

**AGREEMENT NO. 18-26
AMENDED AND RESTATED
SOLID WASTE MANAGEMENT SERVICES AGREEMENT
BETWEEN THE CITY OF MONTCLAIR
AND
BURRTEC WASTE INDUSTRIES, INC.**

This AMENDED AND RESTATED SOLID WASTE MANAGEMENT SERVICES AGREEMENT ("Agreement") is entered into this 21st day of May, 2018, between the CITY OF MONTCLAIR, a California municipal corporation ("City"), and BURRTEC WASTE INDUSTRIES, INC., a California corporation ("Contractor"), for Solid Waste management services.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939" or the "Act"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

WHEREAS, the California Public Resources Code Section 40059(a)(1) makes Solid Waste handling a matter of local concern; and

WHEREAS, California Public Resources Code Section 41900 et seq., provides that local agencies may levy fees for Solid Waste Collection, transfer, and disposal, and for recyclable and compostable collection and transfer; and

WHEREAS, California Public Resources Code Section 41780 requires each local agency to divert Solid Waste generated within the agency's jurisdiction from landfilling; and

WHEREAS, the City Council of the City determines that public convenience and necessity and public health, safety, and well being are served by the award of an exclusive franchise to a qualified enterprise for the Collection, transportation, Recycling, composting, and disposal of Solid Waste from Residential Premises, Commercial Premises, and Industrial Premises (collectively, "Premises") in the City; and

WHEREAS, the City has previously entered into that certain Agreement No. 11-57 Solid Waste Management Services Agreement dated July 1, 2011 with the Contractor ("Original Agreement"); and

WHEREAS, the City finds that the Contractor possesses the labor, equipment, facilities, expertise, and financial capability to provide Solid Waste Collection and disposal services, including Recycling Collection services, Green Waste Collection services, and C&D Waste Diversion services to all Residential Premises, Commercial Premises, and Industrial Premises in the City; and

WHEREAS, the City finds that Contractor has performed as the franchise contractor in a good and workmanlike manner; and

WHEREAS, the Parties desire to enter into this Agreement for the purpose of amending and restating all agreements and understandings between the Parties to more accurately reflect the current rights and obligations of the City and Contractor and to extend the term of the Original Agreement.

NOW, THEREFORE BE IT RESOLVED that the Parties agree as follows:

ARTICLE 1. DEFINITIONS

1.01 DEFINITIONS

Unless the context otherwise requires, or unless otherwise defined in this Agreement, capitalized terms used in this Agreement shall have the meanings set forth in the definitions contained in Attachment A.

1.02 STATUTORY DEFINITIONS

Unless a term is otherwise defined in this Agreement, terms used in this Agreement shall have the same meaning as the definitions of those terms contained in the Act. In the event of a conflict between the definition of a term in the Act and in this Agreement, the definition in the Agreement shall prevail.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 OF CONTRACTOR

2.01.01 Status. Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State of California and is qualified to do business in the State of California.

2.01.02 Authority and Authorization. Contractor has full legal right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly executed and delivered by Contractor and constitutes a legal, valid and binding obligation of the Contractor and is enforceable against the Contractor in accordance with its terms.

2.01.03 Accuracy of Representations. Contractor's representations and warranties made throughout this Agreement are accurate, true and correct on and as of the Effective Date of this Agreement.

2.01.04 No Conflicts. Neither the execution or delivery by Contractor of this Agreement, the performance by Contractor of its performance obligations, nor the fulfillment by Contractor of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of applicable law; (ii) conflicts with, violates or results in a breach of any term or condition of any judgment,

order or decree of any court, administrative agency or other government authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

2.01.05 No Approvals Required. Except as otherwise required pursuant to this Agreement, no approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by Contractor, except such as have been duly obtained from its Board.

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

2.01.07 Due Diligence. Contractor has made an independent investigation satisfactory to it of the conditions and circumstances surrounding the Agreement and services it is required to perform.

2.01.08 Duty. Contractor shall be at all times during the Term of this Agreement, ready, willing and able to collect and transport all Solid Waste generated within the City in accordance with the provision of the Agreement and all applicable laws, rules and regulations.

2.01.09 Insurance and Bonds. Contractor will furnish evidence of the insurance and bonds required under this Agreement prior to the Effective Date of this Agreement.

2.01.10 Criminal Activity. Contractor has represented that none of its officials (executive officers, company managers, etc.) or directors have a criminal conviction from a court of competent jurisdiction with respect to conviction for any crime, including racketeering, which indicates a lack of business integrity or business honesty that seriously and directly affects the present responsibility of Contractor or its officers or directors to satisfactorily perform its obligations under this Agreement; nor has Contractor or any of its respective officers or directors made an admission of guilt or pled nolo contendere to the conduct as described above. Upon evidence of any such conviction for, or involvement in, the conduct as described above by Contractor's officials or directors, the City, without objection, repercussion, legal action, suit or opposition from Contractor or its parts, shall be free to act to abrogate this Agreement in whole or in part.

2.02 OF CITY

2.02.01 Status. The City is a municipal corporation of the State of California, duly organized and validly existing under the Constitution and laws of the State of California.

2.02.02 Authority and Authorization. The City has full legal right, power and authority to execute, deliver, and perform its obligations hereunder. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

2.02.03 No Conflicts. Neither the execution or delivery by the City of this Agreement, the performance by the City of its performance obligations, nor the fulfillment by the City of the terms and conditions hereof: (i) conflicts with, violates or results in a breach of applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other government authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

2.02.04 No Approvals Required. No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the City, except such as have been duly obtained from its City Council.

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

2.02.06 No Warrant Regarding Waste Characterization. The City makes no warranties with respect to the characterization of Solid Waste within the City. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Solid Waste collected by Contractor.

ARTICLE 3. GRANT OF EXCLUSIVE FRANCHISE

3.01 GRANT OF FRANCHISE

Upon the Effective Date of this Agreement and continuing for the Term of the Agreement or any extension or renewal thereof, the City, for consideration as required and defined herein, hereby grants Contractor the exclusive right and duty to collect, transfer, transport, Recycle, process, and dispose of Solid Waste, generated or accumulated within the City by any Residential, Commercial, Institutional or Industrial Premises. Solid Waste, a defined term, includes, but is not

limited to, Refuse, Recyclable Materials, Green Waste, Food Waste and C&D Waste. The exclusive nature of this franchise shall be subject to the U.S. Environmental Protection Agency and shall specifically include: (i) C&D Waste generated at all Premises within the City and (ii) cement truck washout remains, solids, and liquids, generated at all Premises within the City and not transported out of the City in the cement truck. This grant of franchise shall be exclusive except as provided in Section 3.02 and shall be subject to all of the terms and conditions of this Agreement.

3.02 LIMITATIONS ON EXCLUSIVE FRANCHISE

The franchise granted to Contractor 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 and collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining authorization from the City, which is otherwise required by law:

3.02.01 The sale or donation of Recyclable Materials by the Waste Generator to any Person or entity other than Contractor; provided however, to the extent permitted by law, if the Waste Generator is required to pay monetary or nonmonetary consideration for the Collection, transportation, transfer, or processing of Recyclable Materials, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation.

3.02.02 Recyclable Materials and Green Waste, which are removed from any Premises by the Waste Generator, and which are transported personally by such Generator (or his or her full-time employees) to a Processing Facility or Disposal Facility in a manner consistent with all Applicable Laws and regulations.

3.02.03 Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act (California Public Resources Code, Section 14500, et seq.).

3.02.04 Green Waste removed from Premises by a gardening, landscaping, or tree trimming contractor, including Residential gardeners, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service.

3.02.05 The Collection, transfer, transport, Recycling, processing, and disposal of animal waste (excluding horse manure which is not included in the scope of this Agreement) and remains from slaughterhouse or butcher shops for use as tallow.

3.02.06 The Collection, transfer, transport, Recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings.

3.02.07 The Collection, transfer, transport, Recycling, processing, and disposal of Street Sweepings regardless of source.

3.02.08 The Collection, transfer, transport, Recycling, processing, and disposal of hazardous substances, Hazardous Waste, and radioactive waste regardless of its source.

3.02.09 The Collection, transfer, transport, Recycling, processing, and disposal of Solid Waste by the City, its officers, employees, agents, other government agencies, or contractors in the normal course of their employment.

3.02.10 Solid Waste handling services for governmental agencies other than the City, which may have facilities in the City, but over which the City has no jurisdiction in connection with the regulation of Solid Waste.

3.02.11 Solid Waste handling services provided by any Person having a legal right to continue doing so, pursuant to California Public Resources Code Section 49520, et seq., or otherwise, as long as and to the extent such legal right continues to exist.

3.02.12 In addition to the foregoing, in the event that interpretations of current and/or future law, future enactments of law, and/or developing legal trends limit the ability of the City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that the City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

While the grant contained herein shall not be exclusive with respect to the above noted matters, Contractor shall still be obligated to provide those services which may be included in the above (e.g., Collection of Bulky Items) pursuant to the rates, and other terms, as set forth in this Agreement and by Resolution of the City.

3.03 FRANCHISE AREA DEFINED

The franchise area granted by this Agreement shall be all Residential, Commercial, Institutional, Industrial, and construction Premises located within the City as set forth herein. As provided for below, the franchise area may be changed by annexation to the City.

3.04 ANNEXATION COVERED BY EXISTING AGREEMENT

Territory annexed into the City that is covered by an existing Solid Waste permit, license, contract, agreement, or franchise granted by another public entity may continue to be served by the same Contractor for the balance of the term of its permit, license, agreement or franchise, subject to the provisions of the Montclair Municipal Code and the provisions of this Agreement.

ARTICLE 4. TERM OF AGREEMENT

4.01 EFFECTIVE DATE

This Agreement shall become effective January 1, 2018 or upon the date of adoption by the Montclair City Council, if later. This Agreement shall supersede all previous Agreements, written and/or oral between City and Contractor.

4.02 TERM

The Term of this Agreement shall begin on the Effective Date and continue in full force and effect for (20) years until midnight, December 31, 2038.

4.03 RATE SURVEY

Beginning January 1, 2018 the City may conduct a local Refuse rate survey in an effort to evaluate current Refuse rates and service programs. Based on the survey results, City may require Contractor to provide an evaluation of specified service programs and related rates if said programs and or rates demonstrate significant differences when compared to the survey results. Contractor may be required by City Council to adjust service programs and or Refuse rates. If Contractor refuses to act upon the City's direction the City may invoke its authority under Section 11.09 of this agreement. For purposes of this Section and at City's discretion, survey cities may include municipal agencies contiguous to and/or within a 75-mile radius of the City of Montclair. A "significant difference" shall constitute (1) any deviation between the Contractor rate and survey city averages that represent a rate difference of five percent or more between specific rate categories; and/or (2) a difference between service programs that clearly demonstrate a qualitative and/or quantitative difference of superiority for service programs provided in a survey city.

4.04 CHANGES TO TERM

The Parties may, by mutual written consent, further extend the Term of this Agreement or modify the extension provision.

ARTICLE 5. CONTRACTOR'S SERVICES

5.01 COLLECTION SERVICES

The work to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services described in Attachment B, Scope of Collection Services. Contractor shall perform this work in a thorough and professional manner so that the residents and businesses within the City are provided reliable, courteous, and high-quality service at all times.

5.01.1 Conditions of Service. The Parties have determined that the following conditions shall remain in effect during the Term of this Agreement.

5.01.01 Service Mandatory. Except as otherwise provided herein, all Premises shall be required to arrange and pay for Solid Waste services of Contractor.

5.01.02 Unauthorized Collection and Transportation Prohibited. Except as otherwise provided herein, it shall be unlawful for an unauthorized party to collect or transport Solid Waste generated in the City.

5.01.03 Accumulations of Solid Waste. Except as it relates to the weekly accumulation of solid waste prior to each weekly collection date for the premises, it shall be unlawful for Waste Generators to allow Solid Waste to accumulate at any Premises.

5.01.04 Theft of Recyclable Materials Unlawful. It shall be unlawful for any Person to remove Recyclable Materials from Contractor's containers upon and after placement of containers at the curb.

5.01.05 Placement of Containers for Collection. Containers at residential premises shall be permitted at the curb the night before collection day and shall be at the curb on collection day prior to pickup service by the Contractor. Except as otherwise provided for in Sections 5.02.02, failure to place containers at the curb prior to pickup service shall not create a duty to the Contractor to return prior to the next scheduled service pickup date for removal of waste.

5.01.06 Extra Containers Requirement. Extra Containers ordered by Customers shall be provided for a minimum six (6) month continuous subscription period at a monthly rental rate established by Resolution of the City Council.

5.01.07 Illegal Dumping. It shall be unlawful for any person to place waste of any type in or around the waste containers of another party without written authorization of the party who has a subscription for the container(s).

5.02 COLLECTION STANDARDS

5.02.01 Servicing of Containers. Contractor shall collect the contents and return each Container to the location where Customer properly placed the Container for Collection. Following Collection, Contractor shall place the Containers upright.

Contractor shall use due care when handling containers, and shall replace damaged containers within ten (10) days of discovery.

5.02.02 Missed Pick-Ups. When notified of a missed pick-up, Contractor shall collect the Refuse, Recyclable Materials, Green Waste, Food Waste and C&D Waste on the day the notice is received, if possible, and in all cases, shall collect the missed pick-up by 6:00 p.m. of the next scheduled Collection day following receipt of the missed pick-up notification. Failure to place containers at the curb prior to pick-up shall not constitute a "missed pick-up"; nonetheless, Contractor shall seek to comply with the scheduling provisions of this Section.

5.02.03 New Customers. Contractor shall deliver Containers and initiate Collection services for a new Customer within five (5) Business Days of the Customer's request for service.

5.02.04 Change in Service. If an existing Customer requests a change in the number or size of their Refuse, Recyclable Materials, or Green Waste/Food Waste Containers and/or frequency of collection, Contractor shall deliver and/or remove Containers and initiate changes in the Collection services within five (5) Business Days of the Customer's request for a change in service. Customer shall maintain a minimum one-day per week pick-up service; furthermore

no reduction in the frequency of collection shall be initiated if City and Contractor agree that customer's waste volume requires a more frequent collection schedule.

5.02.05 Separate Collection. Contractor shall collect Refuse, Recyclable Materials, and Green Waste separately from each other and shall not commingle these materials at any time during the transportation or delivery of those materials to the Disposal Facility or Processing Facility. Refuse, Recyclable Materials, and Green Waste collected in the City may be combined with similar materials collected from other jurisdictions and shall be allocated by Contractor to the City's Collection program based upon tonnage or volume.

5.02.06 Non-Collection Notices. Contractor may choose to not collect materials for the following reasons: (i) Recyclable Materials or Green Waste contain excessive contamination; (ii) materials contain Hazardous Waste; (iii) the loaded weight of a Container exceeds the maximum load limit specified on the Container by the manufacturer; (iv) materials are not fully contained within Containers; and, (v) Container is not accessible due to vehicles or other obstacles. In such case of non-Collection, Contractor shall issue non-Collection notices stating the reason(s) the materials were not collected. The non-Collection notice shall be affixed prominently on the Container to ensure that it is not inadvertently removed due to weather conditions. Contractor shall maintain a master record of non-Collection notices issued for inspection by the City. Failure by Contractor to collect materials pursuant to this Section shall not constitute a missed pick-up as provided for in Section 5.02.02. City, by Resolution, may adopt a separate fee related to Contractor returning in the same scheduled service week for pickup of waste materials related to a non-collection notice.

5.02.07 Excess Materials. Materials not contained within Customer's Container shall be considered as excess materials and Contractor shall not be required to collect the excess amounts unless Customer has arranged and paid for such Collection, with the exception of Green Waste. City, by Resolution, may adopt a separate fee related to Contractor collecting excess amounts of waste not contained within customer's container. City may adopt a policy requiring Contractor to collect excess materials not contained within customer's container. Failure of customer to resolve recurring conditions of excess material outside the container may result in the introduction of corrective measures imposed by City, in concert with Contractor, and the assessment of fees associated with extraordinary cleanup efforts and adopted by Resolution of City.

5.02.08 Bins Required for Apartment Complexes. Multifamily apartment complexes with more than four (4) individual Dwelling units shall use Bins for Refuse Collections.

5.02.09 Care of Private Property. Contractor shall not damage private property and shall ensure that its employees: (i) close all gates opened in making Collections, (ii) not cross landscaped areas, and (iii) do not climb or jump over hedges and fences. The City shall refer complaints about damage to private property to Contractor who shall repair, to its previous condition, all damage to private or public property caused by its employees or operations. Contractor shall repair damage and/or resolve claims regarding damage to property within thirty (30) days of receipt of the complaint.

5.02.10 Spills and Cleanup. Contractor shall instruct employees to clean up any spills or scattered materials resulting from its Collection operation. Except for de minimis cleanup, and unless otherwise agreed to between City and Contractor, Contractor shall not be regularly assigned to cleanup spilled or scattered materials resulting from the actions of others including materials falling from overfilled Containers or uncontained materials. The City, at its discretion, may require more frequent collection of waste for a customer, customer use of locking or secured containers, or the temporary or permanent use of larger Containers in specified applications when spillover and/or illegal dumping at a residential, commercial, industrial, institutional, or construction site is a consistent problem. The City, at its discretion and for consideration, may require Contractor to cleanup spillover waste resulting from customer spillover and/or the actions of others including illegal dumping. City and Contractor shall jointly work together to determine solutions for customers with consistent problems related to spilled or scattered materials, overfilled or uncontained materials, and illegal dumping. City, by Resolution, may adopt a separate fee related to Contractor collecting spillover waste not contained within customer's container. City may adopt a policy requiring Contractor to collect spillover materials not contained within customer's container. Failure of customer to resolve recurring conditions of spillover material outside the container may result in the introduction of corrective measures imposed by City, in concert with Contractor, and the assessment of fees associated with extraordinary cleanup efforts and adopted by Resolution of City.

5.02.11 Days and Hours of Collection. Contractor shall perform Collections according to the following:

5.02.11.1 Residential Collections. Contractor shall perform Collections at Residential Premises (including Residential Premises with Bin service), Monday through Friday between the hours of 6:00 a.m. and 6:00 p.m. Residential neighborhoods shall be divided into zones for the purpose of scheduling regular pickup days.

5.02.11.2 Commercial, Institutional and Industrial Premises. Contractor shall perform Collections at Commercial, Institutional and Industrial Premises, Monday through Sunday between the hours of 5:00 a.m. and 6:00 p.m. City and Contractor shall determine scheduled days of service for each commercial, institutional and industrial premises.

5.02.12 Designated Holidays. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day (the Designated Holidays), alternate Collection shall be performed on the following day, unless the alternate day falls on Sunday, in which case alternate Collection shall then be performed on the following Monday. All other days falling on a legal holiday other than Designated Holidays shall remain as scheduled. Collections for the remainder of the week following a Designated Holiday shall be delayed for one (1) day.

5.02.13 City Approval of Residential Routes Required. Contractor acknowledges that the City schedules Street Sweeping services for the day following Contractor's performance of Collections at Residential Premises. Contractor shall not temporarily change Collection schedules for Residential Premises receiving Individual Collection without the prior approval of the City, which shall not be unreasonably withheld. Contractor shall not permanently change collection schedules for residential premises receiving individual collection without prior

approval of the City, such approval only to be provided if the City can accommodate such change by modifying street sweeping and other impacted City-provided services and provided such change will have minimal impact on neighborhoods.

5.03 ACCEPTABLE MATERIALS

Materials accepted for Collection as Recyclable Materials and Green Waste are specified in Attachments D and E, respectively.

5.04 VEHICLES

5.04.01 General. Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available sufficient back-up vehicles to respond to mechanical breakdowns, complaints and emergencies. Contractor shall also provide smaller collection vehicles capable of servicing high-density/mixed-use developments and other developments with limited effective turn radii and neighborhood street conditions that do not permit and/or are not conducive to fleet collection vehicles used for standard residential and commercial service collection.

5.04.02 Alternative Fuel. Contractor's regular route vehicles used for the collections from residential, commercial, institutional, and industrial premises shall be alternative fuel vehicles. Contractor shall be permitted to operate non-alternative fuel vehicles for periods up to thirty (30) days as back-ups for regular route vehicles when such alternative fuel vehicles are out of service for repair or maintenance or to supplement the regular Collection vehicles for special programs or emergency situations.

5.04.03 Specifications. All vehicles operated in the City by Contractor shall: (i) be registered with the California Department of Motor Vehicles; (ii) have leak proof bodies designed to prevent leakage, spillage, and/or overflow; and, (iii) comply with California Environmental Protection Agency noise emission and California Air Resources Board and Southern California Air Quality Management District rules and regulations.

5.04.04 Identification. Contractor's name, local telephone number and vehicle identification number designated by Contractor shall be prominently displayed on the sides and rear of each Collection vehicle. The City shall be permitted, at its cost, banner advertising (for nonprofit purposes) on the sides of vehicles. The City may also require vehicles be stenciled with, or carry decals depicting, the City logo.

5.04.05 Condition and Maintenance. Contractor shall maintain all of its vehicles and equipment used in providing service under this Agreement in a good, safe, neat, clean, and operable condition at all times.

5.04.06 Operation. Vehicles shall be operated in compliance with federal, State, and local laws and regulations.

5.05 CONTAINERS

5.05.01 General. Contractor shall provide all Containers, Bins, and Debris Boxes, as appropriate, to all Customers as part of its obligations under the terms of this Agreement. All Containers shall be industry-standard and shall be maintained in a safe, serviceable, and functional condition. Any Container impacted by graffiti shall be replaced or painted over by Contractor within forty-eight (48) hours of being notified by the City or a Customer. All Containers used in the performance of this Agreement shall remain the property of the Contractor. Damaged Residential Containers shall be replaced by Contractor upon discovery, within ten (10) days of a report of damaged container or, at the City's discretion.

5.06 PERSONNEL

5.06.01 General. Contractor shall furnish such qualified drivers, mechanical, supervisory, Customer service, clerical and other personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. All personnel furnished by Contractor shall be subject to the "Relationship of Parties" provisions of Section 11.01.

5.06.02 No Gratuities. Contractor shall not permit its employees to demand, solicit or accept any additional compensation or gratuity in exchange for additional Collection services.

5.06.03 Conduct and Courtesy. Contractor shall employ only competent and qualified personnel who serve the public in a courteous, helpful, and impartial manner. Contractor 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 not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take appropriate measures to immediately correct the behavior of the offending employee or reassign the employee from service assignment in the City.. The City may require Contractor to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

5.06.04 Uniforms. While performing services under this Agreement, all of Contractor's field service employees shall be dressed in clean uniforms.

5.07 HAZARDOUS WASTE

To the extent practical, Contractor shall inspect Containers for the presence of Hazardous Waste and take reasonable precautions to prevent the Collection of Hazardous Waste. If the presence of Hazardous Waste is detected in any Container, Contractor's personnel shall not collect the contents of the Container and shall leave a Notice of Non-Collection.

If Hazardous Waste is later detected in a load, Contractor shall attempt to contact the offending Customer who shall be responsible for its removal and cost of removal.

5.08 CUSTOMER SERVICE

Contractor shall provide Customer service support from its local office for purposes of fielding inquiries regarding services and billings, assisting commercial Customers with service arrangements, and receiving payments.

5.09.01 Customer Service by City. The City shall provide Customer service support to Residential Customers.

5.09.02 Office Hours. Contractor's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. daily, on all Collection days. A representative of Contractor shall be available during office hours for communication with Customers at Contractor's principal office. In the event that normal business problems cannot be rectified over the telephone, a representative of Contractor shall agree to meet with Customer at a location agreeable to Contractor and Customer. Normal office hour telephone numbers shall either be a local or toll-free call. Contractor shall also maintain a local or toll-free after-hours telephone number or answering service available at said after-hours telephone number during all hours other than normal office hours.

5.09.03 Service Complaints. All Customer complaints shall be directed to Contractor. Contractor shall record all complaints received by mail, by email, by telephone, or in Person (including date, name, address of complainant, and nature of complaint). Contractor agrees to use its best efforts to resolve all complaints by close of business (waste Collection) day following the date on which such complaint is received. Service complaints may be investigated by the City Manager or his/her designee. Unless a settlement satisfactory to complainant, Contractor, and Manager's designee is reached, the complainant may refer the matter to the City Manager for review. Except as otherwise provided for in Section 5.11.04 and 11.05, the City Manager's decision shall be final. Contractor shall maintain records listing the date of consumer complaints, the Customer, description of the nature of the complaint or request, and when and what action was taken by Contractor to resolve the complaint. All such records shall be maintained and shall be available for inspection by the City, as described in Article 8.

5.09.4 Billing for Service.

5.09.4.01 City Billing and Payment to Contractor. The City shall utilize a staggered billing cycle, billing each residential premises bimonthly (every two months) for regular Individual Collection services performed by Contractor. The City shall pay Contractor monthly, not later than the tenth (10th) day following the end of each month for services to residential premises from receipts received from customers included in the staggered billing cycle just ending. The City's monthly payment to Contractor for service to Residential Premises shall be equal to approximately one-half the total number of Residential Premises in the City, including all Multifamily Dwellings receiving service based on the residential individual collection service rate, multiplied by the total rate specified in Attachment F-Rate Schedule, as it may be amended from time-to-time. For purposes of the preceding payment calculation, the number of Residential Premises shall exclude those Premises contracting directly with Contractor for Bin service, such as Premises in mobile home parks and multifamily dwellings.. The City's payment to Contractor shall be adjusted upon the Effective Date of adjustments in service rates, disposal Tip Fees or other components of the rate when said adjustments are in accordance with the terms of this Agreement and approved by the City Council.

5.09.4.02 Contractor Billing. Contractor shall bill Owners of Residential Premises for Bin service and commercial, institutional, and industrial Customers for Bin, Debris Box, or Stationary Compactor services performed by Contractor, in accordance with the Service Contract. Billings for regular services shall be monthly in advance; for temporary services, Contractor may require cash/credit card payment in advance of service.

5.09.4.03 Delinquent Commercial, Industrial and Institutional Accounts. Accounts unpaid more than ten (10) days shall be considered delinquent. All delinquent accounts are subject to late fees of eighteen percent (18%) of any unpaid balance. Contractor may stop service to delinquent accounts without notice and service shall thereafter be resumed only upon payment of the accumulated fees and reinstatement and/or redelivery fees. In the event any Person shall fail to pay any charge herein provided, when the same becomes due, the City Manager or his/her designee shall pursue all remedies available for Collection on behalf of the Contractor including, but not limited to, inclusion of such debts on the property tax billing. In the event Contractor establishes a program to file a property tax lien related to a delinquent commercial account and such lien is filed with the office of the San Bernardino County Auditor-Controller/Treasurer/Tax Collector, Contractor shall immediately resume regular pick-up services without interruption. In no event shall Contractor suspend service to delinquent residential accounts; instead, the City shall initiate a process to file property tax liens against delinquent residential accounts.

5.10 GOVERNMENT LIAISON

Contractor shall designate a responsible representative to serve as its “government liaison” to work with the City Manager or City Manager’s designated representative to resolve Customer complaints.

5.11 RESOLUTION OF CUSTOMER DISPUTES

Contractor shall notify Customers of its complaint resolution procedure at the time Customers apply for or are provided service.

5.11.01 A Customer dissatisfied with Contractor’s decision regarding a complaint may ask the City to review the complaint. To obtain this review, Customer must request City review within ten (10) days of receipt of Contractor’s response to the complaint, or within forty-five (45) days of submitting complaint to Contractor if Contractor has failed to respond to the complaint. The City may extend the time to request its review for good cause. The City Manager may agree to accept requests for review beyond the filing deadlines established herein.

5.11.02 Before reviewing the complaint, the City Manager or his/her designee shall refer it to Contractor. If Contractor fails to cure the complaint within ten (10) days, the City Manager shall review Customer’s complaint and determine if further action is warranted. To facilitate rendering a final determination, the City Manager may request written statements from Contractor and Customer, and/or oral presentations.

5.11.03 If the City Manager determines that a remedy, if any, shall be imposed, the remedy under this Section shall be limited to rebate of Customer charges related to the period of complaint.

5.11.04 The City Manager may delegate these duties to a designee. The decision of the City Manager or Manager's designee shall be final on any matter under Five Thousand Dollars (\$5,000). In the event of a decision on a matter awarding Five Thousand Dollars (\$5,000) or more, Contractor may seek review pursuant to Section 11.05.

ARTICLE 6. CITY FEES

6.01 GENERAL

Unless otherwise specified, the fees described in this Article 6 shall be treated as pass-through costs for the purposes of determining Contractor's compensation and shall be recoverable through the rates that the City/Contractor charges to Customers. Contractor shall separately identify any of the fees established under this Section on Customer bills if directed to do so by the City.

6.02 FRANCHISE FEE

In consideration of the exclusive franchise granted to Contractor by this Agreement, and to reimburse the City for costs incurred in administering this Agreement, Contractor shall pay to the City a Franchise Fee equal to ten percent (10%) of Contractor's gross revenue from services to Commercial, Institutional, and Industrial Premises provided in the City's service area under this Agreement, exclusive of all revenue from the sale of Recyclable Materials and Disposal Facility/Processing Facility Tip Fees. The Franchise Fee is not a separately identified pass-through fee charged to customers and Contractor shall not separately identify the franchise fee in correspondence with Customers, including both written and oral communication without City approval.

6.03 PAVEMENT IMPACT FEE

In consideration for approving extension of the exclusive franchise granted to Contractor by this Agreement, Contractor shall continue paying to the City a pavement impact fee equal to three and one-half percent (3.5%) of Contractor's gross revenue from services to Commercial, Institutional and Industrial Premises provided in the City's service area under this Agreement, exclusive of all revenue from the sale of Recyclable Materials and Disposal Facility/Processing Facility Tip Fees. The pavement impact fee is not a separately identified pass-through fee charged to Customers.

6.04 CONTRACT MAINTENANCE FEE

Beginning July 1, 2017, Contractor shall pay to the City a Contract Maintenance Fee of Two Hundred Fifty Thousand Dollars (\$250,000.00) per fiscal year for the Term of this Agreement. For the fiscal year beginning July 1, 2017 and ending June 30, 2018, Contractor shall make a Two Hundred Fifty Thousand Dollar (\$250,000.00) lump sum payment on the effective date of this Agreement. Beginning on July 1, 2018 and for the remainder of the Term of this Agreement, Contractor shall pay the Contract Maintenance Fee in equal monthly installments of \$20,833.33. The Contract Maintenance Fee is not a pass-through fee charged to customers.

Payment is to be made no later than the tenth (10th) day of each month. The Contract Maintenance Fee shall not preclude the City from assessing franchise fees pursuant to Section 6.02 of this Agreement.

6.05 TIME AND METHOD OF PAYMENT

6.05.01 Quarterly Payments. On or before the last day of the month following the end of each calendar quarter, Contractor shall pay to the City the amounts due for the franchise fee, pavement impact fee, and any other fees due for which a separate payment fee schedule has not been agreed to by City and Contractor.

6.05.02 Remittance Form. Concurrent with the payment of the fees, Contractor shall provide a remittance form, approved by the City, such form to include the following information: (i) identifying the gross revenues received for each Service Sector for the calendar quarter; (ii) a calculation of the City Fees due the City; and (iii) a declaration signed by an officer of the company stating the following: "I declare under penalty of perjury that the information provided herein is true, complete, and accurate to the best of my knowledge." Fees due the City shall be considered paid when full payment and a completed Fee Remittance Form are received by the City, and the City has verified the information contained therein. Any City identified discrepancy(ies) in the information contained in the Fee Remittance Form and/or in the payment made shall be brought to the attention of the Contractor and the Contractor shall correct the discrepancy(ies) within ten (10) days of notification or provide evidence as to why any City identified discrepancy(ies) are not valid. Failure between City and Contractor to come to agreement shall be resolved by the City requiring an audit be conducted and results of the audit presented to the City Council, pursuant to Section 11.05 of this Agreement, for final resolution. If the City Council agrees that the audit shows a discrepancy, Contractor shall resolve the discrepancy to the City's satisfaction and pay for the full cost of the audit.

6.05.03 Late Payment Fees. Late payments shall incur a late payment charge equal to one and one-half percent (1.5%) per month of the unpaid fees due for the quarter. Late payment charges are not included in Contractor's compensation and may not be recovered through Customer rates.

6.06 ADJUSTMENT TO CITY FEES; ADDITIONAL CITY FEES

The City may from time to time, by Resolution of the City Council, revise the amount of the fees described in this Article, including franchise fees, and remove or establish other fee categories. Based on the City Attorney's opinion, revisions to the fee schedule may be subject to the provisions of Proposition 218. Changes in the total amount of fees to be collected by Contractor and remitted to the City shall be reflected in an adjustment to Contractor's compensation and rates coinciding with the effective date of the fee adjustment or establishment of an additional fee.

ARTICLE 7. CONTRACTOR COMPENSATION AND RATES

7.01 GENERAL

Subject to the fees due the City as set forth in Article 6, Contractor's compensation provided for in this Article 7 shall be the full, entire, and complete compensation due Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, fees charged at the Disposal Facilities and Processing Facilities used by Contractor, excluding fees collected and due the City including, but not limited to fees passed through to Customers (pavement impact fees and franchise fees) and not passed through to Customers (contract maintenance fees), taxes, insurance, bonds, overhead, profit, and all other items necessary to perform all of the services in the manner required by the Agreement.

7.02 INITIAL RATES

The maximum initial rates (i) that Contractor shall be permitted to charge for Contractor's services, and (ii) that the City shall pay Contractor for service to Premises, are those rates specified in Attachment F, Rate Schedule, and no more. The City is under no obligation to pay Contractor compensation in excess of the service rate charged to residential premises as specified in Attachment F, Rate Schedule..

The initial Attachment F, Rate Schedule, and each subsequent revised Attachment F, shall list each Collection service, additional service and all miscellaneous fees and charges and the total monthly rate for those services.

7.03 ANNUAL FORMULA-BASED COMPENSATION ADJUSTMENT

The maximum rates set forth in Attachment F, Rate Schedule, may be adjusted annually, upon request 90 days in advance, effective each July 1 (the "Effective Date") by an amount equal to the average increase in the Consumer Price Index (CPI) for All Cities for the Los Angeles-Riverside-Orange Co. Area, A-Items Indexes, All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics for the previous 12 months ending in December. The first such adjustment may become effective July 1, 2019, and shall apply to all rate components except the Disposal Facility/Processing Facility Tip Fee component. For example, an adjustment for July 2019 would be based upon the average CPI change reported in the CPI published for January 2018 through December 2018, except that if the change is a decrease, rates shall not be decreased. It is understood and agreed by both Parties that the maximum annual CPI increase shall be no greater than five percent (5%).

Formula Adjustment Request Procedure. Contractor shall submit its request for a CPI-based formula rate adjustment not later than April 1st of the year in which the adjustment shall be made, accompanied by a complete revised Attachment F, Rate Schedule, reflecting the CPI-based formula rate adjustment.

7.03.01 Approval; Formula Adjustments. Contractor's request for increase shall be reviewed and considered by the City Council. The City Council's decision shall be based upon verification of the increase in CPI, verification of Contractor's computations of the increases in the Attachment F, Rate Schedule, and the reasonableness of the proposed rates, any City-prepared survey results and the recommendation of City staff. To the extent possible, the City

Council's decision may be rendered on or before the Effective Date and may not be unreasonably withheld.

7.04 DISPOSAL / PROCESSING FACILITY TIP FEE ADJUSTMENT

The Disposal Facility/Processing Facility Tip Fee component of the rate is a Pass-Through Cost and may be adjusted annually to reflect any change in fees charged by the Disposal Facility/Processing Facility.

7.04.01 Tip Fee Adjustment Request Procedure. Contractor shall submit its request for a Tip Fee rate adjustment not later than April 1st of the year in which the adjustment is requested. The Tip Fee adjustment shall be made in conjunction with any rate compensation adjustment.

7.04.02 Approval. Contractor's request for increase shall be reviewed and considered for approval by the City Council. The City Council's decision shall be based upon verification of the increase in Disposal Facility/Processing Facility Tip Fees, verification of Contractor's computations of the increases in the Attachment F, Rate Schedule, the CPI as defined in Section 7.03, and the reasonableness of the proposed rates. To the extent possible, the City Council's decision may be rendered on or before the Effective Date and may not be unreasonably withheld.

7.05 EXTRAORDINARY RATE ADJUSTMENTS

Contractor may request an adjustment to its rates at reasonable times other than that allowed in Sections 7.03 and 7.04 in the event of extraordinary changes in the cost of providing service under this Agreement. For purposes of this Section and notwithstanding Section 7.05.01, "extraordinary changes in the cost of providing service under this Agreement" shall mean cost changes, including changes in projected costs to the Contractor as defined in Section 7.05.01 that, over any twelve-month period after adoption of the most recent rate adjustment, exceeds real or projected total service rate costs, or results in a loss in Contractor revenue for service provided to City rate payers equal to, or in excess of, ten (10) percent as identified in a Contractor's audit. If such extraordinary change in the cost of providing service is temporary in nature, the Contractor shall reduce the rate adjustment subject to this Section when the extraordinary change in the cost of providing services declines by five (5) percent or greater from the rate adjustment subject to this change and the Contractor has substantially recovered from the fiscal impact of the extraordinary change in the cost of providing services, such reduction to be equal to the total rate of the decline in providing the service that resulted in City Council approval of the extraordinary rate adjustment.

7.05.01 Included Changes. Changes in the cost of providing service considered extraordinary shall include but not be limited to:

- 1.) Changes in Scope. Changes in the scope of services of this Agreement.

- 2.) Changes in Law. Changes in law or regulations enacted after the Effective Date of this Agreement by federal, State, or local regulatory agencies including amendments to the City's Municipal Code.
- 3.) Extraordinary Costs. Changes in operating costs brought about by unforeseen circumstances beyond the control of the Contractor.
- 4.) Change in Disposal Facility. Temporary or permanent changes in the location of the Disposal Facility.
- 5.) Value of Recyclable Materials. Change in the value of Recyclable Materials.
- 6.) Clean Fuel Requirement. Compliance with SCAQMD Rule 1193.
- 7.) Fuel Surcharge. Temporary or permanent fees to offset the increased cost of operating fuels.

7.05.02 Excluded Changes. Changes in the cost of providing service which arise from the following shall not be considered extraordinary changes justifying an extraordinary rate adjustment:

- 1.) Inaccurate Estimates. Inaccurate estimates assumed by Contractor in the number of service units or the cost of rendering service pursuant to this Agreement.
- 2.) Employee Wage Rates and Benefits. Changes in the cost of providing service due to changes in wage rates or employee benefits granted by Contractor.

7.05.03 Request and Review. For each request for an extraordinary rate adjustment to rates that Contractor may charge Customers brought pursuant to this Article 7, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to the City with support for assumptions made by Contractor in preparing the estimate. The City shall review the Contractor's request and, in the City's sole judgment and absolute, unfettered discretion make the final determination as to whether an adjustment to the rates will be made, and, if an adjustment is to be permitted, the appropriate amount of the adjustment.

ARTICLE 8. RECORDS AND REPORTS

8.01 RECORDS

8.01.01 General. Contractor 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.

8.01.02 Inspection. Contractor's records shall be available for inspection by the City at Contractor's corporate office during regular business hours and upon reasonable notice of no less than twenty-four (24) hours.

8.01.03 Records Retention. Contractor shall maintain all records required in the performance of this Agreement for a period of five (5) years after its expiration or early termination. All records and reports maintained by Contractor related to services provided pursuant to terms of this Agreement shall be subject to the California Public Records Act. All records shall be made available upon demand by the City.

8.01.04 Customer Records. Contractor shall maintain Customer and billing information by Service Sector including: (i) name, address, and phone numbers of Customer; (ii) service level; and, (iii) amount billed.

8.01.05 Service Records. Contractor shall maintain record of Customer complaints and inquiries for three (3) years.

8.01.06 Materials Records. Contractor shall maintain a monthly record by Service Sector of the weight of Refuse, Recyclable Materials, Green Waste, Food Waste and C&D Waste collected from all Premises in the City.

8.01.07 Disposal Records. Contractor shall maintain a monthly record of all Solid Waste disposed by Disposal Facility.

8.01.08 Route Information. Contractor shall maintain a record of its routes and Collection days by Service Sector for review by the City. Such record may be in the form of maps and route books.

8.02 REPORTS

8.02.01 General. Contractor shall submit reports according to the following schedule: (i) monthly reports within forty-five (45) days after the end of the reporting month; (ii) quarterly reports within forty-five (45) days after the end of each calendar quarter; (iii) annual reports within forty-five (45) days after the end of the calendar year; and (iv) event-specific reports shall be submitted within thirty (30) days following the occurrence.

8.02.02 Monthly Report. Monthly, Contractor shall prepare and submit the following to the City: (i) a report of the total Solid Waste disposed by Service Sector and Recyclable Materials, Green Waste, Food Waste, and C&D Waste tonnage diverted by Service Sector; (ii) a record of Recyclable Materials sold reflecting the quantity of tonnage sold of each category; (iii) information compiled concerning Customer complaints; and (iv) a list of notices issued detailing Recyclable Materials contamination problems issued during the month.

8.02.03 Quarterly Report. Quarterly, Contractor shall prepare and submit a report of its gross revenue by Service Sector.

8.02.04 Annual Report. Annually, Contractor shall prepare and submit a report containing: (i) a summary of activities including, but not limited to, services begun or discontinued during the reporting year; (ii) number of Customers for each Service Sector; (iii) a report summarizing the City's progress in meeting and maintaining Diversion goals under AB939, including any recommended changes; (iv) a revenue statement setting forth all fees paid

to the City during the reporting year including the basis for calculation thereof; (v) a report on the amount by weight of Recyclable Materials, Green Waste, Food Waste and C&D Waste diverted from landfill disposal, (vi) list of Contractor's officers and members of its board of directors; and (vii) list of stockholders or other equity investors holding five percent (5%) or more of voting interest in Contractor and any subsidiaries.

8.02.05 Event-Specific Reporting. Contractor shall submit event-specific reports following the occurrence of any of the following events: (i) accumulated Solid Waste at Premises in the City; (ii) unauthorized dumping; (iii) Hazardous Waste identified in Containers; (iv) unauthorized collectors observed including theft of Recyclable Materials; (v) summary of special event activities conducted in the City by Contractor; and (vi) any reports or material submitted by Contractor to any federal or State agency containing information adverse to the City or this Agreement.

8.03 AUDIT

8.03.01 Auditable Records. Contractor shall maintain in auditable form all records relating to the services provided hereunder, namely: (i) Customer lists, (ii) billing records, (iii) accounts receivable records, (iv) maps, (v) AB 939 compliance records, and (vi) Customer complaints, for the most current five (5) year period of time, or any longer period required by law or by the City. The City shall have the right, upon five (5) days advance notice, to inspect maps, AB 939 compliance records, Customer complaints, and other like materials of Contractor, which reasonably relate to Contractor's compliance with the provisions of the Agreement. Such records shall be made available to the City at Contractor's regular place of business.

8.03.02 Underpayment of City Fees. Should any examination or audit of Contractor's records reveal an underpayment of any City Fee or payment to the City required by this Agreement, the amount of such underpayment of any fee required shall become due and payable to the City with interest at the legal rate of seven percent (7%) not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by the City. Should any underpayment equal to or more than three percent (3%) be discovered, Contractor shall bear the entire cost of the audit.

ARTICLE 9. INDEMNITY

9.01 INDEMNIFICATION OF CITY - GENERAL

Separate and distinct from the insurance and liquidated damages provisions found in this Agreement and to the fullest extent permitted by law, Contractor shall defend, with counsel approved by the City, indemnify and hold harmless City, its employees, agents and officials ("Indemnitees") from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses, or costs of any kind, whether actual, alleged, or threatened; actual attorney fees incurred by City; court costs; interest; defense costs including expert witness fees; and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of, or arising out of or in any way attributable in whole or in part to the performance of this Agreement. All obligations under this provision are to be paid by Contractor as the City incurs them. Contractor's obligation to defend Indemnitees is not

contingent upon there being an acknowledgement or determination of the merit of any claims, demands, actions, causes of action, suits, losses, liability, expenses, penalties, obligations, errors, omissions and/or costs.

Without affecting the rights of City under any provision of this Agreement or this Section, Contractor shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the Parties or the findings of a court of competent jurisdiction. This exception will apply only in instances where the City is shown to have been solely at fault and not in instances where Contractor is solely or partially at fault or in instances where City's fault accounts for only a percentage of the liability involved when such percentage of City liability is less than one hundred (100) percent. In those instances, the obligation of Contractor will be all-inclusive and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of the City.

Contractor acknowledges that its obligation pursuant to this Section extends to liability attributable to City, whether the City's negligence is "active" or "passive", if that liability is less than the sole fault of City.

This provision shall survive the expiration of the Term of this Agreement.

9.02 INDEMNIFICATION OF CITY - FINES

Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by the California Department of Resources, Recycling and Recovery (Cal Recycle) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by Cal Recycle, untimely filing of reports or caused or contributed to by Contractor's failure to perform its obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section. This indemnity shall survive the termination or earlier expiration of this Agreement.

9.03 HAZARDOUS SUBSTANCES AND COMPREHENSIVE ENVIRONMENTAL RESPONSE, AND LIABILITY ACT (CERCLA) INDEMNIFICATION

Except with respect to Disposal Facilities used by Contractor, Contractor shall indemnify, defend with counsel approved by the City, protect and hold harmless the City, its officers, employees, agents, assigns, volunteers, and any successor or successors to the City's interest (collectively, "Indemnitees") from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid (collectively, "claims"), incurred or suffered by, or asserted against, the City or its officers, employees, agents, or Contractor arising from or attributable to any pick-up, repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial,

response, closure, or other plan (regardless of whether or not undertaken due to governmental action) concerning any hazardous substances or Hazardous Wastes including the release of such substances or wastes at any place where Contractor stores or disposes of municipal Solid Waste pursuant to the Agreement, provided that this indemnity does not extend to claims to the extent that they are caused solely by the negligence or willful misconduct or breach of this Agreement by an indemnitee. The indemnity provided in this Section shall apply to claims arising from acts or omissions of Contractor, which occur during the Term of this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless, and indemnify the City from all liability. The indemnity provided in this Section 9.03 is separate from and supplementary to that provided in Sections 9.01 and 9.02 of this Agreement..

ARTICLE 10. INSURANCE AND PERFORMANCE BOND

10.01 INSURANCE

10.01.01 Types and Amounts of Coverage. Contractor shall procure from an insurance company or companies authorized to do business in the State of California, and shall maintain in force at all times during the term of this Agreement, the following types and amounts of insurance:

- 1.) Workers' Compensation and Employer's Liability. Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance with a limit of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or for bodily injury by disease and an excess umbrella liability policy with a minimum of not less than Five Million Dollars (\$5,000,000) per occurrence. Contractor shall not be obligated to carry workers compensation insurance if: (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) furnishes a Certificate of Permission to Self-Insure issued by the Department of Industrial Relations; and (iii) furnishes updated Certificates of Permission to Self-Insure periodically to evidence continuous self-insurance.
- 2.) Commercial General Liability. Contractor shall maintain commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate, covering personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of services under this Agreement.

The insurance required by this Subsection shall include:

- (i) Premises Operations (including use of owned and non-owned equipment); and,
- (ii) Personal Injury Liability.

The commercial general liability insurance shall be written on an “occurrence” basis (rather than a “claims made” basis) in a form at least as broad as the most current version of the Insurance Service Office Commercial General Liability Occurrence Policy Form (CG0001). If occurrence coverage is not obtainable, Contractor must arrange for “tail coverage” on a claim’s made policy to protect the City from claims filed within four years after the expiration or earlier termination of this Agreement relating to incidents that occurred prior to such expiration or termination, or within the statute of limitations for any such claims arising from Contractor's performance of services under this Agreement, whichever provides later coverage.

- 3.) Vehicle Liability. Contractor shall maintain automobile liability insurance covering all owned, non-owned, and hired vehicles used in performing service under this Agreement with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage.

10.01.02 Acceptability of Insureds. 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, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best’s Insurance Reports of size category VIII or larger and a rating classification of “A” or better.

10.01.03 Required Endorsements. Without limiting the generality of Subsection 10.01.01, paragraphs 1 and 2, the policies shall contain endorsements in substantially the following form:

- 1.) Workers’ Compensation and Employers’ Liability Policy
 - (a) “Thirty (30) days prior written notice shall be given to the City in the event of cancellation of this policy, except ten (10) days written notice for cancellation of this policy for nonpayment of premium.” Such notice shall be sent to:

Attention: City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

- (b) “Insurer waives all right of subrogation against the City and its officers, agents and employees for injuries or illnesses arising from work performed for the City.”
- 2.) Commercial General Liability Policy; Automobile Liability Policy; Pollution Liability Policy; and Hazardous Materials Policy

- (a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation of this policy, except ten (10) days written notice for cancellation of this policy for nonpayment of premium." Such notice shall be sent to:

Attention: City Manager
City of Montclair
5111 Benito Street
Montclair, CA 91763

- (b) "The City, its officers, employees, and agents are additional insureds on this policy."
- (c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- (d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit, or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one Party had been named as an insured."

10.01.04 Self Insured Retention. The liability policies described in Section 10.01.01 may contain self-insured retentions. The self-insured retentions may not exceed Two Hundred Fifty Thousand Dollars (\$250,000) per occurrence and must be approved in writing by the City.

10.01.05 Delivery of Proof of Coverage. Prior to the Effective Date of this Agreement, Contractor shall furnish the City one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder is in force, in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, Effective Dates, and dates of expiration of policies and shall be accompanied by all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the City. Contractor shall furnish renewal certificates to the City to demonstrate maintenance of the required coverages throughout the Term.

10.01.06 Other Insurance Requirements

- 1.) In the event performance of any services is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 10.01.01 (2) and the automobile liability policy required by Subsection 10.01.01 (3) shall cover all subcontractors or the subcontractor must

furnish evidence of insurance provided by it meeting all of the requirements of this Section.

- 2.) Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Agreement, other than claims by employees for work-related incidents, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.
- 3.) If Contractor fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain such insurance as it may deem proper and may require Contractor to reimburse it for the cost incurred within thirty (30) days and/or deduct the cost from any moneys due Contractor. The City may also treat the failure as a Contractor default.
- 4.) The City is not responsible for payment of premiums for or deductibles under any required insurance coverages.
- 5.) Any excess or umbrella policies shall be written on a "following form" basis.

10.02 FAITHFUL PERFORMANCE BOND

Prior to the Effective Date of this Agreement, Contractor shall file with the City a bond securing the Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Two Hundred Thousand Dollars (\$200,000). The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, regulated by the California Insurance Commissioner, and with a financial condition and record of service satisfactory to the City.

The term of the bond shall be not less than twelve (12) months. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twelve (12) months) and in the same form, annually thereafter. Not less than thirty (30) days before the expiration of the initial, or any subsequent, bond, Contractor shall furnish either a replacement bond or a continuation certificate, executed by the surety.

It is the intention of this Section that there be in full force and effect at all times a bond securing the Contractor's faithful performance of the Agreement, throughout its Term.

ARTICLE 11. ADDITIONAL AGREEMENTS OF PARTIES

11.01 RELATIONSHIP OF PARTIES; INDEPENDENT CONTRACTOR

The Parties intend that Contractor 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 venturer with the City. No employee of Contractor shall be deemed to be an employee or agent of the City. Except as expressly provided herein, Contractor shall have the

exclusive control over the manner and means of conducting the services performed under this Agreement, and over all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor, nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefit, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with the City.

11.02 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws of the United States, the State and the City, with all applicable regulations promulgated by federal, State, regional, or local administrative and regulatory agencies, and by the City, now in force and as they may be enacted, issued or amended during the Term, and with all permits affecting the services to be provided.

11.03 ASSIGNMENT; TRANSFER; CHANGE IN CONTROL

11.03.01 City Consent Required. It is the expressed intent of the Parties to this Agreement that the rights and privileges granted by this Agreement shall not be transferred, sold, hypothecated, leased, assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any Person, except Contractor, either by act of Contractor or by operation of law, nor shall any change in control occur, without the prior written consent of the City, expressed by Resolution adopted by the City Council.

It is further understood and agreed that the City's consent to any of the above actions or transactions may be withheld for any reason, with or without cause, and that upon the occurrence of any of the above events, without consent of the City, the City shall have the absolute right to terminate the Agreement without notice.

11.03.02 Assignment to Family Member. Notwithstanding the fact it would otherwise fall within the provisions of Section 11.03, any transfer of interests to an immediate family member of any existing shareholder may occur with the written approval of the City Manager, if Contractor certifies and the City Manager verifies that the transfer is in fact to an immediate family member or members; and, the City Manager finds both of the following: (i) that the transfer of interest will have no adverse impact on Contractor's operations in the City, and (ii) that the transfer of interest will not result in any interest in Contractor being vested in any Person who is not an immediate family member of an existing shareholder of Contractor. In the event the City Manager is unable to make these findings, or has any concern regarding his ability to do so, he may refer the matter in whole or part to the City Council for its consideration, approval, or other action, and the City Council shall have the discretion to consider the matter as if it is a transfer as described in this Section 11.03. Contractor shall provide the City Manager with the current names of all shareholders and the names of any proposed transferees.

11.04 SUBCONTRACTING

Contractor shall not engage any subcontractors to perform any of the services required of it by Article 5 of this Agreement without the prior written consent of the City, expressed by Resolution adopted by the City Council. Contractor shall notify the City no later than thirty (30) days prior to the date on which it proposes to enter into a subcontract. The City may approve or deny any such request in its sole discretion and its approval shall not be unreasonably withheld.

11.04.01 Affiliated Entity. Contractor retains the right to enter into an arrangement with an affiliated entity to perform any of the services, activities or administration of services or activities, which Contractor is required or allowed to perform under this Agreement. Any arrangement by Contractor with an affiliated entity shall neither be considered as subcontracting nor as an assignment.

11.05 DISPUTES BETWEEN PARTIES

Should either Party be dissatisfied with any action, inaction, report, finding, decision, or matter of discretion of the other, except for a material breach of the Agreement by Contractor, the aggrieved Party shall notify the other in writing, within ten (10) days of the aggrieved event, setting forth their understanding of the facts, rights or claims and reasons for objecting. Within 15 days following such notification, the Parties shall meet in good faith in an Administrative Review conducted by the City Manager to resolve the matter to the reasonable satisfaction of both Parties. Should the Parties fail to reach an agreement on the disputed matter within ten (10) days, the aggrieved Party: (i) if the Contractor, may request a Review Hearing before the City Council to be conducted within twenty (20) days of the request for a Review Hearing, or (ii) if the City, shall schedule a Review Hearing before the City Council to be conducted within twenty (20) days of the Administrative Review. The decision of the City Council at the Review Hearing shall be final and binding.

11.06 FORCE MAJEURE

Except as otherwise provided herein, Contractor shall not be in default under this Agreement in the event that the services to be provided by Contractor are temporarily interrupted or discontinued for any of the following reasons: (i) riots, wars, sabotage, civil disturbances, insurrections, and explosion; (ii) natural disasters such as floods, earthquakes, landslides, and fires; (iii) strikes, lockouts, and other labor disturbances lasting less than ten (10) calendar days; or (iv) other catastrophic events which are beyond the reasonable control of Contractor. Other catastrophic events do not include, and are not limited to, the financial inability of Contractor to perform, failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of Contractor except as otherwise provided.

11.07 OWNERSHIP OF SOLID WASTE

11.07.01 Contractor Ownership and Rights. Once Solid Waste, Recyclable Materials, Green Waste, Food Waste and C&D Waste are placed in commercial Bin/Roll-Offs for

Collection or Residential Containers at Curbside, ownership shall transfer to Contractor by operation of law, subject to the terms of this Agreement and pursuant to Sections 41950 41956 of the California Public Resources Code. Subject to Contractor's duty to meet the AB939 goals which apply to the City, Contractor is hereby granted the right to retain, Recycle, compost, dispose of, and otherwise use Solid Waste, including Recyclable Materials, Green Waste, Food Waste and C&D Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Contractor. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, Recycle, compost, dispose of, or use the Solid Waste, including Recyclable Materials, Green Waste, Food Waste and C&D Waste, or any part thereof.

11.07.02 Transfer of Ownership. When disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station, or material recovery facility) Solid Waste, including Recyclable Materials, Green Waste, Food Waste and C&D Waste shall become the property of the Owner or operator of the Disposal Facility once deposited there by Contractor. At no time does the City obtain any right of ownership or possession of Solid Waste placed for Collection, and nothing in this Agreement shall be construed as giving rise to any inference that the City has such rights.

11.08 EVENTS OF DEFAULT

Each of the following shall constitute an event of default ("Contractor default"): (i) Contractor fails to perform its obligations under Article 5 of this Agreement and its failure to perform is not cured within ten (10) Business Days after written notice from the City; (ii) Contractor fails to perform its obligations under any Section of this Agreement and its failure to perform is not cured within ten (10) Business Days after written notice from the City, provided that if the nature of the breach is such that it will reasonably require more than ten (10) Business Days to cure, Contractor shall not be in default so long as it promptly commences the cure and diligently proceeds to completion of the cure, and provided further that neither notice nor opportunity to cure applies to events described in Subsections (iii) through (vii); (iii) Contractor ceases to provide Collection and transportation services for a period of two (2) Business Days for any reason within Contractor's control, except for events described in Section 11.06; (iv) Contractor files a voluntary petition for relief under any bankruptcy, insolvency or similar law; (v) an involuntary petition brought against Contractor under any bankruptcy, insolvency, or similar law which remains undismissed or unstayed for ninety (90) days; (vi) Contractor fails to furnish a replacement bond or a continuation certificate of the existing bond not less than ten (10) days before expiration of the bond, as required by Article 10 or fails to maintain all required insurance coverages in force; and (vii) a representation or warranty contained in Section 2 proves to be false or misleading in a material respect as of the date such representation or warranty was made. Each such event of default shall constitute a material breach of this Agreement.

11.09 CITY'S RIGHT TO TERMINATE AGREEMENT

In the event of Contractor default, including cancellation of insurances as required in Article 10 of this Agreement, City may terminate this Agreement after a hearing before the City Council. Contractor shall be given at least twenty (20) days notice prior to said hearing and shall have an opportunity to be heard at the hearing before the City Council.

11.10 CITY'S RIGHT TO LIQUIDATED DAMAGES

11.10.01 **Material Breach.** The City finds, and Contractor 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 material breach by Contractor of its obligations under this Agreement. The factors relating to the impracticality 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 services; (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) that services 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.

11.10.02 **Amount.** After providing Contractor notice and an opportunity to cure set forth herein, the City Council may, in its discretion, assess liquidated damages in an amount not to exceed One Thousand Dollars (\$1,000.00) per day, per incident for each calendar day that service is not provided by Contractor in accordance with this Agreement. The Parties acknowledge that the phrase "ceases to provide Collection and transportation services" (Section 11.08 iii) refers to a comprehensive failure to perform and does not mean an occasional missed pick-up or other similar mistake. The amount of the liquidated damages that may be assessed by the City Council shall be adjusted annually each July 1st by the amount of change in the CPI according to the procedure specified in Article 7 for Contractor compensation. In addition, the City Council may order the assessment against the bond required by Section 10.02, the termination of the Agreement, or both.

11.10.03 **Payment.** The City finds, and Contractor acknowledges and agrees, that the above described liquidated damage provisions represent a reasonable sum in light of all the circumstances. Said liquidated damages sums shall be applicable to each incident and each Business Day of delay during which Contractor has been found by the City Council to be in material default pursuant to this Section. The Contractor shall pay any liquidated damages assessed by the City Council within ten (10) days after they are assessed.

11.11 CITY'S ADDITIONAL REMEDIES

In addition to the remedies set forth in this Article, the City shall have the following rights and remedies:

11.11.01 **Rental of Equipment and Facilities.** To rent or lease equipment from Contractor at its fair and reasonable rental value for the purpose of performing the services which Contractor is obligated to perform pursuant to this Agreement, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to the City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to possess the equipment. If the City exercises its rights under this

Section, the City shall pay Contractor the reasonable rental value of the equipment so taken for the period of the City's possession thereof.

11.11.02 Performance by Others. The right to license others to perform the services otherwise to be performed by Contractor hereunder or to perform such services itself.

11.11.03 Damages. The right to obtain damages and/or injunctive relief. Both Parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, the City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Agreement and to enjoin the breach thereof.

11.12 RIGHTS OF CITY TO PERFORM DURING EMERGENCY

11.12.01 Temporary Possession. Should Contractor, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 11.06, "force majeure", refuse or be unable to collect, transport, Recycle, compost, and dispose, and provide temporary Bin/roll-off services for any or all of the Refuse, compostables, and Recyclable Materials which it is obligated under this Agreement for a period of more than seventy-two (72) hours, and if as a result thereof, debris, Refuse, compostables, Recyclable Materials, and C&D Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event the City shall have the right, upon twenty-four (24) hour prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in the Collection, transportation, Recycling, composting, and disposal of Solid Waste and C&D Waste and provide temporary Bin/roll-off services under this Agreement, and to use such equipment and facilities to collect, Recycle, compost, and transport any or all debris, Refuse, compostables, Recyclable Materials, and C&D Waste and provide temporary Bin/roll-off services which Contractor would otherwise be obligated to collect, Recycle, compost, transport, and dispose of Solid Waste and C&D Waste and provide temporary Bin/roll-off services pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for the City's use and pay and/or reimburse the City for such reasonable costs related to the temporary possession and operation, of such equipment and facilities, and/or provision of such services as defined herein.

11.12.02 No Payment; Relinquishment. Contractor agrees that, in such event, the City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge, provided that the City agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment and facilities. The City agrees that it shall immediately relinquish possession of all of the above mentioned property to Contractor upon receipt of written notice from Contractor to the effect that it is able to resume its normal responsibilities under this Agreement.

11.12.03 Emergency Response Plan. Contractor shall provide services as specified in Attachment G.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.01 GOVERNING LAW

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

12.02 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 San Bernardino County.

12.03 BINDING ON SUCESSORS

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

12.04 PARTIES IN INTEREST

Nothing in this Agreement is intended to confer any rights on any Persons other than the Parties to it and their permitted successors and assigns.

12.05 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.

12.06 ATTACHMENTS

Each of the attachments, identified as Attachments "A" through "G", is attached hereto and incorporated herein and made a part hereof by this reference.

12.07 ENTIRE AGREEMENT

This Agreement, including the attachments, represents the full and entire agreement between the Parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

12.08 SECTION HEADINGS

The article headings, section headings, and table of contents 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.

12.09 INTERPRETATION

This Agreement 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.

12.10 AMENDMENT

This Agreement may not be modified or amended in any respect except by a writing signed by the Parties.

12.11 SEVERABILITY

If a court of competent jurisdiction holds any nonmaterial provision of this Agreement 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.

12.12 COSTS AND ATTORNEY'S FEES

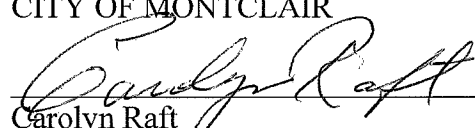
The prevailing Party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs expended in connection with such an action from the other Party. However, each Party shall bear its own attorneys' fees.

12.13 REFERENCE TO LAWS

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

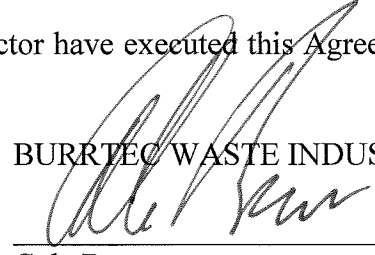
IN WITNESS WHEREOF, the City and Contractor have executed this Agreement as of the day and year first above written:

CITY OF MONTCLAIR


Carolyn Raft
Mayor Pro Tem


5.21.18
Date

BURRTEC WASTE INDUSTRIES, INC.

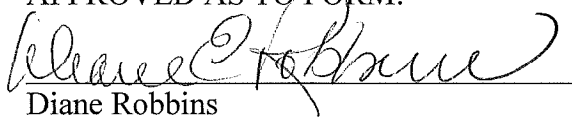

Cole Burr
President

6-7-18
Date

ATTEST:


Andrea Phillips
City Clerk

APPROVED AS TO FORM:


Diane Robbins
City Attorney

ATTACHMENT "A"
AGREEMENT NO. 18-26
BETWEEN THE CITY OF MONTCLAIR
AND
BURRTEC WASTE INDUSTRIES, INC.
DEFINITION OF TERMS

1. "Act" shall mean the California Integrated Waste Management Act.
2. "Applicable Law" shall mean all law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of San Bernardino, City of Montclair, regional or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Contractor's services or the performance of the parties' respective obligations hereunder including any of the foregoing that concern health, safety, fire, environmental protection, labor relations, mitigation, monitoring plans, building codes, zoning, nondiscrimination, and the payment of minimum wages. All references herein to Applicable Law include subsequent amendment or modifications thereof, unless otherwise specified.
3. "Bin" shall mean a covered or fully enclosed moveable Container in which putrescible and non-putrescible Solid Wastes or Recyclable Materials are stored until removed from the Premises including, but not limited to, privately owned or proprietary Bins, roll-off-type Debris Boxes, or enclosed roll-off-type Stationary Compactors.
4. "Bulky Item" or "Bulky Waste" shall mean Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: 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 (vacuum cleaners, phones, cell phones, etc.); 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. Exclusion from the Bulky Items are materials (including plumbing fixtures and carpet) from renovation/additions to homes that are considered C&D Materials.
5. "Business Day" shall mean any day of the regular Monday through Friday workweek, except Holidays.
6. "Cart" shall mean 60-gallon or larger plastic container, as further described in the Agreement, provided by Contractor, equipped with wheels, handles and a tight-fitting

cover. Carts are capable of being mechanically unloaded into Contractor's Collection vehicles.

7. "City" means the City of Montclair or any governmental entity that may herein after assume waste management obligations of the City, including any joint exercise of powers authority or other similar public entity with which the City participates or contracts with, established to provide Solid Waste management services or meet Solid Waste Diversion requirements under Applicable Law.
8. "City Facility" shall mean any building, park, or other site owned, leased, controlled, or used regularly and significantly by the City for public purposes. Any site owned or leased by City and used for private purposes, such as a business establishment, that charges the public or its Customers a fee for its goods or services shall be deemed to not be a City Facility.
9. "City Fees" shall mean the Franchise Fee, Diversion fee, or other fee levied by City and included in Contractor's rate charged to Customer.
10. "Collection" shall mean collection of Solid Waste and its transportation to a disposal site.
11. "Commercial Premises" shall mean any premises occupied by stores, offices, and other commercial facilities providing goods or services.
12. "Construction and Demolition Waste" ("C&D Waste" or "C&D Material") shall mean building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22, Section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe, steel and other metals. The material may be commingled along with rock, soil, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.
13. "Consumer Price Index" and "CPI" shall mean the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics, All Items, for All Urban Consumers, All Items, Los Angeles-Riverside-Orange County, California Area, Base Period, 1982-84 = 100, for the previous 12 months endings in December. For example, the adjustment for July ~~2018~~ 2019 would be based upon the CPI change published for January ~~2017~~ 2018 through December ~~2017~~ 2018, except that if the change is a decrease, rates shall not be decreased.
14. "Container" shall mean any Cart, Bin, or Debris Box provided by Contractor; or any Stationary Compactor provided by Customer for the purpose of storage and Collection of Refuse, Recyclable Materials, Green Waste, Food Waste or C&D Waste.
15. "Contract Maintenance Fee" shall mean the fee Contractor shall pay to the City as further specified in Article 6.04.

16. "Contractor" shall mean Burrtec Waste Industries, Inc.
17. "County" shall mean the County of San Bernardino.
18. "Curbside" or "Curb" shall mean a location for the Collection of Refuse, Recyclable Materials, Green Waste, and Bulky Items within three (3) feet from a roadway or in an alleyway.
19. "Customer" means the generator (including owners, tenants, occupants and/or Persons having the care or control of any premises within the City) of Refuse to which Contractor is required to provide Services.
20. "Debris Box" shall mean an industry-standard Container of 10-, 20-, 30- or 40-cubic-yard capacity designed and constructed for the storage and disposal of Refuse and C&D Waste.
21. "Disposal Charge" shall mean the portion of the rates in Attachment A included to cover payment of landfill or transfer station tipping fees.
22. "Disposal Facility" means the Facility or Facilities for disposing of Refuse and/or residue from a Processing Facility, as designated by Contractor and approved by the City or as designated by the City.
23. "Disposal Tip Fee," "Tip Fee," or "Tipping Fee" shall mean the cost imposed at a Disposal Facility, Processing Facility, and/or Transfer Facility for the receiving and handling of materials Collected by Contractor.
24. "Diversion" shall mean the removal of materials found in the waste stream from landfill disposal for reuse, Recycling, or processing for later Recycling.
25. "Dwelling" shall mean any Premises intended for occupation as living quarters.
26. "Effective Date" shall mean the date upon which the franchise and this Agreement are deemed to commence and when all of the conditions precedent have been satisfied.
27. "Electronic Waste" or "E-Waste" means consumer electronic equipment that is no longer wanted and can include, but is not limited to, computers, printers, televisions, video recording equipment, cell phones, fax machines, stereos, and electronic games.
28. "Food Waste" means food that is discarded or uneaten, acquired for animal or human consumption, is separated from municipal solid waste stream, and that does not meet the definition of "agricultural material."
29. "Franchise Fee" shall mean the fee Contractor pays to the City for the exclusive franchise granted to Contractor by this Agreement, and to reimburse the City for costs incurred in administering this Agreement as further specified in Article 6.02.

30. "Garbage" shall mean Food Waste and animal or vegetable waste that attends or results from the storage, preparation, cooking, or handling of food stuffs.
31. "Generator" or "Waste Generator" shall mean the owner or occupant of any Premises located in City that generates or accumulates Solid Waste.
32. "Green Waste" shall mean organic waste generated from any landscape including grass clippings, leaves, prunings, tree trimmings, weeds, branches, brush, and similar organic material generated from landscapes or gardens and segregated from other waste material.
33. "Gross Receipts" shall mean any and all revenues, receipts, or compensation in any form received or collected by or on behalf of Contractor or its subsidiaries, parent companies, or other affiliates of Contractor for the Collection, transportation and disposal of municipal Solid Waste by Contractor pursuant to the Agreement including, but not limited to, Customer fees for the Collection, transportation, and disposal of municipal Solid Waste, payments for regular and special services, Pass-Through Cost collected on behalf of the City, and Collections received on delinquent accounts, without subtracting Franchise Fees, any Recycling fees, Disposal Charge, or any other cost of doing business and the sales revenue from the sale of Recyclable Materials. Gross Receipts do not include uncollectible accounts and pass-through costs collected on behalf of the State of California or other governmental agencies.
34. "Hazardous Waste" means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following: (1) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or (2) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of or otherwise managed. "Hazardous Waste" includes all substances defined as Hazardous Waste, extremely Hazardous Waste, or acutely Hazardous Waste in California Health and Safety Code Sections 25110.02, 25115, and 25117, or in future amendments to or modifications of such statutes, or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.).
35. "Holiday" shall mean the following City-designated Holidays: New Year's Day, Memorial Day, Labor Day, Thanksgiving Day, Independence Day, and Christmas Day.
36. "Household Hazardous Waste" and "HHW" shall mean Hazardous Waste generated at Residential Premises.
37. "Individual Collection" shall mean the Collection services provided to Residential Premises from Containers not shared with other premises.
38. "Industrial Premises" shall mean premises occupied by manufacturing operations and other industrial facilities.

39. "Institutional Premises" shall mean premises occupied by educational, health care, correctional, research, and other similar facilities.
40. "Multifamily Dwelling" shall mean a residential dwelling that is part of an apartment building or other attached Residential Premises.
41. "Owner" shall mean the Person holding legal title to the real property constituting the Premises to which MSW collection service is to be provided under this Agreement.
42. "Party" or "Parties" shall mean the City and the Contractor, individually and together.
43. "Pass-Through Cost" shall mean an expense to Contractor, such as the Disposal Tip Fee or City Franchise Fee, which is offset by a like amount of revenue so as to have no adverse financial impact on Contractor.
44. "Person" shall mean an individual, limited-liability-company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
45. "Premises" shall mean any land or building within the City where Solid Waste is generated or accumulated.
46. "Processing Facility" shall mean the facility or facilities for sorting and/or processing commingled or source-separated Recyclable Materials, C&D Waste, mixed Refuse, or the processing or composting of Green Waste and/or Food Waste selected by Contractor and approved by the City.
47. "Property Tax Bill" shall mean the annual billing by the County of San Bernardino for ad valorem taxes and special assessments on real estate or interests in real estate.
48. "Reasonable Compensation" shall mean the payment that a reasonably prudent business Person would expect under the same or similar circumstances. The compensation shall be determined by the sum total of (i) the direct operating cost of providing the service; and (ii) an allowance for overhead expense and profit equal to the three (3) year average combined overhead and profit expressed as a percent of total revenue reported by the two (2) largest publicly traded Solid Waste collection firms, determined by total revenue, as reported in their year-end financial statements published in their most recent annual reports applied to the total operating cost of the service.
49. "Recyclable Materials" shall mean materials which are capable of being Recycled and that are segregated from other waste material for Collection and Recycling, rather than Collection and disposal.
50. "Recycle" and "Recycling" shall mean the process of collecting, sorting, cleaning, treating, and reconstituting materials that would otherwise become Solid Waste and returning these materials to the economic mainstream in the form of raw materials for

new, reused, or reconstituted products which meet the quality standards to be used in the marketplace.

51. "Refuse" shall mean Garbage and Rubbish.
52. "Residential" shall mean any building or structure, or portion thereof, that is used for Residential housing purposes.
53. "Residential Premises" shall mean single-family homes, townhouses, multiunit buildings such as apartments and condominiums, and mobile home parks.
54. "Rubbish" shall mean non-putrescible Solid Waste such as ashes, paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, plastics, and rubber by-products.
55. "Service Contract" shall mean a written agreement between Customer and Contractor specifying the terms and conditions of the services provided to Customer by Contractor.
56. "Service Sector" shall mean the classification of Contractor's Customers by the groupings of Cart service, Bin service, or Debris Box and Stationary Compactor service.
57. "Single-Family Dwelling" shall mean a detached Residential Premises intended to be occupied by a single-family unit.
58. "Solid Waste" shall mean all putrescible and non-putrescible Refuse, Recyclable Materials, Green Waste, Food Waste, and C&D Waste and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Materials.
59. "Solid Waste Handling Services" shall mean the Collection and disposal of Refuse, Recyclable Materials, Green Waste, Food Waste, and C&D Waste from Residential, Commercial, Industrial, and Institutional Premises within City.
60. "State" shall mean the State of California.
61. "Stationary Compactor" shall mean a Container used to deposit and store Refuse for Collection by Contractor in which the contents are compacted by mechanical means.
62. "Street Sweepings" shall mean the particles and debris collected from roadways either manually or mechanically either as part of routine roadway maintenance or from the cleanup of roadways dirtied by construction activities.
63. "Term" of this Agreement shall have the meaning specified in Article 3.11.
64. "Ton" shall mean a short ton of 2,000 pounds.

65. "Transfer Facility" shall mean that facility selected and used by Contractor to receive Solid Waste, temporarily store, and to transfer the Solid Waste directly from smaller to larger vehicles for transport to a Disposal Facility.
66. "Uncontained Waste" shall mean Refuse, Recyclable Materials, Green Waste, Food Waste and C&D Waste not fully contained within Containers with lids fully closed.
67. "Used Motor Oil" or "Used Oil" shall mean any oil that has been refined from crude oil or that has been synthetically produced and: (1) is no longer useful to the Customer because of extended storage, spillage, or contamination with non-20 hazardous impurities such as dirt or water; or (2) has been used and as a result of such use has been contaminated with physical or chemical impurities.
68. "Vehicle" shall mean a truck or other vehicle designed for the Collection and disposal of Solid Waste.
69. "Waste Generator" shall mean any owner or occupant of any Premises in City that generates or accumulates Refuse.
70. "White Goods" shall mean kitchen and other large appliances.

ATTACHMENT "B"
AGREEMENT NO. 18-26
BETWEEN THE CITY OF MONTCLAIR
AND
BURRTEC WASTE INDUSTRIES, INC.
SCOPE OF COLLECTION SERVICES

Work to be performed by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required.

Contractor shall perform all work in a thorough and professional manner so that the residents and businesses within City are provided reliable, courteous, and high-quality service at all times.

1. Residential Collection Services

- (a) Regular Collection Services. Contractor shall Collect Refuse, Recyclable Materials and Green Waste from Contractor-provided Carts for all Residential Premises subscribing to individual Collection, except Premises subscribing to Bin service.
- (b) Collection Frequency. Collections shall be performed once weekly.
- (c) Collection Location. Collections shall be performed at Curbside. Contractor shall not be required to Collect from any Cart that:
 - (1) Is not placed Curbside, except for Premises receiving walk-in service
 - (2) Is less than three (3) feet from any obstruction including a vehicle, fence, lamppost, power pole, or mailbox
 - (3) Is less than one (1) foot from another automated Cart
- (d) Containers. Contractor shall provide each Residential Premises with three (3) industry-standard Carts, one (1) each for Refuse, Recyclable Materials, and Green Waste. Each Cart shall be affixed with wheels and hinged lids and shall be uniform in color for the purpose designated.
- (e) Refuse Cart. The Cart designated for Refuse shall be black in color and of 95-gallon capacity except that for Customers qualified by City as "seniors" shall be provided a 65-gallon black Cart.
- (f) Recycling Cart. The Cart designated for commingled Recyclable Materials shall be blue in color and of 60-gallon capacity.
- (g) Green Cart. The Cart designated for Green Waste shall be green in color and of 95-gallon capacity.

- (h) Extra Carts. Upon request of resident and direction of City, Contractor shall provide extra Carts for an additional monthly fee for periods of not less than six (6) months.
- (i) Damaged Carts. Contractor shall replace damaged Containers within forty-eight (48) hours of notice by City or Customer.

2. Special Collection Services

- (a) Walk-In Service. Contractor shall provide, at no additional charge, walk-in backyard or side-yard Collection to any Residential Premise in which the only adult occupant(s) is a disabled person meeting the requirements of the California Department of Motor Vehicles for the issuance of an N1-Permanent disabled person parking placard.
- (b) Bulky/Item Collection. Contractor shall provide each Residential Premise four (4) annual Curbside Collections of up to five (5) Bulky Items per Collection at no cost to Customer. Contractor shall Collect extra Bulky Items beyond five (5) or perform extra Collections of Bulky Items beyond the four (4) annual complimentary Collections at Residential Premises for an additional fee.
- (c) Christmas Tree Collection. Contractor shall provide Curbside Collection of natural Christmas trees for two (2) weeks following December 26th of each year. Christmas trees need not be contained in Customer's Green Waste Cart and shall be cut into sections not longer than four (4) feet in length with all ornaments and decorations removed. This service is in addition to the four annual Collections of Bulky Items.

3. Commercial, Institutional, and Industrial Collection Services

- (a) Regular Collection Services. Contractor shall Collect Refuse and Recyclable Materials from Contractor-provided Bins, Debris Boxes, or Stationary Compactors for all Commercial, Institutional, and Industrial Premises, and Residential Premises subscribing to Bin service in accordance with the Service Contract.
- (b) Collection Frequency
 - (1) Collections from Bins at Commercial, Institutional, and Industrial Premises and from Bins at Residential Premises, including townhouses and condominiums, shall be performed at least once weekly.
 - (2) Collections from Bins at Apartments and Planned Unit Developments shall be performed at least twice weekly.

- (3) Collections from Debris Boxes and Compactors containing Refuse at Commercial, Institutional, and Industrial Premises shall be performed at least once weekly.
- (4) Collections from Debris Boxes or Stationary Compactors used exclusively for Recyclable Materials shall be collected on an as-needed basis.
- (c) Collection Location. Collections from Bins, Debris Boxes, or Stationary Compactors shall be performed on the Premises of the Customer or in an alleyway readily accessible to Contractor's Collection vehicle at the time of Collection. Containers shall be placed in enclosures or otherwise placed in compliance with City's standards and requirements.
- (d) Containers
 - (1) Contractor-Provided Bins and Debris Boxes. Contractor shall offer each Commercial, Institutional, and Industrial Premises or Residential Premises subscribing to Bin service a choice of an industry-standard Bin service (of 2-, 3-, or 4-cubic-yard capacities) or offer each Commercial, Institutional, and Industrial Premises an industry-standard Debris Box service (of 10-, 20-, 30-, or 40-cubic-yard capacities) and will provide the Container(s) selected by the Customer. Bins shall be provided with attached lids. The number of Bins and frequency of Collection shall be mutually agreed by Customer and Contractor and shall be adequate to contain all Refuse within the Container (in the case of Bins with the lids closed) between Collections. Disputes about the adequacy of service subscription shall be referred to the City Manager or his designee whose decision shall be final.
 - (2) Customer-Provided Stationary Compactors. Contractor shall service Stationary Compactors used exclusively for either Refuse or Recyclable Materials (of 10-, 20-, 30-, or 40-cubic-yard capacities) provided by Customer that conform to Contractor's equipment specifications.
- (e) Recyclable Materials. Commercial, Institutional, and Industrial Premises or Residential Premises subscribing to Bin service may arrange one (1) or more Containers for Recyclable Materials for an additional fee.

4. Temporary Bin Services. Upon request of Customer and for the fees approved by City, Contractor shall provide Bins for temporary use by Residential, Commercial, Institutional, and Industrial Premises for storage and disposal of Refuse in accordance with the Service Contract.

- (a) Collection Frequency. Temporary Bin rentals shall be for periods in increments of seven (7) days and shall include one collection.
- (b) Collection Location. Temporary Bins shall be placed according to the subscriber's request provided the Bin shall not obstruct traffic or endanger public safety.

- (c) Containers. Temporary Bins shall be industry-standard three (3) cubic yard capacity.

5. Temporary Debris Box Services. Upon request of Customer and for the fees approved by City, Contractor shall provide Debris Boxes for temporary use by Residential, Commercial, Institutional, or Industrial Premises for Refuse, Green Waste, Food Waste or C&D Waste in accordance with the Service Contract.

- (a) Collection Frequency. Temporary Debris Box rentals shall be for periods in increments of seven (7) days.
- (b) Collection Location. Temporary Debris Boxes shall be placed according to the subscriber's request provided the Debris Box shall not obstruct traffic or endanger public safety.
- (c) Containers. Contractor shall offer Customers industry-standard Debris Boxes (of 10-, 20-, 30-, and 40-cubic yard capacities).

6. C&D Waste. Contractor shall collect mixed and source-separated C&D Waste using Contractor-provided industry-standard Debris Boxes at a frequency specified by Customer in accordance with the Service Contract and transport said C&D Waste to a processing facility in a manner that maximizes Diversion of the material from landfill disposal.

7. City Facility Collection Service. Contractor 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 for public purposes as designated in Attachment C. City Facilities not operated for a public purpose or operated as a City enterprise shall pay for service at the rates and charges in effect at the time service is rendered and under the same terms and conditions as any other Commercial, Institutional, or Industrial Customer.

- (a) Solid Waste. Contractor shall provide separate Containers appropriate for the amount of materials on a facility-by-facility basis for Solid Waste disposal.
- (b) Recyclable Materials. Contractor shall provide separate Containers appropriate for the amount of materials on a facility-by-facility basis for Diversion of source-separated commingled Recyclable Materials.
- (c) Green Waste. Contractor shall provide separate Containers appropriate for the amount of materials at City's Public Works Maintenance Facility for Diversion of Green Waste.
- (d) C&D Waste. Contractor shall provide separate Containers appropriate for the amount of materials at City's Public Works Maintenance Facility for Diversion of incidental C&D Waste.

ATTACHMENT "C"
AGREEMENT NO. 18-26
BETWEEN THE CITY OF MONTCLAIR
AND
BURRTEC WASTE INDUSTRIES
CITY FACILITIES COLLECTION SERVICES

1. Contractor shall provide Collection services at no charge to the following City Facilities:
 - A. Civic Center, 5111 Benito Street
 - B. Fire Station No. 1, 8901 Monte Vista Avenue
 - C. Fire Station No. 2, 10825 Monte Vista Avenue
 - D. Montclair Branch Library, 9955 Fremont Avenue
 - E. Parks:
 - Essex Park, 4295 Howard Street
 - Golden Girls/Vernon Park, 9762 Benson Avenue
 - Kingsley Park, 5575 Kingsley Street
 - MacArthur Park, 5450 Deodar Street
 - Moreno Vista Park, 4675 Moreno Street
 - Saratoga Park, 5397 Kingsley Street
 - Sunrise Park, 5616 Princeton Street
 - Sunset Park, 4351 Orchard Street
 - Wilderness Park, 4592 San Bernardino Street
 - F. Police Department, 4870 Arrow Highway
 - G. Public Works Maintenance Facility, 10835 Monte Vista Avenue
 - H. And all other non-Residential properties now owned or to be owned at an undetermined date by the City of Montclair, Montclair Housing Authority and/or Montclair Housing Corporation

ATTACHMENT "D"
AGREEMENT NO. 18-26
BETWEEN THE CITY OF MONTCALIR
AND
BURRTEC WASTE INDUSTRIES, INC.
ACCEPTABLE RECYCLABLE MATERIALS

- I. The following materials are acceptable for placement in Recycling Carts:
- Aluminum cans
 - Aerosol cans
 - Brochures
 - Cardboard
 - Catalogs
 - Cereal boxes
 - Clothes hangers
 - Computer paper
 - Coupons
 - Envelopes
 - Junk mail
 - Laundry bottles
 - Magazines/catalogs
 - Newspapers
 - Paper
 - Paper tubes
 - Phone books
 - Pizza boxes
 - Plastic Containers #1 - #7
 - Plastic milk jugs
 - Tin cans
 - Tissue boxes
 - Wrapping paper
 - Styrofoam cups/plates/packaging
- II. The following items are NOT accepted for Recycling:
- Batteries
 - Ceramic cups and plates
 - Clothing/shoes
 - Diapers
 - Drinking glasses
 - Furniture, carpet and other products containing fabric
 - Garden hoses
 - Light bulbs
 - Mirrors and window glass

ATTACHMENT "E"
AGREEMENT NO. 11 -57
BETWEEN THE CITY OF MONTCLAIR
AND
BURRTEC WASTE INDUSTRIES, INC.
ACCEPTABLE GREEN WASTE MATERIALS

- I. The following materials are acceptable for deposit in Green Waste Carts:
- Grass clippings
 - Leaves
 - Tree trimmings
 - Brush
 - Shrub trimmings
 - Weeds
 - Palm fronds
- II. The following materials are NOT accepted in Green Waste Carts:
- Dirt
 - Concrete
 - Rock
 - Cactus
 - Animal waste
 - Food Waste

ATTACHMENT "F"
 AGREEMENT NO. 18-26
 BETWEEN THE CITY OF MONTCLAIR
 AND
 BURRTEC WASTE INDUSTRIES, INC.
 RATE SCHEDULE EFFECTIVE MARCH 1, 2018

<i>Service/Size/Pickup</i>	<i>Rate</i>
Residential Refuse Service	\$ 33.60
Residential Bin 1.5/Frequency 1	\$ 114.01
Multifamily Commercial:	
Single Family Bin 1.5/Frequency 1	\$ 114.01
Bin 1.5/Frequency 1	\$ 125.98
Bin 1.5/Frequency 2	\$ 236.64
Bin 1.5/Frequency 3	\$ 347.25
Bin 2.0/Frequency 1	\$ 147.70
Bin 2.0/Frequency 2	\$ 268.03
Bin 2.0/Frequency 3	\$ 390.71
Bin 3.0/Frequency 1	\$ 208.75
Bin 3.0/Frequency 2	\$ 352.80
Bin 3.0/Frequency 3	\$ 499.60
Bin 3.0/Frequency 4	\$ 646.42
Bin 3.0/Frequency 5	\$ 793.21
Bin 3.0/Frequency 6	\$ 940.04
Commercial with Recycling:	
Bin 1.5/Frequency 1	\$ 118.92
Bin 1.5/Frequency 2	\$ 222.76
Bin 1.5/Frequency 3	\$ 329.06
Bin 1.5/Frequency 4	\$ 412.46
Bin 1.5/Frequency 5	\$ 504.72
Bin 1.5/Frequency 6	\$ 597.03
Bin 2.0/Frequency 1	\$ 139.04
Bin 2.0/Frequency 2	\$ 257.36
Bin 2.0/Frequency 3	\$ 374.43
Bin 2.0/Frequency 4	\$ 471.60
Bin 2.0/Frequency 5	\$ 578.53
Bin 2.0/Frequency 6	\$ 685.51
Bin 3.0/Frequency 1	\$ 197.47
Bin 3.0/Frequency 2	\$ 336.54
Bin 3.0/Frequency 3	\$ 474.71
Bin 3.0/Frequency 4	\$ 613.39
Bin 3.0/Frequency 5	\$ 752.06
Bin 3.0/Frequency 6	\$ 890.76
Commercial with Recycling Barrels:	
95Gal/Frequency 1	\$ 36.03
95Gal/Frequency 2	\$ 59.98
95Gal/Frequency 3	\$ 84.90
95Gal/Frequency 4	\$ 109.84
95Gal/Frequency 5	\$ 134.77
95Gal/Frequency 6	\$ 159.70

<i>Service/Size/Pickup</i>	<i>Rate</i>
Commercial Food Waste:	
Bin 1.5/Frequency 1	\$ 178.07
Bin 1.5/Frequency 2	\$ 310.13
Bin 1.5/Frequency 3	\$ 432.90
Bin 1.5/Frequency 4	\$ 554.46
Bin 1.5/Frequency 5	\$ 674.63
Bin 1.5/Frequency 6	\$ 795.09
Bin 2.0/Frequency 1	\$ 220.47
Bin 2.0/Frequency 2	\$ 398.82
Bin 2.0/Frequency 3	\$ 563.67
Bin 2.0/Frequency 4	\$ 729.72
Bin 2.0/Frequency 5	\$ 921.74
Bin 2.0/Frequency 6	\$ 1,059.90
Commercial Food Waste Barrels:	
65Gal/Frequency 1	\$ 59.62
65Gal/Frequency 2	\$ 108.12
65Gal/Frequency 3	\$ 153.05
65Gal/Frequency 4	\$ 198.29
65Gal/Frequency 5	\$ 250.40
65Gal/Frequency 6	\$ 288.29
Commercial Greenwaste:	
Bin 3.0/Frequency 1	\$ 173.27
Bin 3.0/Frequency 2	\$ 295.33
Bin 3.0/Frequency 3	\$ 417.45
Bin 3.0/Frequency 4	\$ 539.52
Bin 3.0/Frequency 5	\$ 661.61
Bin 3.0/Frequency 6	\$ 783.69
Commercial Compacted:	
Bin 3.0/Frequency 1	\$ 255.75
Bin 3.0/Frequency 2	\$ 461.16
Bin 3.0/Frequency 3	\$ 665.76
Bin 3.0/Frequency 4	\$ 870.31
Bin 3.0/Frequency 5	\$ 1,074.87
Bin 3.0/Frequency 6	\$ 1,280.28
Bin 4.0/Frequency 3	\$ 883.78
Commercial Temporary:	
Bin 3.0/Frequency 7	\$ 97.02
Commercial Permanent Roll-Off:	
Bin 40/Frequency 6	\$ 437.46
Bin 10/Frequency 8	\$ 527.15
Bin 20/Frequency 8	\$ 527.15
Bin 40 Comp/Frequency 8	\$ 527.15

<i>Service/Size/Pickup</i>	<i>Rate</i>
Commercial Temporary Roll-Off:	
Bin 40/Frequency 6	\$ 460.61
Bin 10/Frequency 8	\$ 558.01
Bin 20/Frequency 8	\$ 558.01
Bin 40 Comp/Frequency 8	\$ 558.01
Commercial Recycling Roll-Off:	
Bin 40/Frequency 6	\$ 168.39
Bin 10/Frequency 8	\$ 168.39
Bin 20/Frequency 8	\$ 168.39
Bin 40 Comp/Frequency 8	\$ 168.39
Commercial Extra Services:	
Locking Container	\$ 6.56
Steam Cleaning (Compactors)	\$ 89.48
Bulky Item Trip Fee	\$ 41.77
Bulky Item Fee (each item)	\$ 11.93
Relocation Fee (Roll-Off)	\$ 89.48
Tilt hopper	\$ 25.95
Rental Fee (per day)	\$ 24.06
Extra Pick-UP:	
Commercial Barrel	\$ 25.95
Commercial Trash Bin	\$ 43.23
MultiFamily Trash Bin	\$ 45.31
Compact Trash Bin	\$ 103.27
Green Waste Bin	\$ 69.97
Food Waste Barrel	\$ 24.08
Food Waste Bin	\$ 89.04

ATTACHMENT "G"
TO
AGREEMENT NO. 18-26
BETWEEN THE CITY OF MONTCLAIR
AND
BURRTEC WASTE INDUSTRIES, INC.
EMERGENCY RESPONSE PLAN

EMERGENCY RESPONSE PLAN. Burrtec Waste Industries ("Burrtec") is completely versed and prepared to respond in emergency and or disaster situations with regard to debris management. The following debris management plan will be put into action with the City's approval in the event of an emergency or disaster.

1. Debris Management Plan Overview. Burrtec will facilitate and coordinate the removal, Collection, and disposal of debris following a disaster to mitigate against any potential threat to the health, safety, and welfare of impacted citizens, and expedite recovery efforts in the impacted area.

Natural and man-made disasters precipitate a variety of debris including, but not limited to trees, sand, gravel, building/construction materials, vehicles, and personal property. The debris management program implemented by Burrtec to handle debris will be based on the company's approach to solid waste reduction, reuse, reclamation, resources recovery, incineration, and landfilling, respectively.

2. Site Selection. Debris storage and reduction sites will be identified and evaluated by a site selection team comprised of Burrtec and City Staff familiar with the area. Initially, debris will be placed in temporary predetermined holding areas before the onset of a disaster, until such time as the detailed plan for debris Collection and disposal is put into action. Temporary debris collection sites should be readily accessible by recovery equipment and should not require extensive preparation or coordination for use. Collection sites will be on public property when feasible to facilitate the implementation of the mission and mitigate against any potential liability requirements. Activation of sites will be under the control of the City, and will be coordinated with Burrtec through an emergency operations center.

Site selection criteria will be developed into a checklist format for use by the City and Burrtec to facilitate identification and assessment of potential sites. Criteria will include such factors as ownership of property, size of parcel, surrounding land uses and environmental conditions, and transportation facilities serving the site.

3. Debris Removal Priorities. The debris removal process must be initiated promptly and conducted in an orderly, effective manner in order to protect public health and safety following a major disaster or catastrophic event. To achieve this objective, the first priority will be to clear debris from key roads in order to provide access for emergency vehicles and resources into the impacted area.

The need and demand for critical services will be increased significantly following a disaster. Accordingly, the second priority is to provide access to critical facilities pre-identified by State

and or local governments. The third priority related to the assignment of debris removal resources is elimination of debris related threats to public health and safety—including the repair, demolition, or barricading of heavily damaged and structurally unstable buildings, infrastructure, systems, or facilities that pose a danger to the public. Any actions taken to mitigate or eliminate the threat to the public health and safety must be closely coordinated with the City, its agents, property owners, and other responsible parties. If access to an area can be controlled, the City may determine it advantageous, in certain circumstances, to defer debris removal and containment activities.

Assigned City Staff and General Contractors will be responsible for all repairs, demolition, barricades, and debris placement into containers provided and removed by Burrtec.

4. Debris Classification. To facilitate the debris management process, debris will be segregated by type-categories of debris established for recovery operations should be standardized. Debris removed will primarily consist of two broad categories: clean wood debris; and construction and demolition debris.

Ineligible debris such as chemicals, petroleum products, paint products, asbestos, and power transformers are to remain in place for special handling. Any material that is found to be classified as hazardous or toxic waste shall be reported immediately to the designated coordinating agency representative. At the coordinating agency representative's direction, this material shall be segregated from the remaining debris in such a way as to allow the remaining debris to be loaded and transported. Standing broken utility poles, damaged and downed utility poles and accessories, transformers, and other electrical material will be reported to the coordinating agency representative. Emergency workers shall exercise due caution with existing overhead and underground utilities and above ground accessories, and advise the appropriate authorities of any situation that poses a health or safety risk to workers on site or to the general population.

5. Debris Disposal and Reduction. Once debris is removed from damaged sites, it will be taken to appropriate disposal and or processing locations. The four basic methods of disposal will be Recycling, grinding/chipping, burning, and landfilling. Burrtec will incorporate one or more of these methods of disposal into its debris disposal plan to achieve the greatest level of diversion while at the same time removing the disaster debris as quickly and efficiently as possible.