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:** **12**
Public Services Department

Subject: **GROUND LEASE FOR LAND AT THE VICTOR VALLEY MATERIALS RECOVER FACILITY (MRF)**

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

RECOMMENDED ACTION:

That the Town Council approve the attached Ground Lease and authorize the Mayor to execute the lease.

BACKGROUND:

The Town of Apple Valley and the City of Victorville have been working with Burrtec Waste Industries (Burrtec) to develop an expanded materials diversion/recycling facility on land Burrtec owns adjacent to the Victor Valley MRF in order to position itself to comply with new and more stringent State waste diversion requirements. Burrtec has proposed to develop an "Expanded Facility" which will include a composting facility, construction and demolition material processing facility, mixed waste processing facility and possibly a transfer station. These facilities will be located on Burrtec's parcel of land.

The project requires additional land to allow for site access/vehicle circulation, material storage and sales area and new scales. It is therefore proposed to lease 7.96 acres of unused land at the Victor Valley MRF to Burrtec Waste Industries.

The Victor Valley MRF: The Victor Valley Materials Recovery Facility (MRF) is co-owned equally by Apple Valley and Victorville. The facility is operated by Burrtec Waste Industries under contract to the Mojave Desert & Mountain Recycling Authority (Authority) which administers the contract on behalf of the Town of Apple Valley and the City of Victorville. The Authority financed initial construction and site acquisition through a system revenue bond issue.

The Victor Valley MRF includes a 38,400 square foot building, a scale house and various paved areas for parking, material storage and vehicle circulation situated on 13.7 acres on Abbey Lane off of Stoddard Wells Road. The MRF processes recyclables (paper, cardboard, bottles, cans, plastics) from the City and Town's curbside and commercial programs.

The MRF was developed in 1994/1995 in response to State law AB 939 which required jurisdictions to reduce the amount of waste sent to landfill by fifty (50) percent by the year 2000 and beyond.

Additional State Requirements: Over the years, the State of California has continued to expand its State-wide 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. In addition, AB 341 requires 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 and signed into law. 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 recycling programs to divert organic waste generated by businesses, starting in 2016. In addition, jurisdictions are required to conduct outreach and education to businesses on how to recycle/divert organic wastes, and monitoring; and must identify appropriate organics management facilities to serve the jurisdiction.

Most recently, California State Law SB 1383 was passed in 2016. It establishes a goal to 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 non-compliance.

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 need to report 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.

Actions Taken To Get Ready For New State Requirements: T*he development of the Expanded Facility by Burrtec will ensure that the City has adequate capacity for organics recycling and processing. It is a key component of the City's commercial organics recycling program required to be implemented per AB 1826.*

In order to be in a position to comply with the State's expanded diversion requirements and AB 1826 requirements, the Town of Apple Valley and the City of Victorville, via the Mojave Desert & Mountain Recycling Authority, have been working with Burrtec Waste Industries. Burrtec proposed to develop an expanded facility and diversion operations on property it owns adjacent to the Victor Valley MRF.

The JPA, Town of Apple Valley, City of Victorville and Burrtec have negotiated over expanded operations adjacent to the Victor Valley MRF. 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,
- 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 at its January 19, 2016 meeting. Water, air and solid waste facilities permits are in process.

Negotiations resulted in three separate agreements –a ground lease, a processing agreement, and an amended and restated operating agreement.

1. The Ground Lease conveys the vacant VVMRF property to Burrtec.

2. The Processing Agreement secures use of Burrtec's expanded facilities for the municipalities. The Processing Agreement will be between Burrtec and any jurisdiction that wishes to use the Expanded Facility.
3. The Amended and Restated Victor Valley MRF Operating Agreement is between Burrtec and the JPA. It incorporates the previous Operating Agreement and its two (2) amendments into a single document that includes provisions related to the expansion.

Amended and Restated Materials Recovery Facility Operating Agreement: A copy of the Amended and Restated Materials Recovery Facility Operating Agreement is attached for Council's information. This agreement is between Burrtec and the JPA, which administers the MRF Operating Agreement contract on behalf of the Town of Apple Valley and the City of Victorville. The Agreement was approved by the Board of the Mojave Desert & Mountain Recycling Authority at its August 18, 2016 Board meeting.

The Amended and Restated Operating Agreement between the JPA and Burrtec incorporates the prior (2004) agreement, which supplanted the original 1994 agreement and amendments (2005 and 2006). The new Agreement includes language needed to ensure Burrtec's expanded facility while addressing some issues with the existing Agreement. Major provisions of the Amended and Restated Agreement include:

1. The initial term would be reset for ten years, ending in 2026 (Section 3.1),
2. Three five (5) year extensions are available, consistent with the existing agreement (Section 3.2),
3. Major Maintenance is modified to use a two (2) year useful life threshold, with $7,500.00 for equipment and $5,000.00 for vehicles (Section 5.8.b),
4. Sections 5.15, 5.16 and 5.18 describe the relationships between the existing MRF and expanded operations, ensuring that the two (2) facilities are complimentary with the existing MRF continuing to receive expanded source separated recycling material,
5. JPA members have first right to capacity at the existing and expanded facilities, with Apple Valley and Victorville enjoying guaranteed capacity (Section 5.19),
6. Should Burrtec choose to sell the expanded facility, the Authority (and either or both Apple Valley and Victorville) enjoys first right to purchase Burrtec's at construction cost and remaining useful equipment life or salvage value, less ten percent (10%) (Section 14.2),
7. Should the Authority agree to assign the Agreement, Burrtec will pay a $250,000.00 assignment fee (Section 13.10.c.v),
8. Section 5.21 institutes a $.50/ton mitigation payment to Victorville for deliveries to the expanded facility, reflecting the current County landfill mitigation payment,
9. The Monthly Service Fee schedule is unchanged (Section 6.2 and Exhibit 2),
10. The Monthly Service Fee is escalated annually by the Consumer Price Index, but will remain unchanged if the CPI is negative (Appendix 2),
11. Commercial Select pricing is modified so that Burrtec receives seventy-five percent (75%) of recovered materials revenue, partially compensating for higher associated labor costs. Commercial Select loads are delivered through franchise arrangements and including high concentration of recyclable material not part of

commercial recycling collection, requiring considerable floor sorting to remove contamination (Section 6.6.b); and
12. The Operating Period Letter of Credit requirement is removed (prior Section 8.3), since we have twenty (20) years of operating experience.

FISCAL IMPACT:

The Ground Lease provides for a $92,500.00 annual rental payment from Burrtec. The revenues will be shared equally by the Town of Apple Valley and the City of Victorville, as co-owners of the Victor Valley Materials Recovery Facility (MRF), resulting in annual revenues of $46,250.00 to the Town of Apple Valley.

The Victor Valley MRF is co-owned by the Town of Apple Valley and the City of Victorville, therefore it is necessary to execute a lease agreement among the parties, allowing use of the 7.96 acres of land by Burrtec.

The Lease provides that:

1. Total leased area is 7.96 acres of 13.7 gross acres (Exhibit A) of the Victor Valley MRF property,
2. The rent payment is $92,500.00 for the first year, payable in monthly installments (Section 4.1.1) ,
3. Lease payments are adjusted by the Consumer Price Index, but unchanged if the CPI is negative (Section 4.1.2),
4. The lease term is fifty (50) years (Article 3),
5. Right to purchase (Article 23) and assignment (Article 14) provisions are same as in Operating Agreement,
6. Apple Valley and Victorville are guaranteed capacity at the expanded operation, as exercised through the Processing Agreement (Section 5.1)
7. Apple Valley and Victorville are guaranteed the best rates for services, as exercised through the Processing Agreement (Section 5.2),
8. Cap and Trade grant funds received by Burrtec will be reflected in the initial compost facility rate (Section 5.3),
9. Future revenues attributed to Change in Law (e.g. cap and trade/greenhouse gas revenues) will be shared as tipping fee reductions or rebates, applying seventy-five percent (75%) to each communities tonnage (Section 5.4),
10. Employee parking will shift from the Victor Valley MRF to Burrtec's parcel (Section 8.4.3 and 8.4.4); and
11. Facility improvements must occur by October 2020, with priority for access and scale house, then composting and construction and demolition facilities (Section 9.1).

ATTACHMENTS:

1. MRF Lease Agreement
2. MRF Amended and Restated Operating Agreement

Revised 8/4/2016

GROUND LEASE

by and between

The TOWN OF APPLE VALLEY, the CITY OF VICTORVILLE and MOJAVE DESERT AND MOUNTAIN RECYCLING JOINT POWERS AUTHORITY, a California public agency

and

BURRTEC WASTE INDUSTRIES, INC., a California corporation

GROUND LEASE

THIS GROUND LEASE (this "Lease") is entered into this day of 2016, (the "Effective Date") by and between the TOWN OF APPLE VALLEY and the CITY OF VICTORVILLE (the "Participating Municipalities") and the Mojave Desert and Mountain Recycling Joint Powers Authority, a California public agency as the agent of Participating Municipalities (collectively "Landlord") and Burrtec Waste Industries, Inc., a California corporation ("Tenant" or "Burrtec"), together the "Parties."

RECITALS

WHEREAS, the Participating Municipalities are members of the Mojave Desert and Mountain Recycling Joint Powers Authority ("Mojave") and, separately, the equal co-owners of the Property that is the subject of this Ground Lease;

Mojave and Burrtec have entered into that Materials Facility Construction and Operating Agreement originally dated December 1, 1994, as amended, (the "Operating Agreement") pursuant to which Burrtec constructed and operates the Victor Valley Materials Recovery Facility (VVMRF) on the 13.7 acre property equally co-owned by the Participating Municipalities (the "Participating Municipalities' Property");

WHEREAS, the Parties have determined to restate and expand that relationship between them by entering into an Amended and Restated Operating Agreement between Mojave and Burrtec; and

WHEREAS, the Parties also have determined that certain currently unused and unimproved portions of the property owned by the Participating Municipalities on the site of the VVMRF (the "Property") are suitable for use to store, cure, screen and market to support Burrtec's expanded operations for the acceptance, processing, and materials recovery and recycling of additional types and volume of solid waste including but not limited to a scale house, secondary ingress and egress, food waste in municipal solid waste, construction and demolition debris, green waste ("the Expanded Facility" or "Burrtec Expanded Facility") as well as provide necessary for access to certain Burrtec property; and

WHEREAS, Tenant has demonstrated to Landlord that it has the financial resources and technical expertise to enter into this Ground Lease whether

associated with or separate and apart from any amended and restated Operating Agreement;

WHEREAS, on or about January 19, 2016, the City Council of the City of Victorville approved a Negative Declaration and Mitigation and Monitoring Plan as well as the following entitlements for the Expanded Facility: a Specific Plan Amendment, a Site Plan and Conditional Use Permit (Resolution Nos. 16-002 and 16-003) for the expansion of the recycling center to include Composting and Waste processing on Burrtec's property (Parcel 1) as well as on a portion of the Participating Municipalities' property labeled Parcel2; and

WHEREAS, Resolution No 16-002 is the Conditional Use Permit and Resolution No. 16-003 is the terms and conditions of the site plan (along with the Mitigation and Monitoring Plan, the "CUP"); and

WHEREAS, Landlord desires to enter into this Ground Lease (the "Lease") with Tenant for support services for the Expanded Facility; and

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

ARTICLE 1 SUBJECT OF THE LEASE

1.1 The Premises. The Premises are that certain real property more fully described in Exhibit A, attached and incorporated here. The Property, all appurtenant rights, privileges and easements and improvements are collectively referred to as the "Premises." Except as expressly provided to the contrary in this Lease, any reference to the Premises is to the Property together with any improvements now or hereafter located on the Property.

1.2 Parties to the Lease.

1.2.1 Landlord. Landlord is the Town of Apple Valley and the City of Victorville as equal co-owners, with the Mojave Desert Mountain Recycling Joint Powers Authority, a California public agency, acting as their agent to administer this Ground Lease. Mojave's principal office is located at 14343 Civic Drive, Victorville, CA 92392.

1.2.2 Tenant. Tenant is Burrtec Waste Industries, Inc., a California corporation. The principal office of Tenant for purposes of this Lease is 9890 Cherry, Fontana, CA 92235.

1.2.3 Successors and Assigns. All references in this Lease to "Tenant" or "Landlord" shall be deemed to refer to and include successors and assigns of Tenant or Landlord, respectively, without specific mention of such successors or assigns.

1.3 Definitions. All definitions applicable to this Ground Lease are attached and incorporated as Exhibit B hereto.

ARTICLE 2 POSSESSION OF THE PREMISES

2.1 Acceptance of the Premises. Except as may be otherwise herein provided, Tenant shall by entering into and occupying the Premises, be deemed to have accepted the Premises and to have acknowledged that the same is then in the condition called for by this Lease, and is fit for construction, development and expanded transfer operations as more fully defined herein.

2.2 Quiet Enjoyment. Tenant, upon performing and complying with all covenants, agreements, warranties, terms and conditions of this Lease, shall lawfully and quietly hold, occupy and enjoy the Premises during the Term without hindrance or molestation by Landlord, or any person or persons claiming through Landlord.

2.3 Ownership of Improvements. Title to all buildings, structures, fixtures and other improvements that may from time to time constitute a part of the Premises (collectively "the Facilities"), shall be and remain in Tenant. Notwithstanding Section 14 hereof, upon the termination of this Lease, title to all such Facilities left on the Premises over forty-five (45) days, shall pass to and vest in Landlord without cost or charge to it. Title to any personal property, including recycled materials, shall be determined pursuant to the Amended and Restated Operating Agreement and as otherwise allowed by law.

2.4 Surrender of Premises. Tenant, no later than forty-five (45) days following termination of this Lease, shall execute and deliver any and all deeds, assignments, and other documents which in Landlord's reasonable judgment may be necessary or appropriate to transfer, to evidence or to vest in Landlord clear title to any of the Facilities located on the Premises.

Tenant, in addition, shall deliver to Landlord no later than forty-five (45) days following termination of this Lease originals or certified copies of any plans, reports, contracts or other items relating to the ownership of Facilities/Improvements remaining on the Premises.

2.5 Abandonment. Tenant shall not abandon or vacate the Premises at any time during the Term hereof. If Tenant shall abandon, vacate or otherwise surrender the Premises, or be dispossessed thereof by process of law or otherwise, the same shall constitute an Event of Default.

2.6 License for Property Access. Notwithstanding the early termination of this Ground Lease for whatever reason, the license set out in Sections 8 and 9 below shall not terminate before the end of the Term of this Ground Lease unless Tenant fails to construct the access road across such property as provided in those Sections.

ARTICLE 3 TERM

This Lease is entered upon this day of , 2016 that is the date of execution of this Ground Lease by both parties (the "Effective Date"). This Lease shall terminate on the 50th (fiftieth) anniversary date of the Effective Date.

ARTICLE4 RENT

Tenant shall pay to Landlord without delay, abatement, deduction, or offset the rent in such amounts as provided in this Article 4. All rent shall be paid to Mojave at the address set out above.

4.1 Rent. Tenant shall pay to Landlord monthly rent in the following amounts:

4.1.1 Base Rent: Commencing as of the Effective Date, Tenant shall pay Landlord Ninety-Two Thousand Five Hundred Dollars ($92,500.00) for the first year.

4.1.2 Automatic lease payment increase: The base amount set out in subsection 4.1.1 above shall be increased annually on each anniversary date of the Effective Date commencing one year after the Effective Date by the Bureau of Labor Statistics Consumer Price Index – all urban consumers - for the Riverside-San Bernardino SMSA or its equivalent (the CPI) for January 1 -December 31 of the previous calendar year and for each year thereafter during the Term. Notwithstanding, in the event the CPI is zero or a negative number, the lease payment shall not be decreased but shall remain the same.

4.2 Late Charge. Tenant acknowledges that Tenant's failure to pay any monthly Rent or any other amounts (collectively, the "Charges") as and when due under this Lease may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any Charges due under the Lease are not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to ten percent (10%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant. Notwithstanding such failure on the part of Tenant constitutes an Event of Default.

4.3 Location of Payment. All Charges payable by Tenant to Landlord hereunder shall be paid by Tenant to Mojave in a manner as directed in writing by Mojave from time to time.

ARTICLE 5 ADDITIONAL CONSIDERATION

In addition to the rent payable under Section 4 above, and as additional consideration, Tenant shall pay or provide for the following:

5.1 Capacity. Pursuant to the provisions of the Processing Agreement, the Participating Municipalities are guaranteed capacity in the Burrtec MRF.

5.2 Most favored rate. As confirmed in the Processing Agreement, the Participating Municipalities shall not be charged more for waste disposal processing or disposal than the lowest rate Tenant charges any other entity utilizing the MRF or the Expanded Facilities pursuant to the Amended and Restated Operating Agreement

5.3 Future revenues. Cap and trade and/or other revenues may result from a Change in Law as applied to Tenant's operation of the Expanded Facility currently or as expanded pursuant to this Ground Leave and the Amended and Restated Operating Agreement. Each of the Participating Municipalities shall receive a 75% share of future revenues resulting from its delivery of materials. Such share may be paid as rebates or reduced tipping fees at each Participating Municipality's option.

5.4 Application of Grant Funds. Grant funds already awarded shall be applied to offset costs to reduce initial rates, which rates are and shall be reflected in Exhibit "C" of the Processing Agreement.

ARTICLE 6 PUBLIC AND PRIVATE UTILITIES

Tenant will pay or cause to be paid all charges for all public or private utility connections or services rendered to or in connection with the Premises, or any part thereof, will comply with all contracts relating to such services, and will do all other things required for the maintenance and continuance of all such utility services which are within its control.

ARTICLE 7 TAXES AND ASSESSMENTS

7.1 Payment of Taxes and Assessments. Tenant covenants and agrees to pay and discharge, during the entire Term, before delinquency, all taxes, assessments, water charges, sewer charges, utility rates and fees, levies or other charges, general, special, ordinary, extraordinary and otherwise, of every kind and character which are or may during the Term be levied, charged, assessed or imposed upon or against the Premises or any Facilities which are now or hereafter located thereon, or against any of Tenant's personal property now or hereafter located thereon, or which may be levied, charged, assessed or imposed upon or against the leasehold estate created hereby. At the Effective Date and at the end of the Term, such taxes, assessments and other charges to be paid by Tenant shall be prorated on the basis of the fiscal year of the taxing authority in question so that, at the Effective Date and at the end of the Term, as to any such taxes, assessments and other charges levied or assessed for a fiscal year preceding the Effective Date or extending beyond the end of the Term, Tenant will pay only such proportion of such taxes, assessments and other charges as the portion of such fiscal year following the Effective Date and preceding the end of the Term bears to the entire fiscal year.

7.2 Notice of Possessory Interest; Payment of Taxes and Assessments on Value of Entire Leased Property. In accordance with California Revenue and Taxation Code Section 107.6(a) and Health and Safety Code Section 33673, Landlord states that by entering into this Lease, a possessory interest subject to property taxes will be created, and that Tenant shall be liable to pay taxes upon the assessed value of the entire Property and not merely the assessed value of its leasehold interest. Therefore, Tenant agrees to pay all property taxes assessed against the Property, if and when payable by Landlord or Landlord's successor in interest.

7.3 Franchise and Other Taxes. Notwithstanding anything herein to the contrary, Tenant shall not be required to pay any franchise, capital levy, or transfer tax of Landlord, or any net income tax measured by the income of Landlord from all sources, or any tax which may, at any time during the Term, be required to be paid on any gift, or demise, deed, mortgage, descent or other alienation of any part or all of the estate of Landlord in and to the Premises or any Facilities which are now or hereafter located thereon, except as hereinafter provided. If Tenant shall be required by law to pay, and pursuant thereto does pay, any tax, assessment or charge specified in this Section, Landlord shall, immediately upon request, reimburse Tenant for any such payments. If such immediate reimbursements are not forthcoming, Tenant shall receive a credit against the rental payment next due hereunder for the full amount of such delinquent reimbursements. Any documentary transfer tax assessed upon the creation of a leasehold interest in the Premises under this Lease shall be paid by Tenant.

7.4 Additional Rent. Landlord shall have the right, but not the obligation, at all times during the Term to pay any taxes, assessments or other charges levied or assessed upon or against the Premises or any Facilities which are now or hereafter located thereon, and to pay, cancel and clear off all tax sales liens, charges and claims upon or against the Premises or any Facilities which are now or hereafter located thereon, and to redeem the Premises from the same, or any of them, from time to time, without being obligated to inquire as to the validity of the same. All sums paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any of Tenant's obligations, together with Default Interest thereon at the Interest Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost or expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. Notwithstanding payment by Landlord, such failure on the part of Tenant constitutes an Event of Default.

ARTICLE 8 USE OF PREMISES

8.1 Permitted Use. Tenant shall have the right to use and occupy the Premises for the Expanded Facility to store, cure, screen and market as set out in the CUP and as otherwise consistent with the CUP and the Solid Waste Facilities Permit, as both of those may be amended from time to time, and in accordance with Applicable Laws and the Amended and Restated Operating Agreement. In no event shall the Premises be used in any manner that causes, creates or results in a public or private nuisance or violates the CUP, Solid Waste Facilities Permit, Applicable Laws, the Amended and Restated Operating Agreement or the provisions of this Ground Lease. As allowed, with their mutual agreement, Tenant and Landlord may add additional uses. Uses may include, by way of example and not of limitation, the following:

8.1.1 Storage of material relating to the construction and operation of a composting facility, including but not limited to organic compostable material, non-compostable residue and Finished Product; however, (i) no incoming uncomposted material may be received or processed on the leased Property; (2) residue must be processed and removed within 24 hours.

8.1.2 Storage of Construction and Demolition Materials associated with the Construction and Demolition Materials Recycling Operation, including construction and demolition material, and non-recyclable residue handling. Source separated materials may be accepted.

8.1.3 Storage of Finished Products resulting from the compost, construction and demolition materials, mixed waste recovered materials and engineered fuels.

8.1.4 Self-haul materials subject to mixed materials and orgamcs limitations; purchase of inert, mulch and composted materials marketing.

8.1.5 Scale operation upon construction of the Scale House and installation of two truck scales.

8.1.6 Transfer Station pit.

8.1.7 Access consisting of ingress and egress to the adjoining Tenant parcel from East Abbey Lane sufficient to satisfy the requirements of the City of Victorville.

8.2 Permits and Licenses. Landlord will from time to time during the Term execute and deliver all applications for Permits requested by Tenant relating to the Premises required by any municipal, county, state, or federal authorities, or required in connection with the construction, reconstruction, repair or alteration of any Facilities now or hereafter constituting a part of the Premises. Landlord will from time to time during the Term execute, acknowledge and deliver any and all instruments required to grant rights-of-way and easements in favor of municipal and other governmental authorities or public utility companies incident to the installation of water lines, fire hydrants, sewers, electricity, telephone, gas, steam, and other facilities and utilities reasonably required for the use and occupancy of the Premises as a Transfer Station. Tenant shall reimburse Landlord for any sum paid by Landlord in respect of the matters specified in this Section including reasonable attorney fees upon demand.

8.3 Compliance with Laws. Tenant shall comply with and abide by all Applicable Laws and obtain and maintain in good order all Permits affecting the Premises. Facilities now or hereafter located thereupon or activities.

8.4 Cooperation and Coordination with VVMRF: The Expanded Facility shall not interfere with VVMRF operations as follows and as set out in the Amended and Restated Operating Agreement and Processing Agreement:

8.4.1 Tenant's use of the Property, VVMRF Property, hereunder shall not obstruct or impede VVMRF operations. Before commencing operations on the Property, Tenant shall provide Landlord with an internal circulation and storage analysis that demonstrates that VVMRF operations will not be obstructed or impeded or, if obstructed or impeded, provides for recirculation at Tenant's expense. Tenant shall update such analysis as requested by Authority upon changed conditions.

8.4.2 The new scale operation may reduce VVMRF operations cost and result in operator fee offset; VVMRF use of the new scale may entail a payment.

8.4.3 Employee parking for the VVMRF as well as the Burrtec MRF shall be available and provided on Parcel 3 on Abbey Lane owned by Tenant Burrtec at its expense. All parking spaces shall be covered by a shade structure that may include rooftop solar.

8.4.4 At Tenant's expense, VVMRF's existing parking lot shall be reconfigured to allow better Recycle Alley access and accommodate reuse and/or household hazardous waste drop-off sites.

8.5 Nuisance or Damage. Tenant covenants that it will not commit or permit any nuisance or damage upon the Premises other than to the extent necessary for the removal of any Facilities upon the Premises or for the purpose of constructing and erecting other Facilities thereon in accordance with the rights set forth in Article 9 below.

8.5.1 Unacceptable Waste and Hazardous Waste. Tenant will use reasonable efforts to prevent acceptance of Unacceptable Waste and Hazardous Waste delivered to the Premises and will remove any such waste inadvertently accepted for lawful disposal and handling at Tenant's sole expense. Tenant shall have the right to seek recourse against any party found to have delivered Unacceptable Waste or Hazardous Waste to the Premises.

8.6 Effect and Duration of Covenants. The covenants established in this Lease shall, without regard to technical classification and designation, be binding on Tenant and any successor in interest to the Premises or any part thereof for the benefit and in favor of the Landlord and its successors and assigns. These covenants shall remain in effect so long as the Tenant or any permitted successor or assignee is in possession of the Premises or exercises any rights with respect thereto or longer as otherwise provided herein.

ARTICLE 9 TENANT FACILITY IMPROVEMENTS

9.1 Construction of Facility Improvements. Following the Effective Date, Tenant, at its sole cost and expense, may proceed to cause the construction and development of the Facility Improvements listed below necessary to implement the uses set out in Article 8. In the event that no Facility Improvements have been constructed by October 14, 2020, the Parties agree that this Ground Lease shall terminate with no further notice or chance to cure and shall be of no further force and effect. Such termination shall not be grounds for default. Generally, the parties anticipate that the Facility Improvements shall be constructed and installed with the following priority:

1st. Access Road –

2nd. Scale House --

3rd. Composting Facility-

4th. Construction and Demolition Materials Recycling Operating Facility-

5th. Mixed Waste, Fuel Production, transfer station

Notwithstanding the foregoing, upon the written request of the Tenant to extend such time frames along with evidence to support such extension to a date certain no longer than one year from the required date, Landlord may grant such extension in its reasonable discretion.

9.2 Construction/Removal of Improvements. Tenant shall, at its sole cost and expense, have the right at any time and from time to time during the Term to make such additional Improvements, changes, repairs, replacement and alterations, structural or otherwise, to any Facilities/Improvements now or hereafter located on the Premises, as Tenant shall deem necessary or desirable to fulfill its obligations under this Lease or the Amended and Restated Operation Agreement, and in compliance with all Applicable Laws. Notwithstanding, Tenant shall provide Landlord with final plans and related documents for any and all Improvements placed on the property.

9.3 Maintenance of Facilities/Improvements. Tenant shall, during the Term, at its own cost and expense, keep and maintain all Facilities/Improvements now or hereafter located on the Premises and all appurtenances thereto in good and neat order and repair. Tenant shall likewise keep and maintain the grounds, roads, parking and landscaped areas, if any, in good and neat order and repair. Landlord shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the Premises or any Facilities now or hereafter located thereon, and Tenant hereby expressly waives all right to make repairs at Landlord's expense under sections 1941 and 1942 of the California Civil Code, or any amendments thereof. Tenant specifically covenants that Tenant is responsible for any and all vector control on the Property or adjacent properties, whatever the source of such vectors.

9.4 Right of Authority to Purchase Improvements. At any time, the Landlord, on behalf of itself or a nominee, may purchase all or a portion of the Tenant Improvements owned by the Tenant and located on the leased Property. The price for such Tenant Improvements and associated equipment shall be determined as set out under Section 23.3 below.

9.4.1 Exercise of Right to Purchase by Landlord. If the Landlord wishes to exercise its right to purchase the Tenants Improvements, it shall notify the Tenant and upon payment of the purchase price described herein, Landlord and Tenant shall cooperate in the payoff of Tenant's lender(s), if any, and the transfer of title of the Tenant's Improvements to the Landlord free of any liens or third party security interests.

9.4.3 Landlord's Right to Secure its Purchase Rights. Subject only to the superior rights of the Tenant's lender during any period in which debt incurred by Tenant remains unpaid, the Landlord shall be entitled to record a memorandum of this lease in order to protect its right to purchase the Tenant Improvement pursuant hereto against third party claimants of Tenant. The Tenant shall and shall cause any lender to reasonably cooperate with the filing of any such instrument and to deliver to the Landlord an acknowledgement and acceptance of the Landlord's rights hereunder in form and substance reasonably satisfactory to the Landlord.

ARTICLE 10 LIENS

10.1 Mechanics' and Other Liens. Tenant shall promptly discharge or remove by bond or otherwise prior to foreclosure thereof any and all mechanics', materialmen's and other liens for work or labor done, services performed, materials, appliances, teams or power contributed, used or furnished to be used in or about the Premises for or in connection with any operations of Tenant, any alterations, improvements, repairs or additions which Tenant may make or permit or cause to be made, or any work or construction by, for or permitted by Tenant on or about the Premises, and to save and hold Landlord and all of the Premises and all Facilities thereon free and harmless of and from any and all such liens and claims of liens and suits or other proceedings pertaining thereto. Tenant covenants and agrees to give Landlord written notice not less than twenty (20) days in advance of the commencement of any construction, alteration, addition, improvement or repair costing in excess of One Hundred Thousand Dollars ($100,000) in order that Landlord may post appropriate notices of Landlord's non-responsibility.

ARTICLE 11 INDEMNIFICATION

11.1 Taxes, Assessments and Charges. Tenant shall have the right to contest the amount or validity of any lien of the nature set forth in Section 10.1 hereof or the amount or validity of any tax, assessment, charge, or other item to be paid by Tenant under Section 7.1 hereof by giving Landlord written notice of

Tenant's intention to do so within twenty (20) days after the recording of such lien or at least ten days prior to the delinquency of such tax, assessment, charge, or other item, as the case may be. In any such case, Tenant shall not be in default hereunder, and Landlord shall not satisfy and discharge such lien nor pay such tax, assessment, charge or other item, as the case may be, until ten (10) days after the final determination of the amount or validity thereof, within which time Tenant shall satisfy and discharge such lien or pay such tax, assessment, charge or other item to the extent held valid and all penalties, interest, and costs in connection therewith; provided, however, that the satisfaction and discharge of any such lien shall not, in any case, be delayed until execution is had upon any judgment rendered thereon, nor shall the payment of any such tax, assessment, charge or other item, together with penalties, interest, and costs, in any case be delayed until sale is made or threatened to be made of the whole or any part of the Premises on account thereof, and any such delay shall be a default of Tenant hereunder. In the event of any such contest, Tenant shall protect and indemnify Landlord against all loss, cost, expense, and damage resulting therefrom, and upon notice from Landlord so to do, shall furnish Landlord a form or security acceptable and payable to Landlord, in one hundred and twenty percent (120%) of the amount of the lien, tax, assessment, charge, or item contested, as the case may be, conditioned upon the satisfaction and discharge of such lien or the payment of such tax, assessment, charge, or other item, and all penalties, interest, and costs in connection therewith.

11.2 Persons and Property. To the fullest extent allowed by law, Tenant covenants and agrees that Landlord shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death, or damage to persons or property which, at any time may be suffered or sustained by Tenant or by any person who may at any time be using, occupying, or visiting the Premises or Tenant's property or be in, on or about the Premises or Tenant's property, from any cause whatsoever, except when such loss, injury, death, or damage shall be caused by or in any way result from or arise out of the negligence or willful misconduct of Landlord.

Furthermore, Tenant shall forever indemnify, defend, hold, and save Landlord, its officers, agents, employees, members and officials (collectively "Landlord") free and harmless of, from and against any and all claims, liability, loss, costs (including court costs and attorneys fees for counsel acceptable to Landlord) or damage (including but not limited to personal property or bodily injury and death) arising or alleged to arise from Tenant's performance or failure to perform under this Lease.

Tenant hereby waives and releases all claims against Landlord for damages to the Facilities/Improvements now or hereafter located on the Premises and to the property of Tenant in, upon or about the Premises, and for injuries to persons or property in, on or about the Premises, from any cause arising at any time, except for any such claims arising from Landlord's negligence or willful misconduct. Tenant's indemnity obligation set forth in this Section 11.2 shall survive the termination or expiration of this Lease with respect to any claims or liabilities arising out of injury or damage to person or property which occurs during the Term.

ARTICLE 12 DAMAGE OR DESTRUCTION

12.1 Partial or Total Destruction. No loss or damage by fire or other cause required to be insured against hereunder resulting in either partial or total destruction of the Facilities on the Property shall operate to terminate this Lease, or to relieve Tenant from the performance and observance of any of the agreements, covenants and conditions contained herein. Tenant hereby waives the provisions of subsection 2 of section 1932 and subsection 4 of section 1933 of the California Civil Code, as amended from time to time.

12.2 Reconstruction of Facilities. Should any Facilities on the Premises be damaged or destroyed by fire or other casualty or any other cause whatsoever, Tenant shall cause the commencement of reconstruction or replacement of the damaged or destroyed Facilities within 60 days after such damage or destruction, and thereafter cause such reconstruction or replacement to be diligently prosecuted to completion. Any reconstruction or replacement shall be pursued in accordance with Article 9 of this Lease.

ARTICLE 13 CONDEMNATION

13.1 General. If the whole of the Premises should be taken by any public or quasi- public authority under the power or threat of eminent domain during the Term, or if a substantial portion of the Premises should be taken so as to materially impair the use of the Premises contemplated by Tenant, and thereby frustrate Tenant's purpose in entering into this Lease, then, in either of such events, this Lease shall terminate at the time of such taking.

13.2 Award. The value of any condemnation award relating to the Premises and/or the Facilities thereto shall be apportioned between Landlord and Tenant in accordance with their respective interests.

ARTICLE 14 ASSIGNMENT AND SUBLETTING

14.1 Prior Written Consent. Tenant may not assign or sublet all or any portion of its interest in this Lease or all or any portion of any Facilities of any kind now or hereafter, constructed, developed or placed upon the Premises without Landlord's prior written consent and compliance with the applicable provisions of this Lease and of the Amended and Restated Operating Agreement.

14.2 Assignment of Landlord's Interest in Lease or the Leased Premises. Landlord may convey, transfer, sell, assign or otherwise transfer the Property, this Lease, all or a portion of its interest thereunder only with the consent of Tenant, which consent shall not be unreasonably withheld or delayed. Landlord may convey, transfer, sell, assign or otherwise transfer, all or a portion of the payments that are payable to it by Tenant pursuant to this Lease.

ARTICLE 15 RESERVED

ARTICLE 16 INSURANCE

16.1 General Liability Insurance. Tenant shall, at its sole expense, obtain and keep in force during the Term general liability insurance with limits of not less than *Five Million Dollars ($5,000,000) for injury to or death of any number of persons in one* occurrence, and not less than One Million Dollars ($1,000,000) for damage to property, insuring against any and all liability of Landlord and Tenant including, without limitation, coverage for contractual liability, broad form property damage, personal injury, and non-owned automobile liability, with respect to the Premises or arising out of the maintenance, use or occupancy thereof, and insurance on all equipment of any kind located in, on, or about the Premises, without exclusion for explosion, collapse and underground damage, in an amount not less than One Million Dollars ($1,000,000). All such insurance shall be endorsed to provide that the Landlord shall be given a minimum thirty (30) days' notice by the insurance company prior to the cancellation, termination or change in insurance. Tenant shall provide Landlord with copies of the policies or certificates evidencing that such insurance is in full force and effect and stating the term and provisions thereof.

Tenant shall also maintain Pollution Legal Liability Insurance in an amount of Five Million Dollars ($5,000,000) for each occurrence, Ten Million Dollars ($10,000,000) aggregate, and other insurance coverages as may be required by

Applicable Law in connection with its business activities. If Tenant is self-insured, it shall provide certificates or evidence to Landlord indicating that its insurance meets the levels and requirements as herein set forth. All of such insurance shall be primary as to Landlord and noncontributing with any insurance which may be carried by Landlord and shall contain a provision that Landlord, although endorsed as an additional insured, shall nevertheless be entitled to recover under the policy for any loss, injury or damage to Landlord, its officers, agents or employees, or the personal property of such persons. The insurance limits in this Section shall be subject to increase from time to time by such amounts as Landlord may reasonably require is necessary or desirable.

16.2 Property Casualty Insurance. Tenant shall, at its sole expense, obtain and maintain in full and effect force during the Term, after substantial completion of any improvements upon the Premises, fire and extended coverage insurance endorsed to name Landlord and its officers, agents, employees, members and officials, as additional insureds thereunder for buildings and improvements of similar character, on all buildings and improvements located on the Premises, and on all machinery, furniture, fixtures and equipment located therein. The amount of such insurance at all times during the Term shall not be less than one hundred percent (100%) of the actual replacement cost of such Facilities/Improvements, machinery, furniture, fixtures and equipment. All such insurance shall be endorsed to provide that the Landlord shall be given a minimum thirty (30) days' notice by the insurance company prior to the cancellation, termination or change in insurance. Tenant shall provide Landlord with copies of the policies or certificates evidencing that such insurance is in full force and effect and stating the term and provisions thereof.

16.3 Automobile Liability Insurance. Tenant shall, at its sole expense, obtain and maintain in full and effect force during the Term, a comprehensive automobile liability policy with minimum limit of not less than Five Million Dollars ($5,000,000.00) combined single limit for bodily injury and property damage, providing coverage for at least any and all leased, owned, hired or non-owned vehicles used by the Tenant in fulfilling the terms of this Lease, with any self-insured retention not exceeding One Hundred Thousand Dollars ($100,000). Any and all mobile equipment that is not covered under this comprehensive automobile policy shall have said coverage provided for under the comprehensive general liability policy. All such policies shall be endorsed to name Landlord and its officers, agents and employees as additional insureds.

16.4 Workers Compensation and Employers Liability Insurance. The Tenant shall, at its sole cost and expense, obtain and maintain in full force and effect for the Term, Worker's Compensation and Employer's Liability insurance policy written in accordance with the laws of the State of California and providing coverage for any and all employees of Tenant. The Workers Compensation policy shall be maintained in accordance with Statutory Limits and the Employers Liability policy shall have a minimum limit of Five Hundred Thousand Dollars ($500,000) per each occurrence.

16.5 Waiver of Subrogation Rights. Tenant agrees that each such policy of fire and extended coverage insurance and all other policies of insurance on the Property and Premises obtained by Tenant, whether required by the provisions of this Lease or not, shall be made expressly subject to the provisions of Article 11 and all Tenant's insurers hereunder shall waive any right of subrogation against Landlord and Tenant.

16.6 Other Insurance Requirements and Insurance Proceeds. All policies shall be occurrence based (no claims made) and primary as to Landlord. All amounts that shall be received under any insurance policy specified in this Article 16 shall be first applied to the payment of the cost of repair, reconstruction or replacement of any Facilities that are damaged or destroyed. Any amount remaining from the proceeds of any such insurance funds, after the repairing, reconstructing and replacing of any Facilities, shall be immediately paid to and be the sole property of Tenant; *provided* that, if any governmental law or regulation governing land use prohibits the restoration or reconstruction of the Facilities damaged or destroyed to their pre-casualty state, any excess insurance proceeds over restoration or reconstruction costs that are the consequence of such prohibition shall be allocated pursuant to Article 13. If said insurance proceeds shall be insufficient in amount to cover the cost of repairing, reconstructing or replacing any Facilities as herein required; Tenant shall promptly pay any deficiency.

16.7 Damages for Failure to Provide Insurance. This Section 16.7 is applicable only in the event that Tenant is not in compliance with the requirements to maintain insurance as set forth in this Article 16. Landlord shall not be limited in the proof of any damages which Landlord may claim against Tenant arising out of or by reason of Tenant's failure to provide and keep in force insurance as aforesaid, to the amount of the insurance premium or premiums not paid or incurred by Tenant and which would have been payable upon such insurance, but Landlord shall also be entitled to recover as damages for such breach the uninsured

amount of any loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suit, including attorneys' fees, suffered or incurred by reason of damage to, or destruction of, the Premises, occurring during any period in which Tenant shall have failed or neglected to provide insurance as aforesaid.

ARTICLE 17 HAZARDOUS MATERIALS

17.1 No Hazardous Materials on the Premises. Tenant covenants and agrees that other than de minimis amounts of waste materials that have in all material respects been handled, processed and treated in compliance with Applicable Laws, it shall not, and that it shall not permit any licensee to, treat, use, store, dispose, release, handle or otherwise manage Hazardous Materials on the Premises except in connection with any construction, operation, maintenance or repair of the Premises or in the ordinary course of its business, and that such conduct shall be done in compliance with all applicable federal, state and local laws, including all Environmental Laws. Tenant's violation of the foregoing prohibition shall constitute a material breach hereunder and Tenant shall indemnify, hold harmless and defend the Landlord for such violation as provided below.

17.2 Notice and Remediation by Tenant. Tenant shall promptly give Landlord written notice of any significant release of any Hazardous Materials, and/or any notices, demands, claims or orders received by Tenant from any governmental agency pertaining to Hazardous Materials that may affect the Premises.

17.3 Environmental Indemnity. Tenant shall hold harmless, defend and indemnify Landlord and its officers, agents, employees, members and officials from and against all liability, loss, damage, costs, penalties, fines and/or expenses (including attorney's fees for counsel acceptable to Landlord and court costs) arising out of or in any way connected with the (1) Tenant's breach or violation of any covenant, prohibition or warranty in this Lease concerning Hazardous Materials, or (2) the activities, acts or omissions of Tenant, its employees, contractors. licensees or agents on or affecting the Premises from and after the Effective Date, including but not limited to the release of any Hazardous Materials or other kinds of contamination or pollutants of any kind into the air, soil, ground-water or surface water on, in, under or from the Premises whether such condition, liability, loss, damage, cost, penalty, fine and/or expense shall accrue or be discovered before or after the termination of this Lease. This indemnification

supplements and in no way limits the scope of the indemnification set forth in Article 11.

17.4 Termination. The agreements and obligations of Landlord and Tenant under this Article 17 with regard to indemnification shall survive the scheduled termination or sooner expiration of the Term for any reason.

ARTICLE 18 REPRESENTATIONS AND WARRANTIES

18.1 Landlord's Representations and Warranties. Landlord represents and warrants to Tenant that the Property is owned in fee, free and clear, without any liens or deeds of trust of any kind equally by the Participating Municipalities.

18.1.1 Landlord has the power, authority and legal right to grant the estate demised herein, and to enter into and perform its obligations set forth in this Lease as provided in Subsection 18.1.2 below.

18.1.2 To the best of Landlord's knowledge, no person other than Landlord has a present or future right to possession of all or any part of the Premises.

18.1.3 No work has been performed on the Premises within one hundred twenty (120) days of the date hereof for which a Mechanics Lien could be filed.

18.1.4 To the best of Landlord's knowledge, without independent investigation, there are no levied, pending, or threatened special assessments affecting all or any part of the Premises owed to any governmental entity and there is no Hazardous Material on the Premises.

18.1.5 The execution, delivery and performance of this Lease has been duly authorized by Landlord's Board of Directors.

18.1.6 Landlord shall cooperate with Tenant in its efforts to obtain adequate water and utilities as required for occupancy and use of the Premises by Tenant as provided in this Lease all at no expense to the Landlord.

18.1.7 To the best of Landlord's knowledge, without independent investigation, the Premises are fully in compliance with Applicable Laws. There

are no proceedings or amendments pending and brought by or, to the knowledge of Landlord, threatened by, any third party which would result in a change in the allowable uses of the Premises or which would modify the right of Tenant to use the Premises as contemplated hereunder.

18.2 Tenant's Reoresentations and Warranties. Tenant represents and warrants to Landlord that:

18.2.1Tenant has examined the Premises and finds that it is fit for the construction, development and operations contemplated hereunder.

18.2.2Tenant shall expeditiously and diligently construct and develop the Facilities/Improvements on the Premises by the Anniversary Date as defined in Subsection 9.1.

18.2.3Tenant shall, upon completion of the Facilities/Improvements development on the Premises, continuously operate the Premises under the terms of this Lease in conjunction with the Amended and Restated Operating Agreement.

18.2.4During the Term of this Lease, Tenant shall take any and all actions available to it, at its sole cost and expense to maintain and operate the Facilities/Improvements.

18.2.5Tenant shall at all times comply with and adhere to Applicable Laws affecting the construction development and operations on the Premises and shall provide to Landlord: (1) within five (5) days after the receipt thereof, true, corrected, and complete copies of any written notice of noncompliance or true and accurate transcripts of any oral notice of noncompliance issued or given by any Governmental Body; and (2) prompt written notice describing the occurrence of any event or the existence of any circumstances which does or may result in noncompliance or non-adherence, or of any action or proceeding of any nature alleging the same, in any way related to the Premises, whether or not located on the Premises.

18.2.6 Tenant shall take all actions necessary to apply for, and shall take no actions that would, adversely affect the retention of all Permits in good standing.

18.2.7 There are no actions, causes of action, or claims pending or threatened, and there currently exist no grounds for any such actions, causes of

action, or claims relating to Tenant, or which challenge the right of Tenant to execute this Agreement or perform its obligations hereunder.

18.2.8 Tenant has the right, power and authority to enter into this Lease and to perform all the obligations of Tenant hereunder.

18.2.9 Tenant is a California Corporation in full compliance with the provision of the California Corporation Law (California Corporation Code Section 17000 et seq.) and all Applicable Laws.

ARTICLE 19 ENTRY BY LANDLORD

19.1 Right of Entry. Landlord and its respective authorized representatives shall have the right to enter the Premises or any part thereof at all reasonable times upon reasonable notice for the purpose of inspecting the same, observing operations of Tenant, examining Records and to take all such action thereon as may be necessary or appropriate for any such purpose provided for under this Lease or any other lawful purpose including protecting the Premises (but nothing contained in this Lease shall create or imply any duty on the part of Landlord to make any such inspection or to do any such work). No such entry shall constitute an eviction of Tenant provided, however, that Landlord's actions hereunder shall not interfere with Tenant's operation of the Facilities. This right of entry is in addition to those inspection, observation and auditing rights otherwise provided in the Ground Lease or the Amended and Restated Operating Agreement.

ARTICLE20 EVENTS OF DEFAULT: REMEDIES

20.1 Events of Default. Any one or all of the following events after thirty (30) days written notice to Tenant, unless a shorter period is specified herein, shall constitute an Event of Default hereunder:

20.1.1 If Tenant shall default in the payment of any Rent or other charges when and as the same becomes due and payable and such default shall continue for more than ten (10) days after Landlord shall have given written notice thereofto Tenant; or

20.1.2 The failure of Tenant to commence any authorized construction, development and operation on the Premises as set out in Section 9.1;

20.1.3 If Tenant shall default in the performance of or compliance with any other material term, covenant or condition of this Lease and if Tenant shall fail to cure such default within thirty (30) days after receipt of written notice thereof from Landlord, or, if the default is of such character as to require more than thirty (30) days to cure and Tenant shall fail to use reasonable diligence in curing such default.

20.1.4 The abandonment or vacation of the Premises by Tenant; or

20.1.5 The entry of any de.cree or order for relief by any court with respect to Tenant, or any assignee or transferee of Tenant (hereinafter "Assignee"), in any involuntary case under the Federal Bankruptcy Code or any other applicable federal or state law; or the appointment of or taking possession by any receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any Assignee, or of any substantial part of the Premises of Tenant or such Assignee, or the ordering or winding up or liquidating of the affairs of Tenant or any Assignee and the continuance of such decree or order unstayed and in effect for a period of sixty (60) days or more (whether or not consecutive); or the commencement by Tenant of any such Assignee of a voluntary proceeding under the Federal Bankruptcy Code or any other applicable state or federal law or consent by Tenant or any such Assignee to the entry of any order for relief in an involuntary case under any such law, or consent by Tenant or any such Assignee to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, sequestrator or other similar official of Tenant or any such Assignee, or of any substantial property of any of the foregoing, or the making by Tenant or any such Assignee of any general assignment for the benefit of creditors; or Tenant or any such Assignee takes any other voluntary action related to the business of Tenant or any such Assignee or the winding up of the affairs of any of the foregoing;

20.1.6 Any default under the Amended and Restated Operating Agreement as it may be further amended from time to time.

20.2 Remedies.

20.2.1 If an Event of Default shall occur and continue as aforesaid, then in addition to any other remedies available to Landlord at law or in equity, Landlord shall have the immediate option to terminate this Lease and pursue any remedies available at law or in equity.

20.2.2 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, to reenter the Premises and operate the Premises and apply the proceeds of such operation as set out in 20.2.3 below, or to remove all persons and property from the Premises; property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Tenant.

20.2.3 If an Event of Default occurs, Landlord shall also have the right, with or without terminating this Lease, to re-let the Premises. If Landlord so elects to exercise its right to re-let the Premises but without terminating this Lease, then rentals received by Landlord from such re-letting shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Tenant to Landlord; Second, to the payment of any cost of such re-letting; Third, to the payment of the cost of any alterations and repairs to the Premises; Fourth, to the payment of rent due and unpaid hereunder. Tenant shall also pay to Landlord, as soon as ascertained, any costs and expenses incurred by Landlord in such re-letting or in making alterations and repairs not covered by the rentals received from such re-letting.

20.2.4 No reentry or taking possession of the Premises by Landlord pursuant to Paragraphs 20.2.2 or 20.2.3, shall be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding any re-letting without termination by Tenant because of any default by Tenant, Landlord may at any time after such re-letting elect to terminate this Lease for any such default.

20.3 Receipt of Rent, No Waiver of Default. The receipt by Landlord of the Rents or any other charges due to Landlord, with knowledge of any breach of this Lease by Tenant or of any default on the part of Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provisions of this Lease. No acceptance by Landlord of a lesser sum than the Rents or any other charges then due shall be deemed to be other than on account of the earliest installment of the Rents or other charges due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of Rent or charges due be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedy provided in this Lease. The receipt by Landlord of any Rent or any other sum of money or any other consideration paid by Tenant after the termination of

this Lease, or after giving by Landlord of any notice hereunder to effect such termination, shall not, except as othetwise expressly set forth in this Lease, reinstate, continue, or extend the term of this Lease, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by Landlord to Tenant prior to the receipt of any such sum of money or other consideration, unless so agreed to in writing and signed by Landlord. Neither acceptance of the keys nor any other act or thing done by Landlord or by its agents or employees during the Term shall be deemed to be an acceptance of a surrender of the Premises, excepting only an agreement in writing signed by Landlord accepting or agreeing to accept such a surrender.

20.4 Effect on Indemnification. Notwithstanding the foregoing, nothing contained in this Article shall be construed to limit Landlord's right to indemnification as otherwise provided in this Lease.

20.5 Notice of Landlord's Default; Tenant's Waiver. If Landlord fails to perform any of the terms, conditions or agreements provided in this Lease which are to be performed by Landlord and if the failure is not remedied within 60 days after written notice of the failure is given by Tenant to Landlord or if more than 60 days will be reasonably required to cure the failure, and Landlord does not begin to remedy the failure within the 60 days or later does not proceed diligently to cure the failure, then in such event Landlord will be deemed to be in default and Tenant may pursue any remedies available at law or in equity.

ARTICLE 21 MISCELLANEOUS

21.1 Non-waiver. If any action or proceeding is instituted or if any other steps are taken by Landlord or Tenant, and a compromise part payment or settlement thereof shall be made, either before or after judgment, the same shall not constitute or operate as a waiver by Landlord or Tenant of any agreement, covenant or condition of this Lease or of any subsequent breach thereof. No waiver of any default under this Lease shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Lease shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder. No waiver of any provision hereof by Landlord or Tenant shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by Landlord or Tenant, as the case may be. The receipt by Landlord of Rent or other charges (collectively "Charges") with knowledge of any default under this Lease

shall not constitute or operate as a waiver of such default. Payment by Tenant or receipt by Landlord of a lesser amount than the stipulated Charges due Landlord shall operate only as a payment on account of such Charges. No endorsement or statement on any check or other remittance or in any communication accompanying or relating to such payment shall operate as a compromise or accord and satisfaction unless the same is approved in writing by Landlord, and Landlord may accept such check, remittance or payment without prejudice to its right to recover the balance of any Charges due by Tenant and pursue any remedy provided under this Lease or by law.

21.2 No Merger. There shall be no merger of the leasehold estate created by this Lease with any other estate in the Premises, including the fee estate, by reason of the fact that the same person may own or hold the leasehold estate created by this Lease, or an interest in such leasehold estate, and such other estate in the Premises, including the fee estate, or any interest in such other estate; and no merger shall occur unless and until Landlord and Tenant shall join in a written instrument effecting such merger and shall duly record the same.

No termination of this Lease shall cause a merger of the estates of Landlord and Tenant, unless Landlord so elects and any such termination shall, at the option of Landlord, either work a termination of any sublease in effect or act as an assignment to Landlord of Tenant's interest in any such sublease.

21.3 No Partnership. It is expressly understood and agreed that Landlord does not, in any way or for any purpose by executing this Lease or the Operating Agreement, become a partner of Tenant in the conduct of Tenant's business, or otherwise, or a joint venturer or a member of a joint enterprise with Tenant.

21.4 Notices. All notices, requests, demands and other communications hereunder shall be in writing and personally delivered or sent by United States certified or registered mail, postage prepaid, return receipt requested, sent by an overnight express courier service that provides written confirmation of delivery, or sent by facsimile transmission and regular first class mail to such party at the following respective address:

If to Landlord: Mojave and Desert Mountain Recycling Joint Powers Authority
P.O. Box 5001
Victorville, CA 92393-5001
Attn: John Davis

With a copy to:	John Davis 39905 Memory Lane Oak Glen, CA 92399
If to Tenant:	Burrtec Waste Industries, Inc. 9890 Cherry Fontana, CA Attn: Cole Burr
With a copy to:	Marc E. Empey Slovak Baron Empey Murphy & Pinkney LLP 1800 E. Tahquitz Canyon Way Palm Springs, California 92262

Any such notice will be deemed duly given when received by the party for whom it is intended, if personally delivered or sent by facsimile transmission, or two days after deposit in the mail, first-class, postage prepaid.

21.5 Holding Over- Consensual. In the event Tenant shall holdover or remain in possession of the Premises with the written consent of Landlord after the expiration of the Term, such holding over or continued possession shall create a tenancy for month to month only, upon the same terms and conditions as are herein set forth and in effect the last month prior to the expiration of the Term of this Lease.

21.6 Holding Over - Non-Consensual. If Tenant remains in possession of the Premises or any part thereof after the expiration of the Term without the express written consent of Landlord, such occupancy shall be a tenancy from month to month at a monthly Rent double the amount of the monthly Rent due Landlord the month prior to expiration of this Lease plus all other Charges payable hereunder, and upon all the terms hereof applicable to a month-to-month tenancy.

21.7 Default Interest. In the event that Landlord or Tenant shall fail to pay any amount owed to the other hereunder within 10 days of the date that such amounts are due and payable, such party shall pay, in addition to such amounts, interest thereon at two percent (2%) above the "prime rate" of interest (the "Interest Rate") as published daily by the *Wall Street Journal,* or the maximum

interest rate permitted by law, whichever is less, from the first day of the month in which such monetary obligation was payable to the date of actual payment thereof.

21.8 Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

21.9 Warranty Against Payment of Consideration. Tenant warrants that it has not paid or given, and will not pay or give, any official officer or representative of the Landlord or any money or other consideration for obtaining this Lease.

21.10 Non-liability of Landlord Officials and Employees; Nonliability of Members. No member, official or employee of Landlord shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by Landlord or for any amount which may become due to Tenant or its successor or on any obligations under the terms of this Lease. In addition, no member of Tenant shall be personally liable to Landlord, or any successor in interest, in the event of any default or breach by Tenant or for any amount that may become due to Landlord or its successor or on any obligations under the terms of this Lease.

21.11 Remedies Cumulative. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law and not expressly waived in this Lease.

21.12 Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.

21.13 Consents. Whenever in this Lease the consent or approval of either Landlord or Tenant is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval. All consents shall be in writing.

21.14 Memorandum of Lease. Each party shall, upon the request of the other, execute a short form memorandum of this Lease in recordable form, which may be recorded in the official records of San Bernardino County, California.

21.15 Inspection. The Premises will be available for operational inspection by any Governmental Body at all times during regular business hours upon reasonable notice. Tenant will cooperate with said Governmental Body in correcting any deficiencies noted in inspection reports. Inspection personnel will have access to all areas of the Premises and procedures established by Tenant. Tenant will provide to Landlord a copy of all reports and information it provides to any Governmental Body within 10 days of providing such to the Governmental Body.

21.16 Billing and Payments to Disposal Site. Tenant shall pay all costs of disposing of Unacceptable Waste on the Premises at a permitted disposal site.

21.17 Interpretation.

21.17.1 Law. The laws of the State of California shall govern the validity, construction and effect of this Lease.

21.17.2 Covenants. Whenever in this Lease any words of obligation or duty are used in connection with either party, such words shall have the same force and effect as though framed in the form of express covenants on the part of the party obligated.

22.17.3 Burrtec Joint and Several Liability. In the event Burrtec now or hereafter shall consist of more than one person, firm or corporation, all such persons, firms or corporations shall be jointly and severally liable as parties hereunder. In no event shall any member agency of Mojave be liable hereunder.

21.18 Attornev Fees. In the event of any action or proceeding at law or in equity between Landlord and Tenant to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney fees shall be included in and as a part of such judgment.

21.19 Integration. This Lease, and the exhibits attached hereto, are the entire agreement between and final expression of the parties as to this Ground Lease and there are no agreements or representations between the parties except as expressed herein or therein. All prior negotiations and agreements between Landlord and

Tenant with respect only to the subject matter hereof are superseded by this Lease. Except as otherwise provided herein, no subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

21.20 Force Majeure. In the event either party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lock-outs, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature beyond the reasonable control of that party, in performing the work or doing the acts required under the terms of this Lease, then the time for performance of such act shall be extended for a period equivalent to the period of such delay.

21.21 Amendments. This Lease can only be amended, modified, supplemented, extended or rescinded in a writing expressly referring to this Lease, duly authorized and executed by the authorized representatives of the Parties.

ARTICLE22 RESERVED

ARTICLE23 AUTHORITY RIGHT OF FIRST REFUSAL

23.1 Ownership of Facility Improvements and Equipment. Lessee became the owner of such assets and shall remain the owner thereof except as otherwise specifically provided herein.

23.2 Right of First Refusal. Lessee hereby grants to the Authority a right of first refusal subject to the provisions of this Section. The Right of First Refusal may be exercised by either or both of the Participating Municipalities.

23.2.1 If, at any time the Lessee or any of its successors in interest to the Property receives a bona fide purchase offer (from any person or entity that would constitute a "change of control" for all or any portion of the Expanded Facility (also called the Burrtec-MRF), the Lessee shall provide the Authority notice if it is the Contractor's intention to accept the same. Notice shall be provided as set out in Section 21.4 of this Agreement/Lease ("Notice").

23.2.2 The Authority shall have the right (the "Right of First Refusal") within 90 calendar days from the receipt of the Notice to exercise the Right of First Refusal by written notice to Lessee. Such notice shall be provided as set out in Section 21.4 of this Agreement/Lease. Such notice must include

Lessee's determination of the purchase price for pursuant to Section 23.3 below and the documents necessary to establish such purchase price. The 90 days to exercise the Right of First Refusal do not begin to run until such purchase price and supporting documentation has been provided to Authority. Such period may be extended once, at the sole discretion of the Authority, for an additional 30-day period. During the 90-day period, or any extension thereof, Authority retains the right to review, question and negotiate such purchase price. The Authority's review of any proposed assignment shall run concurrently with the 90-day period and any extension thereof.

23.2.3 If the Authority elects to exercise this Right of First Refusal at a price agreed upon by the parties, then the Authority and the Lessee shall promptly thereafter enter into a definitive written agreement whereby Lessee agrees to sell the to the Authority and the Authority agrees to purchase all or that portion of the Expanded Facility from Lessee on terms and conditions, including representations, warranties, covenants and indemnities, and subject to such qualifications, limitations and contingencies that are normal and customary for the size and type of transaction contemplated herein. Each party shall use its best efforts in providing for a closing of the transaction not less than 120 days after the exercise of the Right of First Refusal. Notwithstanding, at any time before the close of the purchase transaction, Authority in its sole discretion may determine not to proceed with the purchase.

23.2.4 If the Authority does not elect to exercise the Right of First Refusal as set out herein, or does not close the transaction then: (a) that Right of First Refusal shall terminate, (b) the Contractor may then sell to said third-party offeror, (c) assuming the assignment has been reviewed concurrently with the RFR pursuant to Section 13 of the Amended and Restated Operating Agreement and is acceptable to the Authority, the Authority shall approve that assignment; (d) if Contractor does not sell pursuant to the offer, the Right of First Refusal continues. Notwithstanding, Authority reserves the right to request a right of first refusal with the assignee as part of the negotiations concerning approval of the assignment but cannot condition approval thereon.

23.3 Purchase Price. The Parties hereby agree that for the purposes of the Right of First Refusal, the purchase price for all or a portion of the Expanded Facility shall be determined as follows:

23.3.1 Lessee waives any right to the value of the Expanded Facilities as a going concern, including permits, operating rights, and goodwill, all of which shall be valued at zero dollars ($0).

23.3.2 Facility improvements for all or that portion of the Expanded Facility to be sold shall be valued at an amount equal to the original construction cost of such facility improvements as such costs were initially booked on the financial statements of the Lessee, less ten percent (10%), without regard to depreciation or amortization. Lessee will keep books that show such amount and shall provide such information to Authority as the phases of the Expanded Facilities are completed.

23.3.4 Capital equipment value shall be established by an agreed-upon, independent and qualified equipment appraiser paid by Burrtec. That appraiser shall determine the value taking into account both the remaining useful life of such equipment and it salvage value and shall then discount the value determined by ten percent (lOo/o). Not less than every 5 years, Contractor shall provide the Authority with an updated value of such capital equipment and shall also provide a current appraisal at such time as Contractor provides the Notice.

23.3.5 Lessee and Authority shall cooperate in any payoff of the Lessee's lender(s) and the transfer of title to the facility improvements and the equipment to the Authority free of any liens or third party security interests.

23.4 Lease of Burrtec MRF Property. If the Authority elects to exercise the Right of First Refusal for the Expanded Facilities located on Contractor's leased property, at the same time as the exercise of that Right of First Refusal, (i) Contractor shall cause its lessor (the owner of the Burrtec-MRF property not leased from the Participating Municipalities) to assign the lease to Authority on the same terms and conditions as the lease currently in place between Contractor and its Affiliate, but with a term equivalent to that provided in the third-party offer; or (ii) Authority may purchase the underlying property for fair market value as determined by a mutually selected and qualified appraiser or at the same price as set out in the third-party offer.

23.5 Authority's Right to Secure its Purchase Rights. Subject only to the superior rights of the Lessor's lender during any period in which debt incurred by Lessor remains unpaid, the Authority shall be entitled to record a memorandum of this Amendment with an explicit reference to the Right of First Refusal in order to

protect that right against third party claimants of Lessor. The Lessor shall and shall cause its lender to reasonably cooperate with the recording of any such instrument.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed on their behalf by their respective signatories thereunto duly authorized as of the date first above written.

MOJAVE DESERT AND MOUNTAIN JOINT POWERS RECYCLING AUTHORITY

By: _____

ATTEST:

By: _____
Secretary/Clerk

APPROVED AS TO FORM:

By: _____

BURRTEC WASTE INDUSTRIES, INC.

By: _____

ATTEST:

By: _____
Secretary/Clerk

APPROVED AS TO FORM:

By: _____

TOWN OF APPLE VALLEY

By: _____

ATTEST:

By: _____
Secretary/Clerk

APPROVED AS TO FORM:

By: _____

CITY OF VICTORVILLE

By: _____

ATTEST:

By: _____
Secretary/Clerk

APPROVED AS TO FORM:

By: _____

EXHIBIT "A-1"

(Description of Lease Area over APN 0472-061-48)

That portion of Parcel 2 of Parcel Map No. 14534, in the City Victorville, County of San Bernardino, State of California, as filed in Book 176 of Parcel Maps at Pages 98 through 111, in the Records of the San Bernardino County Recorder, described as follows:

BEGINNING at the southwesterly corner of said Parcel 2;

Thence along the southerly line of said Parcel 2 South 75 degrees 36 minutes 28 seconds East 110.18 feet to a point on that curved segment of the northerly line of Abbey Lane as shown on said Parcel Map No. 14534, being concave southerly and having a radius of 50.00 feet and to said point a radial line bears North 07 degrees 44 minutes 22 seconds West, and said northerly line also being the southerly line of said Parcel 2;

Thence easterly along said curved segment an arc distance of 37.10 feet through a central angle of 42 degrees 30 minutes 48 seconds, to a point of reverse curvature in said northerly line and the reverse curve being concave northerly and having a radius of 50.00 feet;

Thence easterly along said reverse curve in the northerly line of Abbey Lane an arc distance of 30.47 feet through a central angle of 34 degrees 54 minutes 54 seconds;

Thence along said northerly line North 89 degrees 51 minutes 32 seconds East 336.39 feet to the beginning of a curve in said northerly line being concave northwesterly and having a radius of 25.00 feet;

Thence easterly, northeasterly and northerly along said curve an arc distance of 39.27 feet through a central angle of 90 degrees 00 minutes 00 seconds;

Thence along said northerly line, on a course non-tangent with last said curve, North 89 degrees 51 minutes 32 seconds East 4.00 feet;

Thence leaving said northerly line of Abbey Lane and said southerly line of Parcel 2, on a course perpendicular to the centerline of said Abbey Lane, North 00 degrees 08 minutes 28 seconds West 386.17 feet,

Thence on a course parallel to said centerline, North 89 degrees 51 minutes 32 seconds East 259.66 feet;

Thence on a course perpendicular to said centerline of Abbey Lane, North 00 degrees 08 minutes 28 seconds West 253.01 feet to a line that is parallel with said centerline and intersects the westerly line of Bimini Street as shown on said Parcel Map No. 14534 at a point that is South 00 degrees 46 minutes 28 seconds East 4.00 feet from the westerly end of a curve in said westerly line, being concave northwesterly and having a radius of 25.00 feet and to which a radial line bears South 00 degrees 46 minutes 28 seconds East;

Thence along last said parallel line North 89 degrees 51 minutes 32 seconds East 91.19 feet to said intersection with the westerly line of Bimini Street;

Thence along said westerly line North 00 degrees 46 minutes 28 seconds West 4.00 feet to last said curve;

Thence easterly northeasterly and northerly along last said curve an arc distance of 39.27 feet through a central angle of 90 degrees 00 minutes 00 seconds;

Thence along said westerly line North 00 degrees 46 minutes 28 seconds West 33.77 feet to the northerly line of said Parcel 2;

Thence along said northerly line of Parcel 2 South 89 degrees 51 minutes 32 seconds West
555.89 feet to the westerly line of said Parcel 2;

Thence along said westerly line South 25 degrees 39 minutes 09 seconds West 590.05 feet to the beginning of a curve in said westerly line, being concave westerly and having a radius of
725.00 feet;

Thence along said curve an arc distance of 181.34 feet through a central angle of 14 degrees
19 minutes 53 seconds to the **POINT OF BEGINNING**.

The area of the above described portion of said Parcel 2 is 346,851 square feet more or less.

This description and the attached
Exhibit "A-2" was prepared by:

_____

David James Cockrum,
Professional Land Surveyor No. LS 7979

EXHIBIT "A-2"

LEASE AREA OVER A PORTION OF PARCEL 2 OF PARCEL MAP NO. 14534 P.M.B. 176/98-111
WITHIN SECTION 33, T. 6 N., R. 4 W., S.B.M.
IN THE CITY OF VICTORVILLE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

This plat was prepared by:

David J. Cockrum, PLS L7976

NOTES

——— DENOTES LEASE AREA BOUNDARY: 346,851 SQ. FT. ±

PL DENOTES PROPERTY LINE OF PARCEL 2, PM 14534, PMB 176/98-111, APN 0472-061-48

POB DENOTES POINT OF BEGINNING OF THE DESCRIPTION PER EXHIBIT "A-1"

CURVE TABLE			
#	DELTA	LENGTH	RADIUS
C1	42°30'48"	37.10'	50.00'
C2	34°54'54"	30.47'	50.00'
C3	90°00'00"	39.27'	25.00'
C4	14°19'53"	181.34'	725.00'

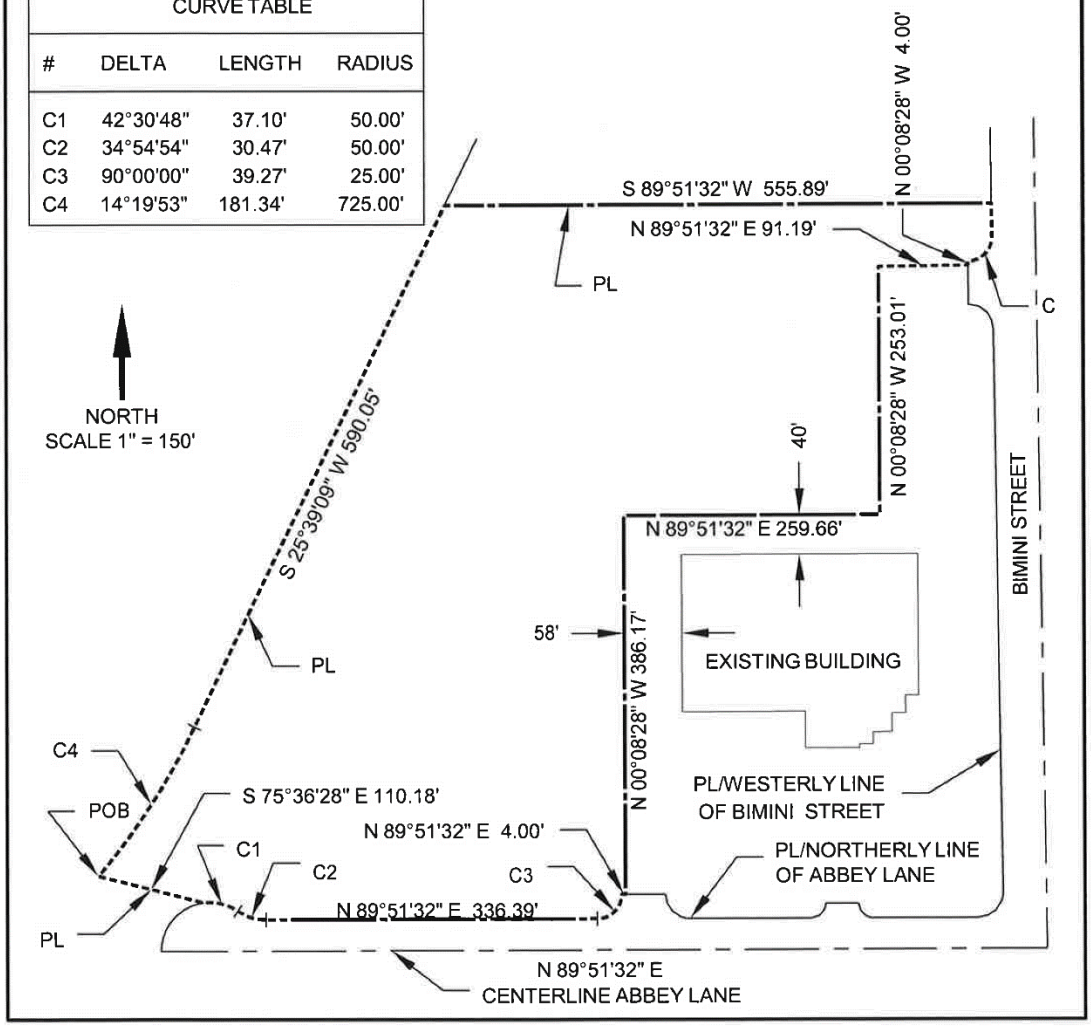


EXHIBIT B

DEFINITIONS

As used in this Lease, 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. If 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 or the Lease 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 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 or the Processing 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.

"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 C
MEMORANDUM OF LEASE

This Memorandum of Lease made *[date]*, pursuant to *[applicable trust]* with respect to the following described Lease:

1. Date of Lease: _____, 2016

2. Name of Landlord: City of Victorville, Town of Apple Valley and Mojave Desert and Mountain Recycling Joint Powers Authority

3. Name of Tenant: Burrtec Waste Industries

4. Description of leased Premises: see Exhibit 1 attached and incorporated (description plus diagram)

5. Term: 50 years

6. Rights of extension

7. Option to buy: Landlord has an option to purchase the improvements at any time. Landlord has a right of first refusal for a value to be determined upon receipt of a bona fide third party offer to purchase improvements.

This Memorandum of Lease is prepared for recording and for the purpose of making a public record of said Lease dated *[date]*, and it is intended that the parties shall be subject to all of the provisions of said Lease, and that nothing herein shall be deemed to alter or change any of the terms or provisions of said Lease.

IN WITNESS WHEREOF, *[name]* has caused this Memorandum of Lease to be duly executed by an authorized signatory t as of the day and year first above written.

EXHIBIT "A-1"

(Description of Lease Area over APN 0472-061-48)

That portion of Parcel 2 of Parcel Map No. 14534, in the City Victorville, County of San Bernardino, State of California, as filed in Book 176 of Parcel Maps at Pages 98 through 111, in the Records of the San Bernardino County Recorder, described as follows:

BEGINNING at the southwesterly corner of said Parcel 2;

Thence along the southerly line of said Parcel 2 South 75 degrees 36 minutes 28 seconds East 110.18 feet to a point on that curved segment of the northerly line of Abbey Lane as shown on said Parcel Map No. 14534, being concave southerly and having a radius of 50.00 feet and to said point a radial line bears North 07 degrees 44 minutes 22 seconds West, and said northerly line also being the southerly line of said Parcel 2;

Thence easterly along said curved segment an arc distance of 37.10 feet through a central angle of 42 degrees 30 minutes 48 seconds, to a point of reverse curvature in said northerly line and the reverse curve being concave northerly and having a radius of 50.00 feet;

Thence easterly along said reverse curve in the northerly line of Abbey Lane an arc distance of 30.47 feet through a central angle of 34 degrees 54 minutes 54 seconds;

Thence along said northerly line North 89 degrees 51 minutes 32 seconds East 336.39 feet to the beginning of a curve in said northerly line being concave northwesterly and having a radius of 25.00 feet;

Thence easterly, northeasterly and northerly along said curve an arc distance of 39.27 feet through a central angle of 90 degrees 00 minutes 00 seconds;

Thence along said northerly line, on a course non-tangent with last said curve, North 89 degrees 51 minutes 32 seconds East 4.00 feet;

Thence leaving said northerly line of Abbey Lane and said southerly line of Parcel 2, on a course perpendicular to the centerline of said Abbey Lane, North 00 degrees 08 minutes 28 seconds West 386.17 feet,

Thence on a course parallel to said centerline, North 89 degrees 51 minutes 32 seconds East 259.66 feet;

Thence on a course perpendicular to said centerline of Abbey Lane, North 00 degrees 08 minutes 28 seconds West 253.01 feet to a line that is parallel with said centerline and intersects the westerly line of Bimini Street as shown on said Parcel Map No. 14534 at a point that is South 00 degrees 46 minutes 28 seconds East 4.00 feet from the westerly end of a curve in said westerly line, being concave northwesterly and having a radius of 25.00 feet and to which a radial line bears South 00 degrees 46 minutes 28 seconds East;

Thence along last said parallel line North 89 degrees 51 minutes 32 seconds East 91.19 feet to said intersection with the westerly line of Bimini Street;

Thence along said westerly line North 00 degrees 46 minutes 28 seconds West 4.00 feet to last said curve;

Thence easterly northeasterly and northerly along last said curve an arc distance of 39.27 feet through a central angle of 90 degrees 00 minutes 00 seconds;

Thence along said westerly line North 00 degrees 46 minutes 28 seconds West 33.77 feet to the northerly line of said Parcel 2;

Thence along said northerly line of Parcel 2 South 89 degrees 51 minutes 32 seconds West
555.89 feet to the westerly line of said Parcel 2;

Thence along said westerly line South 25 degrees 39 minutes 09 seconds West 590.05 feet to the beginning of a curve in said westerly line, being concave westerly and having a radius of
725.00 feet;

Thence along said curve an arc distance of 181.34 feet through a central angle of 14 degrees
19 minutes 53 seconds to the **POINT OF BEGINNING**.

The area of the above described portion of said Parcel 2 is 346,851 square feet more or less.

This description and the attached
Exhibit "A-2" was prepared by:

_____

David James Cockrum,
Professional Land Surveyor No. LS 7979

EXHIBIT "A-2"

LEASE AREA OVER A PORTION OF PARCEL 2 OF PARCEL MAP NO. 14534 P.M.B. 176/98-111
WITHIN SECTION 33, T. 6 N., R. 4 W., S.B.M.
IN THE CITY OF VICTORVILLE, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

This plat was prepared by:

David J. Cockrum, PLS L7976

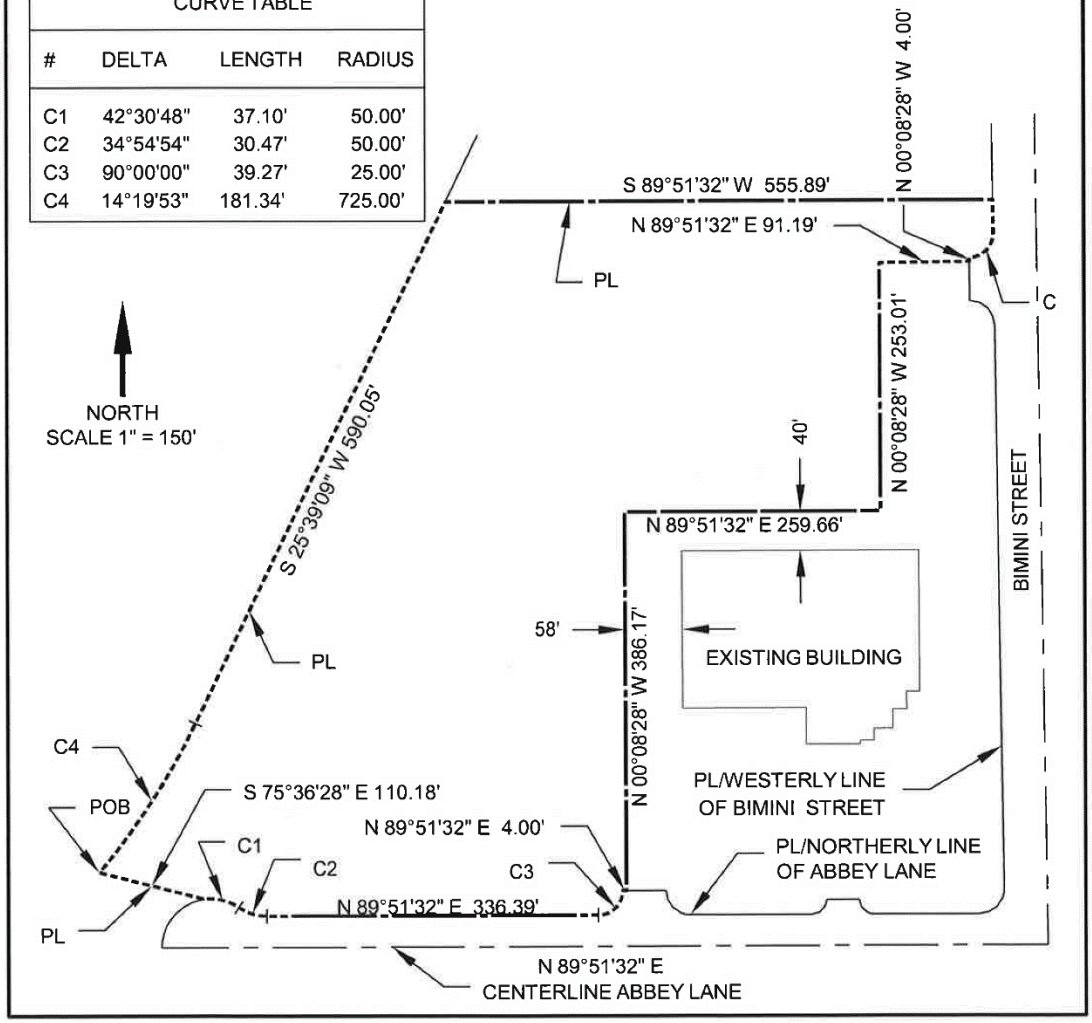
NOTES

——— DENOTES LEASE AREA BOUNDARY: 346,851 SQ. FT. ±

PL DENOTES PROPERTY LINE OF PARCEL 2, PM 14534, PMB 176/98-111, APN 0472-061-48

POB DENOTES POINT OF BEGINNING OF THE DESCRIPTION PER EXHIBIT "A-1"

CURVE TABLE			
#	DELTA	LENGTH	RADIUS
C1	42°30'48"	37.10'	50.00'
C2	34°54'54"	30.47'	50.00'
C3	90°00'00"	39.27'	25.00'
C4	14°19'53"	181.34'	725.00'



AMENDED AND RESTATED MATERIALS RECOVERY FACILITY OPERATING AGREEMENT

BETWEEN

MOJAVE DESERT AND MOUNTAIN RECYCING JOINT POWERS AUTHORITY

AND

BURRTEC WASTE INDUSTRIES, INC.

__, 2016

TABLE OF CONTENTS

EXHIBITS –

1. Definitions
2. Escalation Index
3. Insurance Provisions
4. Major Improvements

AMENDED AND RESTATED MATERIALS RECOVERY FACILITY OPERATING AGREEMENT

This Amended and Restated Agreement (the "Agreement") is made and entered into this ___ day of _____, 2016, by and between the Mojave Desert and Mountain Recycling Joint Powers Authority, a joint powers agency of the State of California (the "Authority"), and Burrtec Waste Industries, Inc. (the "Contractor"), a California corporation (doing business as "Burrtec Recycling and Transfer Co."), each party hereinafter referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the State of California (the "State") has found and declared that the amount of solid waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of the California Integrated Waste Management Act of 1989 (the "Act"), the State has directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of by land disposal; and

WHEREAS, the Authority was formed pursuant to a Joint Powers Agreement dated September 10, 1991 (the "JPA Agreement"), and later amended, in order to assist the Town of Apple Valley, the City of Victorville, the City of Barstow, the City of Adelanto, the City of Big Bear Lake, the City of Needles, the City of Twentynine Palms, the Town of Yucca Valley, and the County of San Bernardino in meeting the requirements of the Integrated Waste Management Act;

WHEREAS, pursuant to the JPA Agreement, a North Desert Project Committee was established, which is currently comprised of the representatives of Apple Valley and Victorville (each, a "Participating Municipality");

WHEREAS, the North Desert Project Committee determined that, in order to meet the requirements of the Act, it is in the best interests of the North Desert Project Committee to accept and enter into this Agreement;

WHEREAS, the Authority has entered into certain agreements with the Participating Municipalities to have the Facility financed, constructed, operated and

maintained and to process at the Facility recyclable materials collected within the Participating Municipalities;

WHEREAS, in order to finance the capital costs of the Facility, the Authority issued Project Revenue Bonds (Victor Valley Materials Recovery Facilities) in the principal amount of $6,825,000, and has determined to refund such Project Revenue Bonds;

WHEREAS, pursuant to Installment Purchase Agreements between each Participating Municipality and the Authority, each Participating Municipality owns an undivided one-half interest in the Facility;

WHEREAS, the Authority and the Contractor entered into a Materials Facility Construction and Operating Agreement, dated December 1, 1994 and amended and restated (the "Prior Agreement");

WHEREAS, the Prior Agreement was amended several times, including the Amended and Restated Agreement dated March 11, 2004; and

WHEREAS, the 2004 Amended and Restated Agreement was amended in 2005 and in 2006 which changes are included here by reference; and

WHEREAS, the State has adopted a goal to achieve 75% recycling by encouraging the development of additional solid waste processing and composting capacity, and by mandating commercial recycling and organics programs; and

WHEREAS, Contractor now has determined to expand its operations to include a composting operation, construction and demolition materials recycling operation, a mixed waste processing operation including engineered fuel production, an additional transfer facility and associated access and parking (collectively the "Expanded Facility") a portion shall be located on the same parcel and operated consistent the current VVMRF operations; and

WHEREAS, certain materials storage and access for such Expanded Facility shall be located on property leased from the North Desert Project Committee Cities and the remainder of the expansion shall be located on Contractor's own property (the "Expanded Facility"); and

WHEREAS, in order to provide for the Expanded Facility, the North Desert Project Committee Cities have determined that certain portions of unimproved real

property which they own and which is located adjacent to the site of the VVMRF is suitable for use for the materials storage and access portion of such Expanded Facility and they have entered into that certain Ground Lease with the Contractor providing for such use of the property; and

WHEREAS, the purpose of these additional amendments to the 2004 Amended and Restated Operating Agreement is to confirm that the ongoing operation of the VVMRF on generally the same terms and conditions, consistent with the Expanded Facility in a manner which is consistent and not competitive with the VVMRF operations, as those may be expanded by these amendments; and

WHEREAS, on January 19, 2016, the City Council of the City of Victorville approved a Negative Declaration and Mitigation and Monitoring Plan as well as the following entitlements for a Specific Plan Amendment, a Site Plan and Conditional Use Permit (Resolution Nos. 16-002 and 16-003) for the expansion of the a recycling center to include Composting and Waste processing on Contractor's property at as well as on a portion of the Cities' property labeled Parcel 2 and identified as Exhibit "A" to the Ground Lease (collectively the "Project") and

WHEREAS, Resolution No 16-002 is the Conditional Use Permit and Resolution No. 16-003 is the terms and conditions of the site plan for the Project.

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties and conditions contained in this Agreement and for other good and valuable consideration, the Authority and the Contractor agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions.

As used in this Agreement, including the Exhibits hereto, applicable definitions are attached and incorporated as Exhibit 1 hereto.

Section 1.2 Interpretation.

(a) **Gender and Plurality.** Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number mean and include the plural number, and vice versa, unless the context demands otherwise.

(b) **Headings.** Any captions or headings following the Exhibit, Section, subsection, paragraph and Article numbers and preceding the operative text hereof shall be for convenience of reference only and shall not in any way control or affect the scope, intent, meaning, construction, interpretation or effect hereof.

(c) "**Including**", when used in this Agreement, shall mean "including, without limitation" and "including, but not limited to".

(d) "**Prompt**" means as soon as practicable, but in no event less than two days, unless otherwise specified.

(e) "**Day**" or "**days**" means calendar day or days.

(f) "**Herein**", "**hereof**", "**hereunder**" and the like shall mean "in this Agreement", "of this Agreement", "under this Agreement", etc.; "hereinbefore" and "hereinafter" shall mean before and after the date of this Agreement, respectively.

(g) **References.** References to Sections and Articles refer to Sections and Articles hereof, unless specified otherwise. References to Exhibits refer to Exhibits attached hereto.

(h) **Well-known meaning.** Unless otherwise specified in the Agreement, words describing material or work that have a well-known technical or trade meaning shall be construed in accordance with the well-known meaning generally recognized by solid waste professionals, engineers and trades.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Contractor.

The Contractor hereby makes the following representations and warranties as of the date hereof to and for the benefit of the Authority and the VVMRF Facility:

(a) Existence. The Contractor is duly organized and validly existing as a corporation in good standing under the laws of the state of California, and it is duly qualified to do business in the state of California.

(b) Authority to Execute Agreement. The Contractor has full legal right, power and authority to execute and deliver, and perform its obligations under, this Agreement, and has duly authorized the execution and delivery of this Agreement by proper action of its governing body. This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

(c) Accuracy and Completeness of Information. The information supplied by the Contractor in all submissions made by the Contractor to the Authority is correct and complete in all material respects.

(d) No Breach. Neither the execution or delivery by the Contractor of this Agreement, the performance by the Contractor of its obligations hereunder, nor the fulfillment by the Contractor of the terms and conditions hereof: (i) conflicts with, violates, or results in a breach of any Applicable Law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor except as expressly provided herein or except as expressly approved by the Authority in writing.

(e) Approvals for Execution. The Contractor has obtained or made all approvals, authorizations, licenses, permits, orders, or consents of, or declarations, registrations or filings with, any governmental or administrative authority, commission, board, agency or instrumentality required for the valid execution and delivery of this Agreement by the Contractor. However, the Authority's acceptance of such assurance shall in no way relieve the Contractor from its full responsibility of obtaining all the approvals, permits and other actions required hereunder.

(f) Litigation. There is no action, suit, proceeding or, to the best of the Contractor's knowledge, investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the Contractor's knowledge, threatened, against the Contractor, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby or any of the permits, licenses or other governmental approvals required for the operation of the Facility.

(g) Patents, Trademarks. The Contractor holds, or is expressly licensed to use, all patents, rights to patents, trademarks, copyrights, licenses and franchises necessary or appropriate to construct, operate and maintain the Facility pursuant to and in accordance with the terms of this Agreement, without any known material conflict with the rights of others.

(h) Contractor Review. The Contractor has examined carefully and acquainted itself with the Agreement, the Technical Specifications, the Project, the elements of the Facility, the difficulties that may be encountered in performing its obligations under this Agreement and all Applicable Laws and has made and shall make its own deductions and conclusions as to any and all problems that may arise from facility site conditions and accepts full legal responsibility and liability for those conditions.

(i) Permits. All permits, licenses and approvals necessary for the operation of the Facility, have either (i) been issued by the appropriate Governmental Bodies, and are in full force and effect and/or (ii) have been applied for and approved in accordance with Applicable Law. With respect to the permits described in clause (ii) of the preceding sentence, the issuance thereof constitutes a ministerial act on the part of the Governmental Body that is responsible for issuing such permits.

Section 2.2 Representations and Warranties of the Authority.

The Authority hereby makes the following representations and warranties to and for the benefit of the Contractor:

(a) Existence. The Authority is a joint powers agency of the State of California duly organized and validly existing under the Constitution and laws of the

State of California, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) Due Authorization. The Authority has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, subject to bankruptcy or other laws affecting creditor's rights, and to application of equitable remedies.

(c) No Breach. Neither the execution and delivery by the Authority of this Agreement, the Authority's performance of its obligations hereunder nor its fulfillment of the terms or conditions hereof: (i) conflicts with, violates or results in a breach of any Applicable Law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument, to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) Approvals. To the best knowledge of the Authority, without independent investigation, no approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the Authority, except such as already have been duly obtained.

(e) Litigation. There is no action, suit, proceeding or, to the best of the Authority's knowledge, investigation, at law or in equity, before or by any court or governmental or administrative authority, commission, board, agency or instrumentality pending or, to the best of the Authority's knowledge, threatened, against the Authority, wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance of the Authority's obligations hereunder or in connection with the other transactions contemplated hereby or which, in any way, would adversely affect the validity or enforceability of this Agreement or any agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

(f) No Warranty as to Waste Characterization or Composition. The Authority makes no warranties with respect to the waste characterization data, projections or other information with respect to the waste or Acceptable Recyclable Materials generated in the Participating Municipalities. The Authority expressly disclaims any warranties, either express or implied, as to the merchantability or

fitness for any particular purpose of Acceptable Recyclable Materials delivered to the Facility.

(g) Approval of Plan. The San Bernardino County Solid Waste Task Force has approved the Facility to be in accordance with the County Comprehensive Solid Waste Management Plan in accordance with Section 50000 of the State Public Resources Code, expressly allowing for the material recovery services contemplated herein.

ARTICLE 3
TERM

Section 3.1 Initial Term of the Agreement.

The initial term of this Agreement shall commence on the Contract Date and shall end ten years later on April 15, 2026 (the "Initial Expiration Date") at which time the extensions set out below shall take effect.

Section 3.2 Extension.

(a) First Automatic Extension. Subject to subsection 3.2(d) hereof, on the date which is eighteen months prior to the Initial Expiration Date (the "First Renewal Date" or October 15, 2025), the Term of this Agreement shall automatically be extended for one additional five year period, commencing on the day after the Initial Expiration Date and ending on the fifth anniversary of the Initial Expiration Date (the "Second Expiration Date" or April 15, 2031).

(b) Second Automatic Extension. Subject to subsection 3.2(d) hereof, on the date which is eighteen months prior to the Second Expiration Date (the "Second Renewal Date" or October 15, 2030), the Term of this Agreement shall automatically be extended for one additional five year period, commencing on the day after the Second Expiration Date and ending on the fifth anniversary of the Second Expiration Date (the "Third Expiration Date" or April 15, 2036).

(c) Third Automatic Extension. Subject to subsection 3.2(d) hereof, on the date which is eighteen months prior to the Third Expiration Date (the "Third Renewal Date" or October 15, 2035), the Term of this Agreement shall automatically be extended for one additional five year period, commencing on the day after the

Third Expiration Date and ending on the fifth anniversary of the Third Expiration Date or April 15, 2041.

(d) Right of Parties to Avoid Automatic Extension. Either party shall have the right at any time to avoid the automatic extension provisions of subsections 3.2(a), 3.2(b) or 3.2 (c) hereof. In order to exercise such right, the Authority or the Contractor (as the case may be) shall provide written notice thereof to the other party prior to the First Renewal Date, the Second Renewal Date or the Third Renewal Date, as applicable. Upon such notice, there shall be no further extension of this Agreement pursuant to subsections 3.2(a), 3.2(b) or 3.2(c) hereof, and the Term of this Agreement shall expire on the then applicable Expiration Date.

ARTICLE 4
CAPITAL IMPROVEMENTS

Section 4.1 Capital Improvements.

(a) Capital Improvements at Authority Election. The Authority may direct the Contractor to make Capital Improvements at any time and for any reason whatsoever, whether and however any such directive revises this Agreement or affects the VVMRF Facility; provided, however, to the extent such Capital Improvement impairs the ability of the Contractor to meet the Performance Standards or comply with its other obligations hereunder, appropriate adjustments to this Agreement shall be made to account for any such impairment. This Section shall not be construed to limit the ability of the Authority to utilize contractors other than the Contractor to undertake Capital Improvements.

(b) Capital Improvements at Contractor Election. The Contractor shall give the Authority written notice, and reasonable opportunity to review and comment upon, any Capital Improvement proposed to be made at the Contractor's election. Any Capital Improvement proposed to be made at the election of the Contractor under this Section 4.1, whether for experimental purposes or otherwise, shall be subject to the Authority's prior written approval, which approval may be withheld in the Authority's sole discretion. All such Capital Improvements shall be made at the Contractor's sole cost and expense, and the Contractor shall not be entitled to any adjustment in the Monthly Service Fee or other compensation or schedule or risk adjustment from the Authority as a result thereof.

(c) Capital Improvements Due to Contractor Fault. If the Facility is damaged or destroyed due to Contractor Fault, the Contractor shall promptly proceed

to make or cause to be made all Capital Improvements reasonably necessary to permit the Contractor to perform its obligations under this Agreement in a manner that is consistent with the Technical Specifications. The Contractor shall give the Authority and the Consulting Engineer written notice of, and a period of not less than 30 days to review and comment upon, any such proposed Capital Improvement. All such Capital Improvements shall be made at the Contractor's sole cost and expense, and the Contractor shall not be entitled to any adjustment in the Monthly Service Fee or other compensation from the Authority as a result thereof.

(d) Capital Improvements Due to Mutual Agreement. Both parties may agree to the necessity for Capital Improvements, and agree to an adjustment in the Monthly Service Fee to compensate Contract for the cost of such Capital Improvements to the extent financed by the Contractor pursuant to Section 4.4.

(e) "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.

Section 4.2 Capital Improvements Due to Uncontrollable Circumstances

In order to implement any Capital Improvement or Change Order which is required as the result of the occurrence of an Uncontrollable Circumstance, the Contractor shall give the Authority prompt written notice thereof, which notice shall include (1) a description of the Capital Improvement or Change Order and an explanation of why the Capital Improvement or Change Order is required by an Uncontrollable Circumstance, (2) an estimate of the amount of all Capital Improvement Costs and changes to the Monthly Service Fee, if any, associated therewith and preliminary Cost Substantiation therefor, (3) a projected completion schedule, (4) a proposed drawdown schedule, (5) the anticipated adjustment to the Monthly Service Fee, (6) the projected time when such adjustment shall first take effect and (7) any changes to any guarantees of the Contractor required as a result thereof. The Contractor shall update such notice from time to time to reflect any modification in the computation of the Monthly Service Fee or any other material change in the information included in any previous notice, and shall provide the Authority with a description of such Capital Improvements, Capital Improvement

Costs and Cost Substantiation on a definitive basis as soon as reasonably possible. The Contractor shall consult with the Authority concerning possible remedies to any Uncontrollable Circumstance or problems caused by Authority Fault, and the Contractor and the Authority shall cooperate in order to minimize any delay and to restore the Facility to the performance levels originally contemplated hereunder. At the request of the Authority, the Contractor shall use Reasonable Business Efforts to finance the cost of any such Capital Improvements pursuant to Section 4.4. The notices delivered by the Contractor to the Authority pursuant to this subsection 4.2 shall be used to determine if the Authority shall have the right to terminate this Agreement pursuant to subsection 11.4 hereof.

Section 4.3 Implementation of Capital Improvements

(a) Implementation of Capital Improvements or Change Orders. On the basis of the information and proposals as furnished by the Contractor, the Authority shall direct, and the Contractor shall undertake and complete, the construction and installation of the Capital Improvement or Change Order in accordance with this Section. The parties shall promptly proceed to negotiate in good faith to reach agreement on the price to be paid the Contractor for the Capital Improvements or Change Orders pursuant to Section 4.1(a), 4.1(d) or Section 4.2, and on the effect of the Capital Improvements or Change Orders on any other obligations of the Contractor under this Agreement. The Contractor acknowledges that it shall not be entitled to seek nor shall it receive a price for the Capital Improvements or Change Orders which is in excess of the fair market price for such Capital Improvements or Change Orders, whether such work is to be performed solely by the Contractor or by a subcontractor under the Contractor's superintendence. The Contractor shall not be obligated to proceed with the Capital Improvements or Change Orders until the Parties agree on (i) the price to be paid therefor; and (ii) any adjustments to the Performance Standards or its other obligations hereunder which are necessitated by the Capital Improvements or Change Orders. Payments for the Capital Improvements or Change Orders shall be made in accordance with a drawdown schedule that the Contractor shall include as part of its proposal for the Capital Improvements or Change Orders. In order to be entitled to such payments, the Contractor shall submit all information required in the drawdown schedule. No such work shall impair the ability of the Contractor to meet the Performance Standards, comply with any other term or condition of this Agreement, affect any right of the Contractor or impose any additional liability or obligation on the Contractor under this Agreement; but the Contractor shall have no right of objection with respect to such work if the Authority affords the Contractor price, schedule and any other relief hereunder agreed to by the parties to be necessary to avoid any such impairment.

(b) Authority's Option to Undertake Capital Improvements. In the event the Contractor and the Authority are unable to agree on a price and any adjustments to this Agreement which are occasioned by a request by the Authority for a Capital Improvement within a reasonable period of time after conducting good faith negotiations with respect thereto pursuant to subsection 4.3(a) hereof, or the Contractor fails to proceed with any Authority-directed Capital Improvement pursuant to subsection 4.3(a) hereof, the Authority shall have the right itself to undertake and complete the Capital Improvement requested. Authority employees or Authority subcontractors may perform such work. In the event the Authority elects to proceed under this subsection, it shall provide notice of its election to the Contractor together with copies of the specifications for the work. The Contractor shall have the right to comment but not approval regarding such specifications. No such work shall impair the ability of the Contractor to meet the Performance Standards, comply with any other term or condition of this Agreement, affect any right of the Authority or impose any additional liability or obligation on the Contractor under this Agreement; but the Contractor shall have no right of objection with respect to such work if the Authority affords the Contractor price, schedule and any other relief hereunder which is necessary to avoid any such impairment.

(c) Insurance and Other Third Party Payments. To the extent that any Capital Improvement Costs or Change Orders that are incurred pursuant to this Article can be recovered by the Contractor from any insurer providing insurance required to be maintained by the Contractor pursuant to this Agreement, or from another third party, the Contractor shall exercise with due diligence such rights as it may have to effect such recovery. The Contractor shall give prompt written notice to the Authority of the receipt of any such recovery, which shall be applied as appropriate to the restoration or reconstruction of the Facility. The Contractor shall provide the Authority with copies of all documentation, and shall afford the Authority a reasonable opportunity to participate in and, if the Authority so determines, to direct all conferences, negotiations and litigation, regarding insurance claims which materially affect the Authority's interest under this Agreement. All applicable insurance recoveries shall be applied to reducing the cost of restoration or reconstruction prior to the calculation of the amount of any cost to be paid by the Authority for such Capital Improvement.

Section 4.4 Contractor Financing of Certain Capital Improvements

(a) Request by Authority. If requested by the Authority, the Contractor may use Reasonable Business Efforts to finance the costs of any Capital Improvements for which the Authority is financially responsible in accordance with Section 4.1(a), 4.1(d) or 4.2. If the event that the Authority requests the Contractor

to provide financing in accordance with this Section, and the Contractor agrees to do so, the Contractor shall provide the Authority with a written proposal specifying the terms and conditions of such financing within 30 days of such request. The Authority may accept or reject such proposal, or seek to negotiate modifications of such proposal with the Contractor.

(d) Terms. If the Contractor, utilizing Reasonable Business Efforts, is able to provide financing for any Capital Improvements, and the Authority accepts the Contractor's proposal with respect thereto, the principal amount of any such financing shall bear interest and be subject to the maturity and terms specified in such proposal. The Authority may prepay such financing at any time without penalty.

(e) If the Authority requests the Contractor to provide long-term financing for the costs of any Capital Improvements for which the Authority is financially responsible in accordance with Section 4.1(a), or 4.2 and Contractor agrees to do so, the Contractor shall use Reasonable Business Efforts to finance such costs and shall provide the Authority with a written proposal specifying the terms and conditions of such financing within 30 days of such request. The Authority may accept or reject such proposal, or seek to negotiate modifications of such proposal with the Contractor.

Section 4.5 Major Expansions to Facility Capacity

(a) Potential for Expansion and/or Modifications. The parties acknowledge that the Authority may wish to expand and/or modify the capacity of the Facility. These expansions/modifications may include (but not be limited to) the following: the addition of shifts or operating staff; increases in the capacity of the Facility to accept and process Acceptable Recyclable Materials; modifications in the types or amount of materials processed at the Facility; and the addition of equipment to accept and/or process and/or transfer other types of materials such as mixed municipal waste, compost material, construction and demolition material, or yard or wood waste.

(b) Specific Provisions Relating to Expansion or Modifications. Any expansions or modifications requested by the Authority shall constitute Capital Improvements at the request of the Authority in accordance with this Article 4; provided, however, if the Contractor and the Authority cannot agree within 60 days on the appropriate cost for undertaking the Capital Improvement, the impact of the Capital Improvement on the Performance Guarantees or the Monthly Service Fee,

or other related matters, the Authority shall have the right (in addition to the right to utilize a different contractor to undertake the Capital Improvement in accordance with Section 4.2(c)) to terminate this Agreement without penalty. If the Authority elects to exercise its right to terminate the Agreement pursuant to this Section, it shall provide the Contractor with written notice thereof. Any such termination shall become effective one year after delivery of such notice. In the event that the Contractor has entered into any leases with respect to equipment to be utilized by the Contractor in connection with the Facility, or has provided financing in accordance with Section 4.1, in the event of termination pursuant to this Section, the Authority shall (i) either assume any such leases or shall reimburse the Contractor for any penalties which are required to be paid by the Contractor as a result of termination of such leases; provided, however, that the Authority's obligation to assume such lease or reimburse the Contractor for early termination payments shall be limited to the period of time from the date of termination to the then applicable expiration date of this Agreement as determined in accordance with Section 3.2 hereof; and (ii) pay the outstanding amount of any financing pursuant to Section 4.1.

ARTICLE 5
FACILITY OPERATION

Section 5.1 Continuing Compliance with Technical Specifications and Applicable Law.

(a) The Contractor shall during the Term of the Agreement satisfy all requirements of this Agreement and Applicable Law unless those requirements cannot be met or complied with as a result of Authority Fault or Uncontrollable Circumstances. The Contractor's guaranty under this Section is an absolute and unconditional obligation of the Contractor throughout the Term of the Agreement.

(b) Without limiting the generality of the foregoing Section 5.1(a), the Contractor shall specifically comply with all requirements of this Agreement, the Technical Specifications and Applicable Law related to:

(i) Odor control;
(ii) Noise control; and
(iii) Product quality.

Section 5.2 Processing of Acceptable Recyclable Materials.

(a) Throughout the Term of this Agreement, but subject to the provisions of this Article, the Contractor shall accept and Process all Acceptable Recyclable Materials delivered by Designated Haulers to the Facility in accordance with this

Article 5. Nothing in this Section shall prohibit the Authority from increasing the tonnage of Acceptable Recyclable Materials delivered and Processed at the Facility provided Facility capacity is available for such additional tonnage.

(b) Subject to the right of the Contractor to reject materials under Section 5.2(d) and Unacceptable Waste under Section 5.5, Contractor shall accept all Acceptable Recyclable Materials delivered to the Facility during Delivery Hours. In the event the Contractor's Processing capacity is insufficient to Process all Acceptable Recyclable Materials delivered, Contractor shall notify and coordinate with any Designated Hauler to limit the delivery of Acceptable Recyclable Materials to the Facility.

(c) Contractor shall refuse to accept delivery of all Unacceptable Waste.

(d) Contractor may refuse to Process any Acceptable Recyclable Materials delivered or sought to be delivered to the Facility (i) to the extent that the Facility cannot Process the Acceptable Recyclable Materials due to an Uncontrollable Circumstance (ii) to the extent that deliveries of Acceptable Recyclable Materials exceed the Facility's design capacity.

(e) In the event that Acceptable Recyclable Materials are not Processed for the reasons set forth in Section 5.2(d), at the direction of the Authority the Contractor shall transport those materials to any Processing facility or other facility designated by the Authority. The cost of transporting, processing or disposing of materials rejected by the Contractor in accordance with this Section shall be reimbursed by the Authority (subject to Cost Substantiation). In the event that the Contractor rejects Acceptable Recyclable Materials pursuant to this clause for any three consecutive months, the Contractor and the Authority shall meet as soon as practicable thereafter to determine if as Capital Improvement or other operational adjustment pursuant to Article 6 is required in order to accommodate the processing of such materials.

(f) The Contractor shall conduct a regular random testing program of the Residue to determine the amount of Acceptable Recyclable Materials contained in the Residue. Such program shall be acceptable to the JPA. At a minimum, the testing program shall alert the JPA to loads exceeding 15% of Acceptable Recyclable Materials and require progressive tests to demonstrate that the 15% threshold is not exceeded. The testing program shall be conducted in accordance with standard industry practices relating to the measurement of recyclable materials in residue, as specified in Section 5.2(f). The amount of Acceptable Recyclable Materials in the Residue which, in any month, is in excess of 15% of the Acceptable Recyclable Materials actually recovered by the Contractor in such month shall constitute

"Excess Residue." Contractor also will conduct waste characterizations as needed to assist in planning and designing Facility improvements and expansion.

(g) At least 30 days prior to any testing pursuant to Section 5.2(e), the Contractor shall present to the Authority a proposed testing protocol. Within 15 days of receipt of such proposed protocol, the Authority shall either accept or reject such protocol. In the event that the Authority rejects the proposed protocol, the parties shall meet and attempt to mutually agree on an acceptable protocol. In the event that the parties cannot agree on a protocol, the parties shall engage an Independent Engineer in accordance with Section 10.3 to develop the protocol. The costs of retaining the Independent Engineer shall be shared equally by the parties.

(h) Additional Protocol. The Parties will develop reporting protocols to identify weight, origin, source, material type, destination of deliveries and destination of outgoing loads. Such records shall be audited to determine the division of payments and charges between the VVMRF and Burrtec MRF/between the parties.

(i) The Parties shall work together to determine a method to monitor the mixed-waste materials received at the Burrtec MRF from the Participating Municipalities and to determine the concentration and source of intended source-separated materials.

Section 5.3 Uncontrollable Circumstances.

(a) The obligations of the Authority and the Contractor under this Agreement (other than payment obligations) are subject to Uncontrollable Circumstances. Neither party will be in default of this Agreement for failure to perform an obligation (other than payment obligations) if such failure was due to the occurrence of an Uncontrollable Circumstance.

(b) As soon as possible after the occurrence of an Uncontrollable Circumstance, the Contractor shall notify the Authority of the Uncontrollable Circumstance. If the occurrence of the Uncontrollable Circumstance damages, destroys or otherwise incapacitates the Facility, the Contractor shall, at the earliest practicable time, activate the plan prepared for correcting repairing or reconstructing the affected Facility. If the Uncontrollable Circumstance or the damage to the Facility is not provided for in that plan, the Contractor shall submit to the Authority as soon as practicable a plan for correcting, repairing or reconstructing the affected Facility, including without limitation the necessity for any Capital Improvement in accordance with Section 4.2.

(c) If, as a result of the occurrence of an Uncontrollable circumstance, the Contractor cannot provide services under this Agreement through the Facility, the Contractor shall make available to the Authority alternate facilities. The Contractor shall be entitled to reimbursement by the Authority of any reasonable increases in costs due to the occurrence of the Uncontrollable circumstance (subject to Cost Substantiation) resulting from the use of such alternate facility.

Section 5.4 Designated Haulers.

(a) The Authority may provide the Contractor with a list of the Member Cities' Designated Haulers. The Authority may update or otherwise revise the list at any time in its discretion.

(b) The Contractor shall not allow any person other than Designated Haulers to utilize the VVMRF Facility except with the prior written consent of the Authority, which consent may be refused by the Authority in its sole discretion.

Section 5.5 Right to Refuse Waste.

The Contractor shall refuse to accept Unacceptable Waste at the Facility and may refuse to accept any Acceptable Recyclable Materials that are not delivered during the Delivery Hours.

Section 5.6 Disposal of Unacceptable Waste; Special Procedures for Hazardous Waste.

(a) Contractor Response to Unacceptable Waste Deliveries. The Contractor shall take immediate action to minimize any environmental damage that may be caused by the delivery of Unacceptable Waste to the Facility and, subject to the provisions for Unacceptable Waste in Section 5.6(d), handle, transport and dispose of that Unacceptable Waste in accordance with all Applicable Laws and the requirements of this Section. Contractor shall in accordance with this Section be reimbursed for its Direct Costs, subject to Cost Substantiation, for handling and disposing of Unacceptable Waste.

(b) Contractor Disposal of Unacceptable Waste. The Contractor shall undertake all procedures required under the Solid Waste Facilities Permit to prevent deliveries to the Facility of Unacceptable Waste. The Contractor shall take all measures necessary to remove the Hazardous Waste from the Facility and dispose of the Hazardous Waste in a manner consistent with the Solid Waste Facilities Permit and Applicable Law. In the event the Contractor does not in accordance with Section 5.5 reject or refuse to accept any Hazardous Waste delivered to the Facility,

Contractor shall pay all costs of any investigation, clean-up, disposal and remediation of the Facility and any other Facility or any other property, as necessary, and seek reimbursement from the Authority in accordance with Section 5.6(d). Nothing in this Agreement shall create any liability of the Authority or the Contractor to any third party for the failure to detect Hazardous Waste.

(c) Specific Procedures Upon Discovery of Hazardous Waste. If the Contractor discovers Hazardous at the Facility the Contractor shall:

(i) Notify the Authority of the discovery of the Hazardous Waste within three hours of that discovery, unless that discovery occurs after 4 p.m. in which event notification shall be given by 9 a.m. of the next day the Authority is open for business;

(ii) Gather, preserve, maintain and make available to the Authority any photographs of the Hazardous Waste that might establish that the waste is Hazardous Waste, samples of Acceptable Recyclable Materials from the delivery that may demonstrate the origin of the Hazardous Waste, laboratory results (if any), any statements or documentation provided by federal, state, or local authorities and any other material the Authority reasonably believes is relevant.

(iii) Dispose of the Hazardous Waste and seek reimbursement from the Authority by means of an increase in the Monthly Service Fee for the Direct Costs of that disposal, subject to Cost Substantiation, in accordance with Section 5.6(d), below.

(f) Authority Reimbursement of Certain Contractor Costs. If Unacceptable Waste is discovered at the Facility, the Authority shall pay or reimburse the Contractor for, subject to the limitations and conditions of this Section, the Direct Costs of the inspection, testing, identification, handling and disposal of the Unacceptable Waste, subject to Cost Substantiation. Payment or reimbursement by the Authority will be made only if the Contractor:

(g) Complies with the requirements of this Section;

(h) Assists the Authority to the extent possible in ascertaining the Person previously owning or responsible for the delivery of the Unacceptable Waste and pursues recovery of its Direct Cost from such Person; and

(i) Documents its Direct Costs, the reasonableness of those costs and that the costs represent the least costly method of inspecting, testing, identifying,

handling and/or disposing of the Unacceptable Waste in compliance with Applicable Law.

Section. 5.7 Disposal of Residue.

The Contractor shall transport Residues generated under this Agreement to a disposal site or transfer station designated by the Authority, which designation shall comply with terms and conditions of the County Waste Disposal Agreements when those apply. The Contractor shall pay any fees or charges payable to the operator of the designated disposal facility; provided, however that the Contractor shall be entitled to reimbursement for any such fees and charges for Residue disposal (other than Excess Residue as determined in accordance with Section 5.2(e)) through the Allowable Residue Disposal Fee component of the Monthly Service Fee. Contractor will implement a system of origin reporting for accurate disposal allocation as required by the State of California, and as needed to allocate disposal charges to participating haulers.

Section 5.8 Repairs and Maintenance.

(a) Ordinary Maintenance. The Contractor, at its own expense, shall maintain the Facility in good condition at all times and shall undertake all ordinary maintenance with respect to the Facility. For purposes of this Section 5.8 "ordinary maintenance" is defined as repair that does not rise to the level of Major Maintenance. Ordinary Maintenance is not subject to Authority's reimbursement of Contractor. The Contractor shall maintain all manufacturer's warranties and required insurance in effect at all times.

(b) Major Facility Maintenance. Major Maintenance means any repair, replacement, improvement, alteration, or addition to the VVMRF or any part thereof by the Contractor resulting in the useful life extension of a vehicle, fixed equipment or yellow iron for two or more years, where the cost $5000 or more for trucks and $7500 for fixed equipment and yellow iron. The Contractor shall undertake all of the items of Major Maintenance, repair and replacement agreed upon by the Parties. The Contractor shall be entitled to reimbursement for such Major Maintenance when approved by the Authority, paid by Contractor and set out on the appropriate invoice, or as provided in Section 5.8(c).

(c) Major Facility Maintenance Fund. The Authority may establish and maintain a "Major Facility Maintenance Fund", which shall be used to reimburse the Contractor for items of maintenance, repair and replacement contained on Exhibit 4 as it now exists or may be amended from time to time. The Contractor and the

Authority shall review Exhibit 4 annually, to determine if the amount specified for that year is appropriate, given the then current condition of the Facility, operational considerations, and actual maintenance, repairs and replacements that have been required up to the date of such review. After undertaking such review, upon mutual agreement of the parties, the amounts identified in Exhibit 4 shall be adjusted. Alternatively, Authority and Contractor may agree to treat Major Facility Maintenance as Capital Improvements in accordance with the provisions of Sections 4.3 and 4.4.

Section 5.9 Operations Staff.

The Contractor shall, at its own expense, train the plant manager and other necessary operating staff of the Facility. The Contractor shall inform the Authority of the identity of the person or persons serving from time to time as plant manager, and of the telephone numbers or other means by which such person(s) may be contacted at all times whether or not during Delivery Hours.

Section 5.10Confidentiality.

The Authority recognizes and acknowledges the confidential and proprietary nature of certain aspects of the Contractor's operation of the Facility. The Authority shall not disclose to others information designated by the Contractor as confidential business records unless the Authority, on advice of legal counsel, reasonably determines that the information concerned, or portions thereof, are subject to disclosure under applicable law. The Contractor recognizes and agrees that even if the Authority determines that information is properly withheld from public disclosure, a court may order the disclosure of that information; in such an event of disclosure the Authority shall have no liability to the Contractor for any loss resulting therefrom.

Section 5.11 Records; Monthly Reports.

(a) Contractor shall keep accurate records of all transactions connected with this Agreement including, but not limited to, all correspondence and invoices, transaction tickets or receipts issued at the Facility or any other facilities. The Contractor shall at all times maintain an accounting system that uses generally accepted accounting principles consistently applied for all services rendered and materials supplied, including additional and deleted work, in connection with this Agreement.

(b) Contractor shall provide to the Authority monthly a report for the preceding month summarizing routine and extraordinary activities during the prior

period and be in a form acceptable to the Authority and shall plan and schedule for all new or revised future activities. The monthly report shall reflect the individual amounts of the following items attributable to each Participating Municipality (where applicable). The monthly report shall include, but not be limited to:

(1) The tonnage of Acceptable Recyclable Materials accepted at the Facility, Processed at the Facility, Transported to the Authority designated disposal site or transfer facility, rejected at the Facility, and the amount of Recovered Material removed from the Acceptable Recyclable Materials delivered to the Facility;

(2) Allocation of tonnage received, recovered and disposed for each Designated Hauler delivering material;

(3) Costs and revenues attributed to each Designated Hauler delivering material;

(4) The invoice for the Monthly Service Fee for the previous month of operations under this Agreement;

(5) Summaries of the weigh scale records including weigh tickets, invoices and/or receipts for the month (the originals to be retained by Contractor);

(6) The condition of the Facility;

(7) Changes in the status and readiness of alternate facilities and emergency facilities;

(8) Any extraordinary occurrences affecting the Contractor's performance including but not limited to occurrences affecting the Facility;

(9) Documentation regarding Unacceptable Waste, if any, gathered, produced and/or retained as required in Section 5.6(d); and

(10) The tonnage of and identification by type of material of Recovered Materials removed from the Acceptable Recyclable Materials delivered to the Facility, the amount of each material sold or marketed that month a statement of the amounts of gross revenues and net revenues (subject to Cost Substantiation of the Direct costs of transportation to markets) obtained from the sale of each Recovered Material; records of any attempted sale of Recovered Materials which has been rejected by the materials buyer or market intermediary as a result of that attempted sale's failure to meet general market

or specific requirements contained in the Technical Specifications; any descriptions of new contracts or amendments of existing contracts for the sale of Recovered Materials.

(c) In addition to the monthly report required under Section 5.11(b), Contractor shall provide to the Authority within thirty days of the end of any year of operations under the Agreement an annual report summarizing and consolidating the information contained in the monthly reports provided for the preceding year.

Section 5.12 Accidents; Complaints.

(a) The Contractor shall be responsible for all injuries, accidents and other mishaps associated with its operations. The Contractor shall report to the Authority the complete details (including witness statements) of any accidents resulting from the performance of this Agreement that are required by Applicable Law to be reported to a governmental unit pursuant to laws concerning occupational health and safety. The Contractor shall also report to the Authority any incidents of property damage with respect to which (i) an insurance claim is filed by the Contractor or (ii) a third party makes a claim against the Contractor.

(b) The Contractor shall respond in a reasonable manner to complaints, charges and allegations related to Contractor's performance under the Agreement within thirty Days of receipt of that complaint, charge or allegation, including but not limited to those complaints made or actions brought by citizens, citizen groups and public agencies. The Contractor shall report to the Authority the details of all significant complaints received including but not be limited to the name and address of the complainant (if available), the substance of the complaint including the activity or service at issue, the action, if and, the Contractor has taken to investigate or remedy the problem or an explanation of why no action has been taken, in the monthly report required under Section 5.11(b).

Section 5.13 Scheduling; Management; Quality of Performance.

(a) The Contractor shall coordinate, schedule in an orderly manner and manage all work done by Contractor's officers, employees, subcontractors and agents under this Agreement.

(b) The Contractor and subcontractors shall perform every act or service under this Agreement in a skillful and competent manner in accordance with the customs and standards of the solid waste processing, transfer, transportation and disposal industries. The Contractor shall be responsible to the Authority for any errors, deficiencies or failures to perform under this Agreement. All workers and

subcontractors shall be skilled in their trades. All operators shall be licensed or otherwise qualified as required by Applicable Law. The Contractor shall furnish evidence of the skill and licenses of its officers, employees, subcontractors and agents on the request of the Authority. The Contractor shall at all times enforce strict discipline and good order among its employees and all subcontractors.

Section 5.14 Required Permits and Royalties, Fees, Insurance Payment.

(a) Contractor Responsible for Permits. The Contractor shall obtain and maintain all permits, orders, licenses and approvals of any governmental agency which under Applicable law are required to be obtained in connection with the operation of the Facility and the sale or other distribution of Recovered Materials, or any other permits necessary to fulfill its obligations under this Agreement. For purposes of this Section, the term "permits" means any temporary and/or permanent permits, approvals, licenses, certificates, inspections, fees, surcharges and other approvals required for the performance of the Contractor's obligations under the Agreement. The Contractor shall pay all costs, royalties, fees, license payments, insurance and similar expenses required with respect to the Contractor's performance under this Agreement. To the extent permitted by Applicable Law, the Authority shall provide the Contractor with any information or documents in its control that the Contractor reasonably requests in order to obtain or maintain all required permits. Contractor recognizes that departments of the City of Victorville that promulgate and enforce applicable legal requirements concerning construction, land use, health and safety, as well as the Victorville City Council, must exercise independent judgment with respect to matters for which they are responsible in those areas of government.

(b) Schedule for Permitting. Upon the execution of this Agreement, the Contractor shall provide to the Authority a list of all permits required for performance of its obligations under this Agreement designating the issuing agency and the dates of issuance and expiration of those permits, a copy of all current permits and the Contractor's schedule for obtaining or renewing all permits required during the Term of the Agreement. The Contractor shall be liable for all fines or civil penalties that may be imposed by any regulatory agency for Contractor caused violations of permits or any Applicable Laws; the Authority shall not be liable for and shall not reimburse Contractor for payment of those fines or civil penalties. The Contractor shall defend all suits and hold the Authority and the Participating Municipalities harmless from any loss resulting from the payment or nonpayment of all royalties, fees, licenses and permits.

Section 5.15 Coordination with Expanded Facility.

The provisions of this Article shall apply to coordination with the Expanded Facility. As additional consideration for such Expanded Facility, the Parties will continue the source-separated recycling program and the VVMRF will continue to process material derived from recycling programs developed between the Participating Municipality and waste hauler.

5.15.1 At all times, the Mixed Waste Processing Operation will work in concert with, and shall not compete with, the existing VVMRF receipt of recycling material.

5.15.2 Contractor shall insure that deliveries and recovery at the VVMRF will be maintained and expanded with improved markets, enhanced technology and community growth.

5.15.3 The Expanded Facility/Mixed Waste Processing Operation emphasis is to recover organic materials, inert materials, engineered fuel residue and Mixed Waste recycled material not feasibly included in the sourced-separated commingled residential and commercial recycling programs as those exist on the date of execution of this Amended and Restated Agreement or as they may be expanded from time to time as set out in this Amended and Restated Agreement.

5.15.4 Contractor and Participating Municipalities shall determine disposition of Commercial Select material, including processing at either the VVMRF or Expanded Facility

Section 5.16 Expansion of Source-Separated Recycling Program.

Contractor and Authority agree that Participating Municipalities and Contractor shall provide programs and outreach to assure that recyclable material continues to be delivered to the VVRMF after the expansion with the intention that such deliveries increase the amount of recyclable material and reduce the amount of Residue delivered to the VVMRF.

Section 5.17 Audit and Upgrade of Current Facilities.

Intentionally omitted

Section 5.18 Relationship to Expanded Facility.

Mixed Waste Processing Operation may process VVMRF materials only if the VVMRF is not operational, upon the same financial terms and conditions as for the VVRMF and at no additional cost to the Authority.

5.18.1 The VVMRF may process Mixed Waste Processing Operation recyclables after separation from non-recyclables (for example, optically sorted PET and aluminum).

5.18.2 Materials recovered from the Mixed Waste Processing Operation will be priced and sold separately from VVMRF recovered materials as follows: (i) As long as pricing for the VVMRF materials is not reduced, materials may be aggregated for handling and shipping; and (ii) bales from each facility may be shipped together, with the source clearly marked.

Section 5.19 Capacity.

The Participating Municipalities and JPA Member Cities will have the first right to capacity for both the VVMRF and Expanded Facility as follows: The North County Project Committee Cities have guaranteed capacity for all materials; the JPA Members shall have the next call on capacity.

Section 5.20 Contractor Indemnification of Authority.

In addition to and as a complement to any other indemnification provisions of this Agreement, the Ground Lease or the Processing Agreement, Contractor states that it has control and responsibility for the design, construction, operation and maintenance of the Facility as well as full control over its separate Expanded Facility. Accordingly, Contractor shall bear the risk as between the Authority and Contractor for the possibility that despite Contractor's efforts, materials that constitute Unacceptable Waste will in fact enter the Facility and become part of the Residue or otherwise impact Contractor's property. Accordingly, Contractor shall indemnify and hold harmless the Authority from any claim or cause of action arising out of an occurrence in which any Unacceptable Waste has entered the Facility or is discovered in the Residue. In addition, Contractor shall indemnify and hold the Authority harmless from any claim of whatever nature arising from any release of hazardous materials into the environment if and when those materials are discovered to have been released into the environment at the Facility or any other facilities by

contaminating soil or groundwater or the air as a result of Contractor's operations under this Agreement.

Section 5.21 Mitigation Payment to City of Victorville.

Contractor shall credit to the City of Victorville the amount of $.50/ton for each ton of waste or Materials of any sort delivered to the Expanded Facility. Such credit is intended to continue the mitigation payment provided for hosting the VVMRF and Expanded Facility which otherwise would be lost due to diversion of Materials from a county landfill.

ARTICLE 6
CONTRACTOR COMPENSATION

Section 6.1 Collection of Tip Fee by Contractor.

(a) Contractor Collection of Tip Fees. At the request of the Authority, the Contractor shall charge, on behalf of and as agent for the Authority, all or a specified portion of the Designated Haulers a Tip Fee for each ton, or other appropriate unit, of Acceptable Recyclable Materials, as appropriate, that is delivered to the Contractor at the Facility. The Tip Fee shall be determined and adjusted by the Authority in its sole discretion. In the event the Authority elects to adjust the Tip Fee, the Contractor shall implement the new Tip Fee as soon as the Contractor receives notice from the Authority to do so. The Contractor acknowledges that any Tip Fees collected by the Contractor constitute property of the Authority, and that such Tip Fees shall be held in trust by the Contractor until remitted to the Authority.

(b) Payment to Authority. The Contractor shall pay to the Authority all Tip Fees collected from the Designated Haulers at the Facility, and shall pay such collected Tip Fees to the Authority on a monthly basis. Upon payment of such Tip Fees to the Authority, the Contractor shall simultaneously submit to the Authority evidence of all invoices and weigh tickets relating to deliveries of Acceptable Recyclable Materials with respect to which the Tip Fee was charged.

Section 6.2 Calculation of Monthly Service Fee Paid to Contractor

(a) Monthly Service Fee Constitutes Sole Compensation for Contractor Services Under Agreement. Commencing on the Contract Date, the Authority shall pay to the Contractor each month in accordance with the procedures set forth in this Article a Monthly Service Fee for the Contractor's performance of its obligations under this Agreement. The Monthly Service Fee shall compensate the Contractor for all costs incurred in performing its obligations under the Agreement including,

without limitation, Processing, Transportation for Residue and marketing of Recovered Materials, whether or not anticipated, including but not limited to the cost of all applicable taxes, governmental permits, labor expenses, equipment, materials, supplies, utility expenses, environmental protection, and any and all other costs associated with the services provided under this Agreement. As used in this Section, "governmental permits" means any temporary and/or permanent permits, approvals, licenses, certificates, inspection fees, surcharges and other approvals required by Applicable Law for the performance of the Contractor's obligations under this Agreement.

(b) Monthly Service Fee Formula. Refer to Exhibit 2, attached and incorporated as if fully set forth herein.

(c) Billing of the Monthly Service Fee. Contractor shall provide to the Authority the monthly report required under Section 5.11 and an invoice in a format acceptable to the Authority for payment of the Monthly Service Fee due the Contractor for its operations under the Agreement for the preceding month. The Contractor shall include with that invoice copies of all supporting Cost Substantiation requested by the Authority including, without limitation, weigh tickets issued at the Facility; Residue disposal invoices from any disposal site, transfer station or other facility; receipts, invoices, logs and records documenting the amount of Acceptable Recyclable Materials delivered to the Contractor at the Facility during the preceding month and the costs incurred by the Contractor. The Authority shall pay the Contractor the Monthly Service Fee in accordance with Section 6.2(d).

(d) Authority Payment of the Monthly Service Fee. The Authority shall pay the Monthly Service Fee, as adjusted for any additional sums due Contractor or refunds due the Authority under this Article, by check, draft or warrant within thirty Days of receipt by the Authority of the invoice described in the Section 6.2(c). However, if the Authority objects to any amount requested by the Contractor under this Section, the Authority shall pay to Contractor only that portion of the requested amount that is undisputed. The disputed amount shall be retained by the Authority and distributed, if at all, to the Contractor in accordance with the resolution of the dispute in accordance with Article 10.

Section 6.3 Increases to the Monthly Service Fee.

(a) Increases. On the written request of the Contractor the Authority shall increase the Monthly Service Fee in an amount equal to the Contractor's Direct Costs (subject to Cost Substantiation) of the following:

(i) any increases in the Contractor's costs which are attributable to the occurrence of any Uncontrollable Circumstance including, without limitation, complying with any Change in Law,

(ii) the cost of obtaining any additional permits required by the Applicable Law to the extent such permits were not required as of the Contract Date.

(b) Cost Substantiation Required. The Monthly Service Fee increases authorized above are subject to Cost Substantiation. No Monthly Service Fee increase shall be allowed for any cost increases that are in any way attributable to conditions, structures, operations or activities at the Facility caused by the Contractor or its Subcontractors, employees, agents or servants or are otherwise within Contractor's control.

(c) Disputes Concerning Monthly Service Fee Increases. On the Authority's request, Contractor immediately shall provide the Authority with all documents, information or other evidence in the Contractor's possession or control that the Authority requests to determine whether there is a continuing need for the Monthly Service Fee increase. In the event the Authority determines that a Monthly Service Fee increase under this Section is no longer necessary, the Authority may cancel that Monthly Service Fee increase upon thirty Days notice to the Contractor. If the Contractor objects to that cancellation within that thirty-day period, the matter shall be resolved in accordance with Article 10. Until that resolution, the Monthly Service Fee shall not be reduced; however, the Contractor shall deposit the disputed portion of the Monthly Service Fee into an interest bearing account acceptable to the Authority until the matter is resolved and the amount on deposit is awarded or allocated to the Parties. The Contractor shall at all times keep the Authority informed as to whether any increase remains necessary.

Section 6.4 Decreases to the Monthly Service Fee

(a) Decreases Generally. Subject to the provisions of this Article, the Contractor shall reduce the Monthly Service Fee one hundred percent of the reduced Direct Costs of Contractor's performance under the Agreement if the reduced costs are attributable to a condition or event for which Contractor is entitled to reimbursement of increased costs under this Article.

(b) For Failure to Process. In the event the Contractor Processes less than 2,300 Tons of Acceptable Recyclable Materials in any month after the Commercial Operations Date

(i) due to the occurrence of an Uncontrollable Circumstance, the Monthly Service Fee shall be reduced to reflect any decreases in the Contractor's Direct Costs (subject to Cost Substantiation) which occurred as a result of the Uncontrollable Circumstance;

(ii) for any reason other than a Authority Fault or Uncontrollable Circumstance, the Monthly Service Fee shall be reduced by an amount equal to $110 (which amount shall be adjusted by application of the Escalation Index on July 1 of each year) times the Monthly Wrongfully Rejected Materials. "Monthly Wrongfully Rejected Materials" shall be the sum of the Daily Wrongfully Rejected Materials for that month. "Daily Wrongfully Rejected Materials" shall be calculated on a daily basis and shall be equal to the difference between (x) the lesser of (a) 120 tons or (b) the number of tons of Acceptable Recyclable Materials actually delivered to the Facility on any day and (y) the number of tons of Acceptable Recyclable Materials actually processed on such day. Notwithstanding the foregoing, the contractor shall not be obligated to pay the damages described in this clause (ii) with respect to any month if it has accepted at the Facility at least 2,310 tons of Acceptable Recyclable Materials in such month.

(c) Procedures for Determination. The Contractor shall at all times keep the Authority informed as to when any reduction is appropriate and when any reduction is no longer appropriate. The Authority shall serve the Contractor with notice and explanation of the Authority's request that the Monthly Service Fee be reduced. Within thirty Days of service of that notice, the Contractor shall respond in writing to the Authority. The written response shall state whether or not the Contractor believes that any reduction in the Monthly Service Fee is justified and shall itemize the reduction in cost of performing the Agreement. The Contractor shall fully document and otherwise support its response to the Authority's notice under this Section. In the event the Authority and Contractor are unable to agree on whether a reduced Monthly Service Fee is appropriate, the matter shall be resolved in accordance with Article 10. During that resolution the Monthly Service Fee shall not be reduced; however, the Contractor shall deposit the disputed portion of the Monthly Service Fee into an interest-bearing account acceptable to the Authority until the matter is resolved and the amount on deposit is awarded to or allocated to the parties.

(d) Cancellation of Decreases. Upon petition of the Contractor, the Authority may at any time cancel reductions made under this Section if the Authority

determines that the need for the reduction has expired or that a reduction was made in error.

Section 6.5 Other Monthly Service Fee Adjustments or Charges.

(a) Authority Right to Withhold Certain Amounts. The Authority may deduct from the Monthly Service Fee the amount necessary to pay any lien filed against the Facility or any other facilities required to perform Contractor's obligations under the Agreement including, without limitation any federal or state tax lien, creditors lien, mechanics or materialmen's lien, and the Authority may pay any such lien.

(b) Costs Resulting from Use of Alternate Facility. The Authority shall either increase or decrease the Monthly Service Fee to reflect Contractor's increased or decreased Direct Costs (subject to Cost Substantiation) of handling Acceptable Recyclable Materials at an alternate Facility in accordance with Section 5.3 of the Agreement.

(c) Cost of Insurance Obtained by Authority. The Authority shall reduce the Monthly Service Fee to reimburse the Authority for any insurance obtained by the Authority in accordance with Section 8.1(c) of this Agreement.

(d) Excess Transportation Costs; Unacceptable Waste Costs. Transporting Acceptable Recyclable Materials in excess of the Contractor's processing commitments in Section 5.2(a), transporting or otherwise handling and disposing of Unacceptable Waste in accordance with Sections 5.2(c) and 5.6(d).

(e) Recovered Materials Losses. If, in any month, the costs, which the Contractor incurs in the transportation and sale of Recovered Materials, exceeds the revenues received from the sale of Recovered Materials, the Contractor shall be entitled to reimbursement of any such loss through an adjustment of the Service Fee in an amount equal to such loss.

(f) Extraordinary Increases in Cost of Fuel. Any increases in the cost of the amount of fuel that is reasonably required by the Contractor in operating the Facility and transporting Residue in any Contract Year to the extent such increases are in excess of 25% of the increases that would result from the application of the Escalation Index to the generally prevailing price of fuel in the previous Contract Year.

(g) Extraordinary Increases in Cost of Required Operating Period Insurance. Any increases in the cost of obtaining and maintaining Required

Operating Period Insurance to the extent such increases are in excess of 25% of the increases that would result from the application of the Escalation Index to the cost of obtaining and maintaining Required Operating Period Insurance in the previous Contract Year.

(h) Adjustments by Mutual Agreement. Nothing in this Section 6.5 prohibits nor shall it be construed to prohibit the adjustment of the Monthly Service Fee or any other payment or fee at any time by mutual consent of the Parties provided that this Section 6.5(h) shall not be construed to create any right or obligation to adjust the Monthly Service Fee.

Section 6.6 Recovered Materials Revenues

Receipt and Segregation of Revenues. "Recovered Materials Revenues" means all monies and the value of all goods received, including in a barter or exchange, for the sale and delivery of Recovered Materials, less (i) an amount equal to the actual verified cost, if any, incurred by the Contractor in transporting the Recovered Materials to the purchasers thereof and (ii) the cost incurred by the Contractor in purchasing Recovered Materials in connection with any "buyback" operations at the Facility. The Contractor shall receive and promptly deposit in a specified account (the "Recovered Materials Revenue Fund") any revenues that it receives from the disposition of Recovered Materials.

(a) Payment of Marketing Costs from Fund. The Contractor shall have the right to pay any costs that it incurs in the transportation and marketing of Recovered Materials from the Recovered Materials Revenue Fund. It shall maintain detailed records relating to such costs and any withdrawals from the fund. Such records shall be kept in a manner so as to allow auditing by independent accountants. The Authority shall have the right to request such an accounting at any time.

(b) Monthly Disbursement to Authority. Contractor shall prepare and submit to the Authority a monthly report relating to the Recovered Materials Revenue Fund, which describes all deposits into and withdrawals from the Fund during such month. Together with the transmittal of such report, the Contractor shall also remit to the Authority 25% of all amounts remaining in the fund as of the end of such month, and may disburse to itself the remainder of the amounts in the fund as of the end of such month. The report prepared by the Contractor pursuant to this Section shall also contain the Contractor's estimate of the portion of the Recovered Materials Revenues attributable to each Participating Municipality, which shall be used by the Authority to calculate the payment due each Participating Municipality

with respect to Recovered Materials Revenues pursuant to the Authority Operating Agreement.

Section 6.7 Disputes.

All unresolved disputes concerning the calculation of or adjustment to the Monthly Service Fee shall be resolved in accordance with Article 10. However, any undisputed portion of the adjustment shall be made effective promptly; further adjustment shall be made effective on the resolution of the dispute under Article 10.

ARTICLE 7
RECOVERED MATERIALS SALES CONTRACTS

Section 7.1 Materials Sales and Reporting.

(a) Initial Marketing Activities. Prior to the Commercial Operations Date, the Contractor shall commence marketing activities to secure purchase commitments and contracts to sell and transport Recovered Materials to markets on a continuing basis, effective on the Commercial Operations Date. The Contractor acknowledges that the Monthly Service Fee compensates it for marketing Recovered Materials, and the Contractor shall use Reasonable Business Efforts to market Recovered Materials at the highest prices and lowest transportation costs available for such Recovered Materials.

(b) Contractor Payments for Failure to Market Materials. If (i) any Recovered Material fails to conform to marketing plan described in subsection (c), or (ii) the Contractor fails to demonstrate that there are no reasonably commercially available markets for such Recovered Material, the Contractor shall pay the Authority a Residue Disposal Fee Adjustment to compensate the Authority for the per ton disposal fee to dispose of such unmarketed Recovered Materials.

(c) Marketing Plan. The Contractor shall prepare and submit to the Authority annually a marketing plan that contains summary information on materials to be recovered and sold and a range of prices anticipated for each material. The Contractor shall prepare monthly marketing reports as provided in Section 5.11(b)(8). The Contractor shall provide the Authority with a copy of any purchase commitments, contracts or other documentation summarized in such monthly reports promptly upon the Authority's request therefore. The Authority may suggest changes in the marketing plans, including storage and transportation, which do not affect Facility or capital or operating costs.

(d) Unmarketed Recovered Materials. In the event that (i) the Contractor is producing one or more Recovered Materials that conform in all material respects with the specifications for Recovered Materials stipulated in the marketing plan described in Subsection (c), as applicable, and (ii) the Contractor demonstrates to the Authority reasonable satisfaction that no reasonable markets are available that will buy such Recovered Materials, taking into account the value of and cost of transportation for such Recovered Materials, then the Contractor and Authority shall proceed in accordance with subsections (e) and (f) such materials are "Unmarketed Recovered Materials".

(e) Procedures for Unmarketed Recovered Materials. The Contractor shall submit to the Authority documentation that demonstrates the existence of the conditions set forth in subsection (b) ("Documentation") and recommendations regarding which of the following options the Contractor proposes with respect to Unmarketed Recovered Materials: (i) expand the storage capacity of the Facility and, if necessary, institute a Capital Improvement, to stockpile Recovered Materials until such time as markets for such Recovered Materials become available; or (ii) modify the Facility, and, if necessary, institute a Capital Improvement, to produce Recovered Materials that comply with revised specifications for one or more Recovered Materials consistent with a revised marketing plan or amended Technical Specification, or (iii) pay a market to accept such Unmarketed Recovered Materials; or (iv) identify a licensed solid waste disposal facility which will accept and dispose of such Unmarketed Recovered Materials and the cost therefor; or (v) undertake another appropriate course of action consistent with the cost allocation hereunder and the prevailing conditions at the time.

(f) Authority Response to Contractor Determination. Within ten (10) days after receipt of the Documentation and recommendations set forth in subsection (e), the Authority shall notify the Contractor of the Authority's election to: (i) accept the Contractor's Documentation and recommendation; or (ii) accept the Contractor's Documentation and reject its recommendation in favor of another course of action identified in subsection (e); or (iii) accept the Contractor's option under subsection (e); or (iv) reject the Contractor's Documentation and invoke subsection (b).

(g) Capital Improvements to Increase Marketability. In the event the Authority agrees that the Contractor shall undertake a Capital Improvement pursuant to Paragraphs (e)(i) or (ii), the provisions of Section 4 shall apply.

ARTICLE 8
INSURANCE AND INDEMNIFICATION

Section 8.1 General.

(a) Operating Period. Beginning on the Contract Date and continuing throughout the Term of this Agreement, the Contractor shall obtain and maintain the Operating Period Required Insurance as provided in Exhibit 3.

(b) Authority Right to Provide Upon Contractor Failure. In the event the Contractor breaches' any provision of this Article, the Authority in its sole discretion may procure and maintain, at the Contractor's sole expense, insurance to the extent the Authority deems proper. The Contractor shall reimburse the Authority for the cost of that insurance within fifteen (15) Days of receiving written notice of the Authority to do so.

(c) Delivery of Policies; Certain Required Provisions. The Contractor shall deliver to the Authority copies of all policies and certificates of insurance for required insurance and any policy amendments and policy renewals. Each policy must provide for thirty (30) days' prior written notice of termination or cancellation or of any change in coverage or deductibles to be given by the insurer to the Authority.

Section 8.2 Indemnification.

(a) Indemnification by the Contractor. In addition to the provisions of Section 5.20, above, the Contractor agrees that it will protect, indemnify and hold harmless the Authority and its representatives, officers, employees and subcontractors (as applicable in the circumstances), (the "Authority Indemnified Parties") from and against (and pay the full amount of) all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits or actions and reasonable attorney's fees (collectively, "Loss-and-Expense"), and will defend the Authority Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property arising out of (1) the negligence of the Contractor or any of its officers, members, employees, agents, representatives or Subcontractors in connection with its obligations or rights under this Agreement, (2) the operation of the Facility by or under the direction of the Contractor during the Term of this Agreement, (3) the transportation, marketing and disposal of Recovered Materials and Residue, (4) any Contractor Fault, or (5) the performance or non-performance of the Contractor's obligations under this Agreement. The Contractor shall not, however, be required to reimburse or

indemnify any Authority Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (a) any Authority Fault, (b) the negligence or other wrongful conduct of any Authority Indemnified Party, or (c) any Uncontrollable Circumstance. An Authority Indemnified Party shall promptly notify the Contractor of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Contractor the opportunity to defend such claim, and shall not settle the claim without the approval of the Contractor. These indemnification provisions are for the protection of the Authority Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this subsection 8.2(a) shall survive termination of this Agreement.

(b) Indemnification by the Authority. To the extent permitted by law, the Authority agrees that it will protect, indemnify and hold harmless the Contractor and its Affiliates and their respective officers, directors, Subcontractors (as applicable in the circumstances) and employees (the "Contractor Indemnified Parties") from and against (and pay the full amount of) all Loss-and-Expense, and will defend the Contractor Indemnified Parties in any suit, including appeals, for personal injury to, or death of, any person, or loss or damage to property or arising out of (1) the negligence of the Authority or any of its officers, employees, agents, representatives, contractors or subcontractors in connection with its obligations or rights under this Agreement (2) Authority Fault, or (3) the performance or nonperformance of the Authority's obligations under this Agreement. The Authority shall not, however, be required to reimburse or indemnify any Contractor Indemnified Party for any Loss-and-Expense to the extent any such Loss-and-Expense is due to (a) any Contractor Fault, (b) the negligence or other wrongful conduct of any Contractor Indemnified Party, or (c) any Uncontrollable Circumstance. A Contractor Indemnified Party shall promptly notify the Authority of the assertion of any claim against it for which it is entitled to be indemnified hereunder, shall give the Authority the opportunity to defend such claim, and shall not settle the claim without the approval of the Authority. These indemnification provisions are for the protection of the Contractor Indemnified Parties only and shall not establish, of themselves, any liability to third parties. The provisions of this Section 8.2(b) shall survive termination of this Agreement.

(c) Defense of Patent Infringement Suits. Upon request by the Authority the Contractor shall defend any lawsuit or proceeding that is brought against the Authority insofar as such lawsuit or proceeding is based upon an allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with the Facility, including Facility technology, processes, machinery or equipment. The Contractor shall pay all

liabilities, damages, claims, demands, judgments, losses, costs and expenses awarded in any such lawsuit or proceeding it defends, in accordance with subsection 8.2(a). If as a result of any such lawsuit or proceeding it defends, the Facility, or any portion thereof, is held to constitute an infringement or use by the Authority is enjoined, then the Contractor shall, at its option, either (1) acquire the right of continued use under the infringed patent, license, proprietary right, trade secret or other similar interest on behalf of the Authority or (2) to the satisfaction of the Authority, modify or replace the infringing equipment with equipment that is equivalent in quality, performance, useful life and technical characteristics, which meets Performance Standards.

ARTICLE 9
CONTRACT ADMINISTRATION

Section 9.1 Books and Records; Reports.

(a) Contractor Obligation to Maintain. For the purpose of enabling the Authority to determine Contractor's compliance with the Agreement the Contractor shall maintain all books, records and accounts necessary to record all matters affecting the Monthly Service Fee or other amounts payable to the Authority under this Agreement, including but not limited to all materials, machinery, equipment, labor and other additional matters for which adjustments to the Monthly Service Fee are made pursuant to Article 6 or other provisions of this Agreement and shall maintain all records pertaining to the marketing, sale, distribution, storage and disposal of Recovered Materials and its Residue.

(b) Generally Accepted Accounting Principles. All books, records and accounts shall be maintained in accordance with generally accepted accounting principles consistently applied, shall accurately, fairly and in reasonable detail reflect all the Contractor's dealings and transactions under this Agreement and shall be sufficient to enable those dealings and transactions to be audited in accordance with generally accepted auditing standards.

(c) Authority Right of Inspection. For purposes of enabling the Authority to verify the computation of the Monthly Service Fee and other amounts payable to the Authority under this Agreement, the Authority, the Participating Municipalities and their respective agents shall have the right, from time to time upon twenty four hour notice to the Contractor, to examine, inspect, audit and copy all of Contractor's books, records and accounts that are related to the Facility. The Contractor shall fully cooperate with the Authority, the State of California and their respective agents, in

the conduct of any and all such examinations, inspections, audits and copying of any books, records and accounts by promptly:

(i) making the books, records and accounts available to the Authority and its agent or agents;

(ii) supplying the Authority and its agent or agents with any and all supporting documentation as they shall request, including without limitation any audits, auditor's notes and audit letters whether in the possession of the Contractor or any auditor or accountant retained by or on behalf of the Contractor; and

(iii) instructing and ensuring that all officers, agents (including without limitation any outside accountants or auditors retained by or on behalf of the Contractor) and employees of the Contractor are available to answer any questions concerning or to discuss any information contained or referred to in or omitted from those books, records and accounts.

(d) Time Period for Retention of Materials. All books, records and accounts shall be kept by the Contractor for at least ten years, except for drawings, plans and records relating to the Facility or the operations thereof, which Contractor shall keep for at least five years following the expiration of the Term (or any longer period required under Applicable Law).

Section 9.2 Authority and Consulting Engineer Access.

The Authority and its agents, licensees or invitees, the Consulting Engineer and representatives of governmental regulatory agencies may, upon proper identification, visit or inspect the Facility at any reasonable time during the Term of this Agreement and at any time within two years after the termination or expiration of the Agreement, after giving the Contractor reasonable advance notice. However, the Authority Authorized Representative and the Consulting Engineer may inspect the Facility during regular business hours without notice. Any such visits shall be conducted in a manner that does not cause unreasonable interference with the Contractor's operations. The Contractor shall have available "as built" plans for the Facility for inspection by the Authority and its Authorized Representative and its Consulting Engineer. The Contractor may require any person entering the Facility, whether pursuant to this Section 9.2, in connection with the Acceptance Tests or otherwise, to comply with its reasonable safety rules and regulations.

Section 9.3 Representatives and Notices.

(a) Contractor Authorized Representative. The Contractor's Authorized Representative shall be the Contractor's agent and shall represent the Contractor for all purposes of this Agreement. All written or oral directions, instructions or notices given by the Authority to the Contractor's Authorized Representative and related to the subject matter of the Agreement shall bind the Contractor as if delivered to the Contractor personally. The Contractor's Authorized Representative shall be in charge of the Project at all times and shall have authority to act on behalf of the Contractor; the Contractor's Authorize Representative's statements, representations, actions and commitments shall fully bind the Contractor.

(b) Authority Authorized Representative. Unless the Authority notifies the Contractor otherwise in writing, the Authority's Authorized Representative shall represent the Authority for all purposes of this Agreement. All written or oral directions, instructions or notices given by the Contractor to the Authority's Authorized Representative and related to the subject matter of the Agreement shall bind the Authority. The Authority's Authorized Representative shall be in charge of the project at all times and shall have authority to act on behalf of the Authority; the Authority's Authorized Representative's statements, representations, actions and commitments shall fully bind the Authority, subject to Section 13.5.

(c) Change in Authorized Representative. The Authority and the Contractor may change their respective Authorized Representatives on five days' written notice to the other Party.

(d) Notices to be Provided in Writing. Except as may otherwise be expressly provided under this Agreement, all approvals, requests, reports, notices, communications or other materials or information required or permitted to be made or given by a Party to the other Party hereunder shall be deemed to have been given or made only if the same is in writing and delivered, either personally or by means of the United States Postal Service (registered or certified mail, postage prepaid), to the Authority Authorized Representative or the Contractor Authorized Representative, as the case may be, at their respective addresses as set forth below. However, for any notice or other communication required or permitted to be given hereunder and which, under the applicable provisions of this Agreement, the Authorized Representative of the recipient thereof is required to give a receipt therefor, such notice or other communication shall only be deemed to have been duly given or made if hand delivered to the recipient's Authorized Representative.

(e) Addresses. All notices; requests and other communications to either party hereunder shall be in writing and shall be given to such party at the following address, or such other address as such party may hereafter specify for that purpose by written notice to the other party:

If to the Authority at:

Mojave Desert and Mountain Recycling Joint Powers Authority
P. O. Box 5001
Victorville, CA 92392-5001
Attn: John Davis

with a copy to:

John Davis
39905 Memory Lane
Oak Glen, CA 92399

If to the Contractor, at:

Burrtec Waste Industries
9890 Cherry Ave.
Fontana, CA 92335

With a copy to:

Marc E. Empey
SLOVAK BARON EMPEY MURPHY & PINKNEY LLP
1800 E. TAHQUITZ CANYON WAY
PALM SPRINGS, CALIFORNIA 92262

ARTICLE 10
DISPUTE RESOLUTION

Section 10.1Forum for Dispute Resolution.

It is the express intention of the parties that all legal actions and proceedings related to this Agreement or to the Facility or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in courts of the State of California or the United States of America having appropriate jurisdiction.

Section 10.2Non-Binding Mediation.

Either party hereto may give the other party written notice of any dispute with respect to any matter hereunder. Such notice shall specify a date and location for a

meeting of the parties hereto at which such parties shall attempt to resolve such dispute. In the event that such dispute cannot be resolved by the parties hereto within 30 days, such dispute shall be referred to an Independent Engineer for advice and non-binding mediation. If the Independent Engineer is unable, within 30 days, to reach a determination as to the dispute that is acceptable to the parties hereto, the matter may be referred by either party to legal proceedings.

Section 10.3Independent Engineer.

(a) Generally. The Independent Engineer, and any successor Independent Engineer, shall be selected by the Authority and the Contractor in accordance with this Section and shall be a qualified independent engineering firm licensed to practice in the State and not otherwise associated with the transaction contemplated herein or, unless otherwise consented to by the parties, currently retained or employed by the parties to this Agreement, having substantial experience and knowledge with respect to the design, construction, start-up, Acceptance Testing, operation and maintenance of solid waste handling and disposal facilities. The cost of retaining the Independent Engineer for Dispute resolution shall be shared equally by the Authority and the Contractor.

(b) Selection of Independent Engineer. The Independent Engineer shall be selected in accordance with the following procedures:

(i) The Authority shall select five Independent Engineers and shall so notify the Contractor;

(ii) The Contractor shall select two Independent Engineers acceptable to the Contractor from the five selected by the Authority and shall so notify the Authority;

(iii) The Authority shall then select one Independent Engineer from the two selected by the Contractor and shall so notify the Contractor.

(c) Retention of Independent Engineer. Contractor and the Authority shall work together to retain the Independent Engineer upon terms and conditions mutually satisfactory to the Contractor and the Authority as soon as practicable after selection of the Independent Engineer.

ARTICLE 11
DEFAULT AND TERMINATION

Section 11.1Contractor Events of Default.

Each of the following shall constitute a Contractor Event of Default for purposes of this Agreement:

(a) The repeated or persistent failure or refusal by the Contractor to fulfill any of its other material obligations under the Agreement (unless that failure or refusal results from an Uncontrollable Circumstance) provided the Authority shall have given Contractor 60 days' prior written notice of the Contractor's failure to meet a specific obligation and Contractor shall have failed to remedy the deficiency within that 60 day period; provided, however, the Contractor must use reasonable efforts to diligently correct the fault in as short a period as practicable;

(b) There is entered, without the consent of the Contractor, a decree or order under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or similar law, or appointing a receiver, liquidator, trustee or similar official of Contractor or any substantial part of its properties, and such decree or order shall remain in effect (and not be stayed) for thirty consecutive Days;

(c) The Contractor shall file a petition, answer or consent seeking relief under Title 11 of the United States Code, or any other applicable bankruptcy, insolvency, reorganization or other similar law, or shall consent to the institution of proceedings thereunder or to the filing of that petition or to the appointment of a receiver, liquidator, trustee, or other similar official of the Contractor or of any substantial part of the properties of the Contractor, or shall make a general assignment for the benefit of creditors;

(d) A direct or indirect change of control or transfer of controlling interest in the ownership of Contractor other than that expressly permitted pursuant to Section 11.10;

(e) The Contractor fails to procure and maintain the insurance required under Article 8 provided the Authority shall have given Contractor thirty Days' prior written notice of the Contractor's failure to remedy the deficiency and the Contractor fails to remedy it.

Section 11.2Authority Events of Default.

The following shall constitute an Authority Event of Default for purposes of this Agreement:

The repeated or persistent failure or refusal by the Authority to fulfill any of its material obligations under this Agreement (unless that failure or refusal results from an Uncontrollable Circumstance) provided that Contractor shall have given the Authority 60 days prior written notice (or 30 days' prior written notice, if the default relates to the nonpayment by the Authority of amounts due to the Contractor) of the Authority's failure to meet the specific obligation.

Section 11.3Remedies for Default.

(a) Notice; Remedies. Upon the occurrence of any of the events described in 11.1 above, the Authority shall provide the Contractor's Authorized Representative with a written notice (a "Default Notice") specifying the Contractor Event of Default that has occurred. Unless the default is remedied within the time period allowed under Section 11.1, if any, the Authority may, in its sole discretion, terminate this Agreement without further liability to the Contractor and use any other method or person to handle, process, and dispose of Acceptable Recyclable Materials and recover liquidated damages as set forth in Section 11.3(b) below.

(b) Damages. In the event that the Authority terminates the Agreement following an Event of Default on the part of the Contractor in accordance with Section 11.1 above, the Contractor shall be obligated to pay the Authority liquidated damages in an amount equal to three times the average Monthly Service Fee for the twelve months prior to the date of termination (plus any damages which were due and owing prior to the date of termination) provided, however, if the date of termination occurs prior to the first anniversary of the Commercial Operations Date, the average Monthly Service Fee for purposes of the foregoing calculation shall be deemed to be equal to $134,000. The parties acknowledge that the Authority's actual damages for the Contractor's failure to meet its obligations hereunder and subsequent termination by the Authority would be difficult or impossible to ascertain, and that the liquidated damages provided for in this subsection are intended to place the Authority in the same economic position it would have been in had the Contractor met its obligations and not been terminated, and shall constitute the only damages for any such failure, regardless of legal theory.

(c) Assignment of Certain Materials. In addition, at the request of the Authority, upon any termination of the Agreement pursuant to this Section or upon expiration of this Agreement at the end of the Term hereof, the Contractor shall:

(i) grant to any assignee a nonexclusive sublicense to any patents, trademarks, copyrights and trade secrets and "shop rights" as necessary for, and limited to, the operation of the Facility;

(ii) supply to any assignee at their fair market price any proprietary components needed for continuing the operation of the Facility;

(iii) assign to any assignee all maintenance and supply contracts and all contracts relating to the sale or other distribution of Recovered Materials and supply that assignee with the names, addresses and other records of the Contractor relating to the sale or other distribution of Recovered Materials;

(iv) assist the assignee by providing initial, training of personnel as may be reasonably necessary to enable the assignee to continue with operation of the Facility; and

(v) Provide non technical and technical design, construction and operational information, whether or not proprietary, including technical specifications and as built plans of the Facility and assign or provide any other license, permit or consent that is necessary for the operation, maintenance and repair of the Facility.

(d) Contractor Right to Receive Previously Accrued Monthly Service Fees. In the event the Authority terminates the Agreement, the Contractor shall be entitled to payment of any Monthly Service Fee due prior to the effective date of the Authority's notice of termination of this Agreement, but only to the extent the amount that Monthly Service Fee exceeds amounts owed to the Authority. The Authority shall retain the right to pursue any cause of action or assert any claim or remedy it may have against Contractor.

(e) Contractor Remedies. Upon the occurrence of any of the events described in Section 11.2 above, the Contractor shall provide the Authority with a Default Notice specifying the Authority Event of Default that has occurred and specifying a reasonable time to be permitted (which shall in no event be less than thirty Days) for the Authority to cure that Authority Event of Default. If the Authority has not cured the Authority Event of Default described in the Default Notice within the time specified or has not given Contractor reasonable assurances

that the default or threatened default will be promptly cured, the Contractor shall have the right to any or all of the remedies to the extent provided by law.

(f) Contractor Right of Termination. In addition to remedies provided above or available under Applicable Law, the Contractor shall have the right to terminate this Agreement if any of the Authority Events of Default referred to in Section 11.2 continue beyond the cure period provided in the Default Notice.

Section 11.4Termination Due to Uncontrollable Circumstances.

(a) Calculation of Increases Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance, the Authority shall calculate any increase in the Monthly Service Fee as a result of that event. The Authority shall compare (x) the sum of the Monthly Service Fee as increased by a result of that event plus the debt service on the Facility Obligations (including any additional Facility Obligations which are required to be issued to remedy the Uncontrollable Circumstances) to (y) the Monthly Service Fee which would have been in effect if that event had not occurred plus the debt service on the Facility Obligations outstanding as of the date of the occurrence of the Uncontrollable circumstance. The comparison shall be computed on a per month basis after adjustment for other increases provided for in this Article and in Article 6. For purposes of this Section 11.4 the Authority shall take into account the aggregate of any increases in the Monthly Service Fee occurring after the Contract Date. The Authority shall also take into account any amounts payable under any additional Facility Obligations required to be issued or entered into by the Authority as a result of the Uncontrollable circumstances described in this Section.

(b) Termination Upon Certain Increases Service Fee Levels. The Authority may, at its option, terminate this Agreement effective thirty Days after the Authority gives the Contractor written notice of termination upon the occurrence of any Uncontrollable Circumstance which:

(i) prevents the Contractor from Processing any Acceptable Recyclable Materials at the Facility for a period of 21 consecutive days or 30 days (whether or not consecutive) out of any 60 day period and results in a determination by the Authority to abandon the Facility or discontinue the processing of Acceptable Recyclable Materials therein; or

(ii) Results in a cumulative increase in the Monthly Service Fee (taking into account all of the elements described above, including

payments required to be made under any additional Facility Obligations, but not including inflation or other adjustments that would have been applicable whether or not the Uncontrollable Circumstance(s) occurred) as a result of any and all Uncontrollable Circumstances greater than 25 percent above the Monthly Service Fee that would have been applicable if the Uncontrollable Circumstance(s) had not occurred and results in a determination by the Authority to abandon the Facility or discontinue the processing of Acceptable Recyclable Materials therein, or

(iii) prevents processing at the Facility of at least one-half the total tonnage of Acceptable Recyclable Materials for at least 4 months and results in a determination by the Authority to abandon the Facility or discontinue the processing of Acceptable Recyclable Materials therein.

(c) Contractor Ability to Forgo Increase. Notwithstanding anything to the contrary in this Section, if the Authority provides the Contractor with written notice of its intention to terminate this Agreement pursuant to Section 11.4(b), then, if the Contractor elects to forego that portion of the increase that causes the Monthly Service Fee to increase more than 25% percent, the Authority's right of termination may not be exercised.

Section 11.5 Survival of Certain Rights and Obligations.

The rights and obligations of the Parties for Unacceptable Waste under Section 5.6(d) and any claims for damages therefor shall survive any termination of this Agreement.

Section 11.6 No Waiver by Authority.

Nothing in this Article, and no actions taken pursuant to this Article shall constitute a waiver or surrender of any rights, remedies, claims or causes of action the Authority may have against Contractor or its Surety under any other provision of this Agreement or any law.

ARTICLE 12
SUBCONTRACTS

Section 12.1Contractor Subcontracts and Assignment.

(a) Authority Right of Rejection. During the Term of this Agreement the Authority shall have the right to reject any or all subcontracts of all or part of

Contractor's obligation to operate the Facility. The Contractor shall inform the Authority of all proposed subcontracts no later than 60 days prior to the date on which the proposed subcontract is to take effect. The Authority reserves the right in its sole discretion to reject any subcontract no later than thirty days prior to the date on which the proposed subcontract is to take effect.

(b) Failure to Reject Does Not Constitute a Waiver. In no event shall the Contractor's subcontracting, or the Authority's failure to reject the Contractor's subcontracting of its obligations to operate the Facility, in any way relieve the Contractor of its responsibilities under this Agreement. The Contractor shall have the exclusive right to control the services and work performed under this Agreement and the Persons performing those services and work. The Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees and Subcontractors. Nothing in the Agreement shall be construed as creating a partnership or joint venture between the Authority and the Contractor or giving the Authority a duty to supervise or control the acts or omissions of any Person performing services or work under the Agreement.

Section 12.2Independent Contractor.

The Contractor shall perform all work under this Agreement as an independent contractor. The Contractor is not and shall not be considered an employee, agent, subagent or servant of the Authority or any of its member agencies for this Agreement or otherwise; the Contractor's Subcontractors, employees or agents are not and shall not be considered employees, agents, subagents or servants of the Authority or any of its member agencies for this Agreement or otherwise.

ARTICLE 13
MISCELLANEOUS

Section 13.1Entire and Complete Agreement.

This Agreement constitutes the entire and complete agreement of the Parties with respect to the subject matter it contains, and supersedes all prior or contemporaneous agreements. In the event of any conflict, this Agreement shall prevail and this Agreement shall be interpreted as if such conflicting language were not a part of the agreement between the Parties.

Section 13.2Binding Effect.

This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successors thereto, whether by merger, consolidation, or transfer of the assets relating to the Facility.

Section 13.3Law Applicable.

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

Section 13.4Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when executed and delivered shall together constitute one and the same instrument.

Section 13.5Amendment or Waiver.

Neither this Agreement nor any provision hereof may be changed, modified, amended or waived except by a written instrument signed by the Parties.

Section 13.6Severability.

In the event that any provision of this Agreement shall, for any reason, be determined to be invalid, illegal or unenforceable in any respect, the Parties shall negotiate in good faith and agree as to such amendments, modifications or supplements of or to this Agreement, that to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement shall, as so amended, modified or supplemented, or otherwise affected by such action remain in full force and effect.

Section 13.7Contracts or Approvals.

Except as otherwise expressly provided herein, in any instance where the consent or approval of the Authority or the Contractor is required hereunder or under any agreements in connection with any transaction contemplated hereby, such consent or approval shall not be unreasonably withheld.

Section 13.8Estoppel Certificates.

Each party, upon not less than thirty Days' prior written notice from the other but not more than once each calendar year, shall execute, acknowledge and deliver a statement in writing:

(a) certifying that this Agreement is unmodified and is in full force and effect (or if there have been modifications, that the Agreement is in full force and effect as modified and stating the modifications); and

(b) stating whether or not to the best knowledge of the person executing any certificate, the requesting party is in default in performance of any material covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of the other party of which that person may have knowledge.

Each Party acknowledges and agrees that any such statement delivered under this Agreement may be relied upon by third parties not a Party to this Agreement.

Section 13.9Limitation of Liability of the Authority.

(a) Limited Obligation of Authority. The obligations of the Authority under this Agreement are limited obligations payable solely from Facility Revenues. The obligations of the Authority hereunder shall not be payable from the general funds or any other funds of the Authority or its members (other than Facility Revenues) and such obligations shall not constitute or create a legal or equitable pledge of, or lien or encumbrance upon, or claim against, any of the assets or property of the Authority or its members or upon any of its income, receipts, or revenues other than Facility Revenues.

(b) No Personal Liability. The execution and delivery of this Agreement by the Authority shall not impose any personal liability on the members, officers, employees or agents of the Authority. No recourse shall be had by the Contractor for any claims based on this Agreement against any member, officer, employee or other agent of the Authority in his or her individual capacity, all such liability, if any, being expressly waived by the Contractor by the execution of this Agreement.

Section 13.10 Assignment; Release.

(a) No Assignment Effective Without Prior Written Consent. Neither this Agreement nor any rights under it may be assigned by either Party except as otherwise set out below. Any purported assignment in violation of these terms is void.

(b) Authority Assignment: Authority may make (i) such assignments as security as may be required in connection with any financing or refinancing in respect of all or part of the Facility or any modification thereof or addition thereto or (ii) assignments to the Participating Municipalities in accordance with the this Authority Operating Agreement.

(c) Contractor Assignment:

(i) "Change of Control" means the transfer of a controlling interest of Contractor" and shall include, but is not limited to, the transfer or assignment of ten percent (10%) or more of the beneficial ownership of Contractor to or from a single entity; however, the following transfers or assignments shall not be construed as a "change of control." (a) intra-company transfers in the form of transfers between different subsidiaries or branches of the Contractor's parent corporation, or (b) if the Contractor, or its parent corporation, is a closely held corporation, transfers or assignments between individuals who own, in whole or in part, the parent or any subsidiary including transfers or assignments between or to (i) the individuals who own, in whole or in part, the parent or any subsidiary, (ii) the spouses, surviving spouses and linear descendants (including adopted children) of the persons described in (b)(i) above, (iii) a trust estate, corporation, partnership or other entity owned by the persons described in (b)(i), above, and (iv) a corporate trustee designated to act in a fiduciary capacity for the estate or trust or any person described in (b)(i), above. Contractor shall give written notice to Authority within 10 calendar days of any such assignment, whether or not it constitutes a change in control.

(ii) A Change of Control is contingent upon the prior written consent of the Authority. Any purported Change of Control absent such consent shall be ineffective and void and shall constitute a default hereunder.

(iii) At least 30 calendar days before any assignment, Contractor shall give written notice to Authority of its intent to assign this Agreement or Contractor's rights under it. Such notice shall include the proposed assignee and a summary of the details of the assignment, including the purchase price, as well as the assignment review fee set out below.

(iv) At the discretion of the Authority, upon notice of Contractor's intended assignment, Authority may exercise its right to purchase the

Facility Improvements as set out in Section 14 rather than consent to the assignment.

(v) Fee: Contractor shall pay to Authority an assignment fee in the amount of $250,000, which amount shall be adjusted by the application of the Escalation Index as set out in Exhibit 2 on July 1 of each year which fee will compensate Authority for the direct and indirect costs of review of the proposed assignment.

Section 13.11 Access.

The Authority shall have the right and unlimited access to inspect the Facility, any or all of the Contractor's and Subcontractors' operations, or records related to this Agreement; however, the Authority's access to records under this Section shall be subject to the confidentiality provisions of Section 5.10. The Authority shall have access to operations and the Facility under this Section at any and all times.

Section 13.12 No Third Party Beneficiaries.

This Agreement is entered into by the Authority in its governmental capacity and is not intended to nor does it create any third party beneficiary or rights in any private Person.

ARTICLE 14
OWNERSHIP OF FACILITY AND RIGHT OF AUTHORITY TO PURCHASE

Section 14.1Purchase of Future VVWRF Facility Improvements by Authority

(a) Ownership of Facility Improvements. As of the date of this Amended and Restated Agreement, Authority is the owner of all Facility Improvements. Notwithstanding, this Agreement addresses possible future Facility Improvements to be purchased by Authority from the Contractor.

(b) Right of Authority to Purchase Improvements. At any time, the Authority may purchase any Facility Improvements or any Facility Improvements that it does not own and that are owned by the Contractor. The value for such Facility Improvements shall be set out in Section 14.2 below.

(c) Exercise of Right to Purchase by Authority. If the Authority wishes to exercise its right to purchase the Facility Improvements, it shall notify the Contractor

and upon payment of the purchase price described herein, Contractor and Authority shall cooperate in the payoff of Contractor's lender(s), if any, and the transfer of title to the Facility Improvements to the Authority free of any liens or third party security interests.

(d) Authority's Right to Secure its Purchase Rights. Subject only to the superior rights of the Contractor's lender during any period in which debt incurred by Contractor remains unpaid, the Authority shall be entitled to file with appropriate governmental entities a memorandum of this Amendment or other security instrument in order to protect its right to purchase the Facility Improvement pursuant hereto against third party claimants of Contractor. The Contractor shall and shall cause any lender to reasonably cooperate with the filing of any such instrument and to deliver to the Authority an acknowledgement and acceptance of the Authority's rights hereunder in form and substance reasonably satisfactory to the Authority.

Section 14.2Authority Right of First Refusal

(a) Contractor hereby grants to the Authority a right of first refusal subject to the provisions of this subsection. The Right of First Refusal may be exercised by either or both of the Participating Municipalities.

(b) If, at any time the Contractor or any of its successors in interest to the Property receives a bona fide purchase offer (from any person or entity that would constitute a "change of control" for all or any portion of the Expanded Facility (also called the Burrtec-MRF), the Contractor shall provide the Authority notice if it is the Contractor's intention to accept the same. Notice shall be provided as set out in Section 9.3 of this Agreement ("Notice").

(c) The Authority shall have the right (the "Right of First Refusal") within 90 calendar days from the receipt of the Notice to exercise the Right of First Refusal by written notice to Contractor. Such notice shall be provided as set out in Section 9.3 of this Agreement/Lease. Such notice must include Contractor's determination of the purchase price for pursuant to subsection (e) below and the documents necessary to establish such purchase price. The 90 days to exercise the Right of First Refusal do not begin to run until such purchase price and supporting documentation has been provided to Authority. Such period may be extended once, at the sole discretion of the Authority, for an additional 30-day period. During the 90-day period, or any extension thereof, Authority retains the right to review, question and negotiate such purchase price. The time to review any proposed assignment shall run concurrently with the 90-dayperiod or any extension thereof.

(d) If the Authority elects to exercise this Right of First Refusal at a price agreed upon by the parties, then the Authority and the Contractor shall promptly thereafter enter into a definitive written agreement whereby Contractor agrees to sell the to the Authority and the Authority agrees to purchase all or that portion of the Expanded Facility from Contractor on terms and conditions, including representations, warranties, covenants and indemnities, and subject to such qualifications, limitations and contingencies that are normal and customary for the size and type of transaction contemplated herein. Each party shall use its best efforts in providing for a closing of the transaction not less than 120 days after the exercise of the Right of First Refusal. Notwithstanding, at any time before the close of the purchase transaction, Authority in its sole discretion may determine not to proceed with the purchase.

(e) If the Authority does not elect to exercise the Right of First Refusal as set out herein, or does not close the transaction then: (a) that Right of First Refusal shall terminate, (b) the Contractor may then sell to said third-party offeror, (c) assuming the assignment has been reviewed concurrently with the RFR pursuant to Section 13 of the Amended and Restated Operating Agreement and is acceptable to the Authority, the Authority shall approve that assignment; (d) if Contractor does not sell pursuant to the offer, the Right of First Refusal continues. Notwithstanding, Authority reserves the right to request a right of first refusal with the assignee as part of the negotiations concerning approval of the assignment but cannot condition approval thereon.

(f) Purchase Price. The Parties hereby agree that for the purposes of the Right of First Refusal, the purchase price for all or a portion of the Expanded Facility shall be determined as follows:

(i) Contractor waives any right to the value of the Expanded Facilities as a going concern, including permits, operating rights, and goodwill, all of which shall be valued at zero dollars ($0).

(ii) Facility improvements for all or that portion of the Expanded Facility to be sold shall be valued at an amount equal to the original construction cost of such facility improvements as such costs were initially booked on the financial statements of the Contractor, less ten percent (10%), without regard to depreciation or amortization. Contractor will keep books that show such amount and shall provide such information to Authority as the phases of the Expanded Facilities are completed.

(iii) Capital equipment value shall be established by an agreed-upon, independent and qualified equipment appraiser paid by Burrtec. That appraiser shall determine the value taking into account both the remaining useful life of such equipment and it salvage value and shall then discount the value determined by ten percent (10%). Not less than every 5 years, Contractor shall provide the Authority with an updated value of such capital equipment and shall also provide a current appraisal at such time as Contractor provides the Notice.

(iv) Contractor and Authority shall cooperate in any payoff of the Contractor's lender(s) and the transfer of title to the facility improvements and the equipment to the Authority free of any liens or third party security interests.

(g) Authority's Right to Secure its Purchase Rights. Subject only to the superior rights of the Contractor's lender during any period in which debt incurred by Contractor remains unpaid, the Authority shall be entitled to record a memorandum of this Amendment with an explicit reference to the Right of First Refusal in order to protect that right against third party claimants of Contractor. The Contractor shall and shall cause its lender to reasonably cooperate with the recording of any such instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first set forth above.

MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE MANAGEMENT AUTHORITY	BURRTEC WASTE INDUSTRIES, INC.

By:	By:
Its: Chairman, Board of Directors	Its:

EXHIBIT 1

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. If 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 2
Monthly Service Fee and Escalation Index

(a) Monthly Service Fee: Subject to all other provisions of this Article, the Monthly Service Fee due the Contractor for providing all services during the Operating Period under this Agreement shall be calculated as follows:

SF = BF + DF where:

SF = Monthly Service Fee paid to Contractor by Authority.

BF = Base Fee for Processing, which shall, for any month, be equal to the amount in the second table below corresponding to the actual amount of Monthly Units Delivered to the Facility in such month. "Monthly Units Delivered" in any month shall be equal to the sum of (i) the number of tons of Acceptable Recyclable Materials delivered in such month plus (ii) the number of Units of Additional Acceptable Recyclable Materials delivered in such month. For purposes of the foregoing, Units of Additional Acceptable Recyclable Materials shall be calculated in accordance with the immediately following table:

Type of Additional Acceptable Recyclable Material	Number of Units Per ton

In the event that the parties determine to process Additional Recyclable Materials at the Facility, which are not included on the table above, prior to commencement of processing, the parties shall agree in writing to the number of units per ton of such Additional Recyclable Materials.

VICTOR VALLEY MATERIAL RECOVERY FACILITY
MONTHLY COMPENSATION SCHEDULE
Effective 7/1/16

Monthly Tonnage Delivered	Current Operator Fee	3/16 CPI 1.7% Proposed Operator Fee 7/1/16
900 – 1,000		

1,001 – 1,100		
1,101 – 1,200		
1,201 – 1,300		
1,301 – 1,400		
1,401 – 1,500		
1,501 – 1,600		
1,601 – 1,700		
1,701 – 1,800		
1,801 – 1,900		
1,901 – 2,000	$ 134,823	$ 137,115
2,001 – 2,100	137,581	139,919
2,101 – 2,200	140,338	142,724
2,201 – 2,300	143,098	145,530
2,301 – 2,400	145,855	148,335
2,401 – 2,500	148,615	151,141
2,501 – 2,600	151,373	153,946
2,601 – 2,700	154,132	156,753
2,701 – 2,800	156,890	159,557
2,801 – 2,900	159,648	162,362
2,901 – 3,000	162,407	165,168
3,001 – 3,100	165,166	167,973
3,101 – 3,200	167,924	170,779
3,201 – 3,300	170,683	173,584
3,301 – 3,400	173,441	176,390
3,401 – 3,500	176,199	179,194
3,501 – 3,600	178,958	182,000
3,601 – 3,700	181,716	184,805
3,701 – 3,800	184,475	187,611
3,801 – 3,900	187,233	190,416
3,901 – 4,000	189,992	193,222

The Base Fee shall be adjusted annually on July 1st of each year, commencing July 1, 2016, by multiplying the amounts specified above by the then applicable Escalation Index.

DF = Allowable Residue Disposal Fee which shall, for any month, be equal to the actual costs incurred by the Contractor in disposing of Residue at the disposal facility designated by the Authority in accordance with Section 5.7; provided,

however, that the Allowable Residue Disposal Fee shall not include any costs incurred by the Contractor in disposing of Excess Residue (as determined in accordance with Section 5.2(e)). Costs incurred by the Contractor in disposing of such Excess Residue shall be borne solely by the Contractor without reimbursement from the Authority. Fees paid for diversion of material may be included in Disposal Fees.

In the event that deliveries of Acceptable Recyclable Materials to the Facility exceed 2,300 tons per month on a regular basis, the Contractor and the Authority shall meet to determine appropriate adjustments to the Base Fee (which adjustments shall be based on the chart contained in this Section). The Contractor and the Authority shall revise the Base Fee chart above to reflect any such adjustments that are mutually agreed upon.

(b) Escalation Index. The Escalation Index shall be equal to the sum of (A) 1.0 and (B):

$$B = \frac{CPI(N) - CPI(2016)}{CPI(2016)}$$

where

CPI(N) = The Consumer Price Index - All Urban Consumers for the Los Angeles - Anaheim - Riverside as of March 1 in the year in which the Adjustment Factor is to be applied.

CPI(2016) = The Consumer Price Index - All Urban Consumers for the Los Angeles - Anaheim - Riverside Area as of March of each year commencing March 1, 2016.

Notwithstanding anything to the contrary in this Agreement, in event that the CPI is zero or negative, the Escalation Index shall be zero.

EXHIBIT 3
OPERATION PERIOD INSURANCE REQUIREMENTS

1. Insurance Coverage. The Contractor shall obtain, pay for and maintain the insurance coverages listed below with respect to the operation of the Facility from the Commercial Operations Date through the Term of the Service Agreement.

(a) workers' compensation insurance as required by Applicable Law covering all of the employees of the Contractor;

(b) employer's liability insurance in the amounts and under the terms and conditions required by California Law;

(c) comprehensive general liability and property damage insurance with coverage for premises operations, products/completed operations explosion and collapse, independent contractors, broad form property damage, contractor liability, and personal injury liability, with a combined single limit of at least $5,000,000 for bodily injury and for property damage with a deductible amount of $25,000;

(d) comprehensive automobile liability insurance with a combined single limit of at least $1,000,000 per occurrence, for bodily injury and property damage with a deductible amount of $25,000 with a rider for non-owned automobile and hired car coverage;

(e) excess liability insurance above the required comprehensive general, automobile and employer's liability insurance in the amount of $5,000,000;

(f) all risk physical damage insurance covering loss, damage or destruction to the Facility caused by physical damage in an amount equal to the full replacement value of the Facility with no co-insurance provision and subject to a $25,000 minimum deductible (or deductibles commercially available at the time of placement).

2. Insurance Certificates. Insurance, and any renewals thereof, shall be evidenced by certificates of insurance issued or countersigned by a duly authorized representative of the issuer and delivered to the Authority for its approval 30 days prior to the Commercial Operations Date or, in the case of a renewal, as reasonably provided by the insurer. The certificates of insurance shall require 30 days written notice to the Authority of cancellation, intent not to renew, or reduction in its coverage by the insurance company.

3. Non-Recourse Provision. All insurance policies shall provide that the insurers shall have no recourse against any the Authority for payment of any premium or assessment and shall contain a severability of interest provision in regard to mutual coverage liability policies. The coverages provided by mutual coverage liability insurance policies required pursuant to this Agreement shall be the primary source of any restitution or other recovery for any injuries to or death of persons or loss or damage to property incurred as a result of an action or inaction of the Contractor or its subcontractors, of their respective suppliers, employees, agents, representatives, or invitees, that fall within these coverages and also within the coverages of any liability insurance or self-insurance program maintained by the Authority.

4. Specific Provisions for Comprehensive General Liability Insurance. Comprehensive General Liability insurance, as required under paragraph 1(c) of this Part 2, shall include premises-operations, blanket contractual, products and completed operations, personal injury, explosion, collapse, underground hazards, broad form property damage including completed operations, and independent contractors coverages.

5. Specific Provisions for Workers' Compensation Coverage. Workers' Compensation insurance shall be in accordance with the requirements of California law, as amended from time to time and have a limit of a least $100,000 per occurrence. The required workers' compensation insurance shall include other states' coverage, voluntary compensation coverage, and federal longshoreman and harbor workers coverage.

6. Specific Provisions for All Risk Physical Damage Insurance. Coverage for all risk physical damage required under paragraph 1(f) of this Part 2 shall be on an all risk basis and shall protect against loss of, damage to and destruction of the Facility. Such insurance shall also cover loss, damage or destruction caused by flood. All policies obtained may be subject to normal exclusions relating to earthquake, nuclear risks, war risks and such other perils as are generally imposed by insurers on similar properties.

7. Changes in Insurance Coverage. The Contractor shall use its best efforts to obtain such additional insurance as the Authority may request from time to time, and the costs of such additional insurance shall be a Pass Through Cost to the Authority. The insurance listed in this Part 2 are the minimum coverages permitted, except that the Authority may decrease or omit the coverage specified in paragraph 1(g) of this Part 2 at any time in its sole discretion. Notwithstanding the provisions of this Exhibit 9, the Contractor may decrease the coverage specified in this Exhibit to the extent it is not available on commercially reasonable terms.

8. Qualifications of Insurers. The Contractor is required to obtain the insurance set forth herein with insurance companies that are approved by the Authority in its reasonable discretion. In addition, insurance must be obtained from insurers authorized to do business in the State of California and having agents upon whom service of process may be made in the State of California.