

**Amended and Restated Agreement**

**Between the City of Upland**

**and**

**Burrtec Waste Industries, Inc.**

**for Solid Waste Collection,**

**Processing, Disposal, and Ancillary Services**

**December 9<sup>th</sup>, 2024**

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**Amended and Restated Agreement Between the  
City of Upland and Burrtec Waste Industries, Inc. for  
Solid Waste Collection, Processing, Disposal and Ancillary Services**

This Agreement for Solid Waste Collection, Processing and Disposal Services ("Agreement") is made and entered into by and between the City of Upland, a California municipal corporation (the "City"), and Burrtec Waste Industries, Inc., a California corporation ("Collector"), as of December 9th, 2024 ("Effective Date").

This Agreement is entered into on the basis of the followings facts, understandings, and intentions of the parties:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 40000, et seq.; hereinafter the "Act") established a Solid Waste management process which requires cities and other local jurisdictions to implement source reduction, reuse, and recycling as integrated waste management practices; and

B. The Act authorizes and requires local agencies to make adequate provisions for Solid Waste handling within their jurisdictions; and

C. The State of California (the "State") has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive new integrated waste management program. Through enactment of the Act the State has directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of Solid Waste that must be disposed of by land disposal; and the City is currently required to divert Solid Waste generated in the City from landfills pursuant to the diversion provisions of AB 939, AB 341, AB 1826, SB 1383, and their implementing regulations, and may be subject to additional requirements during the Term of this Agreement; and

D. The City Council has enacted Chapter 13.28 of Title 13 of the Upland City Code, which establishes standards for the collection and removal of Solid Waste, Recyclables, and Organic Waste, the disposal of Solid Waste, the Recycling of Recyclables and Organic Waste, and requirements for Collection Agreements; and

E. Pursuant to Sections 49300 and 49500-49523 of the Act, City is authorized to enter into an exclusive agreement for the Collection and disposal of Solid Waste; and

F. Pursuant to this Agreement, City desires to engage Collector as an independent contractor to exclusively provide automated Solid Waste, Organic Waste and Recyclables collection services in the City. Collector shall furnish all personnel, equipment, and supplies necessary to collect, or otherwise remove and dispose of all Solid Waste, Organic Waste and Recyclables, as defined herein, generated or accumulated at all residential and Commercial/Industrial Premises within the City, except as otherwise specifically provided herein; and

G. Collector has represented and warranted to City that it has the experience, responsibility, and qualifications to implement the Collection of Solid Waste, Recyclables, and Organic Waste, and to arrange with residents and other entities in the City for the Collection, safe transport, processing, and disposal of all materials in compliance with Applicable Laws; and

H. The City intends that this Agreement will contribute to providing the most cost-efficient, best Solid Waste management services to its citizens;

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

**ARTICLE 1 DEFINITIONS AND CONTRACT INTERPRETATION**

1.01 **Definitions.** As used herein, capitalized words shall have the meanings set forth in Exhibit A, which shall control in the event of any conflict with the definitions used in the recitals hereto.

1.02 **Interpretation.**

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

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

c. **References to Parts.** References to Sections and Articles refer to Sections and Articles hereof, unless specified otherwise. References to Exhibits refer to Exhibits attached hereto.

d. **Examples .** Use of examples are for purpose illustration only. In the event of any ambiguity or conflict between the examples and the provisions which they illustrate, the provisions shall govern.

1.03 **Integration.** This Agreement contains the entire Agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions. All exhibits and attachments referenced herein are incorporated by reference

1.04 **Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California (without giving effects to the State's principles of conflicts of laws). Venue for suit shall be the County of San Bernardino and the Central District of the United States District Court.

1.05 **Severability.** If any clause, sentence, provision, subsection, Section or Article hereof or Exhibit hereto shall be ruled invalid by any court of competent jurisdiction, then the Parties shall:

(1) promptly meet and negotiate in good faith a substitute for such provision which shall, to the greatest extent legally permissible, effectuate the intent of the Parties therein;

(2) if necessary or desirable to accomplish preceding item (1) above, apply to the court having declared such invalidity for a judicial construction of the substituted portion of this Agreement; and

(3) negotiate such changes in, substitutions or additions to the remaining provisions hereof as may be necessary in addition to and in conjunction with preceding items (1) and (2) above to effectuate the intent of the Parties in the invalid provision.

The invalidity of such provision shall not affect any of the remaining provisions hereof, and this Agreement shall be construed and enforced as if such invalid provision did not exist.

1.06 **Construal.** 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. Collector acknowledges that it

determined to participate in the competitive procurement of this Agreement upon its choice and initiative with full knowledge of the terms, conditions and risks of participation. The Parties have negotiated this Agreement at arms' length and with advice of their respective attorneys, and no provision herein shall be construed against the City solely because it prepared this Agreement in its executed forms.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

2.01 **Of Collector.** The Collector hereby covenants, represents, and warrants the representations and warranties set forth in Exhibit B to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the Effective Date.

2.02 **Of City.** The City hereby covenants, represents,<sup>1</sup> and warrants the representations and warranties set forth in Exhibit C to Collector for the purpose of inducing Collector to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the Effective Date.

2.03 **Waiver.** The obligations of the Parties hereunder are preconditioned upon the truth and correctness of the representations and warranties made by the Parties, respectively, in this Article 2. However, either Party may waive such precondition, in whole or in part.

### ARTICLE 3 TERM OF AGREEMENT

3.01 **Term.** The Term of this Agreement shall be for a period of twenty (20) years commencing July 1, 2022 and ending June 30, 2042.

3.02 **Survival of Certain Provisions.** All representations and warranties of the Parties herein, and all indemnifications provided for herein, and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination or expiration.

3.03 **Statutory Continuation Rights.** Collector acknowledges that it is familiar with Article 3 of Chapter 6 of Part 8 of Division 30 of the Public Resources Code, commencing with Section 49520, and that such provisions are inapplicable to the Collector in this Agreement as this Agreement provides an exclusive franchise.

3.04 **Transition to Next Collector.** Upon expiration of this Agreement, if Collector and City do not enter into a succeeding agreement, Collector shall cooperate fully with City and the subsequent collector(s), franchisee(s), licensee(s), permittee(s) or other Person providing services similar to the Services so as to assure an efficient, orderly, timely and effective transition in accordance with Section 12.02c.

3.05 **Conditions Precedent.** This Agreement shall automatically expire and be of no further force or effect, without the need for notice pursuant to Section 11.02 or otherwise, if the conditions precedent set forth below are not satisfied by Collector, or waived (in written form) by City. Waiver of any of the following as a condition to the continued effectiveness of this Agreement will not preclude City from pursuing any claim for breach of this Agreement:

The representations and warranties made by Collector in Section 2.01 and Exhibit B of this Agreement are true and correct on and as of the Effective Date:

- (a) evidence of insurance coverage in compliance with Section 8.02;
- (b) the performance bond in compliance with Section 8.03; and
- (c) the Financial Guaranty Agreement in compliance with Section 8.06 of this Agreement.

**ARTICLE 4 SERVICES**

**4.01 Collection and Transportation.**

**a. Service Standards.**

(1) **General.** Collector acknowledges that one of the City's primary purposes in competitively procuring Services hereunder, selecting, Collector and executing this Agreement, is to improve the quality of Customers' waste management services. Therefore, Collector shall collect residential Solid Waste from all single-family and multi-family premises and commercial and industrial businesses under the City's jurisdiction, and shall perform all Services in a prompt, thorough, comprehensive, reliable, courteous and professional manner so that Customers receive high-quality Service at all times. Enumeration of and specifications of requirements for particular aspects of the quality of Services shall not relieve Collector of the duty and obligation of accomplishing all other aspects of Services in the manner provided in this paragraph, whether such other aspects are enumerated elsewhere herein or not.

(2) **Litter.** Collector shall clean up litter in the immediate vicinity of any Solid Waste storage area, including the areas where Containers are placed for collection, whether or not Collector has caused the litter: Collector shall discuss instances of repeated litter caused by a Customer directly with the responsible Customer and report such instances to City. City will cooperate with Collector to rectify such situation if Collector has already attempted to do so without success.

Collector shall use due care to prevent Solid Waste from being spilled or scattered during Collection and transportation. All vehicles, containers and debris boxes shall be covered during transport to the Disposal Facility, Composting Facility, and Processing Facility. Collector shall not transfer loads from one vehicle to another on any public street, unless necessitated by mechanical failure or accidental damage to a vehicle. If any Solid Waste is spilled or scattered, Collector shall immediately clean it up. Collector shall be responsible for paying any fines assessed by the operator of the Disposal Facility, Composting Facility, and Processing Facility or other Person for improperly covering loads or spills.

(3) **Respect for Property.**

(i) **Private Property.** Collector shall use due care in entering and exiting Customers' property or enclosures to provide Services. After making Collections, Collector shall close all gates opened by them and shall use the paved accessways on public or private property. Collector shall promptly repair or compensate Customer for all damage to Customer's property caused by the negligence or carelessness of Collector's employees.

(i) **Containers.** Collector shall handle Containers with due care to promote the longest possible useful life. Collector shall return containers in an upright position to a location that does not obstruct traffic or access to the Customer's property.

(ii) **Pavement.** Collector shall be responsible for damage to driving surfaces where Containers are located on public or private property, when City or Customer can demonstrate to satisfaction of City that the damages are the result of Collector's Vehicles exceeding the legal maximum weight limits of the State or the negligent operation of Vehicles by Collector's employees.

(4) **Noise.** Collector shall conduct Collection as quietly as possible and shall conform to noise level regulations. Collector will promptly resolve any noise complaints to City satisfaction. City may conduct random checks of noise emission levels to ensure compliance herewith.

b. **Scope of Regular Collection Service.** Collector shall timely and fully perform Collection Services described in Exhibit D in accordance with the provisions of this Agreement. To the extent that any portion of Services is provided exclusively by Collector, it shall be so only if Collector is and shall at all times be ready, willing, and able to provide Services in accordance herewith and with Applicable Law.

(1) Collector shall not commingle, in the vehicles or otherwise, any refuse with any Recyclables, Organic Waste or Green Waste, or any refuse, Recyclables, Organic Waste or Green Waste with each other when collected by Collector, unless otherwise specifically authorized in writing by City. Collector shall not be deemed to have violated this Section where such materials were commingled prior to Collection by Collector.

(2) Collector shall comply with the requirements of the City's Construction and Demolition Waste diversion ordinance, and Applicable Law, as may be adopted or amended, consistent with this Agreement. Collector and shall assist customers with compliance by diverting Construction and Demolition Waste to the maximum extent feasible and by providing receipts for all materials collected.

(3) Exceptions

(i) **Special Wastes.** Collector shall not be required to collect special wastes, including grease wastes from grease traps or grease interceptors.

(ii) **Recyclables Not Discarded by Customer.** Recyclables belong to the Customer until set out at the curb for transfer to Collector. customers may dispose of such Recyclables and bulky goods through other appropriate means including, but not limited to, taking them to drop-off facilities and donating or selling them to private or public entities.

(iii) **Waste Not Properly Placed in Containers.** Collector shall not be required to collect any Solid Waste that: is not placed inside the appropriate Container, bags or bundles; has been overloaded in Containers by weight or volume; or has been compacted or otherwise placed, kept, or accumulated in a manner that the Solid Waste will not, of its own weight, fall out of the Container in which it is placed when such Container is turned upside down except for excess Solid Waste or Bulky Waste properly set out. Collector shall complete and leave a Non-Collection Notice securely attached to any adjacent Container of Customer, or if no Containers are set out, to Customer's door. The use of permanent stickers to affix a Non-Collection Notice is not allowed. In the event a Customer commingles refuse, Organic Waste, or Green Waste with Recyclables for Recyclable collection or commingles refuse or Recyclables with Green Waste or Organic Waste for Green Waste or Organic Waste collection, Collector may treat such collection as a refuse collection subject to the applicable refuse Collection Rates.

(iv) **Container Not Placed in Proper or Safe Collection Location.** Collector shall provide Collection Services for all properly placed Containers except that Collector shall not be required to collect any Solid Waste from any Container which is placed in a manner which would otherwise preclude the safe pickup thereof. Collector shall complete and leave a Non-Collection Notice securely attached to such improperly placed Container. The use of permanent stickers-to affix a Non-Collection Notice is not allowed.

(v) **Unsafe Conditions.** If Collector determines that any condition at or near any collection location presents a health or safety threat to the Collector's employees, Collector shall immediately notify the City representative thereof. Upon City authorization, the Collector may discontinue collection for any such location until the safety hazard is eliminated. Collector shall complete and leave a Non-Collection Notice securely attached to Customer's Container or on the door to the Customer's premises. The use of permanent stickers to affix a Non-Collection Notice is not allowed.

(vi) **Hazardous Waste or Unsafe Materials.** If Collector determines that Containers contain Hazardous Waste or other materials that present a health or safety threat to Collector's employees, Collector may refuse to collect such Container. Collector shall notify the City Fire Department immediately. Collector will notify City thereof in its report.

c. **Special Collection Service.**

(1) **Bulky Waste.**

(i) **Resident Requested Collection.** Collector shall provide Bulky Waste collection at the curbside or alleyway upon request up to four (4) times per calendar year to each residential Customer in the City. Collector shall provide such Customer requested collection by or on the next scheduled service day of the Customer. Customer requests for such service may be done in person, over the telephone, or in writing. Collector may bill the Customer for Customer requested Bulky Waste collection services in excess of the four (4) free collections in accordance with Exhibit M. When a Customer requests a Bulky Waste collection in excess of the required four (4) free collections, the Customer shall be told the cost of the additional collection. Service specifications shall include: recovery rates pursuant to the diversion provisions of AB 939, AB 341, AB 1826, SB 1383, and their implementing regulations, and collection of all white goods, all brown goods, all couches and mattresses, and other Bulky Waste up to four (4) feet in length.

(ii) **On City Demand.** Within twenty-four (24) hours of City Notice to Collector, Collector shall pick up and dispose of Bulky Waste deposited on public streets or other public property located within the City at no charge.

(iii) **Weekly Bulky Collection Program.** In addition, Collector shall pick up Bulky Waste deposited at the City's Downtown, Memorial Park, Citrus Park, Olivedale Park, and Pacific Electric Trail from Euclid Avenue to Benson Avenue, three days each week (on Mondays, Wednesday, and Fridays).

(2) **Backyard Collection Service.** Backyard Collection shall be available to any Residential Customer upon request, for the fees specified in Exhibit M. Residential Customers, including disabled Customers, who demonstrate inability to bring Containers to the curb and meet certain eligibility requirements, as determined by the City Manager, shall not be charged a backyard collection service fee.

(3) **Christmas Tree Collection.** Collector shall collect all Christmas trees set at curbside from December 26 to January 21 annually. Collector will distribute City-provided notification to Customers by mail of such collection dates and that trees placed on the curbside at other times must be cut up for delivery as organic waste/green waste/wood waste. Collector may identify additional sites for centralized drop-off of Christmas trees by Customers and shall ensure that trees will not accumulate outside of such drop-off containers or locations. Collector shall deliver trees to a green/organic waste or composting facility for diversion.

(4) **Alley Service.** Collector acknowledges that up to approximately ten percent (10%) of Residential Customers receive pick up of collection containers in service alleys at no additional charge to the City or the Customer.

(5) **Clean-Up Programs.**

(i) **Multi Family Clean-Up.**

(ii) **City- Roll off Service.** Upon the City Manager's or designee's request, Collector shall provide at no charge six (6) times per Agreement year, a minimum of six (6) 40-cubic yard roll-off boxes for Solid Waste collection and disposal services on City sponsored projects.

(iii) **City Service Community Cleanups.** City Manager or designee, Collector shall provide, at no additional charge, large roll-off refuse containers for use at Community Cleanup events. Up to four times per year, Collector will manage an organized community cleanup effort. Collector shall deliver containers to agreed-upon collection points and shall cooperate with the City Manager or designee to remove containers and dispose of collected Solid Waste. Collector is obligated to provide the equivalent of three 40-cubic yard bin/loads per event or a maximum of 12 roll-off boxes in the calendar year. The Collector will arrange that there shall be no disposal fees charged to the City for these events. Additionally, Up to four times per year and in conjunction with community cleanup events, Collector will provide two shred trucks with the capacity to shred up to 40-cubic yards. The Collector will arrange and provide manpower and ensure that there shall be no disposal fees charged to the City for this service.

(6) **Collection From City Facilities.** Collector shall provide at no charge Solid Waste, Recycling, and Organic Waste collection services to the City facilities and properties listed in Exhibit D.

(7) **Commercial Waste Audits.** Collector shall provide free upon any Commercial Customer's request, a waste audit for the Commercial Customer's serviced facilities. The purpose of such waste audit shall be to identify opportunities for decreasing waste generation and increasing waste diversion at the Commercial Customer's serviced facilities. Collector shall inform all Commercial Customers of this free service through bill inserts a minimum of two (2) times per Agreement year. Collector shall include a listing of Customer requests for free waste audits and a summary of waste audit results for the preceding year in each annual report.

(8) **Mulch.** Collector shall provide, free of charge, a minimum of one hundred and twenty (120) cubic yards of mulch to the City upon City request, per Agreement year. The mulch shall meet the standards set forth in 14 CCR sections 18993.1 for the purpose of the City meeting its annual recovered organic waste procurement target

The City shall notify Collector in writing not less than thirty (30) calendar days prior to the date of the service. The notice to the Collector shall specify the date of delivery and collection of the Roll-Off Containers, the location(s) for delivery, and the size and number of the Roll-Off Containers to be delivered.

d. **Frequency.**

(1) **Regular Schedule**

(i) **Residential.** Collector shall collect Solid Waste, Recyclables, and Organic Waste once (1) a week from each Residential Customer as scheduled and noticed to the Customer.

(ii) **Commercial.** Collector shall collect Solid Waste, Recyclables, and Organic Waste at least once (1) a week from each Commercial Customer as scheduled and noticed to the Customer.

(iii) **City.** Collector shall collect Solid Waste, Recyclables, and Organic Waste according to a schedule mutually agreed upon by the City and Collector.

(2) **Holiday Schedule.** City-designated holidays are as follows: Christmas Day, New Year's Day, Memorial Day, Labor Day, Thanksgiving Day, and Independence Day. Collector shall notify Customers annually in advance of Holiday Collection schedule, and the City shall approve the Collector's Holiday Collection schedule in advance.

e. **Hours.**

(1) **Residential.** Collector shall perform Collection Services within residential areas only between 7:00 a.m. and 6:00 p.m., Monday through Friday. Saturday collection hours shall be between 7:00 a.m. and 6:00 p.m. Other Exceptions shall be effected only upon the mutual agreement of City and Collector.

(2) **Commercial.** Collector shall perform Collection Services within commercial areas only between 6:00 a.m. and 6:00 p.m., Monday through Saturday. Commercial collection in areas that border residential areas shall begin no earlier than 7:00 a.m. Exceptions shall be effected only upon the mutual agreement of City and Collector.

(3) **City.** Collector shall perform Collection Services for City facilities and properties listed in Exhibit D according to a schedule mutually agreed upon by the City and Collector. Exceptions shall be effected only upon the mutual agreement of City and Collector.

f. **Routing.**

(1) **Route Changes.**

(i) ***City-Initiated, Material Route Changes During Agreement Term.*** City reserves the right to change the day of the week for Collection Services on any route. City shall notify Collector of any change in the Collection Service day at least sixty (60) days in advance of the effective date of the change, and Collector shall provide the City with maps precisely defining the revised collection routes and schedules requested by the City not less than thirty (30) calendar days prior to the proposed date of implementation. Collector shall in turn notify all affected Customers of the change at least fourteen (14) days in advance of the effective date of the change. City shall not initiate route schedule changes more often than six (6) times in any Contract Year nor more often than two (2) times per individual numbered route in any Agreement Year. Any notification requirements and decreases in routing efficiency due to City-initiated route changes shall be compensated to the Collector.

(ii) ***Collector-Initiated, Material Route Changes During Agreement Term.*** Collector shall submit to City, in writing, any proposed route schedule changes with maps precisely defining the revised collection routes and schedules not less than sixty (60) calendar days prior to the proposed date of implementation. The City may provide written comments on such proposed change to Collector no later than ten (10) calendar days thereafter, and in such event Collector shall revise the routes to reflect such comments and return them to the City within ten (10) calendar days. Collector shall not implement any route changes without the prior review of the City Representative. Collector shall notify Customer of route schedule changes not less than thirty (30) calendar days before the proposed date of implementation. Any notification requirements and decreases in routing efficiency due to Collector-initiated route changes shall be at Collector's expense.

(iii) ***City-Initiated, Immaterial Route Changes During Agreement Term.*** City reserves the right to change the route path on any route. City shall notify Collector of any change in a Collection Service route at least sixty (60) days in advance of the effective date of the change, and Collector shall provide the City with maps precisely defining the revised collection routes requested by the City not less than thirty (30) calendar days prior to the proposed date of implementation.

(iv) ***Collector-Initiated, Immaterial Route Changes During Agreement Term.*** Collector shall submit to City, in writing, any proposed route path changes with maps precisely defining the revised collection routes not less than sixty (60) calendar days prior to the proposed date of implementation. The City may provide written comments on such proposed change to Collector no later than ten (10) calendar days thereafter, and in such event Collector

shall revise the routes to reflect such comments and return them to the City within ten (10) calendar days. Collector shall not implement any route changes without the prior review of the City Representative.

(2) **Route Audits.** City reserves the right to conduct audits of Collector's Collection routes. Collector shall cooperate with City in connection therewith, including permitting City employees or agents designated by the City Representative to ride in the Collection Vehicles during the conduct thereof. Collector shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the City Representative to conduct such audits.

g. **Vehicles.**

(1) **Specifications.** Collector shall provide route vehicles that comply with South Coast Air Quality Management District (SCAQMD) regulations for fleet vehicle emissions.

(i) **Noise.** The noise level generated by Collection Vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five decibels at a distance of twenty-five feet from the Vehicle measured at an elevation of five feet above ground level using the "A" scale of a standard sound level meter at slow response, or Applicable Law, whichever is more stringent. Collector shall cause the Collection Vehicles to be tested by an independent testing authority annually during the month of May and shall submit a certificate of testing showing that the Vehicles meet the requirements of this Section together with the annual report submitted by Collector.

**Registration, Certifications.** Collector shall register all Vehicles, except those Vehicles used solely on Collector's premises, with the California Department of Motor Vehicles in accordance with Applicable Law. Collector shall obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 et seq.) and the regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 et seq.) and the regulations promulgated thereunder, as applicable to each Vehicle. Collector shall maintain copies of registration certificates and reports and make them available for inspection upon request by the City. Collector shall also obtain certificate of compliance for SCAQMD fleet vehicle emissions requirements.

(2) **Safety Markings.** Contract shall ensure that all Service Assets bear all necessary and appropriate and safety features, including highway lighting, flashing and warning lights, clearance lights, and warning flags, in accordance with the requirements of the California Vehicle Code and other Applicable Law.

(3) **Identification.** Collector shall ensure that its name, telephone number, and the Vehicle number shall be visibly displayed on all Vehicles in letters and figures not less than four (4) inches high on each side and the rear of each vehicle.

(4) **Public Relations Signage.** City may design and produce interchangeable signs containing messages designed to alert the public to special waste management programs in English and additional languages as deemed appropriate by the City. Collector shall install such City provided signage on Collector Vehicle, for uses in the City within thirty (30) days upon request by the City. The City may request a maximum of two (2) signage changes per contract year.

(5) **Maintenance.** Collector shall at all times maintain Vehicles in good condition in accordance with the maintenance protocol contained in Exhibit F, so that they operate properly and safely. Collector acknowledges that

it is important to the City that Collector present a professional and pleasing image. Therefore, Collector shall wash all Vehicles at least once (1) each week and shall repaint all Vehicles (including trim) not less than every thirty (30) months.

h. **Containers.**

(1) **Residential Containers.** Collector shall provide a three-container collection program, using Containers that comply with the requirements of this Agreement and SB 1383 Regulations. Default level of service for Residential Customers is 90-100 gallons for organic waste, 60-70 gallons for recyclables, and 60-70 gallons for Solid Waste. Residential Customers shall be allowed to choose an alternative level of service: 32 gallon, or 90 gallon for Solid Waste and 32 gallon or 90 gallon for organic waste and recyclables. After an initial three (3)-month adjustment period, residential customers are allowed one (1) change of container size per year. Collector shall provide requested container size within fourteen (14) days of a Customer request for change of container size.

(i) ***Provided by Collector for Solid Waste Collection.*** Solid Waste collection Containers shall be provided by the Collector for the Collection of Solid Waste.

(ii) ***Provided by Collector for Recyclables Collection.*** Recyclables collection Containers shall be provided by the Collector for the Collection of Recyclables.

(iii) ***Provided by Collector for Organic Waste Collection.*** Green Waste Collection Containers shall be provided by the Collector. For the Collection of Organic Waste.

(iv) ***Repair of Containers.*** Collector shall repair Collector-provided Containers within seven (7) days of a request for repair from a Customer or from the City Representative. If the repair cannot be completed within seven (7) days, Collector shall provide such customer with a replacement Container.

(2) **Commercial Containers.** Collector shall provide a four-container collection program, using Containers comply with the requirements of this Agreement and SB Regulations that 1383.

i. **Personnel.**

(1) **Driver Licensing and Safety.** Collector shall ensure that all drivers are trained and qualified in the operation of Collection Vehicles and that they have, in full force and effect, a valid license of the appropriate class issued by the California Department of Motor Vehicles. Collector shall maintain photocopies of licenses for all Vehicle operators. Collector shall provide suitable operational and safety training for all of its personnel who utilize or operate Vehicles or other equipment for Collection or who are otherwise directly involved in Collection. Collector shall train its personnel to identify and not collect Hazardous Waste, except as provided in this Agreement.

(2) **Identification, Appearance, Conduct.** Collector shall require each driver and all other personnel who come into contact with the public to wear a uniform identifying his name. Collector shall use its best efforts to assure that all personnel present a neat and orderly appearance and conduct themselves in a courteous manner. Collector shall regularly train its employees in Customer courtesy, prohibit the use of loud or profane language, and instruct Collection crews to perform their work as quietly as possible. If any personnel is found not to be courteous or not to be performing Services in the manner required hereby, Collector shall take all appropriate corrective measures.

(3) **No Gratuities.** Collector shall not permit its personnel to demand, solicit, or accept directly or indirectly, any additional compensation or gratuity from Customers or any members of the public.

(4) **Nondiscrimination.** In the performance of all work and Services hereunder, Collector shall not discriminate against any person on the basis of such person's race, sex, color, ancestry, physical handicap, medical condition, national origin, religion, marital status, sexual orientation, or as otherwise prohibited by Applicable Law. Collector shall comply with all Applicable Law regarding non-discrimination, including in employment.

4.02 **Diversion.**

a. **Processing.**

(1) **Facility Selection.** Collector shall transport and deliver to a Processing Facility or Facilities all Recyclables including Recyclables from single-family households, and Recyclable Bulky Waste. Collector shall transport and deliver to a Composting Facility or Processing Facility all Organic Waste. Such Facilities shall be permitted under and in substantial compliance with Applicable Law. Collector shall make Reasonable Business Efforts to select Facilities which create the most economic value for the City, taking into account any applicable tipping fees, revenue sharing, and transportation costs thereto, consistent with public health and safety, diversion provisions of AB 939, AB 341, SB 1383, and their implementing regulations, and Collector's obligations hereunder. Collector shall ensure there is sufficient capacity at such Facility or Facilities to process, and store until marketed, all Recyclables, Bulky Waste, and Organic Waste Collected by Collector during any one-week collection period, and that the City Representative and his or her designees shall have access to such Facility or Facilities at all reasonable times; provided that Collector shall have no responsibility or liability for the salary, wages, benefits or worker's compensation claims of the City Representative or any such designee.

(2) **Weighing and Record Requirements.** Collector shall ensure that, at a minimum, all materials shall be weighed upon delivery to the Processing Facility or Facilities and Organic Waste Processing Facility, as the case may be, and all weight and related delivery information (including date, time, material type, route and truck number) shall be recorded.

(3) **Recyclables Specifications.** Collector shall ensure or cause to be ensured that the quality of Recyclables continues to meet the specifications set out by Collector in its current Marketing Plan or such other specifications as are mutually agreed by Collector and the City Representative. City shall have no responsibility for the quality of Recyclables delivered by Collector to the Processing Facility nor for any Recyclables rejected by the Processing Facility or broker or other purchaser because the Recyclables do not meet specifications. City shall make no warranty, either express or implied, with respect to the Recyclables, including but not limited to any warranty of merchantability and any warranty of fitness for a particular purpose.

(4) **Disposal of Residue.** Collector shall dispose of, or provide for the disposal of, any and all residue remaining from the processing of Recyclables in accordance with Applicable Law. The cost thereof shall be included in fees for Processing or Composting Facilities, as the case may be.

(5) **Processing Fees.** Collector shall pay for processing of Recyclables, and Bulky Waste at City-reviewed Processing Facilities, Green Waste at a City-reviewed Composting Facility, Organic Waste at a City-revised Organic Waste Processing Facility, and the disposal of residue therefrom, unless otherwise mutually agreed by City and Collector. Collector shall not, under any circumstances, cause to be charged to City any material that was collected by Collector or by any other person without the express prior written authorization of the City Representative.

(6) **Collector Responsibility.** In the event Collector fails or is unable, for any reason whatsoever, to provide for processing of Recyclables, Recyclable Bulky Waste, Green Organic Waste, and Organic Waste, Collector shall reimburse City for any costs incurred by City in securing alternate processing services, including storage or disposal costs if such alternative is required, in light of cost, expediency, and lost revenue.

b. **Certification of Re-use.** Collector shall use Reasonable Business Efforts to obtain certifications of re-use of Recyclables, Bulky Waste and any other materials. Collected hereunder or diverted from disposal.

c. **Indemnification for Failure to Meet Waste Diversion Goals.** Collector agrees to protect and defend City with counsel selected by Collector and approved by City, to pay all attorneys' fees, and to indemnify and hold City harmless from and against all fines or penalties imposed by CalRecycle if the diversion goals specified in California Public Resources Code Section 41780, AB 939, AB 341 (Chapter 476, Statutes of 2012), AB 1826 (Chapter 727, Statutes of 2014), and SB 1383 (Chapter 395, Statutes of 2016), and their implementing regulations, as they may be amended, as of the date hereof and hereafter throughout are not met by the City with respect to the Solid Waste Collected by Collector and if the lack in meeting such goals are attributable to the failure of the Collector to implement and operate the recycling or diversion programs or undertake the related activities required by this Agreement. City Council shall not unreasonably refuse to approve new programs and/or rate adjustments, nor shall the City Council unreasonably delay review and approval of any such change or adjustment that may prevent Contractor in meeting such goals.

d. **Minimum Diversion Requirements.** Collector shall implement and operate programs that will meet the diversion provisions of AB 939, AB 341, AB 1826, SB 1383, their implementing regulations, and Public Resources Code Section 41780.

If the City finds that additional programs are necessary to meet for any required diversion goals, the City may require proposals additional diversion programs to meet the diversion requirements.

#### 4.03 Disposal.

a. **Disposal Facility.** Collector shall transport and deliver to a Disposal Facility and/or transfer station all Solid Waste, including Residential, Commercial, Industrial, City Solid Waste, Solid Waste collected in performing emergency services, and Bulky Waste which cannot be diverted.

Collector shall observe and comply with all regulations in effect at such Disposal Facility and cooperate with the operator thereof with respect to operations thereat, including directions to unload collection vehicles in designated areas, accommodating construction and maintenance, and hazardous waste exclusion programs. Collector shall at all times operate according to safe industry practices. Such Facilities shall be permitted under and in substantial compliance with Applicable Law. Collector shall make Reasonable Business Efforts to select Facilities which result in the least expensive disposal option for the City, taking into account any applicable tipping fees, revenue sharing, and transportation costs thereto, consistent with public health and safety, diversion provisions of AB 939 and successor statutes (including AB 341, AB 1826, and SB 1383), and Collector's obligations hereunder. Collector shall cooperate with City in enforcing mandatory Commercial Recycling and Organic Waste efforts as adopted by AB 341 (Chapter 476, Statutes of 2012), AB 1826 (Chapter 727, Statutes of 2014), and SB 1383 (Chapter 395, Statutes of 2021), any Applicable Law, and their implementing regulations, as they may be amended. Collector shall provide any notices or information reasonably requested by City in enforcement of such requirements.

b. **Disposal Fees.** Collector shall pay for disposal of Solid Waste by Collector at a Disposal Facility unless otherwise mutually agreed by City and Collector. Collector shall not, under any circumstances whatsoever, cause to be charged to City any material that was collected by Collector or by any other person, other than Solid Waste Collected hereunder without the express prior written authorization of the City Representative.

c. **Indemnification.**

(1) **Collector Conduct Included.** Collector shall indemnify, defend with counsel approved by the City, pay all attorneys' fees, protect and hold harmless the City (including parties described in this subsection below) from and against all Liabilities (defined in this subsection below) paid, incurred or suffered by, or asserted against, the City arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remediation, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste and/or Household Hazardous Waste ("HHW") at any place where Collector delivers, stores, processes, composts, or disposes of Solid Waste to the extent that such Liabilities are caused by the following:

(i) ***Collector Negligence or Misconduct.*** the wrongful, willful or negligent act, error or omission, or the misconduct of the Collector;

(ii) ***Customer and Non-Customer Materials.*** The collection, delivery, handling, processing, composting, or disposal by the Collector of Hazardous Waste, which are generated or placed in Collector's collection containers by Collector's Customers or by Persons placing such materials in Collector's collection containers;

(iii) ***Failure to Comply with Hazardous Waste Laws and Regulations.*** The failure of Collector to undertake Hazardous Waste training procedures required by Applicable Law with respect to its employees or any subcontractor or Collector's Hazardous Waste Screening protocol described in Exhibit I, whichever is more stringent;

For the purposes of this section, "City" shall include its officers, employees, agents, Contractors, attorneys, administrators, affiliates, representatives, servants, insurers, heirs, assigns, and any successor or successors to the City's interest; "Collector" shall include its employees, officers, agents, subcontractors, and consultants performing or responsible for performing Services; and "Liabilities" shall include claims, actual damages (including special and consequential damages, whether in contract, statute, or in tort, or pursuant to any theory), natural resource damages, punitive damages, injuries, costs, financial loss, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, mediation, arbitration, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including attorney's 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.

(2) **City Negligence Excluded.** The Collector shall not, however, be required to reimburse or indemnify the City to the extent any such liabilities are due to the sole negligence of the City.

(3) **Indemnification Survives Termination.** Such indemnification shall be limited to Liabilities resulting Services from and after the date hereof through the term. Indemnification resulting from Services during the Term survive the termination of this Agreement.

(4) **Statutory 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, 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 liability in accordance with this section. The provisions of this subsection shall survive the termination of this Agreement.

#### 4.04 **Customer Service and Public Relations.**

##### a. **Phone Access.**

(1) **Toll-free Number.** Collector shall maintain a local telephone number, toll-free to Customers, at least during Office Hours ("**Phone Hours**"). The telephone number shall be listed under Collector's name and the City's governmental listings in the City telephone directory. Collector shall maintain telephone answering system capable of

accepting at least five (5) incoming calls at one time. Collector shall provide an answering machine or answering service to take reports of missed pick-ups and other complaints which are received outside of Phone Hours.

(2) **Emergency Number.** Collector shall also maintain a local emergency telephone number, toll-free to Customers, for use outside Collector's Phone Hours, which shall be Separately listed as an emergency number under Collector's name and under the City's governmental listings in the City telephone directory. Collector shall have a representative, or answering service required to contact such representative, available at such emergency number outside Phone Hours, as soon as possible, and in no event more than one (1) hour following the time of the emergency call.

(3) **Multi-lingual, TDD Services.** Collector shall at all times maintain the capability of responding to telephone calls in English, Spanish, and such other languages as City may direct. Collector shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services. These capabilities shall be maintained for both the local telephone number and the emergency telephone number.

b. **Customer Complaints and Inquiries.** Collector shall record in a computerized daily log all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and nature and date and manner of resolution of complaint. Any such calls received via Collector's answering service shall be recorded in the log and responded to no later than the following work day. This manual log shall be available for inspection by City during Office Hours. All incoming calls shall be answered within a maximum of four rings. Any call "on-hold" in excess of 1.5 minutes shall be switched to a message center where Collector shall maintain information in a daily log to enable a customer service representative to return customer calls. All "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted on the first attempt, Collector shall make subsequent attempts on the next working day after the original call. Collector shall make a minimum of three attempts within twenty-four hours of the receipt of the call. If Collector is unable to reach the caller on the phone, Collector shall send a postcard to the caller. All attempts to contact the caller shall be recorded on the log kept by Collector.

c. **Office Hours.** Collector shall maintain an office, open from Monday through Friday at a minimum from 8:00 a.m. to 5:00 p.m. daily, and on Saturdays following recognized Friday holidays at a minimum from 8:00 a.m. to 12:00 p.m. The Office must be staffed by Collector during these business hours.

#### 4.05 **Public Education and Community Relations.**

a. **Community Relations.** Collector's plan for public education and outreach, and community relations activities to implement route changes and Organic Waste collection, reviewed by City, is attached as Exhibit H. Collector shall timely and fully implement such plan. Collector shall distribute public education and outreach materials prepared and provided by the City to Customers for distribution with Customers' bi-monthly bills in accordance with Exhibit H. Any other promotional materials or news releases will be developed with the City and distributed by the Collector.

b. **News Media Relations.** Collector shall notify City Representative by telephone followed by email of all requests for news media interviews related to the Services within twenty-four hours of Collector's receipt of the request. Before responding to any inquiries involving controversial issues or any issues likely to affect participation or Customer perception of services, Collector will discuss Collector's proposed response with City.

c. **SB 1383 Education and Outreach.** Collector shall use Reasonable Business Efforts to outreach and educate the public on the importance of recycling and separating Solid Waste in order to achieve maximum waste diversion in accordance with 14 CCR Sections 18985.1-18985.2. Collector shall develop and implement a program of educational presentations and materials concerning the importance of recycling and diversion, proper techniques for Solid Waste disposal and recycling, and options for the disposal of Hazardous Waste. The educational program shall include a well-defined

component aimed at capturing Organic Waste, and Green Waste generated by landscaping services and contractors, including information for Customers on how and why Organic Waste and Green Waste should be collected and diverted. A new educational program shall be prepared for each fiscal year, and submitted to the City Manager no later than April 1st. Collector shall perform the recordkeeping requirements related to compliance with education and outreach requirements under 14 CCR Section 18985.3.

#### 4.06 **Emergency Services.**

Collector shall provide, or begin providing, emergency services within twenty-four hours of notification by City. Emergency services are services beyond the services specified in this Agreement and include services needed following natural disasters such as earthquakes. Collector shall be paid at a rate equal to the Collector's then applicable fee for such service, plus five percent (5%).

#### 4.07 **City Right to Perform Services.**

a. **Events.** City reserves the right, which it may exercise in its sole discretion, to perform, or contract for the performance of, any or all of Collector's Service obligations, including the collection of Solid Waste or any portion thereof and transportation to a City-reviewed Processing Facility, Composting Facility or Disposal Facility, as the case may be, in the following events:

(1) Collector, due to Uncontrollable Circumstances or for any reason whatsoever, fails, Solid Wastes, or is unable for a period of 48 hours to collect and/or at any time to transport Solid Waste or any portion thereof to a Processing Facility, Composting Facility, or Disposal Facility, as the case may be, selected in accordance with this Agreement;

(2) Solid Waste generated by Customers for which Collector is obligated to provide Services accumulates in the City to such an extent, in such manner or for such time that the City Manager or City Council determines that such accumulation endangers or threatens the public health, safety, or welfare; or

(3) The City suspends or terminates this Agreement or any portion of Collector's Service obligations due to an Event of Default or continuance of an Uncontrollable Circumstance.

City has no obligation to continue providing such Services and may at any time, at its sole discretion, cease to provide such Services. However, City's right to provide such Services shall continue until Collector can demonstrate to the City's satisfaction that Collector is ready, willing, and able to resume timely and full Service or until the City can make alternative arrangements for providing Solid Waste services comparable to Services in scope and price, which may include contracting with another service provider.

b. **Notice.** The City may give Collector written notice that City is exercising its right to perform Services, which notice shall be effective immediately.

c. **Records and Reports.** Upon City's request, Collector shall promptly provide City with immediate access and/or possession of Records, including those related to routing and billing.

d. **Waiver of Takings Claim.** Collector agrees that the City's exercise of rights under this section does not constitute a taking of private property for which City must compensate Collector; and does not exempt Collector from any indemnifications made with respect to diversion, disposal, or Services generally, which Parties acknowledge are intended to extend to circumstances arising under this Section. Collector is not required to indemnify City against claims and damages arising from the negligence of City officers and employees and agents driving Vehicles.

#### 4.08 Street Sweeping.

a. **Scope of Street Sweeping Services.** Collector shall provide street sweeping services including all labor, materials, fuel, and equipment to all arterial, collector, commercial, residential and industrial streets, including cul-de-sacs, street centerlines, paved medians, left turnpockets, alleys, maintenance yards, intersections and facilities within the City.

Collector shall transport and dispose of all sweeping wastes in accordance with all City, County and Federal requirements. Sweeping wastes are to be off-loaded at the Upland Public Works Yard located at 1370 North Benson Avenue.

b. **Locations.** Collector shall provide street sweeping services to the locations more particularly described in Exhibits "O" ("Street Sweeping Locations and Schedule") and "P" ("Street Sweeping Frequency") which may be modified from time to time by the Director of Public Works or his/her designated representative upon providing thirty (30) days written notice to Collector. Collector shall provide sweeping services outside of the Street Sweeping Schedule on Exhibit "P" on an as-needed basis a maximum of twelve (12) times per year during regular sweeping hours, and an additional six (6) times per year outside of regular sweeping hours.

In addition to those sweeping services in Exhibits "O" and in "P" and the above, Collector shall provide sweeping services for special community events ten (10) times per year and on-call street sweeping ten (10) times per year, not to exceed a total of one hundred twenty (120) sweeping hours. Community events and on-call street sweeping days are selected at the sole discretion of City, and City shall provide forty-eight (48) hour notice to Collector when possible.

c. **Frequency.** Collector shall operate sufficient number of sweepers per day to provide street sweeping services, five days a week in accordance with the City's Street Sweeping schedule as identified in Exhibit "O" including, but not limited to residential streets, alleys, commercial and industrial streets, City-owned parking lots, state highways, City arterial streets, curbs, gutters, and medians and islands with or without curbs. All sweeping must be consistent with City posted signage and to City specifications, which may include varying start times for different types of areas. CITY reserves the right to adjust the Street Sweeping Schedule identified in Exhibit "O" at any time with written notice to Collector.

d. **Hours.** Collector shall only provide street sweeping services during the hours designated for each respective street.

The Director of Public Works or his/her designated representative may modify the hours to perform sweeping and Collector shall accommodate those hours of sweeping.

e. **Routing.** Collector shall provide a routing plan to the Director of Public Works or his/her designated representative. The Director of Public Works or his/her representative reserves the right to modify Collector's routing plan as he/she deems necessary.

f. **Emergency Services During Regular Business Hours.** During regular business hours, Monday through Friday from 8:00am to 5:00pm, the City may call upon Collector to respond to an emergency situation that requires immediate street sweeping services. These situations may include, but not be limited to, spill of non-hazardous waste and debris, debris of accidents involving automobiles, storms, and floods. Collector shall respond to these emergency services requests within two (2) hours of notification. Failure to respond within the designated time will result in penalty as outlined in Article 11 of the Agreement. Collector shall perform emergency services during regular business hours at the same unit price as the regular street sweeping services specified herein.

g. **Emergency Services After Hours.** During weekends, holidays and after work hours (Monday to Friday from 6:00 pm to 6:00 am), the City may call upon Collector to respond to an emergency situation that requires immediate street sweeping services. Collector is required to respond to these emergency services requests within two (2) hours of notification time. Failure to respond within the designated time will result in penalty as outlined in Article 11 of the Agreement. Collector shall perform emergency services during after-hours at the same unit price as the regular street sweeping services specified herein.

h. **Holidays.** Collector shall provide street sweeping services on days that the City provides Collection services and recognize the holidays in Exhibit D.

i. **Equipment.** A sufficient number of primary sweepers and back-up sweepers shall be provided by Collector. The primary sweepers shall have installed an "active" or "passive" Global Positioning System (GPS) that will enable Collector to view, via computer, equipment location at all times. The GPS must be able to track non-sweeping stops and speed of the equipment and be able to generate reports and maps with an exact description of services. Data collected shall be provided to City on a daily basis or other schedule mutually agreed upon by Collector and City.

Collector shall be responsible for the operation and maintenance of the street sweepers, and both the primary and secondary vehicles. Collector shall be responsible for all maintenance, insurance and vehicle replacement costs of all street sweeping vehicles.

All street sweepers must meet South Coast Air Quality Management District's (SCAQMD) PM10-efficient standards and be certified by SCAQMD as meeting the testing and performance standards set forth in SCAQMD Rule 1186.1 and any future regulatory requirements including the use of alternative fuels.

Collector shall comply with the most up-to-date edition of the California Stormwater Best Management Practices issued by the California Stormwater Quality Association.

Sweepers shall be maintained in accordance with the manufacturer's instructions and to the City's satisfaction. Each sweeper shall be completely refurbished and repainted no less than once every five (5) years. City reserves the right to inspect sweepers and Collector's physical operations on an annual basis to ensure proper maintenance of equipment and sweepers.

The noise level generated by equipment or vehicles shall not exceed a single-event noise level of seventy-five (75) decibels at a distance of twenty-five (25) feet from the vehicles. Collector shall submit to City, upon City's request, a certificate of vehicle noise level testing by an independent testing entity approved by the City. Each vehicle used for street sweeping shall be equipped with an audible warning device that is activated when the vehicle is backing up.

Collector shall affix upon the street sweeping vehicles magnetic signs, decals or painted signs approved by the Director of Public Works that contains the Collector's name, local phone number and vehicle identification number visibly displayed on the vehicle.

j. **Personnel.** Sweeping shall be conducted by personnel adequately trained in sweeper operation. Collector shall designate the same operators to sweep in the City on a permanent, regular basis. If there is an operator change, Collector will notify City within 24 hours. All operators will be required to speak English.

#### 4.09 **Pressure Washing Service, Porter Services, and Catch Basin Cleanout**

- a. **Scope of Services for Pressure Washing, Porter Services and Catch Basin Cleanout.** Collector shall provide Pressure Washing, Porter Services and Catch Basin Cleanout Services, including all labor, materials, and equipment at fees specified in Exhibit M, or authorized by the City as per Article 6.
- a. Collector shall pressure wash the Downtown sidewalks and Gazebo each month.
  - b. Collector shall pressure wash four (4) Downtown parklets each week.
  - c. Collector shall provide complete interior pressure washing of all City Park Bathrooms, with disinfectant, each week.
  - d. Collector shall pressure wash City Hall/Library Courtyard as directed.
  - e. Collector shall provide curbside barrel pressure washing for all residential and commercial trash, recycling and organics bins and barrels as per the service schedule approved by the Director of Public Works or his/ her designated representative.
  - f. Collector shall provide porter services at each park. Porter service shall include park bench and picnic area pressure washing, bulky item collection, and trash receptacle waste removal throughout parks each Saturday and Sunday.
  - g. Collector shall provide porter service at the Pacific Electric Trail. Porter service shall mean illegal dumping waste disposal and bulky item removal as well as trash receptacle waste removal. This service shall be performed Fridays, Saturdays, and Sundays.
  - h. The City of Upland has 1,644 catch basins located throughout the City. Collector shall remove all waste within these catch basins twice per year. Removal shall be by Vactor truck or equivalent.

## ARTICLE 5 MISCELLANEOUS SERVICE PROVISIONS

5.01 **Title to Waste.** The Parties agree and intend that all Solid Waste except Hazardous Waste and HHW becomes the property of Collector upon being set out for Collection.

5.02 **Compliance with Law.** Collector shall perform, and shall cause any contractors or Subcontractors to perform, all Services in accordance and compliance with all applicable local, regional, state, and Federal laws, including obtaining and maintaining throughout the Term all necessary Permits, licenses, and approvals required to perform Services. Collector shall show proof of such Permits, licenses, or approvals and shall demonstrate compliance with the terms and conditions of such Permits, licenses, and approvals upon the request of the City.

The City Manager shall have the power to establish rules and regulations relating to the accumulation, collection, recycling, composting, disposal, and management of Solid Waste not inconsistent herewith and with Applicable Law, which the City Manager finds are reasonably necessary for enforcement hereof or of Applicable Law or for preservation of the public peace, health, and safety. Collector agrees to comply with any and all such rules and regulations, subject to adjustments in the Service Fee defined in Section 10.01 for Changes in Law.

Reference to particular provisions or requirements of Applicable Law herein shall not be construed to limit Collector's obligation to comply with all provisions of Applicable Law. In the event of any inconsistency between Applicable Law and this Agreement, the more stringent provision shall apply. Nothing herein shall be construed to relieve the Collector of any obligations imposed by Applicable Law.

5.03 **Container Contamination Minimization.** Collector shall meet its SB 1383 Regulations contamination monitoring requirements using either Route Reviews or Waste Evaluations. If Collector elects to perform Route Reviews, Collector shall, at its sole expense, conduct annual route reviews each calendar year for prohibited Container contaminants in Containers in a manner that is deemed safe by the Collector, is approved by City, and is conducted in a manner that results in all routes being reviewed annually pursuant to 14 CCR Section 18984.5. Collector shall visually inspect the contents of a reasonably representative number of Containers, as directed and approved by City.

Collector shall develop a route review methodology that complies with the requirements of 14 CCR Section 18984.S(b). Collector shall submit its proposed route review methodology for the coming year to the City no later than January 15 of each year describing its proposed methodology for the calendar year and schedule for performance of each route's annual review. Collector's proposed route review methodology shall include its plan for Container inspections and shall also include its plan for prioritizing the inspection of Customers that are more likely to be out of compliance. City shall review, comment on, and approve the proposed methodology. Collector may commence with the proposed methodology upon approval. If City notifies Collector that the methodology is inadequate to meet the requirements of SB 1383, Collector shall, at its sole expense, revise the methodology and, after obtaining CITY approval, conduct additional route reviews, increased Container inspections, or implement other changes using the revised procedure.

Collector shall document Contamination with still pictures or video, and will notify the customer of the Contamination by following the applicable procedures specified in 14 CCR Section 18984.5. Collector shall perform the recordkeeping requirements for Container minimization in 14 CCR Section 18984.6. Collector may, at its discretion Collect the Container as Recyclable Materials, Organic Materials, or as Solid Waste.

Alternatively, if Contractor elects to perform Waste Evaluations, Contractor shall, at its sole expense, conduct waste evaluations that comply with and meet the requirements of 14 CCR Section 18984.S(c).

5.04 **Cooperation with Waste Studies.** Collector shall cooperate with City on any and all waste composition studies, including modification of routes, separate collection of individual Customer's Solid Waste, and/or delivering targeted loads of Solid Waste to a City-designated location or locations; provided that if such location is farther than the Processing Facility, Composting Facility, and/or Disposal Facility selected hereunder, Collector shall be compensated for additional mileage or documented costs associated with conducting waste studies.

5.05 **Public Performance Review.** City Council shall have the right and sole option to conduct a public hearing upon sixty days' Notice to Collector at such time that it selects, not more than once (1) annually, to review Collector's performance and quality of Service. Collector shall attend and participate in such hearing. Council may use Records and reports, including records of Customer complaints, as a basis of such reviews. Within thirty (30) days after the conclusion of the public hearing, the City Council shall issue a report with respect to the matters raised at the hearings.

If any breach of or noncompliance herewith is found, the provisions of Article 11 shall apply.

5.06 **Service Materials Belong to City.** All data, reports, documents, brochures, public education materials, and other computerized, written, printed, or photographic materials developed by City or Collector in connection with Services, whether developed directly or indirectly by City or Collector, shall be and remain the property of City without limitation or restriction on the use of such materials by City. Collector shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of City.

5.07 **Procurement of Recycled Materials** Collector agrees to coordinate and cooperate with the City to meet its Organic Waste procurement target, as required by SB 1383 Regulations.

5.08 **Hazardous Waste.** Collector shall implement the Hazardous Waste screening, identification, and prevention protocol attached as Exhibit I. If Collector inadvertently delivers materials to any Processing Facility, Composting Facility, or Disposal Facility which comprise Hazardous Waste and Collector cannot identify or fail to remove it, Collector shall arrange for its proper disposal in accordance with Applicable Law and/or cooperate with such Facility owner or operator with respect thereto.

**ARTICLE 6 CHANGE IN SCOPE OF SERVICES**

**6.01 Change in Scope of Services.**

a. **Upon City Direction.** The City reserves the right to direct Collector to implement a change in scope of Services at any time, including new or amended diversion programs or special services, for any reason whatsoever, subject to adjustments, if any, of the Service Fee by agreement of the Parties or by arbitration.

b. **Upon Collector Proposal.** The Collector may propose to the City a change in the scope of Services, including new developments in collection, recycling, and processing technologies and techniques, whether on the Collection routes or at a Processing Facility or Composting Facility, at any time, for any reason whatsoever, subject to City approval.

**ARTICLE 7 RECORDS AND REPORTING**

**7.01 Records**

a. **Maintenance.** Collector shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services, the Service Fee, or performance hereunder, including routing, level of each Customer's services, inventory, maintenance logs, etc. ("**Records**"), for the Term plus two years, or any longer period required by Applicable Law. Collector shall further maintain computerized data base(s) in computerized format containing a complete Customer file, including all information required for the reports specified in this Article 7 and sufficient to allow input of information for City and Collector to reconcile the Service Fee.

b. **City Inspection and Audit.** Upon Notice by the City, Collector shall use Reasonable Business Efforts to provide copies of Records to City or City's designees for inspection or audit at City Hall. Otherwise, Collector shall make Records available to City or City's designees for inspection or audit at the Local Office or Collector's address indicated for receipt of Notices during Office Hours. Where City has reason to believe that Records may be lost or discarded due to dissolution, disbandment or termination of Collector's business or other reason, City may require that Collector give City custody of the Records and that the Records and documents be maintained in City Hall, in which event access to such Records shall be granted to any Person duly authorized by Collector. Collector shall assure that the computerized data bases shall at all times be accessible by City. Collector shall use Reasonable Business Efforts to promptly provide the City any additional information relevant hereto which is not specified in this Article 7.

c. **SB 1383 Recordkeeping.** Collector shall prepare and maintain the records identified in 14 CCR Section 18995.2(f).

**7.02 Reporting.**

a. **Monthly.** Collector shall submit monthly reports to City in written form and compatible computerized format in substantially the form set out in Exhibit J, containing, at a minimum, a record of the Solid Waste disposed of and Diverted. These reports shall be due on the fifteenth day of each month for the preceding month.

b. **Quarterly.** Collector shall submit quarterly reports to City in written form and compatible computerized format in substantially the form set out in Exhibit J and containing, at a minimum, the information listed therein. These reports shall be due each year on the fifteenth day of April, July, October, and January.

c. **Annual.** Collector shall submit annual reports to City in written form and compatible computerized format totaling the information contained in the quarterly reports for the previous year, in substantially the form set out in Exhibit K and containing, at a minimum, the information listed therein. These reports shall be due within 30 days of the end of the reporting year.

d. **SB 1383 Reporting.** Collector shall assist City in reporting information about implementation and compliance with SB 1383 Regulations and in accordance with Article 13 of Chapter 12 of Title 14 of the CCR.

e. **Additional Information.** Collector shall use Reasonable Business Efforts to incorporate additional information from Records promptly upon Notice from City.

## **ARTICLE 8 INDEMNITIES, INSURANCE, BONDS**

### **8.01 Collector Indemnification and Defense.**

a. **Indemnification of City.** Collector agrees that it shall protect, defend, indemnify and hold harmless City, its elected officials, officers, employees, volunteers and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgements, including attorneys' fees and costs arising out of or resulting in any way from City's grant of this franchise to Collector or Collector's exercise of the franchise including the provision of Services under this Agreement, unless such claim is due to the sole negligence or willful acts of City, its elected officials, officers, employees, volunteers or agents.

Subject to the scope of this indemnification and upon demand of the City, made by and through the City Attorney, Collector shall protect City and appear in and defend the City its elected officials, officers, employees, volunteers and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definition of "Solid Waste," "Recyclables" or "Organic Waste" or the limits of City's authority with respect to the grant of franchises, exclusive or otherwise, involving the collection of Solid Waste, arising out of the exercise of this Agreement by Collector or claims by other Persons disputing the rights and privileges granted by City in this Agreement. This provision shall survive the expiration of the period during which Collection Services are to be provided under this Agreement. City and Collector agree to confer following any trial to decide jointly whether to appeal, or to oppose any appeal. In the event City and Collector jointly agree to appeal, or to oppose any appeal, City and Collector agree to share equally cost of appeals. Should either City or Collector decide to appeal, or to oppose appeal, and the other decide not to appeal, or to oppose appeal, the party which decides to appeal, or oppose appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

b. **Hazardous Substances Indemnification.** Collector shall indemnify, defend, protect and hold harmless City, its elected officials, officers, employees, agents, assigns and any successor or successors to City's interest 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 attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) or any kind whatsoever paid, incurred or suffered by, or asserted against, City or its elected officials, officers, employees, volunteers or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or Hazardous Waste at any place where Solid Waste collected pursuant to this Agreement is or has been transported, transferred, processed, stored, disposed of or has otherwise come to be located by Collector or its activities pursuant to this Agreement that result in a release of hazardous substances into the environment. 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 defend, protect, hold harmless and indemnify City from all forms of liability under CERCLA, the Resource Conservation and Recovery Act, "RCRA", 42 U.S.C. Sections 6901 et seq. or other similar federal, state or local law or regulation for any and all matters addressed in this Section 8.01. This provision shall survive the expiration of the period during which Collection Services are to be provided under this Agreement.

c. **Liabilities During Term Only.** Such indemnification shall be limited to Liabilities resulting from Services from and after the date hereof through the Term, it being specifically understood that any liabilities attributable to the Collector's actions prior to the date hereof are excluded from such indemnification. However, SUCH INDEMNIFICATION RESULTING FROM SERVICES DURING THE TERM SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

d. **Reduction of CERCLA and Other Liability.** City and Collector agree to meet annually in the second calendar quarter of each calendar year to discuss ways to reduce their respective potential CERCLA and other liabilities to third parties.

## 8.02 Insurance.

a. **Insurance Requirements.** The Collector shall, at its sole cost and expense, obtain and maintain insurance deemed acceptable by the City's Attorney or Risk Manager. This insurance must remain in full force and effect throughout the term of this Agreement and shall protect against claims for personal injury or property damage arising from the performance of work under this Agreement by the Collector, its agents, representatives, or employees. The required types and amounts of insurance coverage, along with any specified deductibles, are outlined in this Section 8.02 or as mandated by Applicable Law—whichever imposes higher standards. Additionally, the Collector shall ensure that its street sweeping subcontractors maintain insurance coverage at the same limits.

b. **Minimum Limits of Insurance.** Collector shall maintain limits of insurance no less than:

**General Liability:** \$20,000,000 aggregate and \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If Comprehensive General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the activities related to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

**Commercial Auto Liability:** \$10,000,000 per accident for bodily injury, including accidental death, and property damage that may arise from operations pursuant to this Agreement.

**Workers' Compensation and Employers' Liability Insurance:** Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of at least a minimum \$1,000,000 per accident.

c. **Other Insurance Provisions.** The insurance required by this Agreement shall be with insurers, which are Best A- rated, or better. The City shall be included as an additional insured on each of the policies and policy endorsements. The Collector shall obtain the written consent of the City's Risk Manager prior to changing insurers providing insurance under this Agreement, which consent shall not be withheld unreasonably. The following language will be made a part of all insurance policies required by this Section:

(1) "The City of Upland, its officials, officers employees, volunteers, and agents, are hereby added as additional insureds as respects liability arising out of activities performed by or on behalf of Collector."

(2) "This policy shall be considered primary insurance as respects any other valid and collectible insurance the City of Upland may possess including any self-insured retention the City of Upland may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."

(3) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(4) " Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City of Upland in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Manager, City Attorney and City Clerk."

d. **Evidence of Insurance Coverage; Insurance Repository.** Collector shall provide insurance in the coverage areas and in the dollar amounts specified in this Article 8 upon execution of this Agreement. Thereafter, copies of the Collector's Certificate(s) of Insurance shall be provided to the City within thirty (30) days of each Agreement Year. Collector shall file copies of the policies and executed endorsements evidencing the above required insurance coverage with the City Clerk. Collector also agrees to establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the Term during which Collection Services are to be provided pursuant to this Agreement. Collector shall notify City's Risk Manager and City Attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection Services are to be provided under this Agreement.

8.03 **Financial Guaranty Agreement.** Collector shall ensure that parent corporation or its successors or assigns acceptable to the City, execute and maintain a legal, valid, and binding Financial Guaranty Agreement in the form appended hereto as Exhibit L, and maintain that Financial Guaranty Agreement in effect as of the date hereof and throughout the Term. Collector shall cause a fully executed original of the Financial Guaranty Agreement to be delivered to City within thirty (30) days of execution of this Agreement.

**ARTICLE 9 CRIMINAL ACTIVITY OF COLLECTOR.**

9.01 **Criminal Activity of Collector.** Should the Collector or any of its officers or directors have a criminal conviction from a court of competent jurisdiction with respect to conviction for any crime, including racketeering, indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the Collector or its officers or directors; or should the Collector or any of its respective officers or directors have made an admission of guilt or pled nolo contendere to the conduct described in this subsection above, which is a matter of record, then each employee, officer, or director, as the case may be, of the Collector responsible for such proscribed conduct shall be promptly terminated and/or replaced. Collector shall have fifteen (15) days' notice and opportunity following such conviction to present evidence in mitigation thereof, and on and after such fifteenth day, if such employee, officer, or director is not promptly terminated or replaced, the City reserves the right to unilaterally terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it shall deem proper.

## **ARTICLE 10 SERVICE FEES**

**10.01 Collector Service Fee.** The Collector shall receive payment, net of any applicable liquidated damages, for services rendered under this Agreement as compensation for performing Collection Services (the "Service Fee") or portion thereof, according to rates set forth for each Customer's individual Services in Exhibit M. The Service Fee includes all Collector's Direct Costs and Indirect Costs plus profit or return, of providing Services including all fueling costs, regardless of the location of the fueling station and/or fuel types and labor and travel time to/from the fueling station. No compensation shall be provided or paid to Collector by City or by any Customer except as expressly provided herein.

**10.02 Disposal and Processing Fees.** The Disposal and Processing Fees consists of costs incurred by the Collector for the processing of organic waste and mixed recyclables. The Disposal and Processing Fees shall be considered pass through fees that are reasonably related to the Collector's costs under this agreement.

**10.03 Franchise Fee.** The City shall retain a Franchise Fee As approved by Council based on the total Gross Receipts received by the City for services provided by the Contractor under the terms of this Agreement. The Franchise Fees will be collected as applicable by the City.

City may use the Franchise Fee for any lawful purpose. The Franchise Fee shall be considered a pass through fee that is reasonably related to the City's administrative costs under this agreement.

Exhibit M shows the Total Customer Rates. The Service Fee is the compensation to be paid to the Collector for collection services provided pursuant to this Agreement. The Total Customer Rates, consisting of the Service Fee, Disposal and Processing Fees, plus the Franchise Fee Component and the Program Cost Component, are the total rates to be paid by residential and commercial customers.

**10.04 Program Cost Fees** The Program Cost Fees consists of costs incurred by the City for the implementation of the green waste and mixed recyclables program, landfill post-closure fees, administrative overhead, and other costs relating to the solid waste and recycling program. The Program Cost Fees are paid to or retained by the City, as applicable and shall be considered a pass through fee that is reasonably related to the City's costs under this agreement.

**10.05 Recyclables Revenue.** The Collector shall pay to the City fifty percent (50%) of all net revenue earned from the sale of recyclables, and may keep the remainder.

**10.06 Additional Revenue; Rebates; State, Local, or Federal Grants and/or Incentive Money.** Any additional revenue, rebates, state, local, or federal grants and/or incentive money generated as a result of source reduction, public education, recycling, organic waste, used motor oil, or HHW programs earned, received, or collected by the Collector shall be paid to the City.

**10.07 Collector Credits to the City.** The City shall receive as a credit against Collector's monthly billing for items listed in Section 10.04. Each retention or credit shall be accompanied by an accounting which sets forth the City's and Collector's gross receipts collected during the preceding month.

Additionally, The City shall receive as credit against Collector's monthly billing for the following: i) Three Hundred Fifty Thousand Dollars (\$350,000) annually to offset the cost of road and alley maintenance, ii) One Hundred Fifty Thousand Dollars (\$150,000) annually for HHW and home generated sharps waste ("SHARPS") as defined in Section 117671 of the California Health and Safety Code. These amounts will be adjusted annually in accordance with Section 10.06 (collective, the "City Credits"), except that no downward adjustment shall be made.

No acceptance by City of any payment shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Collector for any additional sums payable under the provisions of this Agreement or any amendment to this Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates an underpayment of less than three percent (3%), Collector shall pay to City the amount of the underpayment within ten (10) days of receipt of written notice from City of the amount owed. If, after audit such recomputation indicates an underpayment of equal to or more than three percent (3%), Collector shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recomputation, and the amount underpaid, within ten (10) days of receipt of written notice from City of the amount owed. If, after audit, such recomputation indicates overpayment, City shall notify the Collector in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recomputation. Collector may offset the payment of payments (as appropriate) next due following receipt of such notice by the amount specified therein.

**10.08 Adjustments.**

**a. Automatic Fee Adjustments to Service Component, Disposal and Processing Fee Component and Franchise Fee Component.**

(1) **Description of the Adjustment.** Upon the effective date of this Agreement, and annually thereafter, the Collector shall, at Collector's expense, subject to compliance with all provisions of this Article, and subject to the notice and hearing requirements of Proposition 218, receive an annual adjustment in the Service Fee and Disposal and Processing Fee Components.

The Service Component and the Franchise Fee Component of the Total Customer Rate shall be increased or decreased by the percentage change in the published Consumer Price Index (CPI), All Urban Consumers for the Riverside-San Bernardino-Ontario, CA Metropolitan Area. This adjustment shall not exceed five percent (5%) per annum, regardless of the percentage change in the CPI. If the CPI for the previous year was in excess of five percent (5%), the additional percentage may be rolled over to the following year so long as the CPI adjustment for that year does not exceed five percent (5%). The Disposal and Processing Fee adjustments shall be considered pass through fees.

**Procedure.** On or before April 1, 2024 and annually thereafter, Collector shall deliver to the City documentation showing the percentage change in the CPI during the previous calendar year. The Collector shall deliver at the same time adjusted rate sheets for the Total customer Rates specified in Exhibit M, showing an upward or downward adjustment resulting from the application of the percentage change in the CPI to the Service component and the Franchise Fee Component. The Disposal and Processing Fee adjustments shall be considered pass through fees. Annual adjustments shall be made only in units of one cent (\$0.01). Fractions less than one cent (\$0.01) shall not be considered in making adjustments.

**b. Special Rate Review.**

(1) **Description of the Adjustment.** Collector is entitled to apply to City for consideration of a Special Rate Review, or City may initiate such a review, upon the occurrence of an Uncontrollable Circumstance which increases or decreases Collector's Direct Costs and/or Indirect Costs of Services (provided that Collector shall first apply the proceeds of any insurance available to mitigate or eliminate the need for any such adjustment). Any change to the Service Fees resulting from an Uncontrollable Circumstance shall be an adjustment of the Service Component of the Service Fee, as applicable. No rate adjustments shall be made pursuant to this paragraph "b" for events or circumstances occurring prior to the Effective Date.

(2) **Procedure.** Collector shall seek no more than a single annual adjustment, which adjustment (if approved by City), shall become effective at the time of the CPI adjustment described in paragraph "b" of this Section 10.06. Collector must submit its request for a Special Rate Review and complete cost and operational data in a form and manner specified by City no later than April 1 of the year in which the proposed change in the Service Fee is to take effect.

Should Collector request a Special Rate Review, City shall have the right to review any or all costs associated with Collector's Services under this Agreement. For each such request, Collector 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 Collector in preparing the estimate, and shall include documentation supporting its request. Additionally, if required by the City, Collector shall also provide a copy of its certified annual financial statements prepared by a Certified Public Accountant or a licensed public accountant, which shall have been prepared in compliance with Rule 58 of the "Rules and Regulations of the State Board of Accountancy," as established by the California Code of Regulations, Title 16, Division 1. Such Certified Public Accountant or licensed public accountant shall be entirely independent of the Company and shall have no financial interest whatsoever in the business of the Company. The City may specify the form and detail of the financial statements. The City shall have the right to verify the Company's reported changes in costs.

(3) **Decision; Remedy.** Collector shall bear the burden of justifying to City by substantial evidence any entitlement to an increase in the Service Fees under this Section. The City Council shall review Collector's request and, in the City Council's sole judgment (subject to compliance with Article XIII D, Sec. 6(a) of the California Constitution, to the extent applicable) make the final determination on the appropriate amount of the adjustment if any within 30 days of receipt of Collector's request.

The City Council may grant some, all or none of the requested increase. If City rejects a special rate adjustment requested by Collector, grants a rate increase less than what was requested by Collector, or fails to act in a timely manner upon all or any part Collector's special rate adjustment application, Collector's sole remedies against City are (a) to file a petition for writ of mandate pursuant to Code of Civil Procedures Section 1085; or (b) withhold special services and/or new services. Collector expressly agrees that it does not have a cause for action for damages against City.

c. **Changes in Scope of Service.** The City shall approve adjustments of the Service Fee for changes in the scope of Services as specified in Article 6 of this Agreement. In the event either party requests a modification of a Service provided pursuant to this Agreement, or additional services not currently included within this Agreement, Collector shall furnish City with complete, projected operational and cost data for the modified or additional Service. City reserves the right to require that Collector supply any additional cost data or other information it may reasonably need to ascertain the appropriate adjustment. City further reserves the right to employ qualified independent consulting services to review data submitted by Collector. For Collector- initiated proposals for service modifications or additional services, Collector shall pay all City consultant and attorney expenses relating to the review.

d. **Customer Notification.** No later than May 15 to the date the adjusted rates become effective each year, Collector shall notify Customers of any changes in their Solid Waste Collection Service rates.

e. **No Release or Assumption of Liability.** Collector agrees that payment to the Collector by the City for changes in Scope of Service or Uncontrollable Circumstances shall not constitute nor be deemed a release of the responsibility and liability of Collector, its employees, subcontractors, agents, and consultants for the Services performed hereunder nor shall such payment be deemed to be an assumption of responsibility or liability by City for any defect or error in such Services.

#### 10.09 Collector Billing.

**Billing and Payment Residential Customers.** Collector shall be responsible for billing Residential Customers on behalf of the City. Residential Customers shall be billed for Solid Waste Collection Services bi-monthly, in arrears. Collector shall calculate each Customer's bill for Solid Waste Collection Service based on the Customer's Service requirements. The Service Fees shall not exceed current rates approved by the City. Collector may itemize or identify such costs, with prior approval by City. Collector shall submit an itemized invoice to City once per month for the Service Fees for Residential Customers, which invoice City shall pay within thirty (30) days of receipt, less any liquidated damages or other sums due City. The City may, in its discretion, allow residential solid waste service fees to be billed on the property tax rolls pursuant to the City Code.

a. **Billing and Payment - Commercial Customers.** Collector shall be responsible for billing Commercial Customers on behalf of the City. Commercial Customers shall be billed for Solid Waste Collection Services monthly in arrears. Collector shall calculate each Customer's bill for Solid Waste Collection Service based on the Customer's Service requirements. The Service Fees shall not exceed current rates approved by the City. Collector may itemize or identify such costs, with prior approval by the City. Collector shall submit an itemized invoice to City once per month for the Service Fees for Commercial Customers, which invoice City shall pay within thirty (30) days of receipt, less any liquidated damages or other sums due City.

b. **Collector Mailing.** Collector shall incorporate with the billing additional information as required by City, including Collector's telephone number for Customers to call with questions and/or disputes on Solid Waste Collection Service billing, and shall enclose flyers or other notices provided by the City to Customers as required hereunder. Collector shall mail bills substantially in accordance with billing policy and rules of the Collector and approved by the City. Collector billing policy and rules are attached as Exhibit G, in effect as of the date hereof. Collector shall train Collector employees in maintaining records of payments, delinquencies, late charges (if any), as well as promptly responding to billing inquiries and resolving billing disputes. Collector shall mail the Service bills to Commercial Customers no later than ten (10) days following the last day of each month. Collector shall incorporate with the billing additional information as required by City, including Collector telephone number for Customers to call with questions and/or disputes on Service billing, and shall enclose flyers or other notices provided by the City to Customers as required hereunder.

c. **Data Base.** Collector shall maintain Solid Waste Collection Service billing accounts and records in accordance with Article 7.

d. **Dispute Resolution.** Collector acknowledges that City shall not be responsible for taking Customers' calls or responding to Customers' correspondence with respect to Solid Waste Collection Service billing inquiries or disputes, and that it is Collector's obligation to do so.

#### 10.10 Disputes.

a. **Customer Notice of Dispute.** If a Customer disputes any amount calculated in good faith by Collector, the Customer shall pay the undisputed amount and give Collector Notice of such dispute within fifteen (15) days of receipt thereof, together with any request for additional information, identified with reasonable specificity, with respect thereto.

b. **Collector's Response.** Within seven (7) days of receiving the Customer's Notice, the Collector shall respond to the Customer's dispute and supply any requested information. If the Collector does not respond within such time, Collector will be deemed to concur with the Customer. If Collector concurs or is deemed to concur, it shall promptly amend the disputed invoice.

c. **Dispute Resolution.** If the Customer disagrees with Collector's response and the Customer and Collector cannot reach agreement during an ensuing fifteen (15) day period following the Collector's response, the Collector shall submit the matter for determination to the City Manager or his/her designee.

## ARTICLE 11 BREACHES, DEFAULTS AND REMEDIES

11.01 **Minor Breaches and Liquidated Damages.** In its quarterly report submitted to the City, Collector shall certify to City that it has met its Service obligations during such quarter. If Collector cannot so certify, if its complaint log evidences, or if the City Notifies Collector that it has failed to meet any of its Service obligations and the service failures were not remedied in a satisfactory or reasonable manner and time frame, or are repetitive occurrences, then Collector shall pay liquidated damages in the amount of two hundred-fifty dollars (\$250.00) for each of the following breaches:

- a. **Failure to Correct Missed Service.** failure to correct a missed collection or other Service within twenty-four (24) hours (Sundays and holidays excepted) of telephone or other notice thereof to Collector;
- b. **Discourtesy.** discourteous behavior by Collector's employees reported by or complained of by Customers to Collector or City and demonstrated to the satisfaction of the City;
- c. **Damage to Customer's Property.** demonstrated damage reported by or complained of by Customers to Collector or City with respect to Customer's landscaping or other property, caused by inattention, carelessness, or negligence of Collector's employees in the course of providing Service;
- d. **Excessive Noise.** complaints to Collector or City of noise in excess of that reasonable and necessary for providing Service, demonstrated to the satisfaction of the City;
- e. **Collection Outside Permitted Hours.** Providing Services outside authorized hours;
- f. **Failure to Respond to Complaint.** failure to respond to any complaint and correct related breach in Services within twenty-four (24) hours (Sundays and holidays excepted) of telephonic or other notice thereof to Collector;
- g. **Failure to Log Complaint.** Failure to log a complaint in accordance with Article 4;
- h. **Failure to Submit Complaint Log to City.** failure to submit or make available complaint log to City upon request in accordance with Article 4;
- i. **Failure to Submit Reports to City.** failure to timely submit complete reports to the City in accordance with Article 7.

The City shall itemize and submit such liquidated damages to the Collector for the inclusion into the next payment by Collector to the City, whether or not Collector has itemized such complaints on its reports submitted. Within ten (10) days of receiving notice of such breaches and damages from City, Collector may contest imposition of such damages by notice to the City, indicating the basis for disagreement. IF COLLECTOR OWES CITY ANY DAMAGES UPON TERMINATION OF THE AGREEMENT BY THE CITY, COLLECTOR'S LIABILITY SHALL SURVIVE THE TERMINATION HEREOF. REPEATED VIOLATIONS MAY CONSTITUTE GROUNDS FOR TERMINATION OF THE AGREEMENT.

- j. **Failure to Respond to Emergency Services During Work Hours.** failure to respond within the time frame set forth in Section 4.08.f.
- k. **Failure to Respond to Emergency Services After Hours.** failure to respond within the time frame set forth in Section 4.08.g.

- l. **Spillage of Litter.** failure of Collector to clean up litter or spillage (including water leakage from vehicles) due to negligence of the Collector within 90 minutes of report of such spillage.
- m. **Failure to conduct annual outreach and education.** failure to complete annual outreach and education requirements as described in Exhibit H by December 31 of any Year to City's satisfaction.
- n. **Failure to complete annual SB 1383 monitoring requirements.** failure to complete annual SB 1383 monitoring requirements as described in Exhibit D by December 31 of any Year to City's satisfaction.
- o. **Failure to timely complete annual SB 1383 reporting requirements.** failure to complete annual reporting requirements as described in Article 7 by December 31 of any Year to City's satisfaction.
- p. **Commingled Waste.** Commingling Solid Waste with Recyclable Materials and/or Organic Waste in Collection Vehicles that was properly sorted by Customer.
- q. **Improper Disposal.** Disposal of Recyclable Materials or Organic Materials in the Disposal Facility except as provided in this Agreement.
- r. **Failure to Label Containers.** Failure to label containers in accordance with SB 1383 Regulations.
- s. **Failure to perform waste studies.** failure to perform route reviews or waste studies/audits.
- t. **Failure to investigate complaints.**
- u. **Failure to fulfill any other obligation in this Agreement.**

#### 11.02 Defaults.

Each of the following shall constitute an event of default ("Event of Default") hereunder:

a. **Service Defaults:**

(1) **Missed Collections.** Collector fails to make at least ninety-nine percent (99.0%) of the gross number of scheduled Solid Waste collections or at least ninety-nine percent (99.0%) of Street Sweeping Services in any Contract Year (calculated by lane miles swept divided by total lane miles to be swept pursuant to Exhibit O) or at least ninety-nine percent (99.0%) of Street Sweeping Services required pursuant to Exhibit P or section 4.08.b hereof, subject to exceptions in Article 4.

(2) **Breach of Agreement.** Collector fails to perform any of its obligations hereunder (that is not a violation of Applicable Law), the City notifies Collector that a specific failure or refusal has occurred which will, unless corrected, in its opinion, give the City a right to terminate this Agreement in accordance with this Article, and the Collector does not or correct such breach within twenty (20) days of receiving the City's Notice thereof. If such breach is not capable of cure within the twenty (20) days, Collector shall promptly provide City Notice explaining why Collector believes it needs additional time to effectuate a cure together with a schedule therefor, and shall diligently proceed to cure the breach within such schedule, whereupon City, in its sole discretion, may accept Collector's schedule of cure, make a written demand that Collector cure the default within an alternative time period set by City, or terminate this Agreement at the end of the twenty (20) day period.

(3) **Full Service Not Timely Implemented.** Collector fails to implement full Service by the scheduled date in the Transition Plan;

(4) **Failure to Comply With Law.** Collector fails to comply with Applicable Law within five (5) days' notice of violation thereof;

(5) **Failure to Deliver Materials to Designated Facility.** Collector fails to deliver Street Sweeping waste to the Upland Public Works Yard, Solid Waste to a Disposal Facility, Green Waste to a Composting Facility, Organic Waste to an Organic Waste Processing Facility, or Recyclables to a Processing Facility, selected in accordance with Article 4.

(6) **Criminal Activity.** The occurrence of any conduct prohibited under Article 9;

(7) **Failure to Meet Diversion Requirements.** Collector fails to meet the diversion provisions of AB 939, AB 341, AB 1826, SB 1383, and their implementing regulations. Provided Collector has received approval to implement new diversion programs and/or rates.

b. **Performance Assurance Defaults:**

(1) **Failure to Maintain Performance Bond, etc.** Collector fails to maintain insurance, performance bond or guaranty in accordance with Section 8.03;

(2) **Failure to Provide Assurances of Performance.** Collector fails to timely provide assurance of performances in accordance with Article 11;

(3) **Failure to Pay Damages.** Collector fails to pay City damages suffered by the City within thirty (30) days following City's request therefore;

(4) **Sale, Transfer, Assignment.** Collector sells, transfer or assigns its stock, assets and/or this Agreement without City approval required by Article 15;

(5) **Seizure, Attachment.** Any Service Asset is seized, attached, or levied upon (other than a pre-judgment attachment) so as to substantially impair Collector's ability to timely and fully perform Services, and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours, not counting weekends and holidays;

(6) **Insolvency, Bankruptcy, Liquidation.** Collector files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidation, assignee (other than as a part of a transfer of Service Assets no longer used to provide Services or backup Services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestrator, or administrator (or similar official) of Collector for any part of Collector's operating assets or any substantial part of Collector's property, or shall make any general assignment for the benefit of Collector's creditors, or shall fail generally to pay Collector's debts as they become due or shall take any action in furtherance of any of the foregoing.

A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Collector consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidation, assignee, custodian, trustee, sequestrator, or administrator (or similar official) of the Collector or for any part of the Collector's operating equipment or assets, or orders the conclusion or liquidation of the affairs of the Collector.

c. **False Representations; Breach of Representations or Warranties.** Collector makes a representation or warranty herein, including Exhibit B, which is untrue as of the date thereof. Collector makes a representation or fails to make a disclosure, whether within this Agreement or otherwise, to the City in connection with or as a material inducement to entering into this Agreement or any future amendment hereto, which representation or failed disclosure is false or misleading in any material respect when made.

#### 11.03 Breaches and Defaults Excused

a. **Performance Excused.** Neither Party shall be deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities or commitments hereunder to the extent that such breach or default is due to an Uncontrollable Circumstance, provided such Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of such Uncontrollable Circumstance.

b. **Notice.** The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing performance hereunder for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent Services may be curtailed; any requests or suggestions to mitigate the adverse effects of such Uncontrollable Circumstance; or any consequent adjustment of the Service Fee in accordance with Article 10. If the Parties cannot agree upon such matters, either Party may seek determination by Arbitration.

c. **City's Rights.** Notwithstanding that Collector's failure to timely and fully provide Services due to Uncontrollable Circumstances does not constitute an Event of Default, City shall nevertheless retain the right to perform such Services itself in accordance with Article 4, and following the continuance of such failure for thirty (30) days, shall have the option, in its sole discretion, to terminate the Agreement as provided in this Article.

#### 11.04 Remedies Upon Default.

Upon occurrence of an Event of Default, City shall have the following rights:

- a. **Termination.** to terminate this Agreement or any portion of the Collector's Service obligations;
- b. **Suspension.** to suspend the Agreement for a period not to exceed thirty (30) days;
- c. **City Right to Perform Services.** to perform Collector's Services using Collector's equipment;
- d. **All Other Available Remedies.** to exercise its remedies of damages and any other available remedies at law and in equity (including specific performance); provided, that prior to instituting any court proceeding, the City may request dispute resolution.

Collector acknowledges that City's remedy of damages for a breach hereof by Collector may be inadequate for reasons including:

- (1) the urgency of timely, continuous, and high-quality Solid Waste management service hereunder, including collection, transportation, and/or transfer for disposal of putrescible wastes which constitute a threat to public health;
- (2) the lengthy time period and significant investment of money and personnel (both City staff and private consultants, including engineers, procurement counsel, City peers, and elected City officials) required to

request and evaluate qualifications and proposals for alternative service comparable to Service provided hereunder for the price provided hereunder, and to negotiate new agreements therefore;

(3) the City's reliance on Collector's technical Solid Waste management expertise;

(4) the City's reliance on Collector's established relationships with owners and/or operators of Processing Facilities, Composting Facilities, Disposal Facilities, and Recyclables brokers and purchasers; and

(5) City's obligation to repay municipal obligations, regardless whether it secures Collector's performance hereunder.

Consequently, City shall be entitled to all available equitable remedies, including injunctive relief.

**11.05 Remedies Not Exclusive.** Each Party's rights and remedies in event of the other Party's breach and default hereunder are not exclusive. A Party's exercise of one such remedy, is not an election of remedies but shall be cumulative with any other remedies hereunder.

**11.06 Waivers.**

a. **City Waiver of Breach.** City's waiver of any breach or Event of Default shall not be deemed to be a waiver of any other breach or Event of Default, including ones with respect to the same obligations hereunder. The City's decision not to demand liquidated damages shall not be deemed a waiver of any Collector breach hereunder. City's subsequent acceptance of any damages or other money paid by Collector, including liquidated damages, shall not be deemed to be a waiver by City of any pre-existing or concurrent breach or Event of Default.

b. **Collector Waiver of Defenses.** Collector acknowledges that it is solely responsible for provided Services waives defenses to the payment and performance of its obligations hereunder based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence, or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Collector with regard to any provision hereof.

**11.07 Jurisdiction; Venue.** The Parties shall bring any lawsuits arising out of this Agreement in State of California courts, which shall have exclusive jurisdiction over such lawsuits. The Parties agree that venue is made in and will be performed in courts sitting in the San Bernardino County. Parties further agree that the site of any other hearing or action, whether arbitration or non-judicial, of whatever nature or kind regarding this Agreement, shall be conducted in San Bernardino County.

**11.08 Costs.** Collector agrees to pay to the City all fees and expenses reasonably incurred by or on behalf of the City while enforcing payment or performance of Collector's obligations hereunder if such non-payment or non-performance results in an Event of Default by Collector.

**11.09 Assurance of Performance.** If Collector is the subject of any labor unrest and appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of an environmental or tax law, and the City Manager believes in good faith that Collector's ability to timely and fully perform Services has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Collector reasonable assurances of timely and full performance hereunder. If Collector fails to provide such reasonable assurances by the date required by the City, such failure or refusal shall constitute an Event of Default.

**ARTICLE 12 SUSPENSION OR TERMINATION.**

**12.01 City Right to Suspend or Terminate.**

a. **Termination Events.** City shall have the right to terminate this Agreement in whole, or by directing Collector to cease performing any portion or item of its Services listed in Exhibit D, in part, in the following events:

(1) **Collector Default.** the occurrence of an Event or Default;

(2) **Uncontrollable Circumstances.** the occurrence- and continuance of an Uncontrollable Circumstance;

(3) **Non-Severable Provisions.** any clause, sentence, provision, subsection, Section, or Article hereof or Exhibit hereto ruled invalid by any court of competent jurisdiction but is not severable here from;

b. **Suspension Events.** City shall have the right to suspend this Agreement, in whole or in part, upon the occurrence of an Event of Default; provided such suspension is for no longer than thirty (30) days, during which period the Collector shall have the opportunity to demonstrate to the satisfaction of the City that Collector can once again fully perform Services, in which event City's right to suspend or terminate the Agreement shall cease and Collector may resume its Performance Obligations.

c. **Notice.** City shall give Collector Notice of termination, which shall be effective one-hundred twenty (120) days thereafter; provided that such termination shall be effective immediately in an Event of Default which endangers public health, welfare, or safety. City shall give Collector Notice of suspension, which shall be effective immediately.

d. **Suspension, Termination of a Portion of Performance Obligations: Reduction in Service Fee.** In the event the City suspends a portion of this Agreement or terminates a portion of Collector's Performance Obligations, Collector shall continue to fully perform its obligations under the remaining portions hereof which are not suspended or terminated, and the Service Fee shall be adjusted to reflect actual reductions in Services rendered to Customers by Collector at rates set forth in Exhibit M.

**12.02 Collector's Obligations Upon Termination**

a. **Use of Service Assets.** Upon effectiveness of Notice of the City's Notice of termination, City shall have the right to possess and use Service Assets, which RIGHT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

b. **Pay Outstanding Damages.** Collector shall pay City any damages accrued and payable during the then current Agreement Year or portion thereof which would have otherwise become payable. COLLECTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

c. **Cooperation During Transition.** In the event Collector is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, Collector shall cooperate fully with City and any subsequent Collector(s) to assure a smooth transition of services described in this Agreement, including transfer of Records (including computer data, files and tapes), complete routing information, route maps, vehicle fleet information, and Customer billing lists; provision of other reports and data required by this Agreement; and coordination with City and any subsequent Collector(s). SUCH OBLIGATIONS OF COLLECTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

## **ARTICLE 13      DISPUTE RESOLUTION**

13.01 **Alternative Dispute Resolution.** Prior to resorting to arbitration, litigation, or some other dispute resolution procedure, either Party may choose a non-binding determination de novo by a retired judge, including Alternative Resolutions Centers (A.R.C.) and JAMS/End dispute, pursuant to standard alternative dispute resolution procedures. Each Party shall be responsible for their own attorneys' fees and costs related to the Alternative Dispute Process.

13.02 **Parties' Obligations During Pendency of Dispute.** During the pendency of any dispute hereunder, the Parties shall perform their respective obligations hereunder.

**ARTICLE 14 THE PARTIES.**

14.01 **Collector Is Independent Contractor.** Collector shall perform Services as an independent contractor engaged by City and not as officer, agent, servant, employee, or partner of City, nor as a joint venture with City. No employee or agent of Collector shall be deemed to be an employee or agent of City. Collector shall have the exclusive control over the manner and means of performing Services and over all persons performing Services, except for City's right to change the scope of Services in accordance with Article 6. Collector shall be solely responsible for the acts and omissions of its officers, employees, collectors, subcontractor, and agents, none of whom shall be deemed to be an officer, agent, servant, or employee of the City. Neither Collector nor its officers, employees, Collectors, subcontractors, and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to City employees, and Collector expressly waives any claim it may have or acquire to such benefits.

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

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

14.04 **Further Assurances.** Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

14.05 **Actions of the City in Its Governmental Capacity.** Nothing herein shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity.

14.06 **Collector's Obligations Performed at Its Sole Expense.** Collector shall perform Services solely for the compensation expressly provided for herein.

14.07 **Parties' Representatives.** Except as otherwise expressly provided in this Agreement, the City Representative shall be authorized to act on behalf of City in the administration of this Agreement.

14.08 **Due Diligence.** Collector acknowledges that the City may be subject to statutory fines for failure to achieve mandated diversion levels and that waste management is a public health and safety concern. It agrees that it shall exercise due diligence in performing Services hereunder.

**ARTICLE 15 ASSIGNMENT AND AMENDMENTS**

**15.01 Assignment.**

a. **City Assignment.** The City reserves the right to assign this Agreement to a sanitation district or other public entity succeeding to the major portion of the City's Solid Waste management rights and obligations.

b. **Collector Assignment.** Collector acknowledges that the experience and expertise of Collector are material considerations of City in entering into this Agreement with Collector. Collector shall not assign any of Collector's rights nor delegate any of Collector's duties under this Agreement without the express prior written consent of City. Any such assignment made without the consent of City shall be void. Collector shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

(1) assignee's audited financial statement for the immediately preceding three (3) operating years; indicating that in the opinion of the Collector the proposed assignee's financial status is equal to or greater than Collector's;

(2) satisfactory proof that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Collector;

(3) satisfactory proof that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the assignee has provided City with a complete list of such citations and censures;

(4) satisfactory proof that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion;

(5) satisfactory proof that the proposed assignee conducts its Solid Waste management practices in accordance with sound waste management practices in full compliance with all federal, state, and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations;

(6) of any other information required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of indemnities and damages and provision of bonds and/or performance guaranties, in a timely, safe, and effective manner.

Collector shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.

c. **Assign.** For the purpose of this Section, "assign" includes:

(1) to sell, exchange, or otherwise transfer to a third party any of Collector's assets dedicated to Solid Waste management services;

(2) issuing new stock or selling, exchanging, or otherwise transferring thirty percent (30%) or more of the then outstanding common stock of Collector to a Person other than the shareholders owning the stock as of the date hereof.

d. **Subcontractor.** The use of a subcontractor to perform services under this Agreement shall not constitute delegation of Collector's duties provided that Collector has received prior City approval to subcontract such services and the City has approved the subcontractor who will perform such services. Collector shall be responsible for directing the work of Collector's subcontractor and any compensation due or payable to Collector's subcontractor shall be the sole responsibility of Collector. City shall have the right to require the removal of any approved subcontractor for reasonable cause.

#### 15.02 Amendments

a. **By Agreement.** The Parties may change, modify, supplement or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.

b. **City Manager May Act as Authorized Representative.** Authority to act on behalf of the City is hereby delegated to the City Manager or her designee.

**ARTICLE 16 NOTICES, CONSENTS, APPROVALS, ETC.**

16.01 **Notices, etc.** All reports, demands, requests, directions, selections, option exercises, orders, requests, proposals, reviews, comments, acknowledgments, approvals, consents, waivers, certifications and other communications made hereunder shall be in writing, other than computerized reports in accordance with Article 7, and shall either be sent by email or be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested) or by commercial delivery service providing delivery verification, addressed as follows:

If to City: City Manager  
City of Upland  
1370 North Benson Avenue  
Upland, CA 91786  
Fax: (909) 931-9923  
Ph: (909) 931-4100  
Email:citymanager@uplandca.gov

If to Collector: Mr. Cole Burr, President  
Burrtec Waste Industries, Inc.  
9890 Cherry Ave  
Fontana, CA 92335  
Fax: (909) 429-4290  
Ph: (909) 429-4200  
Email: cole@burrtec.com

Notices may be delivered via email provided that any such email shall be promptly followed by personal or mailed delivery.

Notice by City to Collector of a missed pick-up or a Customer problem or complaint may be given to Collector orally by telephone at Collector's local office with written confirmation sent to Collector within twenty-four (24) hours of the oral notification.

Parties may change their address or contact information upon Notice to the other Party as provided above.

16.02 **Exercise of Options.** Except as otherwise provided, the Parties' exercise of any approval, disapproval, option, discretion, satisfaction, determination, election, or choice hereunder shall be reasonable; unless this Agreement specifically provides otherwise.

**ARTICLE 17 EXECUTION OF AGREEMENT**

17.01 **Execution in Counterparts.** This Agreement may be executed in any number of original counterparts. All such shall counter parts shall constitute but one and the same Agreement.

17.02 **Authority to Execute.** The Parties warrant that the undersigned has been duly authorized to execute this agreement.

BURRTEC WASTE INDUSTRIES, INC.,  
a California corporation

CITY OF UPLAND,  
a California Municipal Corporation

Signed by:  
By: Cole Burr  
63679C96A01D483...  
Cole Burr, President

Signed by:  
By: Bill Velto  
E39F326490F54B4...  
Bill Velto, Mayor

Signed by:  
By: Tracy A. Burr  
B50A7D311821408...  
Tracy A. Burr, Vice  
President/Secretary

ATTEST:  
DocuSigned by:  
By: Keri Johnson  
F421A8F85BE347A...  
Keri Johnson, City Clerk

APPROVED AS TO FORM:

Signed by:  
By: Stephen Deitsch  
9326579F6DB640E...  
Stephen P. Deitsch, City Attorney

## EXHIBIT A DEFINITIONS

**"Agreement"** means this Agreement, including all exhibits (Exhibits A - M) and attachments, which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 15.02.

**"Applicable Law"** means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State, County of San Bernardino, City, regional or local government authorities, agencies, boards, commissions, courts, or other bodies having applicable jurisdiction, that from time to time apply to or govern Services or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, the payment of minimum wages and the San Bernardino County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendment or modifications thereof, unless otherwise specifically limited.

**"Backyard Collection"** means the collection of Solid Waste, Recyclables, and Organic Waste from Customers' backyards where necessary for safety, convenience, access, or where requested by Customer.

**"Bin"** shall mean a detachable container used in connection with Commercial/Industrial Premises with a capacity equal to or less than six (6) cubic yards that is serviced using a front end loading vehicle.

**"Box"**, sometimes known as a "roll-off," "drop" box or "debris" box, means a wheeled or sledded container or compactor, generally 10 to 40 cubic yards in size, that is picked up in its entirety by a dedicated truck.

**"Cart"** shall mean an industry-standard receptacle for, Solid Waste, Recyclables, or Organic Waste, made of metal, hard rubber or plastic, in a range of sizes of approximately 35, 65 or 95 gallons, with wheels, a handle for ease of movement and a tight-fitting, attached lid, designed to be dumped mechanically into a Collection vehicle.

**"Bulky Waste" or "Bulky Goods"** means discarded furniture (including chairs, sofas, mattresses, and rugs); 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, VCRs, and other similar items commonly known as "brown goods"); residential wastes (including wood waste, tree branches, scrap wood, debris from building construction, sod, and earth, in the aggregate not exceeding one cubic yard per collection); clothing; and tires.

**"Change in Law"** means the occurrence of any event or change in Applicable Law as follows:

(1) the adoption, promulgation, modification, or change in judicial or administrative interpretation occurring after the date hereof which adoption, promulgation, codification, or change in judicial or administrative interpretation relates to any Applicable Law, other than laws with respect to taxes based on or measured by net income, or any unincorporated business, payroll, or employment taxes; or

(2) any order or judgment of any federal, state or local court, administrative agency or governmental body issued after the date hereof if:

(i) such order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and

(ii) the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such Party); or

(3) the imposition by a governmental authority or agency of:

(i) any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date hereof; or

(ii) any Franchise Fee, tax, or assessment with respect to the transfer, processing, or disposal of Solid Waste, Recyclables, or Organic Waste; or

(4) the failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption or termination of, any Permit after the date hereof; provided such failure to issue or the suspension or termination of any Permit is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon *is* directly responsible.

**"City"** means the *City* of Upland, California.

**"City Representative"** means the City Manager or his/her designee.

**"City Waste"** means Solid Waste Collected from City-designated facilities.

**"Collect, Collection"** or other form thereof means Solid Waste, Recyclables, and Organic Waste pickups made by Collector as required by and in accordance with the Agreement.

**"Commercial"** refers to premises or customers within the City other than Residential premises or Customers.

**"Commercial Service"** means Bin or Cart service normally provided under this Agreement to industrial, manufacturing, warehouse, wholesale and retail stores, service establishments, professional offices, other business establishments, government facilities, and schools, and Bin service provided to Multiple- Family Dwellings and Mobile Home Parks.

**"Compactor"** means a compacting unit that loads a detachable roll-off box. The detachable roll-off box serves as a receptacle for Solid Waste, Recyclables, or Organic Waste having a capacity of greater than eight (8) cubic yards and is picked up in its entirety by a dedicated truck for emptying at a separate location.

**"Composting Facility"** means the Facility for processing Green Waste selected by Collector. The Facility can process the Green Waste as alternative daily cover provided it receives AB 939 diversion credit.

**"Construction and Demolition Waste" or "C&D"** means any non-putrescible Solid Waste generated as the result of construction or demolition, including without limitation, discarded packaging or containers and waste construction materials, whether brought on site for fabrication or used in construction or resulting from demolition, excluding liquid waste, Hazardous Waste, and Medical and Infectious Waste.

**"Containers"** means the carts, cans, bins, roll-offs, plastic bags, or custom containers Collector uses in providing Services hereunder.

**"Contract Year"** means each fiscal year of the City commencing July 1 and ending June 30.

**"Collector"** means Burrtec Waste Industries, Inc.

**"Collector Representative"** means an authorized employee or designated representative of Burrtec Waste Industries, Inc.

**"Curbside Collection"** means the collection of Solid Waste from Customers who place containers within four (4) feet from a road or in an alleyway.

**"Customers"** means the generators (including owners, tenants, occupants and/or persons having the care or control of any premises within the City) of Solid Waste to which Collector is required to provide Services.

**"Debris Box"** means a receptacle for Solid Waste, Recyclables, or Organic Waste having a capacity of greater than 10 cubic yards that is picked up in its entirety by a dedicated truck for emptying at a separate location.

**"Direct Cost"** means costs directly related to the implementation of this Agreement that include any or all of the following:

- (1) payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers' Compensation Insurance, federal and state unemployment taxes and all medical and health insurance benefits;
- (2) the costs of materials, services, direct rental costs and supplies;
- (3) travel and subsistence costs;
- (4) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance hereunder; and
- (5) any other cost or expense which is directly or normally associated with the task performed.

**"Disposal Facility"** means the Facility or Facilities for disposing of Solid Waste and/or residue from a Processing Facility or Composting Facility, including transfer stations, selected by Collector.

**"Disposal Fees"** means all tipping fees and transportation costs related to the disposal of solid waste.

**"Event of Default"** means a service default, performance assurance default, false representations, or breach of representations or warranties as defined in Article 11.

**"Food Waste"** means food scraps separated from Solid Waste and offered for Collection by the Collector, that will decompose and/or putrefy including (i) all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs, and (ii) paper waste contaminated with food waste.

**"Green Waste"** means organic waste generated from any landscape, including grass clippings, leaves, prunings, tree trimmings, weeds, branches and brush.

**"Gross Receipts"** means any and all revenues, receipts, or compensation in any form received by the Collector for the services provided under this Agreement. Sales revenue from the sale of Recyclable Material is excluded from Gross Receipts for purposes of calculating Franchise Fees.

**"Hazardous Waste"** is a material which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, excluding HHW but including:

(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including California Code of Regulations, title 23, Section 2521;

(2) materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations;

(3) materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

(4) materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder; and

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

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste," for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition shall be employed for purposes of this Agreement.

**"Household Hazardous Waste" or "HHW"** means Hazardous Waste generated in small quantities at Residential premises.

**"Holiday"** means Christmas Day, New Thanksgiving Day, and the following City-designated Holidays: Year's Day, Memorial Day, Labor Day, Independence Day.

**"Indirect Costs"** means costs related to the implementation of this Agreement that are not Direct Costs.

**"Mobilehome"** shall have the meaning set forth in California Health and Safety Code Section 18211.

**"Mobilehome Park"** means a site at which Mobilehome spaces are rented for residential use.

**"Multi-Family Residence"** shall mean any building or structure, including but not limited to Mobilehome Parks used for residential purposes having four (4) or more dwelling units.

**"Non-Collection Notice"** means a notice left by Collector for Customers at the times, in the events and in the manner described herein, including Waste Not Properly Placed in Containers, Container Not Placed in Proper or Safe Collection Location, and Hazardous Waste or Unsafe Materials, as described in Article 4, which shall contain, at a minimum the date and time it is given, the complete address of the premises, the reason for the non-collection, and the manner in which materials should be prepared for collection, and which shall be printed at Collector's expense.

**"Notice" or "Notify"** or other variation thereof means notice given in accordance with Article 16.

**"Office Hours"** are defined in Article 4.

**"Organic Waste"** means Solid Waste containing material originated from living organisms and their metabolic waste products, including, but not limited to, Food Waste, Green Waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with Food Waste or otherwise defined in 14 CCR Section 18982(a)(46).

**"Party" and "Parties"** refers to the City and the Collector, individually and together.

**"Permits"** means all federal, State, City, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any Person with respect to Services, as renewed or amended from time to time.

**"Person"** includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special purpose district or any other entity whatsoever.

**"Phone Hours"** are the Collector's open Office Hours as defined in Article 4.

**"Processing Facility"** means the facility or facilities for sorting and/or processing commingled or source separated Recyclables, Organic Waste and/or Solid Waste selected by Collector.

**"Processing Fee"** means all tipping fees for costs related to the sorting, cleaning, material treatment, marketing and transportation of Solid Waste including Recyclables and Organic Waste.

**"Reasonable Business Efforts"** means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy; provided that such Person and/or any enterprise by which such Person is employed would not incur a financial loss (other than time expended or unless otherwise compensated for such efforts herein) by reason of having expended or expending such efforts.

**"Records"** are ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services, the Service Fee, or performance hereunder, including routing, level of each Customer's services, inventory, maintenance logs, etc.

**"Recyclables"** means material that can be separated from waste for the purpose of reusing or returning these materials in the form of raw materials for new, used or reconstituted products that meet the quality standard necessary to be used in the marketplace, or for composting. "Recyclables" includes, but is not limited to the following: newspaper including inserts, coupons, and store advertisements; corrugated cardboard; mixed waste paper, including office paper, computer

paper, magazines, junk mail, catalogs, kraft bags paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes, tissue boxes, paper tubes, and wrapping paper; glass containers including brown, clear, and green glass bottles and jars; aluminum including beverage containers, foil, food containers, small scrap metal; milk and juice cartons and jugs; steel or tin cans; small scrap metal including metal coat hangers; plastic jugs, bottles, and containers including resins #1 through #7; used motor oil and oil filters; and any other materials mutually agreed to by the Collector and the City.

**"Recycling"** means the process of collecting, sorting, cleansing, treating, and reconstituting materials, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Recycling includes processes deemed to constitute a reduction of Landfill Disposal pursuant to 14 CCR, Division 7, Chapter 12, Article 2. "Recycling" does not include transformation as defined in Public Resources Code Section 40201.

**"Resident-Requested Collection"** means the collection of Bulky Waste at the curbside or alleyway on request from residential customers.

**"Residential"** refers to: (i) any building or structure, or portion thereof, that is used for residential housing purposes and has four (4) or fewer distinct living units; and (ii) any multiple unit residential complex which, with the prior written approval of the City Manager, receives Solid Waste, Organic Waste, and Recyclables Collection services using Standard Residential Solid Waste, Organic Waste, and Recycling Containers.

**"Roll-Off Container"** means a metal container with a capacity of twenty(20) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

**"Service Assets"** means all property of Collector used directly or indirectly in performing Services, including Vehicles, Containers, maintenance equipment and facilities, administrative equipment and offices and related supplies.

**"Service Fee"** is defined in Section 10.01, as adjusted, escalated or offset.

**"Services"** means all obligations of Collector hereunder to City and Customers.

**"Solid Waste"** has the same meaning as defined in Public Resources Code section 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, C&D, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- (1) Hazardous waste, as defined in PRC Section 40141.
- (2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- (3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14, commencing with Section 117600, of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste Landfill, as defined in PRC Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to PRC, Division 30.

"**Special Wastes**" include flammable waste; waste transported in a bulk tanker; liquid waste; sewage sludge; pollution control process waste; residue and debris from the cleanup of a spill or release of chemical substances or any other Special Wastes; contaminated soil, waste, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; wastewater; explosive substances; radioactive substances; industrial appliances; and abandoned vehicles and parts thereof.

"**State**" means the State of California.

"**Substantial Evidence**" means such evidence as would convince a reasonable person and on which reasonable persons may not reasonably differ as to the conclusion to be drawn from such evidence.

"**Term**" of this Agreement is defined in Article 3.

"**Tipping Fee**" means the fee charged by a Disposal, Composting, or Processing Facility to dispose or process of municipal Solid Waste, Organic Waste, or Recyclables, not including any charges for Special Wastes or Bulky Waste.

"**Ton (or Tonnage)**" means a short ton of 2,000 pounds.

"**Uncontrollable Circumstance(s)**" means any act, event or condition, whether affecting Services or either Party beyond the reasonable control of such Party and not the result of willful or negligent action or inaction of such Party, which materially and adversely affects the ability of either Party to perform any obligation hereunder, including:

(1) an act of God, landslide, lightning, earthquake, fire, flood (other than reasonably anticipated weather conditions for the geographic area of the City), explosion, sabotage, acts of a public enemy, war, blockade or insurrection, riot or civil disturbance, epidemic, pandemic or quarantine;

(2) the failure of any appropriate federal, State, City, or local public agency or private utility having operational jurisdiction in the area, to provide and maintain utilities, services, water, sewer or power transmission lines thereto; and

(3) strikes, work stoppages or other labor disputes or disturbances of any Person performing Services;

"**Used Oil**" means any oil that has been refined from crude oil, or has been synthetically produced, and

(1) is no longer useful to the Customer because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or

(2) has been synthetically produced, and has been used and as a result of such use has been contaminated with physical or chemical impurities.

"**Used Oil Filter**" means any oil filter that is no longer useful to the Customer because of extended storage, spillage, or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with physical or chemical impurities. Used Oil Filters must be generated by and at the Customer location wherein the Used Oil Filter is collected.

"**Vehicles**" means all trucks (including trucks providing Residential Collection Service of Solid Waste, Recyclables, Organic Waste, Bulky Waste and litter pickup; field supervisors' and administrator's vehicles), rolling stock and other vehicles used to provide Services (including Collection as well as repair and maintenance), whether owned or leased by Collector.



**EXHIBIT B**  
**COLLECTOR'S REPRESENTATIONS AND WARRANTIES**

- a. **Status.** Collector 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.
- b. **Authority and Authorization.** The Collector 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 the Collector and constitutes a legal, valid and binding obligation of the Collector enforceable against the Collector in accordance with its terms.
- c. **Statements and Information in Proposal.** Collector's Response to the City's Negotiation Packet for Solid Waste, Recycling and Organic Waste Collection, Disposal and Recycling Services; Proposal in response to the City's Negotiation Packet, on which City has relied upon in entering into this Agreement, are correct and complete in all material respects at the time originally submitted to the City.
- d. **No conflicts.** Neither the execution or delivery by the Collector of this Agreement, the performance by the Collector of its Performance Obligations, nor the fulfillment by the Collector of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of any Applicable Law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Collector is a party or by which the Collector or any of its properties or assets are bound, or constitutes a default thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Collector.
- e. **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 Collector, except such as have been duly obtained from its Board.
- f. **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 Collector's knowledge, threatened, against the Collector wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Collector 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 Collector in connection with the transactions contemplated hereby.
- g. **Due Diligence.** Collector has made an independent investigation satisfactory to it of conditions and circumstances surrounding the Agreement and Services it is required to perform.

**EXHIBIT C**  
**CITY'S REPRESENTATIONS AND WARRANTIES**

- a. **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.
- b. **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.
- c. **No conflicts.** Neither the execution nor delivery by the City of this Agreement, the performance by the City of its obligations hereunder, nor the fulfillment by the City of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.
- d. **No approvals.** 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 the City Council.
- e. **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.
- f. **No Warranty Regarding Waste Characterization.** City makes no warranties with respect to the waste characterization data or any waste disposal characterization study or projections by material type distributed to Collector together therewith. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of Solid Waste, Organic waste, or Recyclables collected by Collector.

## EXHIBIT D SCOPE OF REGULAR COLLECTION SERVICES

### Residential Collection Service

Collector shall provide for collection of Solid Waste, Recyclables, and Organic Waste from residential customers. Collector shall provide collection services using not more than three vehicle passes. Collector may provide collection services five (5) days per week, Monday through Friday. Charges for collection services shall be in accordance with Exhibit M.

1. **Residential Solid Waste Collection.** Collector shall Collect Residential Solid Waste once per week, in accordance with the provisions of this Agreement unless excepted as provided in Article 4, and transport Residential Solid Waste to the Disposal Facility or Facilities in accordance with Article 4. Cart service shall be provided to all single-family residences and to multiple-family dwellings and mobilehome parks at the property Owner's request. Collector shall collect Residential Solid Waste in Containers provided by the Collector. The City requires provision of industry-standard wheeled Carts for Solid Waste with securable, attached lids. The standard service will include Collection at the curb, and should be provided using automated collection vehicles. The Collector will provide backyard service in accordance with Article 4.

2. **Residential Recyclables Collection.** Collector shall Collect Residential Recyclables once per week comprised at a minimum of those listed in the definition "Recyclables" in accordance with the provisions of this Agreement unless excepted as provided in Article 4, and transport Residential Recyclables to the Processing Facility or Facilities in accordance with Article 4. Collector shall collect Residential Recyclables in Containers provided by the Collector. Default container capacity for Residential Recyclables service shall be 60-70 gallons.

3. **Residential Organic Waste Collection.** Collector shall Collect Residential Organic Waste once per week in accordance with the provisions of this Agreement unless excepted as provided in Article 4, and transport Residential Organic Waste to the Composting Facility or Organic Waste Facility in accordance with Article 4. Collector shall collect Organic Waste in the Containers provided by Collector. Default container capacity for Organic Waste Service shall be 90-100 gallons. Additional Organic Waste set out for collection will be collected, at the same time as the regularly scheduled collection for Organic Waste, at no charge to the Residential Customers. Collector shall provide up to two additional organics containers per residential property at no additional charge. Customer owned containers will no longer be accepted.

### Commercial Service

Collector shall provide for collection of Solid Waste, Recyclables and Organic Waste from Commercial Customers. Collector may provide collection services six (6) days per week, Monday through Saturday. • Charges for collection services shall be in accordance with Exhibit M.

1. **Commercial Solid Waste Collection.** The Collector will provide collection of Commercial Solid Waste on a regularly scheduled basis at a frequency specified by the Customer in accordance with the provisions of this Agreement unless excepted as provided in Article 4, and transport Commercial Solid Waste to the Processing Facility or Facilities in accordance with Article 4. The Collector will offer the following types of collection containers as options to its customers: industry-standard wheeled Carts (up to 100-gallon capacity) and industry-standard Bins of various sizes. The Collector may offer wheeled Carts providing 32 to 100 gallons of capacity. The Collector may offer bins ranging from 1 to 6 cubic yards of capacity. Customer is responsible for securing all containers and the container replacement cost in the event of container theft.

2. **Commercial Recyclables Collection.** Collector shall Collect Commercial Recyclables once per week comprised at a minimum of those listed in the definition "Recyclables" in accordance with the provisions of this Agreement unless

excepted as provided in Article 4, and transport Commercial Recyclables to the Processing Facility or Facilities in accordance with Article 4. Collector shall collect Commercial Recyclables in containers provided by the Collector.

3. **Commercial Organic Waste Collection.** Collector shall Collect Commercial Organic Waste once per week comprised at a minimum of those listed in the definition "Organic Waste" in accordance with the provisions of this Agreement unless excepted as provided in Article 4, and transport Commercial Organic Waste to the Composting Facility or Organic Waste Facility in accordance with Article 4. Collector shall collect Commercial Recyclables in containers provided by the Collector. Collector shall commence such Services no later than the date or dates provided in its Transition Plan attached as Exhibit E.

### **Commingling Solid Waste**

In the event a Customer commingles Refuse, Organic Waste, or Green Waste with Recyclables for Recyclable collection or commingles Refuse or Recyclables with Green Waste or Organic Waste for Green Waste or Organic Waste collection, Collector may treat such collection as a Refuse collection subject to the applicable Refuse Collection Rates.

Collector shall not commingle, in the vehicles or otherwise, any Refuse with any Recyclable Materials, Organic Waste or Green Waste, or any Refuse, Recyclable Materials, Organic Waste or Green Waste with each other when collected by Collector, unless otherwise specifically authorized in writing by CITY. Collector shall not be deemed to have violated this Section where such materials were commingled prior to collection by Collector.

### **Waivers**

Collector shall assist the CITY in the initial review of waiver applications under 14 CCR Section 18984.11. Collector shall be responsible for the distribution, collection and evaluation of waiver applications as appropriate and provide the City a recommendation to accept or reject waiver requests. Collector shall provide Collection services for customers not subject to waiver.

### **City Facilities**

Collector shall provide for the routine collection of Solid Waste, Organic Waste, and Recyclables from selected City facilities and properties according to a mutually agreed upon schedule attached herein. Charges for collection services shall be in accordance with Exhibit M.

1. **City Solid Waste, Organic Waste and Recycling Collection.** The Collector will provide collection of Solid Waste, Organic Waste and Recycling Collection to the following City facilities and properties: Police Station, Fire Station, City Hall, Library, Public Works Yard, Carnegie Building, all parks and ball fields, City-owned receptacles at bus stops, trash Containers in Euclid median. Collector will also collect City street sweepings from City-designated collection points. Collector shall construct one (1) new trash enclosure and retrofit two (2) trash enclosures at Memorial Park, and construct three (3) new trash enclosures in the Downtown Parking Lots. The trash enclosures shall be constructed in accordance with specifications provided by, and in the locations designated by, the City.

2. **City Roll-Off Service.** The Collector shall provide a minimum of six (6) forty (40) cubic yard Roll-Off bins to the City upon City Manager's request, per Agreement year. The City shall notify Collector in writing not less than thirty (30) calendar days prior to the date of the service. The notice to the Collector shall specify the date of delivery and collection of the Roll-Off Containers, the location(s) for delivery, and the number of the Roll-Off Containers to be delivered.

### **Special Services**

Collector shall supply the special Collection Services as provided in Article 4, including Bulky Waste Collection, On-Premise Collection Service, Christmas Tree Collection, Alley Service, collection at Community Events, collection for clean-up programs, free Commercial Waste Audits, and free mulch to City upon City request.

### **SB 1383 Monitoring and Inspections**

Collector shall perform route reviews, compliance reviews, and inspections and reviews in accordance with 14 CCR Section 18995.1.

When compliance reviews are performed by Collector, Collector shall provide City-approved educational materials, in response to violations. Collector shall provide these educational materials to the non-compliant Customers within two (2) working days of determination of non-compliance or immediately upon determination of non-compliance if such non-compliance is determined during an inspection or route review. Collector shall document the non-compliant Customers and the date and type of education materials provided and report such information to the City. The City shall be responsible for subsequent enforcement action against the Customer.

Collector shall maintain a computer database of all oral and written SB 1383-related non-compliance incidents reported to Collector from Customers or other persons, and documentation related to route reviews, compliance reviews, inspections, and enforcement.

### **Edible Food Recovery**

Collector will provide information or documentation requested by the City in support of Organic Waste or Edible Food Recovery Capacity Planning studies. Contractor shall report to the City Commercial Edible Food Generators that fail to comply with 14 CCR

§ 18991.1 - 18991.5.

### **Personnel for HHW Program**

Collector shall provide one program coordinator and two employees to assist the City in running the City's HHW Program, once a week on a day designated by the City, from 6:30 am to 1:00 pm.

### **Recordkeeping and Reporting**

Collector shall prepare and maintain the records identified in 14 CCR Section 18995.2(f) and assist CITY in reporting information about implementation and compliance with SB 1383 Regulations and in accordance with Article 13 of Chapter 12 of Title 14 of the CCR.

### **Billing**

Collector shall supply billing services in accordance with Article 10.

### **Customer Service and Public Relations**

Collector shall supply phone access and handle complaints and inquiries in accordance with Article 4.

**Public Education and Outreach**

Collector shall supply these services in accordance with Article 4 and its plan attached as Exhibit H.

**Emergency Services**

Collector shall provide emergency services in accordance with Article 4.

### CITY FACILITIES

Service Customer	Service Address
City Of Upland	1370 Benson Ave
Upland Police	1499 13th St
Upland City Yard	1370 Benson Ave
Baldy View Park	979 11th St
Sierra Vista Park	300 15th St
Cabrillo Park	1401 11th St
Hawkins Field	198 Campus Ave
Magnolia Park	651 15th St
Upland City Hall	460 Euclid Ave
Upland Library	450 Euclid Ave
Olivedale Park	460 8th St
San Antonio Park	1201 24th St
Upland Fire Station #2	2046 San Antonio Ave
Warden Fields	190 Campus Ave
Green Belt Park	1500 15th St
Citrus Park	992 8th St
Mc Carthy Park	2010 San Antonio Ave
Gibson Senior Center	250 3rd Ave
City Of Upland-Animal Shelter	1275 San Bernardino Rd
City Service-Old YMCA	1325 San Bernardino Rd
Magnolia Park	651 15th St
City of Upland	207 Foothill Blvd
Memorial Park	1288 Foothill Blvd
City Of Upland-Animal Shelter	1275 San Bernardino Rd
City of Upland	1299 San Bernardino Rd

**EXHIBIT E  
RESERVED**

## **EXHIBIT F MAINTENANCE PROTOCOL**

### **Vehicle Maintenance**

Burrtec's vehicle maintenance facilities will provide complete maintenance and repair for all collection and service equipment. Preventative service schedules will include the following: (1) daily inspection by drivers and vehicle maintenance personnel for the purposes of checking fluid levels, lights, brake adjustments and general repair; (2) every 100 hours of operations lube chassis and visual body and chassis inspection; (3) every 300 hours of operation lube chassis, visual body and chassis inspection, change engine oil and filter; (4) everyday inspection, lubrication and adjustment (if needed) of mechanical arms on all automated vehicles; (5) every week brake inspection and adjustment; and (6) every 365 days service rear differential.

A Vehicle Maintenance Report will be generated upon request from the City. This report shows the maintenance activity for each vehicle operating in the City of Upland.

Our attention to preventative maintenance and attention to timely, quality repairs allows us to extend the useful life of our vehicles to over ten years.

Burrtec will use a mobile repair vehicle for basic repairs in the field. In the event of a vehicle breakdown while on route, the mobile repair unit is dispatched. A diagnosis will be made by the mechanic whether a repair can be addressed immediately, or if the truck should return to the base. In either case, the other collection vehicles will be made aware of the situation and notified whether a replacement truck will be sent to finish the route or if other trucks will be needed to work together to finish the uncompleted route. The decision will be made by the operations supervisor and is based on the time of day and the general workload for that day's routes.

### **Container Maintenance Program**

All automated containers will be repaired and/or replaced on request. The request may be generated from the route driver, the customer or City staff. Once the repair or replacement order is received, all containers will be delivered within 24 hours. The defective or missing container will be exchanged for a new or reconditioned container. Containers are repaired and replaced whenever necessary.

Bins will be exchanged on an as-needed basis or once every 12 months, whichever comes first. An exchange request may be generated from the route driver or the customer. Bins will be exchanged within 24 hours of the received request. Bins and containers are exchanged or replaced for a variety of reasons, including: defective or damaged components, graffiti, odor or the unit is missing all together.

All automated containers and bins will be maintained at the local facilities yard. Maintenance procedures include: (1) steam cleaning; (2) welding; (3) painting; (4) component replacement; (5) lubrication; and, (6) signage.

**EXHIBIT G  
COLLECTOR BILLING PROCEDURE AND POLICY**

Residential customers will receive bi-monthly billing in arrears for the previous two-month period of service. Commercial customers will receive monthly billing in arrears for the previous month. The invoices will include the local telephone number of the Burrtec office for any questions. Any informational notices, fliers or inserts must be submitted to the mailing house 10-days prior to the billing.

Examples of the residential and commercial past due programs are listed below. City of Upland programs are subject to revision by the City and may change during the course of the Agreement and may vary based upon type of services. Burrtec will maintain an approved Past Due as agreed upon by both parties.

**ACCOUNT PAST DUE PROGRAM**

**CURRENT BILL (trash service Aug-Sep)**. The following message will appear on the customer's bill.

*Payment is due upon receipt.*

**CURRENT+ PAST DUE BILLS**. The following message will appear on the customer's bill.

30-days past due accounts:

*PAST DUE! Your account is currently past due. We understand that this may have been an oversight. Thank you.*

60-days past due accounts

*PAST DUE! Your account is past due. To avoid possible property lien action payment must be made immediately!*

In addition to the invoice message, a past-due notice will be sent to all customer with a past due balance in excess of \$85 for residential and \$30 for all monthly billed accounts.

90-days past due accounts

*PAST DUE! Your account is past due and will be submitted for property lien action. Please remit payment to avoid lien action.*

In addition to the invoice message, a lien notice will be sent to all customer with a past due balance in excess of \$85 for residential and \$30 for all monthly billed accounts.

## **EXHIBIT H COMMUNITY RELATIONS ACTIVITIES**

### **Public Education Plan Objectives**

The objectives of the public education program are the following:

- To promote recycling and to maximize the use of feasible source reduction, recycling and composting collection services in order to reduce the amount of solid waste that must be disposed of and increase the City's diversion pursuant to AB 939, AB 341, AB 1826, SB 1383 and their associated regulations.
- To make the recycling and organic waste diversion program easily understood by all generators.
- To educate the community via flyers, signage, social media campaigns, and onsite outreach on the program and services offered.
- Encourage the implementation of source reduction techniques and procurement of recycled content products.
- To convey strong anti-scavenging messages to protect the value of the resources collected at the curb.

Collector shall use Reasonable Business Efforts to outreach and educate the public on the importance of recycling and separating Solid Waste in order to achieve maximum waste diversion in accordance with 14 CCR Sections 18985.1-18985.2. Collector shall develop and implement a program of educational presentations and materials concerning the importance of recycling and diversion, proper techniques for Solid Waste disposal and recycling, and options for the disposal of Hazardous Waste. The educational program shall include a well-defined component aimed at capturing Organic Waste. A new educational program shall be prepared for each fiscal year, and submitted to the City Manager for approval no later than April 1st. Collector shall perform the recordkeeping requirements related to compliance with education and outreach requirements under 14 CCR Section 18985.3.

### **Required Plan Components**

The Collector shall coordinate with City Staff for a refined, well-thought out public education plan that must provide the following information:

- Information related to the public health and safety and environmental impacts associated with the landfill disposal of organic waste.
- Information regarding the methane reduction benefits of reducing the landfill disposal of organic waste, and the methods of organic waste recovery the organic waste collection service uses.
- Information on methods for: the prevention of organic waste generation, recycling organic waste on-site, sending organic waste to community composting, and any other local requirements regarding organic waste.

- Information on the organic waste generator's requirements to properly separate materials in appropriate containers.
- If a City allows generators subject to its authority to self-haul organic waste, information regarding self-hauling requirements shall be included in education and outreach material.
- Information about commercial edible food generator requirements
- Information regarding programs for the donation of edible food.
- Information about food recovery organizations and food recovery services operating within the jurisdiction, and where a list of those food recovery organizations and food recovery services can be found.

### **Public Education Materials**

Collector must prepare and distribute the following materials in an amount and frequency agreed upon in writing by the Parties:

- (1) Bill inserts comprising of not more than two pages prepared and provided by the City and/or Collector.
- (2) Bill statement messages reminding generators of Public Education Plan objectives, events, and activities.
- (3) Newsletters prepared and provided by the Collector which include plan components, upcoming events, and additional information mutually agreed upon by the Parties.
- (4) Brochure(s) prepared by the Collector and reviewed by the City describing relevant waste collection services, edible food recovery programs, construction & demolition information and additional information consistent with Education Plan Objectives.
- (5) Fliers/postcards prepared and provided by the City and/or Collector on an "as needed basis" to communicate upcoming events, minor changes or modifications in the program.
- (6) Social media posts consistent with Educational Plan Objectives.

### **Participation in City, School, or Community Events**

Collector must participate in City, School, or Community Events in an amount and frequency agreed upon in writing by the Parties as follows:

- (1) Provide display materials for use at City-sponsored events and school presentations.
- (2) Provide promotional items for distribution at community events.
- (3) Annual participation in an educational capacity at school assemblies, HOAs, and other civic organizations.

.(4) Participation in an educational capacity at minimum of two (2) community events annually.

### **Organic Waste Contamination Monitoring**

In accordance with Section 18984.5 of SB 1383, Collector will conduct a route review for prohibited container contaminants on randomly selected containers in a manner that results in all collection routes being reviewed annually. This may include Collector's driver monitoring the live video screen to look for contamination or reviewing the video later to detect such contamination or third party associates completing the required work.

- Upon finding prohibited container contaminants, Collector shall provide written notice to generators in the form of a contamination tag.
- Collector's contamination tag will include information regarding how to separate materials properly.
- The contamination tag will be placed on the container, on the door, or mailed to the generator so that generator receives the notice prior to their next collection.

Collector will document the number of containers reviewed, the number of violations noted or observed, the date the violations were noted/observed, and the location or route where the violations were noted/observed.

## EXHIBIT I HAZARDOUS WASTE SCREENING PROTOCOL

Hazardous materials inadvertently collected along with Solid Waste is a persistent problem facing our industry. Drivers are trained to avoid accidental collection of hazardous materials; and, whenever possible, front or side loading vehicles are used to allow drivers to easily spot hazardous materials. If hazardous waste is found in the container; or if recyclables or organic waste are contaminated with Solid Waste, the customer is notified *in writing* with a tag attached to the Container. Burrtec drivers and Route Supervisors conduct routine waste audits and carefully inspect containers before they are serviced. If contamination is found, written notification *is* attached to the container.

Burrtec's written notification system has been in place for many years and it is viewed as an education process for the customer and a safety measure for the both driver and the City.

Burrtec has successfully implemented the following system to address this problem:

1. Continual education and identification to the customers regarding the dangers of improperly disposed of hazardous materials and locations where this material can be taken for proper management.
2. Tags to be filled out and attached to a customer's container indicating what hazardous materials have been identified in the container and proper disposal methods.
3. Driver training on the identification of hazardous materials that have been combined with Solid Waste.

In the event hazardous materials do appear in the waste stream, Burrtec has established the following procedures:

1. Collectors receive safety training regarding hazardous waste identification, inadvertent contact and notification procedures.
2. Once a suspected hazardous waste situation *is* identified by the Collector, the local supervisor is contacted to isolate the area or load.
3. The local Department of Environmental Health is contacted and steps are taken to properly clean-up and dispose of the material.
4. Investigative efforts are made to establish the source of the material and the individual(s) involved.

Additionally, all Solid Waste, recyclables, and organic waste collected in the City of Upland will be delivered to the West Valley Materials Recovery Facility (MRF). The West Valley MRF has a hazardous waste inspection and load-checking program to eliminate accidental disposal of hazardous waste from the City of Upland in the landfill. Commercial waste will be processed for recyclables and organic waste recovery, a process that includes another inspection level for unacceptable waste. The West Valley MRF will work closely with the hauling operation to identify loads and specific accounts that might become problem generators. This identification will lead to monitoring and inspection at the source.

**EXHIBIT J**  
**MONTHLY AND QUARTERLY REPORTS**

Collector shall work in cooperation with the City to develop a report acceptable to both parties. Collector shall include, at a minimum, the following information in the monthly and quarterly report, which shall clearly indicate the report period:

1. **Collection, Disposal, and Processing.** Number of tons of residential Solid Waste, Recyclables and Organic Waste collected and delivered to the Disposal Facility and or Processing Facility.
2. **Recyclables Tonnages and Revenue.** The report shall specify the number of tons of Recyclables and Organic Waste collected for each type of material and the revenue received by the Collector.
3. **Bulky Waste Collection.** The report shall specify the number of bulky waste collections and the type and tonnage of material collected.
4. **Complaint Log.** A copy of Collector's complaint log, including missed pickups and a description of how each complaint was resolved.
5. **Problems Encountered.** A narrative account of problems encountered during the reporting period. This should include a brief discussion of the Recyclables and Organic Waste Collection programs' impact on and interaction with Solid Waste Collection Services.
6. **Disposal Costs.** Disposal costs in dollars per ton and total dollars.
7. **Public Education.** Public Education report that summaries the diversion programs, any changes, upcoming events, or program changes.
8. **Customer Account Information.** The report shall specify the number and type of Customer Accounts, the number of pre-paid Customers, the number of active and non-active Customers, and the type and number of delinquent Customer Accounts.

**EXHIBIT K  
ANNUAL REPORTS**

Collector shall work in cooperation with the City to develop a report acceptable to both parties. Collector shall include, at a minimum, the following information:

1. A collated summary of the information contained in the quarterly reports, including reconciliation of any adjustments from prior quarterly reports.
2. A discussion -of public awareness activities and their impact on recycling participation and recovered amounts. discussion shall include the type of emphasis given to areas a high concentration of non-English speaking Customers.
3. A discussion of highlights and other noteworthy experiences, including summary of Commercial Customer waste audit requests and results, along with measures taken to resolve problems, increase efficiency, and increase participation.
4. A complete inventory of collection and other major equipment, in accordance with Article 4.
5. No later than ninety (90) days following the end of Collector's fiscal year of each Agreement year, Collector shall cause to be prepared a statement of Collector's Parent Company's income and expenses in connection with this Agreement for the immediately preceding fiscal year. Such statement shall be prepared by a Certified Public Accountant (CPA) and shall be accompanied by a certification from the CPA that the calculation of the income and expenses is fairly presented in accordance with Generally Accepted Accounting Principles and in accordance with the terms of this Agreement.
6. Collector's obligation to submit an annual report shall survive the termination or expiration of this Agreement and Agreement shall submit an annual report for the final Contract Year of this Agreement on or before the May 1 immediately following such Agreement Year.

**EXHIBIT L**  
**FORM OF PARENT GUARANTY**

This Guaranty, made as of the date of the Agreement (as defined below) Burrtec Waste Group, Inc., a corporation duly organized and existing in good standing under the laws of the State of California and having their principal place of business in California, respectively ("**Guarantor**"), to and for the benefit of the City of Upland ("**City**"), a municipal corporation of the State of California ("**State**").

**WITNESSETH**

WHEREAS, Burrtec Waste Industries, Inc. ("**Collector**"), a subsidiary of the Guarantor, and the City have negotiated an Agreement for Solid Waste, Recyclables and Green Waste Collection and Transportation to Disposal, Composting and Processing Facilities, dated as of the later of the date of execution thereof by the City or the Collector, as may be supplemented and amended from time to time in accordance with the terms thereof ("**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

WHEREAS, it is in the interest of Guarantor that the Collector enter into the Agreement with the City;

WHEREAS, the City is willing to enter into the Agreement only upon the condition that the Guarantor execute this Guaranty;

WHEREAS, in the event Collector fails to timely and fully perform its obligations, including the payment of moneys, pursuant to the Agreement, Guarantor is willing to Guaranty, Collector's timely and full performance thereof;

WHEREAS, it is a condition precedent to the City's obligations under the Agreement that the Guarantor provide this Guaranty.

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the Guarantor agrees as follows:

Capitalized terms used herein and not otherwise defined herein, shall have the meaning assigned to them in the Agreement.

(1) **Guaranty of Collector's Performance Under Agreement.** Guarantor hereby directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of Collector's obligations under the Agreement in accordance with the terms and conditions contained therein. Within thirty days' written request therefor by the City, Guarantor shall honor such Guaranty. Notwithstanding the unconditional nature of the Guarantor's payment obligations set forth herein, the Guarantor shall have the right to assert the defenses provided in the paragraph entitled "Defenses" under Section 8 hereof, against claims made hereunder.

(1) **Governing law; consent to jurisdiction; service of process.** This Guaranty shall be governed by the laws of the State of California. The Guarantor hereby agrees to the service of process in the State of California for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor hereby agrees that the courts of the State of California, County of San Bernardino and to the extent permitted by law, the United States District Court for the Central District of California, shall have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the City may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach hereof, waives any objections that it might otherwise have to the venue of any such Court for the trial of any such suit, action, or

proceeding, and consents to the service of process in any such suit, action, or proceeding by prepaid registered mail, return receipt requested.

(2) **Enforceability; no assignment.** This Guaranty and enforceable against Guarantor, its successors, shall be binding upon assigns, and legal representatives. It is for the benefit of the City, assigns. its successors and

(3) **Guaranty absolute and unconditional.** The undertakings of Guarantor set forth herein are absolute and unconditional, and the City shall be entitled to enforce any or all of the undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the Collector to perform its obligations under the agreement or to seek, or obtain recourse against any other party or parties, including but not limited to the Collector or any assignee of the Collector, who are, or may be, liable therefor in whole or in part, irrespective of any cause or state of facts whatever. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its obligations hereunder shall not be affected, limited, modified or impaired by any state of facts or the happening from time to time of an event, other than the payment of monetary obligations by the Collector to City under the Agreement in accordance with the terms of the Agreement, including, without limitation, any of the following, each of which is hereby expressly waived as a defense to its liability hereunder, except to the extent such defenses would be available to the Collector and release, discharge or otherwise offset Collector's obligations under the Agreement:

(a) the invalidity, irregularity, illegality, or unenforceability, of or any defect in or objections to the Agreement;

(b) any modification, amendment, or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Agreement by the Collector;

(c) any release of any collateral or lien thereof, including, without limitation, any performance bond;

(d) any defense based upon the election of any remedies against the Guarantor of the Collector, or both, including without limitation, any consequential loss by the Guarantor of its right to recover any deficiency, by way of subrogation or otherwise, from the Collector or any other person or entity;

(e) the recovery of any judgment against the Collector to enforce any such collateral or performance bond;

(f) the City or its assigns taking or omitting to take any of the actions which it or any such assign is required to take under the Agreement; any failure, omission or delay on the part of the City or its assignees to enforce, assert or exercise any right, power or remedy conferred on it or its assigns by the Agreement, except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense by the Collector with respect to a specific obligation;

(g) the default or failure of the Guarantor to fully perform any of its obligations set forth in this Guaranty;

(h) the bankruptcy, insolvency, or similar proceeding involving or pertaining to the Collector or the City, or any order or decree of a court, trustee or receiver in any such proceeding;

(i) in addition to those circumstances described in item (h), any other circumstance which might otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the City to the Guarantor;

(j) the existence or absence of any action to enforce the Agreement;

(k) subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present or future law or order of any government or of any agency thereof, purporting to reduce, amend or otherwise affect the Agreement or to vary any terms of payment or performance under the Agreement;

provided that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary obligation of Collector to City from which Collector would be discharged, released or otherwise excused under the provisions of the Agreement.

(4) **Waivers.** Guarantor hereby waives:

(a) notice of acceptance of this Guaranty and of the creation, renewal, extension, and accrual of the limited financial obligations Guaranteed hereunder;

(b) notice that any person has relied on this Guaranty;

(c) diligence, demand of payment and notice of default or nonpayment under this Guaranty or the Agreement, and any and all other notices required under the Agreement;

(d) filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the Collector;

(e) any right to require a proceeding first against the Collector or with respect to any collateral or lien, including, without limitation, any performance bond, or any other requirement that the City exercise any remedy or take any other action against the Collector or any other person, or in respect of any collateral or lien, before proceeding hereunder;

(f) (i) any demand for performance or observance of, (ii) any enforcement of any provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any performance bond) for the obligations of the Collector under the Agreement; any pursuit or exhaustion of remedies against the Collector or any other obliger or guarantor of the obligations; and any requirement of promptness or diligence on the part of any person in connection therewith;

(g) to the extent that it lawfully may do so, any and all demands or notices of every kind and description with respect to the foregoing or which may be required to be given by any statute or rule of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty or the obligations of the Collector under the Agreement, except any Notice to the Collector required pursuant to the Agreement or Applicable Law which Notice preconditions the Collector's obligation or the defenses listed in Section (8) below.

To the extent that it may lawfully do so, the Guarantor hereby further agrees to waive, and does hereby absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does hereby covenant not to assert, any appraisal, valuation, stay, extension, redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the due performance or proper enforcement of this Guaranty, the Agreement, or the obligations of the Collector under the Agreement, and hereby expressly agrees that the right of the City hereunder may be enforced notwithstanding any partial performance by the Collector or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given by the Collector for its performance of any of its obligations under the Agreement.

(5) **Agreements between City and Collector; Waivers by City.** The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement between the City and Collector, the City and Collector may, from time to time

(a) renew, modify or compromise the liability of the Collector for or upon any of the obligations hereby Guaranteed; or

(b) consent to any amendment or change of any terms of the Agreement; or

(c) accept, release, or surrender any security (including, without limitation, any performance bond),  
or

(d) grant any extensions or renewals of the obligations of the Collector under the Agreement, and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor hereunder.

The Guarantor further agrees that the City or any of its assigns shall have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the Collector under, the Agreement.

(6) **Continuing Guaranty.** This Guaranty is a continuing Guaranty and shall continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations hereby Guaranteed is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Collector or Guarantor or otherwise, all as though such payment had not been made.

(7) **Defenses.** Notwithstanding any provision in this Guaranty to the contrary, the Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Agreement or Applicable Law which the Collector could assert against any party seeking to enforce the Agreement against the Collector, and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

(8) **Payment of costs of enforcing Guaranty.** Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the City in enforcing this Guaranty following the default on the part of the Guarantor hereunder whether the same shall be enforced by suit or otherwise.

(9) **Enforcement.** The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

(10) **Remedies cumulative.** No remedy herein conferred upon or reserved to the City hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Guaranty and the Agreement or hereinafter existing at law or in equity or by statute.

(11) **Severability.** The invalidity or unenforceability of any one or more phrases, sentences or clauses in this Guaranty contained shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

(12) **Amendments.** No amendment, change, modification or termination of this Guaranty shall be made except upon the written consent of Guarantor and the City.

(13) **Term.** The obligations of the Guarantor under this Guaranty shall remain in full force and effect until (i) all monetary obligations of the Collector under the Agreement shall have been fully performed or provided for in accordance with the Agreement, or (ii) the discharge, release or other excuse of the obligations in accordance with the terms of the Agreement.

(14) **No set-offs, etc.**

(a) By Guarantor. The obligation of Guarantor under this Guaranty shall not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the City on account of any claim of the Guarantor against the City; provided that Guarantor reserves the right to bring independent claims not arising from the Agreement against the City so long as any such claims shall not be used to set-off or deduct from any claims which the City may have against the Guarantor arising from this Guaranty.

(b) By Collector. The obligation of Guarantor under this Guaranty shall be subject to any set-off, counterclaim, recoupment, defense or other right that the Collector may assert pursuant to the Agreement, if any, but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim, recoupment, defense or other right that the Collector may assert independently of and outside the Agreement.

(15) **Warranties and representations.** The Guarantor warrants and represents that as of date of execution of this Guaranty:

(a) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings hereunder, and the execution, delivery and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, (ii) have the requisite approval of all federal, State and local governing bodies having jurisdiction or authority with respect thereto, (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor; (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.

(b) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and

(c) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceedings before any court or administrative agency which would have a material adverse effect on the financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings under this Guaranty except as publicly disclosed in Securities and Exchange Commission filings.

(16) **Counterparts.** This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties hereto. Each such counterpart, when so executed and delivered, shall be deemed to be an original and all of such counterparts, taken together, shall constitute one and the same instrument; provided, however, that in pleading or proving this Guaranty, it shall not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

(17) **Notices.** All notices, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, and shall be given in the manner and to the addresses provided in the Agreement.

(18) **Separate suits.** Each and every payment default by Collector under the Agreement shall give rise to a separate cause of action under this Guaranty, and separate suits may be brought hereunder by the City or its assigns as each cause of action arises.

(19) **Headings.** The Section headings appearing herein are for convenience only and shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

(20) **Entire Agreement.** This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(21) **Personal Liability.** It is understood and agreed to by the City that nothing contained herein shall create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection against any such director, officer, employee, or stockholder.

IN WITNESS WHEREOF, Guarantor has executed this instrument the day and year first above written.

By: Signed by:  
Cole Burr  
\_\_\_\_\_  
Burrtec Waste Group, Inc., Cole Burr, President



5	6	\$ 1,754.98
6	1	\$ 357.44
6	2	\$ 699.95
6	3	\$ 1,042.38
6	4	\$ 1,384.87
6	5	\$ 1,727.35
6	6	\$ 2,069.88

**Commercial Barrel Trash Service**

65-gallon trash barrel	\$ 32.48
95-gallon trash barrel	\$ 38.09
Exchange bbl (first free)	\$ 22.50
Extra pick-up - barrel	\$ 22.29

**Commercial Recycling Bin Service (Extras)**

Size	Freq	
	q	
2	1	\$ 101.71
2	2	\$ 188.51
2	3	\$ 275.26
2	4	\$ 356.70
2	5	\$ 442.15
2	6	\$ 495.24
3	1	\$ 131.41
3	2	\$ 247.82
3	3	\$ 364.28
3	4	\$ 480.72
3	5	\$ 597.20
3	6	\$ 713.58
4	1	\$ 161.00
4	2	\$ 307.12
4	3	\$ 453.24
4	4	\$ 599.29
4	5	\$ 745.34
4	6	\$ 891.41

**Commercial/Multi-Family Green Waste Bin Service**

Size	Freq	
	q	
35-gallon Barrel	1	\$ 22.53
35-gallon Barrel	2	\$ 41.47
35-gallon Barrel	3	\$ 60.41
35-gallon Barrel	4	\$ 79.34
35-gallon Barrel	5	\$ 98.29
35-gallon Barrel	6	\$ 117.23
65-gallon Barrel	1	\$ 26.58

3	\$ 1,066.72
3	\$ 1,417.40
3	\$ 1,768.08
3	\$ 2,118.74
4	\$ 478.26
4	\$ 941.55
4	\$ 1,404.90
4	\$ 1,848.69
4	\$ 2,307.12
4	\$ 2,765.62

**Commercial Food Waste Service - Stand Alone**

Size	Freq	
2	1	\$ 274.11
2	2	\$ 502.11
2	3	\$ 715.24
2	4	\$ 928.55
2	5	\$ 1,171.19
2	6	\$ 1,354.78
35-gallon Barrel	1	\$ 55.33
35-gallon Barrel	2	\$ 97.93
35-gallon Barrel	3	\$ 136.29
35-gallon Barrel	4	\$ 174.55
35-gallon Barrel	5	\$ 221.20
35-gallon Barrel	6	\$ 251.08
65-gallon Barrel	1	\$ 69.16
65-gallon Barrel	2	\$ 126.13
65-gallon Barrel	3	\$ 179.16
65-gallon Barrel	4	\$ 232.00
65-gallon Barrel	5	\$ 292.76
65-gallon Barrel	6	\$ 337.94

**Miscellaneous Charges**

Pull-out (0-25 ft) - All services	N/C
Pull-out (26-50 ft) - 1 x Week	\$ 20.66
Pull-out (26-50 ft) - 2 x Week	\$ 26.56
Pull-out (26-50 ft) - 3 x Week	\$ 32.08
Pull-out (26-50 ft) - 4 x Week	\$ 38.38
Pull-out (26-50 ft) - 5 x Week	\$ 44.27
Pull-out (26-50 ft) - 6 x Week	\$ 50.17
Pull-out (51-75 ft) - 1 x Week	\$ 23.60

65-gallon Barrel	2	\$	49.48	Pull-out (51-75 ft) - 2 x Week	\$	32.46
65-gallon Barrel	3	\$	72.37	Pull-out (51-75 ft) - 3 x Week	\$	41.32
65-gallon Barrel	4	\$	95.26	Pull-out (51-75 ft) - 4 x Week	\$	50.17
65-gallon Barrel	5	\$	118.17	Pull-out (51-75 ft) - 5 x Week	\$	59.02
65-gallon Barrel	6	\$	141.06	Pull-out (51-75 ft) - 6 x Week	\$	67.88
2	1	\$	115.72	Pull-out (76-100 ft) - 1 x Week	\$	26.56
2	2	\$	216.47	Pull-out (76-100 ft) - 2 x Week	\$	38.38
2	3	\$	317.23	Pull-out (76-100 ft) - 3 x Week	\$	50.17
2	4	\$	418.01	Pull-out (76-100 ft) - 4 x Week	\$	61.96
2	5	\$	518.72	Pull-out (76-100 ft) - 5 x Week	\$	73.80
2	6	\$	619.49	Pull-out (76-100 ft) - 6 x Week	\$	83.43
3	1	\$	152.39	Pull-out (101-125 ft) - 1 x Week	\$	29.50
3	2	\$	289.79	Pull-out (101-125 ft) - 2 x Week	\$	44.27
3	3	\$	427.21	Pull-out (101-125 ft) - 3 x Week	\$	59.02
3	4	\$	564.60	Pull-out (101-125 ft) - 4 x Week	\$	73.80
3	5	\$	702.07	Pull-out (101-125 ft) - 5 x Week	\$	88.53
3	6	\$	839.48	Pull-out (101-125 ft) - 6 x Week	\$	103.29
4	1	\$	189.01	Pull-out (126-150 ft) - 1 x Week	\$	32.46
4	2	\$	363.06	Pull-out (126-150 ft) - 2 x Week	\$	50.17
4	3	\$	537.09	Pull-out (126-150 ft) - 3 x Week	\$	67.88
4	4	\$	711.16	Pull-out (126-150 ft) - 4 x Week	\$	85.60
4	5	\$	885.23	Pull-out (126-150 ft) - 5 x Week	\$	103.29
4	6	\$	1,059.26	Pull-out (126-150 ft) - 6 x Week	\$	121.00
				Pull-out (over 150 ft) - 1 x Week	\$	35.41
				Pull-out (over 150 ft) - 2 x Week	\$	56.05
				Pull-out (over 150 ft) - 3 x Week	\$	76.73

**Multi-Family / Residential Mixed Organics**

Size	Fre					
	q					
15-gallon Barrel	1	\$	33.54	Pull-out (over 150 ft) - 4 x Week	\$	97.40
15-gallon Barrel	2	\$	54.70	Pull-out (over 150 ft) - 5 x Week	\$	118.06
15-gallon Barrel	3	\$	71.79	Pull-out (over 150 ft) - 6 x Week	\$	138.70
15-gallon Barrel	4	\$	89.24			
15-gallon Barrel	5	\$	114.47			
15-gallon Barrel	6	\$	123.59			
35-gallon Barrel	1	\$	34.77	- Barrel Replacement Comm'l lost or stolen	\$	94.23
35-gallon Barrel	2	\$	57.07			
35-gallon Barrel	3	\$	75.31	- Bin Exchange (first Exchange free) charge does not apply to graffiti or damaged bins	\$	109.39
35-gallon Barrel	4	\$	93.91			
35-gallon Barrel	5	\$	120.27			
35-gallon Barrel	6	\$	130.54			
65-gallon Barrel	1	\$	36.57	Contamination Fee:		
65-gallon Barrel	2	\$	60.59	- Commercial Barrels	\$	33.50
65-gallon Barrel	3	\$	80.53	- All Bins	\$	81.49
65-gallon Barrel	4	\$	100.85			
65-gallon Barrel	5	\$	128.93	Steam Cleaning	\$	62.99
65-gallon Barrel	6	\$	140.92	Bulky Charge per Item	\$	18.68
95-gallon Barrel	1	\$	38.36	Bulky Item Trip Charge	\$	49.78
95-gallon Barrel	2	\$	64.11	Steam Cleaning - Compactor	\$	217.72
95-gallon Barrel	3	\$	85.77	Dump and Destroy Fee	\$	129.43

95-gallon Barrel	4	\$ 107.80
95-gallon Barrel	5	\$ 137.60
95-gallon Barrel	6	\$ 151.29

**Roll-Off Refuse**

40 yd compactor - trash 8 Tons		\$ 1,153.24
40 yd roll-off box - trash 6 Tons		\$ 929.91
20 yd roll-off box - trash 6 Tons		\$ 929.91
40 yd roll-off box - trash 6 Tons		\$ 995.76

with  
Retractable Lid

**Roll-Off Recycling Materials Service + Actual Disposal**

Demo box - Inerts Clean		\$ 396.63
C&D box		\$ 591.97
Rolloff 40-Y Recyc. (6 tons max)		\$ 264.20
Rolloff 40-Y Comp Recyc. (8 tons max)		\$ 267.29
Rolloff 40-Y Greenwaste (6 tons max)		\$ 265.64
40 yd roll-off box - clean wood/green		\$ 501.75
Dry run charge		\$ 77.12
Receiver Rental		\$ 275.63
Daily roll-off rental		\$ 275.63
End Dump - Hourly Rate		\$ 265.64

Extra pick-up - bin	\$ 81.49
Extra pick-up - compactor bin	\$ 150.36
Extra pick-up - G/W bin	\$ 46.82
Extra pick-up - F/W bin	\$ 105.75
Extra pick-up - F/W barrel	\$ 33.50
Tilt-Hopper	\$ 52.10
Temporary bin (7 day usage)	\$ 169.59
Temporary bin - extra empty	\$ 169.59
Locking bin	\$ 17.99

Downtown Sidewalk Pressure Wash (Monthly)	\$ 3,040.00
Downtown Parklets Pressure Wash (per service)	\$ 527.00
Bathroom Pressure Wash (all parks, hourly rate)	\$ 220.00
Barrel Pressure Wash (each)	\$ 16.00
Bin Pressure Wash (each)	\$ 100.00
Catch Basins (per cleaning - initial)	\$ 250.00
Catch Basins (per cleaning - subsequent)	\$ 137.00
Pressure Wash (additional, 4 hr min; per hr)	\$ 207.00
Power Wash (City Hall/Library) (4 hr min; per hour)	\$ 221.00
Day Porter Service (4 hr min; per hour)	\$ 87.00

## **EXHIBIT N**

### **Rate Adjustment Methodology**

#### **General**

Subject to the terms herein, the Contractor shall be entitled to an annual adjustment of all Rates. Each Rate, excluding special charges, includes a "Service Component", "Disposal Component", "Processing Component", "Franchise Fee Component" "Program Cost Fee Component" and "Compliance Component" which are annually adjusted.

Contractor shall submit its application for a Rate adjustment to the City Manager on or before April 1st preceding the start of each Rate Period that begins July 1 where Rates will be adjusted. Contractor's Rate application shall document all calculations and include all supporting schedules, documentation of Disposal or Processing tipping fee changes (including supporting calculations where applicable), documentation of tonnage calculations and/or assumptions, and any other documentation or evidence determined by the City Manager to be necessary to ensure that the calculation of Rate adjustments has been performed in strict conformance with the requirements of this Exhibit N.

The City Council shall make a good faith effort to approve Rates by June 1, and such Rates shall be effective on each subsequent July 1. If Rates are not effective by July 1 due to a delay caused solely by City, City shall allow Contractor to retroactively bill Customers for the amount of the Rate increase for any period of delay that is solely caused by City.

In no event may the adjustment of the Service Component or Franchise Fee Component pursuant to this Exhibit be an increase in an amount greater than 5% of either Component, compared to the previous Service and/or Franchise Fee Component. In the event that calculations in accordance with this Exhibit result in an increase above five percent (5%) of either Component, any amount above five percent (5%) shall be carried forward and applied to the Service and/or Franchise Fee Component in subsequent Rate Adjustments until such time as the carried over amount has been applied in full.

#### **Definitions**

Certain terms which are specific to this Exhibit N are defined below:

1. Annual Percentage Change means the average value of an index for the twelve (12) month period ending December of most recently completed calendar year, minus the average index value for the twelve (12) month period ending December of the calendar year one year prior (year before last), divided by the average index value for the twelve (12) month period ending December of the calendar year one year prior. The Annual Percentage Change shall be rounded to the nearest thousandth (1,000th).

For example, if the Contractor is preparing its Rate application for Rates to be effective for July 1, 2022, the Annual Percentage Change in CPI shall be calculated as follows:  $[(\text{Average CPI for January 2021 through December 2021}) - (\text{Average CPI for January 2020 through December 2020})] / (\text{Average CPI for January 2020 through December 2020})$ .

2. Bureau of Labor Statistics (BLS) shall mean the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.
3. City Fees shall mean the Franchise Fee specified in the Agreement.
4. Consumer Price Index (CPI) shall mean the All Urban Consumers Index (CPI-U) compiled and published by the BLS, using the following parameters:

Area – Riverside-San Bernardino-Ontario, CA

Item - All Items

Base Period - December 2017 = 100

Not seasonally adjusted

Series Identification Number – CUURS49C SAO

5. Disposal/Processing Fee shall mean the actual pass-through fee charged per ton or unit of material delivered to an approved facility. The "Current Approved" Disposal/Processing Fee for any Approved Facility shall be the Disposal/Processing Fee in place immediately preceding the submission of the Rate Application.
6. Program Cost Fees consists of costs incurred by the City for the implementation of the green waste and mixed recyclables program, landfill post-closure fees, administrative overhead, and other costs relating to the solid waste and recycling program. The Program Cost Fees are paid to or retained by the City, as applicable and shall be considered a pass through fee that is reasonably related to the City's costs under this agreement.
7. Rate means the maximum amount, expressed as a dollar unit, approved by City that the Contractor may bill for providing services under this Agreement.
8. Rate Adjustment Factor shall mean the amount, expressed as a percentage, by which the Service Component of each Rate is adjusted.
9. Service Component shall mean portion of Rate set by Contractor for costs related to service of Solid Waste as described in this Agreement, including, but not limited to fuel, personnel costs, and vehicle maintenance. The Service Component shall not include costs related to providing Disposal and Processing Fees, Tipping Fees, Compliance Component, or City Fees.
10. Tipping Fee shall mean the Rate or tipping fee charged for each ton or unit of material delivered to an approved facility. The "Current Approved" Tipping Fee for any Approved Facility shall be the Tipping Fee in place immediately preceding the submission of the Rate Application.
11. Compliance Component shall mean portion of the Rate charged to customers for program elements related to legislative requirements such as AB 939, AB 341, AB 1826, and SB 1383 as described in this agreement including but not limited to edible food recovery programs, procurement activities, equipment, contamination minimization requirements, education and outreach activities, container contamination minimization efforts, record keeping, and future compliance cost elements resulting from new legislation as mutually agreed upon by the Parties. The Compliance Component shall not include costs related to providing Disposal and Processing Fees, or Tipping Fees.
12. Disposal Component shall mean portion of the Rate set by Contractor for pass-through costs related to disposal of Solid Waste materials as described in this agreement including but not limited to Tipping Fees, Solid Waste Tons, and Customer

counts. The Disposal Component shall not include costs related to providing collection services, Compliance Component, or City Fees.

13. Processing Component shall mean portion of the Rate set by Contractor for pass-through costs related to processing of Solid Waste materials such as commingled recyclables, organic waste, and other materials as described in this agreement including but not limited to Tipping Fees, Solid Waste Tons, and Customer counts. The Processing Component shall not include costs related to providing collection services, Compliance Component, or City Fees.

14. Franchise Fee Component shall mean portion of the Rate set by City for costs related to fees as described in this agreement and other fees authorized by the City. The contractor shall collect, at the City's request, pass-through fees as funding for the City's programs General

The Rate adjustment methodology involves modifying: (A) the Service and Franchise Fee Component for the current Rate Period by CPI; (B) the Disposal, and/or Processing Component(s) by the actual pass-through costs of those components; and (C) the Compliance Component to determine the Rates for the coming Rate Period.

If the CPI is discontinued or revised during the Term by the BLS, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

#### **A. Service Component**

Contractor shall calculate the adjustment to Residential, Multi-Family, Commercial, and Roll-off Box Service Components using the following methodology:

Step 1: Calculate the "Service Component Factor" or "SCF".

Calculate the twelve (12) month average Change in the CPI for the previous calendar year. The factor shall be rounded to the nearest hundredth (100th) percent.

Step 2: Calculate the adjusted Service Component, rounded to the nearest cent, for each Rate as follows:

Adjusted Service Component = Then-current Service Component / (1 - SCF) For example, assuming:

1. Then-current Service Component = \$18.31
2. SCF = 3.83%
3. Adjusted Service Component =  $\$18.31 \times (1 + 0.0383) = \$19.01$

Step 3: Verify the Adjusted Service Component does not exceed the maximum percentage increase as follows:

Adjusted Service Component = (Previous Service Component / 0.95) > Adjusted Service Component For example, assuming:

1. Adjusted Service Component = \$19.01
2. Previous Service Component = \$18.31

3. Adjusted Service Component = ( \$19.01 – \$18.31 ) / (\$18.31) = 3.82% < 5.00% = OK

Step 4: Apply eligible carried over Adjusted Service Component costs as follows:

Eligible carry over Adjusted Service Component = ((Previous Adjusted Service Component \* 1.05) – (Adjusted Service Component))

1. Adjusted Service Component = \$19.01
2. Previous Service Component = \$18.31
3. Eligible carry over amount = ((\$18.31 \* 1.05) – (\$19.01)) = \$0.22

### **B. Disposal and/or Processing Component(s)**

Contractor shall calculate the adjustment to Residential Disposal and Processing Components using the following methodology:

#### Residential Disposal and Processing Component Calculation

Step 1: Calculate the adjusted Residential Disposal Component, rounded to the nearest cent, for each Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, and the calculated average Tons of Refuse Collected per household per year, based on the actual tonnage of Residential Refuse Collected in the prior calendar year and the average number of Residential units served, rounded to the nearest ten thousandth (10,000th). The adjustment shall be calculated as follows:

Adjusted Disposal Component = Disposal Site Tipping Fee x Average Refuse Tons per Household Per Year / 12 months

For example, assuming:

1. Current Approved Disposal Site Tipping Fee = \$50.88 per Ton
2. Average Refuse Tons per Household Per Year = 1.5860 Tons
3. Adjusted Disposal Component = \$50.88 x 1.5860 / 12 = \$6.72

Step 2: Calculate the adjusted Residential Recyclable Materials Processing Component, rounded to the nearest cent, for each Rate to reflect any change in the Tipping Fee charge at the approved MRF and the calculated average Tons of Recyclable Materials Collected per household per year, based on the actual tonnage of Residential Recyclable Materials Collected in the prior calendar year and the average number of Residential units served, rounded to the nearest ten thousandth (10,000th). The adjustment shall be calculated as follows:

Adjusted Recyclable Materials Processing Component = Approved MRF Tipping Fee x Average Recyclable Materials Tons per Household Per Year / 12 months

For example, assuming:

1. Current Approved MRF Tipping Fee = \$53.00 per Ton
2. Average Recyclable Materials Tons per Household Per Year = 0.3900 Tons

3. Adjusted Recyclable Materials Processing Component =  $\$53.00 \times 0.3900 / 12 = \$1.72$

Step 3: Calculate the adjusted Residential Organic Waste Processing Component, rounded to the nearest cent, for each Rate to reflect any change in the Tipping Fee charge at the approved Organic Materials Processing Facility and the calculated average Tons of Organic Waste Collected per household per year, based on the actual tonnage of Residential Organic Waste Collected in the prior calendar year and the average number of Residential units served, rounded to the nearest ten thousandth (10,000th). The adjustment shall be calculated as follows:

Adjusted Organic Waste Processing Component = Approved Organic Waste Processing Facility Tipping Fee x Average Organic Waste Tons per Household Per Year / 12 months

For example, assuming:

1. Current Approved Organic Waste Processing Facility Tipping Fee= \$80.00 per Ton
2. Average Organic Waste Tons per Household per Year= 0.7800 Tons
3. Adjusted Organic Waste Processing Component=  $\$80.00 \times 0.7800 / 12 = \$5.20$

#### Commercial Refuse and Recyclable Materials Disposal and Processing Component Calculation

Contractor shall calculate the adjustment to Commercial Refuse and Recyclable Materials Rate Disposal and Processing Components, using the following methodology:

Step 1: Calculate the adjusted Commercial Disposal Component, rounded to the nearest cent, for each Commercial Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, or a change in the estimated weight per cubic yard of Refuse Collected (which is initially established at one hundred five (105) pounds), and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

Adjusted Disposal Component=  $130 \text{ lbs} * \text{Weekly Service Level in Cubic Yards} * 52 \text{ Weeks per Year} / 2,000 \text{ pounds per Ton} * \text{Approved Disposal Site Tipping Fee} / 12 \text{ months}$  For example, assuming:

1. Current Approved Disposal Site Tipping Fee= \$50.88 per Ton
2. Service Level (size of container \* frequency of service) = 3 cubic yards, 1 x per week
3. Adjusted Disposal Component=  $130 * 3 * 1 * 52 / 2,000 * \$50.88 / 12 = \$42.99$

Step 2: Calculate the adjusted Commercial Recyclable Materials Processing Component, rounded to the nearest cent, for each Commercial Rate to reflect any change in the Tipping Fee charge at the approved MRF, and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

Adjusted Recyclable Materials Processing Component = Approved MRF Tipping Fee\* Weekly Service Level in Cubic Yards\* 4.33 Average Weeks per Month

For example, assuming:

1. Current Approved MRF Tipping Fee= \$2.58 per Cubic Yard
2. Service Level (size of container\* frequency of service) = 3 cubic yards, 1x per week

3. Adjusted Disposal Component=  $\$2.58 * 3 * 1 * 52/12 = \$33.54$

Commercial Green Waste and Food Waste Processing Component Calculation Contractor shall calculate the adjustment to Commercial Green Waste and Food Waste Rates Disposal and Processing Components, using the following methodology:

Step 1: Calculate the adjusted Commercial Green Waste Processing Component, rounded to the nearest cent, for each Commercial Green Waste Rate to reflect any change in the Tipping Fee charge at the Approved Organic Materials Processing Facility, the estimated weight per cubic yard of Organic Material Collected (which shall be two hundred (200) pounds for Green Waste initially) and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

Adjusted Green Waste Processing Component =  $200 \text{ lbs} * \text{Weekly Service Level in Cubic Yards} * 52 \text{ Weeks per Year} / 2,000 \text{ pounds per Ton} * \text{Approved Green Waste Tipping Fee} / 12 \text{ months}$

For example, assuming:

1. Current Approved Green Waste Tipping Fee= \$53.76 per Ton
2. Service Level (size of container\* frequency of service) = 3 cubic yards, 1x per week
3. Adjusted Green Waste Processing Component=  $200 * 3 * 1 * 52 / 2,000 * \$53.76 / 12 = \$69.89$

Step 2: Calculate the adjusted Commercial Food Waste Processing Component, rounded to the nearest cent, for each Commercial Food Waste Rate to reflect any change in the Tipping Fee charge at the Approved Organic Materials Processing Facility, the estimated weight per cubic yard of Organic Material Collected (which shall be three hundred twenty (320) pounds for Food Waste initially) and the appropriate weekly service level in cubic yards. The adjustment shall be calculated as follows:

Adjusted Food Waste Processing Component=  $320 \text{ lbs} * \text{Weekly Service Level in Cubic Yards} * 52 \text{ Weeks per Year} / 2,000 \text{ pounds per Ton} * \text{Approved Food Waste Tipping Fee} / 12 \text{ months}$

For example, assuming:

1. Current Approved Food Waste Tipping Fee= \$92.82 per Ton
2. Service Level (size of container\* frequency of service) = 2 cubic yards, 1x per week
3. Adjusted Food Waste Processing Component=  $320 * 2 * 1 * 52 / 2,000 * \$92.82 / 12 = \$128.71$

### Roll-Off Box Disposal and Processing Component Calculation

Contractor shall calculate the adjustment to Roll-off Box Rates using the following methodology: Step 1: Calculate the adjusted Roll-off Box Disposal Component, rounded to the nearest cent, for each Roll-off Box Rate to reflect any change in the Tipping Fee charge at the approved Disposal Site, and the weight per pull (which shall be six (6) Tons for standard Roll-off Boxes, and eight (8) Tons for compactors. The adjustment shall be calculated as follows:

Adjusted Disposal Component =  $\text{Approved Disposal Site Tipping Fee} * 6 \text{ Tons}$  For example, assuming:

1. Current Approved Disposal Site Tipping Fee= \$50.88 per Ton
2. Adjusted Disposal Component = \$50.88 \* 6 = \$305.28

Step 2: Calculate the adjusted Roll-off Box Processing Component, rounded to the nearest cent, for each Roll-off Box Rate to reflect any change in the Tipping Fee charge at the Approved Processing Facility, and the actual weight per pull. The adjustment shall be calculated as follows:

Adjusted Disposal Component = Approved Processing Facility Tipping Fee \* Actual Tons For example, assuming:

1. Current Approved Processing Facility Tipping Fee= \$11.93 per Ton
2. Adjusted Processing Component = \$11.93 \* Actual tons = Adjusted Disposal Component

### C. Compliance Components

Contractor shall calculate the adjustment to Single Family Dwelling, Multi-Family Dwelling, Commercial, and Roll-off Box Compliance Components using the following methodology:

Step 1: Determine annual program costs by calculating the sum of estimated program variable costs for the upcoming year, including the previous year's actual surplus or shortfall.

For example, assuming:

1. Equipment Fee = \$231,822 (food waste pails purchased for resident giveaways. SB 1383 barrel, bin, and roll off decal requirements)
2. Education & Outreach Fee = \$56,067 (information packet sent to each resident and business, community meetings, videos, and presentations informing customers of their obligations under SB 1383)
3. Procurement Fee = \$28,745 (Compost procurement and delivery to achieve 30% of City requirement)
4. Compliance Monitoring Fee = \$33,649 (Cost to audit residential and 10% of Commercial customers)
5. Record Keeping Fee = \$29,817 (Cost to manage, create, and record data and reports)
6. Edible Food Program Fee = \$27,000 (Cost to manage 3<sup>rd</sup> party contractor)
7. Other Fees / Funding = N/A (Miscellaneous Fees and/or Credits)
8. Previous Year Funding Surplus or Shortfall = N/A (Enter excess costs or balance remaining of monies from previous year's estimate)

Total Compliance Component costs = \$231,822+\$56,067+\$28,745+\$33,649+\$29,817+\$27,000 = \$407,100

Step 2: Determine adjusted Compliance Component Rate Impact for the upcoming year using one of two methods; fixed rate or average rate.

Method 1 – Average Rate. Divide total Compliance Component costs by total number of customers by twelve (12) months.

For Example, assuming:

Average Rate = \$407,100 Compliance Component costs ÷ 20,717 total customers ÷ 12 months = \$1.64 per customer, per month

OR

Method 2 – Fixed Rate. Set a fixed rate per month for Residential and determine a per yard rate for commercial customers using the remaining balance of the Compliance Component costs.

For Example, assuming:

Step 1: City determines monthly fixed rate for Residential. \$0.90

Step 2: Calculate cost of Single Family Dwellings by multiplying fixed monthly SFD rate by number of SFDs

Single Family Dwelling fixed rate \$0.90 \* 17,955 Residential \* 12 Months = \$193,914 Residential Cost

Step 3: Subtract Residential cost from Compliance Component costs to determine commercial customer Compliance Component costs.

Compliance Component costs \$407,100 - \$193,914 Residential cost = \$213,186 commercial customer Compliance Component cost.

Step 4: Divide commercial customer Compliance Component costs by total refuse yards per month

Commercial customer Compliance Component cost \$213,186 ÷ 12 months ÷ 46,614 Trash Yards per month = \$0.38 Per Yard Per Month

Step 5: Determine commercial Compliance Component per service level per month

For example, Calculate for 3 cubic yards, 1x per week:

Compliance Fee \$0.38 \* 3 yards \* 1 one service \* 4.33 weeks per month = \$4.94 per month

#### **D. Franchise Fee Components**

Contractor shall calculate the adjustment to Residential, Multi-Family, Commercial, and Roll-off Box Franchise Fee Components using the following methodology:

Step 1: Calculate the " Franchise Fee Component Factor" or "FFCF".

Calculate the twelve (12) month average Change in the CPI for the previous calendar year. The factor shall be rounded to the nearest hundredth (100th) percent.

Step 2: Calculate the adjusted Franchise Fee Component, rounded to the nearest cent, for each Rate as follows:

Adjusted Franchise Fee Component = Then-current Franchise Fee Component / (1 - FFCF) For example, assuming:

1. Then-current Franchise Fee Component= \$1.23

2. FFCF = 3.83%

3. Adjusted Franchise Fee Component=  $\$1.23 * (1 + 0.0383) = \$1.28$

Step 3: Verify the Adjusted Franchise Fee Component does not exceed the maximum percentage increase as follows:

Adjusted Franchise Fee Component = (Previous Franchise Fee Component / 0.95) > Adjusted Franchise Fee Component

For example, assuming:

4. Adjusted Franchise Fee Component =  $\$1.28$

5. Previous Franchise Fee Component =  $\$1.23$

6. Adjusted Franchise Fee Component =  $(\$1.28 - \$1.23) / (\$1.23) = 3.91\% < 5.00\% = \text{OK}$

Step 4: Apply eligible carried over Adjusted Franchise Fee Component costs as follows:

Eligible carry over Adjusted Franchise Fee Component = ((Previous Adjusted Franchise Fee Component \* 1.05) – (Adjusted Franchise Fee Component))

1. Adjusted Franchise Fee Component =  $\$1.28$

2. Previous Franchise Fee Component =  $\$1.23$

3. Eligible carry over amount =  $(\$1.23 * 1.05) - (\$1.28) = \$0.01$

#### **E. Program Cost Fees**

Contractor shall calculate the adjustment to Residential, Multi-Family, Commercial, and Roll-off Box rates then add the fixed Program Cost Fees as directed by the City.

#### **F. Total Adjusted Rates**

Contractor shall calculate the total adjusted Residential, Commercial, and Roll-off Box City Rates using the following methodology:

Step 1: Calculate the adjusted value for each Rate charged under this Agreement. Adjusted Rates shall be calculated as follows:

Adjusted Rate = Adjusted Service Component + Adjusted Disposal Component + Adjusted Processing Component + Adjusted Franchise Fee Component + Adjusted Compliance Component

For example, assuming:

1. Adjusted Service Component=  $\$19.01$

2. Adjusted Disposal Component=  $\$6.72$

3. Adjusted Recyclable Materials Processing Component=  $\$1.72$

V1.1.1.

4. Adjusted Organic Waste Processing Component= \$5.20

5. Adjusted Compliance Component (Method 2) = \$0.90

6. Franchise Fee Component = \$1.28

7. Adjusted Rate= \$19.01 + \$6.72 + \$1.72 + \$5.20 + \$0.90 + \$1.28 = \$34.83

8. Adjusted Rate may be increased by additional Program Cost Fees

**EXHIBIT O**  
**STREET SWEEPING SCHEDULE AND LOCATION**

**EXHIBITS**  
**Agreement Between the City of Upland and Burrtec Waste Industries, Inc. for**  
**Solid Waste Collection, Processing and Disposal Service**

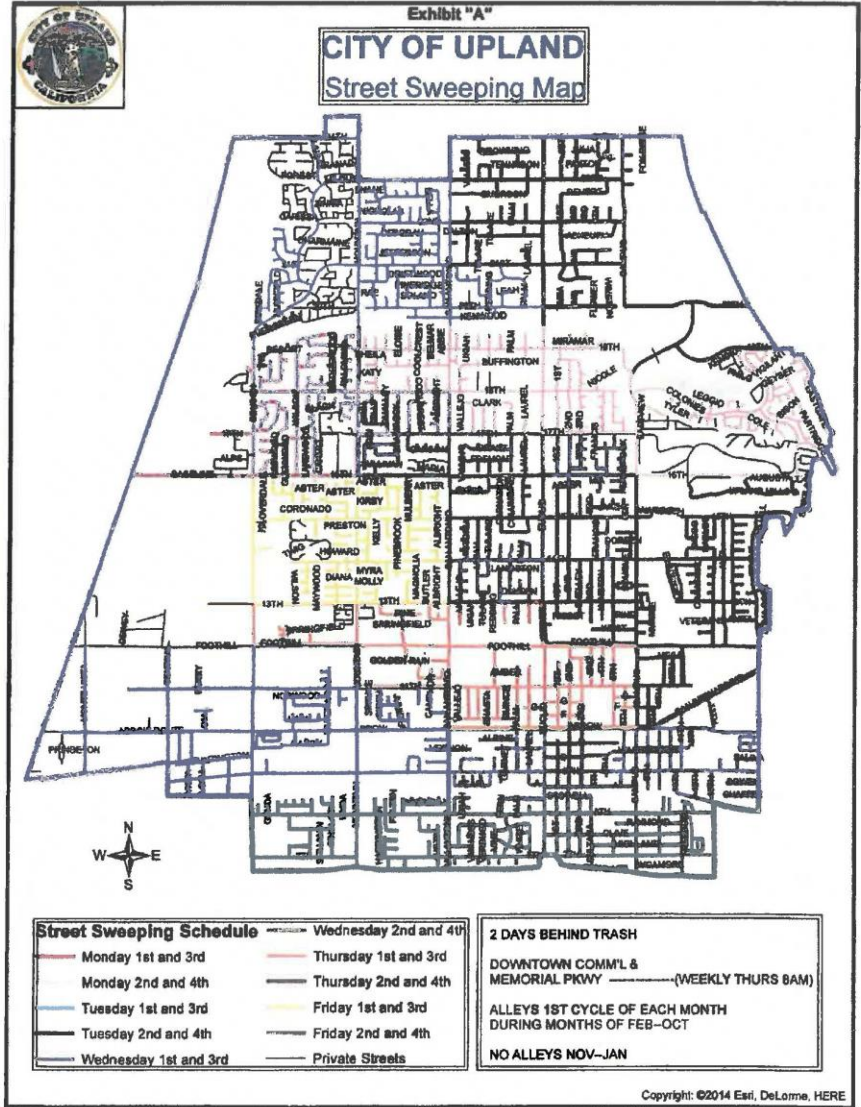


EXHIBIT O-2

**EXHIBIT P**  
**STREET SWEEPING FREQUENCY**

- i. All streets shall be swept weekly unless otherwise indicated ( $522 \text{ curb miles} \times 2 = 1,044 \text{ curb miles/month}$  or  $12,528 \text{ curb miles/year}$ ).
- ii. Foothill Boulevard (S.R. 66) and Euclid Avenue (S.R. 83) will be swept weekly ( $17.5 \text{ curb miles} \times 2 = 35 \text{ curb miles/month}$  or  $420 \text{ curb miles/year}$ ).
- iii. All alleys shall be swept weekly between the months of February through October of each year ( $68 \text{ curb miles} \times 2 = 136 \text{ curb miles/month}$  or  $1,224 \text{ curb miles/year}$ ).

NOTE: New additional streets will be performed without additional compensation because enhanced prevailing solid waste collector rates will be effect and these services are included in the cost of service.