



TOWN OF APPLE VALLEY TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** January 24, 2017
From: Marc Puckett, Assistant Town Manager **Item No:** 6
Subject: AMENDMENT TO THE FRANCHISE AGREEMENT BETWEEN THE
TOWN OF APPLE VALLEY AND BURRTEC WASTE INDUSTRIES INC.

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

RECOMMENDED ACTION:

That the Town Council approve the Amendment to the Exclusive Franchise Agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc. amending the term of the agreement.

SUMMARY:

The Town entered into agreements for the provision of solid waste and recycling services with Burrtec Waste Industries, Inc. (Burrtec) on August 23, 1994. These agreements have been reviewed and modified periodically. The contractor has been providing solid waste services to the Town pursuant to the agreements. The agreements grant Burrtec the exclusive right and privilege to collect, transfer, transport, recycle, process and dispose of Solid Waste and Recyclable Material, exclusive of Construction Waste, Hazardous Waste and Special Waste accumulated within the Town limits.

Per this amendment, the initial term of the amendment will commence upon execution of this agreement and will expire on January 1, 2027, thus extending the existing agreement by eight (8) years. Thereafter, and similar to the current agreement, this amended agreement is set to be automatically renewed for succeeding ten (10) year terms unless the Town finds Burrtec to be in breach of the agreement or if it is determined that Burrtec's performance is unsatisfactory. Under the terms of the agreement, Burrtec is required to collect Solid Waste and Recyclable Materials at least once per week. In addition, once each spring and fall, Burrtec is required to provide the Town with roll-off bins and other assistance as needed for community-wide cleanups at no additional cost. The Agreement further requires Burrtec to prepare an annual public education plan that will continue to inform the public how to correctly sort materials for recycling, the importance of diversion,

to publicize the operation and diversion accomplished by the Victor Valley Materials Recovery Facility (MRF), and the implementation of any new diversion programs such as organics collection. Burrtec also prepares and distributes public education materials to all Residential and Commercial Customers at least two (2) times during each Contract Year. All education materials are subject to the Town's review and approval.

The proposed amendment also maintains the existing waste hauling rate for one year. By maintaining the existing waste hauling rate, the Town will save approximately \$60,000 over the next year and a total of \$600,000 over the term of the agreement. All other terms of the existing agreement remain unchanged. The existing agreement and proposed amendment documents and sets forth the rights and responsibilities of each party during the contract term.

Under the existing agreement, Burrtec may annually request adjustments to the charges made to Customers under this Agreement to reflect increases in their costs. The requested adjustments are based on the previous calendar year twelve (12) month average change in the Consumer Price Index for All Urban Consumers as published by the U.S. Department of Labor for Los Angeles-Riverside-Orange Counties. The Town may request additional information if the Town believes that the materials provided by Burrtec are insufficient or inadequate. No adjustment granted by the Town shall exceed four percent (4%) or the change in the Consumer Price Index for All Urban Consumers ("CPI-U") published by the U.S. Department of Labor for the Los Angeles-Riverside-Orange County statistical area, whichever is less. Burrtec may request an extraordinary adjustment due to extraordinary changes in service costs resulting from regulations imposed by Federal, State or local regulatory agencies, including additional diversion program requirements or other unforeseen service cost impacts. For any such request Burrtec is required to prepare a schedule documenting the extraordinary costs prepared in a form acceptable to the Town with supporting documentation for any assumptions made. The Town will then review the request and Town Council will make the final determination as to whether any adjustment will be made.

FISCAL ANALYSIS:

The proposed amendment will maintain the existing waste hauling rate unchanged for one (1) year. By maintaining the existing waste hauling rate, the Town will save approximately \$60,000 over the next year and a total of \$600,000 over the term of the agreement.

STAFF RECOMMENDATION:

Staff recommends that the Town Council approve the attached proposed amendment to the Franchise Agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc.

ATTACHMENT:

Proposed Franchise Agreement with Amendments

**EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN THE TOWN OF APPLE VALLEY
AND
BURRTEC WASTE INDUSTRIES, INC.**

FOR COLLECTION AND HANDLING OF SOLID WASTE AND RECYCLING

THIS AGREEMENT FOR THE COLLECTION OF SOLID WASTE AND RECYCLING ("Agreement") is made and entered into this 24th day of January, 2017, (the "Effective Date"), by and between the TOWN OF APPLE VALLEY, a municipal corporation of the State of California, ("TOWN"), and BURRTEC WASTE INDUSTRIES, INC., a California corporation, dba AVCO DISPOSAL, INC. ("CONTRACTOR"). TOWN and CONTRACTOR are collectively referred to as the "Parties."

R E C I T A L S:

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

WHEREAS, CONTRACTOR has represented and warranted to TOWN that it has the experience, responsibility, and qualifications to provide Solid Waste handling services and Recyclable Materials handling services, as defined in Public Resources Code Section 49505 and as described herein;

WHEREAS, TOWN entered into an agreement for the provision of solid waste and recycling services with CONTRACTOR on August 23, 1994, and CONTRACTOR has been providing solid waste services to TOWN pursuant to the agreement;

WHEREAS, the Town Council of TOWN has determined that CONTRACTOR, by demonstrated experience, reputation and capacity is qualified to continue to exclusively provide for the collection of solid waste within the corporate limits of TOWN and to transport such solid waste to places of processing and disposal, which may be designated in accordance with this Agreement, and TOWN and CONTRACTOR desire that CONTRACTOR be engaged to perform such services on the terms and conditions set forth in this Agreement;

WHEREAS, the Town Council of Apple Valley has determined that the public health, safety and well being of its residents require that Solid Waste collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be governed by and provided under an exclusive solid waste franchise agreement;

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WHEREAS, TOWN and CONTRACTOR (“Parties”) hereto desire to enter into this Agreement for the purpose of rescinding and superseding all prior agreements and understandings between the Parties to accurately reflect the rights and obligations of the TOWN and CONTRACTOR solely as set forth in this Agreement; and

WHEREAS, the Town Council of Apple Valley further declares its intention of maintaining reasonable rates for collection, processing and disposal of Solid Waste within TOWN;

NOW, THEREFORE, in consideration of the respective and mutual covenants and promises contained and made in this Agreement, and subject to all the terms and conditions of this Agreement, the Parties agree as follows:

1. DEFINITIONS

Affiliated Companies mean all businesses which are directly or indirectly related to CONTRACTOR by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in CONTRACTOR.

Applicable Law means all law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of San Bernardino, TOWN, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, including AB 939, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties’ respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and the San Bernardino County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise specifically limited.

Bins mean Front Loading Bins and Roll-Off Bins provided by CONTRACTOR for Commercial Premises and Multi-Unit Residential Premises.

Bulk Household Waste means all discarded household waste matter which is too large to be placed in a covered Container including, but not limited to, furniture, appliances, discarded carpets, discarded mattresses, discarded electronic equipment, residential wastes (including wood waste, tree branches, scrap wood), cathode ray tube (CRT) devices, and similar large items produced from Residential Premises, and is considered Solid Waste for purposes of this Agreement. Construction waste is specifically excluded from bulk household waste service.

Commercial Premises means all properties or points of Solid Waste collection on which there are the following uses: industrial, manufacturing, industrial warehouse, restaurants, wholesale or retail stores, service establishments, professional offices, construction sites, multifamily residences and hotels or motels.

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Composting Facility means a facility or facilities for the controlled biological decomposition of organic wastes that have been source separated from the TOWN's municipal Solid Waste stream, or which have been separated at a centralized facility.

Construction Waste means any waste matter which is a by-product of a construction, demolition, clean-up or remodeling process, wherever occurring within the TOWN, and is considered Solid Waste for purposes of this Agreement.

Container means a receptacle designed specifically for the storage and collection of Solid Waste, which does not exceed 95 gallons in capacity and which has a tight fitting lid. Container includes receptacles provided by CONTRACTOR to Customers for the storage and collection of Solid Waste, Green Waste, and/or Recyclable Material. Any Container which does not conform with the provisions of this Section, or which is severely damaged or has jagged or sharp edges, may be removed from future use by TOWN or CONTRACTOR. Such removal shall be made by attaching a tab to the Container for purposes of notice to the Customer.

Contract Year means any fiscal year of the TOWN commencing on July 1 and ending June 30 during the initial and any extended term of this Agreement.

Customer means each person or business directly receiving services from CONTRACTOR at Residential Premises or Commercial Premises.

Disposal Facility means a facility or facilities for disposing of Solid Waste and/or residue from a Processing Facility or Composting Facility.

Front-Loading Bins mean Bins which are picked up by CONTRACTOR by means of front-loading apparatus, and which are generally smaller in size than Roll-Off Bins.

Green Waste means organic waste generated from any landscape, including grass clippings, leaves, prunings, tree trimmings, pine needles, weeds, branches and brush collected pursuant to this Agreement and not exceeding three (3") inches in diameter

Hazardous Waste means any material, which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may 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:

- a. "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 Section 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste

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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 23 California Code of Regulations Sections 2521 and 2522;

b. 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;

c. 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.;

d. 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

e. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste.

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 expansive definition shall be employed for purposes of this Agreement.

Holiday means a day officially designated as either a State holiday or Federal holiday during which San Bernardino County landfills are closed, specifically New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Litter Containers means any Containers, now or in the future, owned and maintained by TOWN and located at bus shelters, bus stops, in parking lots, on TOWN sidewalks and other public rights-of-way or on TOWN facilities adjacent thereto, all within TOWN limits, which may be serviced by CONTRACTOR's automated disposal trucks. TOWN will advise CONTRACTOR at such time as Litter Containers are placed into service.

Multi-Unit Residential Premises means any building and/or structure, or portion thereof, in TOWN which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having five (5) or more self-contained living units.

Municipal Code means the Town of Apple Valley Municipal Code, as amended from time to time.

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Processing Facility means a facility or facilities for sorting and/or processing commingled or source separated Recyclable Materials and/or Solid Waste.

Recyclables means the materials segregated from the waste stream which can be processed and returned to the economic mainstream in the form of feedstock for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

Recyclables handling means the collection, transportation, storage and transfer of recyclables.

Recyclables handling services means the collection, transportation, storage and transfer of recyclables for residential, commercial, institutional or industrial users or customers.

Recyclable Materials mean materials which have been discarded, thrown away or abandoned by the generator or owner thereof and are commonly collected in recycling programs in Southern California, including, but not limited to:

- newsprint
- corrugated material
- high-grade paper and mixed paper
- glass jars and bottles
- aluminum cans
- tin cans
- steel and other types of scrap metals
- all rigid plastics marked “1” through “7” including:
 - ✓ polyethylene terephthalate containers (“PET”) marked “1” as of the date hereof
 - ✓ high density polyethylene containers (“HDPE”) marked “2” as of the date hereof
 - ✓ low density polyethylene containers (“LDPE”) marked “4” as of the date hereof
- California Redemption Value containers (CRV)
- ferrous metals
- non-ferrous metals
- white paper
- mixed paper
- telephone books

This list may be expanded to include any other material for which a recycling market or process is developed and which material is designated by TOWN to constitute Recyclable Material during the term of this Agreement. Notwithstanding any other term or provision of this Agreement to the contrary, materials shall be deemed to constitute solid waste within the meaning of California Public Resources Code Section 40191, and regulated accordingly, whether or not said materials are identified on the foregoing list or may be potentially recyclable, in all cases where the material

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is mixed or commingled with other types of solid waste, or where a fee, charge, or other form of consideration, regardless of amount, is directly or indirectly solicited or received from the generator in exchange for collection, removal, transportation, storage, processing, handling or disposal services ("fee for service" recycling), whether or not arranged by or through a subcontractor, broker, agent, or affiliate of the provider of such service. As used herein, "generator" includes, without limitation, a property owner, occupant, or his/her contractor.

Recycle or recycling means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace.

Residential Premises means and includes all Single-Unit Residential and Multi-Unit Residential sites located within TOWN.

Roll-Off Bins means Bins picked up by CONTRACTOR by means of rear loading winches onto rails. Roll-Off Bins are generally much larger in size than Front-Loading Bins.

Single-Unit Residential Premises means any building, and/or structure, or portion thereof, in TOWN which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having four (4) or fewer self-contained living units.

Solid waste means all putrescible and nonputrescible solid and semisolid wastes including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semisolid wastes and other discarded solid and semisolid wastes. Solid waste does not include hazardous waste as defined by the State or low-level radioactive waste. Solid waste does not include medical waste which has not been treated for disposal at a solid waste facility.

Solid waste disposal means the final disposition of solid wastes onto land, into the atmosphere or into the waters of the State.

Solid waste enterprise means any individual, partnership, joint venture, unincorporated private organization or private corporation regularly engaged in the business of providing solid waste handling services.

Solid waste handling or handling means the collection, transportation, storage and transfer of solid wastes.

Solid waste handling services means the collection, transportation, storage and transfer of solid wastes for residential, commercial, institutional or industrial users or customers.

Special Waste means any waste matter which is a Hazardous Waste, or which requires special handling or processing, including those items set forth on Exhibit "A" attached to this

Agreement and incorporated by this reference. The list in Exhibit "A" is subject to any possible future definitional changes applied pursuant to Applicable Law.

Town Bins mean those Bins provided by CONTRACTOR for non-commercial use by TOWN at TOWN facilities, all as shown on Exhibit "C."

Town Manager means the Town Manager of TOWN. The Town Manager or his designee is the authorized agent of TOWN in enforcing the terms of this Agreement.

2. GRANT OF EXCLUSIVE CONTRACT

TOWN grants to CONTRACTOR during the term of this Agreement the exclusive right and privilege to collect, transfer, transport, recycle, process, and dispose of Solid Waste and Recyclable Material, exclusive of Construction Waste and Hazardous and Special Waste, produced, generated, kept and/or accumulated within TOWN limits as those limits may exist at any time during the term of this Agreement.

3. ENFORCEMENT OF EXCLUSIVITY

Contractor and TOWN shall be jointly responsible for enforcing the exclusivity of this Agreement. TOWN shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but TOWN shall have no obligation to do so for the benefit of Contractor or otherwise. Should TOWN take administrative or other legal action to protect Contractor's exclusive rights, or otherwise incur legal costs in order to enforce the exclusivity of this Agreement, Contractor shall actively participate in such action, and shall reimburse TOWN for all reasonable attorneys fees or other legal costs and fees specifically related to any such action, unless Contractor provides advance written notice to TOWN of its opposition to such activity.

4. CONSIDERATION – FRANCHISE FEE

- a. Franchise Fee. In consideration of this Agreement and the permit and franchise given CONTRACTOR under this Agreement, the TOWN shall receive as an administration and franchise fee a sum equal to eighteen percent (18%) of all sums collected by TOWN on behalf of CONTRACTOR or Affiliated Companies, or directly collected by CONTRACTOR or Affiliated Companies pursuant to this Agreement for each annual period. TOWN may adjust the Franchise Fee from time to time, provided that if TOWN increases the Franchise Fee, CONTRACTOR may increase its rates by the amount necessary to pass through the increase in the Franchise Fee.
- b. Audit of Franchise Fee. TOWN or its designee, at TOWN's sole discretion, may audit the Franchise Fee paid by CONTRACTOR.

5. CONTRACTOR RESPONSIBILITY

CONTRACTOR agrees to perform all of its obligations under this Agreement for the term of this Agreement. CONTRACTOR shall furnish all of the labor and equipment necessary for the collection, processing and disposal of all Solid Waste subject to the terms, conditions and provisions of this Agreement. CONTRACTOR represents that it has the professional and technical personnel required to perform the services in conformance with such terms, conditions and provisions of this Agreement. CONTRACTOR shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

6. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon execution of this Agreement by the Parties as indicated by the date first appearing above and shall expire on January 1, 2027, provided, however, that this Agreement shall be automatically renewed for succeeding ten year terms unless the TOWN finds the CONTRACTOR in breach of this Agreement or that the CONTRACTOR'S performance under the Agreement is determined by the TOWN in its reasonable discretion to be unsatisfactory. This Agreement is intended to replace in its entirety the previous Agreement for Solid Waste Handling Services between the parties hereto dated August 23, 1994 and the Agreement for Solid Waste Recycling Services dated August 23, 1994. Nothing in this section shall be construed as limiting TOWN's right to terminate this Agreement for cause pursuant to Section 14(b). TOWN at its sole discretion may terminate contract by providing CONTRACTOR notice one year prior to the end of a term.

7. SCOPE OF SERVICES

a. General

CONTRACTOR shall provide Solid Waste and Recyclable Material collection, transportation, transferring, processing recycling and disposal services within TOWN in accordance with the terms of this Agreement. CONTRACTOR shall not be required to provide such collection, transportation, processing and disposal services for Special or Hazardous Waste under this Agreement. CONTRACTOR may provide such services for Special or Hazardous Waste if contracted to do so by Customers under separate written contracts negotiated between CONTRACTOR and the Customer generating such Special or Hazardous Waste, provided that CONTRACTOR obtains all necessary permits and performs in accordance with Applicable Law.

Unless otherwise approved by CONTRACTOR, only Containers, Bins, Front-Loading Bins, Roll-Off Bins, Compactors and Litter Containers are authorized to be used by Customers for the deposit of Solid Waste. CONTRACTOR shall replace existing Containers, Front-Loading Bins, Roll-Off Bins and Litter Containers, if applicable, with clean and freshly painted replacements as often as deemed reasonably necessary by TOWN and requested by TOWN, but in no event more often than twice per Contract Year at no cost to TOWN or any Customer. All

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cleaning of such Bins and Containers shall be completed in full compliance with all Applicable Laws, including any requirements of the National Pollution Discharge Elimination System.

CONTRACTOR's employees and agents while engaged in the collection or gathering of Solid Waste within the TOWN shall be attired in suitable and acceptable uniforms approved by TOWN. All CONTRACTOR's employees shall make collections as reasonably quiet as possible and shall avoid any unnecessary disturbance in the course of providing the services under this Agreement. CONTRACTOR and its employees shall not loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. CONTRACTOR shall exercise due care when handling Containers and shall not cause the Containers to be thrown or dropped during collection services. CONTRACTOR's employees shall replace Containers upright once emptied and shall clean up any Solid Waste spilled during the collection process, including Solid Waste spilled prior to the arrival of CONTRACTOR's employees.

CONTRACTOR shall be responsible for any damage to any property if proven to be the result of the CONTRACTOR's vehicles exceeding the legal maximum weight limits of the State of California or the CONTRACTOR's negligent operation of the vehicles. CONTRACTOR shall be responsible for damage to public and private utilities, and shall repair or replace such damaged utilities, if proven, to the satisfaction of the TOWN, to be caused by the inattention, carelessness or negligence of CONTRACTOR.

TOWN reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing CONTRACTOR from driving an established collection route, in which event CONTRACTOR will adjust its route without cost adjustment therefore. Any route changes proposed by CONTRACTOR shall be submitted, in writing, for TOWN approval at least sixty (60) days prior to the proposed date of implementation. CONTRACTOR shall implement such route changes so that no Customer is left without collection services for more than six days. TOWN reserves the right to conduct audits of CONTRACTOR's collection routes. Upon request, CONTRACTOR shall provide TOWN with route maps detailing all collection routes.

b. Residential Service

i. Single-Unit Residential

CONTRACTOR shall, at least once per week, collect Solid Waste which has been placed, kept or accumulated in Containers provided by CONTRACTOR. CONTRACTOR shall also collect, once per week, Recyclable Material which has been placed, kept or accumulated in Containers provided by CONTRACTOR. The collection day for Solid Waste shall be the same as the collection day for Recyclable Material. The Containers provided by CONTRACTOR shall be 40-60-95 gallons in size, depending on arrangements by Customers. CONTRACTOR shall make available additional Containers to any Customer who requests additional Containers, at the rates as approved by the TOWN.

Customers shall place receptacles at or near the curbside prior to CONTRACTOR'S normal weekly collection time. Notwithstanding the requirement that receptacles be placed at curbside, CONTRACTOR may make special provision for service to Customers with physical conditions which limit the Customer's ability to place receptacles at curbside who request such service in writing. CONTRACTOR may request reasonable verification of the physical condition of Customers requesting special service. CONTRACTOR shall not be required to collect Containers which do not conform to the provisions of this Agreement

Upon verbal or written Customer request, CONTRACTOR shall collect from each Customer up to five items of Bulk Household Waste items. Each residential Customer shall be entitled to receive such bulk pickup two times per year at no charge to the Customer or the TOWN. Between December 25th and January 15th, CONTRACTOR shall collect Christmas trees that are placed curbside.

TOWN shall bill Single-Unit Residential Customers for Solid Waste curbside collection service, and, if applicable, additional Containers, at the rates set forth and established by the TOWN. CONTRACTOR shall not receive compensation, including sign-up or similar charges, from Single-Unit Residential Customers in addition to the CONTRACTOR service rates set forth in Exhibit "B," except for Special Services. The rates reflected in Exhibit "B" provide for the residential rates in effect until July 2012.

ii. Multi-Unit Residential

CONTRACTOR shall, as frequently as negotiated with Customer but in no event less than once per week, collect the Solid Waste and Recyclable Materials which have been compacted or otherwise placed, kept or accumulated in Bins or Containers at Multi-Unit Residential Premises. Multi-Unit Residential Customers or owners may arrange with CONTRACTOR for Container service in lieu of Bin service. If CONTRACTOR disagrees with a Customer regarding the Customer's preference for Container service, CONTRACTOR shall promptly notify the Town Manager in writing of such disagreement. If the Town Manager or his designee determines that Container service would be appropriate, the Town Manager or his designee may authorize Container service in lieu of Bin service, subject to the dispute resolution procedures set forth in Section 10.b.

Multi-Unit Residential Customers or owners shall be billed by TOWN at the commercial rates authorized by the TOWN including any extra charges applicable to a particular Customer. Such Customers shall pay the applicable charges directly to TOWN. If a Multi-Unit Residential Customer receives Container service instead of Bin service, TOWN shall bill to receive from such Customer the applicable fee set forth for Residential Containers.

iii. Hours of Collection

Collection service at Residential Premises (including Multi-Family Residential) shall not start before 6:00 a.m. or continue after 8:00 p.m., except in an emergency (and after notice of which has been provided to TOWN's Town Manager) or as is specifically approved in writing by

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the Town Manager or his or her designee. Hours of collection are subject to change by resolution of the Town Council. Collection services to Residential Premises shall not take place on Sundays.

c. Commercial Service

CONTRACTOR shall, as frequently as negotiated with Customer but in no event less than once per week, collect the Solid Waste and Recyclable Materials which have been collected, compacted or otherwise placed, kept or accumulated in Bins or Containers at Commercial Premises. Commercial Customers or owners shall be billed at the rates authorized by the TOWN. If a Commercial Customer receives Container service instead of Bin service, TOWN shall bill to receive from such Customer the applicable fee set forth for Commercial Containers. Except for Special Services, TOWN shall charge Commercial Customers only those charges approved by the TOWN and CONTRACTOR shall bill for temporary, on-demand service including temporary bins and rolloff boxes.

The exterior of the Bins supplied by CONTRACTOR shall, at all times, be maintained by CONTRACTOR in a well-kept appearance. Roll-Off Bins shall be marked with reflectorized material where such Bins are or may reasonably be expected to be located in the public right-of-way. CONTRACTOR shall offer Customers renting Bins a Bin cleaning service to be performed at the request of the Customer or TOWN for a fee specified in such contract for the purpose of cleaning and deodorizing the interior of the Bins.

i. Hours of Collection

Collection service at Commercial Premises, except at Multi Family Residential Units, may not start earlier than 5:00 a.m. or continue after 8:00 p.m., except in an emergency (and after notice of which has been provided to TOWN's Town Manager) or as is specifically approved in writing by the Town Manager or his or her designee. If the Town Manager determines that the commencement of collection in areas immediately adjacent to residential units between the hours of 5:00 a.m. and 6:00 a.m. unduly and unnecessarily disturbs the residents thereof, he may direct that collections in such areas shall be made between the hours of 6:00 a.m. and 8:00 p.m., and in that event CONTRACTOR agrees to comply with such order.

ii. Mandatory Commercial Recycling

CONTRACTOR assumes all responsibility for TOWN'S compliance with statewide mandatory commercial recycling program requirements as defined by CalRecycle. CONTRACTOR will ensure all entities with commercial trash accounts are advised of the mandate for commercial recycling and the importance of adding a recycling account. CONTRACTOR will work with businesses in the TOWN to set up the optimal combination of trash and recycling containers to reduce disposal charges, where possible, and ensure recovery of the maximum amount of recycling. CONTRACTOR will maintain a database of commercial recycling accounts separately from commercial trash accounts and will make such information available to TOWN upon request.

d. Litter Containers

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At such time as TOWN develops a comprehensive program of distribution of Litter Containers, CONTRACTOR shall, at no charge to TOWN, dispose of the Solid Waste collected in any Litter Containers which are serviceable by CONTRACTOR's automated disposal trucks. CONTRACTOR will continue to empty TOWN-provided recycling containers located in TOWN parks as more fully set out in Exhibit "D."

e. Composting

No later than 12 months following the commencement of composting operations at the Victor Valley MRF and upon request by TOWN, CONTRACTOR and TOWN will begin a mutually agreed upon pilot program for the collection of food waste and green waste. Organic materials collected in this program will be taken to composting facility for processing into compost and not to a landfill for use as Alternative Daily Cover (ADC). CONTRACTOR will work closely with TOWN and with the Mojave Desert & Mountain Recycling Joint Powers Authority (JPA) to set up both the collection route for the pilot project, and the plan for processing the materials into compost.

f. Diversion.

i. No Commingling CONTRACTOR shall not commingle, in the vehicles or otherwise, any Solid Waste with any Recyclable Materials or Green Waste, or any Solid Waste, Recyclable Materials or Green Waste with each other when collected by CONTRACTOR, unless otherwise specifically authorized in writing by TOWN. CONTRACTOR shall not be deemed to have violated this section where such materials were commingled prior to collection by CONTRACTOR.

ii. Processing

(1) Facility Selection CONTRACTOR shall transport and deliver all Recyclable Materials collected within the TOWN to a Processing Facility and all Green Waste Collected within the TOWN to a Green Waste and/or a Composting Facility when applicable. Initially, the Processing Facility for Recyclable Materials shall be the Victor Valley MRF in San Bernardino County. If public health, safety and/or fiscal interest requires, or compliance with Applicable Law necessitates, the TOWN may designate an alternate Facility at any time during the term of this Agreement. Prior to designating an alternative Facility, TOWN shall give CONTRACTOR at least 30 days advance written notification of its intention to do so, except in cases of emergency resulting in an imminent threat to public health and safety.

(2) Weighing and Record Requirements CONTRACTOR shall ensure that, at a minimum, all materials shall be weighed upon delivery to a Processing Facility or Composting Facility, and all weight and related delivery information recorded. CONTRACTOR shall make arrangements with the Processing or Composting Facility to allow the TOWN to review during such facility's normal operating hours any recordings

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or video of tipping. CONTRACTOR shall ensure that all scales shall be weigh master certified and regularly maintained to ensure reliability and continued functioning.

(3) Disposal of Residue CONTRACTOR shall dispose of any and all residue remaining from the processing of Recyclable Materials and any non-processable materials in accordance with Applicable Law.

iii. Indemnification To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by CONTRACTOR's breach of or noncompliance with a provision of this Agreement, CONTRACTOR agrees to protect, indemnify and defend TOWN, with counsel approved by TOWN, and to indemnify and hold harmless TOWN from and against all fines or penalties imposed by the California Department of Resources Recycling and Recovery (CalRecycle) if the diversion goals specified in the California Public Resources Code are not met by the TOWN with respect to the Solid Waste collected by CONTRACTOR under this Agreement. Upon receipt from CalRecycle of a stipulated order of noncompliance with the diversion goals, which is at least partially caused by CONTRACTOR's breach of or noncompliance with a provision of this Agreement, the TOWN may require CONTRACTOR to provide a performance bond in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) until such time as compliance is attained by CONTRACTOR.

If the TOWN finds that additional programs are necessary to meet any required diversion goals, the TOWN may require proposals for additional diversion programs to meet the diversion requirements. If necessary, TOWN and CONTRACTOR shall enter into good faith negotiations, but if agreement regarding programs and/or rate adjustments cannot be reached, the matter shall be referred for non-binding mediation as set forth herein. If TOWN and CONTRACTOR cannot reach agreement regarding programs and/or rate adjustments in order to meet required diversion goals, the TOWN and CONTRACTOR shall refer the matter for binding arbitration to be resolved by an independent arbitrator mutually selected by the TOWN and CONTRACTOR, the costs of which shall be borne equally by the TOWN and CONTRACTOR. Both parties shall, in good faith and in writing, promptly provide the independent mediator or arbitrator with any all information and documentation required or requested by the independent arbitrator in order to make its determination. The independent arbitrator shall make its determination based on the submissions of the parties, the provisions of this Agreement, its experience with similar services and disputes, and other factual determinations it may make regarding the matter in dispute. Such determination shall be made within thirty (30) days following such referral and shall be binding upon the Parties as though made a lawful amendment to this Agreement.

g. Collection on Holidays

If the day of collection on any given route falls on a Holiday or a day on which the Disposal Facility utilized by CONTRACTOR is closed, CONTRACTOR may provide collection service for such route on the next workday following such holiday or Disposal Facility closure day.

h. Provision and Replacement of Containers and Bins

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CONTRACTOR shall promptly provide without cost to each new Residential Customer using Container service one (1) Container for collection and storage of Recyclable Material. Upon request of any Customer for a replacement Container, CONTRACTOR shall provide such Container without cost to the Customer or to TOWN. CONTRACTOR shall provide all Bins to Customers including, without limitation, TOWN, who obtain Bin service.

8. OTHER SERVICES OF CONTRACTOR

a. On-Demand Residential Bulk Household Waste Curbside Collection

Not less than two times a year, each Residential Customer shall be entitled to place up to five items of Bulk Household Waste for curbside pickup at no additional charge to the Customer or TOWN. A Residential Customer who wishes to place Bulk Household Waste for collection shall contact CONTRACTOR to inform CONTRACTOR that Bulk Household Waste pickup is requested.

b. Town Facilities

- i. CONTRACTOR shall, at no charge to TOWN, collect all Solid Waste and Recyclable Materials generated by the TOWN (and not third parties) at Premises owned and/or operated by the TOWN, excluding construction and demolition debris. In addition, street sweeping debris hauling services will be provided at no charge to the TOWN; street sweeping debris disposal costs will continue to be the responsibility of the TOWN. The facilities currently to be provided service along with the type and frequency of service are listed on Exhibit C. The locations and levels of service required may change from time to time as facilities are built, altered or closed. TOWN staff will provide standard notice as service needs change, and CONTRACTOR will make appropriate changes to service within one week of receiving notice from TOWN.
- ii. CONTRACTOR shall, at no charge to TOWN, provide necessary bins for Solid Waste and Recyclable Materials collected through monthly neighborhood cleanup programs conducted by the TOWN, not to exceed 12 boxes per year.
- iii. Once each spring and fall, CONTRACTOR shall provide TOWN with roll-off bins and other assistance as required for community-wide cleanups at no additional cost. Such cleanups may coincide with San Bernardino County free dump days in April and October and do not count towards the monthly neighborhood cleanup programs listed above.

c. Hazardous Waste

CONTRACTOR shall screen, identify and prevent against the disposal of Hazardous Wastes at any Processing Facility, Composting Facility or Disposal Facility used by CONTRACTOR under this Agreement. If CONTRACTOR inadvertently delivers materials to

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any Processing Facility, Composting Facility or Disposal Facility which comprise Hazardous Waste and CONTRACTOR cannot or fails to remove it, CONTRACTOR shall arrange for its proper disposal in accordance with Applicable Law. CONTRACTOR shall recover the costs of such disposal from the Customer which generated such Hazardous Waste, if known, and charge such cost to such Customer. If CONTRACTOR delivers Hazardous Waste to any Processing Facility, Composting Facility or Disposal Facility, CONTRACTOR shall promptly notify the TOWN, the Apple Valley Fire Protection District, and the San Bernardino County Health Department, providing the name, address, and telephone number of the collector and the facility or premises from which the Hazardous Waste was collected, the type and quantity of the Hazardous Waste, and the location and method of final disposition of Hazardous Waste.

d. Indemnification

CONTRACTOR shall indemnify, defend with counsel approved by TOWN, protect and hold harmless the TOWN from and against all claims, actions, damages or liabilities paid, incurred or suffered by, or asserted against, the TOWN arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where CONTRACTOR delivers, stores, processes, recycles, composts or disposes of materials or wastes to the extent that such liabilities are caused by CONTRACTOR's negligence or willful misconduct. Nothing in this subsection shall be construed to require CONTRACTOR to indemnify the TOWN for liabilities caused by the negligence of the TOWN.

e. Notification of New Services

CONTRACTOR shall ensure that Customers are informed in a timely manner about new service programs or the introduction of new elements in services required by the CONTRACTOR and approved by the TOWN. CONTRACTOR shall inform Customers of such changes through a public awareness plan, which shall include direct mailings and/or local advertising, prior to the implementation of such changes.

f. Public Education Plan

CONTRACTOR shall prepare for TOWN's approval an annual public education plan that will continue to inform the public how to correctly sort materials for recycling, the importance of diversion, to publicize the operation and diversion accomplished by the Victor Valley Materials Recovery Facility (MRF), and the implementation of any new diversion programs such as organics collection. Plan shall include preparation of professionally printed and updated brochures, updated information posted on CONTRACTOR's website, grade-appropriate presentations made to classes or assemblies at Apple Valley schools, and a physical CONTRACTOR presence at special events in the community to distribute informational materials and answer Customer questions. CONTRACTOR shall participate in no less than one presentation per year for each Apple Valley school requesting such presentation and four large-scale community events approved by TOWN. Conducting class tours of the MRF shall count towards school presentations. CONTRACTOR

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participation in certain regional events such as High Desert Opportunity may count as one of the four required large-scale community events, with advance approval of TOWN.

CONTRACTOR shall utilize Department of Conservation California Redemption Value (CRV) curbside payments to fund preparation and fulfillment of the public education plan.

g. Required Reports to State

CONTRACTOR will complete all required AB 939 and AB341 reports to the requisite state agency on TOWN'S behalf including the Electronic Annual Report and such other reports as may become necessary by law or regulation.

h. Distribution of Materials

CONTRACTOR shall prepare and distribute public education materials to all Residential and Commercial Customers at least two (2) times during each Contract Year. All informational and promotional materials and related news releases shall be developed at CONTRACTOR's sole cost and expense.

9. BILLING AND PAYMENTS

a. Collection

All amounts due and payable to CONTRACTOR from Customers under this Agreement shall be solely billable by TOWN or its designee. TOWN shall retain full responsibility for prosecuting any collection actions involving TOWN's Customers, including, without limitation, referral to collection agencies or instituting legal proceedings. Collection by CONTRACTOR of any fee, charge, or other sum directly from any Customer shall constitute a violation of this Agreement. Collection for temporary services and roll-off services that are billed by CONTRACTOR shall be the responsibility of the CONTRACTOR.

b. Annual Adjustment

In addition to other increases as provided herein, CONTRACTOR may annually request adjustments to the charges made to Customers under this Agreement to reflect increases in CONTRACTOR's costs. CONTRACTOR shall make each request in writing, no later than March 31 of each year, and shall be effective July 1 of each year. CONTRACTOR shall submit detailed information with each request to substantiate its claimed cost increases. The adjustments will be based on the previous calendar year twelve month average change in the Consumer Price Index for All Urban Consumers as published by the U.S. Department of Labor for Los Angeles-Riverside-Orange Counties. TOWN may request additional information if TOWN believes that the materials provided by CONTRACTOR are insufficient or inadequate. Subject to the limits contained in this paragraph, TOWN shall grant the adjustment, at the Town Council's discretion, if it finds that CONTRACTOR's costs have increased by the amount indicated, and that CONTRACTOR is in compliance with every term of this Agreement. A grant of a rate adjustment

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shall be by resolution following a public hearing concerning the proposed increase. No adjustment granted by TOWN shall exceed four percent (4%) or the change in the Consumer Price Index for All Urban Consumers ("CPI-U") published by the U.S. Department of Labor for the Los Angeles-Riverside-Orange County statistical area, whichever is less.

c. Extraordinary Adjustment

CONTRACTOR may request an adjustment to CONTRACTOR service rates at reasonable times other than that required in Section 9.b. in the event of extraordinary changes in the cost of providing service under this Agreement. Extraordinary adjustment requests may include changes in service costs resulting from regulations imposed by Federal, State or local regulatory agencies, including additional diversion program requirements or other unforeseen service cost impacts.

For each request pursuant to this Section, CONTRACTOR shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to TOWN with support for assumptions made by Company in preparing the estimate. TOWN shall review the CONTRACTOR's request and make the final determination as to whether an adjustment will be made.

10. COLLECTION EQUIPMENT

CONTRACTOR shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which CONTRACTOR is responsible under this Agreement. All vehicles used by CONTRACTOR under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, and in good repair, shall keep all collected materials covered during transportation, and shall be regularly inspected and certified by the San Bernardino County Health Department. Such vehicles shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid. CONTRACTOR shall not cause or permit the private property or TOWN streets or property to be littered with trash or other debris because of CONTRACTOR's activities under this Agreement. CONTRACTOR shall clean up any such trash or debris in the immediate vicinity of any Container and/or storage area that results from collection services under this Agreement.

CONTRACTOR's name, phone number and vehicle number shall be visibly displayed on its vehicles in letters and figures no less than four (4") inches high.

CONTRACTOR will comply with all applicable air quality rules in vehicle deployment. All newly purchased route vehicles for use on TOWN routes will be either compressed natural gas (CNG) fueled, liquid natural gas (LNG) fueled or meet or exceed the same pollution and mileage performance standards.

10. SERVICE COMPLAINTS AND DISPUTE RESOLUTION

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All service complaints by Customers shall be directed to CONTRACTOR. All billing complaints by Customers received by TOWN from Customers billed directly by CONTRACTOR shall also be directed to CONTRACTOR. CONTRACTOR shall record all complaints received (including date, name, address and nature of complaint). CONTRACTOR shall make all such records available for inspection by the Town Manager or his designee during normal business hours, upon demand by the Town Manager. CONTRACTOR agrees to use its best efforts to resolve all such complaints within the business day next following the date on which such complaint is received. CONTRACTOR shall report in writing to the Town Manager, or his designee, as to the action taken or other disposition made of each complaint. Such report shall be provided to TOWN within 72 hours of CONTRACTOR receiving the complaint (excluding Saturdays, Sundays, and holidays).

If CONTRACTOR misses a scheduled pickup, it shall provide a special pickup within twenty-four (24) hours (Sundays and Holidays excepted) of notice thereof to CONTRACTOR at no charge to Customer or TOWN.

The Customer making the complaint may appeal CONTRACTOR's resolution to the Town Manager or his designee within 30 days of the initial complaint. CONTRACTOR shall promptly make this appeal right known to the Customer making complaints. The Town Manager shall recommend a resolution within seven days of receiving the appeal, and provide a written copy of the resolution to CONTRACTOR and the Customer appealing CONTRACTOR's complaint resolution.

In the event that the Town Manager determines that CONTRACTOR has failed to render performance in accordance with the requirements of this Agreement, he or she may assess damages against CONTRACTOR and reduce payment otherwise due to CONTRACTOR accordingly. CONTRACTOR shall in all cases be given a reasonable opportunity to remedy the defect in performance prior to such assessment of damages.

11. OWNERSHIP OF SOLID WASTE

All Solid Waste collected pursuant to this Agreement shall be the property of the Customer until placed in a Bin or Container for collection pursuant to this Agreement. Except as provided in the next paragraph, once Solid Waste is placed in a Bin or Container, it shall be deemed thrown away and discarded, and ownership shall pass to TOWN. All Solid Waste shall be collected, transported, and disposed of in accordance with federal, state and local law.

This Agreement shall not prohibit any person from selling Recyclable Material or giving Recyclable Material away to persons or entities other than CONTRACTOR prior to such Recyclable Material being placed in a Bin or Container for collection by CONTRACTOR. However, in either instance, the Recyclable Material must be segregated from and not mixed with Solid Waste and the seller/donor may not pay the buyer/donee any consideration for collecting, transporting, processing or recycling such Recyclable Material.

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12. INSURANCE, INDEMNIFICATION AND PERFORMANCE BOND

a. Indemnification of TOWN

CONTRACTOR agrees that it shall indemnify, defend with an attorney chosen by TOWN, and hold harmless TOWN, its officers, officials, employees, agents, assigns and any successor or successors to TOWN's interest, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of every kind and description, arising or resulting from: (i) the acts or omissions of CONTRACTOR, its agents, employees or subcontractors, in exercising the privileges granted to it by this Agreement; and (ii) the failure of CONTRACTOR, its agents, employees and/or subcontractors, to comply in all respects with the provisions and requirements of this Agreement; and (iii) any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) pertaining to any Hazardous Waste at any place where CONTRACTOR stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to and shall be construed to operate as an agreement pursuant to Section 107(c) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9067(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify TOWN from liability.

This Section 12.a. shall survive the expiration of the period during which collection services are to be provided under this Agreement.

b. Insurance

CONTRACTOR shall obtain and shall require its subcontractors to obtain insurance of the types and in the amounts described below and satisfactory to TOWN.

i. Commercial General Liability Insurance

CONTRACTOR shall maintain time of occurrence based commercial general liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or be no less than two times the occurrence limit. Such insurance shall:

(a) Name TOWN, its officials, officers, employees, agents, and consultants, as insureds with respect to performance of Services. Such insured status shall contain no special limitations on the scope of its protection to the above listed insureds.

(b) Be primary with respect to any insurance or self insurance programs covering TOWN, its officials, officers, employees, agents, and consultants.

(c) Contain standard separation of insureds provisions.

ii. Business Automobile Liability Insurance

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CONTRACTOR shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

iii. Workers' Compensation Insurance

CONTRACTOR shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 per accident.

iv. Certificates/Insurer Rating/Cancellation Notice

(a) CONTRACTOR shall, prior to commencement of the Services, furnish to TOWN properly executed certificates of insurance, and certified copies of endorsements, and policies if requested by TOWN, which shall clearly evidence all insurance required in this Section. CONTRACTOR shall not allow such insurance to be canceled, allowed to expire or be materially reduced in coverage except on 30 days' prior written notice to TOWN.

(b) CONTRACTOR shall maintain such insurance from the time the Services commence until the Services are completed, except as may be otherwise required by this Section.

(c) CONTRACTOR shall place insurance with insurers having an A.M. Best Company rating of no less than A:VIII and licensed to do business in California.

(d) CONTRACTOR shall replace certificates, policies and endorsements for any insurance expiring prior to completion of the Services.

c. Performance Bond

Prior to execution of this Agreement, CONTRACTOR shall deposit with TOWN either a letter of credit or a performance bond (collectively referred to as the "Performance Bond") in the amount of \$250,000. The Performance Bond shall serve as security for the faithful performance of CONTRACTOR of all of the provisions and obligations of this Agreement. The Performance Bond shall contain terms acceptable to TOWN. If CONTRACTOR deposits a letter of credit with TOWN, interest, if any, relating to any cash deposits that may exist with regard to that letter of credit shall accrue to CONTRACTOR.

13. RIGHTS OF TOWN TO PERFORM DURING EMERGENCY

Should CONTRACTOR, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 15.a. below, fail, refuse or be unable to collect, transport, process and dispose of any or all of the Solid Waste for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than forty-eight (48) hours, and if as a result thereof Solid Waste should accumulate in TOWN to such an extent, in

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such a manner, or for such a time that the Town Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event TOWN shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hour prior written notice to CONTRACTOR, or without such notice should the TOWN determine that a further delay would endanger the health, safety, and welfare of TOWN residents during the period of such emergency, to take possession of any or all equipment of CONTRACTOR previously used in the collection, transportation, processing and disposal of Solid Waste hereunder or which CONTRACTOR would otherwise be obligated to collect and transport pursuant to this Agreement. CONTRACTOR agrees that in such event it will fully cooperate with TOWN to affect such a transfer of possession for TOWN's use. CONTRACTOR agrees that, in such event, TOWN may take possession of and use all of said equipment and facilities without paying CONTRACTOR any rental or other charge, provided that TOWN agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities and indemnifies, defends and holds CONTRACTOR harmless from TOWN's use.

14. TOWN'S REMEDIES UPON DEFAULT BY CONTRACTOR

a. Liquidated Damages

IN THE EVENT THAT THE CONTRACTOR FAILS TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE PARTIES AGREE THAT TOWN WILL SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO TOWN, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL FIVE HUNDRED DOLLARS (\$500) PER DAY, PER UNEXCUSED VIOLATION OF THIS AGREEMENT OR THE MUNICIPAL CODE. THEREFORE, THE PARTIES FURTHER AGREE THAT, UPON ANY UNEXCUSED VIOLATION BY CONTRACTOR OF THIS AGREEMENT OR THE MUNICIPAL CODE, TOWN SHALL BE ENTITLED TO PAYMENT, AS LIQUIDATED DAMAGES, OF FIVE HUNDRED DOLLARS (\$500) PER DAY, PER UNEXCUSED VIOLATION OF THIS AGREEMENT OR THE MUNICIPAL CODE. THE PARTIES AGREE THAT SUCH LIQUIDATED AND AGREED DAMAGES SHALL BE DUE AND PAYABLE TO TOWN BY THE HOLDER OF THE PERFORMANCE BOND REQUIRED BY SECTION 12.C OF THIS AGREEMENT AND WITHOUT ANY ACTION ON CONTRACTOR'S PART.

CONTRACTOR AND TOWN SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES BELOW:

CONTRACTOR

TOWN

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b. Termination

i. TOWN may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement at any time as a result of a violation of this Agreement by CONTRACTOR by giving written notice to CONTRACTOR of such termination and the violation, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon receipt of a notice of termination, CONTRACTOR shall have sixty (60) days to cure or correct the violation of this Agreement noted by TOWN. During the 60-day cure period, CONTRACTOR shall have the right to a hearing before the Town Council to discuss the violation and proposed termination, provided that the request for a hearing is made in sufficient time to schedule a hearing at a regular meeting of the Town Council falling within the 60-day cure period. If the violation has not been cured or corrected within the 60-day cure period, TOWN may proceed with the termination of this Agreement on the noticed date. Upon termination, CONTRACTOR shall be compensated only for those Services which have been adequately rendered to TOWN, and CONTRACTOR shall be entitled to no further compensation. Upon termination, TOWN shall be entitled to damages caused by such violation and the resulting termination, including, but not limited to the liquidated damages provided for in section 14.a of this Agreement. Notwithstanding the 90-day pre-termination notice requirement described above, if, in TOWN's determination (which determination may be made in the sole discretion of TOWN), the violation endangers public health, safety or welfare, termination may be effective immediately.

ii. The rights and remedies of TOWN under this Agreement, including the right to make a claim under the Performance Bond deposited with TOWN by CONTRACTOR for reimbursement of any costs borne or damages incurred by TOWN as a result of a default by CONTRACTOR under this Agreement and the right to perform during an emergency, shall be in addition to any and all other rights and privileges TOWN may have, and shall not be deemed to limit any such other rights or privileges of TOWN under this Agreement or by virtue of any law.

15. GENERAL PROVISIONS

a. Annexation

In the event that any community, neighborhood or other territory is hereafter annexed to TOWN, Solid Waste and Recyclable Material collection, transportation, processing, disposal and recycling services shall, if requested by TOWN, be immediately provided to such area by CONTRACTOR pursuant to this Agreement, subject to any rights the existing Solid Waste franchisee in such territory may have to continue providing services in such territory.

b. Independent Contractor

It is expressly understood and agreed that CONTRACTOR shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of TOWN; that CONTRACTOR shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that CONTRACTOR shall

be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing shall be construed as creating a partnership or joint venture between TOWN and CONTRACTOR.

c. Law to Govern

It is understood and agreed by the Parties that the law of the State of California shall govern the interpretation of this Agreement.

d. Amendment

Except as may otherwise be specifically provided in this Agreement, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both TOWN and CONTRACTOR.

e. Assignment and Transferability; Subcontracting

This Agreement is not assignable or transferable in whole or in part by CONTRACTOR, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. In addition, the services to be performed by CONTRACTOR pursuant to this Agreement shall not be subcontracted to any third party without the written consent of TOWN. Any request made to TOWN by CONTRACTOR for approval of an assignment or transfer of this Agreement shall be accompanied by a non-refundable deposit in the amount of \$20,000 to cover TOWN's costs, including attorneys' fees, in evaluating the proposed assignee or transferee and the potential benefit or detriment to TOWN of the proposed assignment or transfer. Such consent shall not be unreasonably withheld, delayed or conditioned.

f. Compliance with Applicable Law

CONTRACTOR agrees that it will comply with all provisions of the Applicable Law, including TOWN's business license ordinance, and will obtain all licenses and permits, and pay all taxes and fees, required under the Applicable Law.

g. Notices

All notices, demands, requests, consents or other communications which this Agreement contemplates, authorizes, requires or permits either Party to give to the other, shall be in writing and shall be personally delivered; or sent by overnight mail, delivery service, or registered or certified mail, postage prepaid, return receipt requested; or by facsimile transmission; or by confirmed electronic mail, all addressed to the respective Party as follows:

To TOWN: Town of Apple Valley
 14955 Dale Evans Parkway
 Apple Valley, CA 92307
 Attention: Town Manager

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

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

h. Savings Clause and Entirety

If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement.

i. Attorney's Fees

In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

j. Entire Agreement

This Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties; provided, however, that this Agreement shall not relieve CONTRACTOR of any financial obligations that may have existed under the former franchise agreement, including but not limited to payment to the TOWN of one half of the proceeds from the sale by CONTRACTOR of recyclable materials.

k. Reimbursement of TOWN's Attorneys' Fees

Within 60 days following the effective date of this Agreement, CONTRACTOR shall reimburse TOWN's properly documented attorneys' fees incurred in the preparation and negotiation of this Agreement, in an amount in the aggregate not to exceed \$10,000.

l. Force Majeure

CONTRACTOR shall not be in breach under this Agreement in the event that the services to be provided by CONTRACTOR are temporarily interrupted or discontinued for any of the following events which are beyond the reasonable control of and not caused by the actions of CONTRACTOR: (i) riots, wars, sabotage, severe civil disturbances, insurrections, and explosions;

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(ii) natural disasters such as floods, earthquakes, landslides, and fires; (iii) strikes, lockouts, and other labor disturbances; or (iv) other catastrophic events. Other catastrophic events do not include the financial inability of CONTRACTOR to perform or failure of CONTRACTOR to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of CONTRACTOR.

16. ANNUAL REVIEW OF FRANCHISE BY TOWN

TOWN may, in its discretion, hold an annual public hearing to review and discuss CONTRACTOR's performance in providing services under this Agreement and its compliance with the terms of this Agreement. If TOWN opts to hold such a hearing, TOWN shall provide written notice of the hearing to CONTRACTOR, and may provide CONTRACTOR with information concerning items of special concern or specific topics to be discussed at the hearing. CONTRACTOR shall send a representative to any such hearing, and shall endeavor to reach mutually acceptable resolutions of issues raised or concerns expressed at the hearing.

17. REPORTING, ACCOUNTING AND AUDITING

a. Daily and Quarterly

CONTRACTOR shall maintain and make available to the TOWN, upon request, daily reports containing detailed audit information including, the number of tons of Solid Waste collected from Residential and Commercial premises, Recyclable Material, Green Waste and Bulk Household Waste and Construction Waste collected and delivered to the Disposal Facility, Processing Facility or Composting Facility and the route number, the vehicle number and CONTRACTOR's weight ticket for each load disposed or processed. Daily Residential Collection of Recyclable Materials shall be summarized by commodity and the amount collected. The daily reports shall also reflect amounts received by CONTRACTOR from the sale of Recyclable Materials.

b. Annual

CONTRACTOR shall submit annual reports to the TOWN on or before June 1 of each year totaling the information contained in the quarterly reports for the year. CONTRACTOR shall cooperate fully with TOWN's AB 939 reporting requirements by providing TOWN with requested information within a reasonable time of CONTRACTOR's receipt of TOWN's request, but in no event longer than fifteen (15) days after such receipt. Upon request, CONTRACTOR shall make an oral presentation of the annual report to the Town Council of the TOWN at the Town Council meeting specified by the TOWN.

c. Maintenance and Audit of Records

CONTRACTOR shall accurately maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents relating to this Agreement, or performance under this Agreement, including routing, complete list of Customers, level of

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Customer's Services, Customer complaints, employee training, inventory, maintenance logs, etc. ("Records") for the term of this Agreement plus two (2) years, or any longer period required by Applicable Law. Contractor shall maintain complete accounting records pertaining to cash receipts, billing and disposal records ("Accounting Records") prepared on an accrual basis in accordance with generally accepted accounting principles for at least three (3) years following the close of CONTRACTOR's fiscal year. CONTRACTOR shall maintain the Accounting Records in a manner that allows for the separate identification of all costs and revenues associated with providing Services hereunder and such costs and revenues shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by CONTRACTOR in locations other than the TOWN.

The Records, Accounting Records, and records of Affiliated Companies if any, shall be subject to audit and inspection, for the primary purpose of reviewing billing operations, accounts receivable and customer service, by the TOWN, its auditors or other agents, at any reasonable time, such audit or inspection to take place at the Town Hall, if practicable, or at CONTRACTOR's address indicated for receipt of notices. The TOWN shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an underpayment of the Franchise Fee in excess of five percent (5%) of the amount which should have been paid, CONTRACTOR shall repay such underpayment, together with interest at the rate of ten percent (10%) computed from the date of underpayment, and shall further reimburse TOWN for the entirety of TOWN's audit costs, including, without limitation, TOWN's auditor's costs and expenses, TOWN's internal costs and expenses, and TOWN's legal and other third party expenses. If such audit discloses a Franchise Fee underpayment of less than five percent (5%), CONTRACTOR shall repay such underpayment, together with interest at the rate of ten percent (10%) computed from the date of underpayment, but TOWN shall bear its audit costs.

d. Confidentiality

CONTRACTOR shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by Applicable Law, the TOWN or a court of competent jurisdiction.

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Executed:

BURRTEC WASTE INDUSTRIES, INC.,
a California corporation

TOWN OF APPLE VALLEY,
a Municipal Corporation
of the State of California

By _____

By _____
Mayor

ATTEST:

By: _____
Town Clerk

APPROVED AS TO CONTENT:

By: _____
Town Manager

APPROVED AS TO FORM:

By: _____
Town Attorney

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**EXHIBIT A
SPECIAL WASTE**

- Flammable waste.
- Containerized waste (e.g., a drum, barrel, portable tank, pair, etc).
- A waste from a pollution control process.
- Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or any other special wastes.
- Contaminated soil, waste, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation or disposal of any other special wastes.
- Dead animals.
- Explosive substances.
- Radioactive materials.
- Materials which have been exposed to highly infectious or contagious diseases.
- Medical waste as defined by State and Federal agencies.
- Sludge waste.
- Waste motor oil.
- Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos.
- Ash residue from the incineration of Infectious Waste described below.
- Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials.
- Industrial byproducts, including cement kiln dust, ore process residues and grit or screening removed from a waste water treatment facility.
- Infectious wastes which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes.
- Liquid wastes which are not spadeable, usually containing less than fifty percent solids, including food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap and septic tank pumpings, oil and geothermal field wastes, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes.
- Radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation.
- Sewage sludge comprised of residue produced by humans (not industrial), removed from a waste water treatment facility or septic tank, whether in a dry or semidry form.
- Other wastes which may be designated from time to time by CalRecycle.

**EXHIBIT B
CONTRACTOR SERVICE RATES PER MONTH**

Residential Services

Refuse/Recycling	40g	60g	95g
Standard Service	\$13.69	\$13.69	\$13.69
Hardship Service	\$9.85	\$10.27	\$10.46
Additional	\$5.57	\$6.96	\$9.75

**Commercial Services
For the Following Number of Collections Per Week**

Quantity Collected	1	2	3	4	5	6	7
Refuse							
60 g Barrel	\$13.60	-	-	-	-	-	-
95 g Barrel	\$13.60	-	-	-	-	-	-
1.5 CY Bin	\$29.11	\$56.81	\$84.54	\$112.24	\$139.94	\$167.65	\$195.39
2.0 CY Bin	\$38.29	\$75.20	\$112.52	\$148.98	\$185.87	\$222.80	\$259.69
3.0 CY Bin	\$56.76	\$112.13	\$167.51	\$222.87	\$278.25	\$333.61	\$388.99
4.0 CY Bin	\$75.20	\$148.98	\$222.80	\$296.80	\$370.39	\$444.17	\$518.05
Refuse Compactor							
2.0 CY Bin	\$38.29	\$75.20	\$112.52	\$148.98	\$185.87	\$222.80	\$259.69
3.0 CY Bin	\$56.76	\$112.13	\$167.51	\$222.87	\$278.25	\$333.61	\$388.99
4.0 CY Bin	\$75.20	\$148.98	\$222.80	\$296.60	\$370.39	\$444.17	\$518.05
Recycling							
60g Barrel	\$7.02	-	-	-	-	-	-
1.5 CY Bin	\$31.87	\$63.73	\$95.60	\$127.46	\$159.34	\$191.20	\$223.06
2.0 CY Bin	\$42.43	\$84.88	\$127.29	\$169.73	\$212.18	\$254.62	\$297.03
3.0 CY Bin	\$63.66	\$127.33	\$191.01	\$254.66	\$318.34	\$382.00	\$445.64
4.0 CY Bin	\$84.87	\$169.71	\$254.59	\$339.43	\$424.28	\$509.15	\$594.00
Recycling Compactor							
6.0 CY Bin	\$127.33	\$254.67	\$381.99	\$509.35	\$636.67	\$764.02	\$891.33
Roll Off							
10 yard	\$186.79						
20 yard	\$186.79						
30/40 yard	\$186.79						
30/40 yd compactor	\$186.79						

Temporary Roll Off							
10 yard	\$186.79						
20 yard	\$186.79						
30/40 yard	\$186.79						
Extra Services							
Temp Bin	\$88.58	7 day use					
Dump and Return	\$88.58						
Locking Bin	\$10.00	Per Bin					
Extra Pick-up	\$42.27	Per container					
Contaminated Recy. Bin (after one time grace)	\$40.00	Per dump + monthly charges					
Roll Off Rental	\$22.00	Per day					
Dry Run	\$50.00						

Note: Contractor service rates include 5% franchise fee.

**EXHIBIT C
TOWN OF APPLE VALLEY FACILITIES**

Facility	Address	Service Level			Type
		Qty	Size	Frq	
Town Hall	14955 Dale Evans Pkwy	1	3	3	Select
		1	3	3	Recycle
TAV Development Center	14975 Dale Evans Pkwy	1	3	3	Select
		1	3	3	Recycle
Household Hazardous Waste	13450 Nomwaket	1	3	1	Trash
		1	3	1	Recycle
Public Works Yard	13450 Nomwaket	2	10	O/C	Street Sweep
		1	30	O/C	Greenwaste
		1	30	O/C	Tires
Animal Shelter	22131 Powhatan	1	3	1	Trash
		1	3	1	Recycle
James Woody Community Center	13467 Navajo Rd	1	3	2	Trash
		2	3	2	Trash
		8	60g	0	Recycle
A.V Parks Brewster	21024 Otoe Rd	2	3	1	Trash
		4	60g	0	Recycle
TAV Civic Center Park	14999 Dale Evans Pkwy	2	3	1	Trash
		1	3	1	Recycle
TAV Corwin Park	18577 Corwin Rd	0	0	0	none
TAV Cramer Family Park	Serrano/Rimrock Roads	0	0	0	none
Horseman's Center	24320 Highway 18	6	60g	0	Recycle
TAV Lion's Park	20701 Highway 18	1	60g	0	Recycle

Facility	Address	Service Level			Type
TAV Mendel Park	21860 Tussing Ranch Rd	1	60g	0	Recycle
TAV Norm Schmidt Park	14053 Tuweep Trail	0	0	0	none
TAV Sycamore Rocks Park	23450 South Rd	1	60g	0	Recycle
TAV Thunderbird Park	20700 Thunderbird Rd	1	60g	0	Recycle
TAV Virginia Park	17242 Central Rd	1	60g	0	Recycle
TAV Yucca Loma Park	21351 Yucca Loma Rd	1	60g	0	Recycle
Apple Valley Golf Course	15200 Rancherias	2	3	1	Trash
		1	3	1	Trash
		1	3	1	Recycle