. The rates are still being developed by Burrtec as facilities come online. The rates will be brought back to the Town for acceptance once they have been proposed by Burrtec and negotiated with staff.

The Processing Agreement provides:

1. Deliveries of residential curbside recyclables and commercial recycling program materials to the existing Victor Valley MRF would continue,
2. Materials to be delivered to the Burrtec Expanded Facility may include green materials (landscape trimmings), wood, inerts (rock, concrete, asphalt), drywall,

- carpet/padding, construction and demolition (C & D) waste, food waste, commercial select loads and/or mixed waste (Exhibits B and C),
3. The Town cannot deliver materials to the Expanded Facility until such time that it has accepted rates for those materials (Paragraph 3),
 4. The term of the Agreement is set to coincide with the term of the hauling agreement with Burrtec Disposal (Paragraph 6),
 5. Rates to process materials will be reset either by changes in market pricing for similar services or by annual cost of living formulas (Paragraph 8.c.),
 6. The Town of Apple Valley is guaranteed capacity (Paragraph 5) and lowest rates at the facility (Paragraph 8.d.), along with the Town of Apple Valley; and
 7. A list of materials and services (Exhibit B) and operational definitions (Exhibit C) are included.

As previously mentioned, the Agreement does not include rates at the present time since the rates are still being developed by Burrtec as facilities come online. Initial rates for the composting and construction/demolition processing services are expected later this year, or early next year. As noted in Item # 3 above, the Town is not allowed or obligated to deliver any material to the Expanded Facility until the rates are accepted by the Town.

The Town is protected against unreasonable or non-competitive rates by language in Paragraph 8.c. This section states that rates will be adjusted annually by a COLA. In addition, every two (2) years, the Town may undertake a market rate analysis. If it is determined that the market rate for comparable processing services by other facilities/vendors is five percent (5%) or more below the then-current rate under the Agreement, then the Town and Burrtec will negotiate and review the rates. If they cannot agree on a new, acceptable rate, then the Town may provide the materials to another market/facility.

BACKGROUND INFORMATION:

In order to be ready to comply with new and more stringent State of California waste diversion requirements, the Town of Apple Valley and the City of Victorville, with the assistance of the Mojave Desert & Mountain Recycling Authority, have been working with Burrtec Waste Industries to develop an expanded materials diversion/recycling facility. Burrtec has proposed to develop an "Expanded Facility" on land Burrtec owns adjacent to the existing Victor Valley MRF. An additional 7.96 acres of unused land from the Victor Valley MRF is proposed to be leased to Burrtec. The leased land will allow for site access/vehicle circulation, material storage and sales area and new scales.

Burrtec's expanded facilities will include:

- A 100 ton per day covered aerated composting facility for food and landscape materials, including an 8,000 square foot enclosed area for receiving and grinding,
- A 16,000 square foot enclosed mixed construction and demolition recycling facility,
- A 57,600 square foot enclosed mixed waste processing facility to recover non-source separated recyclable and compostable materials,

- A transfer station to receive incoming materials and ship residuals,
- An engineered fuel processing and production line,
- A new scale house,
- Areas for product storage and sale; and
- Two employee parking lots with solar panel roofed carports.

The Victorville City Council approved the Specific Plan Amendment, Negative Declaration, Conditional Use Permit and site plan for the project at its January 19, 2016 meeting. Water, air and solid waste facilities permits are in process.

State Recycling Requirements

Since the late 1980s, the State of California has enacted ambitious recycling and waste reduction goals. In 1989, State Law AB 939 required jurisdictions to develop and implement programs to reduce the amount of waste sent to landfill by fifty percent (50%) by the year 2000 and beyond.

Over the years, California has continued to increase its statewide recycling goals, as well as requirements on local jurisdictions. California State Law AB 341 went into effect July 1, 2012 and established a statewide goal that not less than seventy-five percent (75%) of solid waste in the state be source reduced, composted and/or recycled by 2020. In addition, AB 341 required all businesses and “public entities” that generate four (4) or more cubic yards of trash per week to implement recycling. Multi-family complexes with five (5) or more units are also required to recycle.

In 2014, California State Law AB 1826, Mandatory Commercial Organics Recycling, was passed. AB 1826 requires businesses, including public entities and multi-family complexes of five (5) or more units, to divert organic waste, including food waste, landscape and pruning waste and non-hazardous wood waste. Depending on the amount of organic waste generated, businesses are required to start diverting organics between 2016 through 2019.

AB 1826 also requires local jurisdictions to develop organic waste recycling programs to divert organic waste generated by the included businesses, starting in 2016. In addition, jurisdictions are required to conduct outreach and education to businesses on how to recycle/divert organic wastes; monitor participation/compliance; and identify appropriate organics management facilities to serve the jurisdiction.

Most recently, California State Law SB 1383, passed in 2016, would reduce the landfilling of organic waste by fifty percent (50%) by 2020 and seventy-five percent (75%) by 2025. CalRecycle may require that local agencies impose requirements on generators, including fines; may include requirements for local jurisdictions and phased timelines based upon their progress in meeting the organic waste reduction goals; and may include CalRecycle penalties for noncompliance.

Beginning with their 2016 Annual Reports (due in August 2017), jurisdictions are required to report to CalRecycle (the California State Department of Resources Recycling and Recovery) on progress toward implementing the Mandatory Commercial Organics Recycling program. Information jurisdictions will need to report on includes, but is not limited to:

- *Efforts underway to develop new private or public regional organic waste recycling facilities that may service some or all of the organic waste recycling needs of the commercial waste generators within the jurisdiction and the anticipated time frame for completion of those facilities.*
- *Any known barriers to siting or expanding organic waste recycling facilities in the area and a plan to remedy these barriers, if any barriers are in the jurisdiction's control*

Per AB 1826, jurisdictions will be evaluated in part on, "The extent to which the jurisdiction has taken steps that are under its control to remove barriers to siting and expanding organic waste recycling facilities."

Failure to make progress toward complying with the law could result in compliance orders or fines.

Adoption of the Processing Agreement ensures that the Town has guaranteed capacity for compostable materials processing at Burrtec's Expanded Facility. This is a critical part of the Town's plan to comply with AB 1826, the Mandatory Commercial Organics Recycling law.

FISCAL IMPACT:

No budget impact at the present time. All costs incurred for processing services will be incorporated into solid waste rates billed to commercial and residential customers.

ATTACHMENT:

Agreement for Processing Services at the Burrtec Expanded Facility

**AGREEMENT FOR PROCESSING SERVICES AT THE
BURRTEC EXPANDED FACILITY**

THIS AGREEMENT FOR PROCESSING SERVICES AT THE BURRTEC ("Agreement") is entered into this ____ day of _____, 201_, by and between the City/Town/County of _____, a municipal corporation and a political subdivision of the State of California ("City/Town/County") and Burrtec Waste Industries, Inc., a California corporation dba AVCO Disposal, Inc. ("Burrtec").

RECITALS

- A. The Legislature of the State of California, by enactment of California Public Resources Code section 40000 *et seq.*, declares that it is within the public interest to authorize and require local agencies to make adequate provision for solid waste handling within their jurisdictions. In that regard, City/Town/County provides for the collection, recycling and disposal of solid waste, organic materials, recyclable materials, and other miscellaneous waste items generated within the boundaries of City/Town/County and recycling and disposal of said waste in a manner consistent with the protection of public health and safety.
- B. The Legislature, by enactment of State Assembly Bill 939 on September 29, 1989, enacted the California Integrated Waste Management Act of 1989, AB 939 as amended by various amendments, including AB 341 (2011) (collectively, AB 939), requires all municipalities to divert solid waste from landfill disposal through source reduction, recycling, and composting. Assembly Bill 341 (2011) sets a statewide recycling goal of 75% and mandates that businesses participate in recycling programs. State Assembly Bill 1826 was enacted in 2014 and requires a business that generates a specified amount of organic waste per week to arrange for recycling service for that organic waste.
- C. The Legislature, by enactment of California Public Resources Code sections 40059 and 49300 *et seq.*, has provided a means by which cities may enter into solid waste handling and recycling service contracts with an independent contractor without utilizing the competitive bidding process.
- D. Burrtec has entered into a Ground Lease with the Participating Municipalities and the Mojave Desert & Mountain Recycling Joint Powers Authority (the "JPA"), to provide expanded processing support services on property owned by the Participating Municipalities City/Town/County and managed by the JPA adjacent to the Victor Valley MRF in San Bernardino County (the "VVMRF"). These expanded processing support services, and additional facilities on Burrtec property, are commonly known as the Burrtec Expanded Facility (sometimes called the "Burrtec MRF"), which

meets the applicable State and local regulatory requirements. Burrtec is prepared to accept and process additional materials not currently delivered to VVMRF or more appropriately handled at the Burrtec Expanded Facility and this Processing Agreement does not affect any agreement between Burrtec and the City/Town/County except as otherwise explicitly provided here.

THE PARTIES AGREE AS FOLLOWS:

1. Recitals. The Recitals set out above are true and correct.
2. Definitions. For purposes of this Agreement, used here shall have the definitions set out on Exhibit “A”, attached and incorporated as if fully set forth, which terms are consistent with those utilized in the Ground Lease and Amended and Restated Operating Agreement.
 - a. The definitions applicable to Processing of Materials are set out on Exhibit “C”, attached and incorporated as if fully set forth herein.
3. Delivery of Materials for Processing. The City/Town/County shall deliver, or cause to be delivered to the Burrtec Expanded Facility the Materials to be Processed (or “Processing Materials”) generated and collected within the City/Town/County limits to be processed pursuant to this Agreement, provided that the City/Town/County shall accept any processing rates proposed by Burrtec in Exhibit B hereto prior to beginning any such delivery, and such delivery may not begin prior to City/Town/County’s acceptance of the rate for that service. City/Town/County shall have no obligation to deliver any Recyclable Materials under this Agreement when those Recyclable Materials shall continue to be delivered to the VVMRF. Except for those Recyclable Materials that continue to be delivered to the VVMRF, this Agreement is exclusive and City/Town/County shall deliver or caused to be delivered all such Green, Palm, Wood–Blonde, Wood–Manufactured, Inert, Drywall, Carpet, C&D, Food, Drywall, Commercial Select and Mixed Waste collected under franchise agreement from within the City/Town/County limits to the Burrtec Expanded Facility. Notwithstanding, in the Burrtec fails to perform pursuant to the terms and conditions of this Agreement, including providing acceptable processing rates, City/Town/County retains the right to enter into additional contracts with other parties for the services provided by this Agreement.
4. Scope of Services. Burrtec will process at the Burrtec Expanded Facility the Processing Materials delivered to the Burrtec Expanded Facility by the

City/Town/County or on behalf of the City/Town/County. Burrtec shall arrange for the transfer, transportation and disposal of non-recoverable solid waste materials processed out of the Processing Materials ("Residual Material").

5. Acceptance of Materials for Processing. Burrtec guarantees that during the term of this Agreement, it shall, at its sole cost and expense, provide management, supervision, personnel, materials, equipment, services and supplies necessary to operate and maintain the Burrtec Expanded Facility and to have sufficient capacity at the Burrtec Expanded Facility to enable it to accept Materials for Processing generated and collected within the boundaries of the City/Town/County. Notwithstanding the foregoing, Burrtec may utilize any excess capacity at the Burrtec Expanded Facility for other customers.
 - a. Burrtec shall immediately advise the City/Town/County by phone and facsimile of any event which results in the partial or complete inability of Materials for Processing to be received at the Burrtec Expanded Facility, its effect on Burrtec's ability to perform this Agreement, and Burrtec's best estimate of the probable duration. Burrtec shall confirm such advice in writing within 24 hours of any such inability. Normal operation of the Expanded Facility shall resume as soon as possible in accordance with this Agreement. In the event such processing capacity cannot be provided for a period in excess of seven (7) days, Burrtec shall be obligated to make arrangements to accept such ((or at another facility and to reimburse the City/Town/County for any increased transportation and processing cost (including without limitation, increased processing fees, equipment rental costs, overtime and increased fuel costs resulting from the unavailability of the Burrtec Expanded Facility) incurred by the City/Town/County in transporting Processing Materials to another processing facility.
 - b. Burrtec shall have a scale house or utilize the VVMRF scale house and computer software to track all loads of Processing Materials delivered to the MRF, all Green Materials processed, and applicable processing fees charged to City/Town/County. Monthly reports shall be generated to the City/Town/County showing the tonnage of all Processing Materials delivered, by category, processed at the Burrtec Expanded Facility for purposes of reporting City/Town/County's diversion of waste pursuant to the requirements of AB 939. Burrtec agrees to use its best efforts in assisting the City/Town/County by providing information in its possession needed for the preparation of compliance documents required pursuant to AB 939, AB341 and AB 1826 and other Applicable Law. Said information shall be provided by Burrtec in a format consistent with CalRecycle guidelines. Burrtec shall maintain books and records of all financial transactions made

pursuant to this Agreement. Such records shall be made available to the City/Town/County at any time during business hours upon reasonable demand as required to verify Burrtec's performance of its obligations pursuant to this agreement.

- c. Burrtec represents and warrants that it currently has, and will maintain, or cause to be obtained and maintained, all contracts, licenses, permits, qualifications, and approvals of whatever nature that are legally required for the operation, maintenance and use of the Burrtec MRF. Burrtec agrees to comply with all Applicable Law, including, but not limited to, social security and income tax withholding laws, unemployment compensation laws, and all applicable laws involving environmental, safety, or health procedures.
- d. Burrtec shall, at its sole cost and expense, operate and maintain the Burrtec Expanded Facility in a good clean and orderly condition including implementing necessary repairs and replacements, purchasing and maintaining necessary replacement equipment or parts for the Burrtec Expanded Facility, and maintaining an adequate inventory of spare parts and equipment.
- e. Burrtec shall operate the Burrtec Expanded Facility with a sufficient amount of personnel to enable Burrtec to perform all of Burrtec's obligations and duties under this Agreement in a timely and efficient manner. All of Burrtec's personnel shall be appropriately trained in accordance with all applicable rules, regulations and law so that the Burrtec Expanded Facility will be operated and maintained in accordance with and consistent with applicable law and good industry standards and practices, for Processing Materials processing facilities.
- f. The parties acknowledge the responsibility of the City/Town/County to meet the recycling and landfill diversion goals in AB 939, AB 341, AB 1826 and AB 1594. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the City/Town/County to meet or exceed such responsibilities, or to exceed such responsibilities, or to restrict the rights of residents, businesses or organizations within the City/Town/County to practice source separation, source reduction, recycling, composting or other materials recovery activities, or to restrict the right of the City/Town/County to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Processing Materials generated within the City/Town/County and delivered to the Burrtec Expanded Facility by or on behalf of the City/Town/County which may result from any source separation or recycling program, or from any other cause, shall cause the City/Town/County any liability hereunder and no such reduction shall constitute a breach of this Agreement. Whenever

possible the material from the City/Town/County shall be used for the highest diversion credit possible

6. **Term.** The term of this Agreement shall begin on _____, 2016 ("Commencement Date") and end upon the termination date of the [to be discussed with the cities].
7. **Fees.** In consideration for the services to be provided by Burrtec for the processing of Processing Materials pursuant to this Agreement, the City/Town/County agrees to compensate Burrtec in accordance with the rates in Exhibit B, as that may be amended from time to time pursuant to Sections 8(c) and (d) below.
8.
 - a. **Non-Processable Residue.** Burrtec shall arrange for the removal and transportation to disposal facilities of all non-recoverable solid waste materials processed out of the Processing Materials ("Residual Material") at a disposal site which is licensed and operating in accordance with all local, county, state and federal regulations and statutes. All Residual Material shall be disposed at a site that complies with Applicable Law and current waste disposal agreements. Burrtec may also dispose of Landfill Materials pursuant to this section. For all Landfill Materials and Residual Material, Burrtec will identify a disposal site licensed and operating as a Class III Sanitary Landfill in accordance with all Applicable Law; and Burrtec will allocate Landfill and Residual Materials consistent with disposal reporting requirements to accurately reflect the origin of such Materials
 - b. **Scales.** The Burrtec Expanded Facility will use the VVMRF scales until the Burrtec MRF scales are available. When such scales are available, Burrtec, at its sole cost and expense, shall test and recalibrate the on a quarterly basis or in event of dispute. When, at any time, testing of the weigh scales indicates that the scales do not meet the accuracy requirements of Applicable Law, or if the scales are being tested, Burrtec, absent more accurate information, shall estimate the quantity of Processing Materials delivered on the basis of truck volumes and estimated data obtained from historical information pertinent to Burrtec and shall assume, for purposes of such estimate, that the weigh scale inaccuracy occurred on a linear basis from the test most recently preceding the test demonstrating such inaccuracy. These estimates shall take the place of actual weighing records until correction of the weigh scales is

completed. Burrtec shall use all reasonable efforts to repair the scales within three (3) days. Burrtec shall provide a monthly listing of scale records for each calendar month to the City/Town/County within thirty (30) days after the close of each month. Copies of all daily weight records shall be maintained by Burrtec for a period of at least three (3) years.

- c. Rate Adjustments. Rates shall be adjusted annually, each July 1 to the standard, market rates for each category of Processing Materials determined as set out here or as otherwise provided in an applicable COLA or other formula for automatic rate increase. Every second year on the anniversary of the contract date, the City/Town/County may undertake a market rate analysis of comparable options for the Processing Materials. In the event any analysis indicates that the market rate for comparable Processing Materials is five percent (5%) or more below the then-current rates under this Agreement, the City/Town/County and Burrtec shall review and negotiate in good faith. If Burrtec and City/Town/County cannot agree, the City/Town/County may provide the Materials to another market.
 - d. Rate Guarantee. Notwithstanding the forgoing, the rates charged to the City/Town/County shall not exceed the lowest rate for comparable services (including consideration of type of Processing Materials, transportation costs, waste stream characterization and volume) to any other customer at the Burrtec MRF.
9. Billing, Payment and Audits.
- a. Burrtec shall submit monthly invoices for Processing Materials delivered in the preceding month. Burrtec's invoices shall clearly set forth the calculation for the total amount of the invoice, including specifying Processing Materials processing costs by category. The City/Town/County shall promptly review all invoices and notify Burrtec in writing of any objections thereto in accordance with the dispute procedures set forth in herein. Absent Burrtec's receipt of written objections within 15 days of receipt of an invoice by the City/Town/County, the invoice shall be deemed proper and acceptable. Subject to the City/Town/County's objections, the City/Town/County shall pay Burrtec the sum equal to the amount due under an invoice (or the undisputed amount, if any, in the event of an objection by City/Town/County) within 30 days after receipt. If City/Town/County disputes any amount billed pursuant to this Agreement, the City/Town/County shall submit to Burrtec a written objection within 15 days of receipt of the disputed billing indicating

the amount that is being disputed and providing all reasons for objection. If the parties are not able to resolve such dispute with 30 days after the response, either party may pursue applicable legal remedies.

- b. All records of Burrtec related to or prepared in connection with its performance of this Agreement shall be subject to audit and inspection by City/Town/County, its auditors or other agents, at any reasonable time. Such audit or inspection shall take place at City/Town/County's City/Town/County Hall, if practicable, or at a Burrtec facility located in San Bernardino County. The City/Town/County shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an overpayment of sums owed by the City/Town/County under this Agreement in excess of five percent (5%) of the amount which should have been paid, Burrtec shall promptly tender to the City/Town/County the amount of such overpayment, together with interest at the rate of twelve percent (12%) computed from the date of overpayment, and shall further reimburse the City/Town/County for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an overpayment of less than five percent (5%), Burrtec shall promptly repay such overpayment, together with interest at the rate of twelve percent (12%) computed from the date of overpayment, and the City/Town/County shall bear the City/Town/County of the audit. If an audit discloses an underpayment by City/Town/County, the City/Town/County shall promptly tender the underpayment without interest.

- 10. Hours of Operation. The Burrtec Expanded Facility shall be open for the delivery of Processing Materials by the City/Town/County, or on behalf of the City/Town/County during normal business hours, as set for the in the Operating Agreements. Said schedule shall not be changed without Burrtec's prior written notice to the City/Town/County at least 30 days in advance. Except for specific dates of holidays, the hours and days of operation shall remain in accordance with this Section. The City/Town/County shall have access to the Burrtec Expanded Facility during normal business hours as set forth in this Agreement. Burrtec agrees to receive, Processing Materials at the Burrtec Expanded Facility at hours other than as set forth herein if (i) requested by the City/Town/County to accommodate unusual quantities of Processing Materials resulting from an emergency or from programs of the City/Town/County or any local governmental entity designed to promote clean-up of an area serviced by the Burrtec Expanded Facility and (ii)

the Burrtec Expanded Facility is able, in the reasonable judgment of Burrtec, to receive such additional quantities of Processing Materials without adversely affecting Burrtec's operation or maintenance of the Burrtec MRF.

11. Compliance with Laws and Regulations. Burrtec covenants with the City/Town/County to use its best skill, judgment and effort to process all Processing Materials delivered to the Expanded Facility. Burrtec warrants that it will comply with all Applicable Law, including regulations, as they, from time to time, may be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601, et.seq. the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et.seq., the California Integrated Waste Management Act of 1989, California Public Resources Code Section 43601, and all applicable laws of the State of California, County of San Bernardino, ordinances of the City/Town/County, the requirements of local enforcement agencies and other agencies with jurisdiction. Notice shall be promptly provided to the City/Town/County in the event Burrtec should receive any enforcement action arising out of the services performed under this Agreement. Burrtec shall establish and maintain safety procedures for the Burrtec Expanded Facility for the protection of employees of Burrtec and all other persons, invitees and permittees at the Burrtec Expanded Facility in connection with the operation and maintenance thereof at a level consistent with Applicable Law and with good industry standards and practices for green material processing facilities. Burrtec shall comply with all applicable laws, ordinances, rules and regulations relating to the safety of persons or property at the Burrtec Expanded Facility from damage, injury or loss.
12. Field Visits to the Burrtec Expanded Facility. The City/Town/County may, with the full cooperation of Burrtec, conduct field visits to the Burrtec Expanded Facility to determine whether Burrtec is in compliance with all of its obligations under this Agreement. In connection with such inspections or visits, the City/Town/County shall, on behalf of itself, its agents and representatives, comply, and cause its agents and representatives to comply, with all reasonable rules and regulations adopted by Burrtec.
13. Events of Default- Termination. The parties agree that in the event of the breach by any party of an obligation under this Agreement, neither party shall have the right to terminate this Agreement except for, and

as a result of, an event of default as described in this section ("Event of Default"). With respect to, and as a result of, any breach or default under this Agreement which is not an Event of Default as described in this section that would warrant termination, the parties acknowledge that the exclusive remedies of the non-defaulting party shall be specific performance or such other remedies in law or equity as may be available to compel specific performance, as well as the recovery of damages incurred by the non-defaulting party as a result of the breach or default. Each of the following shall constitute an Event of Default:

- a. The material failure or refusal by a party to proceed with activities contemplated by this Agreement; unless such failure or refusal shall be excused or justified by an event covered by the Force Majeure provisions of this Agreement; provided, however, that no such default shall constitute an Event of Default giving rise to the right to terminate this Agreement under this section unless or until:
 - 1) The non-defaulting party shall have given prior written notice to the breaching party specifying that a particular default exists which will, unless corrected, constitute a material breach of this Agreement on the part of the defaulting party, and
 - 2) The defaulting party has not corrected such default or has not taken reasonable steps to commence to correct the same within thirty (30) days from the date of the notice given pursuant to this section or thereafter does not diligently continue to take reasonable steps to correct such default.
 - 3) In the case of Burrtec only, the following Event of Default may also be determined to exist: Burrtec becomes insolvent or bankrupt or ceases to pay its debts as they mature, makes arrangements with or for the benefit of creditors, consents to or acquiesces to the appointment of a receiver, becomes part of a voluntary or involuntary bankruptcy, insolvency or similar proceeding. In the event of such insolvency or bankruptcy, Burrtec shall assume or reject this Agreement within sixty (60) days after the order for relief, promptly cure any failure to perform under this Agreement, and provide adequate assurance of future performance under this Agreement.
 - 4) Failure of either party to pay all or any amount required to be paid to the other party under this Agreement, when such amount becomes

due and payable, unless the same is paid within thirty (30) days after written demand therefor by the other party accompanied by notice that unless the same is not so paid, such failure to pay shall constitute an Event of Default unless a dispute with respect to any such amount is being pursued.

- 5) If a party terminates this Agreement for an Event of Default on the part of the other party, the non-defaulting party shall have the right to seek legal and equitable remedies provided by law for such default provided, however, that the non-defaulting party is obligated, to the extent not detrimental to its interests and within any applicable provision of law, to mitigate the damages, costs and expenses incurred by reason of such Event of Default and to credit the savings therefrom to any damages, costs and expenses otherwise payable by the defaulting party.

14. Indemnification. (a) Burrtec shall indemnify, defend with competent counsel reasonably approved by the City/Town/County, protect and hold harmless the City/Town/County, its officers, employees and assigns from and against all claims, including natural resources damages, injuries, costs, response, assessment, 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, the City/Town/County or its officers or employees arising from or attributable to: (i) 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) or replacement or restoration of natural resources arising from or related to Hazardous Substance (as defined under Applicable Law) or Hazardous Wastes (as defined under Applicable Law) or petroleum products at any place where Burrtec transfers, stores or disposes of Green Materials pursuant to this Agreement; (ii) Burrtec's activities pursuant to this Agreement which result in a release or threatened release of Hazardous Substances or Hazardous Wastes or petroleum products into the environment; (iii) any failure by Burrtec to comply with any applicable law, regulation, or order; and/or (iv) any breach by Burrtec of this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to but not limited to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and

Safety Code Section 25364, to defend, protect, hold harmless and indemnify the City/Town/County from liability. This indemnity shall not apply with respect to (i) vehicle accidents or other Processing Materials delivery activities or (ii) to any Hazardous Substances, Hazardous Waste, petroleum product or other unacceptable waste not accepted by Burrtec for processing at the Burrtec Expanded Facility. The City/Town/County agrees that Burrtec may provide counsel to jointly represent itself, the City/Town/County and all other parties who disposed of waste at the Burrtec Expanded Facility. The City/Town/County hereby agrees to waive, in writing, any conflict, actual or apparent, created by joint representation of such parties pursuant to this indemnity. The City/Town/County also hereby agrees to cooperate fully and completely with Burrtec and with counsel provided by Burrtec in resolving any legal matter that arises pursuant to this indemnity. The City/Town/County further agrees that Burrtec has complete discretion in the conduct of any matter to which this indemnity applies, and may resolve or settle such matters to which this indemnity applies in its sole discretion without the permission or approval of the City/Town/County, provided that written consent from the City/Town/County shall be required for any such resolution or settlement requiring the City/Town/County to make any payment or admit liability. Burrtec agrees that it will not bring any action against the City/Town/County claiming or alleging that the City/Town/County has any responsibility for matters, actions or liabilities within the scope of the indemnity provided above, except to the extent of the negligence or willful misconduct of City/Town/County, its officers, employees or assigns.

- a. Burrtec's Indemnity. Burrtec shall indemnify, defend, and hold harmless the City/Town/County, its officers, employees, agents, contractors and consultants, to the maximum extent allowed by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees), on account of bodily injury to or death of any person or damage to or loss of property arising out of or resulting from the acts or omissions to act of Burrtec, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of this Agreement, unless caused by the negligence or willful misconduct of the parties to be indemnified.
- b. City/Town/County Indemnity. The City/Town/County shall indemnify, defend, and hold harmless the Burrtec, its officers, officials, employees, agents, contractors and consultants, to the maximum extent allowed by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees), on account of bodily injury to or death of any person or damage to or loss of use of property arising out of or resulting from the acts or omissions to act of the City/Town/County, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of this

Agreement, unless caused by the negligence or willful misconduct of the parties to be indemnified.

15. Force Majeure. Neither party shall be in default under this Agreement in the event that the delivery of Processing Materials to the Burrtec Expanded Facility is temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President of Congress and affecting the City/Town/County or the area in which the Burrtec Expanded Facility is located; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fire; strikes, or other catastrophic events which are beyond the reasonable control of the City/Town/County or Burrtec. "Other catastrophic events" does not include (1) strikes, lockouts, or other labor unrest, (2) the financial inability of Burrtec to perform their obligations under this Agreement, (3) for failure of Burrtec to obtain any necessary permits from other governmental agencies or (4) the right to use the facilities of any public entity where such failure occurs because Burrtec did not exercise reasonable diligence.

16. Insurance. Burrtec shall obtain and maintain, at its own cost and expense, the following insurance policy or policies of liability insurance of the following coverages and limits for the duration of this Agreement: Workers Compensation - Statutory; Employer's Liability - \$1,000,000 each occurrence; Comprehensive General Liability - \$1,000,000 each occurrence combined single limit; Comprehensive Automobile Liability - \$1,000,000 each occurrence combined single limit. Burrtec agrees to furnish to the City/Town/County, upon request, certificates of insurance attesting to the insurance coverages and limits above. Each certificate shall contain a statement requiring the insurer to notify the certificate holder at least thirty (30) days prior to cancellation of any policy covered thereunder. Each certificate shall also name the City/Town/County as an additional insured.

17. Notices. All notices, requests, demands and other communications hereunder shall be furnished at the addresses listed below (or such address as notified in writing), shall be in writing, and deemed as duly given when delivered personally or three (3) days after the date mailed by certified mail, return receipt requested as follows:

To CITY/TOWN/COUNTY: City/Town/County of

Attention: City/Town/County Manager

To CONTRACTOR: Burrtec Waste Industries, Inc.
9890 Cherry Avenue
Fontana, CA 92335
Attn: Cole Burr, President

18. Attorney's Fees. In the event an action is commenced by either party to this Agreement to enforce or construe its rights or obligations arising under this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the Court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees as said reasonable amount of attorney's fees may be determined by the Court.
19. Binding Upon Successors. All agreements, covenants, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.
20. Captions. The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties only and are not part of this Agreement.
21. Governing Law and Venue. This Agreement shall be deemed to be made in California and shall be governed under the laws of the State of California in all respects, without regard to the principles of conflict of laws, including matters of construction, validity, and performance. Any action to interpret or enforce this Agreement shall be maintained exclusively in the courts of and for San Bernardino County.
22. Amendment. This Agreement can be modified only by writing expressly referring to this Agreement and signed by each of the parties hereto.

23. Invalidity of Provisions. Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of the other provisions shall nonetheless remain in full force and effect.
24. Assignment and Subcontracting. Neither party hereto may assign, transfer, or permit the assignment or transfer of this Agreement, or any rights or obligations hereunder without the prior written consent of the other party hereto, which such consent shall not unreasonably be withheld. Either party may subcontract the performance of its respective obligations hereunder upon written consent of the other, which shall not be unreasonably withheld.
25. Independent Contractor. Each party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all its employees, agents and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.
26. Counterparts. This Agreement may be signed in counterparts.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

BURRTEC WASTE INDUSTRIES, CITY/TOWN/COUNTY OF
INC. _____
a California corporation dba _____ a Municipal Corporation of the
State of California

By _____

Its:

By _____

Its: Mayor

ATTEST:

By: _____

Its: City/Town/County Clerk

APPROVED AS TO CONTENT:

By: _____

Its: Manager

APPROVED AS TO FORM:

By: _____

Its: City/Town/County Attorney

EXHIBIT A
DEFINITIONS

As used in this Agreement, including the Exhibits hereto, the following capitalized terms shall have the respective meanings.

“Acceptable Recyclable Materials” means the following classes of materials derived from municipal solid waste, which materials are Uncontaminated and of sufficient size to be sorted manually or mechanically:

(1) Glass: new and used glass food and beverage containers, including clear (flint), green and brown (amber) colored glass bottles.

(2) Aluminum Cans: any food or beverage container made mainly of aluminum. Examples include aluminum soda or beer cans, and some pet food cans. This type does not include bimetal containers with steel sides and aluminum ends.

(3) Tin/Steel Cans: rigid containers made mainly of steel. These items will stick to a magnet and may be tin-coated. This type is used to store food, beverages, paint, and a variety of other household and consumer products. Examples include canned food and beverage containers, empty metal paint cans, empty spray paint and other aerosol containers, and bimetal containers with steel sides and aluminum ends.

(4) PET clear or colored PETE (polyethylene terephthalate) containers. When marked for identification, it bears the number 1 in the center of the triangular recycling symbol and may also bear the letters PETE or PET. The color is usually transparent green or clear. APETE container usually has a small dot left from the manufacturing process, not a seam. It does not turn white when bent. Examples include soft drink and water bottles, some liquor bottles, cooking oil containers, and aspirin bottles.

(5) HDPE natural and colored (high-density polyethylene) containers. This plastic is usually either cloudy white, allowing light to pass through it (natural) or a solid color, preventing light from passing through it (colored). When marked for identification, it bears the number 2 in the triangular recycling symbol and may also bear the letters HDPE. Examples include mild jugs, water jugs, detergent

bottles, some hair-care bottles, empty motor oil, empty antifreeze, and other empty vehicle and equipment fluid containers.

(6) Mixed Rigid Plastic containers including plastic grades #2 through #7 that cannot be put in any other type and are often large pieces such as laundry baskets, toys, or similar objects.

Paper:

(7) Newspaper: paper used in newspapers. Examples include newspaper and glossy inserts found in newspapers, and all items made from newsprint, such as free advertising guides, election guides, and tax instruction booklets

(8) Uncoated Corrugated Cardboard usually has three layers. The center wavy layer is sandwiched between the two outer layers. It does not have any wax coating on the inside or outside. Examples include entire cardboard containers, such as shipping and moving boxes, computer packaging cartons, and sheets and pieces of boxes and cartons. This type does not include chipboard boxes such as cereal and tissue boxes.

(9) White Ledger Paper means bleached, uncolored bond, rag, or stationary grade paper, without wood fibers. It may have colored ink on it. When the paper is torn, the fibers are white. Examples include with paper used in photocopiers and laser printers, and letter paper.

(10) Mixed Paper items make mostly of paper. Examples include aseptic packages, plastic-coated paper milk cartons, waxed paper, tissue, paper towel and blueprints; this also includes other office paper such as manila folder and envelopes, index cards and junk mail.

“Acceptance Tests” means the performance tests conducted by the Contractor upon completion of the Facility Improvements.

“Additional Acceptable Recyclable Materials” shall include any other recyclable waste materials so designated and agreed to by the parties.

“Agreement” means the Amended and Restated Facility Operating Agreement dated March 11, 2004, as consolidated, amended and restated by this Amendment and thereafter as amended from time to time. This Agreement also may be referred to as “the Amendment.”

“Applicable Law” means any law, rule, regulation, requirement, guideline, action, determination or order of, or permit issued or deemed to be issued by, any

Governmental Body having jurisdiction, applicable from time to time to the siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, testing, operation or maintenance of the Facility, the transfer, handling, transportation, marketing and disposal of Acceptable Recyclable Materials, Recovered Materials, Residue, and Unacceptable Waste, or any other transaction or matter contemplated hereby (including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, and further including the San Bernardino County Integrated Waste Management Plan.

“Authority” or “Recycling Authority” means the Mojave Desert and Mountain Recycling Joint Powers Authority, a separate public agency; “Authority” is referred to as the “Lessor” under the Ground Lease.

“Authorized Representative” means: (i) when used with respect to the Landlord or Authority, any person or persons designated in writing from time to time as the representative of the Authority with respect to this Agreement which notice is delivered to the Contractor/Tenant; and (ii) when used with respect to the Contractor/Tenant, any person or persons designated in writing from time to time by the Contractor/Tenant, but only if such notice is delivered to the Authority Authorized Representative. The Authority and the Contractor/Tenant shall each have at least one and not more than two Authorized Representatives at any given time.

“Authority Fault” means (a) any unauthorized act or omission by the Authority that results in or significantly contributes to a cost increase, delay, failure to meet performance standards or other adverse event affecting the Facility, and (b) any Authority Event of Default.

“Capital Improvement” means any structure or equipment, whether or not fixed, that is subject to depreciation by the Contractor pursuant to its capitalization policies. Capital Improvement is distinguished from any repair, replacement, improvement, alteration, or addition constituting normal maintenance of the VVMRF which does not meet that standard. “Capital Improvements” shall also include any material changes in the scope of operations of the VVMRF as mutually agreed to by the Authority and the Contractor, including but not limited to changes in staffing, the type of Acceptable Recyclable Materials to be delivered to the Facility, changes in Recovered Materials to be recovered, and Major Maintenance.

“Capital Improvement Cost” means the cost of any Capital Improvement which the Contractor reasonably incurs under the Agreement and proves by Cost

Substantiation including, without limitation, expenditures for material, equipment, labor, and services supplied by architects, engineers and subcontractors, expenses related to managing and administering the Capital Improvement and an allowance for reasonable overhead, any related interest or other financing costs, and, with respect to Capital Improvements undertaken at the direction of the Authority, a reasonable profit.

“Change in Law” means any of the following that occurs after the Effective Date or Contract Date: (a) the enactment, adoption, promulgation, modification, repeal, issuance, or written change in administrative or judicial interpretation of any Applicable Law, unless such Applicable Law was officially proposed on or before the date hereof to become effective on or prior to a specified date after the date hereof without any further discretionary action by any federal, state, city, county, regional or other local governmental body, administrative agency or governmental official having jurisdiction; (b) the issuance of a valid and enforceable order, decree or judgment of any federal, state, or local court, administrative agency or governmental officer or body, if that order, decree or judgment is not also the result of negligent or willful action or failure to act of the party relying thereon, provided that the contesting in good faith of any order, decree or judgment shall not constitute or be construed as a willful or negligent action of that party; or (c) the denial of an application for, or suspension, termination, interruption, or imposition of any new material condition in connection with the renewal or failure to renew, of any governmental permit, license, consent, authorization or approval to the extent that such denial, suspension, termination, interruption, imposition or failure substantially interferes with the performance of a Party of its material obligations hereunder, if that denial, suspension, termination, interruption, imposition or failure is not also the result of negligent or willful action or failure to act of the party relying thereon, provided that the contesting in good faith of any denial, suspension, termination, interruption, imposition or failure shall not constitute or be construed as a willful or negligent action of that party. Without limiting the foregoing, the imposition, as a result of an event described in any of clauses (a)-(c) of this definition, of a technology requirement applicable to the Facility not included in the technology required in accordance with the Technical Specifications shall be a Change in Law. Notwithstanding the foregoing, the adoption of or change, amendment or modification to any federal, state, local or any other tax law shall not be considered a Change in Law for purposes of this Agreement or the Lease. In addition, the application of prevailing wage laws to the operation of the Facility shall not constitute a “Change in Law”.

“Commercial Select” means dry refuse loads identified by a Participating Municipality as having a high amount of commingled recyclables, but not sufficiently high to be delivered to the VVMRF. Notwithstanding, under the Processing Agreement, a Participating Municipality may designate that Commercial Select loads be delivered to the VVMRF.

“Compost” means the product resulting from the controlled biological decomposition of organic material.

“Construction and Demolition Debris” means that defined in California Code of Regulations Title 14, Division 7 Chapter 3.0, Article 5.9, Section 1738 as that may be amended from time to time.

“Construction Work” means everything that is required to be furnished and done for and relating to any Facility Improvement by the Contractor/Tenant pursuant to the Agreement/Lease. "Construction Work" shall include the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities, and other things and services of every kind whatsoever necessary for the full performance and completion of the Contractor's/Tenant's permitting, design, engineering, construction, shakedown, Acceptance Testing, and related obligations, including all completed structures, assemblies, fabrications, acquisitions and installations, all commissioning and testing, and all of the administrative, accounting, record-keeping, notification and similar responsibilities of every kind whatsoever pertaining to such obligations. A reference to "Construction Work" shall mean "any part and all of the Construction Work" unless the context otherwise requires.

“Consulting Engineer” means a nationally recognized consulting engineer or firm knowledgeable in the design, construction, acceptance, operation and maintenance of solid waste handling facilities, selected by the Authority, in its sole discretion, for the purpose of monitoring on behalf of the Authority the operation of the Facility under the Agreement.

“Contractor” means Burrtec Waste Industries, Inc., a California corporation, and to the extent permitted by the express terms of this Agreement, its successors and assigns.

“Contractor Fault” means (a) any act or omission by the Contractor that results in or significantly contributes to a cost increase, debt, failure to meet performance standards or other adverse event affecting the Facility, and (b) any Contractor Event of Default.

“Cost Substantiation” means, with respect to any cost reasonably incurred or to be incurred by the Contractor which is directly or indirectly chargeable in whole or in part to the Authority hereunder, delivery to the Authority of a certificate signed by an authorized engineering officer and an authorized financial officer of the Contractor, setting forth the amount of such cost and the provisions of this Agreement under which such cost is properly chargeable to the Authority, stating that such cost is a fair market price for the service or materials supplied or to be supplied and that such services and materials are reasonably required pursuant to this Agreement, and accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been or will be paid or incurred. In the event that any Cost has been incurred by the Contractor and is owing to a third party, the Authority shall have the right to pay such third party directly (upon presentation of the Cost Substantiation required hereunder). In such event, the Authority shall provide notice to the Contractor of such direct payment.

“County” means San Bernardino County, a political subdivision of the State of California.

“County Waste Disposal Agreements” means the Waste Disposal Agreements between the County and the Participating Municipalities providing for the disposal of certain solid waste generated in the Participating Municipalities at County disposal sites.

“Delivery Hours” means the operating schedule as agreed to by the Parties.

“Designated Haulers” means any haulers designated by the Authority as being permitted to utilize the Facility in accordance with the Agreement.

“Direct Costs” means, in connection with any cost or expense incurred by either Party for which reimbursement and cost substantiation is required pursuant to the terms of this Agreement, the sum of (i) the costs of the Party’s payroll directly related to the performance or supervision of any obligation of a Party pursuant to the terms of this Agreement, consisting of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers’ Compensation Insurance, federal and State unemployment taxes and all medical and health insurance benefits, plus (ii) the costs of materials, services, direct rental costs and supplies purchased by such Party, plus (iii) the costs of travel and subsistence, plus (iv) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance of such obligation.

“Effective Date” means the date of the underlying document..

“Expanded Facility” means the Burrtec transfer and recovery operations including composting, construction and demolition materials recycling, mixed waste processing including engineered fuel production, and the associated real property improvements and equipment consisting of an additional transfer facility and associated access and parking, a portion of which will be constructed on VVMRF property. The “Expanded Operation” also may be called the Burrtec MRF or Burrtec Expanded Facility.

“Facility Improvements” means those Capital Improvements constructed by Burrtec pursuant to the 1994 – 2004 Agreements.

“Facility Obligations” means revenue bonds, certificates of participation or other instruments issued or entered into by the Authority in order to finance all or a portion of the amounts required to be paid by the Authority pursuant to this Agreement for the VVMRF.

“Facility Revenues” means (1) amounts payable to the Authority by the Participating Municipalities pursuant to the Amended and Restated Agreement, (2) Tipping Fees, and (3) Recovered Materials Revenues.

“Governmental Body” means any federal, State, County, City or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body.

“Ground Lease” means that certain lease of unimproved real property entered into between the Contractor as Tenant and the North Desert Project Committee Cities for storage and other uses related to the Expanded Facility.

“Hazardous Materials” or “Hazardous Waste” means any waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may do either of the following: cause, or significantly contribute to, an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise mismanaged, or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under applicable law, including but not limited to:

“Hazardous Waste” pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as

hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including Title 14 Chapter 7; materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations; and materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.; and

(6) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder; and

(7) any other federal or state law or regulation governing the treatment, storage, handling or disposal of solid waste or hazardous or dangerous waste, materials or substances or requiring such waste, material or substance to be handled under special procedures similar to that required under subsection (2), above.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "Hazardous Waste", for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition shall be employed for purposes of this Agreement. Notwithstanding, "Hazardous Waste" does not include "Universal Waste".

"Independent Engineer" shall mean a firm of nationally recognized independent engineers selected in accordance with the procedures set forth in the Amended and Restated Agreement.

"Landfill Materials" means material suitable for in a Class III landfill in compliance with Applicable Law and includes Residual Material.

"Load" means the contents of one commercial collection vehicle or roll off box delivered to the facility. Types of commercial collection vehicles include front-end load, automated side load, roll off and rear load.

“Inert debris” means rock, concrete, asphalt, and dirt with minor amounts of contamination.

“LEA” means the Local Enforcement Agency certified by the California Integrated Waste Management Board to enforce the provisions of Titles 14 and 23 of the California Code of Regulations.

“Lien” means any and every lien against the VVMRF, the area subject to the Ground Lease or other security instrument for any monies due by Contractor to any Person, including without limitation mechanics’, materialmen, laborers and lenders liens.

“Materials” means all type of materials that may be recycled or composted which are delivered to either the VVMRF or the Expanded Facility; materials may be comprised of mixed waste or source-separated materials.

“Member Cities” means the cities who are members of the Authority other than the Participating Municipalities/North County Project Committee Cities.

“Mixed Waste” means unseparated refuse. Processing removes reusable materials from unseparated refuse as opposed to “commingled MRF” processing which separates materials from commingled recyclables, typically collected from residential or commercial programs.

“North County Project Committee Cities” means the Participating Municipalities of the Town of Apple Valley and the City of Victorville.

“Participating Municipalities” means the City of Victorville and the Town of Apple Valley;

“Party” means the Contractor/Lessee or the Authority/Lessor.

“Person” means any natural person, partnership, joint venture, corporation or other entity or organization, public or private, and any unit of government or agency thereof.

“Process,” “Processed” or “Processing” means (i) removal of reusable materials from mixed waste; (ii) commingled MRF processing that separates materials from commingled recyclables, typically collected from residential or commercial programs; (iii) an operation or series of operations, whether involving equipment or manual labor, that enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares source-separated Acceptable Recyclable Materials

for sale or exchange as a Recovered Material and extracts Residue, if any, for Transportation and disposal.

“Processing Agreement” means that Agreement between each Participating Municipality and Burrtec for use of the Expanded Facility.

“Recovered Materials” means Acceptable Recyclable Materials delivered to the VVMRF or Expanded Facility that are recovered for diversion through recycling, reuse, resale or composting of materials the sale of which is undertaken by the Contractor/Tenant .

“Recycle or Recyclable” means material which has been source separated or commingled with similar materials and can be reused or processed into a form suitable for reuse through reprocessing or remanufacture at the VVMRF; such material must not be taken to or commingled with that going to the Expanded Facility.

“Reporting and Monitoring System” means the system adopted by the Authority for the purposes of gathering and reporting materials diversion achieved through the various source reduction, recycling and composting programs for its members.

“Residue” or “Residual Materials” means that limited recoverable material remaining after the processing of Acceptable Recyclable Materials, all materials that are not suitable as any sort of Recovered Materials or are separated from the Acceptable Recyclable Materials during Processing.

“State” means the state of California.

“Subcontractor” means any Person with whom Contractor contracts for the purpose of having that Person provide labor, materials or services for the operation of the Facility and performance of any of Contractor’s obligations under the Agreement.

“Surety” means the Person approved by the Authority to provide the letter(s) of credit or other financial guarantee required under Section 8.3 of the Agreement guaranteeing or providing the funds to guarantee performance of the Contractor’s obligations..

“Technical Specifications” means those specifications for the implementation of the Facility Improvement required under the Amended and Restated Agreement.

“Tenant” means the same as “Contractor.”

“Term” means the term of this Agreement or the term of the Ground Lease as specified in those documents.

“Tipping Fees” means any fees that may be collected by the Contractor at the gate for the use of the VVMRF (or otherwise) at the direction of the Authority.

“Unacceptable Waste” means the following (unless specifically included as “additional acceptable recyclable material”):

- (i) Hazardous Waste;
- (ii) Radioactive waste or materials;
- (iii) All wastes requiring special handling to comply with applicable federal, State or local law regarding (A) pathological, infectious, or explosive materials; (B) oil sludge; (C) cesspool or human waste; and (D) dead animals or animal remains or wastes;
- (iv) Any item of waste either smoldering or on fire or at its kindling point or in the process of initiating combustion;
- (v) Sewage sludge, septic tank and cesspool pumpings or other sludge from air or water pollution control facilities or water supply treatment facilities;
- (vi) Assuming the Facility is properly operated and maintained, any item posing a reasonable likelihood of damaging the facility, or the processing of which would be likely to impose a threat to health or safety in violation of any judicial decision, order, or action of any federal, state or local government or any agency thereof, or any other regulatory authority or Applicable Law;
- (vii) Any other wastes which the Authority and the Contractor may at any time agree in writing to designate as “Unacceptable Waste”; and
- (viii) Acceptable materials too small to efficiently manually sort.

“Uncontaminated”, when used with respect to any Acceptable Recyclable Materials, means the following conditions, unless specifically included as “additional acceptable recyclable material”:

- (a) free of oil, grease, chemicals, solvent, excessive food, blood or other materials; and
- (b) not containing any foreign liquids or solid not originally packaged in such Recyclable Material; and

(c) not connected, nailed, glued, welded, crushed or otherwise joined with other materials such that it takes over 20 pounds of pull strength or the use of tools or instruments to separate; and

(d) free of protruding nails or foreign objects that could result in the risk of injury to Contractor employees.

“Uncontrollable Circumstance” as set out in the Agreement means any act, event or condition, whether affecting the Facility, the Authority, the Contractor, or any of the Authority’s subcontractors or the Contractor’s subcontractors to the extent that it materially and adversely affects the ability of either Party to perform any obligation under the Agreement (except for payment obligations), if such act, event or condition is beyond the reasonable control or prevention and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the Agreement and for which notice shall have been given to the other Party within fifteen (15) days of the occurrence thereof; provided, however, that the contesting in good faith or the failure in good faith to contest such action or inaction shall not be construed as willful or negligent action or a lack of reasonable diligence of either party. Such acts or events may include but shall not be limited to the following:

(1) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the Facility), landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(2) a Change in Law;

(3) the failure of any appropriate federal, State, city or local public agency or private Utility having operational jurisdiction in the area in which the Facility is located to provide and maintain Utilities to the Facility Site which are required for operation of the Facility;

(4) the failure of any Subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the affected party is not reasonably able to obtain substitute labor, services, materials or equipment on the agreed upon dates;

(5) the presence at the Facility Site of (a) subsurface structures, materials or conditions having archaeological significance; (b) any habitat of endangered

species; and (c) functioning subsurface structures used by utilities at the Facility Site;

(6) the presence of Hazardous Waste upon, beneath or migrating to or from the Facility Site;

(7) any failure of title to the Facility Site or any enforcement of any encumbrance on the Facility Site, or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by the party adversely affected thereby; and

(8) governmental pre-emption of materials or services in connection with a public emergency or any condemnation or other taking by eminent domain of any portion of the Facility or the Facility Site.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances, and shall not entitle the Contractor to any price, fee, schedule or other adjustments or relief hereunder: (a) consequences of error, neglect or omissions by the Contractor, any Subcontractor, any of their affiliates or any other person in the design, construction or operation of the Facility or in the performance of any other work hereunder, (b) the failure of the Contractor to secure patents or licenses in connection with the technology necessary to perform its obligations hereunder; (c) adverse changes in the financial condition of either party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes; (d) equipment failure (unless caused by an Uncontrollable Circumstance); (e) general economic conditions, interest or inflation rates, or currency fluctuations; (f) as to the Contractor, any act or event the occurrence against which the Contractor is obligated to carry insurance under this Agreement to the extent the Contractor is so obligated; (g) union work rules, requirements or demands which have the effect of increasing the number of employees employed at the Facility or otherwise increase the cost to the Contractor of operating and maintaining the Facility; (h) any impact of prevailing wage laws on the Contractor's operation and maintenance costs with respect to wages and benefits; or (i) any act, event or circumstance occurring outside of the United States.

Section 21.20 of the Lease shall govern as to "uncontrollable circumstances."

"Universal Waste" means any of the wastes that are listed in section 66261.9 of division 4.5 of title 22 of the California Code of Regulations.

“Utility” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“VVMRF Facility” or “VVMRF” means the Victor Valley Materials Recovery Facility located at 17000 Abbey Lane, Victorville, California (VVMRF) and includes any and all other personal and real property used for the performance of Contractor’s obligations under this Agreement.

Exhibit B
Burrtec - Expanded Facility
Processing Materials Rates

	<u>Rate</u>	<u>Per</u>
<u>Refuse and Processing Residual</u>		
Transfer Processing	\$TBD	/ton
Transportation	\$TBD	/ton
Disposal	\$TBD	/ton
Green Materials	\$TBD	/ton
Palm	\$TBD	/ton
Wood – Blonde	\$TBD	/ton
Wood – Manufactured	\$TBD	/ton
Inerts	\$TBD	/ton
Drywall	\$TBD	/ton
Carpet	\$TBD	
/ton		
<u>C&D Processing</u>		
Mixed C&D Processing	\$TBD	
/ton		
Individual Load Inspection Fee	\$TBD	
/load		
Food Recycling – Source Separated	\$TBD	
/ton		
<u>MRF Processing Fees</u>		
Commercial Select	\$TBD	/ton
Commercial Mixed Waste	\$TBD	/ton

Residential Mixed Waste
/ton

\$TBD

TBD rates will be added when processing capabilities become available.

Exhibit C
Burrtec - Expanded Facility
Processing Materials Definitions and Downgrades

Transfer Processing

Transfer of refuse and residue from processing activities. Transfer includes but is not limited to, receiving, inspecting, moving and loading into a transfer trailer.

Transportation

Transportation is the movement of refuse and processing residual to the final destination for disposal.

Disposal

Use of Class III Sanitary Landfills.

Green Materials

Green materials consist of landscape trimmings such as grass, leaves, branches, and brush.

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load may be processed as C&D. 51% plus: load will be processed as refuse. Palm material is contamination. If a Palm contaminated Green Waste load cannot be cleaned, it may be downgraded to Palm. Hard to handle fees may apply to tree trunks or stumps greater than 3' in diameter.

Palm

Palm consists of waste from palm trees including fronds, trunks, stumps, etc.

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load may be processed as C&D. 51% plus: load will be processed as refuse. Hard to handle fees may apply to tree trunks or stumps greater than 3' in diameter.

Wood - Blonde

Clean blonde wood from pallets, cut-offs, and dimensional lumber.

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load may be processed as C&D. 51% plus: load will be processed as refuse. Loads containing Manufactured Wood items such as painted, laminated, chip, ply, particle board may be result in a downgrade of the load to Manufactured Wood if they cannot be cleaned from the load. No treated wood allowed.

Wood - Manufactured

Painted wood, laminated board, plywood, chip board, particle board, and other 'manufactured' wood products.

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load may be processed as C&D. 51% plus: load will be processed as refuse. No treated wood allowed.

Inerts

Rock, concrete, asphalt, and dirt with minor amounts of contamination

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 15%: \$40 per load cleaning fee. 16 to 50%: load may be processed as C&D. 51% plus: load will be processed as refuse. Inerts-2 containing organics such as sod that cannot feasible be cleaned may be downgraded to greenwaste.

Drywall

Drywall consists of gypsum wall board. Clean and painted wall board is acceptable.

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load may be processed as C&D. 51% to 100%: load will be processed as refuse.

Carpet

Carpet and carpet padding. All types of carpet are acceptable.

The following applies to contamination: 0% to 5%: no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load may be processed as C&D. 51% to 100%: load will be processed as refuse.

Construction and Demolition (C&D)

Means that defined in California Code of Regulations Title 14, Division 7 Chapter 3.0, Article 5.9, Section 17380 as that may be amended from time to time. Commingled / mixed C&D loads include wood, inerts, asphalt, metals, tires, cardboard, plastic, mattresses, gypsum, carpet, etc.

The Burrtec - Victor Valley MRF offers a diversion guarantee for mixed C&D material processing. Burrtec performs a characterization of mixed C&D material to establish a diversion percentage that is applied to all mixed C&D loads.

At the request of the customer, per load visual characterizations can be provided for a fee.

Food Waste

Food Waste collected from source separated collection programs. Food Wastes are materials resulting from the processing, storage, preparation, cooking, handling, or consumption of food. Examples include discarded meat scraps, dairy products, egg shells, fruit or vegetable peels, and other food items from stores and restaurants.

The following applies to contamination: Food Waste must be source separated and be free of contamination such as glass, metal, plastic, or any other non-organic materials. Contaminated loads may be subject to cleaning and/or handling fees for disposal.

Commercial Select

Dry refuse loads identified by the City/Town/County as having a high amount of commingled recyclables, but not sufficiently high to be delivered to the VVMRF. The City/Town/County may designate that Commercial Select loads be delivered to the VVMRF.

Commingled recyclables include: aluminum cans, cardboard, glass, HDPE mixed color, HDPE natural, mixed paper, mixed injection plastic, newspaper, PET plastic, scrap metals, plastic film, wood, carpet, Styrofoam and tin.

If the City/Town/County establishes a Commercial Select front loader route, Burrtec will perform and establish a characterization that is applied to all incoming volume on that route. A materials rebate is provided based on scrap value and CRV value, less a per ton processing fee and transfer, transportation and disposal costs for all non-recyclable residual.

If a load has a high level of contamination, the load may be sorted on the floor and not processed through the sorting equipment. In this case, a visual characterization will be performed and applied to the load. The value rebate to the customer will remain the same.

Mixed Waste

Mixed waste or “dirty MRF” processing removes reusable materials from unseparated refuse as opposed to “clean MRF” processing which separates materials from commingled recyclables, typically collected from residential or commercial programs.

We are currently evaluating equipment proposals for mixed waste processing for the Burrtec - Victor Valley MRF. The process will involve sizing of material, screening to extract fines/organics for further cleaning and use in compost or anaerobic digestion, recovery of recyclables and the production of engineered fuels.

The tip fee will be all-inclusive and will be accompanied with a diversion percentage established from a characterization of mixed waste.

Load

“Load” means the contents of one commercial collection vehicle or roll off box delivered to the facility. Types of commercial collection vehicles include front-end load, automated side load, roll off and rear load.