

## FIRST AMENDMENT TO AMENDED AND RESTATED FRANCHISE AGREEMENT

This First Amendment to Amended and Restated Franchise Agreement (the "Amendment") is entered into June 8 2022, by and between the City of Cathedral City ("City") and Burrtec Waste and Recycling Services, LLC ("Company") (collectively "Parties," or individually "Party").]

### RECITALS

WHEREAS, the City and Company previously entered into that certain Amended and Restated Franchise Agreement for Integrated Solid Waste Management Services dated July 1, 2020 (the "Agreement"); and,

WHEREAS, SB 1383 regulations require the City to implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City has chosen to delegate some of its responsibilities to the Company, acting as the City's designee, and Company desires to take on these responsibilities; and

WHEREAS, the City and Company desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the promises above stated and the terms, conditions, covenants, and agreements contained herein, the Parties do hereby agree as follows:

#### 1. AMENDMENT TO ARTICLE 1.

The following definitions are added to, and/or shall amend the definitions in, Article 1 of the Agreement, as set forth herein, as applicable. Definitions otherwise contained in the Agreement and/or any previous amendment(s), but which are not addressed below, shall remain the same.

**"Back-Haul"** means generating and transporting Organic Waste to a destination owned and operated by the Generator using the Generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

**"Blue Container"** has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and Collection of Source Separated Recyclable Materials (SSBCOW).

**"Commercial Edible Food Generators"** includes Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators, or as otherwise defined in 14 CCR Section 18982(a)(7). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators, or as otherwise specified by 14 CCR Section 18982(a)(7).

**"Compostable Plastics"** or **"Compostable Plastic"** means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

**“Compost”** has the same meaning as in 14 CCR Section 17896.2(a)(4), as may be amended from time to time.

**“Edible Food”** means food intended for human consumption. For the purposes of this Agreement, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Agreement requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this Agreement.

**“Environmental Fee”** means the fee paid by Company to the City to fund the City’s costs of Solid Waste management and implementation of SB 1383, including education and outreach as well as monitoring, reporting and administration requirements.

**“Excluded Waste”** means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Company’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Company or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, processing, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

**“Food Recovery”** means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

**“Food Recovery Organization”** means an entity that primarily engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:

- A. A food bank as defined in Section 113783 of the Health and Safety Code;
- B. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- C. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Agreement.

**“Food Recovery Service”** means a Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery; or as otherwise defined in 14 CCR Section 18982(a)(26).

**“Food Scraps”** means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells.

**“Food-Soiled Paper”** means compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

**“Food Waste”** means Source Separated Food Scraps, Food-Soiled Paper, and Compostable Plastics. Food Waste is a subset of SSGCOW. Edible Food separated for Food Recovery shall not be considered Food Waste.

**“Gray Container”** has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and Collection of Gray Container Waste.

**“Gray Container Waste”** means Solid Waste that is collected in a Gray Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5). Gray Container Waste may specifically include carpet, Non-Compostable Paper and textiles.

**“Green Container”** has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste (SSGCOW).

**“Hauler Route(s)”** means the designated itinerary or sequence of stops for each segment of the City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

**“Large Event”** means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Agreement.

**“Large Venue”** means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of 14 CCR, Division 7, Chapter 12 and this Agreement, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Agreement.

**“Non-Compostable Paper”** includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

**“Non-Organic Recyclables”** means non-putrescible and non-hazardous recyclable wastes including, but not limited to, bottles, cans, metals, plastics, and glass, or as otherwise defined in 14 CCR Section 18982(a)(43). Non-Organic Recyclables are a subset of Source Separated Recyclable Materials.

**“Organic Waste”** means Solid Wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, yard trimmings, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

**“Performance-based Compliance Approach”** means the method of complying with the SB 1383 Regulations through implementation of a collection system, programs, and policies in accordance with 14 CCR, Division 7, Chapter 12, Article 17, or as otherwise defined by 18982(a)(52.5), and all associated requirements.

**“Prohibited Container Contaminants”** means the following: (i) Discarded Materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the Blue Container; (ii) Discarded Materials placed in the Green Container that are not identified as acceptable SSGCOW for the Green Container; (iii) Discarded Materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or SSGCOW to be placed in the Green Container and/or Blue Container; and (iv) Excluded Waste placed in any Container.

**“SB 1383 Regulations”** or **“SB 1383 Regulatory”** refers to the Short-Lived Climate Pollutants (SLCP): Organic Waste Reductions regulations developed by CalRecycle and adopted in 2020 that created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR.

**“Source Separated”** means materials, including commingled Recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for Recycling or reuse in order to return 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, or as otherwise defined in 14 CCR Section 17402.5(b)(4).

**“Source Separated Blue Container Organic Waste”** or **“SSBCOW”** means Source Separated Organic Wastes that can be placed in a Blue Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).



**“Source Separated Green Container Organic Waste” or “SSGCOW”** means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the generator, excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles.

**“Source Separated Recyclable Materials”** means Source Separated Non-Organic Recyclables and SSBCOW.

**“Standard Compliance Approach”** means the method for complying with the SB 1383 Regulations through implementation of a collection system pursuant to 14 CCR, Division 7, Chapter 12, Article 3, and all associated program and policy requirements.

**“Tier One Commercial Edible Food Generator”** means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Supermarket.
- B. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- C. Food Service Provider.
- D. Food Distributor.
- E. Wholesale Food Vendor.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Agreement.

**“Tier Two Commercial Edible Food Generator”** means a Commercial Edible Food Generator that is one of the following, each as defined in 14 CCR Section 18982:

- A. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- B. Hotel with an on-site food facility and 200 or more rooms.
- C. Health facility with an on-site food facility and 100 or more beds.
- D. Large Venue.
- E. Large Event.
- F. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- G. A local education agency with an on-site food facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Agreement.

## **2. GENERATOR WAIVER PROGRAM COORDINATION.**

Section 2.14 “Generator Waiver Program” is added to the Agreement as follows:

In accordance with SB 1383 regulations and the City’s Municipal Code, the City may grant waivers (de minimis, physical space or Collection frequency) to Generators that impact the

scope of Company's provision of service for those Customers. Waivers issued shall be subject to compliance with SB 1383 regulatory requirements, pursuant to 14 CCR Section 18984.11, and the City's Municipal Code. If using a Performance-based Compliance Approach, the City agrees it will only grant waivers if at least ninety percent (90%) of Single-Family Generators and ninety percent (90%) of Commercial Generators (including Multi-Family Generators) participate in the three-Container Collection program. Company agrees to coordinate and cooperate with the City to meet in connection with its waiver program, as required by SB 1383 regulations.

3. **AMENDMENT TO SECTIONS 4.5.5 AND 4.6.6.** Sections 4.5.5 and 4.6.6 of the Agreement is deleted in its entirety and the following is substituted in its stead:

**THREE-CONTAINER SYSTEM.**

**General.** Company shall provide a three-Container Collection program for the separate Collection of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste as specified in this Agreement, using Containers that comply with the requirements of this Agreement and SB 1383 regulations. Company shall not knowingly Collect Blue, Green, or Gray Containers that include Prohibited Container Contaminants.

**Source Separated Recyclable Materials Collection (Blue Container).** Company shall provide Blue Containers to Customers for Collection of Source Separated Recyclable Materials and shall provide Source Separated Recyclable Materials Collection service. Company shall Transport the Source Separated Recyclable Materials to Facility that recovers the materials designated for Collection in the Blue Containers, in accordance with SB 1383 regulations.

Source Separated Recyclable Materials that are to be accepted for Collection in the Source Separated Recyclable Materials Collection program include the following: (i) Non-Organic Recyclables such as: aluminum, glass bottles and jars, rigid plastics (marked # 1 through # 7), and tin and bi-metal cans; and (ii) SSGCOW such as: paper products, printing and writing paper.

**SSGCOW Collection (Green Container).** Company shall provide Green Containers to Customers for Collection of SSGCOW and shall provide SSGCOW Collection service. Company shall Transport the SSGCOW to a Facility in accordance with SB 1383 regulations.

SSGCOW that are to be accepted for Collection in the SSGCOW Collection program include the following: Food Scraps; Food-Soiled Paper; yard trimmings, which are defined below; and wood and dry lumber. Carpets, non-Compostable Paper, textiles, and Prohibited Container Contaminants shall not be Collected in the Green Containers. Yard trimmings that are to be accepted for Collection in the SSGCOW Collection program include the following: green trimmings, grass, weeds, flowers, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees weighing no more than 50 lbs., and other types of SSGCOW resulting from normal yard and landscaping installation, maintenance, or removal, provided all SSGCOW fits inside the Green Container with the lid closed and does not exceed 150 pounds.

Company may Collect compliant Compostable Plastics, as defined, in the Green Containers for processing. Company shall provide written notification to the City that the Facility can or cannot Process and recover these Compostable Plastics in accordance with SB

1383 regulations. If the Facility can process and recover Compostable Plastics, and Company elects to Collect Compostable Plastics in the Green Container, then Company shall provide written notification to the City that the Facility has and will continue to have the capabilities to Process and recover the Compostable Plastics. If the Facility cannot process and recover Compostable Plastics, then Company will notify City and not Collect Compostable Plastics in the Green Container.

**Gray Container Waste Collection.** Company shall provide Gray Containers to Customers for Collection of Gray Container Waste, and shall provide Gray Container Waste Collection service. Company shall Transport the Gray Container Waste to a Facility that processes waste, in accordance with the SB 1383 regulations. Company may allow carpets, Non-Compostable Paper, and textiles to be placed in the Gray Containers. Prohibited Container Contaminants shall not be Collected in the Gray Containers.

#### **USE OF PLASTIC BAGS FOR SSGCOW COLLECTION.**

Company may require Customers and Generators to place Food Waste in plastic bags or other paper wrappings and put the bagged or wrapped Food Waste in the Green Container. Company shall provide written notification to the City that allowing the use of bags does not inhibit the ability of the City to comply with SB 1383 regulations, and that the Facility can Process and remove plastic bags when it recovers SSGCOW. Company shall provide written notification to the City should the Facility no longer have the capabilities to Process and remove plastic bags when it recovers SSGCOW.

#### **CONTAMINATION MONITORING.**

Upon finding Prohibited Container Contaminants in a Container, Company shall follow the protocols set forth in this Section.

##### **A. Actions upon Identification of Prohibited Container Contaminants.**

1. **Record Keeping.** The driver or other Company representative shall record each event of identification of Prohibited Container Contaminants in a written log or in the on-board computer system including date, time, Customer's address, type of Container (Blue, Green, or Gray Container); and maintain photographic evidence, if required.

2. **Courtesy Pick-Up Notices.** Upon identification of Prohibited Container Contaminants in a Customer's Container, Company shall provide the Customer a courtesy pick-up notice either by putting a tag on the Customers containers or a documented phone conversation. The courtesy pick-up notification (tag or documented conversation) shall: (i) inform the Customer of the observed presence of Prohibited Container Contaminants; (ii) include the date and time the Prohibited Container Contaminants were observed; (iii) include information on the Customer's requirement to properly separate materials into the appropriate Containers, and the accepted and prohibited materials for Collection in the Blue Container, Green Container, and/or Gray Container; (iv) inform the Customer of the courtesy pick-up of the contaminated materials on this occasion with information that following three instances of Prohibited

Container Contaminants within a six-month time period, Company may assess contamination processing fees; and, (v) may include photographic evidence. Company shall either leave the courtesy pick-up notice attached to or adhered to the Generators' contaminated Containers or document a conversation Contractor had with the Customer regarding Prohibited Containers Contaminants found as required above. Contractor may also leave the tag at the Premises' door or gate; or may deliver the notice by mail, e-mail, text message, or other electronic message.

3. **Notice of Assessment of Contamination Processing Fees.** If the Company observes Prohibited Container Contaminants in a Generator's Container on more than three consecutive occasions within a six-month time period, and issued courtesy pick-up notices on each of those occasions, the Company may impose a contamination processing fee of \$15 for residential customers and \$75 for commercial customers. Company shall notify the City in its quarterly report of Customers for which contamination processing fees were assessed. The contamination processing fee notice shall describe the specific material(s) of issue, explain how to correct future set outs, and indicate that the Customer will be charged a contamination processing fee on its next bill.

**B. Disposal of Contaminated Materials.** If the Company observes Prohibited Container Contaminants in a Generator's Container(s), Company may Dispose of the Container's contents, provided Company complies with the noticing requirements in subsection A above.

### **ROUTE REVIEWS AND WASTE EVALUATIONS.**

Company shall meet its SB 1383 Regulations contamination monitoring requirements using either Route Reviews or Waste Evaluations; provided however, that if Company complies with SB 1383 Regulations using a Performance-based Compliance Approach, it shall monitor containers using waste evaluations, as outlined herein:

#### **A. Route Reviews**

1. If Company elects to perform Route Reviews, Company shall, at its sole expense, conduct Hauler Route reviews for Prohibited Container Contaminants in Collection Containers in a manner that is deemed safe by the Company; is approved by the City; is conducted in a manner that results in all Hauler Routes being reviewed annually, and is consistent and in accordance with SB 1383 Regulations. Containers may be randomly selected along the Hauler Route. This Section should not be construed to require that every container on a Hauler Route must be sampled annually.

2. Upon finding Prohibited Container Contaminants in the Container, Company shall follow the contamination monitoring noticing procedures herein.

#### **B. Waste Evaluations**

Alternatively, if Company elects to perform Waste Evaluations, Company shall, at its sole expense, conduct waste evaluations that comply with and meet the requirements of 14 CCR Section 18984.5(c). The City maintains the right to observe, or hire a third party to observe, the waste evaluations.

**1. Sampling Method, Study Protocols.** The Company shall conduct waste evaluations for Prohibited Container Contaminants by sampling the contents of Containers on Hauler Routes in the following manner:

a. If using a Standard Compliance Approach, Company shall conduct waste evaluations at least twice per year and in two distinct seasons of the year in a manner that complies with the requirements of 14 CCR section 18984.5(c). If using a Performance-based Compliance Approach, Company shall conduct waste evaluations at least twice per year for the Blue and Green Containers and at least once per quarter for the Gray Containers.

b. The Company's waste evaluations shall include samples of Source Separated Recyclable Materials, SSGCOW, and Gray Container Waste.

c. The waste evaluations shall include samples from each Container type served by the Company and shall include samples taken from different areas in the City that are representative of the City's waste stream.

d. The waste evaluations shall include at least the minimum number of samples specified in SB 1383 Regulations.

e. The Company shall Transport all of the material Collected for sampling to a sorting area at a permitted solid waste Facility where the presence of Prohibited Container Contaminants for each Container type shall be measured to determine the ratio of Prohibited Container Contaminants present in each material stream by weight. To determine the ratio of Prohibited Container Contaminants, the Company shall use the following protocol:

i. The Company shall take one sample of at least a 200 pounds from the material Collected from each material stream for sampling.

ii. The 200-pound sample shall be randomly selected from different areas of the pile of Collected material for that material stream.

iii. For each 200-pound sample, the Company shall remove any Prohibited Container Contaminants and determine the weight of Prohibited Container Contaminants.

iv. The Company shall determine the ratio of Prohibited Container Contaminants in the sample by dividing the total weight of Prohibited Container Contaminants by the total weight of the sample.

**2. Contamination Response.** If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Company shall:

a. If using a Performance-based Compliance Approach, notify the City within [fifteen (15)] working days of the waste evaluation.

b. Within fifteen (15)] working days of the waste evaluation, notify all Generators on the sampled Hauler Route of their requirement to properly separate materials into the appropriate Containers. The Company may provide this information by placing a written notice on the Generators' Containers or the gate or door of the Premises; and/or by mail, email, or electronic message to the Generators.

c. If using a Performance-based Compliance Approach, Company shall allow a representative of the City and/or CalRecycle to oversee its next scheduled quarterly sampling of the Gray Containers, upon request.

**3. Material Exceptions.** Organic Waste that is textiles, carpet, hazardous wood waste, human waste, pet waste, or material subject to a quarantine on movement issued by a County agricultural commissioner is not required to be measured as Organic Waste when calculating the amount of Organic Waste present in the Gray Container Waste.

**C. Recordkeeping Requirements.** Company shall maintain all applicable records required under SB 1383 Regulations, and report to the City on a monthly basis on contamination monitoring activities, route reviews and/or waste evaluations, and actions taken.

**D. Alternative Methods.** Nothing in this section shall prohibit Company from meeting its compliance requirements by any alternative methods or procedures, provided it complies with SB 1383, the SB 1383 Regulations, and/or any other applicable law, as may be amended from time to time.

#### **4. INSPECTION AND ENFORCEMENT.**

Section 4.7.14 "Inspection and Enforcement" is added to the Agreement as follows:

No later than November 1, 2022, Company shall assist the City with and/or conduct applicable inspections and enforcement, to the extent delegable, as required by SB 1383 Regulations.

Company shall maintain all applicable records from inspection in accordance with SB 1383 regulations.

#### **5. PROVISION FOR RECOVERED ORGANIC WASTE PRODUCT.**

Section 4.7.15 "Inspection and Enforcement" is added to the Agreement as follows:

Company agrees to coordinate and cooperate with the City to meet its Organic Waste produce procurement target, as required by SB 1383 regulations.

#### **6. CONTAINER REQUIREMENTS.**

Section 4.8.3.1.6 "Container Requirements" is added to the Agreement as follows:

Company shall use the Company-provided Collection Containers that are currently located at Customers' Premises or provide Customers with Collection Containers from Company's current inventory.

No later than January 1, 2036, Company shall provide all Customers with Collection Containers that comply with the Container color requirements specified in this Agreement or as otherwise specified in the SB 1383 regulations. Notwithstanding this Section, the Company is not required to replace functional Containers, including Containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Agreement prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

## **7. LABELING REQUIREMENTS**

Section 4.8.3.1.7 "Container Requirements" is added to the Agreement as follows:

Beginning January 1, 2022 (or if using the Performance-based Compliance Approach), then until color compliant containers are provided, Company shall place a label on the body or lid of each new Container that has been provided to a Customer that includes language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that Container. Labels shall clearly indicate items that are Prohibited Container Contaminants for each Container.

## **8. COMPLAINTS.**

The following provision is added to Section 5.2.2:

Investigation of SB 1383 Regulatory Non-Compliance Complaints. Company shall commence an investigation, within thirty (30) days of receiving a Complaint in the following circumstances: (i) upon Contractor receipt of a Complaint that a Customer may not be compliant with SB 1383 Regulations and if City determines that the allegations against the Customer, if true, would constitute a violation of SB 1383 Regulations; and, (ii) upon City request to investigate a Complaint received by the City, in which the City determines that the allegations against the Customer, if true, would constitute a violation of SB 1383 Regulations. Company is required to investigate Complaints against Customers and Customers, but not against Food Recovery Organizations, or Food Recovery Services.

Company shall investigate the Complaint using one or more of the methods:

1. Reviewing the Service Level of the Customer that may not be compliant with SB 1383 Regulations.
2. Reviewing the waiver list to determine if the Customer has a valid de minimis or physical space constraint.
3. Reviewing the Self-Haul registration list to determine if the Customer has registered and reviewing the Customer's reported Self-Haul information;
4. Inspecting Premises of the Customer identified by the complainant, if warranted;

and/or,

5. Contacting the Customer to gather more information, if warranted.

Within ten (10) working/calendar days of completing an investigation of an SB 1383 Regulatory non-compliance Complaint, Company shall submit an investigation Complaint report that documents the investigation performed and recommends to the City on whether or not the Customer investigated is in violation of SB 1383 Regulations based on the Contractor's investigation. The City Manager or his or her delegate shall make a final determination of the allegations against the Customer.

## **9. EDUCATION AND OUTREACH.**

Section 5.3.5 "SB 1383 Education and Outreach" is added to the Agreement as follows:

A. Company shall create all applicable education materials and conduct all education programs and activities as provided by and in accordance with the SB 1383 regulations. Company shall cooperate and coordinate with the City on public education activities.

B. On or before October 1, 2022, the Company shall develop a list of Food Recovery Organizations and Food Recovery Services operating within the City, maintain the list on the Company's City-specific website, share the list with the City if the City wants to post the list on additional City websites, and update the list annually. The list shall include, at a minimum, the following information about each Food Recovery Organization and each Food Recovery Service:

1. Name and physical address;
2. Contact information;
3. Collection service area; and,
4. An indication of types of Edible Food the Food Recovery Service or Food Recovery Organization can accept for Food Recovery.

C. At least annually, the Company shall provide Commercial Edible Food Generators with the following information:

1. Information about the City's Edible Food Recovery program;
2. Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
3. Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
4. Information about actions that Commercial Edible Food Generators can



take to prevent the creation of Food Waste.

D. The Company may provide the information required above by including it with regularly scheduled notices, education materials, billing inserts, or other information disseminated to Commercial Businesses.

E. Company shall comply with all applicable public education and outreach record keeping and reporting requirements as provided by SB 1383.

**10. DISPOSAL AND RECYCLING PROCESSING CHARGES.**

The following provision is added to Section 6.4 of the Agreement:

In April of each year, the Company shall submit to City the following: (1) the amount of the Gate Rate charged for the immediately preceding fiscal year; and (2) a statement of the Gate Rate actually paid in the immediately preceding fiscal year for refuse disposal and Organic processing. Contractor shall submit any additional documentation, financial records, accounts payable and receivable records, weight tickets and other information requested by City, its agents, auditor, or financial consultants for the purpose of verifying the charged and actual Gate Rate paid by Contractor for the prior fiscal year. The difference (whether positive or negative) between the amount in Gate Rates charged in the prior fiscal year, and the amount actually paid during that same fiscal year shall be taken into account as a separate cost or revenue line by City in setting Collection rates for the following fiscal year.

**11. RECORDKEEPING AND REPORTING.**

The following provision is added to Section 8.2.1 of the Agreement:

Company shall maintain all applicable records and assist the City in meeting all applicable reporting as required by the SB 1383 Regulations. Contractor shall allow City to audit and inspect such records and reports upon reasonable request.

**12. EXHIBIT 1.**

Exhibit 1 is hereby amended as attached hereto to reflect rates for the new SB 1383 services and programs.

**13. OTHER TERMS AND CONDITIONS UNCHANGED.**

Except as expressly amended by the Amendment, all other terms and conditions of the Agreement shall remain unchanged. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Agreement and/or any previous amendment thereto, the terms and conditions of this Amendment shall prevail and control.

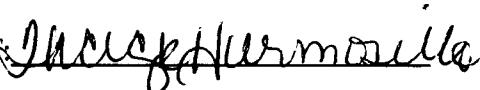

**14. COUNTERPARTS.**

This Agreement may be executed in one or more counterparts, each of which shall be

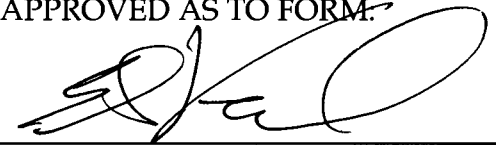
deemed an original. All counterparts shall be construed together and shall constitute one agreement.

IN WITNESS WHEREOF, the City and Company have executed this Agreement as of the day and year first above written.

CITY OF CATHEDRAL CITY

ATTEST:  By:   
CITY CLERK MAYOR, CITY OF CATHEDRAL  
CITY

APPROVED AS TO FORM:



CITY ATTORNEY

BURRTECT WASTE AND RECYCLING SERVICES, LLC

By: 

Name: Cole Burr, President

AMENDED AND RESTATED FRANCHISE  
AGREEMENT  
BETWEEN  
CITY OF CATHEDRAL CITY  
AND  
BURRTEC WASTE AND RECYCLING SERVICES, LLC  
FOR  
INTEGRATED SOLID WASTE  
MANAGEMENT SERVICES

\* \* \*

July 1, 2020

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#### **Exhibits**

1. Rate Schedule
2. Corporate Guarantee
3. Company Faithful Performance Bond
4. Notary Certification



## RECITALS

This Amended and Restated Franchise Agreement ("Agreement") is entered into this 1st day of July, 2020, by and between the City of Cathedral City ("City") and Burrtec Waste and Recycling Services, LLC ("Company").

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq. ), 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, AB 341 and AB 1826;

**WHEREAS**, pursuant to California Public Resources Code Section 49300 and 49500-49500, the City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939, AB 341 and AB 1826;

**WHEREAS**, Company has provided Solid Waste services to the City as Burrtec Waste and Recycling, LLC. since 2006 and currently provides Solid Waste services to the City pursuant to that certain Franchise Agreement between City of Cathedral City and Burrtec Waste and Recycling Services, LLC for Integrated Solid Waste Management Services dated July 1, 2010 and as amended by that certain First Amendment to Franchise Agreement dated July 13, 2011 (collectively the "Prior Agreement");

**WHEREAS**, the City Council of City has decided to continue its relationship with Company and amend and restate the Franchise set forth in this Agreement, subject to the rights and limitations of this Agreement;

**WHEREAS**, Company agrees to and acknowledges that it shall properly Dispose of all Solid Waste Collected in the City pursuant to this Agreement;

**WHEREAS**, City and Company are mindful of the provisions of the laws governing the safe Collection, transport, Recycling, processing and Disposal of Solid Waste, including AB 939, AB 341 and AB 1826, the Resource Conservation and Recovery Act, and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA");

**WHEREAS**, City and Company desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Company, not City, who is "arranging for" the Collection from residences in the City, transport for Disposal,

composting or other processing, and Recycling of municipal Solid Waste which may contain hazardous substances; and further to confirm that as a material inducement to City entering into this Agreement, Company has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions relating to the inadvertent or intentional Collection, transportation and/or Disposal of hazardous materials that may occur in connection with Company's performance under this Agreement; and

**WHEREAS**, City and Company (collectively, "Parties") hereto desire to enter into this Agreement;

**NOW, THEREFORE**, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

## **ARTICLE 1**

### **DEFINITIONS**

Whenever any term used in this Agreement has been defined by the provisions of Section 6.04.020 of the Cathedral City Municipal Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code and the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case the definitions in this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

#### **1.1 AB 341**

"AB 341" means Assembly Bill 341 from the 2011-2012 Regular Session of the California Legislature (Chapter 476, Statutes 2011).

#### **1.2 AB 939**

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

#### **1.3 AB 1826**

"AB 1826" means Assembly Bill 1826 from the 2013-2014 Regular Session of the California Legislature (Chapter 727, Statutes 2014).



#### **1.4 Affiliate**

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Company by virtue of direct or indirect ownership interest or common management and shall be deemed to be "Affiliated with" Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Company owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Company and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Company. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "10 percent" shall be substituted for "50 percent" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

#### **1.5 Agreement**

"Agreement" means this Franchise Agreement between the City and Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

#### **1.6 Billings**

"Billings" means any and all statements of charges, howsoever made, described or designated, for services rendered pursuant to this Agreement.

#### **1.7 Bin**

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 1.5 to 8 cubic yards.

#### **1.8 Bulky Items**

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within a Cart, such as furniture (including chairs, sofas, mattresses); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); electronic equipment

(including stereos, televisions, computers and monitors, including laptops, VCRs, microwaves and other similar items commonly known as "brown goods" and "e-waste"); Universal Waste; and clothing. Bulky Items do not include car bodies or C & D Waste. Other items not specifically included or excluded above will be Collected provided that they are not more than eight feet in length, four feet in width, or more than 150 pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

#### **1.9 CalRecycle**

"CalRecycle" shall mean the State of California Department of Resources Recycling and Recovery, the department within the State Natural Resources Agency responsible for the administration of the Integrated Waste Management Act of 1989, California Public Resources Code Section 40000 et seq. ("Act"), or any successor department or agency created or designated for such purpose pursuant to the Act.

#### **1.10 Can**

"Can" means a Solid Waste receptacle provided by the Customer and serviced by manual Collection.

#### **1.11 Cannabis Waste**

"Cannabis Waste" means waste that contains cannabis or cannabis products but is not otherwise a Hazardous Waste, including, but not limited to, waste that contains cannabis that has been made unusable and unrecognizable in the manner prescribed by 16 California Code of Regulations Section 5054.

#### **1.12 Cart(s)**

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated side-loading truck with a capacity of no less than 30 and no greater than 101 gallons.

#### **1.13 City**

"City" means the City of Cathedral City, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term of this Agreement.



#### **1.14 City Premises**

City Premises means any building, park or other site owned, leased, or used regularly and significantly by City for public purposes and not operated as a Commercial enterprise.

#### **1.15 Collect/Collected/Collecting/Collection**

"Collect", "Collected", "Collecting" and "Collection", in addition to the common meaning, refers to taking physical possession of, transporting, and/or removing Solid Waste within or from the City.

#### **1.16 Commercial**

"Commercial" refers to business activity of the type conducted at or for Commercial Premises, as defined in the next paragraph.

#### **1.17 Commercial Premises**

"Commercial Premises" means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. For purposes of this Agreement, Premises upon which the following uses are occurring shall be deemed to be Commercial Premises: Assisted Living facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential facilities, Group Care facilities, Hotels, and Motels.

#### **1.18 Company**

"Company" means Burrtec Waste and Recycling Services, LLC, a limited liability company organized and operating under the laws of the State of California and its officers, directors, employees, agents, contractors, and subcontractors.

#### **1.19 Company Compensation**

"Company Compensation" means the revenue received by Company from Billings and from payment by City in return for providing services in accordance with this Agreement and any amendments to this Agreement.

#### **1.20 Construction and Demolition ("C & D") Waste**

"C & D Waste" means used or discarded construction and demolition materials removed from a Premises during the addition to, renovation, construction or demolition of a structure.

#### **1.21 Containers**

"Containers" means any and all types of Solid Waste receptacles, including Cans, Carts, Bins, and Roll-off Boxes.

#### **1.22 Customer**

"Customer" means the Person having the care and control of any Premises in the City who receives Solid Waste Collection service from Company.

#### **1.23 Dispose/Disposed/Disposal**

"Dispose", "Disposed", or "Disposal" refers to the ultimate disposition, in full regulatory compliance, of Solid Waste.

#### **1.24 Disposal Cost**

"Disposal Cost" means the portion of the fee charged to the Customer that represents the cost of Refuse Disposal.

#### **1.25 Disposal Site**

"Disposal Site" mean a Facility utilized for Disposal.

#### **1.26 Divert/Diverted/Diverting/Diversion**

"Divert", "Diverted", "Diverting", and "Diversion" refers to Disposing of Solid Waste in such a manner as to prevent material from being landfilled.

#### **1.27 Environmental Fee**

"Environmental Fee" means the fee paid by Company to the City to fund the City's costs of Solid Waste management.



## **1.28 Environmental Laws**

"Environmental Laws" means all federal and state statutes, county, local and the City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

## **1.29 Facility/Facilities**

"Facility" and "Facilities" refers to any station, operation, plant or site, owned or leased and maintained, operated or used by Company for purposes of performing services under this Agreement.

## **1.30 Franchise**

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

## **1.31 Franchise Fee**

"Franchise Fee" means the fee paid by Company to the City, or retained by the City from service fees remitted to the City, for the right to hold the Franchise granted by this Agreement.

## **1.32 Greenwaste**

"Greenwaste" means leaves, grass, weeds, and wood materials from trees and shrubs (not more than six (6) inches in diameter or 48 inches in length) and similar materials generated at the Premises.

## **1.33 Gross Receipts**

"Gross Receipts" means any and all revenues, receipts, or compensation in any form received by Company or its subsidiaries, parent companies or other Affiliates of Company, for the Collection and transportation of Solid Waste and all other services performed pursuant to this

Agreement, [in accordance with Generally Accepted Accounting Principles], including, but not limited to, monthly Customer fees for Collection of Solid Waste, without subtracting Franchise Fees, Environmental Fees or any other cost of doing business.

#### **1.34 Hazardous Substance**

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. ("CERCLA"); (ii) the Hazardous Materials Transportation Act, 49 USC §1802 et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products, and by-products.

#### **1.35 Hazardous Waste**

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the United States Environmental Protection Agency ("EPA"), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

#### **1.36 Household Hazardous Waste ("HHW")**

"Household hazardous waste" or "HHW" means Hazardous Waste generated at Residential Premises.

#### **1.37 Organics Waste**

"Organics Waste" means food waste, Green Waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste



#### **1.38 Person**

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Riverside, town, city, or special purpose district.

#### **1.39 Premises**

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

#### **1.40 Rate Year**

"Rate Year" means the twelve month period from July 1 to June 30, for each year of the Agreement.

#### **1.41 Recycle/Recycling**

"Recycle" or "Recycling" refers to any process by which materials which would otherwise become Solid Waste are Collected (whether source-separated, co-mingled, or "mixed waste"), separated and/or processed and returned to the economic mainstream in the form of raw materials, products or materials or which are otherwise salvaged or recovered for reuse. "Source-separated" refers to materials segregated at the Premises from other Solid Waste generated at the site.

#### **1.42 Recyclable Material(s)**

"Recyclable Material(s)" means material that is source-separated so that the material can be salvaged or recovered for reuse, or which has some potential economic value, and which is therefore set aside, handled, packaged, or offered for Collection in a manner different from other Solid Waste.

#### **1.43 Refuse**

"Refuse" means putrescible and non-putrescible Solid Waste or debris, whether combustible or non-combustible, excluding sewage, source-separated Organics Waste and Recyclable Materials.

#### **1.44 Residential**

"Residential" refers to Premises containing a dwelling or dwellings, including single-family, multi-family and apartment dwelling units, irrespective of whether such dwelling units are rental units or owner-occupied.

#### **1.45 Roll-off Box**

"Roll-off Box" means an open-top metal Container serviced by a roll-off truck with a capacity of 10 to 50 cubic yards.

#### **1.46 SB 1383**

"SB 1383" shall mean Senate Bill 1383 from the 2015-2016 Regular Session of the California Legislature (Lara Chapter 395, Statutes 2016).

#### **1.47 Solid Waste**

"Solid Waste" means all putrescible and non-putrescible Refuse Cannabis Waste, garbage, rubbish, Recyclable Material, and Organics Waste, and as otherwise defined in Public Resources Code §40191.

#### **1.48 State**

"State" means the State of California.

#### **1.49 Transfer Station**

"Transfer Station" means a Facility used to receive, temporarily store and/or transfer Solid Waste from smaller to larger vehicles for transport to a Disposal Site.

#### **1.50 Transformation**

"Transformation" means Division of Solid Waste by incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

#### **1.51 Universal Waste**

"Universal Waste" means a category of Hazardous Wastes that includes batteries (rechargeable and single use, except automobile batteries), fluorescent lamps and tubes, thermostats,

electronic devices (televisions, computer monitors, computers, printers, video cassette recorders, cell phones, telephones, and radios), electrical switches (from chest freezers, pre-1972 clothes washers, sump pumps, electric space heaters, clothes irons, silent light switches, automobile hood and trunk lights, and ABC brakes), pilot light sensors (found in gas appliances such as stoves, ovens, clothes dryers, water heaters, furnaces, and space heaters), mercury gauges (barometers, manometers, blood pressure, and vacuum gauges), mercury added novelties (musical greeting cards, pre-1997 athletic shoes with flashing lights, mercury maze games), mercury thermometers, and non-empty aerosol cans containing hazardous materials.

## **ARTICLE 2**

### **GRANT AND ACCEPTANCE OF FRANCHISE**

#### **2.1 Grant and Acceptance of Franchise**

Subject to the terms and conditions of this Agreement, the City hereby grants to Company a Franchise to Collect, transfer, transport, Recycle, process, and Dispose of Solid Waste generated in the City and which is to be offered to Company for Collection in accordance with this Agreement.

Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

#### **2.2 Exclusive Nature of Franchise**

During the Term of this Agreement, except as otherwise provided in Section 2.7 below, or as may otherwise be provided by federal or state law, the rights granted to Company under this Agreement shall be exclusive to Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by Company.

The City shall protect Company's exclusive rights by proper ordinances, and by reasonable enforcement of those ordinances. Should the City be required to take administrative, law enforcement, or other legal action against any Person that infringes on Company's exclusive rights, Company shall reimburse the City for its reasonable administrative, law enforcement, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties as it deems appropriate to protect the exclusive nature of its Franchise.

#### **2.3 Effective Date**

The effective date of this Agreement shall be July 1, 2020 ("Effective Date").



## **2.4 Term of Agreement**

The term of this Agreement shall be ten (10) years, commencing on the Effective Date. On each anniversary of the Effective Date, the term shall automatically be extended for an additional one (1) year, thereby restoring the term to a full Ten (10) years, unless either party shall provide written notice to the other of its intent not to extend the term, which notice shall be given not later than one hundred twenty (120) days prior to the anniversary date.

## **2.5 Conditions to Effectiveness of Agreement**

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

### **2.5.1 Accuracy of Representations**

Representations and warranties made by Company throughout this Agreement are accurate, true and correct on and as of the Effective Date.

### **2.5.2 Absence of Litigation**

There is no litigation pending in any court challenging the award of this Franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.

### **2.5.3 Furnishing of Insurance and Bonds**

Company has furnished evidence of the insurance and bonds required by Article 9.

### **2.5.4 Effectiveness of the City Council Action**

The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the Effective Date.

## **2.6 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the Environmental Conservation Manager or other designee of the City Manager. The actions of the City specified in this Agreement, unless otherwise stated, may be executed by the Environmental Conservation Manager or the City Manager's designee.

## **2.7 Limitations on Scope of Franchise**

The Franchise granted to Company shall be exclusive except as to the categories of Solid Waste listed in this Section. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to, Collected or transported by others; except that, however, nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City which is otherwise required by law:

- a) Recyclable Materials source-separated from other Solid Waste by the Customer and (i) that is Collected at no cost to the Customer, (ii) sold by the Customer; or (iii) for which Customer is otherwise compensated in a manner resulting in a net payment to the Customer;
- b) Solid Waste, including Recyclable Materials and Organics Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer or such Premises (or by his or her full-time employee) to a processing or Disposal Site;
- c) Recyclable Materials and Organics Waste which are source-separated at any Premises by the Customer and donated to youth, civic, or charitable organizations), including containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- d) Property owners may self-haul their own Solid Waste, including Recyclable Materials and Organics Waste, when undertaking special projects or when the owner has excess waste materials; however, property owners must maintain regular Solid Waste Collection service through City's franchised hauler as mandated at Chapter 6.04 of the City's Municipal Code.
- e) Organics Waste removed from Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment as an incidental part of a total service offered by the company rather than solely as a hauling service;
- f) C & D Waste that is incidentally removed by a duly licensed construction or demolition company or by the City, where the licensed company utilizes its own equipment and employees;
- g) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- h) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- i) Hazardous Waste and radioactive waste, regardless of its source; and
- j) The casual or emergency Collection, removal, Disposal or Diversion of Solid Waste by City officers or employees in the normal course of their employment.



Company acknowledges and agrees that the City may permit other Persons besides Company to Collect any or all types of the Solid Waste listed in this Section 2.7, including Recyclable Materials, without seeking or obtaining approval of Company.

This grant to Company of an exclusive Franchise, right and privilege to Collect, transport, process and Dispose of Solid Waste shall be interpreted to be consistent with state and federal laws, as now existing and as adopted during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and future state and federal laws with regard to Solid Waste handling, exclusive franchises, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, the enactment of new law, or development of legal trends limit the ability of the City to lawfully contract for the scope of exclusive Franchise services as specifically set forth herein, Company agrees that the scope of this Agreement shall be limited to those services and materials for which the City may lawfully grant a franchise and that the City shall not be responsible for any lost profits claimed by Company as a result of such limitations to the scope of the Agreement. In such an event, it shall be the responsibility of Company to minimize the financial impact upon the cost to the Customer for all other services that may continue to be provided pursuant to the terms of this Agreement.

## **2.8 City's Right to Direct Changes**

### **2.8.1 General**

The City may direct Company to perform additional services (including new Diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes which the City may direct. Company shall be entitled to an adjustment in its Company Compensation based on its reasonable costs for providing such additional or modified services, as agreed between the City and Company. If Company and the City cannot agree on terms and conditions of such additional or expanded services within ninety (90) days from the date when the City first requests Company to perform such services, Company acknowledges and agrees that the City may permit Persons other than Company to provide such services.

### **2.8.2 New Diversion Programs**

Company shall present, within 30 days of a request to do so by the City, a proposal to provide additional or expanded Diversion services. The proposal shall contain a complete description of the following:



- a) Collection methodology to be employed (equipment, manpower, etc.);
- b) Equipment to be utilized (vehicle number, types, capacity, age, etc.);
- c) Labor requirements (number of employees by classification);
- d) Type of materials Containers to be utilized;
- e) Provision for program publicity/ education/ marketing; and
- f) Projection of the annual financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

### **2.8.3 City's Right to Acquire Services**

Company acknowledges and agrees that the City may permit other Persons besides Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.8.1, Company and the City cannot agree on terms and conditions of such additional or expanded Diversion services within ninety (90) days from the date when the City first requests a proposal from Company to perform such services, Company acknowledges and agrees that the City may permit Persons other than Company to provide such services. In the event that City exercises its right to permit third party Persons to provide such services, and if such a decision reduces or eliminates Company's costs to provide Collection services as contemplated herein, Company agrees to reduce its Billings proportionately.

## **2.9 Ownership of Solid Waste**

Once Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Customer to Company by operation of this Agreement. Subject to Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct Company to process and Dispose of Solid Waste at a particular licensed Solid Waste Facility or to Dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to Company, Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Company. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste, Organics Waste, and Recyclable Materials which it Collects. Solid Waste, Organics Waste, and Recyclable Materials, or any part

thereof, which is Disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, Transfer Station or Processing Facility) shall become the property of the owner or operator of the Disposal Site(s) once deposited there by Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to Company.

#### **2.10 Company Status**

Company represents and warrants that it is duly organized, validly existing and in good standing under applicable laws. It is qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

#### **2.11 Company Authorization**

Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Company (or the shareholders, if necessary) have taken all actions required by law, Company's governing documents, or as may otherwise be required to authorize the execution of this Agreement. The individual signing this Agreement on behalf of Company has authority to so bind and obligate Company. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this Company-designated employee's actions are taken on behalf of and with the full approval of Company.

#### **2.12 Annexations**

This Agreement extends to any territory annexed to the City during the Term of this Agreement except to the extent that Collection by Company within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with Company to fulfill any requirement necessary for Company to serve the annexed area consistent with this paragraph.

#### **2.13 Mandatory Service**

It is understood and agreed that, as provided in Chapter 6.04 of the City's Municipal Code, trash Collection service from the City's franchised hauler is a mandatory service for all Premises within the City. City agrees to assist Company in enforcing the mandatory service requirements set out in the City's Municipal Code as, in its sole discretion, the City deems reasonable and necessary. It is the responsibility of Company to provide and maintain mandatory trash Collection service that meets the City's approval.



## **ARTICLE 3**

### **FRANCHISE, ENVIRONMENTAL & ADMINISTRATIVE FEES**

#### **3.1 Franchise, Environmental and Administrative Fees**

##### **3.1.1 Franchise Fee Amount**

In consideration of the exclusive Franchise granted pursuant to this Agreement, Company shall pay to the City a Franchise Fee equal to twelve percent (12%) of Company's Gross Receipts collected under this Agreement net of (i) Environmental Fees and (ii) revenue from the sale of Recyclable Material. Company shall remit to the City said Franchise Fee in the manner provided at section 3.1.4 below.

##### **3.1.2 Environmental Fee Amount**

Company shall pay to the City the Environmental Fee specified in the attached Rate Schedule (Exhibit 1), and as it may be amended from time to time, for each ton of Refuse Collected from within the City. Company shall remit to the City this Environmental Fee according to section 3.1.4 below. The Environmental Fee may be adjusted by the City, and in such case, rates charged to Customers shall be adjusted up or down by a corresponding amount. Any such adjustment shall be considered in adjustments to Company rates as described in Section 6.5.

##### **3.1.3 Vehicle Impacts**

City may instruct Company to compensate City annually for the costs of maintaining and repairing roads attributed to Solid Waste Collection vehicles. If a fee is imposed, the City and Company shall negotiate the amount.

##### **3.1.4 Time and Method of Payment**

Company shall remit all monies due to the City on or before the thirtieth (30<sup>th</sup>) day following the end of each month. Company shall continue to remit Franchise Fees and/or Environmental Fees to the City after the Term of this Agreement expires so long as Company continues to collect receipts from Customers that were billed for services during the Agreement Term.

If fees or other outstanding monies are not paid on or before the thirtieth (30<sup>th</sup>) day following the end of the month, Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the total amount owing. Company

shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period that any sum remains unpaid.

Company agrees that the service charges contemplated by this Section 3.1.4 reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor Company's services, all in an effort to collect the delinquent Franchise Fees and/or Environmental Fees which, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs), and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees and/or Environmental Fees.

#### **3.1.5 Documentation of Fee Payments**

Along with fee payments, Company shall submit documentation of the Gross Receipts and total tonnage Collected and Disposed during the corresponding month, by line of service (Residential, Commercial, Roll-off Box). The Disposal costs and Recyclable Materials processing fee components shall be segregated in the documentation of Gross Receipts and total tonnage. This documentation is due by the 30<sup>th</sup> day following the end of each month and shall not be deemed received by the City unless it is complete and accurate.

#### **3.2 Other Fees**

The City shall reserve the right to set other fees, as it deems reasonably necessary. The amount, time and method of payment and adjustment process shall be determined by reference to Section 3.1.4 above and Section 6.2 below.

### **ARTICLE 4**

#### **DIRECT SERVICES**

##### **4.1 Collection Services**

Company shall furnish all labor, supervision, equipment, materials, supplies, and all other items necessary or convenient to perform all services within the scope of this Franchise. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether or not enumerated elsewhere in this Agreement.



The work to be done by Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection services at all times.

#### **4.2 Determination of Residential Collection Method**

All individually-serviced Residential Customers shall receive automated Collection service using Carts provided by Company, or Bin service, unless City approves manual service on a case-by-case basis. City shall make the final determination as to the form of Collection service a Customer shall receive: Cart, Bin or other.

##### **4.2.1 Homeowner Association Customers in Gated Communities**

Homeowner associations in gated communities shall have automated services as described in Section 4.3, unless City approves manual or other service on a case-by-case basis.

##### **4.2.2 Individually Serviced Dwelling Units**

Except as provided in Section 4.2.3, Residential Customers shall receive automated Cart service once per week as described in Section 4.3.

##### **4.2.3 Apartment Complex Customers**

Section 9.16.150 of the Cathedral City Municipal Code mandates the developers of certain Residential developments to construct trash enclosures to accommodate Bin service. Accordingly, Residential Customers (i) in Residential developments with three (3) or more dwelling units and with trash enclosures accessible to Refuse removal vehicles by alley or private common drive, and (ii) in Residential developments with five (5) or more dwelling units regardless of access, shall receive Bin service. All Residential Customers not receiving Bin Service shall receive automated Cart services. Recyclable Materials Collection shall also be offered to Residential Bin Customers, at the rates established in Exhibit 1 and using the containers deemed most appropriate by Company.

#### **4.3 Automated Collection Services**

Except as provided in Section 4.4, Company shall provide Residential Customers receiving individual automated Cart Collection service with a minimum of three (3) 96-gallon Carts, one each for Refuse, Recyclables and Organic Waste. Additional Carts shall be provided at the rate in Exhibit 1, Rate Schedule.; No Customer may receive additional Carts at the additional Cart rate unless the Customer is already paying for Cart service. All materials to be Collected must be contained in the Cart with the lid closed.

#### **4.3.1 Automated Refuse Services**

Company shall provide Refuse Collection services to all Premises not less than once per week.

#### **4.3.2 Automated Curbside Recyclable Materials Collection**

No discounts shall be given to Customers for not using Recycling Carts. Customers shall be provided, at no additional cost, one recycling cart as Customer may request. Customers may continue to utilize an additional no charge Recycling cart, so long as they do not have contamination levels above 15%. Should a customer have continued contamination levels above 15% and have been notified by company more than four times annually, Company may charge a monthly fee for additional can identified in Exhibit 1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts at the curbside on the same day as Refuse Collection. Recyclable Material Collection from automated Carts within the City shall be at least once each week and, at a minimum, shall include, but not be limited to, the Collection of:

- a) Paper - all grades, including: newspaper, catalogs, magazines, junk mail including envelopes, telephone books, cereal boxes, office paper (white, colored, computer & envelopes), cardboard (all grades, including egg cartons);
- b) Empty aerosol cans;
- c) Glass - all colors, whether or not there is a California redemption value;
- d) Aluminum - cans, foil and trays;
- e) Bi-metal, tin - cans, steel cans;
- g) Plastics/resins of all grades, Nos. 1 through 7, as markets exist.

Recyclable Materials are to be commingled in a single Recycling Cart.

#### **4.3.3 Automated Curbside Organics Waste Collection**

No discounts shall be given to Customers for not using Organics Waste Carts. Customers shall be provided, at no additional cost, one Organics cart as Customer may request. Customers may continue to utilize an additional no charge Organic cart, so long as they do not have contamination levels above 15%. Should a customer have continued contamination levels above 15% and have been notified by company more than four



times annually, Company may charge a monthly fee for additional can identified in Exhibit 1. Residential Organics Waste Collection shall be on the same day of the week as Refuse Collection service.

#### **4.3.4 Automated Cart Walk-in Service**

Company shall offer walk-in Collection services to all Customers for an additional fee. Service will include retrieving and returning Refuse, Recyclable Materials, and Organics Waste Containers to the backyard or enclosure of such Customers. Disabled persons, identified as those meeting the DMV requirement for N1-Permanent disabled parking placard, shall receive such service for no additional charge. The walk-in service surcharge for able-bodied Customers choosing to pay for such service will include the walk-in Collection of one each Refuse, Recycling and Organics Waste Containers; additional fees may be charged for additional Containers.

#### **4.4 Manual Collection Services**

Company shall manually Collect Refuse delivered for Collection at the curbside in Customer-provided Cans weighing no more than 60 pounds, not less than once per week and only until such Customers have been transitioned to automated. Customers receiving manual Refuse Collection service shall receive manual Collection of Recyclable Materials but shall not receive Organics Waste Collection. Once transitioned to automated collection, Customers will receive Organic Waste Collection.

#### **4.5 Other Residential Services**

##### **4.5.1 Low Income Clean-up Assistance**

At City's request and at no cost to Residents or City, Company shall provide up to eight (8) 40 Cubic Yard Roll-off Boxes in a Calendar Year for removal of Solid Waste, including Bulky Items, from individual dwellings that have been qualified by City as low income. Company shall not be responsible for loading, traffic control or oversight of such cleanups.

##### **4.5.2 On-Call Bulky Item Collection**

The Company shall provide Bulky Item pickup service to all Residential Customers (both Single, multi-family, and gated communities) and all Commercial Customers subscribing to Bin service. Residential Customers will be entitled to weekly pickups, with a maximum of four (4) items per pickup per week, for no charge for bulky items generated at the residential premises. Commercial Customers shall be charged rates in accordance with the charges in effect in the Rate Schedule, Exhibit 1. Customers will provide the

Company with forty-eight (48) hours advance notice and the items will be Collected on the Customer's regular Collection day. The City shall have the right to direct Company to pick up from commercial establishments, free of charge, bulky items that were illegally dumped.

#### **4.5.3 Christmas Tree Collection Program**

Company shall operate an annual Christmas Tree Collection program. The program shall include curbside Collection and a drop off site at Company's operations yard located in the City of Palm Desert, and shall target all Residential Premises in the City (both single and multi-family). Company shall reasonably cooperate with the City in the scheduling and operation of the Christmas tree Collection program.

#### **4.5.4 Used Motor Oil and Filter Recycling**

Company shall Collect and Recycle all used motor oil and oil filters from all Residential Premises on the same day as Recyclable Materials Collection. Company shall provide Collection of used motor oil and oil filter for Residents not receiving automated Cart service on a call-in basis.

#### **4.5.5 Residential Organics Collection SB 1383**

At such time as Residential Organics Collection is required by state law and regulations, Company shall offer and provide an Organics Collection program (the "Residential Organics Program") to all Residential Customers that at a minimum meets the standards required under SB 1383. Company shall also assist the City in identifying Residential Customers that are not in compliance with the requirements of the Applicable Laws, including without limitation SB 1383.

Company shall provide periodic on-site visits to such Residential Premises to offer and promote Residential Organics Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement the Residential Organics Program. Company shall keep records of all on-site visits including the date visit was conducted, who Company met with, services offered and any reasons explaining if customer refuses to implement the Residential Organics Program and will be provided to the City on a monthly basis. City agrees to provide reasonable assistance to Company, which may include adding its name to materials prepared for distribution to Residential Customers regarding the Applicable Laws, including without limitation SB 1383 requirements, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation SB 1383 requirements,



and occasional participation by City personnel in meetings with Residential Customers who repeatedly refuse to implement the Residential Organics Program.

Company shall be responsible for ensuring that its Residential Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time, to meet such diversion requirements. Company shall produce, keep current, and provide public information specifically outlining its Residential Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City. City and Company shall work together to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit 1 in order to compensate Company for implementing said Organics Program; and the City Manager is authorized to approve the Residential Organics Program and any associated increase to the maximum rates set forth on Exhibit 1.

#### **4.6 Commercial Service**

##### **4.6.1 Refuse Bin Service**

Company shall offer Bin service. Company shall Collect and remove all Solid Waste that is placed in Bins by Customers receiving Bin service at least once every week, or more frequently if required to handle the Solid Waste stream of the Premises where the Bin is located. Special consideration shall be given when determining the pick-up area to ensure that the flow of traffic is not impeded. Company is responsible for closing Bin enclosure gates and for replacing locks, if provided, after Collection.

##### **4.6.2 Cart Service**

Company shall provide Cart service to low-volume Commercial Customers requesting such service provided Company or City's Environmental Conservation Manager has first conducted a waste stream audit and approved the use of a Cart. This service will be provided at the same rate as Residential Cart service.

##### **4.6.3 Temporary Bins and Roll-off Box Service**

Company shall offer temporary Bin service and Roll-off Box and compactor services for the Collection of Refuse or C & D Waste.

#### **4.6.3.1 Condition of Equipment**

Temporary Bins and Roll-off Boxes shall be free of graffiti and in good repair, and must be clearly marked and identifiable as belonging to Company.

#### **4.6.3.2 Location**

Company shall not deliver a temporary Bin or Roll-off Box in the public right-of-way unless and until Customer has obtained an encroachment permit issued by City. Special consideration shall be given when determining the delivery Collection location for temporary Bins and Roll-off Boxes to ensure that the flow of traffic is not impeded. The designated Collection location, if disputed by the Customer or Company, shall be determined by the City. Additionally, if in the City's opinion the location of an existing Collection location is inappropriate for aesthetic or safety reasons, the City may require the Customer and/or Company to relocate the temporary Bins or Roll-off Boxes to an alternate Collection location.

#### **4.6.3.3 Arranging**

Company shall deliver and Collect temporary Bins and Roll-off Boxes at the direction of the Customer.

#### **4.6.3.4 Time**

The Customer is entitled to retain the Bin or Roll-off Box(es) for seven (7) business days. After the initial seven (7) business days, additional fees may be due based on demurrage charges for use beyond the seven (7) business days.

#### **4.6.3.5 Charge**

Company may charge the established Temporary Bin and Roll-off Box Service rates as set out in Exhibit 1.

#### **4.6.4 Commercial Recycling Program**

Company shall offer and provide a Commercial Recycling Program to all Commercial customers (the "Commercial Recycling Program") that at a minimum meets the standards required under the Applicable Laws including without limitation AB 341. Company shall also assist the City in identifying Commercial customers that are not in compliance with the requirements set forth in the Applicable Laws including without limitation AB 341.



Company shall provide quarterly contact that may include on-site visits to such Premises to offer and promote the Commercial Recycling Program services as required, attempt to resolve any logistical detriments to providing these services, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement the Commercial Recycling Program. Company shall keep records of all contact and on-site visits including the date contact/visit was conducted, who Company met with, services offered and any reasons explaining if customer refuses to implement the Commercial Recycling Program and will be provided to the City on a monthly basis, along with information of those who are and are not complying with the Applicable Laws including without limitation AB 341. City agrees to provide reasonable assistance to Company, which may include adding its name to materials prepared for distribution to customers regarding the Applicable Laws including without limitation AB 341, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation AB 341 requirements, and occasional participation by City personnel in meetings with customers who repeatedly refuse to implement the Commercial Recycling Program.

Company shall be responsible for ensuring that its Commercial Recycling Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time to meet such diversion requirements. Company shall produce, keep current, and provide public information specifically outlining its Commercial Recycling Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable customers in the City.

#### **4.6.5 Overflowing Commercial Containers and Enclosure Clean-Outs**

Customers that regularly produce more Refuse than their current level of service can accommodate and who fail to increase service as recommended by Company shall be reported to City for review and action.

#### **4.6.6 Commercial Organics Program**

Company shall offer and provide a Commercial Organics Collection program to all Customers at Commercial Premises (the "Commercial Organics Program"), to be approved by the City Manager, that at a minimum meets the requirements of the Applicable Laws including without limitation AB 1826. Company shall also assist the City in identifying Commercial Customers that are not in compliance with the requirements set forth in the Applicable Laws including without limitation AB 1826.

Company shall provide quarterly that may include on-site visits to Commercial Customers to offer and promote its Commercial Organics Program, attempt to resolve

any logistical detriments to providing services offered thereunder, and notify and request assistance from the City for potential follow up action where there is a repeated refusal to implement the Commercial Organics Program. Company shall keep records of all contact and on-site visits including the date contact/visit was conducted, who Company met with, services offered and any reasons explaining if customer refuses to implement the Commercial Organics Program and will be provided to the City on a monthly basis, along with information of those who are and are not complying with the Applicable Laws including without limitation AB 1826. City agrees to provide reasonable assistance to Company, which may include adding its name to materials prepared for distribution to Customers regarding the Applicable Laws including without limitation AB 1826 requirements, consideration of ordinances which may assist with gaining compliance with the Applicable Laws including without limitation AB 1826 requirements, and occasional participation by City personnel in meetings with Commercial Customers who repeatedly refuse to implement the Commercial Organics Program.

Company shall be responsible for ensuring that its Commercial Organics Program, combined with its other programs, enables it to achieve the required diversion rates specified in this Agreement and may be required to modify its program from time to time to meet such diversion requirements. Company shall produce, keep current, and provide public information specifically outlining its Commercial Organics Program, which shall specifically include the annual publication and distribution of a brochure describing this service to all applicable Customers in City.

#### **4.6.7 Compactor Service**

Company shall offer Collection of Refuse or Recyclable Material from high volume Commercial Customers from stationary compactors maintained by either the Customer or Company as they may mutually agree.

##### **4.6.7.1 Condition of Equipment**

If provided by Company, compactors shall be free of graffiti and in good repair, and must be clearly marked and identifiable as belonging to Company.

##### **4.6.7.2 Location**

The designated Collection location shall be arranged by Customer in accordance with the requirements and design standards of City and with the prior approval of the City. The selected location shall also be subject to the prior written approval of Company.



#### **4.6.7.3 Arranging**

Company shall Collect from compactors at the direction of the Customer.

#### **4.6.7.4 Charges**

Company may charge for compactor service at the rate set out in Exhibit 1.

#### **4.6.7.5 Conditions**

The compactor shall be compatible with Company's Collection equipment and procedures. The location, type and method of operation of the compactor shall be approved in writing by Company before installation. If maintained by the Customer, the Customer shall be solely responsible for the safe operation of the compactor and for all repairs that may be needed from time to time.

### **4.7 City Services and Other Requirements**

#### **4.7.1 City Premises Collection**

Company shall provide, at no charge to City, Containers for, and Collection and Disposal of, all Solid Waste generated at Premises owned and/or operated by the City; provided, however, that City shall pay for services at the rates and charges in effect at the time service is rendered, and under the same terms and conditions as any other Commercial Customer, for Solid Waste services provided for City Premises that are (1) not operated for a public purpose or (2) operated as a Commercial enterprise. Collections shall be scheduled at a time mutually agreed upon by Company and City. Company may also provide separate containers appropriate for the type and amount of materials on a facility-by-facility basis for commingled Recycling of newsprint, mixed paper, corrugated cardboard, and glass, plastic and metal beverage containers and for source-separated Organics Waste, including Organics Waste originating from City Premises and loaded into Roll-off Boxes at City's Corporate Yard, and source-separated C & D Waste materials (concrete and asphalt, woody waste, metals and sand, soil and sod).

#### **4.7.2 Illegal Dumping Collection Program**

Company shall Collect debris from illegal dumping consisting of non-hazardous waste items such as Refuse, appliances, electronics, TV's, bulky items, mattresses, tires, and the like at approximately 1,440 locations identified by the City, within the City (the "Illegal Dumping Collection Program"). Company will provide a crew two days a week for the Illegal Dumping Collection Program, and will also be available for the collection of debris in areas deemed urgent and needing a quick response as directed by the City. In the event of significant increases or

decreases from 1,440 identified sites or costs., City and Company shall work together to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit 1.

#### **4.7.3 City Sponsored Events**

Each calendar year, Company shall provide Solid Waste and Recycling Collection service and portable toilet and sink service at up to five (5) City-sponsored, community-wide, not for profit events, exclusive of City-sponsored events designed exclusively as a Recycling event. City shall designate the five (5) City-sponsored events. These services shall be provided at no cost to the City or the event.

#### **4.7.4 C & D Waste Recycling**

Company shall Divert a minimum of seventy-five percent (75%) of all C & D Waste Collected by Company. All mixed C & D Waste shall be processed. Company's program shall commence upon the Effective Date and continue during the City's continuation and enforcement of:

- a) City's comprehensive Construction and Demolition Waste Recycling Ordinance, when approved, designed to Divert seventy-five percent (75%) of all C & D Waste generated within the City, and
- b) That there continuously exists in the Coachella Valley sufficient properly licensed and permitted Diversion Sites capable of accepting, processing and Diverting seventy-five percent (75%) of the C & D Waste generated within City.

Provided Company has made a good faith effort to implement City's C & D Waste Recycling Ordinance, Company's failure to Divert seventy-five percent (75%) of C & D Waste from landfill Disposal shall not result in a breach of this Agreement or subject Company to penalties or liquidated damages; however, such failure may be considered in City Council's future extensions of this Agreement.

Roll-off Box Collection service shall be charged on a "pull-plus-dump" basis, with a service fee or "pull charge" and a per-ton fee component. The per-ton component for source-separated loads (e.g., concrete, dirt, asphalt, wood) shall be the actual per-ton gate rate at the Facility accepting the material for Diversion.

#### **4.7.5 Document Shredding Program**

Company shall reimburse City for the cost to operate four (4) drop-in document shredding events per calendar year for Cathedral City Customers. Said reimbursement shall include (a) the service fees charged by the shredding equipment vendor, (b) the cost



to place a display advertisement in a newspaper of general circulation in the City ten (10) days prior to each drop-in document shredding event, and (c) printing, postage and distribution fees for postcards notifying the residents of the event. Company shall reimburse City, not to exceed \$10,000 annually, for said expenses within 30 days of the City's invoice for same.

#### **4.7.6 Sharps Recycling and Medication Disposal Program**

Company shall provide a mail-in program for the Collection of used needles, with program specifics to be approved by City, and shall accept sharps at its HHW center and at other locations that may develop as a result of expansion of the program in the City. Said services shall be offered to Residential Customers at no cost, but may be provided to Commercial Customers for a fee. Company shall be responsible to ensure that the sharps collection program complies with all applicable laws and regulations. Company shall also provide the City, at no charge, up to 1,000 "Take Away" envelopes per calendar year for the proper disposal of medications.

#### **4.7.7 Warning Notice**

Company shall warn Customers who have non-Recyclable Materials in their Recycling Container. The warning should notify the Customer that Company may charge a Collection fee for contaminated Recycling Containers in accordance with the approved rate schedule. If after two sequential written warnings that Customer's Recycling Container continues to be contaminated, Company may remove the Recycling Container. Company shall report quarterly to the City any warning notices issued as part of its quarterly reporting under Section 8.3.3. Removed Recycling Containers shall be returned to Customers under any of the following circumstances:

- a) Customer requests return of Recycling Containers and it has been at least three months since the removal;
- b) Occupant at location changes;
- c) Company has reason to believe Customer will no longer contaminate Recycling Container; or,
- d) City requests Recycling Containers be returned.

#### **4.7.8 Marketing and Sale of Recyclable Materials**

Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials.

#### **4.7.9 End Uses for Organics Waste**

Company shall Divert Organics Waste materials through any available method, including but not limited to composting and mulching. The Organics Waste to be Diverted shall include all source-separated Organics Waste Collected by Company, whether through curbside collection services, commercial Organics Waste collection services, the Christmas tree collection program or as a result of having been dropped off by the Customer at a Company site. Company must provide end uses for Organics Waste that maximize Diversion credits for the City according to regulations established by the Cal Recycle, and may use Organics Waste as alternative daily cover (ADC) so long as ADC is permitted as a Diversion credit by the CalRecycle.

#### **4.7.10 Diversion Requirements**

The minimum amount that shall be Diverted through Recycling, Organics Waste Collection, and Transformation (the "Diversion Rate") is fifty percent (50%) until such time as the City approves its Sustainability Plan and/or the State approves the Green Building Standards, at which time the Diversion Rate will increase to seventy-five percent (75%) of the total Solid Waste stream during each calendar year of this Agreement. Transformation shall consist of a maximum of ten percent (10%) of the total Solid Waste stream.

Company shall ensure that the City meets the meet the goals and requirements of AB 939, AB 341, AB 1826 and SB 1383 (as implemented herein) and any future State mandate(s). If additional services and/or equipment is necessary to meet said goals, Company shall be entitled to a rate adjustment equal to the increased, reasonable, and actual costs.

#### **4.7.11 Development of Diversion Facility**

Company intends to develop additional Diversion Facilities to augment City's Diversion Rate goals. However, both Parties recognize that having viable markets for Diverted products is an important ingredient in Company's decision to invest in technology and Facilities to Divert C & D Waste and food waste as part of this Agreement.



Within the first two years of this Agreement, Company will endeavor to develop a site for sorting and consolidating mixed C & D Waste for transfer to local processors for Diversion.

Also, within the first year of this Agreement, Company will endeavor to develop, an organic composting Facility for the conversion of Organics Waste into a beneficial soil amendment.

Once developed, Company guarantees City sufficient capacity to Divert: (a) all mixed C & D Waste generated within City, and (b) all food waste generated by Commercial food establishments and residential customers participating in Company's source-separated food waste Collection program.

#### **4.7.12 Waste Characterization Studies**

Company will conduct a Solid Waste characterization study at all Premises, including City facilities, upon request of the Customer.

#### **4.7.13 CNG Fueling Station Discount**

Company will allow City to use any of Company's public access CNG fueling stations at the pump price available to the general public.

### **4.8 Operations**

#### **4.8.1 Schedules**

Solid Waste shall be Collected according to the City Code as follows:

*a) Commercial:*

i) Winter Months (October 1<sup>st</sup> through April 30<sup>th</sup>) - between 6:00 a.m. and 6:00 p.m.;

ii) Summer Months (May 1<sup>st</sup> through September 30<sup>th</sup>) - between 5:30 a.m. and 6:00 p.m.

*b) Residential:*

i) Winter Months (October 1<sup>st</sup> through April 30<sup>th</sup>) - between 6:30 a.m. and 6:00 p.m.;

- ii) Summer Months (May 1<sup>st</sup> through September 30<sup>th</sup>) – between 5:30 a.m. and 6:00 p.m.

Solid Waste shall be Collected from Commercial zones Monday through Saturday, and Residential zones Monday through Friday, unless Saturday Collection shall be necessary due to holiday scheduling. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, unless the alternate day falls on Sunday. Alternate Collection shall then be performed on the following Monday. All other Collection days falling on a legal holiday shall remain as scheduled. Collections for the remainder of the week following a holiday shall be delayed for one day.

Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days. When notified of a missed pick-up, Company shall Collect the Refuse, Recyclable Materials, Bulky Items and/or Organics Waste within one (1) business day.

#### **4.8.2 Vehicles**

##### **4.8.2.1 General**

Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the services required by this Agreement in strict accordance with its terms. The cost of any additional vehicles/routes that may be required to meet the service standards during the Term of this Agreement, above the number currently budgeted, shall be at Company's sole expense. Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies. Company shall provide electronic communication with the route supervisor and Commercial and Residential Collection vehicles.

##### **4.8.2.2 Specifications**

All vehicles used by Company in providing Refuse, Recycling, and Organics Waste Collection services shall be registered with the California Department of



Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage or overflow.

#### **4.8.2.3 Alternative Fuel Vehicles**

Company shall comply with the requirements of the Southern California Air Quality Management District Rule No. 1193. Further, all regular Residential and Commercial route trucks used by Company to Collect Refuse, Recycling, and Organics Waste generated within City shall be alternative fuel vehicles. Qualifying vehicles include:

- a) Compressed Natural Gas vehicles;
- b) Liquefied Natural Gas vehicles; and
- c) Other alternative fuel vehicles with similar emission performance standards if such vehicles are approved in writing by the City in advance of implementation of such vehicles.

#### **4.8.2.4 Vehicle Identification**

Company's name, local telephone number, and a unique vehicle identification number designed by Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than three (3) inches high. Company shall not place the City's name and/or any City logos on Company vehicles.

#### **4.8.2.5 Cleaning and Maintenance**

- a) Company shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- b) Vehicles used in the Collection of Refuse, Recyclable Materials, and Organics Waste shall be painted, thoroughly washed, and thoroughly steam-cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. Company shall also make vehicles available to the Riverside County Health Department for inspection, at any frequency it requests. Company agrees to replace or repair to the City's satisfaction, any vehicle which the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

c) Within sixty (60) days' notice from the City that it has determined the appearance of a Company vehicle warrants painting, Company shall repaint the vehicle used in the Collection of Solid Waste.

d) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.

e) Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, Company shall obtain warranty performance. Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

f) Upon request by the City, Company shall furnish the City a written inventory of all Collection equipment, including vehicles and Containers used in providing service, and shall update the inventory upon request, up to once annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

#### **4.8.2.6 Operation**

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment shall comply with EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.



Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to the City's driving surfaces, whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

#### **4.8.2.7 City Inspection Per Code**

The City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including all Vehicle Code Sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with said codes, and its return to service has been approved by the City.

#### **4.8.2.8 Vehicle Inspections**

Upon City request, Company shall submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT. If Company receives a terminal rating below satisfactory, Company shall notify the City. Company shall use the time allowed by the Department of California Highway Patrol ("CHP") to cure violations and bring the terminal rating up to satisfactory. If the CHP does not adjust the rating to satisfactory or better within three (3) months, then Company shall remove any and all unsatisfactory vehicles from operation within City.

#### **4.8.2.9 Correction of Defects**

Following any inspection, the City Manager or his designee shall have the right to cause Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, which decision shall be final.

### **4.8.3 Containers**

#### **4.8.3.1 Cart Design Requirements**

These Carts shall be manufactured by injection or rotational molding and meet all requirements specified below.

##### **4.8.3.1.1 Capacity**

Company shall continue to provide new and replacement 96-gallon Carts in the same appearance for Residential Refuse, Recycling and Organics Waste Collection as in use at the start of this Agreement term.

##### **4.8.3.1.2 Cart Handles**

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. Bolt-on handles are acceptable. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

##### **4.8.3.1.3 Cart Lid**

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- a) Prevents the intrusion of rainwater, rodents, birds, and flies;
- b) Prevents the emission of odors;
- c) Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- d) Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- e) The lid handle shall be an integrally molded part of the lid;

f) The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and

g) The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

#### **4.8.3.1.4 Cart Colors**

The Refuse, Recycling and Organics Waste Carts will continue to be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container, and the colors must be uniform for all Carts throughout the City.

#### **4.8.3.1.5 Cart Identification Markings**

All markings on the Containers shall be approved by the City in advance of ordering Carts. An arrow (at least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction of Cart placement.

The word REFUSE, RECYCLING or ORGANICS WASTE, as applicable, may be hot stamped or in a sticker format in white color on the lid of the Cart, in character size of no less than 3/16 inch.

#### **4.8.3.2 Cart Performance Requirements**

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

##### **4.8.3.2.1 Cart Load Capacity**

Carts shall have a minimum load capacity of 200 pounds without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.



#### **4.8.3.2.2 Cart Durability**

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy the intended use and performance, for the Term of this Agreement:

- a) Maintain its original shape and appearance;
- b) Be resistant to kicks and blows;
- c) Require no routine maintenance and essentially be maintenance free;
- d) Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with the intended use;
- e) Resist degradation from ultraviolet radiation;
- f) Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- g) The bottoms of Cart bodies must remain impervious to any damage that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough or abrasive surface;
- h) All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- i) Resist degradation by airborne gases or particulate matter currently present in the ambient air of the City.

#### **4.8.3.2.3 Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

#### **4.8.3.2.4 Stability and Maneuverability**

The Carts shall be stable and self-balancing in the upright position, whether empty or loaded to its maximum design capacity with an evenly distributed load, and whether the lid is in a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered with an evenly distributed load equal in weight to its maximum design capacity, whether on a level, sloped or stepped surface.

#### **4.8.3.2.5 Lid Performance**

Cart lid assemblies shall meet the following minimum requirements:

- a) Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- b) Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- c) Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

#### **4.8.3.2.6 Reparability**

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by Company personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

#### **4.8.3.2.7 Cart Replacement**

The majority of the Carts in distribution at the start of this Agreement Term are aging and may need replacing during the Agreement Term. Company shall replace any Cart upon request of City or Customer with a uniform-looking new Cart. Carts removed from service due to a complaint of poor appearance may not be placed back into service, in either the same or another location, unless specifically authorized in writing by the City. Replacement of Carts shall also be in conformance with Section 4.8.3.1.5.

#### **4.8.3.3 Bins**

Company shall provide Bins for Collection of Solid Waste to all Commercial Customers and, except as provided at Section 4.4, all Residential Customers not receiving automated Cart service. The Bins shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances which were designed for movement, loading, or unloading of the Bin shall be maintained in good repair.

##### **4.8.3.3.1 Bin Cleaning**

Company shall maintain the Bins in a clean, sound condition free from putrescible residue. Company shall inspect all Bins at least once per year, and clean or replace all Bins as necessary, or upon Customer request. One free cleaning or replacement per calendar year shall be provided to each Bin Customer at no additional charge; except, however, that Commercial food establishments shall receive three free cleanings/replacements per calendar year at no additional charge. Company shall perform cleaning or replacement of Bins more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings for a fee, in accordance with the approved rate schedule. Food handling establishments must have Bins cleaned a minimum of once every quarter and may be charged for cleanings beyond three per year. Graffiti shall be removed from any Bin within one business day of request by City or Customers. Each Bin placed in the City by Company shall have the name of Company in letters not less than three inches high on the exterior of the Bin so as to be visible when the Bin is placed for use.



Company's Annual Report shall include a statement attesting to Company's compliance with this Section.

#### **4.8.3.3.3 Bin Identification**

All Bins shall be the same color, except where the City states otherwise, and shall carry Company's name and phone number, at least 3" high.

### **4.8.4 Litter Abatement**

#### **4.8.4.1 Minimization of Spills**

Company shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, Company shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

Except with the City's prior written approval, Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles.

#### **4.8.4.2 Clean Up**

During the Collection or transportation process, Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not Company has caused the litter. Company shall report to the City any instances of repeated spillage not caused by Company. The City will attempt to rectify such situations with the Customer if Company has already attempted to do so without success.

#### **4.8.4.3 Covering of Loads**

Company shall properly cover all open Roll-off Boxes during transport to the Disposal Site.

### **4.8.5 Personnel**

Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers

shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

Company also agrees to establish and vigorously enforce an educational program which will train Company's employees in the identification of Hazardous Waste. Company's employees shall not knowingly place Hazardous Waste in the Collection vehicles, nor knowingly Dispose of Hazardous Wastes at the processing Facility or Disposal Site.

Company shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not performing services in the manner required by this Agreement, Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified Company of a complaint related to discourteous or improper behavior, Company will consider reassigning the employee to duties not entailing contact with the public while Company is pursuing its investigation and corrective action process.

Company shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

#### **4.8.6 Identification Required**

Company shall provide Company identification for every employee, agent, contractor and subcontractor who may make personal contact with residents or businesses in the City. The City may require Company to notify Customers yearly of the form of said identification. Company shall provide a list of current employees, agents, contractors, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

#### **4.8.7 Fees and Gratuities**

Company shall not, nor shall it permit any agent, employee, contractor or subcontractor to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for temporary Bin/Roll-off Box services or the Collection, transportation,



Recycling, processing, or Disposal of Solid Waste otherwise required under this Agreement.

#### **4.8.8 Non-Discrimination**

Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition or in violation of any applicable federal or state law.

#### **4.8.9 Street Sweeping Services**

Company, its contractors, or subcontractors shall provide street sweeping within the City one (1) time per month, not to exceed 290 curb miles. Notwithstanding any other provision herein, no costs or expenses, direct or indirect, related to said street sweeping services shall be considered when adjusting or setting rates or other compensation for Company services.

#### **4.8.10 Change in Collection Schedule**

Company shall notify the City in writing forty-five (45) days prior to, and Residential Customers not later than thirty (30) days prior to, any change in Collection operations which results in a change in the day on which Solid Waste Collection occurs. Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule to improve service, to resolve complaints or for other reasons.

#### **4.8.11 Report of Accumulation of Solid Waste; Unauthorized Dumping**

Company shall direct its drivers to note the address of any Premises at which Solid Waste is accumulating and is not being offered to Company for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Company shall deliver each such address or description to the City within five (5) working days of any such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Cathedral City Municipal Code.



#### **4.9 Transportation of Solid Waste**

Company shall transport all Refuse Collected pursuant to this Agreement to the Transfer Station, Transformation Facility or Disposal Site designated by City. Unless and until the City notifies Company of a change, Refuse shall be transported to the Edom Hill Transfer Station. City's direction of a change of location that involves a change in Company's cost of transportation or Disposal tipping fees shall include a change in Company's compensation to offset Company's reasonable increase in operating costs.

Company shall not redirect Refuse without first notifying City in writing 30-days prior to the proposed change. City's approval shall not be unreasonably withheld.

Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for Diversion from landfill Disposal.

Company shall be permitted to direct Recyclable Materials, Organics Waste, and other Diverted materials to appropriately licensed and permitted processing Facilities. Further, if Company develops and operates Facilities within the Coachella Valley for processing Recyclable Materials, organic waste and/or C & D Waste, this Agreement specifically authorizes Company to direct the flow of all materials generated within City and Collected by Company to said Facilities. Company shall maintain, or cause its affiliates to maintain, at the Edom Hill Compost Facility sufficient capacity to accept the Organic Waste to be collected and processed pursuant to this Agreement.

City may periodically request Company to report the tip fees or processing fees charged at such Facilities and may evaluate those tip fees and processing fees when considering rate increases requested by Company pursuant to Article 6 hereof. City's evaluation of tip fees and processing fees at processing Facilities used by Company shall be for the purpose of determining that said fees are within a reasonable range for comparable Facilities within the same market area and shall consider all relevant cost factors including transportation and Facility output quality. City shall notify Company in writing if it determines any such fee is not within a reasonable range for comparable Facilities within the same market area. Within thirty (30) days of City's notification of unreasonable tip fees or processing fees, Company shall either provide written justification for the fee or redirect materials to an alternative Facility in the same market area or adjust the fee in question. If a written justification for a fee is provided by Company, the City and Company shall hold a meeting to review the justification provided. The City shall have the final determination as to whether the justification is acceptable and authority to redirect materials

#### **4.10 Disposal of Refuse**

Company shall ensure that all Refuse Collected under this Agreement is Disposed of at the Disposal Site. Unless and until the City otherwise notifies Company of a change, the Disposal Site Company has designated for Disposal of Refuse shall be the Edom Hill Transfer Station for transfer to the Riverside County Waste Management Department Landfill System or Salton City Landfill. City retains the right to designate the Disposal Site to be used by Company.

#### **4.11 Status of Disposal Site**

Any Disposal Site utilized by Company for Disposal of Refuse shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. Any such landfill must have been issued all permits from federal, state, regional, county and the City agencies necessary for it to operate as a Class III Sanitary Landfill and be in full regulatory compliance with all such permits.

#### **4.12 Route Audit**

At City's request Company shall conduct an audit of its Commercial Collection routes in the City. Additionally, if requested by the City, the route audit shall also include Residential Collection routes. City shall request route(s) audit in writing. Within ninety (90) days of written notice to perform a route audit, Company shall perform the route audit and submit a report summarizing the audit findings and attaching the complete audit findings. The route audit shall be conducted by a Person(s), other than the route driver, selected by Company and approved in advance by the City.

The route audit information shall include, as a minimum, the following information for each account:

a) *For Residential Routes:*

- i) The number of routes, Collection vehicles, and stops for each day of the week and for each type of service (Refuse, Recycling, Organics Waste, and other) prepared from physical observation.
- ii) A report generated from Company's Customer records detailing all Customers organized by route and day of week and specifying the service address and type of service.



- iii) A report of route audit findings identifying any variances between the physical audit and review of Company's Customer records and the location of any substandard Company-provided Container.
  - iv) The number of routes, Collection vehicles, stops for each day of the week and for each type of service (Refuse, Recycling, Organics Waste, and other) and tonnage of each.
- b) *For Commercial Routes:*
- i) The account name, number, address, and service level.
  - ii) The number of routes, Collection vehicles, and stops for each day of the week and for each type of service (Refuse, Recycling, Organics Waste, and other) prepared from physical observation.
  - iii) A report generated from Company's Customer records detailing all Customers organized by route and day of week and specifying the service address and type of service.
  - iv) A report of route audit findings identifying any variances between the physical audit and review of Company's Customer records and the location of any substandard Company-provided Cart.
  - v) The number of routes, Collection vehicles, stops for each day of the week and for each type of service (Refuse, Recycling, Organics Waste, and other) and tonnage of each.
- c) *For Roll-Off Box Routes:*
- i) The account name, number, address, and service level.
  - ii) The number of routes, Collection vehicles, and stops each day of the week and for each type of service (Refuse Roll-off Boxes, Refuse compactors, and Organics Waste Roll-off Boxes) prepared from physical observation. Temporary accounts shall be excluded from the route audit.
  - iii) A report generated from Company's Customer records detailing all Customers organized by route and day of week and specifying the service address and type of service.
  - iv) A report of route audit findings identifying any variances between the physical audit and review of Company's Customer records and the location of any substandard Company-provided Container.



- v) The number of routes, Collection vehicles, stops for each day of the week and for each type of service (Refuse, Recycling, Organics Waste, and other) and tonnage of each.

#### **4.13 Service Exceptions; Hazardous Waste Notifications**

##### **4.13.1 Failure to Collect**

When Solid Waste is not Collected from any Customer, Company shall notify the Customer in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made.

##### **4.13.2 Hazardous Waste Inspection and Reporting**

Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste. Company shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the City Manager or his designee and the City's Environmental Conservation Manager.

##### **4.13.3 Hazardous Waste Diversion Records**

Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from Customers within the City but Diverted from landfilling.

#### **4.14 Disaster Preparedness Plan**

Within twelve (12) months of the Effective Date, Company shall, with City assistance, prepare a written plan detailing how Refuse services will be delivered in a time of emergency or natural disaster. For the plan, City shall provide Company with a written list of critical facilities being those facilities that the City deems in need of special consideration in a time of emergency because they are critical to City's emergency response, of priority to the need of the community and/or represent a public health risk to the community. Company's written plan shall contain

a protocol for contacting Company management in the event of an emergency, an overview of Company's resources available for emergency response, a plan for Collecting and Disposing of Refuse generated by critical facilities until the time of emergency passes and a plan for resuming normal operations following an emergency.

#### **4.15 Dedicated Routes**

Within eighteen (18) months of the start date of this Agreement, Company shall service all regular Collection routes in such fashion that all Solid Waste, except for Bulky Items, Used Motor Oil and some commercial routes, Collected from or in other jurisdictions is not commingled in Collection vehicles servicing Cathedral City routes. All regular Collection routes shall be dedicated exclusively to the City of Cathedral City and not merge with or be combined with other routes in other jurisdictions.

## **ARTICLE 5**

### **OTHER SERVICES**

#### **5.1 Services and Customer Billing**

##### **5.1.1 Service Description**

Company shall annually, in September, prepare and distribute, subject to the direction of the City, a notice to each Customer listing Company's Collection rates for services, annual holiday schedule, Recycling programs offered, and a general summary of services required to be provided hereunder and optional services which may be furnished by Company. Such notice shall be in a form subject to the City's approval prior to its distribution. Notice may be included with Billings. The notice may also be included as part of Company's public education plan described below in Section 5.3.1.

##### **5.1.2 Billing**

Except for services to Residential Customers assessed on the real property tax bill, Company shall invoice all Customers directly. Company shall design detailed billing formats to clearly and fully explain all charges to Customers. City must approve, and may alter, all billing formats. City's written approval is required prior to Company charging, or agreeing to charge, a Customer rates other than those listed on the City-approved rate schedule.



#### **5.1.2.1 Residential Billing by City**

City shall bill Residential Customers as an assessment on the real property tax bill at Company's expense. Company shall provide to City and to the County of Riverside updated tax roll billing data in a timely manner to ensure that new billing information can be placed on the tax bill for the next calendar year.

#### **5.1.2.2 Billing by Company**

Company shall directly bill and collect payment from the following:

- a) Residential Premises not billed by City as an assessment on the annual real property tax bill shall be billed quarterly in advance directly by Company.
- b) Special services to Residential Premises, including Bulky Item Collections exceeding those services provided at no cost, temporary Bin and Roll-off Box services, shall be billed by Company and payable at the time service is rendered. For Residential Customers who request Roll-off Box service, Company shall accept major credit cards for payment. Residential Customers that do not use credit cards may be required by Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.
- c) For all other Roll-off Box Customers, Company shall invoice monthly or semi-monthly in arrears with payment due within 15 or 30 days from the invoice date (i.e., the beginning of the month or the inception of service). Company may require a security deposit for temporary Roll-off Boxes, with the unused portion refunded to the Customer within five (5) business days of the termination of service.
- d) Regular services to Commercial Premises shall be billed by Company monthly, in arrears, except that Company may require a deposit for delinquent accounts and/or bill said accounts monthly in advance of service. Said billing shall include Bulky Item Collections exceeding those provided at no cost, temporary Bin services and Roll-off Box services.
- e) Special services to Commercial Premises without an established account, including Bulky Item Collections exceeding those provided at no cost, temporary Bin services and Roll-off Box services, shall be billed by Company and may be collected at the time service is rendered.



#### **5.1.2.3 Temporary Suspension of Service**

Company may suspend service to non-Residential Customers due to non-payment. In addition to payment of all charges owed, Company may assess a re-start fee in accordance with the rate schedule to reinstate service. The re-start fee does not apply to a Customer establishing service at a new address, but only when service has been suspended and restarted at the same location by the same Customer.

#### **5.1.3 Review of Billings**

Company shall review its Billings to Customers under Section 5.1.2. The purpose of the review is to determine that the amount which Company is billing each Customer is correct in terms of the level of service being provided to such Customer by Company. Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees and/or Recycling Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

### **5.2 Customer Service**

#### **5.2.1 Office Hours**

Company shall provide an office within Coachella Valley, and office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays. A responsible and qualified representative of Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days, with a maximum hold time of three minutes for Customers of the City of Cathedral City. Automated telephone answering systems with menu-driven options must provide callers with an option to connect to a live operator. Phone answering staff shall be competent to handle questions on City-specific programs. Company shall also maintain a toll free telephone number for use during other than normal business hours. Company shall have a representative,

answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day. Company shall provide the Environmental Conservation Manager or other City Manager designee with the phone number of a live person who may be reached 24 hours a day.

#### **5.2.2 Complaint Documentation**

All service complaints shall be directed to Company. Daily logs of complaints concerning Collection of Solid Waste, including Recyclable Materials and Organics Waste Collection, shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all times upon request.

Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of callers, description of complaint, employee recording complaint and the action taken by Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. Company shall log action taken by Company to respond to and remedy all complaints.

All Customer service records and logs kept by Company shall be available to the City upon request and at no cost to the City. Company shall supply the City, within seven (7) days of written notice, copies of all complaints on a form approved by the City and indicate the disposition of each. The City shall, at any time during Company's regular business hours, have access to Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

#### **5.2.3 Missed or Requested Pick-ups**

In case of a missed pick-up, Company shall Collect the missed Solid Waste from the Customer within one (1) business day. Missed pick-ups shall be logged and reported under Section 5.2.2.

Requested pick-ups due to Bins filling up prior to normal Collection shall also be responded to within twenty-four (24) hours and logged and reported under Section 5.2.2.

#### **5.2.4 Resolution of Customer Complaints**

Disputes between Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall



be final and binding. Should Company and the Customer not be able to establish a mutually acceptable fee to be charged for special hauling services, the matter shall be determined by the City, whose written approval is required for any charges that deviate from the rate schedules, and the City's decision shall be final.

Notwithstanding any rights or remedies vested in the City, intervention by the City is not a condition precedent to the exercise of any right or remedy that a third party might otherwise have with respect to a dispute with Company. Nothing in this Agreement is intended to affect the remedies of third parties against Company.

#### **5.2.5 Government Liaison**

Company shall designate in writing a "Government Liaison" to work with the City and/or the its designated representative(s) on contractual matters and to resolve Customer complaints. Liaison shall be well versed in City's programs. City shall be able to contact liaison via e-mail. City shall have the right to approve Company's choice for a liaison and shall be notified in writing of relevant personnel changes.

### **5.3 Education and Public Awareness**

#### **5.3.1 General**

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939, AB 341, AB 1826 and SB 1383 (as implemented herein). The City has previously developed a "Refuse & Recycling Guide." Company shall reimburse City annually, not to exceed \$10,000 every 18 months, within thirty (30) days of invoice, for the cost to update, print and distribute the guide to all Cathedral City Customers. At such time that City desires to implement any other public education and awareness program not otherwise provided for herein or as may be required by the implementation of SB 1383, City and Company shall negotiate the content, delivery and cost of such programs. Company shall designate in writing a representative that will serve as the Public Education Specialist responsible for coordinating the public information and outreach activities.

#### **5.3.2 Community Events**

At the direction of the City, Company shall participate in and promote Recycling and other Diversion techniques at community meetings, special events and other local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event, educational information promoting the goals of the City's Solid Waste Diversion and Recycling programs, and guest speakers at meetings.



### **5.3.3 Field Representative**

Company shall designate in writing one or more field representatives who will be responsible for (a) sending customer satisfaction surveys to Customers, and reporting to the City as to the results, as and when requested by the City, (b) responding to the City's inquiries with respect to all required reports, (c) monitoring all Company programs, including customer service complaints, (d) ensuring Recycling programs are re-offered to each Customer at least once per year, and (e) otherwise responding to the City's inquiries concerning Solid Waste management services. Company's field representative(s) shall also visit civic groups, homeowners' associations, building managers at apartment complexes and Commercial Premises to promote and explain Recycling and other Solid Waste programs.

### **5.3.4 Recycling Coordinator**

Company shall provide a Recycling coordinator to:

- a) be a liaison between Company's Solid Waste and Recycling operations and the City;
- b) formulate, communicate, and coordinate public education campaigns;
- c) produce educational material regarding all Solid Waste programs being implemented by the City;
- d) develop an annual calendar of milestones and be responsible for informing the City's Environmental Conservation Manager of events and deadlines; and,
- e) assist in preparing grants that enhance public education in regard to Solid Waste and waste reduction issues.

## **5.4 Waste Generation/Characterization Studies**

Company acknowledges that the City may be required to perform Solid Waste generation and Disposal characterization studies periodically to comply with AB 939 or other waste Diversion requirements (including in connection with the implementation of SB 1383). Company agrees to participate and cooperate with the City and its agents and to accomplish such studies.

## ARTICLE 6

### COMPANY COMPENSATION AND RATES

#### 6.1 General

As full and complete compensation for all services required by this Agreement, Company shall be entitled to:

- a) Payment from City in accordance with Exhibit 1, Rate Schedule for service to Residential Premises which have been billed by City as an assessment on the real property tax bill.
- b) Charge Customers at Commercial Premises the rates approved by the City in Exhibit 1, Rate Schedule for Solid Waste and Recycling Collection services.
- c) Charge Customers at Residential Premises for alternate service (such as walk-in or backyard) the rates approved by the City in Exhibit 1, Rate Schedule.
- d) Charge operators of special events conducted in City for Collection services at special events.
- e) Retain all of the revenues received from the sale of Recyclable Materials, to be used in determining Net Recycling costs, generated in City and Collected by Company.
- f) No payment to Company is required or expected from the City except as expressly provided at Section 4.7.1.

#### 6.2 Changes in Scope of Service

The rates and fees identified in Exhibit 1, Rate Schedule shall be adjusted for changes in the scope of Collection services as mutually agreed or ordered by City. Company's compensation for changes in the scope of services shall be established by the following procedure:

- a) City shall provide Company written notice describing the change in the scope of services desired by City.
- b) Within thirty (30) days following receipt of City's written notice, Company shall submit its written proposal to provide the services requested by City. At a minimum, Company's proposal shall include (i) a description of how the service will be rendered, (ii) Company's schedule to provide the requested service, (iii) the effect on Company's annual operating expense, overhead expense and amount of profit of providing the requested service, and (iv) a description of any options or alternatives Company deems appropriate.



c) Within thirty (30) days following the submittal of Company's written proposal, City and Company shall meet and negotiate in good faith to agree on an amendment to the Agreement to allow for the change in the scope of services requested by City.

d) Should City and Company be unable to reach a negotiated agreement on an appropriate amendment to the Agreement, the City Council may order Company to comply with the requested change in the scope of services with an adjustment in the rates and fees determined by the City Council to be reasonable given the effect on Company's operating expense, overhead expense and profit. The decision of the City Council shall be final.

### **6.3 CPI-Based Change**

The rates and fees identified in Exhibit 1, Rate Schedule, excluding the Disposal tip fee portion of said rates and fees, may be adjusted annually for increases in the Consumer Price Index ("CPI") according to the following procedures:

a) **CPI Formula Increase.** Beginning July 1, 2021 and each July 1<sup>st</sup> thereafter, the rates for Company's services identified in Exhibit 1, Rate Schedule, excluding Disposal Charges and City Fees, may be increased annually based upon one-hundred percent (100%) of the change in the CPI for All Urban Consumers Series Title: Water and Sewer and Trash Collection Services in U.S. for January to January published by the U.S. Department of Labor, Bureau of Labor Statistics. Said increase is subject to the following:

i) Company shall be entitled to a maximum CPI formula increase of five percent (5%), except as provided in Section 6.3.b.

ii) Company's request for a CPI formula increase of not more than 5% shall be submitted to City with evidence of the change in the CPI and a proposed revised Exhibit 1, Rate Schedule reflecting the increase. Company shall submit the request not later than May 1<sup>st</sup> and City shall confirm Company's calculations for accuracy and approve the revised Exhibit 1, Rate Schedule in time for the rate adjustment to take effect on July 1<sup>st</sup>.

iii) Upon Company's failure to submit a request for a CPI formula increase by May 1<sup>st</sup>, Company shall be deemed to have irrevocably waived the right to a CPI formula increase for the next fiscal year.

b) **Additional CPI Formula Adjustment.** Should the change in the CPI described in Section 6.3.a be greater than five percent (5%), Company may request special consideration by the City Council of an additional CPI formula increase over and above the maximum five percent (5%) specified in Section 6.3.a above, provided that total annual CPI-formula increase shall not exceed the total amount of the increase in the CPI or seven percent (7%), whichever is less.



i) Company's request for an additional CPI formula adjustment, also due May 1<sup>st</sup>, shall include an explanation as to why an additional formula adjustment above five percent (5%) is necessary and reasonable for local business conditions. The City Council shall render its decision not later than July 1 and the decision of the City Council shall be final.

ii) Upon Company's failure to submit a request for an additional CPI formula adjustment by May 1<sup>st</sup>, Company shall be deemed to have irrevocably waived its right to an additional CPI formula adjustment for the next fiscal year.

Nothing in this Section shall preclude the City from adjusting rates in the years that Company does not file a CPI rate increase request for the purpose of changing the fees set forth in the last approved Rate Schedule or for any other purpose. In lieu of a CPI-based rate increase under this Section 6.3, Company may request a rate adjustment on the basis of unusual or extraordinary increases in Company's direct costs of operation in accordance with Section 6.5 below.

#### **6.4 Disposal and Recycling Processing Charges**

Disposal and Recycle Processing Costs are specifically excepted from the CPI-based charge described in Section 6.3. Adjustments to the Disposal and Recycling Processing Cost may be made based upon the actual changes in the tipping fee levied by the operator of the Disposal Site and/or Transfer Station/Material Recovery Facility (MRF) and shall become effective concurrent with the effective date of the change in said tipping fees. Recycle processing costs will be based on material sale of recyclables, less Transportation and MRF fees to establish the Net Recycling Costs.

#### **6.5 Extraordinary Adjustments**

Company or the City may request an adjustment to rates at reasonable times other than that required in Section 6.3 for unusual changes in the cost of providing service under this Agreement. Such changes may include changes in the scope of services, changes in components of the landfill tipping fee, changes in the Disposal Site requested by the City, changes in wage and benefits rates implemented by the State of California, and changes in State or local government Solid Waste fees and charges. Such changes shall not include inaccurate estimates by Company of its cost of operations. For each such request, Company shall prepare a schedule documenting the associated change in costs. Such schedule shall be prepared in a form acceptable to the City with support for assumptions made by Company in preparing the schedule. Company shall also submit a schedule reporting its total costs and total Gross Receipts each year for the past three (3) years for all services within the scope of this Agreement.

City shall make the final determination as to whether an adjustment to the rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. Extraordinary



rate adjustments shall only be effective after approval by the City Council and may not be applied retroactively. City shall render its decision within sixty (60) days of receipt of Company's schedule, which shall not be considered until the City deems the documentation provided to the City for the rate adjustment to be complete. City's decision on the proposed rate adjustment shall be based upon the reasonableness of Company's analysis of the impact of the extraordinary costs prompting the proposal and on Company's overall financial performance for its performance of this Agreement.

#### **6.6 Supporting Information**

In the event Company requests a rate adjustment on the basis of unusual changes or extraordinary increases or costs of doing business, Company shall provide the City with documentation supporting its request. Additionally, if required by the City, Company will also provide a copy of its certified annual financial statements prepared by a Certified Public Accountant ("CPA") or a licensed public accountant, which shall have been prepared in compliance with Rule 58 of the "Rules and Regulations of the State Board of Accountancy", as established by the California Code of Regulations, Title 16, Chapter I. Such CPA or licensed public accountant shall be entirely independent of Company and shall have no financial interest whatsoever in the business of Company. The City may specify the form and detail of the financial statements.

#### **6.7 Grants**

From time to time, federal, state, or local agencies including the City may provide to Company grants to assist in financing qualified programs provided by Company. Company agrees that the Company Compensation, calculated as described in this Article shall be reduced by the amount of any such grant, unless the grant is used exclusively to pay for new services not otherwise within the scope of services contemplated in this Agreement. The City Council shall determine whether the reduction in the Company Compensation shall be: (1) passed through as a reduction to the rates charged to those Customers designated by the City; (2) as an offset to a rate increase otherwise permitted pursuant to Sections 6.3 through 6.5; (3) paid to the City for use as the City directs; or (4) applied in any combinations of (1) through (3).

#### **6.8 Prop 2018 Compliance**

Contractor understands and agrees that City may elect to or be required to comply with Proposition 218 and other applicable law before approving any rate increase, including any rate increase granted to Contractor in this Agreement. City shall not be in Breach of this Agreement if its residents lawfully delay or prevent City from raising or imposing the rates. In such event, City and Contractor shall meet in good faith to consider alternatives and options, which may include permitting Contractor to terminate the Agreement without cause.



## ARTICLE 7

### REVIEW OF SERVICES AND PERFORMANCE

#### 7.1 Performance Hearing

The City may hold a public hearing on each anniversary of the Effective Date of this Agreement, at which time Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other Diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal; to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a performance hearing, Company shall submit a report to the City indicating, at a minimum, the following:

- a) Company's recommendations for changes to existing or new services to improve the City's ability to meet the goals of AB 939 and to contain costs and minimize impacts on rates;
- b) Any specific plans for provision of changed or new services by Company; and
- c) A summary of all complaint logs and an assessment of all problems reported since the last performance hearing.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. Company may submit other relevant performance information and reports for consideration. The City may request Company to submit specific information for the hearing. In addition, any Customer may submit other comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the annual performance hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, proposed amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939 goals, regulatory constraints and Company's performance. The City and Company may each select additional topics for discussion at the hearing.

Not later than sixty (60) days after the conclusion of the annual performance hearing, the City may issue a report. City may also require Company to provide expanded or new services,



within a reasonable time and for reasonable rates and compensation, and the City may direct or take corrective actions for any performance inadequacies.

## **ARTICLE 8**

### **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

#### **8.1 General**

Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define the entire scope or contents of the records and reports to be submitted. Further, at the written direction or approval of the City, the records and reports to be maintained and provided by Company in accordance with this and other Articles of the Agreement shall be adjusted in content, number, format, or frequency.

#### **8.2 Records**

##### **8.2.1 General**

Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City concerning aspects of Solid Waste services performed in the City. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained five (5) years after the expiration of this Agreement.

Company agrees that the records of any and all (sub)contractors or Affiliates conducting operations pursuant to this Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize any of the records described in this Article for any purpose whatsoever.

### **8.2.2 Financial Records**

Financial records shall be maintained and expense and revenue information for services within the scope of this Agreement shall be segregated from services provided in other areas served by Company.

### **8.2.3 Solid Waste, Recycling, and Organics Waste Service Records**

Records for services within the scope of this Agreement shall be maintained by Company, including but not limited to those records relating to:

- a) Customer services and billing;
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick-ups;
- f) Number of Refuse, Recycling, and Organics Waste Carts; and
- g) Tons Collected, processed, Diverted, and Disposed by type of service (Cart, Bin, Can, or Roll-off Box), waste stream (Refuse, Recycling, Organics Waste) and Customer (Residential and Commercial).

### **8.2.4 CERCLA Defense Records**

The City views the ability to defend against claims under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where all Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be a matter of concern. Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 8.3, together with all supporting documentation, for five (5) years after the expiration of the Term of this Agreement. Company agrees to notify the City Manager or his designee, the Environmental Conservation Manager and the City Attorney at least ninety (90) days before destroying such records. This provision shall survive the expiration of the Term of this Agreement.



#### **8.2.5 Disposal Records**

Company shall maintain records of Disposal of all Solid Waste Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Company discontinues providing Solid Waste services to the City, Company shall provide all records of Disposal or processing of all Solid Waste Collected in the City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

#### **8.2.6 Other Program Records**

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

#### **8.2.7 Scope and Cost of Audit**

City may conduct an audit of Company every two years and Company shall reimburse City for the cost of the first such audit up to \$7,500. Thereafter, said amount shall be adjusted based on the change in the CPI for all Urban Consumers in Los Angeles, Riverside, Orange County, as calculated in Section 6.3. The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to, Company revenue, expenses, and methodology of Franchise Fee allocation, compliance with terms of this Agreement, Customer service levels and billing, fee payments, Gross Receipts, tonnage, and verification of Diversion Rate. Company will provide the necessary data, documents and records to support its allocation of costs to the various services areas and between the local jurisdictions.

#### **8.2.8 Payments and Refunds**

Should an audit by the City disclose or the City otherwise discover that any fees payable by Company to the City were underpaid, or that Customers were overcharged for the period under review, Company shall pay to the City any such underpayment and/or, as applicable, refund the overcharges to Company's Customers. Should an audit disclose that there was an overpayment to City, the City shall promptly refund to Company the amount of the overpayment. Any refunds to be made by either party shall be due and payable thirty (30) days following the date of the results of the audit.



## 8.3 Reports

### 8.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data for structuring reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the efficiency of operations;
- b) Evaluate past and expected progress towards achieving AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City. Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. Company will provide a certification statement by an authorized Company official that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within thirty (30) calendar days after the end of the calendar quarter. If requested, Company's complaint summary, described in Section 5.2.2 below, shall be sent to the City Manager, or his designee, within 5 days of request. Annual reports shall be submitted before January 31st following the reporting year.

All reports shall be submitted to:

City Manager  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

With a copy to:

Environmental Conservation Manager  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

### **8.3.2 Monthly Reports**

The information listed here shall be the minimum reported:

- a) Solid Waste Collected, Recycled, and Disposed of by Company for each month, sorted by waste stream (Refuse, Recycling, Organics Waste) and type of Customer (Residential, Commercial, Roll-off Box) in tons, and the Facilities where the tons were processed or Disposed.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) The field representative's contact log described in Section 5.3.3.
- d) Other information or reports that the City may reasonably request or require.
- e) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- f) Commercial Recycling contamination report, broken down by Customer name, address, dates of contamination(s), and number/type of Containers and number of times contaminated.
- g) Commercial Recycling cancellation report, broken down by Customer name, address, and reason for cancellation.

### **8.3.3 Quarterly Reports**

The information listed here shall be the minimum reported:

- a) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- b) Copies of promotional and public education materials sent during the quarter, including warnings as described in Section 4.7.8.



- c) Detailed "Cash Receipts Report", broken down by month, by type of Customer (Residential, Commercial, or Roll-off Box) including Customer name and account number.
- d) Detailed "Disposal/Tonnage Report", broken down by type of Customer (Residential, Commercial, or Roll-off Box) including Customer name, account number, and Disposal Site.
- e) Detailed report of Company's outreach to Customers to evaluate and make recommendations regarding Solid Waste services, including Recycling opportunities as provided at Section 4.6.6 above.

#### **8.3.4 Annual Report**

The Annual Report is to be essentially in the form and content of the monthly and quarterly reports combined, but shall also include:

- a) A complete inventory of equipment used to provide all services.
- b) Number of Containers in service by type of Customer (Residential or Commercial), service (Refuse, Recycling, or Organics Waste) and type of Container.
- c) The field representative's contact log described in Section 5.3.3.
- d) CERCLA Defense records required under Section 8.2.4.
- e) Name, address, and phone numbers of every Residential Customer, including services provided (Refuse, Recycling, Organics Waste), Collection method (manual or automated), and monthly rates.
- f) Name, address, and phone numbers of every Commercial Customer, including services provided (Refuse, Recycling, Organics Waste), Collection method, and monthly rates.

#### **8.3.5 AB 939 Reports**

City may, at City's option, request Company to prepare and submit to the CalRecycle the annual AB 939 report.

### **8.3.6 Financial Report**

The City may, at the City's option, request to review Company's annual audited financial reports/statements for the most recently completed fiscal year. Financial statements shall include a supplemental combining schedule showing Company's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles and audited, in accordance with Generally Accepted Auditing Standards by a CPA licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by Company as a direct cost of service. In addition, Company shall provide to the City the supplemental schedule on a compiled basis.

Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by Company's CPA shall be included in the cost of the audit.

At the City's request, Company shall provide the City with copies of working papers or other documentation deemed relevant to be reviewed by the City relating to information shown in the CPA's disclosure letter. The disclosure letter shall be provided to the City.

## **8.4 Adverse Information**

### **8.4.1 Reporting Adverse Information**

Company shall provide the City three (3) copies (one to the City Manager, one to the Environmental conservation Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Company's performance of services pursuant to this Agreement, submitted by Company to, or received by Company from, the United States or California Environmental Protection Agency, the Cal Recycle, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to the City simultaneously with the filing or submission of such matters with said agencies. Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.



#### **8.4.2 Failure to Report**

The refusal or failure of Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by Company in a report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject Company to all remedies which are available to the City under the Agreement or otherwise.

#### **8.5 Right to Inspect Records**

The City shall have the right to inspect Company's internal documents or records that are required expressly or by inference pursuant to this Agreement, or any other documents or records of Company or its Affiliates that the City shall deem, in its sole discretion, necessary to evaluate Company's performance provided for in this Agreement.

### **ARTICLE 9**

#### **INDEMNIFICATION, INSURANCE AND BOND**

##### **9.1 Indemnification**

Company hereby agrees to and shall indemnify and hold harmless the City, its Council, elected and appointed board or commission members, officers, employees, volunteers and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with (1) the negligent or intentional conduct of Company, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from an Indemnitee's sole negligence, willful misconduct or breach of this Agreement. Company further agrees to and shall, upon



demand of the City, at Company's sole cost and expense, defend (with attorneys acceptable to the City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon demand of the City, made by and through the City Attorney, shall indemnify and hold harmless and appear in and defend the Indemnitees, against any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material" or the limits of the City's authority with respect to the grant of licenses, this or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

Company's duty to indemnify and defend the Indemnitees as set out herein shall survive the expiration or earlier termination of this Agreement.

## **9.2 Hazardous Substances Indemnification**

a) Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Company specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold harmless Indemnitees from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of or are alleged to arise out of or in any way relate to any action, inaction or omission of Company that:

i) results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or



ii) relates to material Collected, transported, Recycled, processed, treated or Disposed of by Company.

b) Company's obligations pursuant to this section shall apply, without limitation, to:

i) any Claims brought pursuant to or based on the provisions of any Environmental Law;

ii) any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Company of any Facility;

iii) any Claims based on or arising out of or alleged to be arising out of Company's marketing, sale, distribution, storage, transportation, Disposal, processing or use of any material;

iv) any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or related to this Agreement.

c) The foregoing indemnity and defense obligations shall apply irrespective of any allegation, or actual or ultimate finding, of negligence of intentional conduct on the part of the Company or its Affiliates.

d) For purposes of this Article, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

e) THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE AND SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

### **9.3 AB 939, AB341 and AB 1826 Indemnification and Guarantee**

a) To the extent authorized by law, Company agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and Recycling goals or any other requirement of AB 939, AB 341, and AB 1826 are not met by City with respect to the waste stream Collected under this Agreement, except to the extent resulting from City's sole negligence, willful misconduct or breach of this Agreement.

b) Company warrants and represents that it is familiar with City's waste characterization study as set forth in City's Source Recovery and Recycling Element, and that Company has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the Diversion requirements (including, without limitation, amounts of Solid Waste to be Diverted, time frames for Diversion, and any other requirements) set forth in or promulgated pursuant to AB 939, AB 341, and AB 1826, as they may be amended, superseded or supplemented..

c) As used in this Agreement, any reference to CalRecycle is intended to refer to the State of California Department of Resources Recycling and Recovery, as currently constituted, and to any successor, substitute or companion agency that may exercise any powers that are or were within the subject matter jurisdiction of CalRecycle during any portion of the Term of this Agreement.

#### **9.4 Insurance**

The City does not, and shall not, waive any rights against Company which it may have by reason of the aforesaid indemnification, defense and hold harmless provisions because of acceptance by the City or the deposit with the City by Company of the insurance policies described in this Section.

##### **9.4.1 Minimum Scope of Insurance**

Coverage shall be at least as broad as:

- a) The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
- b) The most recent editions of Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
- c) Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

##### **9.4.2 Minimum Limits of Insurance**

Company shall maintain in force for the Term of this Agreement limits no less than:

- a. Comprehensive General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Ten Million Dollars (\$10,000,000) limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.



- b. **Automobile Liability:** Ten Million Dollars (\$10,000,000) limit aggregate and Ten Million Dollars (\$10,000,000) limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.
- c. **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

#### **9.4.3 Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects the Indemnitees; or Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

#### **9.4.4 Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions.

##### **9.4.4.1 General Liability and Automobile Liability Coverages**

- a) The Indemnitees are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Company; products and completed operations of Company; premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no special limitations on the scope of protection afforded to the Indemnitees.
- b) Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the Indemnitees shall be excess of Company's insurance and shall not contribute with it.
- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
- d) Coverage shall state that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

#### **9.4.4.2 Workers' Compensation and Employers Liability Coverage**

The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by Company for the City.

#### **9.4.4.3 All Coverages**

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by any party, reduced in coverage or in limits except after one hundred twenty (120) days prior written notice by certified mail, return receipt requested, has been given to the City.

#### **9.4.5 Acceptability of Insurers**

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

#### **9.4.6 Verification of Coverage**

Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this Section 9.4. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

#### **9.4.7 Contractors and Subcontractors**

Company shall include all contractors and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each the contractor and subcontractor. All coverages for contractor and subcontractors shall be subject to all of the requirements stated herein.



#### 9.4.8 Required Endorsements

- a) The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

- b) The General Liability policy shall contain endorsements in substantially the following form:

- i) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

- ii) "The City, its Council, elected and appointed board or commission members, officers, employees, volunteers and agents ("Additional Insureds") are additional insureds on this policy."

- iii) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the Additional Insureds, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

- iv) "Inclusion of the City as an insured shall not affect the Additional Insureds' rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy shall protect Company and the Additional Insureds in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which Company would have been liable if only one party had been named as an insured."

#### **9.4.9 Other Insurance Requirements**

- a) In the event any services are delegated to another contractor or subcontractor, Company shall require such contractor or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other contractor's or subcontractor's employees in accordance with this Section 9.4. The liability insurance required by this Section 9.4 shall cover all contractors and subcontractors; alternatively, a contractor or subcontractor must furnish evidence of insurance that meets all of the requirements of this Section 9.4.
- b) Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Company or any contractor or subcontractor on account of any occurrence related to this Agreement, Company shall promptly report the facts in writing to the insurance carrier and to the City.
- c) If Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due Company.

#### **9.5 Faithful Performance Bond**

Concurrently with execution of this Agreement, Company shall deliver to the City a performance bond, from an admitted surety insurer, in the amount of One Million Dollars (\$1,000,000), similar to the form provided in Exhibit 3, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire Term of the Agreement and shall be null and void at the conclusion of the Term of this Agreement only if Company promptly and faithfully performs all terms and conditions of this Agreement.

#### **9.6 Forfeiture of Performance Bond**

In the event Company shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, the City may declare a portion or all of the performance bond which is necessary to recompense and make whole the City, forfeited to the City. Upon partial or full forfeiture of the performance bond, Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.



#### **9.7 Performance Security Beyond Service Term**

Some Agreement requirements extend beyond the Term of this Agreement and other requirements, such as minimum Diversion Rates per Section 4.7.11, will not be substantiated until after the final service date. Therefore, until receiving a written release from the City, Company shall not terminate and shall renew the performance bond required in Section 9.5 to ensure continuous availability to the City. Permission from the City to release the performance bond does not relieve Company of payments to the City that may be due, or may become due, or any other liability arising hereunder.

### **ARTICLE 10**

#### **CITY'S RIGHT TO PERFORM SERVICE**

##### **10.1 General**

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that Company, for any reason whatsoever (including interruptions and discontinuance due to events described in Section 11.5), fails, refuses or is unable to provide any service within the scope of this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, the City should find a resulting danger or menace to the public health, safety or welfare, then the City shall have the right, but not the obligation, during the period of such emergency as determined by the City, and upon notice to Company as hereinafter set forth, (1) to perform, or cause to be performed, such services with its own or other personnel without liability to Company; and/or (2) to take possession of any or all of Company's land, equipment or other property as maybe used or useful to perform said services.

Notice of Company's failure, refusal, neglect or inability to perform services within the scope of this Agreement, and the City's intent to exercise its rights pursuant to this Article, may be given orally by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Company within one business day of the oral notification.

Company further agrees that in such event:

- a) It will take direction from the City to affect the transfer of possession of equipment and property to the City for the City's use.

b) It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

c) The City may immediately engage all or any personnel necessary or useful for the performance of Solid Waste services, including, if the City so desires, employees previously or then employed by Company. Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by Company whose assistance is necessary or useful and for the billing and Collection of fees for these services. The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.5, the City shall pay to Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which Company has rendered bills in advance of service, for the class of service involved.

#### **10.2 Billing and Compensation to the City During the City's Possession**

During such time that the City is providing Solid Waste services, as above provided, Company shall bill and collect payment from all users of the above-mentioned services as described in Section 5.1. Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City for providing said services. Such reimbursement shall be made from time to time after submission by the City to Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

#### **10.3 City's Right to Relinquish Possession**

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Company and thereupon demand that Company resume the Solid Waste services as provided in this Agreement, whereupon Company shall be bound to resume the same.

#### **10.4 City's Possession Not A Taking**

The City's exercise of its rights under this Article 10 does not (1) constitute a taking of private property for which compensation must be paid; (2) create any liability on the part of the City to Company; nor (3) exempt Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this Section, provided that Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its



elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **10.5 Duration of the City's Possession**

The City's right pursuant to this Article 10 to retain temporary possession of Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Company.

### **ARTICLE 11**

#### **DEFAULT, REMEDIES AND LIQUIDATED DAMAGES**

##### **11.1 Events of Default**

All provisions of this Agreement to be performed by Company are considered material. Each of the following shall constitute an event of default.

###### **11.1.1 Fraud or Deceit**

If Company practices or attempts to practice any fraud or deceit upon the City.

###### **11.1.2 Insolvency or Bankruptcy**

If Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

###### **11.1.3 Failure to Maintain Coverage**

If Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

###### **11.1.4 Violations of Regulation**

If Company violates any orders or filings of any regulatory body having jurisdiction over Company or City relative to services provided pursuant to this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted

in good faith, in which case no breach of this Agreement shall be deemed to have occurred during the pendency of such contest.

#### **11.1.5 Failure to Perform**

If Company ceases to provide any services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Company, including labor disputes.

#### **11.1.6 Failure to Pay**

If Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand therefor, with information, reports, and/or records as required by this Agreement.

#### **11.1.7 Acts or Omissions**

Any other act or omission by Company which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder, and which is not corrected or remedied within the time set in the written notice of the violation or, if Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if Company should fail to commence to correct or remedy such violation within the time set forth in such notice and to thereafter diligently effect such correction or remedy.

#### **11.1.8 False or Misleading Statements**

Any representation or disclosure made to the City by Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

#### **11.1.9 Attachment**

There is a seizure of, attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office facilities, or any part thereof.



#### **11.1.10 Suspension or Termination of Service**

There is any termination or suspension of the transaction of business by Company, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days.

#### **11.1.11 Failure to Provide Assurance of Performance**

If Company fails to provide reasonable assurances of performance as required under Section 11.7.

The Company shall be given forty-eight (48) hours from notification by the City to cure only those defaults arising under subsections E, F, I, J and K; provided, however, that the City shall not be obligated to provide Company with a notice and cure opportunity if Company has committed the same or similar breach within the preceding twenty-four (24) month period.

### **11.2 Criminal Activity of Company**

Should Company or any of its officers or directors be found guilty of felonious conduct related to the performance of this Agreement, or of felonious conduct related to anti-trust activities, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper.

### **11.3 Right to Terminate Upon Default**

Upon an event of default by Company, the City shall have the right to terminate this Franchise and this Agreement upon ten (10) days' notice if the public health or safety is threatened, or otherwise upon thirty (30) days' notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, said remedies shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high- quality service, the time required to effect alternative service, and the rights granted by the City to Company, the remedy of damages for a breach hereof by Company is inadequate and the City shall be entitled to injunctive relief.

## **11.4 Liquidated Damages**

### **11.4.1 General**

The City finds, and Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) the services provided under this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

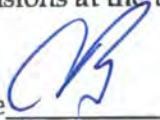
### **11.4.2 Service Performance Standards; Liquidated Damages for Failure to Meet Standards**

The Parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to the City and that the City has considered and relied on Company's representations as to its quality of service commitment in awarding the Franchise to it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had

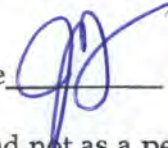


ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company  
Initial Here



City  
Initial Here



Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

#### 11.4.2.1 Collection Reliability

a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually:

\$150.00

b) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established Customer account on the scheduled Collection day which exceeds ten (10) such failures annually:

\$150.00

c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days:

\$150.00

#### 11.4.2.2 Collection Quality

a) For each occurrence of violating a Transfer Station conditional use permit:

\$500.00

b) For each occurrence of uncompensated damage to private property which exceeds five (5) such occurrences annually:

\$250.00

c) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Cans upright with lids secured (in areas where Customers own their Containers, if applicable) which exceeds ten (10) service locations annually:

\$150.00

d) For each occurrence of excessive noise or discourteous behavior:

\$250.00

e) For each failure to clean up Solid Waste spilled from Solid Waste Containers which exceeds ten (10) such failures annually:

\$150.00

f) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00

g) For each failure to clean or replace a Commercial Container in accordance with the terms of this Agreement which exceeds ten (10) such failures annually: \$150.00

h) For each failure to replace locks on locking Bins after Collection in accordance with Section 4.6.1 which exceeds three (3) annually: \$ 50.00

#### **11.4.2.3 Customer Responsiveness**

a) For each failure to initially respond to a Customer complaint within one (1) business day: \$100.00

b) For each failure to process Customer complaints to the City as required by Article 5 herein: \$500.00

c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or a Customer: \$100.00

d) For each failure of a Company field representative to annually contact a Commercial account. \$ 50.00  
per account per year

#### **11.4.2.4 Timeliness of Submissions to the City**

Any report shall be considered late until such time as a correct and complete report is received by the City. For each calendar day a report is late, the daily liquidated damage amount shall be:

a) Monthly Reports: \$ 25 per day

b) Quarterly Reports: \$100 per day

c) Annual Reports: \$350 per day

d) For each day beyond thirty (30) calendar days after the due date that Company has not submitted complete and accurate supporting data and calculations for Franchise and Recycling Fees paid, or to be paid, in accordance with Article 3 of the Agreement, Company shall pay: \$50.00/day



#### **11.4.2.5 Accuracy of Billing**

- a) Each Customer invoice that is not prepared in accordance with the City's approved rate schedule that is not cured within 30 days of initial invoicing:

\$250.00

- b) Each occurrence in which a service address is "double billed" with multiple invoices sent to different billing addresses (for example, both a tenant and an off-site property owner are billed for service at the same location):

\$250.00

#### **11.4.2.6 Implementation of Public Education Plan**

For each day past the agreed upon deadline that Company fails to perform a task set forth in its public education plan:

\$100 per day

#### **11.4.2.9 Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 12.9 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service:

\$1,000/day

- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.9: \$1,000/day

- c) For delay in not meeting the requirements contained in Section 12.9 in a timely manner, in addition to the daily liquidated damages pursuant to a) and b) of this subsection, liquidated damages of:

\$35,000

#### **11.4.2.10 General Agreement Adherence**

For each day that Company fails to provide services required under the Agreement, or comply with terms of the Agreement, five (5) business days after receipt of written notification from City that such services are not being provided or terms are not being met:

\$300.00/day

Liquidated damages will only be assessed after Company has been given the opportunity but failed to rectify the damages as described in this Agreement.

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing liquidated damages, the City shall give Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. Company may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide Company with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his or her designee shall be final.

#### **11.4.3 Amount**

The City may assess liquidated damages for each calendar day or event, as appropriate, that Company is determined to be liable in accordance with this Agreement.

#### **11.4.4 Timing of Payment**

Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

### **11.5 Excuse from Performance**

The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), picketing at Customer Collection locations that blocks access to Container pick up points, and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Company's employees or directed at Company is not an excuse from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.



The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of Company's services caused by one or more of the events excused shall not constitute a default by Company under this Agreement. Notwithstanding the foregoing or any other provision herein, however, if Company is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of Company's land, equipment and other property and engaging Company's personnel in Article 10 and this Article 11 will apply.

#### **11.6 Arbitration**

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies having no monetary value, or are in an amount or amounts, if combined, not exceeding \$25,000, shall be first mediated between the Parties. The party making demand for mediation shall select a panel of three (3) mediators from those mediators listed and approved by the local Superior Court of jurisdiction, and the party not selecting the panel shall choose one (1) of the listed mediators who shall serve in that capacity. The Parties shall share equally in the cost and expense of the mediation.

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies, having a monetary value in an amount or amounts, if combined, not exceeding \$25,000, which dispute was not resolved by mediation as required herein, shall be decided by arbitration in accordance with the commercial rules of the American Arbitration Association then pertaining, unless the Parties agree otherwise and consent, in writing, to a different method of dispute resolution, including mediation or judicial arbitration.

Notice of the demand for arbitration is to be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand is to be made within a reasonable period of time after the claim, dispute, or other matter in controversy has arisen. In no event, however, is the demand for arbitration to be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in controversy would be barred by the applicable statute of limitations.

Any award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies in an amount or amounts, if combined, exceeding \$25,000, shall not involve arbitration, or any other method of dispute resolution, unless the Parties agree otherwise and consent, in writing, but shall instead be brought in a court of competent jurisdiction in the County of Riverside, State of California.

Venue for any action, including those actions subject to arbitration, shall be Riverside County. Company hereby expressly waives any right to remove any such action to a County other than Riverside County as otherwise provided by California Code of Civil Procedure Section 394.

#### **11.7 Assurance of Performance**

The City may, at its option and in addition to all other remedies it may have, demand from Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.

## **ARTICLE 12**

### **OTHER AGREEMENTS OF THE PARTIES**

#### **12.1 Relationship of Parties**

The Parties intend that Company shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent of Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors, Affiliates and agents. Neither Company nor its officers, employees, contractors, subcontractors, Affiliates nor agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

#### **12.2 Compliance with Law**

In providing the services required under this Agreement, Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California,



and local agencies. The City shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

### **12.3 Governing Law**

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

### **12.4 Jurisdiction**

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the Parties agree that this Agreement is made in and will be performed in Riverside County.

### **12.5 Assignment**

Except as may be provided for in Article 10 (City's Right to Perform Service), Company shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior written consent of City. Any such Assignment made without the consent of City shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

The term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer to a third party of substantially all of Company's assets dedicated to service under this Agreement; (ii) a sale, exchange or other transfer of outstanding membership interest in Company to a third party provided said sale, exchange or transfer results in a change of control of Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of control of Company; (iv) any Assignment by operation of law, including those resulting from mergers or acquisitions by or of Company of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the event of a probate proceeding, which results in a change of control of Company; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer (under clause (i) above) or results in a change of control of Company.

Notwithstanding the foregoing, nothing in this Section shall prohibit or prevent an assignment by or among Company's present members, whether as trustees of trusts or otherwise, or to or among trusts controlled by such members or trustees, so long as such assignment does not result in a change of control of Company.

For the purpose of this Section, the term "change of control of company" means that Company's present members shall cease to own, individually or collectively, either directly or indirectly through one or more Affiliates or one or more trusts as to which one or more of such individuals is or becomes a trustee, more than forty-nine (49) percent of the voting membership interests in Company.

Company acknowledges that this Agreement involved rendering a vital service to City's residents and businesses, and that City has selected Company to perform the services specified herein based on (1) Company's experience, skill and reputation for conducting its Solid Waste handling services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Company's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Company to perform the services to be rendered by Company under this Agreement.

If Company requests City's consideration of and consent to an Assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an Assignment must be approved by the City Manager, and no request by Company for consent to an Assignment need be considered by City unless and until Company has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such Assignment. An advance payment toward expenses may be requested by City prior to City consideration of any Assignment request and Company shall be responsible to pay all costs incurred by City in considering a request for Assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the Assignment.
- b) Company shall pay the City a transfer fee equal to one percent (1%) of the Gross Receipts, not to exceed \$150,000, it, or its assignee, will receive during the remaining Term of the Agreement, as estimated by City.
- c) Company shall furnish City with audited financial statements for Company and the proposed assignee's operations for the immediately preceding three (3) operating years.



d) A proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the Assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Company's operations.

e) Company shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided City with a complete list of any such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed Assignment by City if Company is in default at any time during the period of consideration. Should City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to City's approval have been met.

An Assignment among the existing shareholders or their related trusts shall not require the City's prior approval and shall not be subject to the transfer fees, submittals, and investigations articulated in this Section 12.5. Company shall notify City in writing of any Assignment among its existing shareholders or their related trusts within thirty (30) days of the event.

#### **12.6 Affiliated Companies**

Company's accounting records shall be maintained on a basis showing the results of Company's operations under this Agreement separately from operations in other locations, as if Company were an independent entity providing service only to the City. The costs and revenues associated with providing service to the City shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by Company in other locations, or with those of an Affiliate.

If Company enters into any financial transactions with an Affiliate for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship shall be disclosed to the City and the related expenses segregated



in the financial reports submitted to the City. In such event, the City's rights to inspect records, and obtain financial data shall extend to such Affiliate.

Any application for a change of ownership or a Franchise transfer shall be made in a manner prescribed by the City Manager or his designee. The application shall include a transfer fee in an amount to be set by a resolution of the City Council, to cover the reasonable costs of all direct and indirect administrative expenses of the City, including, without limitation, consultants and attorneys, necessary to analyze the application and to reimburse the City for all its direct and indirect expenses. The applicant shall pay such invoices prior to any authorized change of ownership or Franchise transfer becoming effective.

#### **12.7 Contracting or Subcontracting**

Company shall not engage any contractor or subcontractor for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City.

#### **12.8 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the Parties.

#### **12.9 Transition to the Next Company**

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Company shall cooperate fully with City and any subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste handling services. Company's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises covered by this Agreement. Company's failure to cooperate with City prior to and following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages, Bin enclosures and other property as applicable. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least 90 days prior to the transition date, and provide an updated list two weeks before the transition and a final list of changes the day before the transition. Company shall provide means of access to the new service provider at least one full business day prior to the first day of Collection by the new service provider, and always within



sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

#### **12.10 Parties in Interest**

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the Parties to it and their representatives, successors and permitted assigns.

#### **12.11 Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

#### **12.12 Company's Investigation**

Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

#### **12.13 Condemnation**

The City fully reserves the rights to acquire Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the Parties set forth in Article 10.

#### **12.14 Notice**

All notices, demands, requests, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to the other party at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to the City:

City Manager  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

With a copy to:

Environmental Conservation Manager  
City of Cathedral City  
68700 Avenida Lalo Guerrero  
Cathedral City, CA 92234

If to Company:

District Manager  
Burrtec Waste and Recycling Services, LLC  
41-575 Eclectic Street  
Palm Desert, CA 92260

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

#### **12.15 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as otherwise provided. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Company shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind Company. The City may rely upon action taken by such designated representative as actions of Company unless they are outside the scope of the authority delegated to him/her by Company as communicated to the City.

#### **12.16 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from Company and from third parties for the provision of Collection services,



Disposal services, Recycling services, Organics Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement.

#### **12.17 Compliance with Municipal Code**

Company shall comply with those provisions of the Municipal Code of the City which are applicable, and with any and all amendments to such applicable provisions during the Term of this Agreement. Company and any contractors and subcontractor must maintain a current City business license during the Term of this Agreement.

#### **12.18 Privacy**

Company shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, company, or other entity unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this Section 12.18, in which case this Section 12.18 shall apply to City in the same manner to which it applies to Company.

#### **12.19 Compliance with Immigration Laws**

Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

#### **12.20 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of Company are proprietary and confidential. Regular monthly, quarterly, and annual reports described in Sections 8.3.2, 8.3.3, and 8.3.4 are not proprietary. Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by Company. Notwithstanding the foregoing, and notwithstanding Section 12.18 (as it applies to City), any documents provided by Company to the City that are public records may be disclosed pursuant to a proper public records request.

#### **12.21 Guarantee of Company's Performance**

Pursuant to a guarantee in substantially the form attached as Exhibit 2, Burrtec Waste Group, Inc., a California corporation, has agreed to guarantee the performance of this Agreement by Burrtec Waste and Recycling Services, LLC. The Guarantee is being provided concurrently with Company's execution of this Agreement.

#### **12.22 Attorney's Fees**

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

### **ARTICLE 13**

#### **MISCELLANEOUS AGREEMENTS**

##### **13.1 Entire Agreement**

This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein and supersedes and replaces all prior agreements, understandings, commitments, communications and representations made between the Parties, whether written or oral, with respect to the subject matter hereof, including specifically any prior agreements regarding the "8.50 Fund" or the "POD System". No verbal agreement or conversation with any officer, agent, or employee of the City, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle Company to any additional payment whatsoever under the terms of this Agreement.

##### **13.2 Section Headings**

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.



### **13.3 References to Laws and Other Agreements**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the Parties.

### **13.4 Interpretation**

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

### **13.5 Agreement**

This Agreement may not be modified or amended in any respect except by a writing signed by the Parties.

### **13.6 Severability**

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

### **13.7 Exhibits**

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

### **13.8 Non-Waiver Provision**

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to perform whether determined to be a breach, excused performance or unexcused defaults by the other party.

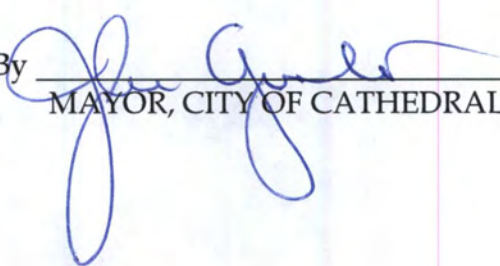
IN WITNESS WHEREOF, the City and Company have executed this Agreement as of the day and year first above written.

CITY OF CATHEDRAL CITY

ATTEST:

  
CITY CLERK

By


  
MAYOR, CITY OF CATHEDRAL CITY

APPROVED AS TO FORM:

  
CITY ATTORNEY

BURRTECT WASTE AND RECYCLING SERVICES, LLC

By:

  
Name: Cole Burr

Title: President



**EXHIBIT 1**

**RATE SCHEDULE**

## EXHIBIT 2

### CORPORATE GUARANTY

#### Guaranty

THIS GUARANTY (the "Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_, 2020.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. Burrtec Waste and Recycling, LLC, hereinafter ("Owner") is a corporation organized under the laws of the State of California, and is an Affiliate of Burrtec Waste Group, Inc. ("Guarantor").
- B. Owner and the City of Cathedral City ("the City") have negotiated a Franchise Agreement Between City of Cathedral City and Burrtec Waste and Recycling Services, LLC for Integrated Solid Waste Management Services as of \_\_\_\_\_, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- 1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.
- 2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the



Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to Guarantor, performance or compliance herewith is waived; (b) any other provision of the Agreement respecting Owner's indemnification obligations or any security therefor is released or



exchanged in whole or in part or otherwise dealt with; or (c) any Assignment of the Agreement is effected which does not require the City's approval.

Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.
5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.
6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the Parties hereunder.
7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of



laws rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in California:

Cole Burr  
Burrtec Waste & Recycling Services, LLC  
9890 Cherry Ave.  
Fontana, CA 92335

With a copy by certified mail to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.
9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.
10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the person signing this Guaranty on its behalf has the authority to do so.
11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

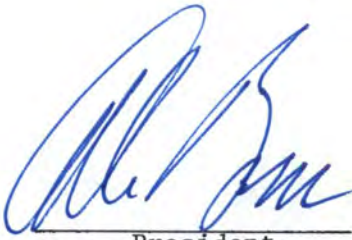
To the City:                      City Manager  
   City of Cathedral City  
   68700 Avenida Lalo Guerrero  
   Cathedral City, CA 92234

with a copy to the City Attorney at the same address.

To the Guarantor:

Cole Burr  
Burrtec Waste & Recycling Services, LLC  
9890 Cherry Ave.  
Fontana, CA 92335

By:



(title) President

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By:

\_\_\_\_\_  
(title)



Executed in Duplicate

HARCO NATIONAL INSURANCE COMPANY

BOND NO. 769182

PREMIUM: \$9,000.00

KNOW ALL MEN BY THESE PRESENTS THAT WE,

Burrtec Waste and Recycling Services, LLC

as Principal, and HARCO NATIONAL INSURANCE COMPANY, a corporation duly organized and doing business under and by the virtue of the laws of the State of Illinois, and duly licensed for the purpose of making, guaranteeing or becoming sole surety upon bonds or undertakings required or authorized by the laws of the said State, as Surety, are held and firmly bound unto

City of Cathedral City

(Hereinafter called the Obligee)

in the sum of

One Million & 00/100

Dollars (\$ 1,000,000.00 )

for the payment whereof well and truly to be made we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT, WHEREAS, the above bounden PRINCIPAL entered into a Franchise Agreement dated July 1 20 20, (a copy of which Agreement is or may be attached hereto, and is hereby referred to and made a part hereof), with the said Obligee to do and perform the following, to wit:

Integrated Solid Waste Management Services

1. This bond shall have the term beginning July 1, 2020 and ending June 30, 2021, but may be continued by certificate at the option of the Surety. Provided, however, that this bond may be cancelled by the Surety by giving at least sixty (60) days advance written notice to the Principal and Obligee. Neither cancellation or non-renewal by the Surety, nor failure, nor inability of the Principal to file a replacement bond shall constitute a loss to the Obligee recoverable under this bond.
2. In the event of default by the Principal in the performance of the Agreement during the term of this bond, the Surety shall be liable only for damages incurred by Obligee up to termination date of this bond.
3. No claim shall be had or maintained against the Surety on this instrument unless such be brought or instituted and process served upon the Surety prior to expiration date of the bond; no suit shall be maintained against the Surety unless it be brought within one year from the termination or expiration date of the bond.
4. If any conflict or inconsistency exists between the Surety's obligations or undertakings as described in this bond and as described in the underlying document, then the terms of this bond shall prevail.
5. The aggregate liability of the surety is limited to the penal sum stated herein regardless of the number or amount of claims brought against this bond and regardless of the number of years this bond remains in force.

6. This bond shall not bind the surety unless the bond is accepted by the Obligee. If the Obligee objects to any language contained herein, within 30 days of the date this bond is signed and sealed by the Surety, Obligee shall return this bond, certified mail or express courier, to the Surety at its address at:

Harco National Insurance Insurance Company  
c/o IFIC  
2999 Oak Rd., Suite 820  
Walnut Creek, CA 94597

Failure to return the bond as described above shall constitute Obligee's acceptance of the terms and conditions, herein.

NOW, THEREFORE, if the above bounden Principal shall well and truly perform the work contracted to be performed under said Agreement, then this obligation to be null and void, otherwise to remain in full force and effect. No right of action shall accrue under this bond to or for the use of any person other than the said Obligee.

SIGNED AND SEALED THIS 16th day of July 20 20.

Burrtec Waste and Recycling Services, LLC

By

Harco National Insurance Company

By

Lawrence F. McMahon

Attorney-in-Fact





# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

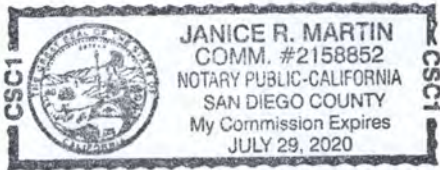
STATE OF CALIFORNIA

County of San Diego

On JUL 16 2020 before me, Janice R. Martin, Notary Public,  
Date Insert Name of Notary exactly as it appears on the official seal

personally appeared Lawrence F. McMahon

Name(s) of Signer(s)



Place Notary Seal Above

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/it~~ executed the same in his/~~her/its~~ authorized capacity(~~ies~~), and that by his/~~her/its~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Signature [Signature]  
Signature of Notary Public Janice R. Martin

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of the form to another document.*

### Description of Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner ☐ Limited ☐ General  
☒ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer is Representing:

Surety Company

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER**

Top of thumb here

Signer is Representing:



ALLEGHENY CASUALTY COMPANY

## Addendum: Usage of e-Seal and e-Signature for IFIC Surety Bond Forms

To ensure uninterrupted business continuity during the extent of the Covid-19 pandemic, Harco National Insurance Company, International Fidelity Insurance Company and Allegheny Casualty Company (herein the "Company") has authorized our network of surety partners, as granted under the attached Power of Attorney, stipulated within the terms of a signed Agency Agreement and duly appointed by the Company under a Department of Insurance appointment (where required) within all 50 U.S. States, territories and possessions to affix an electronic e-seal to all bond documents as if it were a raised corporate seal. This addendum also extends to the use of an e-signature by our appointed surety partners authorized under the Company Power of Attorney during the extent of the Covid-19 pandemic.

This authority is effective on this day, the 29th of June, 2020 and shall remain in place until December 31, 2020 or until a National declaration is announced that the Covid - 19 pandemic restrictions have ceased.

**Harco National Insurance Company, International Fidelity Insurance Company and Allegheny Casualty Company.**



A handwritten signature in black ink, appearing to read "Kenneth Chapman".

---

Authorized by: Kenneth Chapman  
Executive Vice President , Surety



**POWER OF ATTORNEY**  
**HARCO NATIONAL INSURANCE COMPANY**  
**INTERNATIONAL FIDELITY INSURANCE COMPANY**

Bond # /69182

Member companies of IAT Insurance Group, Headquartered: 702 Oberlin Road, Raleigh, North Carolina 27605

**KNOW ALL MEN BY THESE PRESENTS:** That **HARCO NATIONAL INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of Illinois, and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, a corporation organized and existing under the laws of the State of New Jersey, and having their principal offices located respectively in the cities of Rolling Meadows, Illinois and Newark, New Jersey, do hereby constitute and appoint

**SARAH MYERS, JAMES D. CASTLE, LAWRENCE F. MCMAHON, JANICE MARTIN**

San Diego, CA

their true and lawful attorney(s)-in-fact to execute, seal and deliver for and on its behalf as surety, any and all bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof, which are or may be allowed, required or permitted by law, statute, rule, regulation, contract or otherwise, and the execution of such instrument(s) in pursuance of these presents, shall be as binding upon the said **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**, as fully and amply, to all intents and purposes, as if the same had been duly executed and acknowledged by their regularly elected officers at their principal offices.

This Power of Attorney is executed, and may be revoked, pursuant to and by authority of the By-Laws of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** and is granted under and by authority of the following resolution adopted by the Board of Directors of **INTERNATIONAL FIDELITY INSURANCE COMPANY** at a meeting duly held on the 13th day of December, 2018 and by the Board of Directors of **HARCO NATIONAL INSURANCE COMPANY** at a meeting held on the 13th day of December, 2018.

"**RESOLVED**, that (1) the Chief Executive Officer, President, Executive Vice President, Senior Vice President, Vice President, or Secretary of the Corporation shall have the power to appoint, and to revoke the appointments of, Attorneys-in-Fact or agents with power and authority as defined or limited in their respective powers of attorney, and to execute on behalf of the Corporation and affix the Corporation's seal thereto, bonds, undertakings, recognizances, contracts of indemnity and other written obligations in the nature thereof or related thereto; and (2) any such Officers of the Corporation may appoint and revoke the appointments of joint-control custodians, agents for acceptance of process, and Attorneys-in-fact with authority to execute waivers and consents on behalf of the Corporation; and (3) the signature of any such Officer of the Corporation and the Corporation's seal may be affixed by facsimile to any power of attorney or certification given for the execution of any bond, undertaking, recognizance, contract of indemnity or other written obligation in the nature thereof or related thereto, such signature and seals when so used whether heretofore or hereafter, being hereby adopted by the Corporation as the original signature of such officer and the original seal of the Corporation, to be valid and binding upon the Corporation with the same force and effect as though manually affixed."

IN WITNESS WHEREOF, **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** have each executed and attested these presents  
on this 31st day of December, 2019



STATE OF NEW JERSEY  
County of Essex

Kenneth Chapman  
Executive Vice President, Harco National Insurance Company  
and International Fidelity Insurance Company

STATE OF ILLINOIS  
County of Cook



On this 31st day of December, 2019, before me came the individual who executed the preceding instrument, to me personally known, and, being by me duly sworn, said he is the therein described and authorized officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY**; that the seals affixed to said instrument are the Corporate Seals of said Companies; that the said Corporate Seals and his signature were duly affixed by order of the Boards of Directors of said Companies.



IN TESTIMONY WHEREOF, I have hereunto set my hand affixed my Official Seal, at the City of Newark, New Jersey the day and year first above written.

Shirelle A. Outley a Notary Public of New Jersey  
My Commission Expires April 04, 2023

**CERTIFICATION**

I, the undersigned officer of **HARCO NATIONAL INSURANCE COMPANY** and **INTERNATIONAL FIDELITY INSURANCE COMPANY** do hereby certify that I have compared the foregoing copy of the Power of Attorney and affidavit, and the copy of the Sections of the By-Laws of said Companies as set forth in said Power of Attorney, with the originals on file in the home office of said companies, and that the same are correct transcripts thereof, and of the whole of the said originals, and that the said Power of Attorney has not been revoked and is now in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this day, 7/16/2020

  
Irene Martins, Assistant Secretary