



Town Council Agenda Report

Date: March 23, 2021 Item No. 3

To: Honorable Mayor and Town Council

Subject: PROPOSED AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND BURRTEC WASTE INDUSTRIES, INC. TO PROVIDE FOR ORGANIC WASTE DISPOSAL AND PROCESSING SERVICES AT THE BURRTEC EXPANDED FACILITY LOCATION IN VICTORVILLE, CALIFORNIA

From: Douglas Robertson, Town Manager

Submitted by: Guy Eisenbrey, CCEO
Code Enforcement Manager

Budgeted Item: Yes No N/A

RECOMMENDED ACTION

That the Town Council authorize the Town Manager to approve the attached agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc. for organic waste Processing Services at the Burrtec Expanded Facility.

SUMMARY

The attached agreement will allow Burrtec Waste Industries, Inc. to start processing the Town of Apple Valley's green and organic waste streams at their expanded facility located in Victorville, California. The agreement term will run concurrently with the existing exclusive solid waste franchise agreement and the cost for this service will be set as noted in the agreement.

BACKGROUND

The Town's efforts to comply with AB 1826 and the upcoming requirements within the provisions set forth in SB 1383 have created a need for the Town to divert its commercial and residential green and organic wastes from disposal at the landfill. Over the last two years, the organic waste from commercial businesses had been collected by Burrtec Waste Industries, Inc. and transported to American Organics (AO) in Victorville, California

for processing. Until recently, AO was the only local outlet for the Town's green and organic waste and, though the tip fee was fairly low, AO has increased that fee and had planned on increasing the fee further as a result of needed upgrades to their facility in anticipation of an increased flow of green and organic waste. AO also has numerous priority customers, including Athens and others, that transport their organic waste to them from as far away as Los Angeles. There had always been a potential for Apple Valley to lose its ability to process its organic waste at AO if they ever exceeded their capacity or needing to give their other partners priority. This would have resulted in added transport costs to the Burrtec facility in Rialto, CA. Our partners at Burrtec have thankfully completed construction on an extended facility adjacent to the Victorville Materials Recovery Facility designed specifically to accommodate organics recycling. This agreement ensures reserved capacity at a long term fixed cost for the residents of the Town.

FISCAL IMPACT

Fiscal Year 20/21 Budget: \$30,000.00 (Organics Recycling)

YTD Expenditures: \$2,205.00

Project Budget: \$8,000.00 (approximate)

ATTACHMENTS

- A. Proposed agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc. to provide for organic waste processing services at the Burrtec Expanded Facility.
- B. Exhibit A, Definitions.

AGREEMENT FOR PROCESSING SERVICES AT THE BURRTEC EXPANDED FACILITY

THIS AGREEMENT FOR PROCESSING SERVICES AT THE BURRTEC EXPANDED FACILITY ("Agreement") is entered into this ___ day of 2020, by and between the Town of Apple Valley, a municipal corporation and a political subdivision of the State of California ("Town") and Burrtec Waste Industries, Inc., a California corporation dba AVCO Disposal, Inc. ("Burrtec").

RECITALS

WHEREAS, The Legislature of the State of California, by enactment of California Public Resources Code section 40000 *et seq.*, declares that it is within the public interest to authorize and require local agencies to make adequate provision for solid waste handling within their jurisdictions. In that regard, Town provides for the collection, recycling and disposal of solid waste, organic materials, recyclable materials, and other miscellaneous waste items generated within the boundaries of Town and recycling and disposal of said waste in a manner consistent with the protection of public health and safety; and

WHEREAS, The Legislature, by enactment of State Assembly Bill 939 on September 29, 1989, enacted the California Integrated Waste Management Act of 1989. AB 939 as amended by various amendments, including AB 341 (2011) (collectively, AB 939), requires all municipalities to divert solid waste from landfill disposal through source reduction, recycling, and composting. Assembly Bill 341 (2011) sets a statewide recycling goal of 75% and mandates that businesses participate in recycling programs. State Assembly Bill 1826 was enacted in 2014 and requires a business that generates a specified amount of organic waste per week to arrange for recycling service for that organic waste. State Assembly Bill (AB) 827 enacted in 2019 and effective July 1, 2020, requires limited-service restaurants such as those restaurants where customers order and pay at the counter, to provide food waste collection bins for patrons and arrange for recycling service for the organic waste; and

WHEREAS, The Legislature, by enactment of California Public Resources Code sections 40059 and 49300 *et seq.*, has provided a means by which cities may enter into solid waste handling and recycling service contracts with an independent contractor without utilizing the competitive bidding process; and

WHEREAS, Burrtec has entered into an agreement with the Mojave Desert & Mountain Recycling Joint Powers Authority (the "JPA") and participating municipalities, Town of Apple Valley and City of Victorville, to provide expanded processing support services on property owned by the participating municipalities and managed by the JPA

adjacent to the Victor Valley MRF in San Bernardino County (the "VVMRF"). These expanded processing support services, and additional facilities on Burrtec property, are commonly known as the Burrtec Expanded Facility (sometimes called the "Burrtec MRF"), which meets the applicable State and local regulatory requirements. Burrtec is prepared to accept and process additional materials not currently delivered to VVMRF or more appropriately handled at the Burrtec Expanded Facility and this Processing Services Agreement does not affect any agreement between Burrtec and the Town except as otherwise explicitly provided herein; and

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL COVENANTS AND CONDITIONS CONTAINED AND MADE IN THIS AGREEMENT, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Recitals. The Recitals set out above are true and correct.
2. Definitions. For purposes of this Agreement, used here shall have the definitions set out on Exhibit "A", attached and incorporated as if fully set forth, which terms are consistent with those utilized in the ground lease and amended and restated VVMRF operating agreement.
3. Delivery of Materials for Processing. The Town shall deliver, or cause to be delivered to the Burrtec Expanded Facility the materials to be processed (or "Processing Materials") generated and collected within the Town limits to be processed pursuant to this Agreement, provided that the Town shall accept any processing rates proposed by Burrtec in Exhibit B hereto prior to beginning any such delivery, and such delivery may not begin prior to Town's acceptance of the rate for that service. Town shall have no obligation to deliver any Processing Materials under this Agreement. Except for those Recyclable Materials that continue to be delivered to the VVMRF, this Agreement is exclusive and the Town shall deliver or caused to be delivered all such Green and Food Waste collected under the franchise agreement from within the Town limits to the Burrtec Expanded Facility. Notwithstanding, in the event Burrtec fails to perform pursuant to the terms and conditions of this Agreement, including providing acceptable processing rates, Town retains the right to enter into additional contracts with other parties for the services provided by this Agreement.
4. Scope of Services. Contractor will process at the Burrtec Expanded Facility the Processing Materials delivered to the Burrtec Expanded Facility by the Town or on behalf of the Town. Contractor shall arrange for the transfer, transportation and disposal of non-recoverable solid waste materials processed out of the Processing Materials ("Residual Material").
5. Acceptance of Materials for Processing. Contractor guarantees that during the term of this Agreement, it shall, at its sole cost and expense, provide management, supervision, personnel, materials, equipment, services and supplies necessary to operate and maintain the Burrtec Expanded Facility and to have sufficient capacity at the Burrtec Expanded Facility to enable it to accept Processing Materials

generated and collected within the boundaries of the Town. Notwithstanding the foregoing, Contractor may utilize any excess capacity at the Burrtec Expanded Facility for other customers.

- a. Contractor shall immediately advise the Town by phone and facsimile of any event which results in the partial or complete inability of the Burrtec Expanded Facility to receive Processing Materials, its effect on Contractor's ability to perform this Agreement, and Contractor's best estimate of the probable duration. Contractor shall confirm such information in writing within 24 hours of any such event. Normal operation of the Expanded Facility shall resume as soon as possible in accordance with this Agreement. In the event such processing capacity cannot be provided for a period in excess of seven (7) days, Contractor shall be obligated to make arrangements to accept such Processing Materials at another facility and to reimburse the Town for any increased transportation and processing costs incurred by the Town, including without limitation, increased processing fees, equipment rental costs, overtime and increased fuel costs resulting from the unavailability of the Burrtec Expanded Facility.
- b. Contractor shall have a scale house or utilize the VVMRF scale house and computer software to track all loads of Processing Materials delivered to the Expanded Facility, all Green and Food Wastes processed, and all applicable processing fees charged to the Town. Monthly reports shall be generated for the Town showing the tonnage of all Processing Materials delivered, by category, and processed at the Burrtec Expanded Facility for purposes of reporting the Town's diversion of waste pursuant to the requirements of AB 939. Contractor agrees to use its best efforts in assisting the Town by providing information in its possession needed for the preparation of compliance documents required pursuant to AB 939, AB341 and AB 1826 and other applicable State law. Said information shall be provided by Contractor in a format consistent with CalRecycle guidelines. Contractor shall maintain books and records of all financial transactions made pursuant to this Agreement. Such records shall be made available to the Town at any time during business hours, upon reasonable demand and as required to verify Contractor's performance of its obligations pursuant to this agreement.
- c. Contractor represents and warrants that it currently has, and will maintain, or cause to be obtained and maintained, all contracts, licenses, permits, qualifications, and approvals of whatever nature that are legally required for the operation, maintenance and use of the Burrtec Expanded Facility. Contractor agrees to comply with all applicable State and Federal law, including, but not limited to, social security and income tax withholding laws, unemployment compensation laws, and all applicable laws involving environmental, safety, or health procedures.
- d. Contractor shall, at its sole cost and expense, operate and maintain the Burrtec Expanded Facility in a good, clean and orderly condition including

implementing necessary repairs and replacements, purchasing and maintaining necessary replacement equipment or parts for the Burrtec Expanded Facility and maintaining an adequate inventory of spare parts and equipment.

- e. Contractor shall operate the Burrtec Expanded Facility with a sufficient amount of personnel to enable Contractor to perform all of Contractor 's obligations and duties under this Agreement in a timely and efficient manner. All of Contractor 's personnel shall be appropriately trained in accordance with all applicable rules, regulations and law so that the Burrtec Expanded Facility will be operated and maintained in accordance and consistent with applicable law, industry standards and practices.
 - f. The parties acknowledge the responsibility of the Town to meet the recycling and landfill diversion goals in AB 939, AB 341, AB 1826 and AB 1594. Nothing in this Agreement is intended or shall be interpreted to prohibit or impair the ability of the Town to meet or exceed such responsibilities, or to restrict the rights of residents, businesses or organizations within the Town to practice source separation, source reduction, recycling, composting or other materials recovery activities, or to restrict the right of the Town to conduct, sponsor, encourage or require such activities in any form. No reduction in the amount of Processing Materials generated within the Town and delivered to the Burrtec Expanded Facility by or on behalf of the Town which may result from any source separation or recycling program, or from any other cause, shall cause the Town any liability hereunder and no such reduction shall constitute a breach of this Agreement. Whenever possible the material from the Town shall be used for the highest diversion credit possible.
6. Term. The term of this Agreement shall begin on the date this Agreement has been executed by both parties ("Commencement Date") and end upon the expiration date of the Exclusive Franchise Agreement between the Town of Apple Valley and Burrtec Waste Industries, Inc. for Collection and Handling of Solid Waste and Recycling unless terminated earlier as provided herein.
7. Fees. In consideration for the services to be provided by Contractor for the processing of Processing Materials pursuant to this Agreement, the Town agrees to compensate Contractor in accordance with the rates in Exhibit B, and as may be amended from time to time pursuant to Sections 8(c) and (d) below.
8. Additional Items.
- a. Residual Material. Contractor shall arrange for the removal and transportation to disposal facilities of all non-recoverable solid waste materials processed out of the Processing Materials ("Residual Material") at a disposal site which is licensed and operating as a Class III Sanitary Landfill in accordance with all applicable law and Contractor will document the disposal of such Residual Materials consistent with disposal reporting requirements and as required by law.

- b. Scales. The Burrtec Expanded Facility will use the VVMRF scales until the Burrtec MRF scales are available. When such scales are available, Contractor, at its sole cost and expense, shall test and recalibrate them on a quarterly basis or in event of dispute. When, at any time, testing of the weigh scales indicates that the scales do not meet the accuracy requirements of applicable law, or if the scales are being tested, Contractor, absent more accurate information, shall estimate the quantity of Processing Materials delivered on the basis of truck volumes and estimated data obtained from historical information pertinent to Contractor and shall assume, for purposes of such estimate, that the weigh scale inaccuracy occurred on a linear basis from the test most recently preceding the test demonstrating such inaccuracy. These estimates shall take the place of actual weighing records until correction of the weigh scales is completed. Contractor shall use all reasonable efforts to repair the scales within three (3) days. Contractor shall provide a monthly listing of scale records for each calendar month to the Town within thirty (30) days after the close of each month. Copies of all daily weight records shall be maintained by Contractor for a period of at least three (3) years.
- c. Rate Adjustments. Rates shall be adjusted annually, each July 1 to the standard market rates for each category of Processing Materials determined as set out here or as otherwise provided in an applicable COLA or other formula for automatic rate increase. Every second year on the anniversary of the contract date, the Town may undertake a market rate analysis of comparable options for the Processing Materials. In the event any analysis indicates that the market rate for comparable Processing Materials is five percent (5%) or more below the then-current rates under this Agreement, the Town and Contractor shall review and negotiate in good faith. If Contractor and the Town cannot agree, the Town may provide the Processing Materials to another contractor in the organics market.
- d. Rate Guarantee. Notwithstanding the forgoing, the rates charged to the Town shall not exceed the lowest rate for comparable services (including consideration of type of Processing Materials, transportation costs, waste stream characterization and volume) to any other customer at the Burrtec Expanded Facility.

9. Billing, Payment and Audits.

- a. Contractor shall submit monthly invoices for Processing Materials delivered in the preceding month. Contractor's invoices shall clearly set forth the calculation for the total amount of the invoice, including specifying processing costs by category. The Town shall promptly review all invoices and notify Contractor in writing within fifteen (15) days of any objections thereto in accordance with the dispute procedures set forth herein. The invoice shall be deemed proper and acceptable, absent Contractor's receipt of written objections of an invoice by the Town. Subject to the Town's objections, the Town shall pay Contractor the sum equal to the amount due

under an invoice (or the undisputed amount, if any, in the event of an objection by Town) within 30 days after receipt. If the parties are unable to resolve such dispute with thirty (30) days after the written objection, either party may pursue applicable legal remedies.

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

10. Hours of Operation. The Burrtec Expanded Facility shall be open for the delivery of Processing Materials by the Town, or on behalf of the Town during normal business hours, as set forth in the VVMRF Operating Agreements. Said schedule shall not be changed without Contractor's prior written notice to the Town at least thirty (30) days in advance. Except for specific holiday dates, the hours and days of operation shall remain in accordance with this Section. Contractor agrees to receive, Processing Materials at the Burrtec Expanded Facility at hours other than those set forth herein if

- a. Requested by the Town to accommodate unusual quantities of Processing Materials resulting from an emergency or from programs of the Town or any local governmental entity designed to promote cleanup of an area serviced by the Burrtec Expanded Facility and
- b. The Burrtec Expanded Facility is able, in the reasonable judgment of Contractor, to receive such additional quantities of Processing Materials without adversely affecting Contractor's operation or maintenance of the Burrtec Expanded Facility.

11. Compliance with Laws and Regulations. Contractor covenants with the Town to use its best skill, judgment and effort to process all Processing Materials delivered to the Expanded Facility. Contractor warrants that it will comply with all applicable law, including regulations, as they, from time to time, may be amended, specifically

including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601, et.seq. the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et.seq., the California Integrated Waste Management Act of 1989, California Public Resources Code Section 43601, and all applicable laws of the State of California, County of San Bernardino, ordinances of the Town, the requirements of local enforcement agencies and other agencies with jurisdiction. Notice shall be promptly provided to the Town in the event Contractor should receive any enforcement action arising out of the services performed under this Agreement. Burrtec shall establish and maintain safety procedures for the Burrtec Expanded Facility for the protection of employees of Contractor and all other persons, invitees and permittees at the Burrtec Expanded Facility in connection with the operation and maintenance thereof at a level consistent with applicable law and good industry standards and practices. Contractor shall comply with all applicable laws, ordinances, rules and regulations relating to the safety of persons or property at the Burrtec Expanded Facility.

12. Field Visits to the Burrtec Expanded Facility. The Town may, with full cooperation of Contractor, conduct field visits at the Burrtec Expanded Facility to determine whether Contractor is in compliance with all of its obligations under this Agreement. In connection with such inspections or visits, the Town shall, on behalf of itself, its agents and representatives, comply, and cause its agents and representatives to comply, with all reasonable rules and regulations adopted by Contractor.
13. Events of Default - Termination. The parties agree that in the event of the breach by any party of an obligation under this Agreement, neither party shall have the right to terminate this Agreement except for, and as a result of, an event of default as described in this section ("Event of Default"). With respect to, and as a result of, any breach or default under this Agreement which is not an Event of Default as described in this section that would warrant termination, the parties acknowledge that the exclusive remedies of the non-defaulting party shall be specific performance or such other remedies in law or equity as may be available to compel specific performance, as well as the recovery of damages incurred by the non-defaulting party as a result of the breach or default. Each of the following shall constitute an Event of Default:
 - a. The material failure or refusal by a party to proceed with activities contemplated by this Agreement; unless such failure or refusal shall be excused or justified by an event covered by the Force Majeure provisions of this Agreement; provided, however, that no such default shall constitute an Event of Default giving rise to the right to terminate this Agreement under this section unless or until:
 - (i) The non-defaulting party shall have given prior written notice to the breaching party specifying that a particular default exists which will, unless corrected, constitute a material breach of this Agreement on the part of the defaulting party; and the defaulting party has not corrected such default or has not taken reasonable steps to

commence to correct the same within thirty (30) days from the date of the notice given pursuant to this section or thereafter does not diligently continue to take reasonable steps to correct such default.

- b. In the case of Contractor only, the following Event of Default may also be determined to exist:
 - (i) Contractor becomes insolvent or bankrupt or ceases to pay its debts as they mature, makes arrangements with or for the benefit of creditors, consents to or acquiesces to the appointment of a receiver, becomes part of a voluntary or involuntary bankruptcy, insolvency or similar proceeding. In the event of such insolvency or bankruptcy, Contractor shall assume or reject this Agreement within sixty (60) days after the order for relief, promptly cure any failure to perform under this Agreement, and provide adequate assurance of future performance under this Agreement.
- c. Failure of either party to pay all or any amount required to be paid to the other party under this Agreement, when such amount becomes due and payable, unless the same is paid within thirty (30) days after written demand therefor by the other party accompanied by notice that unless the same is not so paid, such failure to pay shall constitute an Event of Default unless a dispute with respect to any such amount is being pursued.

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

14. Indemnification.

- a. Contractor shall indemnify, defend with competent counsel reasonably approved by the Town, protect and hold harmless the Town, its officers, employees and assigns from and against all claims, including natural resources damages, injuries, costs, response, assessment, remediation, and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Town or its officers or employees arising from or attributable to:
 - (i) Any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of

whether undertaken due to governmental action) or replacement or restoration of natural resources arising from or related to Hazardous Materials (as defined herein) or Hazardous Wastes (as defined herein) or petroleum products at any place where Contractor transfers, stores or disposes of Green Materials pursuant to this Agreement;

- (ii) Contractor's activities pursuant to this Agreement which result in a release or threatened release of Hazardous Materials or Hazardous Wastes or petroleum products into the environment;
 - (iii) Any failure by Contractor to comply with any applicable law, regulation, or order; or
 - (iv) Any breach by Contractor of this Agreement. The forgoing indemnity is intended to operate as an agreement pursuant to but not limited to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify the Town from liability. This indemnity shall not apply with respect to:
 - (a) Vehicle accidents or other Processing Materials delivery activities; or
 - (b) To any Hazardous Substances, Hazardous Waste, petroleum product or other unacceptable waste not accepted by Contractor for processing at the Burrtec Expanded Facility. The Town agrees that Contractor may provide counsel to jointly represent itself, the Town and all other parties who disposed of waste at the Burrtec Expanded Facility. The Town hereby agrees to waive, in writing, any conflict, actual or apparent, created by joint representation of such parties pursuant to this indemnity. The Town also hereby agrees to cooperate fully and completely with Contractor and with counsel provided by Contractor in resolving any legal matter that arises pursuant to this indemnity. The Town further agrees that Contractor has complete discretion in the conduct of any matter to which this indemnity applies, and may resolve or settle such matters to which this indemnity applies in its sole discretion without the permission or approval of the Town, provided that written consent from the Town shall be required for any such resolution or settlement requiring the Town to make any payment or admit liability. Contractor agrees that it will not bring any action against the Town claiming or alleging that the Town has any responsibility for matters, actions or liabilities within the scope of the indemnity provided above, except to the extent of the negligence or willful misconduct of Town, its officers, employees or assigns.
- b. Contractor's Indemnity. Contractor shall indemnify, defend, and hold harmless the Town, its officers, employees, agents, contractors and consultants, to the maximum extent allowed by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees), on account of bodily injury

to or death of any person or damage to or loss of property arising out of or resulting from the acts or omissions to act of Contractor, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of this Agreement, unless caused by the negligence or willful misconduct of the parties to be indemnified.

- c. Town Indemnity. The Town shall indemnify, defend, and hold harmless the Contractor, its officers, officials, employees, agents, contractors and consultants, to the maximum extent allowed by law, from and against all liability, claims, losses, actions, and expenses (including attorney's fees), on account of bodily injury to or death of any person or damage to or loss of use of property arising out of or resulting from the acts or omissions to act of the Town, its subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of this Agreement, unless caused by the negligence or willful misconduct of the parties to be indemnified.
15. Force Majeure. Neither party shall be in default under this Agreement in the event that the delivery of Processing Materials to the Burrtec Expanded Facility is temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President of Congress and affecting the Town or the area in which the Burrtec Expanded Facility is located; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fire; a change in law; epidemic, pandemic, endemic, or outbreak, or quarantine, travel or movement restrictions, "social distancing" or public health advisories, or other catastrophic events which are beyond the reasonable control of the Town or Contractor. "Other catastrophic events" does not include (1) strikes, lockouts, or other labor unrest, (2) the financial inability of Contractor to perform their obligations under this Agreement, (3) failure of Contractor to obtain any necessary permits from other governmental agencies, or (4) the right to use other contractors as allowed herein.
16. Insurance. Contractor shall obtain and maintain, at its own cost and expense, the following insurance policy or policies of liability insurance of the following coverages and limits for the duration of this Agreement: Workers Compensation - Statutory; Employer's Liability - \$1,000,000 each occurrence; Comprehensive General Liability - \$1,000,000 each occurrence combined single limit; Comprehensive Automobile Liability - \$1,000,000 each occurrence combined single limit. Contractor agrees to furnish to the Town, upon request, certificates of insurance attesting to the insurance coverages and limits above. Each certificate shall contain a statement requiring the insurer to notify the certificate holder at least thirty (30) days prior to cancellation of any policy covered thereunder. Each certificate shall also name the Town as an additional insured.

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

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

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

18. Attorney's Fees. In the event an action is commenced by either party to this Agreement to enforce or construe its rights or obligations arising under this Agreement, the prevailing party in such action, in addition to any other relief and recovery awarded by the Court, shall be entitled to recover all statutory costs plus a reasonable amount for attorney's fees and as may be determined by the Court.
19. Binding Upon Successors. All agreements, covenants, conditions and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.
20. Captions. The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties only and are not part of this Agreement.
21. Governing Law and Venue. This Agreement shall be deemed to be made in California and shall be governed under the laws of the State of California in all respects, without regard to the principles of conflict of laws, including matters of construction, validity, and performance. Any action to interpret or enforce this Agreement shall be maintained exclusively in the courts of and for San Bernardino County.
22. Amendment. This Agreement can be modified only in writing, expressly referring to this Agreement and any such amendment shall be signed by each of the parties hereto.
23. Assignment and Subcontracting. Neither party hereto may transfer, permit the assignment of transfer, or assign this Agreement, or any rights or obligations hereunder without the prior written consent of the other party hereto. Either party may subcontract the performance of its respective obligations hereunder upon written consent of the other. Consent for either assignment or subcontracting shall not be unreasonably withheld.
24. Invalidity of Provisions. Every provision of this Agreement is intended to be severable. If any term or provision hereof is declared by a court of competent

jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable, and to the extent possible all of the other provisions shall nonetheless remain in full force and effect.

- 25. Independent Contractor. Each party is and shall perform this Agreement as an independent contractor and, as such, shall have and maintain complete control over all its employees, agents and operations. Neither party nor anyone employed by it shall be, represent, act, purport to act or be deemed to be the agent, representative, employee or servant of the other party.
- 26. Counterparts. This Agreement may be signed in counterparts.

In WITNESS WHEREOF, the Town of Apple Valley and Burrtec have executed this Agreement as of the day and year first written above.

TOWN OF APPLE VALLEY

BURRTEC WASTE INDUSTRIES,
INC.

By: _____
Curt Emick
Mayor

By: _____
Cole Burr
President

ATTEST:

APPROVED AS TO CONTENT:

La Vonda M-Pearson
Town Clerk

Douglas B. Robertson
Town Manager

APPROVED AS TO FORM:

Thomas Rice
Town Attorney

EXHIBIT A

DEFINITIONS

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

"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.

"Change in Law" shall mean 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.

Additionally, the application of prevailing wage laws to the operation of the Facility shall not constitute a "Change in Law".

"Composting" shall mean the process of controlled biological decomposition of organic material.

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

"Disposal" shall mean transportation to and use of Class III Sanitary Landfills.

"Food Waste" shall mean materials resulting from the processing, storage, preparation, cooking, handling, or consumption of food. Examples include discarded meat scraps, dairy products, eggshells, fruit or vegetable peels, and other food items from stores and restaurants. As existing technologies improve and new technologies arise, the contractor may be able to handle mixed waste at some point in the future. Until then, food waste collection programs shall be source separated.

The following applies to contamination: Food Waste must be source separated and be free of contamination such as glass, metal, plastic, or any other non-organic materials.

"Green Waste" shall mean materials that consist of landscape trimmings such as grass, leaves, branches, and brush.

The following applies to contamination: 0% to 5% no processing or cleaning fee. 6% to 25%: \$40 per load cleaning fee. 26% to 50%: load will be processed as refuse. Palm material is contamination and any Green Waste load contaminated with Palm cannot be cleaned and therefore considered refuse.

"Hazardous Materials" 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

- (a) 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
- (b) 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".

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

"Person" shall mean 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" shall mean 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.

"Processing Materials" shall mean Acceptable Recyclable Materials delivered to the Expanded Facility that are recovered for diversion through composting of materials the sale of which is undertaken by the Contractor.

"Recycle or Recyclable" means material which has been source separated or commingled with similar materials and can be processed into a form suitable for reuse through reprocessing or remanufacture at the Expanded Facility.

"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.

"Transportation" shall mean the movement of refuse and processing residual to the final destination for disposal.

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

- a. Hazardous Waste;
- b. Radioactive waste or materials;
- c. All wastes requiring special handling to comply with applicable federal, State or local law regarding
 - (i) Pathological, infectious, or explosive materials;
 - (ii) Oil sludge;
 - (iii) Cesspool or human waste; and
 - (iv) Dead animals or animal remains or wastes;
- d. Any item of waste either smoldering or on fire or at its kindling point or in the process of initiating combustion;
- e. Sewage sludge, septic tank and cesspool pumpings or other sludge from air or water pollution control facilities or water supply treatment facilities;
- f. 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;
- g. Any other wastes which the Town and the Contractor may at any time agree in writing to designate as "Unacceptable Waste"; and
- h. Acceptable materials too small to efficiently manually sort.

"Uncontaminated", when used with respect to any acceptable food or green waste materials, shall mean the following conditions, unless specified otherwise:

- a. Free of oil, grease, chemicals, solvent, blood or other materials;
- b. Not containing any foreign liquids or solids;

- 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.

"VVMRF Facility" or "VVMRF" means the Victor Valley Materials Recovery Facility located at 17000 Abbey Lane, Victorville, California (VVMRF).

Exhibit B

**Burrtec – Expanded Facility
Processing Material Rates**

	Rate	Per
Green Waste ^{1 2}	\$60.00	/ton
Food Waste – Source Separated ¹	\$96.25	/ton

¹ Contaminated loads may be subject to cleaning and/or handling fees for disposal.

² Hard to handle fees may apply to tree trunks or stumps greater than 3' in diameter.