

AGREEMENT BETWEEN

THE CITY OF DUARTE

AND

BURRTEC WASTE SERVICE, LLC

FOR

MUNICIPAL SOLID WASTE, RECYCLABLES AND GREEN WASTE

COLLECTION, TRANSPORTATION,

DISPOSAL, COMPOSTING AND PROCESSING

September 18, 1996

For Solid Waste Collection, Processing And Disposal Services

September 18, 1996

This Agreement is made and entered into by and between the City of Duarte (the "**City**"), a political subdivision of the State of California, and Burrtec Waste Service LLC. ("**Contractor**"), a California corporation, as of the later of the date of execution by the City or the Contractor, as the case may be.

WITNESSED:

WHEREAS, the City is responsible for providing solid waste handling services to its citizens, including source reduction, recycling, composting activities and the collection, transfer and disposal of solid waste within the City boundaries subject to solid waste handling jurisdiction, as provided in Public Resources Code, Section 40057, commonly known as the California Integrated Waste Management Act (the "**Act**" or AB 939);

WHEREAS, the City has determined to provide such solid waste handling services by contracting with solid waste enterprises, as defined and provided in Public Resources Code, Section 40058, and on December 21, 1995, the City issued a Request for Qualifications for Refuse, Recycling and Green Waste Collection to establish lists of the most qualified candidates for participation in a Request for Proposals, to improve and modernize residential collection operations, improve residential customer satisfaction, better meet the diversion requirements as set in the Act;

WHEREAS, on March 22, 1996, through participation with the City of Bradbury, the City issued a Request for Proposal, seeking proposals from qualified firms to provide refuse collection, transportation and disposal; recycling collection, transportation, processing and recovered materials marketing and green waste collection and transportation (the "**Services**", as more fully defined hereinafter);

WHEREAS, on June 13, 1996, the City received revised proposals from seven contractors, and whereby the City evaluated all proposals and determined that the Contractor has proposed to provide Services in a manner and on terms which are in the best interest of City, taking into account the qualifications and experience of Contractor, the level of diversion to which the Contractor is committed, and the cost of providing such Services;

WHEREAS, 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 at least twenty-five percent (25%) solid waste from landfills by 1995, and fifty percent (50%) by 2000; and may be subject to additional requirements during the Term of this Agreement; and

WHEREAS, 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 Contractor agree as follows:

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ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION

1.01 Definitions. As used herein, capitalized words shall have the meanings set forth in Exhibit 1.01, 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 neuter genders, 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 of 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, including those contained in the City's Request for Qualifications dated December 21, 1995 and the Contractor's response thereto, the City's Request for Proposals dated March 22, 1996, and Contractor's proposal.

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 Los Angeles 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:

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(1) promptly meet and negotiate in good faith a substitute for such provision which shall, to the greatest extent legally permissible, effect 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 effect 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; provided however, that if any provision with respect to City approval (or disapproval) or selection of any Processing Facility, Composting Facility or Disposal Facility shall be ruled invalid by any court of competent jurisdiction, then the City shall have the right in its sole discretion to terminate this Agreement in accordance with Section 12.01a(3).

1.06 Interpretation. This Agreement shall be interpreted and construed reasonably and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Contractor 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.

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ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.01 Of Contractor. The Contractor represents and warrants as of the date hereof, in accordance with Exhibit 2.01.

2.02 Of City. The City represents and warrants as of the date hereof, in accordance with Exhibit 2.02.

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 Article 2 provided that either Party may respectively waive such precondition, in whole or in part.

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ARTICLE 3. TERM OF AGREEMENT

3.01 Term. This Agreement shall become effective on the date hereof and continue in effect until January 1, 2007, (the "**Term**"), provided, however, that by January 1, 2004 the City Council authorizes one of the following two (2) Contract term options:

1. The Contract term will end on January 1, 2007, with no extensions of the term.
2. The Contract shall be extended one (1) year beyond the January 1, 2007, term; and on each subsequent year the term may be extended by one additional (1) year only if the City Council provides such authorization. If the City Council does not provide such authorization to extend the contract by one (1) additional, year, the Contract term shall automatically not be extended.

The Contractor must provide a Notice of Contract Term to the City of this provision at least three months prior to January 1, 2004, and at least three months prior to the January 1 for each subsequent year of the term.

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.

3.03 Statutory Continuation Rights. Contractor acknowledges that it is familiar with Article 3 of Chapter 4 of Part 8 of Division 30 of the Public Resources Code, commencing with Section 49520, and that such provisions are inapplicable to this Agreement. Contractor further agrees that if and to the extent that such provisions are deemed applicable to this Agreement, Contractor waives any rights they may afford.

3.04 Transition to Next Contractor. Upon expiration of this Agreement, if Contractor and City do not enter into a succeeding agreement, Contractor shall cooperate fully with City and the subsequent contractor(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 12.02.

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ARTICLE 4. SERVICES

4.01 Collection and Transportation.

a. Service Standards.

(1) **General.** Contractor acknowledges that one of the City's primary purposes in competitively procuring Services hereunder, selecting Contractor and executing this Agreement, is to improve the quality of Customers' waste management services. Therefore, Contractor shall collect residential and commercial solid waste from all premises 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 Services quality shall not relieve Contractor 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.** Contractor shall clean up litter in the immediate vicinity of any MSW storage area, including the areas where Containers are placed for collection, whether or not Contractor has caused the litter. The Contractor shall discuss instances of repeated litter not caused by it directly with the Customer responsible therefore and report such instances to City. City will cooperate with Contractor to rectify such situation if Contractor has already attempted to do so without success.

Contractor shall also use due care to prevent MSW 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. Contractor 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 MSW is spilled or scattered, Contractor shall immediately clean it up. Contractor 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 for spills.

(3) Respect for Property.

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

(ii) **Containers.** Contractor shall handle Containers with due care to promote the longest possible useful life. Contractor shall return containers to within five feet of the location from

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which they were picked up, and shall ensure that Containers are not deposited in any driveway, sidewalk or street.

(iii) Pavement. Contractor 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 said damages are the result of such Vehicles exceeding the legal maximum weight limits of the State or the negligent operation of Vehicles by Contractor's employees.

(4) Noise. Contractor shall conduct Collection as quietly as possible and shall conform to noise level regulation in accordance with the specifications in Section 4.01g(1)(i). Contractor will promptly resolve any noise complaints to City satisfaction. The City may conduct random checks of noise emission levels to ensure compliance herewith.

b. Scope of Regular Collection Service. Contractor shall timely and fully perform Collection Services described in Exhibit 3.01a in accordance with the provisions of this Agreement. To the extent that any portion of Services is provided exclusively by Contractor, it shall be so only if Contractor is and shall at all times be ready, willing and able to provide Services in accordance herewith and with Applicable Law.

(1) Exceptions.

(i) Special Wastes. Contractor shall not be required to collect special wastes, including: grease wastes from grease traps or grease interceptors; waste materials resulting from demolition or construction.

(ii) Recyclable Materials not Discarded by Customer. Recyclable materials belong to the customer until set out at the curb for transfer to Contractor. Customers may dispose of such recyclable materials 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. Contractor shall not be required to collect any MSW that is not placed inside a Container, bags or bundles, has been over loaded in Containers by weight or volume, or has been compacted or otherwise placed, kept or accumulated in a manner that the MSW 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 MSW or Bulky Waste properly set out in accordance with subsection c. Contractor 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.

(iv) Container Not Placed in Proper or Safe Collection Location. Contractor shall provide Collection Services for all properly placed Containers except that Contractor shall not be required to collect any MSW from any Container which is placed in a manner which would

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otherwise preclude the safe pickup thereof. Contractor shall complete and leave a Non-Collection Notice securely attached to such improperly placed Container.

(v) Unsafe Condition. If Contractor determines that any condition at or near any collection location presents a health or safety threat to Contractor's employees, Contractor shall immediately notify the City Representative thereof. Upon City authorization, the Contractor may discontinue collection for any such location until the safety hazard is eliminated. Contractor shall complete and leave a Non-Collection Notice securely attached to Customer's Container or on the door to Customer's premises.

(vi) Hazardous Waste or Unsafe Materials. If Contractor determines that Containers contain Hazardous Waste (other than Household Hazardous Waste) or other materials that present a health or safety threat to Contractor's employees, Contractor may refuse to collect such Container. Contractor shall notify the City Fire Department immediately, using the 911 number. Contractor will notify City thereof in its report in accordance with Section 7.02.

(2) Annexation of Territory. If territory is annexed to the City, and if for the three years immediately prior to such annexation any services similar to the Services were provided by a Person authorized to perform such services by the local agency having jurisdiction over such territory prior to annexation, then such authorized Person may continue to provide such services in such territory as provided in Section 49520 et seq. of the Public Resources Code and such territory shall not be deemed a portion of the City for the purpose of defining the scope of Services. If such authorized Person is Contractor, or if such authorized Person declines to continue to provide Services therein, or upon termination of such Person's right to provide such service pursuant to such provisions of the Public Resources Code, then such territory shall become a part of the City for the purposes hereof.

The City reserves the right, upon ten (10) days written notice to the Contractor, to order the Contractor to make collections in such annexed area in accordance with all provisions of these specifications and at the rates appropriate for the customer.

(3) Transition Implementation Schedule. Contractor acknowledges that to date the collection services have been provided by Newco Waste Systems, Inc. and that timely, efficient and orderly transition from Newco Waste Systems, Inc. to Contractor-provided Services is of the utmost importance to City. Contractor has prepared and City has reviewed Contractor's transition implementation plan and schedule, attached as Exhibit 3.01b ("**Transition Plan**"). Contractor shall adhere strictly to the Transition Plan and submit written status reports to the City on a weekly basis, commencing three (3) weeks prior to start of collection operations and promptly upon City request, meet with the City to review implementation progress.

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c. Special Collection Service.

(1) Bulky Waste.

(i) Semi-Annually. Contractor shall provide Community Clean-up services for collection of bulky waste city-wide at locations designated by the City from Customers two (2) times each calendar year. Contractor shall use its best efforts to divert/recycle Bulky Waste, including informing Customers of donation, reuse and other source reduction or diversion options.

(ii) On Customer Demand. Contractor shall provide Bulky Waste collection at the curbside or alley way on demand from residential Customers two (2) times per calendar year to each residential customer in the City. Contractor shall provide such On Customer Demand collection within forty-eight (48) hours of request by the residential customer. Customer requests for such service may be done in person, over the telephone, or in writing. Contractors shall include information about On Demand collection services as part of the Contractor's public education program and in billing notices at least four (4) times per year. Contractor may bill the Service Recipient for On-Demand Bulky Waste collection services in excess of the required two (2) free collections in accordance with Section 4.04a and Exhibit 7.01.

(iii) On City Demand. Within 24 hours of City Notice to Contractor, Contractor shall pick up and dispose of Bulky Waste which have been deposited on public streets or other public property located within the City. Contractor shall not charge the City for such collection of bulky waste.

(2) Push Services. Contractor shall provide special manual carry-out, roll-out or push services for all or a portion of Collection Services at the request of any Customer. Push services shall include dismount from the collection vehicle, moving the Containers from their storage location to the closest location where collection can be performed not more than four hours before Collection, and returning them to their storage location and may charge Customer in accordance with Exhibit 7.01.

(3) Christmas Tree Collection. Contractor shall Collect all Christmas trees set at curbside from December 26 to January 14 annually. Contractor will notify Customers by mail of such collection dates and that trees placed on the curbside at other times must be cut up for delivery as green waste/ wood waste. Contractor may identify additional sites for centralized drop-off by Customers of Christmas trees, ensuring that trees will not accumulate outside of such drop-off containers or location. Contractor shall deliver trees to a green waste or composting facility for diversion.

(4) City Facilities: Contractor shall Collect Refuse, Recyclables, and Green Waste from City facilities at no charge to the City.

(5) Senior and Handicapped Collection. Contractor shall provide collection services at reduced rates for qualified senior and handicapped residents in accordance with Exhibit 7.01.

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Contractor shall also provide at no cost push services and/or backyard collection to qualified senior and handicapped residents.

d. Frequency

(1) Regular Schedule.

(i) Residential. Contractor shall collect Refuse, Recyclables and Green Waste from each Residential Customer on the same day, at least once a week as scheduled and noticed to the Residential Customer.

(ii) Commercial. Contractor shall collect Refuse, Recyclables and Green Waste from each Commercial Customer at least once a week, Monday through Friday and upon request of the Commercial Customer, on Saturday, and at such additional times as Contractor and Commercial Customer may agree.

(2) Holiday Schedule. Contractor shall perform Collection Services scheduled for a Holiday on the business day immediately following the Holiday and provide affected Customers at least thirty days' advance written notice thereof.

e. Hours.

(1) Residential. Contractor shall perform Collection Services within residential areas only between 7:00 a.m. and 5:00 p.m., Monday through Friday, and on Saturday if a holiday occurs within the preceding week. Other Exceptions shall be effected only upon the mutual agreement between City and Contractor.

(2) Commercial Contractor shall perform Collection Services within commercial areas only between 6:00 a.m. and 6:00 p.m., Monday through Saturday.

(3) No Sunday Pickup. Contractor shall not perform scheduled Collection Services on Sunday.

f. Routing.

(1) Maps. On or before the date provided in the Transition Plan (Exhibit 301b.), Contractor shall provide to the City preliminary Collection Service maps showing the collection routes Contractor proposes for Residential and Commercial Customers, including Refuse, Recyclables, Green Waste. The City Representative may provide written comments on the preliminary maps to Contractor no later than ten days thereafter, and in such event Contractor shall revise the maps to reflect such comments and return them to the City within ten days after receipt of City comment for City corroboration.

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(2) Route Changes

(i) *City-Initiated.* City reserves the right to change the day of the week for Collection Services on any route. City shall notify Contractor of any change in the Collection Service day at least sixty days in advance of the effective date of the change, and Contractor shall in turn notify all affected Customers of the change at least fourteen days in advance of the effective date of the change. City shall not initiate route changes more often than six times in any Contract Year nor more often than two times per individual numbered route in any Contract Year.

Contractor will use Reasonable Business Efforts to effect the transition from the existing collection service provider to Contractor-provided Collection Services but acknowledges that during the first year of Service hereunder, changes may be necessary or convenient for the City and/or Customers. Consequently, Contractor shall implement route changes requested by the City in accordance with the preceding paragraph on or before December 31, 1997 without compensation.

(ii) *Contractor-Initiated.* Contractor shall submit to City, in writing, any proposed route change (including maps thereof) not less than sixty calendar days prior to the proposed date of implementation. The City may provide written comments on such proposed change to Contractor no later than ten calendar days thereafter, and in such event Contractor shall revise the routes to reflect such comments and return them to the City within ten calendar days, for City corroboration on or before the proposed date of implementation. Contractor shall not implement any route changes without the prior review of the City Representative. Contractor shall notify Customer of route changes not less than thirty calendar days before the proposed date of implementation.

(3) *Route Audits.* City reserves the right to conduct audits of Contractor's Collection routes. Contractor 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. Contractor 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.

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g. Vehicles.

(1) Specifications.

(i) Noise. The noise level generated by Vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five decibels at a distance of twenty-five feet from the Collection 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. Contractor shall cause the collection vehicles to be tested annually by an independent testing authority 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 in accordance with Section 7.02c.

(2) Registration; Certifications. Contractor shall register all Vehicles, except those Vehicles used solely on Contractor's premises, with the California Department of Motor Vehicles in accordance with Applicable Law. Contractor 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. Contractor shall maintain copies of registration certificates and reports and make them available for inspection upon request by the City.

(3) 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.

(4) Identification. Contractor 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 inches high on each side of each vehicle and the number painted on the rear.

(5) Public Relations Signage. Contractor shall equip both sides of Vehicles with frames capable of securing 3 x 8 signs. Contractor shall design, produce and install interchangeable signs containing messages designed to alert the public to special waste management programs in English and additional languages directed by the City. Contractor shall submit its designs for such signs to the City and the City may comment upon them within two weeks thereafter. Signs shall be subject to City review. The City may request a maximum of two (2) changes per year at no cost to the City.

(6) Maintenance. Contractor shall at all times maintain Vehicles in good condition in accordance with the maintenance protocol contained in Exhibit 3.01d(2), so that they operate properly and safely. Contractor acknowledges that it is important to the City that Contractor present a professional and pleasing image. Therefore, Contractor shall wash all Vehicles at least

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once each week and shall repaint all Vehicles (including trim) not less than every two and half years dating from the new acquisition thereof.

h. Containers.

(1) Provided by Contractor. Contractor shall provide Customers with Containers required to provide Services. Contractor shall make initial timely delivery thereof in accordance with the Transition Plan and thereafter, shall maintain an inventory of sufficient numbers of Containers to enable Contractor to provide Services without interruption. Contractor shall provide a secure location for inventory storage and shall distribute Containers from inventory to new Customers and Customers who request replacements or exchanges thereof in accordance with the following subsection (2). Contractor shall maintain complete inventory thereof in accordance with Exhibit 3.01e, and Customer distribution records (by volume and/or size) in accordance with Section 7.01a.

The containers shall be in bright, readily identifiable colors (to be reviewed and approved by the Cities) to help promote the program, be imprinted with the program's logo and type of material to be held in each bin. A description of notice of each City's anti-scavenging ordinance shall be affixed to each container. The plastic materials used shall be durable and ultraviolet light stabilized. Containers shall be reviewed the City.

At the end of the Contract term the City reserves the right to purchase the containers, both distributed and otherwise, for an amount equal to the fair market value as determined by an independent appraiser which is mutually agreed upon by the City and Contractor.

(2) Change in Size or Number of Containers.

(i) *Container Exchange During Program Start-up (Without Charge).* Upon written or telephonic request of a Customer during the first six months of program start-up (November 1, 1996 - April 30, 1997), Customers may exchange Containers for different sizes, add extra Containers or reduce the number of their Containers for no cost. Contractor shall exchange, deliver and/or remove Container(s) in accordance with Customer's request within fifteen calendar days' receipt thereof. Contractor shall adjust Customer billing to reflect changes in Container sizes or the number of Containers during the next scheduled billing period.

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(ii) Customer Request (Without Charge). Contractor shall prepare and incorporate notices in English and other languages as directed by the City to be included in Contractor's quarterly newsletter provided to residential customers in substantially the form attached in Exhibit 3.01f, subject to City review, to inform them that upon written or telephonic request commencing January 1998, Customers may exchange Containers for different sizes, add extra Containers or reduce the number of their Containers. Customers may request such change at any time throughout the twelve month period (January - December). Each Customer shall be limited to one such free transaction per twelve (12) month period. Contractor shall exchange, deliver and/or remove Containers in accordance with Customer's request and shall maintain a record of Customer requests received by returned postcards and telephone calls for a period of not less than one month after completion of each such Container exchange, delivery or removal.

(iii) Customer Request (With Charge). Upon written or telephonic request of a Customer in excess of the one time per 12 month period without charge as described in the preceding paragraph (i), Customers may exchange Containers for different sizes, add extra Containers or reduce the number of their Containers for the charges listed in Exhibit 7.01. Contractor shall exchange, deliver and/or remove Container(s) in accordance with Customer's request within fifteen calendar days' receipt thereof.

(iv) Contractor Request: No Reduction. If Contractor believes that a Customer's request to reduce its level of Service would result in repeated overflows of MSW. Contractor may notify the City Representative who shall determine whether Customers' Service level will be reduced.

(v) Contractor Request: Increased Service. In the case of repeated overflows of MSW, Contractor shall contact the Customer, specify the frequency of overflows and discuss increasing the size or the number of Containers at the premises or increasing the frequency of pickups. Contractor shall implement agreed-upon changes within seven calendar days thereafter. However, if Contractor cannot successfully contact Customer after three attempts or Customer does not agree to Service changes, Contractor shall Notify the City Representative, specifying the frequency of overflows and documenting Contractor's attempts to contact Customer. The City Representative shall respond to Contractor's report and make a final written determination. Within seven calendar days of the City Representative's written determination, Contractor shall implement the Service changes determined by City.

(vi) City Requirement. The City reserves the right to require a Customer to use a larger Container or additional Containers at Customer's expense in any case where City determines that the Customer has inadequate capacity for the volume of Refuse generated on Customer's premises. If City so directs Contractor, Contractor shall exchange existing Container(s) for Container(s) of a different size or provide additional Container(s) within seven calendar days of City's direction.

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(3) **Repair of Containers.** Contractor shall repair Containers within ten days of a request for repair from a Customer or from the City Representative or, if the repair cannot be completed within said ten days, shall provide such Customer with a replacement Container.

i. Personnel.

(1) **Driver Licensing and Safety.** Contractor 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. Contractor shall maintain photostat copies of licenses for all Vehicle operators. Contractor 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. Contractor shall train its personnel to identify, and not to collect, Hazardous Waste except as provided in this Agreement.

(2) **Identification, Appearance, Conduct.** Contractor shall require its drivers and all other personnel who come into contact with the public to wear a uniform identifying the name of each such driver or other personnel. Contractor shall use its best efforts to assure that all personnel present a neat and orderly appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language and shall 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, Contractor shall take all appropriate corrective measures.

(3) **No Gratuities.** Contractor shall not permit its personnel to demand or solicit, 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 Contractor shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status or sexual orientation. Contractor shall comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

4.02 Diversion.

a. Processing.

(1) **Facility Selection.** Contractor shall transport and deliver to a *Processing Facility* or Facilities all Recyclables including recyclables from single-family, multi-family households, businesses, and recyclable Bulky Waste in accordance with Section 4.01c(1); and to a *Composting Facility* all Green Waste. Such Facilities shall be permitted under and in substantial compliance with Applicable Law. Contractor shall select Facilities which result in the least expensive processing

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option for the City, taking into account tipping fees thereat, revenue sharing, if any, and transportation costs thereto, consistent with public health and safety, diversion provisions of AB 939, and Contractor's obligations hereunder. Contractor shall ensure there is sufficient capacity at such Facility or Facilities to process, and store until marketed, all Recyclables, Bulky Waste, and Green Waste Collected by Contractor 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 Contractor shall have no responsibility or liability for the salary, wages, benefits or worker's compensation claims of the City Representative or any such designee.

City reserves the right to disapprove of Contractor's selected Facility or Facilities, in which case Contractor will designate an alternative, also subject to City review.

(2) Weighing and Record Requirements. Contractor shall ensure that, at a minimum, all materials shall be weighed upon delivery to the Processing Facility or Facilities and Green Waste 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. After processing, baling, containerizing or otherwise preparing for shipping, Contractor shall ensure that all processed materials and residue therefrom shall again be weighed and the weights recorded, and that all recorded weights of materials delivered, shipped to market and/or disposed of shall be reconciled on a weekly basis. Contractor shall ensure that all balers shall be equipped with tamper-proof counters to record the number and weight of bales processed and that all scales shall be weigh master certified and shall be regularly maintained to ensure their reliability and continued functioning.

(3) Recyclables Specifications. Contractor shall ensure or cause to be ensured that the quality of Recyclables continues to meet the specifications set out by Contractor in its current Marketing Plan or such other specifications as are mutually agreed by Contractor and the City Representative. City shall have no responsibility for the quality of Recyclables delivered by Contractor 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. Contractor 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 Facility or Facilities or Composting Facility, as the case may be.

(5) Processing Fees. Contractor shall pay for processing of Recyclables, and Bulky Waste at City-reviewed Processing Facilities and of Green Waste at a City-reviewed Composting Facility and the disposal of residue therefrom, unless otherwise mutually agreed by City and Contractor. Contractor shall not, under any circumstances, cause to be charged to City any material that was

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collected by Contractor or by any other person without the express prior written authorization of the City Representative.

(6) Contractor Responsibility. In the event Contractor fails or is unable, for any reason whatsoever to, provide for processing of Recyclables, Recyclable Bulky Waste and Green Waste, Contractor 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. Contractor 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.

Contractor acknowledges that the California Integrated Waste Management Act requires solid waste diversion from landfill disposal and that "transformation," as defined in California Public Resources Code Section 40201, does not provide City with full diversion credit. Contractor shall not process by means of transformation any Recyclables nor shall Contractor ship, transport, deliver or otherwise make available any such Recyclables to any person for the purpose of transformation, without the express prior written authorization of City Representative. However, if residue from any Processing Facility is disposed through transformation, Contractor will provide City with the data to support diversion credit, if any.

c. Indemnification. Contractor agrees to protect and defend City with counsel selected by Contractor and approved by City, and to indemnify and hold City harmless from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in California Public Resources Code Section 41780 as of the date hereof are not met by the City with respect to the MSW Collected by Contractor under this Agreement or not reported because of Contractor's delays in providing information which the City requires to timely submit reports required by the Public Resources Code.

d. Minimum Diversion Guarantees. Attached as Exhibit 3.03 is Contractor's Statement of Minimum Diversion Guarantees of the diversion it will achieve for (1) each type of MSW collected hereunder (i.e. Residential and Commercial Refuse, Recyclables, and Green Waste), (2) all MSW collected hereunder and (3) all waste which the City must take into account in calculating compliance (i.e. including construction and demolition waste and other waste not collected by Contractor), together with the assumptions and calculations used to determine such estimate. Contractor shall update such estimates annually in conjunction with its Annual Report.

During the year prior to each compliance reporting date under the Public Resources Code, if in the opinion of the City, based upon information provided by Contractor and/or the State, the City is not reasonably convinced that the Contractor will attain compliance, the City may require Contractor to provide a performance bond in the amount sufficient to cover the City's cost to prepare a plan of correction, and the actual amount to achieve compliance.

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The Contractor shall recycle, process and/or market in a manner which entitles City to diversion credit as specified in California Public Resources Code, Section 41780 measured on a calendar year basis beginning January 1, 1997 ("**Minimum Diversion Guarantee**"). If Contractor fails to meet the Minimum Diversion Guarantees as specified in Exhibit 3.03, and does not correct such diversion deficiency within 120 days, the City may terminate this Agreement in accordance with Article 12.

If the City finds that additional programs are necessary to meet any required diversion goals, the City may require proposals for additional diversion programs to meet the diversion requirements. If necessary City and Contractor shall enter into good faith negotiations, but if agreement regarding programs and/or rate adjustments cannot be reached City reserves the right upon 120 days notice thereof to terminate the Contractor's Contract.

4.03 Disposal.

a. Disposal Facility. Contractor shall transport and deliver to a permitted Disposal Facility reviewed by City all Refuse, including Residential and Commercial, City Refuse, Refuse collected in performing emergency services in accordance with Section 4.06 , and Bulky Waste which cannot be diverted in accordance with Section 4.01c(1). Contractor shall select a Disposal Facility which results in the least expensive disposal option for the City, taking into account tipping fees and transportation costs thereto, consistent with public health and safety and Contractor's obligations hereunder. For ease of reference, Parties shall attach any agreements between a Disposal Processing Facility owner or operator and either Party and any rules, regulations, policies or fee schedules relating to such Disposal Facility as Exhibit 3.02a. The Parties shall promptly update such Exhibit to reflect any and all amendments to or replacement of any such agreements, rules, regulations, policies or price schedules.

City reserves the right to disapprove Contractor's selected Disposal Facility, in which case Contractor will designate an alternative, also subject to City review. If public health, safety and/or fiscal interest requires or compliance with Applicable Law necessitates, then the City may designate a disposal facility for Contractor's disposal of Refuse as described in subsection a above.

Contractor 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. Contractor shall at all times operate according to safe industry practices.

b. Disposal Fees. Contractor shall pay for disposal of Refuse by Contractor at a City-reviewed Disposal Facility in accordance with subsection a above unless otherwise mutually agreed by City and Contractor. Contractor shall not, under any circumstances whatsoever, cause to be charged to City any material that was collected by Contractor or by any other person, other than

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MSW Collected hereunder without the express prior written authorization of the City Representative.

c. Indemnification.

(1) Contractor Conduct Included: Contractor shall indemnify, defend with counsel approved by the City, 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 at any place where Contractor delivers, stores, processes, composts or disposes of MSW to the extent that such Liabilities are caused by the following:

(i) **Contractor negligence or misconduct:** the wrongful, willful or negligent act, error or omission, or the misconduct of the Contractor;

(ii) **Customer and Non Customer materials:** the collection, delivery, handling, processing, composting or disposal by the Contractor of any materials or waste, including Hazardous Waste, which are generated or placed in Contractor's collection containers by Contractor's Customers or by Persons placing such materials in Contractor's collection containers;

(iii) **Failure to Comply with Hazardous Waste Laws and Regulations:** the failure of Contractor to undertake Hazardous Waste training procedures required by Applicable Law with respect to its employees or any subcontractors or Contractor's Hazardous Waste Screening protocol described in Exhibit 4.02, 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; "Contractor" 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 Contractor 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. The City acknowledges that the mere presence of household hazardous waste in the MSW Collected hereunder shall not constitute negligence and in and of itself create any liability on the

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part of the Contractor absent any of the circumstances described in clauses (i) through (iii) in the preceding subsection (1).

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

(4) Statutory Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e), 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. Contractor shall maintain a local telephone number, toll-free to Customers, at least during Office Hours ("**Phone Hours**"). The telephone number shall be listed under Contractor's name and the City's governmental listings in the City telephone directory. Contractor shall maintain telephone answering system capable of accepting at least five (5) incoming calls at one time. Contractor 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. Contractor shall also maintain a local emergency telephone number, toll-free to Customers, for use outside Contractor's Phone Hours, which shall be separately listed as an emergency number under Contractor's name and under the City's governmental listings in the City telephone directory. Contractor 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 hour.

(3) Multi-lingual, TDD Services. Contractor shall at all times maintain the capability of responding to telephone calls in English, Spanish and such other languages as City may direct. Contractor 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. Contractor 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 Contractor's answering service shall be recorded in the log no later than the following work day. This manual log shall be available for inspection by City during Office Hours.

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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 Contractor 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, Contractor shall make subsequent attempts on the next working day after the original call. Contractor shall make a minimum of three attempts within twenty-four hours of the receipt of the call. If Contractor is unable to reach the caller on the phone, Contractor shall send a postcard to the caller. All attempts to contact the caller shall be recorded on the log kept by Contractor.

c. Office Hours. Contractor shall maintain an office open at a minimum from 7:00 a.m. to 6:00 p.m. daily, and on Saturdays following recognized holidays. Office must be staffed by Contractor during normal business hours.

4.05 Public Education and Community Relations.

a. Community Relations Contractor's plan for public education and outreach, and community relations activities, reviewed by City, is attached as Exhibit 3.05. Contractor shall timely and fully implement such plan.

b. Quarterly Distribution of Materials. Contractor shall prepare community relations materials to Customers four times during each Contract Year for distribution with Customers' bills in January, April, July and October, which shall address specific Collection needs or problems in English, Spanish and other languages specified by City. Contractor shall provide camera-ready copy to City for City's review and approval at least fourteen calendar days prior to printing thereof.

Any other promotional materials or news releases developed for Contractor's own use in the promotion of Contractor's Service program shall also be developed at Contractor's sole cost and expense. Contractor shall obtain City's approval of any materials prior to printing or distributing the materials. These materials shall be submitted at least two weeks in advance.

c. News Media Relations. Contractor shall notify City Representative by telephone followed by telefax of all requests for news media interviews related to the Services within twenty-four hours of Contractor'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, Contractor will discuss Contractor's proposed response with City.

4.06 Emergency Services. Contractor 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. Contractor shall be paid at a rate equal to the Contractor's then applicable fee for such service, plus five percent.

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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 Contractor's Service obligations, including the collection of MSW or any portion thereof and transportation and delivery to a City-approved or designated Processing Facility, Composting Facility or Disposal Facility, as the case may be, in the following events:

(1) Contractor, due to Uncontrollable Circumstances or for any reason whatsoever, fails, refuses or is unable for a period of 48 hours to collect, and/or at any time to transport MSW or any portion thereof to a Processing Facility, Composting Facility or Disposal Facility, as the case may be, selected in accordance with Sections 4.02a(1) and/or 4.03a;

(2) MSW generated by Customers for which Contractor 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 in accordance with Section 12.01 or any portion of Contractor'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, in its sole discretion, cease. However City's right to provide such Services shall continue until Contractor can demonstrate to the City's satisfaction that Contractor is ready, willing and able to resume timely and full Service or until the City can make alternative arrangements for providing MSW services comparable to Services in scope and price, which may include contracting with another service provider.

b. Notice. The City may give Contractor oral notice that City is exercising its right to perform Services, which notice shall be effective immediately, and shall confirm such oral notice with a written Notice within 24 hours thereafter.

c. Service Assets. Upon giving Contractor such oral notice, City shall have the right to take possession of any or all of the Service Assets necessary and convenient in providing Services, and Contractor will fully cooperate with City to transfer such Service Assets to the City and reimburse the City for any and all City's costs and expenses incurred in taking over possession of such Service Assets in accordance with subsection f below. The City may use such Service Assets to provide all or a portion of Services and shall pay Contractor fair market rental herefore less any increased costs incurred by the City as a result of Contractor's failure to provide Services, and offsets payable under Section 10.05, including damages. City shall have absolute and exclusive control over such Service Assets as though the City were the absolute owner thereof, provided that upon City request, Contractor will keep such Services Assets in good repair and condition, including providing Vehicles with fuel, oil and other maintenance in accordance with Exhibit

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3.01e, without extra cost and expense to the City. The City shall assume complete responsibility for use of Service Assets while they are in its possession and shall maintain such Service Assets in the same condition as they were in when Contractor transferred possession thereof to the City (unless Contractor maintains them as provided in the preceding sentence), and shall return said Service Assets to Contractor in the same condition as received, normal wear and tear excepted (subject to proper maintenance by Contractor).

Contractor shall maintain in full force and effect all insurance required in accordance with Section 8.01 during City's possession of such Service Assets. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

City has no obligation to continue possession and/or use of such Service Assets and may at any time, in its sole discretion, cease possession and/or use. However City's right to possess and use such Service Assets shall continue until Contractor can demonstrate to the City's satisfaction that Contractor is ready, willing and able to resume timely and full Service; until the City can make alternative arrangements for providing MSW services comparable to Services in scope and price, which may include terminating all or a portion of this Agreement in accordance with Section 12.01 and contracting for related Services with another service provider.

d. Contractor's Personnel. Upon giving Contractor oral notice in accordance with subsection b above, the City may immediately engage personnel necessary or convenient for providing all or a portion of Services, including employees previously or then employed by Contractor. However City shall not be obligated to hire Contractor's employees and may use municipal employees or other Persons to provide all or a portion of Services, including driving Vehicles. Promptly upon City request, Contractor shall make available to the City all Contractor's management and office personnel necessary or convenient for providing Services, including customer services and billing, without extra cost of expense to City.

e. Records and Reports. Upon City request, Contractor shall promptly provide City with immediate access and/or possession of Records, including those related to routing and billing.

f. Waiver of Taking Claim. Contractor agrees that the City's exercise of rights under this section does not constitute a taking of private property for which City must compensate Contractor; will not create any liability on the part of City to Contractor; and does not exempt Contractor from any indemnifications made in accordance with Sections 4.02c (with respect to diversion) and 4.03c (with respect to disposal) and 8.02 (with respect to Services generally), which Parties acknowledge are intended to extend to circumstances arising under this Section; provided Contractor is not required to indemnify City against claims and damages arising from the negligence of City officers and employees (other than employees of Contractor at the time City commenced performing such Services) and agents driving Vehicles.

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ARTICLE 5. MISCELLANEOUS SERVICE PROVISIONS

5.01 Title to Waste. The Parties agree and intend that all MSW becomes the property of Contractor when Customers abandon and discard MSW at the proper place designated for disposal, composting and/or recycling, in accordance with Section 4.02a(1) and Section 4.03a.

5.02 No Discrimination. Contractor shall not discriminate against Customers entitled to Service hereunder or Persons seeking employment from Contractor in the provision of Service hereunder on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex or such persons, as otherwise prohibited by and in accordance with Applicable Law.

5.03 Compliance with Law. Contractor shall perform, and shall cause any contractors or subcontractors to perform, all Services in accordance and compliance with Applicable Law, including obtaining and maintaining throughout the Term all necessary Permits, licenses and approvals required to perform Services. Contractor 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 MSW 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. Contractor agrees to comply with any and all such rules and regulations, subject to Article 6 relating to adjustments in the Service Fee for Changes in Law.

Reference to particular provisions or requirements of Applicable Law herein shall not be construed to limit Contractor'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 Contractor of any obligations imposed by Applicable Law.

5.04 Cooperation with Waste Studies. Contractor shall cooperate with City on any and all waste composition studies, at no additional cost to City, including modification of routes, separate collection of individual Customer's MSW, and/or delivering targeted loads of MSW to a City-designated location or locations; provided that if such location is farther than the Processing Facility, Composting Facility and/ or Disposal Facility or Processing Facilities then selected hereunder, Contractor may be compensated for additional mileage.

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5.05 Public Performance Review. City Council shall have the right and sole option to conduct a public hearing upon sixty days Notice to Contractor at such time that it selects, not more than once annually, to review Contractor's performance and quality of Service. Contractor shall attend and participate in such hearing. Council may use Records and reports required under Article 7, including records of Customer complaints, as a basis of such reviews. Within thirty 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 Contractor in connection with Services, whether developed directly or indirectly by City or Contractor, shall be and shall remain the property of City without limitation or restriction on the use of such materials by City. Contractor shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of City.

5.07 Emergency Contingency Plan. Contractor's written contingency plan describing Contractor's arrangements to provide vehicles and personnel necessary and sufficient to maintain uninterrupted Service during mechanical breakdowns, strikes, work stoppages and other concerted job actions or similar events, is attached as Exhibit 4.01. Contractor shall update such plan as necessary, subject to approval of City.

5.08 Collection Containers. Contractor shall acquire, provide, repair and maintain without any compensation in excess of its Service Fee at its own cost and expense Collection Containers which in number, design, and capacity, shall be sufficient to enable to the Contractor to perform Services in accordance with the terms hereof and Applicable Law. If any useful part of the Collection Containers shall be damaged or destroyed, as expeditiously as possible Contractor shall commence and diligently repair or replace such property so as to restore it the extent required to perform Services.

5.09 Recycled Materials. Contractor shall use Reasonable Business Efforts to procure supplies and Containers with post-consumer recycled content, including paper products for all publicity, billing and other management and operational Services, as well as Containers

5.10 Hazardous Waste. Contractor shall implement the Hazardous Waste screening, identification and prevention protocol attached as Exhibit 4.02. If Contractor inadvertently delivers materials to any Processing Facility, Composting Facility or Disposal Facility which comprise Hazardous Waste and Contractor cannot identify or fails to remove it, Contractor shall

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arrange for its proper disposal in accordance with Applicable Law and/or cooperate with such Facility owner or operator with respect thereto.

5.11 Transition Fee Contractor recognizes the procurement of the Agreement is being undertaken as a joint project between the Cities of Bradbury and Duarte, and Contractor will have separate contracts with each City. Further, Contractor recognizes that execution of Contractor's Agreement with each City may not occur at the same time. Simultaneously upon execution of Contractor's Agreement with either Bradbury or Duarte, whichever occurs first, Contractor shall pay a total of \$60,000 in full, to compensate Bradbury and Duarte for their costs of procuring Agreement(s). Contractor's transition payment shall be split between the Cities of Bradbury and Duarte in the following amounts: \$30,000 payable to Bradbury; and \$30,000 payable to Duarte.

5.12 Administration Cost The total annual Contractor payment for the City's responsibilities for AB 939 administration cost is \$40,000, increased by the CPI. The first annual payment will be made at contract execution, and each subsequent year on January 1.

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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 Contractor 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 determination by the procedures set in the Articles.

b. Upon Contractor Proposal. The Contractor 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.

6.02 Review and Comment.

a. City's Request for Proposal. Prior to directing a change in scope of Services the City shall submit a request for proposal to the Contractor. The City may withdraw such request for proposal at any time, for any reason, including receipt of a proposal from Contractor unsatisfactory to the City and may implement such request itself or through other Persons.

b. Contractor's Proposal. Within ten days of receiving the City's request for proposal (or such longer period as City may designate in light of the complexity or magnitude of the change directed by the City) or in conjunction with its own proposal, the Contractor shall submit its plan to implement such changes, including an implementation schedule and the impact, if any, on the Service Fee. Contractor shall include documentation supporting its cost proposal, including cost substantiation required with respect to Direct Costs and Indirect Costs. Contractor covenants that it will not propose a Direct Cost in excess of the fair market price for such change whether it implements such change itself or through a subcontractor. It shall charge no more than a five percent (5%) margin over Direct Costs, if any. Such proposal shall be deemed the Contractor's offer to the City to implement the change in accordance with the terms of such proposal and shall remain binding for thirty days.

In particular, if City requests or Contractor proposes to add another material to the list of Recyclables to be collected, processed and/or marketed by Contractor, Contractor shall describe the extent to which the addition of the proposed material would require the modification of Vehicles, an additional Container(s), additional Vehicles or routes, or additional route time and the associated additional costs, if any.

c. Proposal Review. Within twenty days of receiving the Contractor's proposal, the City shall review, approve, or disapprove such proposal and comment thereon. If the City does not respond within such time, its approval will be deemed not given. Contractor shall incorporate the City's comments promptly, but in all events within fifteen days; provided, that with respect to

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a City-initiated request, if Contractor disagrees with City's comments and Contractor and City cannot reach agreement during such fifteen day period, the City may Notify Contractor to submit the matter for determination in accordance with Section 6.03, or implement such change itself or through another contractor. However, the Parties shall negotiate in good faith for the purpose of reaching an agreement.

d. Proposal Implementation. Upon City approval of Contractor's proposal, the Contractor shall diligently perform such work in accordance with the schedule in its proposal and for the Service Fee adjustment, if any, provided the Contractor shall not be entitled to any compensation for implementing changes occasioned by its failure to fully and timely Services.

6.03 Arbitration. Independent impartial arbitrators shall be selected and procedure for arbitration agreed upon by the parties within ten (10) days of either party serving a notice to arbitrate on the other party. If selection and procedure cannot be agreed upon within the ten (10) day period or an agreed upon written extension, the arbitration shall be conducted by the American Arbitration Association in accordance with their procedures. The arbitrator shall be selected by City and Contractor from the applicable lists provided by the Association in accordance with their procedures. Cost of arbitration shall be shared equally by the parties.

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ARTICLE 7. RECORDS AND REPORTING

7.01 Records

a. Maintenance. Contractor 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. Contractor 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 Contractor to reconcile the Service Fee.

b. City Inspection and Audit. Upon Notice by the City, Contractor shall use Reasonable Business Efforts to provide copies of Records to City or City's designees for inspection or audit at City Hall. Otherwise, Contract shall make Records available to City or City's designees for inspection or audit at the Local Office or Contractor'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 Contractor's business or other reason, City may require that Contractor 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 Contractor. Contractor shall assure that the computerized data bases shall at all times be accessible by City. Contractor shall use Reasonable Business Efforts to promptly provide the City any additional information relevant hereto which is not specified in this Article 7.

7.02 Reporting.

a. Quarterly. Contractor shall submit quarterly reports to City in written form and Compatible Computerized Format at the same time Contractor submits billing information to the City in accordance with Section 10.06 totaling the information contained in the daily reports for such month, in substantially the form set out in Exhibit 5.01a and containing, at a minimum, the information listed therein. These reports shall be due within fifteen business days from the end of the period being reported.

b. Annual. Contractor shall submit annual reports to City in written form and Compatible Computerized Format on or before March 1 of each year totaling the information contained in the quarterly reports for such year, in substantially the form set out in Exhibit 5.01c and containing, at a minimum, the information listed therein. These reports shall be due within 30 days of the end of the reporting year.

c. Additional Information. Contractor shall use Reasonable Business Efforts to incorporate additional information from Records promptly upon Notice from City.

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ARTICLE 8. INDEMNITIES, INSURANCE, BONDS

8.01 Insurance.

a. Types and amounts. Contractor shall secure and maintain, and enter into agreements to cause its subcontractors to secure and maintain, in full force and effect the types and amounts of insurance coverage, together with related specified deductibles, listed in Exhibit 6.01 or required by Applicable Law, whichever is greater.

Contractor shall further secure and maintain, and enter into agreements to cause its subcontractors to secure and maintain, insurance policies which are always primary with respect to the Contractor's Services. Insurance coverage written specifically for the City shall be considered to be excess and not contributory. The City, and the City's affiliated employees, Council members, officers, officials, agents, assigns and volunteers shall be included as insureds under all policies, except with respect to any professional liability policies specified in Exhibit 6.01. All insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

b. Insurers. Contractor shall procure such insurance from insurers approved by the City Finance Director, licensed in California, rated not less than "A-VII" or better by A.M. Best Company, Inc.; provided that the City may waive such requirements.

c. Notices to City. Policies must bear endorsements providing the City with thirty days' prior written notice to the City Finance Director of any cancellation, non-renewal, change or other modification and name the City as an additional insured. Such endorsements shall not contain mere "best effort" modifiers or relieve the insurer from its responsibility to give the City such notice.

d. Evidence of coverage. On or before the dates when Contractor is required to procure insurance policies hereunder Contractor shall file with the City Clerk at the address provided below evidence of coverage in force, including endorsements, in accordance with the provision hereof, together with a certificate of insurance, on a City-approved form, signed or counter-signed by an authorized officer of the insurer, certifying that the coverage has not lapsed and shall remain in effect at all times required hereunder.

City of Duarte
City Clerk
1600 Huntington Drive
Duarte, CA 91010

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Upon request of the City Manager, the Contractor shall cause any of its subcontractors to provide proper evidence of insurance coverage required hereunder, satisfactory to the City Manager. Contractor shall institute a comprehensive accounting system to assure the City it is monitoring all insurance requirements hereunder, including those of its subcontractors.

8.02 Contractor Indemnification and Defense.

a. General. Contractor shall indemnify, defend with counsel approved by the City, 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 that result or are claimed to have resulted directly or indirectly by the following:

(1) **Contractor negligence or misconduct:** the wrongful, willful or negligent act, error or omission, or the misconduct of the Contractor (including the parties described below);

(2) **Patents, etc.:** any allegation of infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or other similar interest, in connection with and Service Assets, including technology, processes, Vehicles, software, machinery or equipment; or

(3) **Recyclables:** any claims made by, or payments made to, purchasers or users of Recyclables for alleged breaches of warranties of fitness in connection with the benefaction of contaminated Recyclables, but not in connection with product liability for re-use of Recyclables in new products.

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; "Contractor" 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 or in tort), natural resource damages, punitive damages, injuries, costs, financial loss, 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.

b. City Negligence Excluded. The Contractor 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.

c. Indemnification 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 Contractor's actions prior to the date hereof are

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excluded from such indemnification. However, SUCH INDEMNIFICATION RESULTING FROM SERVICES DURING THE TERM SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8.03 Performance Bond. Within ten days from the date the City Council approves this Agreement Contractor shall secure and throughout the Term maintain in full force and effect a performance or surety bond to guarantee and assure the timely and complete performance of Services in an amount no less than eight and a half percent (8.5%) of the Contractor's annual gross revenue received as a result of this contract, fully prepaid for each Contract Year. Such bond shall be in substantially the form of commercial blanket bond form attached as Exhibit 6.02, naming the City as obligee and providing at least thirty days prior notice of any cancellation. Contractor shall procure such bond from underwriters approved by the City Manager, licensed in California, rated not less than "A-7" by A.M. Best Company, Inc. The form of the bond and the surety are subject to the approval of City's Risk Manager and the City Attorney. The condition of the performance bond shall be such that if Contractor shall well and truly perform the covenants, promises, undertakings and obligations contracted by Contractor to be performed under this Agreement, then the obligation of the bond shall be void; otherwise it shall remain in full force and effect. Said bond shall terminate and be canceled upon the completion of all of Contractor's obligations under this Agreement. City shall execute and deliver to Contractor or Contractor's surety company promptly upon Contractor's completion of all of Contractor's obligations under this Agreement such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling such performance bond.

As an alternative to such performance bond, at City's option Contractor may deposit with City a fully prepaid irrevocable letter of credit for at least the duration of the Contract Year for which the letter of credit is deposited in the same amount as such performance bond. The form of the letter of credit and the issuer of the letter of credit are subject to approval of the City Manager and the City Attorney. Nothing herein shall in any way obligate City to accept a letter of credit in lieu of the performance bond.

City shall have the right to draw against the performance bond or the letter of credit in the event of a breach or default of Contractor or the failure of Contractor to perform fully any obligation under this Agreement. Within five calendar days of receipt of notice from City, Contractor shall renew or replace such sums of money as needed to bring the faithful performance bond or letter of credit current.

8.04 Financial Guaranty Agreement. As of the date hereof and throughout the Term, Contractor shall ensure that parent corporation or its successors or assigns acceptable to the City, shall execute and maintain a legal, valid and binding Financial Guaranty Agreement appended hereto as Exhibit 6.03.

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ARTICLE 9. CRIMINAL ACTIVITY OF CONTRACTOR.

9.01 Criminal Activity of Contractor.

(1) Should the Contractor or any of its officers or directors have a criminal conviction of any 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 Contractor or its officers or directors; or

(2) Should the Contractor 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 Contractor responsible for such proscribed conduct shall be promptly terminated and/or replaced. Contractor shall have fifteen 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 pursuant to Section 11.02a(6), Section 11.04 and Article 12 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.

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ARTICLE 10. FEES

10.01 Contractor Service Fee. The Contractor shall receive payment for services rendered under this Contract at the time and in the manner described in Section 10.07 as compensation for performing Services (the "**Service Fee**") or portion thereof in accordance with Sections 12.01d, for rates set forth for each Customer's in individual Services in Exhibit 7.01. The Service Fee includes all Contractor's Direct Costs, Indirect Cost plus profit or return, of providing Services. No compensation for Services shall be provided or paid to Contractor by City or by any Customer except as expressly provided herein.

10.02 City Business Fee. The Contractor shall obtain a City Business License to operate in the City, and Contractor shall pay to City the fee for obtaining such a license ("**City Business License Fee**"), as in an amount as established by City Council.

10.03 City Impact Fee. In order to reimburse the City its costs of administering this Contract, including review and evaluation of Records and reports in accordance with Article 7; evaluating Contractor's performance hereunder and compliance with the terms hereof; and of generally providing MSW management services not provided by Contractor hereunder as necessary to protect public health and welfare and comply with Applicable Law, including AB 939 diversion programs; and of maintaining, repairing and replacing City infrastructure, including streets, Contractor shall pay to City as below:

1. An amount equal to ten percent (10%) of the gross annual revenue received by Contractor from commercial customers and all commercial Services; and
2. An amount equal to seven percent (7%) of the gross annual revenue received by Contractor from residential customers and all residential Services.

10.04 Adjustments.

a. 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.

b. Uncontrollable Circumstances. The Contractor may request an adjustment of the Service Fee upon occurrence of an Uncontrollable Circumstance which increases its Direct Costs and/or Indirect Costs of Services; provided that Contractor shall first apply the proceeds of any insurance available to mitigate or eliminate the need for any such adjustment. Contractor shall submit a proposal describing such increases in the same manner provided in Section 6.02b and City shall review such proposal as provided in Section 6.02c. If Parties cannot reach agreement as provided therein, the Contractor may Notify the City of submittal for determination in accordance with Section 6.03. The City shall adjust the Service Fee for changes in the scope of

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Services as soon as practicable in accordance with Applicable Law, including notice and publication of City Council agenda and City Council approval requirements, in amounts agreed to by the Parties or determined by arbitration in accordance with Section 6.03 effective on the commencement of such change.

10.05 Offsets. The City may offset against the Service Fee the following amounts due and owing by Contractor to City or Customers, if Contractor has not paid City or Customer such amounts by the Service Fee Payment Date defined in Section 10.07:

- a. **Damages**: any unpaid damages, including under Sections 11.01;
- b. **Reimbursements**: unpaid reimbursements of City's substitute performance costs under Section 4.07;
- c. **City Business License Fee**;
- d. **City Impact Fee**;

10.06 Contractor Billing.

a. **Contractor Preparation and Administration.** Contractor shall calculate each Customer's bill based on such Customer's Service requirements, which shall not be more than the rates listed in Exhibit 7.01 upon which Contractor's Service Fee is based, and may further include, the City's Impact Fee and other charges established by the City. Contractor may itemize or identify such costs, with prior approval by the City. City shall provide Contractor Notice of any additional Customer charges in addition to the charges Contractor calculates based upon the rates in Exhibit 7.01, and any changes therein not less than ninety days in advance of the effective date of such change.

b. **Contractor Mailing and Collection.** Contractor shall incorporate with the billing additional information as provided by City on the Contractor bills, including Contractor's telephone number for Customers to call with questions and/or disputes on such billing, and shall enclose flyers or other notices provided by Contractor to Customers as required hereunder. Contractor shall mail bills and provide for collection thereof substantially in accordance with billing policy and rules of the Contractor and approved by the City. Contractor billing policy and rules are attached as Exhibit 3.04a, in effect as of the date hereof. Contractor shall provide Contractor employees, as necessary and convenient, in maintaining records of payments, delinquencies, late charges (if any), as well as promptly responding to billing inquiries and resolving billing disputes as provided in subsection d below.

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c. Data Base. Contractor shall maintain billing accounts and records in accordance with Article 7.

d. Dispute Resolution. Contractor acknowledges that the Contractor shall mail out bills, and the City shall not be responsible for taking Customers' calls or responding to Customers' correspondence with respect to billing inquiries or disputes. Contractor shall handle billing disputes with Customers in accordance with the procedure attached as Exhibit 3.04b.

10.07 Payment Procedure. Contractor shall submit an itemized invoice to Residential and Commercial customers for the Service Fee in accordance with Section 7.01. Contractor shall bill serviced households or businesses in accordance with Exhibit 304a and Section 7.01.

10.08 Disputes.

a. Customer Notice of Dispute. If Customer disputes any amount calculated by Contractor in good faith in accordance with Section 10.06d, Customer shall pay the undisputed amount and give Contractor Notice of such dispute within fifteen days of receipt thereof, together with any request for additional information, identified with reasonable specificity, with respect thereto.

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

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

10.09 Contractor Payment to the City. Contractor shall make payment to the City for items listed in Section 10.03 calculated on quarterly basis, on the tenth day of the month following the prior quarter ending date.

Contractor agrees that payment by the Contractor to the City for items as identified in Section 10.05 shall not constitute nor be deemed a release of the responsibility and liability of Contractor, 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.

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10.10 Rate Adjustment. The Customer Rates as specified in Exhibit 7.01 shall be applicable for Services provided through December 31, 1998. Thereafter, on January 1, 1999 and each subsequent January 1, the rate for each category of service shall be subject to upward or downward adjustment as discussed below.

a. Customer Rate Adjustment Formula. Customer Rates as specified in Exhibit 7.01 shall be comprised of four cost components: 1) Collection Service Cost; 2) Disposal Cost; 3) Recycling Processing Cost; and 4) Green Waste Processing Cost. The City Impact Fee shall be applied to the gross contractor revenue on all four cost components. Changes in the four cost components shall be for the period July 1 through June 30, for the year immediately preceding the date of adjustment. Adjustments to the Customer Rates shall be as below:

(i) Contractor Service Cost: The Contractor service shall be adjusted based upon the percentage change in the Consumer Price Index. The Consumer Price Index to be used shall be the - All Urban Consumer Index for Los Angeles-Anaheim-Riverside, California. In the event that such index should be discontinued or be otherwise modified during the term of this Contract to the extent that the Consumer Price Index shall no longer provide a fair index for adjustment of the service rates, then the City shall specify a replacement index for use in computation of the adjustment.

(ii) Disposal Cost: Changes in disposal cost shall be adjusted based upon actual cost changes documented by the Contractor. Such documentation shall include tipping fees (total and per ton) and disposal tonnages.

(iii) Recycling Processing Cost. Changes in recycling processing cost shall be adjusted based upon actual cost changes documented by the Contractor. Such documentation shall include processing tipping fees, recycling tonnages, recycling materials revenue, and recycling processing residual disposal fees. Recycling Processing Costs shall be the net cost (or savings).

(iv) Green Waste Processing Cost. Changes in Green Waste processing cost shall be adjusted based upon actual cost changes documented by the Contractor. Such documentation shall include processing tipping fees, Green Waste tonnages, Green Waste materials revenue, and Green Waste processing residual disposal fees. Green Waste Processing Costs shall be the net cost (or savings).

b. Annual Rate Cap. Rate increases shall not exceed four percent (4%) annually. In the event that extraordinary circumstances occur due only to increases in disposal or processing costs not attributable to the Contractor's requirements to meet AB 939 mandates, the Contractor may petition the City for rate increases in excess of the four percent (4%) annual rate cap. Any such increase above the 4 percent cap can only be authorized by City Council.

c. Annual Rate Review and Adjustment Period. Customer Service Rates are established and authorized by City Council on an annual basis. The annual rate review and adjustment period

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shall be from October 1 - November 30 each year. Contractor shall submit a written request and all necessary documentation, including the specific cost breakdown by cost components, by October 10 of each year if any upward adjustment in Customer Rates as specified in Exhibit 7.01 is requested. If Contractor does not submit a written request by October 10, then no upward adjustment in Customer Rates will be authorized by City Council. In the event that the Contractor does not submit a written request for upward adjustment, the City may request the Contractor to submit by October 30, documentation on Contractor's Service Cost, and Disposal and Processing Cost to determine if a downward adjustment in Customer Rates is needed.

Any Contractor request for upward rate adjustment due to extraordinary circumstances can only be made during the annual rate review and adjustment period.

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ARTICLE 11. BREACHES, DEFAULTS AND REMEDIES

11.01 Minor Breaches and Liquidated Damages. In its monthly report submitted to the City in accordance with Section 7.02a, Contractor shall certify to City that it has met its Service obligations during such month. If Contractor cannot so certify, if its complaint log evidences, or if the City Notifies Contractor that it has failed to meet any of its Service obligations, then Contractor 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 hours (Sundays and holidays excepted) of telephonic or other notice thereof to Contractor;

b. Discourtesy: discourteous behavior by Contractor's employees reported by or complained of by Customers to Contractor 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 Contractor or City with respect to Customers' landscaping or other property, caused by inattention, carelessness or negligence of Contractor's employees in the course of providing Service;

d. Excessive Noise: complaints to Contractor 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 Service outside hours authorized in accordance with Section 4.01e;

f. Failure to Respond to Complaint: failure to respond to any complaint and correct related breach in Services within twenty-four hours (Sundays and holidays excepted) of telephonic or other notice thereof to Contractor;

g. Failure to Log Complaint: failure to log a complaint in accordance with Section 4.04b;

h. Failure to Submit Complaint Log to City: failure to submit or make available complaint log to City upon request in accordance with Section 4.04b;

i. Failure to Submit Reports to City: failure to timely submit complete reports to the City in accordance with Section 7.02.

The City shall itemize and submit such liquidated damages to the Contractor for the inclusion into the next payment by Contractor to the City as established in Sections 10.07 and Section 10.09, whether or not Contractor has itemized such complaints on its reports submitted in accordance with Section 7.02. Within ten days of receiving notice of such breaches and

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damages from City, Contractor may contest imposition of such damages by notice to the City, indicating the basis for disagreement. IF CONTRACTOR OWES CITY ANY DAMAGES UPON TERMINATION OF THE AGREEMENT BY THE CITY, CONTRACTOR'S LIABILITY SHALL SURVIVE THE TERMINATION HEREOF IN ACCORDANCE WITH SECTION 3.02. REPEATED VIOLATIONS MAY CONSTITUTE GROUNDS FOR TERMINATION OF THE AGREEMENT.

11.02 Defaults.

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

a. Service Defaults:

(1) ***Missed Collections:*** Contractor fails to make at least 99.0% of the gross number of scheduled Solid Waste collections in any Contractor Year, subject to exceptions in Section 4.01b(1);

(2) ***Breach of Agreement:*** Contractor fails or refuses to perform any of its obligations hereunder; the City Notifies Contractor 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 Contractor does not or correct such breach within twenty days of receiving the City's Notice thereof; provided that if such breach is not capable of cure within said twenty days, Contractor shall promptly provide City Notice explaining why Contractor 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 (x) accept Contractor s schedule of cure; (y) make a written demand that Contractor cure the default within an alternative time period set by City, or (z) terminate this Agreement at the end of the twenty day period;

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

(4) ***Failure to Comply With Law:*** Contractor fails to comply with Applicable Law in accordance with Section 5.03 within five days notice of violation thereof;

(5) ***Failure to Deliver Materials to Designated Facility:*** Contractor fails to deliver Refuse to a Disposal Facility selected in accordance with Section 4.03a, Green Waste to a selected Composting Facility in accordance with Section 4.02a(1), or Recyclables to a selected Processing Facility in accordance with Section 4.02a(1);

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(6) **Criminal Activity:** The occurrence of any conduct prescribed in Section 9.01;

(7) **Failure to Meet the Minimum Diversion Guarantees:** Contractor fails to meet the Minimum Diversion Guarantees as specified in Exhibit 3.03.

b. Performance Assurance Defaults:

(1) **Failure to Provide Performance Bond, etc.:** Contractor fails to provide insurance, performance bond or guaranty in accordance with Article 8;

(2) **Failure to Provide Assurances of Performance:** Contractor fails to timely provide assurance of performances in accordance with Section 11.09.

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

(4) **Sale, Transfer, Assignment:** Contractor sells, transfer or assigns its stock, assets and/or this Agreement without City approval required by Section 15.01;

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

(6) **Insolvency, Bankruptcy, Liquidation:** Contractor 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, administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor'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 Contractor 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, administrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

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c. **False Representations; Breach of Representations or Warranties:** Contractor makes a representation or warranty herein, including Exhibit 2.01, which is untrue as of the date thereof. Contractor 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; any extension of the schedule in the Transition Plan; or any consequent adjustment of the Service Fee in accordance with Section 10.05. If the Parties cannot agree upon such matters, either Party may seek determination by Arbitration in accordance with Section 6.03.

c. **City's Rights.** Notwithstanding that Contractor'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 Section 4.07, and following the continuance of such failure for thirty days, shall have the option, in its sole discretion, to terminate the Agreement as provided in Section 11.04a.

11.05 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 Contractor's Service obligations in accordance with Section 12.01a(1);

b. **Suspension:** to suspend the Agreement in accordance with Section 12.01b;

c. **City Right to Perform Services:** to perform Contractor's Services in accordance with Section 4.07;

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d. All Other Available Remedies: to exercise its remedies of damages (including in accordance with Section 11.01) 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 in accordance with Article 13.

Contractor acknowledges that City's remedy of damages for a breach hereof by Contractor in accordance with Section 11.01 may be inadequate for reasons including:

(1) the urgency of timely, continuous and high-quality MSW management service hereunder, including collection, transportation and/or transfer for disposal of putrescible wastes which constitute a threat to public health;

(2) the long time 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 Contractor's technical MSW waste management expertise;

(4) the City's reliance on Contractor'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 Contractor's performance hereunder.

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

11.06 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, including liquidated damages in accordance with Section 11.01, is not an election of remedies but shall be cumulative with any other remedies hereunder.

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11.07 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 in accordance with Section 11.01 shall not be deemed a waiver of any Contractor breach hereunder. City's subsequent acceptance of any damages or other money paid by Contractor, including liquidated damages under Section 11.01, shall not be deemed to be a waiver by City of any pre-existing or concurrent breach or Event of Default.

b. Contractor Waiver of Defenses. Contractor acknowledges that it is solely responsible for providing Services and hereby irrevocably and unconditionally 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 Contractor with regard to any provision hereof.

11.08 Jurisdiction; Venue. The Parties shall bring any lawsuits arising out of this Agreement in State 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 Los Angeles 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 Los Angeles County.

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

11.10 Assurance of Performance. If Contractor 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 Contractor'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 Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date required by the City, such failure or refusal shall constitute an Event of Default in accordance with Section 11.02b(2).

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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 Contractor to cease performing any portion or item of its Services listed in Exhibit 3.01a, in part, in the following events:

- (1) **Contractor Default**: the occurrence of an Event of Default;
- (2) **Uncontrollable Circumstances**: the occurrence and continuance of an Uncontrollable Circumstance in accordance with Section 11.03c;
- (3) **Non-Severable Provisions**: any clause, sentence, provision, subsection, Section or Article hereof or Exhibit hereto shall be ruled invalid by any court of competent jurisdiction but is not severable here from in accordance with Section 1.05;

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

c. Notice. City shall give Contractor 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 Contractor 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 Contractor's Performance Obligations, Contractor 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 Contractor at rates set forth in Exhibit 7.01.

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12.02 Contractor's Obligations Upon Termination

a. Use of Service Assets. Upon effectiveness of Notice of the City's Notice of termination in accordance with Section 12.01c, City shall have the right to possess and use Service Assets in accordance with Section 4.07, which RIGHT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

b. Pay Outstanding Damages. Contractor shall pay City any damages, including damages payable in accordance with Section 11.01, accrued and payable during the then current Contract Year or portion thereof which would have otherwise become payable. CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

c. Cooperation During Transition. In the event Contractor is not awarded an agreement to continue to provide services following the expiration or earlier termination of this Agreement, Contractor shall cooperate fully with City and any subsequent contractor(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, inventory in accordance with Exhibit 3.01e upon request of the City; providing other reports and data required by this Agreement; and coordinating with City and any subsequent contractor(s) with respect to exchanging Containers. With respect to the exchange of Containers, Contractor shall not remove a Container from any Customer's premises until the earlier of: (1) the date replacement containers are provided to the Customer or (2) three months after the expiration or termination of this Agreement. Contractor agrees to sell Containers to Customers at fair market value. SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

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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.

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

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ARTICLE 14. THE PARTIES.

14.01 Contractor Is Independent Contractor. Contractor 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 venturer with City. No employee or agent of Contractor shall be deemed to be an employee or agent of City. Contractor 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. Contractor shall be solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors and agents, none of whom shall be deemed to be an officer, agent, servant, employee of the City. Neither Contractor nor its officers, employees, contractors, subcontractors and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to City employees and Contractor 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 Contractor's Obligations Performed at Its Sole Expense. Contractor shall perform Services solely for the compensation expressly provided for herein.

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

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14.08 Gifts Prohibited. Contractor shall not offer any City officer or designated employee any gift.

14.09 Due Diligence. Contractor 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 the performing Services hereunder.

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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. Contractor Assignment. Contractor acknowledges that the experience and expertise of Contractor are material considerations of City in entering into this Agreement with Contractor. Contractor shall not assign any of Contractor's rights nor delegate any of Contractor'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. Contractor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

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

(2) satisfactory proof that the proposed assignee has at least ten years of municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor;

(3) satisfactory proof that in the last five 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 state, federal 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 municipal 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.

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Contractor 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 Contractor's assets dedicated to solid waste management services;

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

d. Subcontractors. The use of a subcontractor to perform services under this Agreement shall not constitute delegation of Contractor's duties provided that Contractor has received the prior City approval to subcontract such services and said City has approved the subcontractor who will perform such services. Contractor shall be responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractors shall be the sole responsibility of Contractor. 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 his or her designee.

c. Conformance with City of Bradbury. The procurement process resulting in this agreement was undertaken as a joint venture between the City of Duarte and the City of Bradbury. If Contractor enters into an agreement with the City of Bradbury for services similar to those provided for herein, and the City of Duarte determines that the language contained in the Contractor's agreement with the City of Bradbury provides more favorable terms or enhanced protection from business risks, the City shall have the right to amend this agreement to incorporate the same or similar language.

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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 Section 7.02) and shall either be sent by *facsimile* 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:

City Manager (or his/her designee)
City of Duarte
1600 Huntington Drive
Duarte, CA 91010
Fax: (818) 358-0018

If to Contractor: Mr. Cole Burr
Burrtec Waste Services LLC
9890 Cherry Avenue
Fontana, CA 92335
phone: (909) 822-2397
fax: (909) 355-7158

provided that any such facsimile shall be promptly followed by such personal or mailed delivery.

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

Parties may change their address or fax number 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, including in each respective Party's independent, sole, exclusive and absolute control or judgment, or discretion.

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ARTICLE 17 EXECUTION OF AGREEMENT

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

17.02 Authority to Execute. City warrants that the Mayor has been duly authorized by the City Council on August 27, 1996, to execute this Agreement on behalf of the City. Contractor warrants that its [President and Secretary] have been duly authorized to execute this Agreement on behalf of the Contractor.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the latter of the date written below.

THE CITY OF DUARTE



Signature

Phillip R. Reyes
Mayor

Date 26 Sept 96

APPROVED AS TO FORM



Signature

Clarke E. Moseley
City Attorney

Date _____

BURRTEC WASTE SERVICE LCC



Signature

President
Title

Date 9/27/96

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EXHIBIT 1.01

DEFINITIONS

"Agreement" means this Agreement, including all exhibits 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 Los Angeles, City (including its Environmental Health Code), 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 Los Angeles County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendment or remodifications thereof, unless otherwise specifically limited.

"Bulky Waste" 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, and VCRs and other similar items commonly known as "brown goods"); residential wastes (including wood waste, tree branches, scrap wood, debris from building construction, rocks, 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, franchise taxes levied by any tax board (other than franchise fees levied by the City) 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

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

"Change in Law" shall include the payment of prevailing wages for Services or other similar laws relating to the collection of solid waste.

"**City**" means the City of Duarte or any governmental entity which may hereinafter assume waste management obligations of the City, including any joint exercise of powers authority or other similar public entity with which the City participates or contracts with, established to provide solid waste management services or meet MSW diversion requirements under Applicable Law.

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

"**City Waste**" means MSW Collected from City designated facilities.

"**Collect, Collection**" or other form thereof means MSW pickups made by Contractor as required by and in accordance with the provisions of this Agreement.

"**C&D**" means construction and demolition debris, including concrete, brick, wood and other rubble and debris resulting from construction and demolition of buildings and other improvements.

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

"**Community Clean-Up**" means City-wide semi-annual collection of 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,

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computers, and VCRs and other similar items commonly known as "brown goods"); residential wastes (including wood waste, tree branches, scrap wood, debris from building construction, rocks, sod and earth, in the aggregate not exceeding one cubic yard per collection); clothing; and tires.

"Composting Facility" means the facility for processing Green Waste selected by Contractor and reviewed by the City, or designated by the City, in accordance with Section 4.02a.

"Containers" means the toters, carts, cans, bins, roll-offs, plastic bags or provided custom containers other containers Contractor uses in providing Services hereunder.

"Contract Year" means each calendar year of the City commencing January 1 and ending December 31.

"Contractor" means Burrtec Waste Industries, LLC

"Contractor Representative" means an authorized employee or designated representative of Burrtec Waste Industries, LLC.

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

"Disposal Facility" means the Disposal Facility or Facilities for disposing of Refuse and/or residue from a Processing Facility or Composting Facility, selected by Contractor and reviewed by the City, or designated by the City, in accordance with Section 4.03a.

"Event of Default" is defined in Section 11.02.

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

"Handicapped" means handicapped residents of Duarte as determined in accordance with State and Federal guidelines.

"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 Household Hazardous Wastes but including:

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(1) "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522;

(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" means Hazardous Waste generated in small quantities at Residential premises.

"MSW" means Residential and Commercial refuse, garbage and/or rubbish and other materials Collected pursuant hereto, including Refuse, Recyclables, Bulky Waste and Green Waste Collected hereunder, but excluding:

(1) **agricultural wastes** comprised of animal manures;

(2) **asbestos**, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous

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mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos;

(3) ash residue from the incineration of solid wastes, including municipal waste, infectious waste described in item (8) below, wood waste, sludge, and agricultural wastes described in item (1) above;

(4) auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances which remains after the shredding of automobiles;

(5) large dead animals;

(6) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;

(7) industrial solid or semi-solid wastes resulting from industrial processes and manufacturing operations, including cement kiln dust, ore process residues and grit or screenings removed from waste water treatment facility;

(8) infectious wastes which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;

(9) liquid wastes which are not spadeable, usually containing less than fifty percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes;

(10) radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation;

(11) sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semidry form; and

(12) special wastes designated from time to time by the California Integrated Waste Management Board, including contaminated soil.

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"Non-Collection Notice" means a notice left by Contractor for Customers at the times, in the events and in the manner described herein, including 4.01b (1) (iii) *Waste Not Properly Placed in Containers*, (iv) *Container Not Placed in Proper or Safe Collection Location*, and (vi) *Hazardous Waste or Unsafe Materials*, 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 Contractor's expense, in English and Spanish, and shall be numbered sequentially. Contractor shall leave a hard (card stock) copy with the Customer in the place provided under such cited provisions, shall retain one copy, and shall transmit one copy to the City Representative within twenty-four (24) hours.

"Notice" (or **Notify** or other variation thereof) means notice given in accordance with Section 16.01.

"Office Hours" are defined in Section 4.04c.

"On Demand Collection" means collection at curbside or alley ways from residential customers two (2) times per year within forty-eight (48) hours of request by residential customers of Bulky Waste (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, and VCRs and other similar items commonly known as "brown goods"); residential wastes (including wood waste, tree branches, scrap wood, debris from building construction, rocks, sod and earth, in the aggregate not exceeding one cubic yard per collection); clothing; and tires).

"Party" and **"Parties"** refers to the City and the Contractor, 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 defined in Section 4.04a(1).

"Processing Facility" means the facility or facilities for sorting and/or processing commingled or source separated Recyclables and/or MSW, selected by Contractor and reviewed by the City or designated by the City, in accordance with Section 4.03a.

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"Records" are defined in Section 7.01a.

"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.

"Residential" refers to single family, and multi-family residences in the City.

"Residential MSW" means MSW Collected from residential premises that are eligible to receive toter or bin collection services.

"Recyclables" means Residential and Commercial materials which have been discarded, thrown away or abandoned by the generator or owner thereof, and are commonly collected in recycling programs in southern California. . The list of recyclable materials includes, but is not limited to the following:

- | | |
|---|-------------------------|
| 1.Aluminum Cans | 16. Newspaper |
| 2.Aluminum Foil | 17.Office Paper |
| 3.Brochures | 18.Paper Tubes |
| 4.Cardboard | 19.Phone Books |
| 5.Catalogs | 20.Plastic Bottles # 1 |
| 6.Cereal Boxes | 21.Plastic Bottles # 2 |
| 7.Colored Paper | 22.Plastic Juice Jugs |
| 8.Computer Paper | 23.Plastic Milk Jugs |
| 9.Coupons | 24.Plastic Water Jugs |
| 10.Crayon Drawings | 25.Plastic Soda Bottles |
| 11.Glass Bottles & Jars (Clear-Green-Amber) | 26.Steel Cans |
| 12.Junk Mail | 27.Tin Cans |
| 13.Laundry Bottles | 28.Tissue Boxes |
| 14.Magazines | 29.Used Envelopes |
| 15.Metal Coat Hangers | 30.Wrapping Paper |

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"Refuse" means MSW comprised of rubbish and garbage.

"Senior" means Duarte residents age 62 or older.

"Service Assets" means all property of Contractor 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 Contractor hereunder to City and Customers.

"State" means the State of California.

"Term" of this Agreement is defined in Section 3.01.

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

"Transition Plan" means the transition implementation plan and schedule defined in Section 4.01b (3) and attached in Exhibit 3.01b.

"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 (other than the contesting in good faith or the failure in good faith to contest such action or inaction), 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;
- (2) the failure of any appropriate federal, State, City, or local public agency or private utility having operational jurisdiction in the area in which Service Assets comprised of realty, including maintenance and administrative facilities, are located, to provide and maintain utilities, services, water, sewer or power transmission lines thereto.
- (3) a Change in Law other than Changes in Law excluded in items (ii) and (vi) below; and

but excluding, without limitation:

- (i) either Party's own breach of its obligations hereunder;

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- (ii) adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;
- (iii) strikes, work stoppages or other labor disputes or disturbances of any Person performing Services;
- (iv) the failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for Services;
- (v) as to the Contractor, the failure of any Service Assets to perform in accordance with any warranties, unless caused by Uncontrollable Circumstances; and
- (vi) with respect to the City, any Change in Law adopted by the City, unless such Change in Law is mandated by State or federal Applicable Law.
- (vii) service conditions already provided for as part of the rate structure and rate adjustment as specified in Section 10.10.

“Used Oil” means: (1) any oil that has been refined from crude oil, or has been synthetically produced, and is no longer useful to the Customer because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; and (2) any oil that has been refined from crude oil, or has been synthetically produced, and has been used and as a result of such use has been contaminated with physical or chemical impurities.

“Vehicles” means all trucks (including trucks providing Residential and Commercial Collection Service of Refuse, Recyclables, Green 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 Contractor.

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EXHIBIT 2.01

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

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

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

c. Statements and Information in Proposal. Contractor's Response to the City's Request for Qualifications for Refuse, Recycling and Green Waste Collection, Disposal and Recycling Services; Proposal in response to the City's Request for Qualifications, 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 Contractor of this Agreement, the performance by the Contractor of its Performance Obligations, nor the fulfillment by the Contractor 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 Contractor is a party or by which the Contractor 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 Contractor.

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 Contractor, except such as have been duly obtained from its Board of Directors.

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 Contractor's knowledge, threatened, against the Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

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

September 18, 1996

EXHIBIT 2.02

CITY'S REPRESENTATIONS AND WARRANTIES

a. Status. The City is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.

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 contained in the RFP or any waste disposal characterization study or projections by material type distributed to Contractor together therewith. The City expressly disclaims any warranties, either express or implied, as to the merchantability or fitness for any particular purpose of MSW Collected by Contractor.

September 18, 1996

EXHIBIT 3.01a

SCOPE OF REGULAR COLLECTION SERVICES

1. Residential Collection. Contractor shall provide for collection of refuse, recyclables, and green waste materials from residential customers. Contractor shall provide collection services using triple automated collection and two vehicle passes. Contractor shall provide automated collection containers to each eligible residential customer. Charges for collection services shall be in accordance with Exhibit 701. Container sizes provided to residential customers by the contractor shall be as follows:

- 90, 60, and 40 gallon refuse containers
- 60 gallon recyclables containers
- 60 gallon green waste containers

2. Residential Refuse Collection. Contractor shall Collect Residential Refuse in accordance with the provisions of this Agreement (including the frequency required in Section 4.01d) unless excepted as provided in Section 4.01b(1), and transport it to the Disposal Facility or Facilities in accordance with Section 4.03a.

Contractor shall commence such Services no later than the date or dates provided in its Transition Plan attached as Exhibit 3.01b.

3. Residential Recyclables Collection. Contractor shall Collect Residential Recyclables comprised at a minimum of those listed in the definition "Recyclables" in accordance with the provisions of this Agreement (including the frequency required in Section 4.01d) unless excepted as provided in Section 4.01b(1), and transport them to the Processing Facility or Facilities in accordance with Section 4.02a. Contractor shall commence such Services no later than the date or dates provided in its Transition Plan.

3. Residential Green Waste Collection. Contractor shall Collect Residential Green Waste in accordance with the provisions of this Agreement (including the frequency required in Section 4.01d) unless excepted as provided in Section 4.01b(1), and transport it to the Composting Facility in accordance with Section 4.02a. Contractor shall collect green waste in the containers provided by Contractor to eligible customers. Contractor shall also collect additional green waste materials placed at curb or alleyway by residential customers that is bundled, bagged or placed in customer's containers. Additional green waste collection set out for collection will be done at no charge to the residential customers at the same time as the regularly scheduled collection for green waste collection. Contractor shall commence such Services no later than the

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date or dates provided in its Transition Plan. Residential customers can request that the Contractor provide an additional green waste container for a charge in accordance with Exhibit 7.01.

4. Commercial Collection. Contractor shall collect Commercial Refuse, Recyclables, and Green Waste in accordance with the provisions of this agreement (including the frequency required in Section 4.01d). Contractor shall conduct a waste audit on each commercial customer to determine the most cost efficient service package of refuse and recyclables collection, container size and collection frequency. Initial waste audits will be completed prior to November 1, 1996. Contractor shall provide subsequent waste audits upon request of commercial customers at no cost.

5. Manure Collection. Contractor shall collect Manure in accordance with the provisions of this agreement.

6. Special Services. Contractor shall supply the special Collection Services described in Section 4.01c, including semi-annual Community Clean-Up Collection included in the cost of providing general services, on-demand Bulky Waste Collection charged to Customer at rates listed in Exhibit 7.01 (including limitations, if any, on number of items); optional Household Hazardous Waste pickups; clean up of illegal dumping; push services for the senior and handicapped included in the cost of providing general Services; push services for Customers at rates listed in Exhibit 7.01; collection from all City-owned facilities at no charge, and Christmas tree Collection, all as provided in Section 4.01c.

7. Billing. Contractor shall supply billing services in accordance with Section 10.

8. Customer Service and Public Relations. Contractor shall supply phone access and handle complaints and inquiries in accordance with Section 4.04.

9. Public Education and Outreach. Contractor shall supply these services in accordance with Section 4.05 and its plan therefore attached as Exhibit 3.05.

10. Emergency Services. Contractor shall provide emergency services in accordance with Section 4.06.

September 18, 1996

EXHIBIT 3.01b

TRANSITION IMPLEMENTATION PLAN AND SCHEDULE

Contractor will focus efforts on addressing the specific and unique needs of the customers through implementation of the following transition plan elements.

- **Public Awareness Campaign** - The first step in building positive customer relations is to communicate, in a clear and helpful way, the changes that are taking place and the service improvements that will result. Each customer will be mailed material that explains the changes, describes Burrtec and our services, lists other satisfied customers, and provides a toll-free phone number to answer any questions.

Other promotional activities shall be used as appropriate. These include but are not limited to, direct mailings, radio spots, newspaper and Chamber of Commerce newsletter announcements, a booth at local events, cable television announcements and door hangers.

Our public awareness campaign will be conducted through our Customer Service Transition Program and our Public Education Transition Plan. The following information outlines the basic categories and their activities as they pertain to the total public awareness campaign.

Notifications

- Letter From Mayor And City Council
- Local Newspaper Ads
- Commercial Flyer (General Information And Waste Audit)
- Residential Flyer (General Information And Service Selection Forms)
- Cable TV Ad's
- Community Meeting Schedule
- Chamber Newsletter Ad
- School Flyer (Re: Recycling Workshop)
- Container Delivery Notices

Education

- Information Booth - Duarte Picnic
- Community Meetings
- Recycling Workshop (Residential, Commercial, Multi-Family)
- Placement Of Information Kiosk
- Quarterly Newsletter Mailings
- Bi-Annual Community Meetings (Program Updates)
- School District Recycling Program

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Service Operation

- Coordinate Billing Information
- Route Schedule Evaluation
- Commercial Waste Audits
- Residential Container Delivery
- Commercial Container Delivery
- Collection Start-Up

Community Activity

- Join Chamber
- City Council Updates
- Community Service Commission Presentation
- Presentations:
 - Senior Center
 - Kiwanis Club
 - Rotary Club
 - Chamber Of Commerce

- **Customer Service Transition Program** - During the transition period, a toll-free number will be available to all residents who have questions and concerns. Experienced Burrtec customer service staff, with bilingual skills, will be prepared to answer all questions in a helpful, courteous manner. Any questions that the customer service representative are unable to answer will be referred to the appropriate Burrtec staff person so that every caller's questions are answered. Staff will contact the customer within 24 hours of the initial contact by the customer.

During the transition period and over the life of the contract, the phones shall be staffed between the hours of 7:00 am and 6:00 p.m., Monday through Friday and will also be staffed on Saturdays following recognized holidays. A telephone answering machine with a recording will take messages from callers outside these hours. Customer Service will follow-up on each message the following business day.

All Burrtec staff who will be providing services to the City of Duarte will receive special information and training to prepare them for the transition. This will enable Burrtec to provide a high level of service from the first day.

Greater detail about Burrtec's customer response procedure and other specific customer services is contained in the Customer Service Section of this Work Plan.

- **Public Education Transition Plan** - We have found that a key to overall customer satisfaction and participation in waste diversion activities is providing education programs and information to our customers. Gearing information to groups with varying needs in the community enables us to provide information that is interesting and germane.

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As a part of the transition we will identify these groups and gear our Public Awareness Campaign material to each one. These customer categories will include single-family and multi-family residents, City facilities and schools. Other designations may be added as identified in the billing information received.

The primary focus of public education during the transition period is to clearly communicate what changes will take place when the current collection operation converts to a new, upgraded program and a new service provider. Burrtec's goal is to address any concerns customers have about this change and enumerate the advantages of the change to the customers.

To accomplish this, Burrtec will be intentionally hosting four community meetings throughout the months of October 1996. These meetings will target recycling issues, program enhancements, and the transition from one hauler to the other. In addition, there will be discussion on AB 939 and the "why" of recycling.

Burrtec will also conduct a recycling workshop geared toward the various ways to recycling and reduce waste, in the areas of residential, commercial and multi-family waste generation.

An informational kiosk will be placed by Burrtec, at City Hall, giving residents easily accessible and current information regarding recycling, routing, collection, and payment issues.

Throughout each year a quarterly newsletter will be mailed to all residents, keeping them informed on community recycling results and up and coming events and services.

Burrtec will provide the local school districts with the opportunity to become involved in a complete District-wide recycling program geared towards the classroom and for Grades K through 12.

On an on-going basis, Burrtec will provide two community workshop meetings per year, to gage recycling results, pass on new information and receive community feedback.

These programs coupled with an assortment of written material, and visual aids will make up the basis of Burrtec's public education program.

Burrtec's in-house capability to produce educational and promotional material in a bilingual format, if needed, is an asset for this transition period. Customized, timely promotional and educational material is critical. As with all promotional and educational material produced for customers, designated City staff or representatives will be asked to review and approve the content.

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- **Billing Procedure** - During the transition period, Burrtec will work closely with each City staff to make a smooth conversion from the current billing system to our system. Burrtec has made many previous conversions and has developed procedures that will assure a smooth transition for the residents of each City.

Upon contract execution, Burrtec staff will immediately begin to coordinate billing conversion. Once information about the billing cycle is ascertained, a schedule will be set up for billing information transfer. Burrtec will request, at the appropriate time, an aged trial balance and ASCII export of all data based on the current billing methodology. This insures that billing errors will not occur in the conversion.

All accounts will be added to our existing routing/Geographic Information System. By tying our routing information to the billing information, errors or confusion about service and billing is minimized.

Upon receiving the customer list for the City, the information will be reviewed to help identify special needs that customers may have and to identify public education or special service requirements.

- **Permits and Licenses** - Burrtec and its subsidiary companies are licensed and permitted solid waste contractors in Los Angeles County. Upon contract execution, Burrtec will obtain any additional licenses or permits required by the City.
- **Collection Operations Groundwork** - Burrtec has assessed the equipment needs for serving the City of Duarte and is prepared to order it as soon as our contract has been executed. If unforeseen delays are encountered in receiving our equipment, the backup plan is to designate equivalent equipment, owned by Burrtec, that can be used temporarily.

Based on past experience, Burrtec has ordered collection containers to be delivered as soon as we give the go ahead. This was done because delays often occur in procuring containers. The City of Duarte will be served by all new equipment.

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TRANSITION PLAN IMPLEMENTATION SCHEDULE AND TASKS

Service is scheduled to start on November 1, 1996. The following action plan and timeline assumes a six to eight week transition period for the City.

PROGRAM IMPLEMENTATION ACTION PLAN

<u>DATE</u>	<u>ACTION</u>
August 29	Join Duarte Chamber of Commerce
September 4	Conclude Contract Revisions
September 9	Begin Current Route Schedule Evaluation
September 10	Mail Mayor and Council Letter
September 11	Run Local Information Ads
September 11	Mail Commercial Flyer (general information and waste audit notice)
September 12	Mail Residential Flyer (general information and container selection form)
September 16	Begin Commercial Waste Audits
September 17	Begin Cable TV Ads
September 21	Set-Up Information Booth at Duarte City Picnic
September 24	Mail Community Meeting Schedule
September 25	Provide Information Flyer for Chamber Newsletter
October 2	Community Meeting (location to be determined)
October 3	Send School Flyer on Recycling Workshop
October 3	Send Community Flyer on Recycling Workshop and Community Meeting Schedule Reminder
October 12	Recycling Workshop and Program Information Meeting (location to be determined)
October 15	Mail Residential Barrel Delivery Notice
October 16	Presentation Community Services Commission
October 17	Community Meeting (location to be determined)
October 18	Placement of Information Kiosk
October 21	Begin Residential Barrel Delivery
October 22	Update to City Council
October 26	Community Meeting (location to be determined)
October 28	Begin Commercial Container Deliveries
November 1	Begin all Collection Services
November --	Presentation to: Senior Center Kiwanis Club Rotary Club Chamber of Commerce
April 1997	Bi-Annual Community Meeting and Program Workshop
October 1997	Bi-Annual Community Meeting and Program Workshop

September 18, 1996

EXHIBIT 3.01d(1)

MAINTENANCE PROTOCOL

Vehicle Maintenance

Burrtec's vehicle maintenance facilities will provide complete maintenance and repair for all collection and service equipment. Preventative maintenance service schedules will include the following:

- **Daily inspections** by drivers and vehicle maintenance personnel for the purpose of checking fluid levels, lights, brake adjustments and general repair.
- **Every 100 hours of operation:** lube chassis, visual body and chassis inspection.
- **Every 300 hours of operation:** lube chassis, visual body and chassis inspection, change engine oil and filter.
- **Every day:** Inspection, lubrication, and adjustment (if needed) of mechanical arms on all automated vehicles.
- **Every week:** brake inspection and adjustment.
- **Every 365 days:** service rear differential.

A Vehicle Maintenance Report will be generated on a monthly basis. This report shows the maintenance activity for each vehicle operating in the City during the month.

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 is made by the mechanic whether a repair can be made 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 the 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.

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Once the repair or replacement order is received, a container 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.

Residential 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 residential bins will be maintained at the local facilities yard. Maintenance procedures include:

Steam cleaning
Component replacement

Welding
Lubrication

Painting
Signage

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EXHIBIT 3.01d(2)

MAINTENANCE LOG

A sample Vehicle Maintenance Report is included for your reference. A similar report will be prepared for vehicles assigned to the City of Duarte.

MAINTENANCE LOG

PAGE 1

BURRTEC WASTE
INDUSTRIES

APRIL 9, 1996

VEHICLE MAINTENANCE REPORT SUMMARY
FOR FONTANA WASTE SERVICES
MARCH 1996

TRUCK NUMBER	LAST P.M. DATE	MAINTENANCE PROBLEMS CODES -- OCCURRENCES
08	03/25/96	20 -- 1 40 -- 1 70 -- 1 80 -- 1
231	03/20/96	20 -- 2 30 -- 1 60 -- 1 70 -- 2
256	03/28/96	20 -- 4 70 -- 4 70 -- 5
327	04/01/96	20 -- 4 60 -- 1 70 -- 1 80 -- 4
342	03/21/96	70 -- 3
343	03/29/96	10 -- 1 20 -- 1 50 -- 1 70 -- 1 80 -- 2
344	03/22/96	70 -- 1 90 -- 1
347	04/08/96	20 -- 3 30 -- 1 60 -- 1 70 -- 2 80 -- 2
352	03/25/96	70 -- 2

BU
IN

VEHICLE MAINTENANCE PROBLEM CODES

<u>CODES</u>	<u>REFERENCE</u>
00	----- SAFETY ITEMS (fire extinguishers, back up horn, ect.)
10	----- FRAME, SUSPENSION, STEERING (axles, springs, fuel tank, crossmembers, ect.)
20	----- WHEEL, HUB, BRAKE (air line sysem, slack adjuster, ect.)
30	----- ENGINE (fuel line system, oil line system, ect)
40	----- COOLING SYSTEM (exhaust system, belts, coolant, ect.)
50	----- DRIVE TRAIN (transmission, differential, clutch, ect,)
60	----- CAB (gauges, mirrors, glass, wipers, doors, ect.)
70	----- ELECTRICAL (alternator, battery, lights, wiring, ect.)
80	----- BODY (arms, forks, packer blade, winch, ect.)
90	----- HYDRAULICS (cylinders, valves, hoses, power takeoff ect.)

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EXHIBIT 3.01e

SERVICE ASSET INVENTORY

The Contractor intends to purchase new equipment for servicing the City of Duarte. After reviewing the customer list from either the City or their current hauler, we will order sufficient barrels, bins and equipment to service the City and provide adequate spares at all times.

We will provide the City with all information requested prior to November 1, 1996.

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EXHIBIT 3.01f

FORM OF NOTICE OF ANNUAL CONTAINER EXCHANGE OPTION

Contractor does not charge for container exchanges, therefore, Customer may request an exchange at any time during the year. The Customer calls our Customer Service Department for a prompt exchange of their barrel. In addition, we will remind all residents of this service on our Quarterly Newsletter.

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EXHIBIT 3.02a

DISPOSAL FACILITY

The Contractor shall use the Puente Hills Landfill at a \$17.57/ton disposal fee. There is no agreement on file.

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EXHIBIT 3.02b

PROCESSING FACILITY

The Contractor intends to use Pomona Valley Recycling (PVR) Facility for residential and commercial recyclables processing. Recyclable prices are set monthly and offset processing costs. As of November, 1996, that amount is assumed to be a \$30.00/ton credit. The residue is disposed of by PVR at a cost of \$25.00/ton.

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EXHIBIT 3.02c

GREEN WASTE FACILITY

The Contractor shall use the Puente Hills green waste receiving area for all yard waste at a tipping fee currently set at \$9.50/ton.

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EXHIBIT 3.01c

FORM OF ROUTING MAPS

The attached is a sample of the format that will be used for route maps for the City of Duarte. Route maps will be prepared after Burrtec receives customer listing.

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EXHIBIT 3.03

DIVERSION GUARANTEES

Contractor's Diversion Estimates and Diversion Guarantees are included in Tables EX-1 and EX-2 below. Based on the variables of a voluntary recycling program, we anticipate that diversion rates will increase over time as public education programs take affect.

TABLE EX-1 DIVERSION GUARANTEES BY GENERATOR TYPE AND PROGRAM	
	Diversion Guarantees
Residential Waste Stream:	
Recyclables	15%
Green Waste	10%
Multi-Family Waste Stream:	
Recyclables	10%
Green Waste	5%
Commercial Waste Stream	
Recyclables	5%
TOTALS	50%

TABLE EX-2 DIVERSION GUARANTEES BY GENERATOR TYPE AND YEAR				
	1997	1998	1999	2000
Residential Waste Stream:				
Estimated	25%	35%	45%	50%
Guaranteed	16%	17%	20%	25%
Multi-Family Waste Stream:				
Estimated	10%	15%	25%	35%
Guaranteed	7%	8%	12%	20%
Commercial Waste Stream:				
Estimated	4%	6%	8%	10%
Guaranteed	2%	4%	5%	5%
TOTALS (GUARANTEED)	25%	29%	37%	50%

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EXHIBIT 3.04a

CONTRACTOR BILLING PROCEDURE AND POLICY

Both Residential and Commercial billings are generated through the computerized accounts receivable system. The local Burrtec office will submit a request for billing to the ACS location in Buena Park via facsimile. Upon receiving the request for billing, ACS generates all necessary invoices and prepares them for the mailing company. It is an approximate (48) forty-eight hour turnaround from the request for billing to the actual mailing of the invoice.

Residential customers will receive an advanced quarterly billing for the upcoming (3) three month period of service. Commercial customers will receive an advanced monthly billing. The invoices will include the local telephone number of the Burrtec office for any questions, as well as the remittance address and local office address (see attached examples).

Any informational notices, fliers or inserts are submitted to the ACS company by 10:00 a.m. on the day billing is requested to process. This procedure enables Burrtec Waste Services to include up to date information in the billing packet.

Examples of the Residential and Commercial Past Due Programs are attached. Burrtec Waste Services will maintain a Stop Service program in order to effectively collect on delinquent accounts. The Residential accounts will be subject to Stop Service after 120 days of service without payment. The Commercial accounts will be subject to Stop Service after 60 days of service without payment. The City of Duarte will receive a copy of the delinquent aged trial balance (7) seven days prior to any accounts being placed on Stop Service.



RANCHO DISPOSAL SERVICES, INC.
BURRTEC
 WASTE INDUSTRIES, INC.
 9890 Cherry, Fontana, California 92335

ACCOUNT NUMBER
02-CM 096384
AMOUNT DUE
23.62

BILLING DATE
08/20/96
INDICATE AMOUNT PAID
\$ _____

SEND PAYMENT TO:

LAGO TIRES
 15908 VALLEY
 FONTANA CA 92335

RANCHO DISPOSAL SERVICES, INC
 P.O. BOX 6766
 BUENA PARK, CA 90622-6766

* Please note - to assure proper credit to your account, write your account number on your check

PLEASE DETACH ABOVE PORTION AND RETURN WITH PAYMENT.
 PLEASE MAIL ALL OTHER WRITTEN CORRESPONDENCE TO: CUSTOMER SERVICE • 9890 CHERRY AVE., FONTANA, CA 92335

INVOICE

RANCHO DISPOSAL SERVICES, INC.
 9890 CHERRY AVE.
 FONTANA, CA 92335

FOR SERVICE AT:
 LAGO TIRES
 15908 VALLEY
 FONTANA CA 92335

ACCOUNT NUMBER	BILLING DATE	AMOUNT DUE
02-CM 096384	08/20/96	23.62

FOR BILLING INQUIRIES OR SERVICE,
 CALL (909) 987-3717

MO DAY	DESCRIPTION	CHARGES	CREDITS	BALANCE
08 01	AUG REFUSE SERVICE	23.62		23.62



FONTANA RUBBISH COLLECTORS
BURRTEC
 WASTE INDUSTRIES, INC.
 9890 Cherry, Fontana, California 92335

ACCOUNT NUMBER
 05-FR 096985

BILLING DATE
 08/20/96

AMOUNT DUE
 54.48

INDICATE AMOUNT PAID
 \$ _____

SEND PAYMENT TO:

GABINO GARCIA
 9485 JUNIPER
 FONTANA CA 92335

FONTANA RUBBISH COLLECTORS
 P.O. BOX 6826
 BUENA PARK, CA 90622-6826

* Please note - to assure proper credit to your account, write your account number on your check

PLEASE DETACH ABOVE PORTION AND RETURN WITH PAYMENT.

PLEASE MAIL ALL OTHER WRITTEN CORRESPONDENCE TO: CUSTOMER SERVICE • 9890 CHERRY AVE., FONTANA, CA 92335

INVOICE

FONTANA RUBBISH COLLECTORS
 9890 CHERRY AVE.
 FONTANA, CA 92335

FOR SERVICE AT:
 GARCIA, GABINO
 9485 JUNIPER
 FONTANA CA 92335

ACCOUNT NUMBER
 05-FR 096985

BILLING DATE
 08/20/96

AMOUNT DUE
 54.48

FOR BILLING INQUIRIES OR SERVICE,
 CALL (909) 822-9739

MO DAY	DESCRIPTION	CHARGES	CREDITS	BALANCE
07 01	SERVICE JUL-AUG-SEP	54.48		54.48

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RESIDENTIAL CURBSIDE PAST DUE PROGRAM

CURRENT BILLING

A message will appear on the customer's bill.

Payment is due upon receipt.

CURRENT QUARTER + 1 QUARTER PAST DUE

Payment is due upon receipt. Service is subject to interruption if payment is not received by the 1st of (the second month in the billing cycle).

On approximately the 15th of the first month in the billing cycle a post card is sent stating service will be interrupted on the 1st of the upcoming month.

If the past due amount is \$20 or more and payment/arrangements have not been received by the 1st of the month stated on the invoice, the Customer Service Department is to STOP SERVICE the account. Seven (7) days prior to placing the accounts on STOP SERVICE, a delinquent aged trial balance report will be submitted to the City of Duarte for health code compliance.

CURRENT QUARTER + 2 QUARTERS PAST DUE

The following message will appear on the customer's bill if the past due amount is over \$20.00.

Your account is past due and service has been stopped. If payment in full is not received immediately your account will be turned over to our collection department.

On the 15th of the current month of the billing cycle, a letter is sent stating the account will be turned over to our collection agency if full payment is not received immediately.

Prior to the next billing:

1. Audit Customers on HOLD. If payment arrangements have not been made place the account on a HOLD/CANCEL status.
2. Remove any company supplied barrel/recycling container.

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FINAL BILLING

This is a final bill. A message will appear on the customer's bill.

Payment must be made immediately! Protect your Credit Rating!

A past due notice will be inserted with this bill.

Since you have not paid your past due account after receiving repeated notices, we will be forced to submit your account to our collection agency unless the account is paid in full within 5 days from the date of this billing. Please remit the amount due immediately in order to protect your credit rating.

By the 25th of the month, if no payment arrangements have been made the account must now be assigned to an outside collection agency.

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COMMERCIAL BIN ACCOUNT PAST DUE PROGRAM

CURRENT BILL

A message will appear on the customer's bill.

Payment is due upon receipt. Payment is considered past due by the 15th.

30 DAY BILL

The following message will appear on the customer's bill if the 30 day past due amount is > \$30.00.

In order to avoid an interruption in your service, payment must be received on or before the 20th of this month.

On the 20th of the month, if a payment has not been received, a post card is mailed out automatically by ACS.

Please be advised that your refuse service bill is seriously past due and your service will be subject to interruption. In order to avoid an interruption in your service, the past due balance of (TOTAL AMOUNT OWING) must be received on or before the 30th of this month. If payment arrangements need to be made, please contact our customer service department at (909) xxx-xxxx.

If the past due amount is less than or equal to \$30, the "Current" billing message will print and no 30 day dunning post card will be sent.

Prior to the 20th of the current month, the Customer Service Department will telephone the customer to determine if payment/arrangements can be made. If payment/arrangements have not been received by the 30th of the month, the Customer Service Department is to STOP SERVICE the account. Repetitive billing will continue. Seven (7) days prior to placing the accounts on STOP SERVICE, a delinquent aged trial balance report will be submitted to the City of Duarte for health code compliance.

60 DAY BILL

A past due message will appear on the customer's bill.

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Your account is past due and service has been stopped. If payment in full is not received immediately, the bin will be removed as of the 15th of this month and your account will be turned over to our collection department.

On the 10th of the month, if a payment has not been received, a dunning letter is mailed out automatically by ACS.

Your service has been stopped due to the PAST DUE status of your account in the amount of (total amount due). Prompt full payment will clear your account and allow us to resume your refuse service.

Prior to the 15th of the month, if the account is still 60 days past due, a customer service representative will call the customer to negotiate one last time in order to save the account. If no payment arrangements have been made with the customer, the bin will be removed, the account status will remain on HOLD, a cancellation date will be entered.

90 DAY BILL

This is a final bill. A message will appear on the customer's bill.

Payment must be made immediately!

A 90 day notice will be inserted with this bill.

Since you have not paid your past due account after receiving repeated notices, we will be forced to take legal action against you unless the account is paid in full within 5 days from the date of this billing. Please remit the amount due immediately in order to protect your credit rating.

The account will be assigned for legal collection to small claims court if the amount exceeds \$500.00 or to an outside collection agency if the amount is under \$500.00.

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EXHIBIT 3.04b

CUSTOMER DISPUTE RESOLUTION PROTOCOL

PROCEDURE FOR SAME DAY SERVICE - NO PICK UP

Quality Customer Service in a cost efficient manner is always the primary goal for Burrtec Waste Industries. In order to meet this goal the following are the procedures for "missed services and late put outs".

- * When a customer calls stating their trash was not picked up, first verify in the computer that the account is on service, it is the correct service day and verify the telephone number. Be sure to check the account for any Remarks indicating the Driver has called in to inform Dispatch of a problem with pick-up. After verifying all information thank the customer for calling stating you will communicate the information to the Route Supervisor.

Send a work order through the computer system as a REMINDER PICK-UP. Be sure to check the account for any Remarks indicating that the customer has repeatedly called in a miss. If this is the case be sure to inform the customer that according to the notes in the account this is an ongoing problem and we will research the situation and reprimand the Driver accordingly. This will let the customer know we are tracking the calls and may deter them from abusing the services.

- * If the customer calls at or after 5:00 p.m., after verifying all information thank the customer for calling stating we will guarantee pick up the following day.
- Any misses on the telephone recorder will be automatically dispatched after verification in the computer for pick up that same day. Customer Service will contact the customer to acknowledge the call and give the follow up.

RED TAG PROGRAM

When a Driver encounters a problem with the collection of a residential or commercial account he will "Red Tag" the container and notify Dispatch as to what the problem is. The Dispatch Department will then contact the Customer and try to resolve the problem and log in the "Remarks" field of the customers account the reason for the tag. If Dispatch is unable to contact the Customer, the Customer Service Department will attempt to contact and update the status in the "Remarks" field. When the Customer calls inquiring about the Customer Service Representative must check remarks first to obtain the reason for the tag. In certain situations the area Supervisor will visit the Customer. By using the Red Tag Program effectively we are able to

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better serve the customer in a cost effective manner. A Red Tag is used in the following situations:

- Container too heavy to lift Maximum weight not to exceed:
 - 90 gal BBL 60 lbs.
 - 60 gal BBL 45 lbs.
 - 40 gal BBL 35 lbs.
- Hazardous Waste
- Bulky or Large Item**
- Container packed too tight
- Late Put Out
- Not listed as "On" service
- Automated Placement

**Large or Bulky items must be done as a separate collection. These are not considered household trash, however, yard waste is considered household trash and every attempt will be made to dispose of it.

PROCEDURE FOR CREDITING ACCOUNTS

NON-SERVICE - RESIDENTIAL]

Questions that must be asked first:

- For what period of time does the customer say he has not received service?
 - How has the customer been disposing of his trash? Does he have proof?
 - Is the customer's account in good standing?
 - Is requested credit for more or less than two months?
1. If requested credit is for less than two months, politely convey to the customer that if they have not disposed of trash, we will clean up the area entirely on the next pick-up day and no credit will be issued. If they insist that they cannot wait until next pick-up day, offer courtesy pick-up. Or, if they have disposed of their trash, ask for proof of disposal and upon receipt, issue credit. Only if customer cannot be appeased, issue credit. (The City of Fontana may claim variance. Check list. Inform customer of variance standing. Issue credit only if customer is not satisfied.)

The bottom line is attempt to dissuade the customer from demanding unearned credits, but give them when needed as a gesture of compromise for good customer service.

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2. If requested credit is for more than two months, approval must be obtained from the Customer Service Manager.

MOVED - RESIDENTIAL

Questions that must be asked first:

- What is the date the customer moved out.? Does he have proof?
 - What is the forwarding address and new telephone?
 - Is the customer's account in good standing?
 - Is the requested credit for more than the current months service?
1. If customer is stating they have moved out of the address as of a date other than the 1st of the current month, proof must be sent to the Customer Service Department before credit can be given. The proof of move can be in the form of a closing utility bill, a current rental agreement or any other item that can identify when the customer moved out.
 2. If the account is still "ON" cancel the account using the current date. When the proof of move is sent the account will then be given the additional credit.
 3. If the customer is stating they have moved within the current month, cancel the account as of the date the customer is requesting. If the customer requests a refund it must be submitted in writing. (Refer to Customer Refund Policy)

ON-HOLD/NON-PAYMENT - RESIDENTIAL

Questions that must be asked first:

- For what period of time is the customer requesting credit? More than two months? Less than two months?
 - How has the customer been disposing of his trash? Does he have proof?
 - Is the customer willing to bring his account current?
1. Request that the customer bring account current.
 2. Make payment arrangements if necessary as follows:
 - a. Payment arrangements must bring customer current within four (4) weeks. Document account and mark calendar for follow-up. CSR's will be responsible to follow through for all payment arrangements made with the customer.

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- b. If the customer says "the check's in the mail", get check number and date mailed. Document account and mark calendar for follow-up. Proceed as if payment has been made.
- c. Schedule service for next pick-up day. If customer is PAID IN FULL and cannot be convinced to wait for next pick-up day, quote the charges for the request, but be willing to waive them if the customer is not satisfied.

However, if a customer is NOT paid in full, quote the charges for the request, and give the customer the option of waiting until his next pick-up day.

ONLY WHEN THIS PROCESS HAS BEEN COMPLETED, consider the customer's request as follows:

- 3. If requested credit is for less than two months, politely convey to the customer that if they have not disposed of trash, we will clean-up the area entirely on the next pick-up day and no credit will be issued. Or, if they have disposed of their trash, ask for proof of disposal and upon receipt, issue credit. Only if customer cannot be appeased, issue credit. (The City of Fontana may claim variance. Check list. Inform customer of variance standing. Issue credit only if customer is not satisfied.)
- 4. If requested credit is for more than two months, approval must be obtained from the Customer Service Manager.

Non-Service/On-Hold/Non-Payment - Bin Service

- 1. Politely convey to the customer that a) if they have not disposed of trash, we will clean-up the area entirely on the next pick-up day and no credit will be issued. Or, b) if they have disposed of their trash, ask for proof of disposal; and issue credit only after proof has been received.
- 2. Courtesy pick-up can be given only for accounts that are paid in full and only when the customer insists. Otherwise, account will be serviced on the next pick-up day, or the account will be charged for an extra pick-up.

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ANGRY CUSTOMERS

Questions that must be asked first:

- Is the customer's request reasonable? Is it outrageous?
- 1. Listen carefully to the customer's complaint. Sometimes they just need a sounding board and a sympathetic ear.
- 2. Try to accommodate the customer within reason, if promises are made to appease customer be sure to follow through with agreement.
- 3. If customer cannot be reasoned with contact Supervisor.

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EXHIBIT 3.05

PUBLIC EDUCATION ACTIVITIES

Burrtec Waste Services is committed to being an active member of the community. Our commitment to the City of Duarte in the area of public relations includes the following, in addition to the public awareness and education campaign that are stated in Exhibit 3.01B transition plan.

- Chamber of Commerce membership and activity participation.
- Service club membership and activity participating i.e., Kiwanis, Rotary
- Youth group support and sponsorships
- Community activity sponsorship and service contribution i.e., parades, picnics, etc.
- Youth sports program sponsorship
- School district youth club sponsorship and incentive programs.

These activities represent a sampling of the many projects Burrtec's community relations staff is involved or plans to be involved with. Additionally, on-going education and community information will be a constant factor.

Business Membership

1. Chamber of Commerce
2. Rotary

Community Activities

1. Semi-Annual Clean-Up

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EXHIBIT 3.06

VEHICLE AND CONTAINER PURCHASE OR LEASE AGREEMENT

Burrtec has assessed the equipment needs for providing service to the City of Duarte and is prepared to order the equipment as soon as our contract has been executed. If unforeseen delays are encountered in receiving our equipment, the back-up plan is to designate equivalent equipment, owned by Burrtec, that can be used temporarily.

Burrtec's vendors and delivery schedule are as follows:

- Trucks White Volvo Delivery Mid-October
- Barrels RMI Delivery Mid-October

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EXHIBIT 4.01

CONTINGENCY COLLECTION EMERGENCY PLAN

In the event of a sudden change in service prior to November 1, 1996, Burrtec is currently prepared to provide emergency services.

Equipment such as trucks, barrels and commercial containers can be made available from Burrtec's "on hand" inventory. This equipment can be dispatched and delivered on very short notice. Trained service and supervisory personnel are also available for quick, complete service operation.

Residential and commercial basic route elevations have been completed in order to provide systematic collection of solid waste.

Information notices can be made readily available for emergency distribution to all Duarte businesses and residents.

SERVICE COSTS WILL BE REVIEWED WITH CITY STAFF AT A MUTUALLY CONVENIENT TIME AFTER FULL IMPLEMENTATION

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EXHIBIT 4.02

HAZARDOUS WASTE SCREENING PROTOCOL

Hazardous materials inadvertently collected along with municipal solid waste is a persistent problem facing our industry. Burrtec has successfully implemented the following system to address this problem:

- Continual education and notification to the customer regarding the dangers of improperly disposed of hazardous materials and locations where this material can be taken for proper management.
- 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.
- Driver training on the identification of hazardous materials that have been combined with municipal solid waste.

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

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

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Exhibit 5.01a

QUARTERLY REPORTS

Contractor shall include, at a minimum, the following information in the quarterly report, indicating the report period:

1. **Collection, Disposal and Processing:** number of tons of residential and commercial Refuse, Recyclables and Green Waste collected and delivered to the Disposal Facility and or Processing Facility, including.
 - a. **Base Service.** The total number of Residential and Commercial **Customers**, the number and Customers added or deleted; number of **non-collections**, address of each Customer where non-collection occurred, and reason for non-collection, a summary of promotional, informational or educational materials distributed (number of copies distributed, descriptions and route number(s));
 - b. **Special Services.** The address of each Service Recipient where special services were provided (push services, backyard collection, on-demand bulky-waste collection) and a description of each special service.
2. **Recyclables Tonnages and Revenue.** The report shall specify the number of tons of Recyclables collected for each type of material, and the revenue received by the Contractor.
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 Contractor's complaint log, including a description of how each complaint was resolved, including missed pickups.
5. **Problems Encountered.** a narrative account of problems encountered during the reporting period. This should include a brief discussion of impact and interaction of recyclables and green waste collection programs with refuse collection services
6. **Disposal Costs.** Disposal costs in dollars per ton and total dollars.
7. **Public Education.** Public Education report which summaries the diversion programs, any changes, upcoming events, or program changes.

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EXHIBIT 5.01b

ANNUAL REPORTS

Contractor shall include, at a minimum, the following information in the annual report:

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. The discussion shall include the type of emphasis given to areas with a high concentration of non-English speaking Service Recipients.
3. A discussion of highlights and other noteworthy experiences, 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 Section 4.01g(6).
5. A Recycled Product Purchase Report
6. **Financial Information.** On or before (60 days after end of Contractor's fiscal year) of each year of the term of this Agreement beginning in the year 1997, Contractor shall cause to be prepared a statement of Contractor'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) licensed to practice in the State of California and shall be accompanied by a certification from the CPA that the calculation of said income and expenses is fairly presented in accordance with Generally Accepted Accounting Principles and in accordance with the terms of this Agreement. Contractor shall cause such statement to be submitted by the CPA directly to City on or before 60 days after end of Contractor's fiscal year. Contractor shall ensure that the work papers of the CPA shall be available for inspection, upon reasonable request, to the City Auditor, City Manager, City Attorney, or the designee of any of these officers. If any of Contractor's subcontractors are subsidiaries of or are affiliated with Contractor or Contractor's parent company, this relationship shall be disclosed to City, and Contractor shall, on request, furnish separate financial statements for each subsidiary or affiliate, if any.
7. **Declarations.** On or before January 4 beginning in the year 1997, Contractor shall submit to City a statement by Contractor's Chief Executive Officer either: (1) that no events subsequent to the preparation of the last financial statement submitted pursuant to Section 12.05.2 of this Agreement have materially changed Contractor's financial status or condition, or (2) describing any material changes in Contractor's financial status or condition since the

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preparation of the last financial statement. On or before January 4 of each year of the term of this Agreement beginning in the year 1997, Contractor shall submit to City a declaration describing the current status of any criminal or civil litigation pending against either Contractor's parent company or any subsidiaries of the parent company, if any, which relates to solid waste handling, collection, recycling or disposal. Also, Contractor shall submit declarations of the current status of any pending criminal or civil litigation relating to the activities of Contractor, Contractor's parent company or any subsidiary naming any current officer of the parent company or any subsidiary company, if any, as a defendant. For these declarations, "current officers" shall be defined to include those individuals who are presently serving or who have served as an officer of the parent company or the subsidiary within the two years immediately preceding the date of the report.

8. Contractor's obligation to submit an annual report shall survive the termination or expiration of this Agreement and Contractor shall submit an annual report for the final Contract Year of this Agreement on or before the January 1 immediately following such Contract Year.

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EXHIBIT 6.01

INSURANCE

Contractor has agreed to provide insurance in the following coverage areas in the dollar amounts as specified below. Contractor's Certificate (s) of Insurance is attached.

General Liability

- \$1 Million Aggregate
- \$1 Million Products and Complete Operations
- \$1 Million/Occurrence
- \$1 M Fire/Occurrence
- \$5,000 Medical EA Deductible
- \$1 Million Personal & Ad Injury
- \$1 Million Employee Benefits Liability
- \$5,000 BI & PD Each Occurrence Deductible

Excess Liability for Commercial Auto and Employer's

- \$20 Million/Occurrence; 10,000 Self-Insured Retention
- Automobile (same)
- \$1 Million CSL BE & PD/Occurrence
- \$5,000 Deductible
- \$5,000 MP - Passenger
- \$1 Million Uninsured Motorists - Passenger
- \$1 Million Non-Owned/Hired
- \$1,000 Comp - Passenger Vehicles - Deductible
- N/C - Collision Deductible
- \$1,000 Sp. Perils - Passenger Vehicles - Deductible

Workers Comp/Employer's Liability

- \$2 Million/Accident
- \$2 Million/Disease - Policy Limit
- \$2 Million/Disease - Each Employee

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EXHIBIT 6.02

FORM OF PERFORMANCE BOND

Contractor's performance bond from as provided by Insc/Dico Group is attached. For contract year 1997 the performance bond will be \$150,000. Each subsequent year the amount of the performance bond will be adjusted upward or downward based on an amount equal to 8.5 percent of the contractor's total gross annual revenue.

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EXHIBIT 6.03

FORM OF PARENT GUARANTY

This Guaranty, made as of the date of the Agreement (as defined below) by Burrtec Waste Industries and EDCO Disposal Corporation, corporations duly organized and existing in good standing under the laws of the State of California and having their principal place of business in Lemon Grove and Fontana, California, respectively ("**Guarantor**"), to and for the benefit of the City of Duarte ("**City**"), a municipal corporation of the State of California (the "**State**").

WITNESSETH

WHEREAS, Burrtec Waste Industries, LLC. (the "**Contractor**"), a subsidiary of the Guarantor, and the City have negotiated an Agreement for Municipal 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 Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof (the "**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

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

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 Contractor's Performance Under Agreement. Guarantor hereby directly, unconditionally, irrevocably, and absolutely guaranties the timely and full performance of

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Contractor'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.

(2) Governing law; consent to jurisdiction; service of process. This Guaranty shall be governed by the laws of the State. The Guarantor hereby agrees to the service of process in the State 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, 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.

(3) Enforceability; no assignment. This Guaranty shall be binding upon and enforceable against Guarantor, its successors, assigns, and legal representatives. It is for the benefit of the City, its successors and assigns. The Guarantor may not assign or delegate the performance of this Guaranty without the prior written consent of the City. Any such assignment made without the consent of City shall be void. Guarantor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

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

(ii) satisfactory proof that in the last five 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 state, federal or local waste management law and that the assignee has provided City with a complete list of such citations and censures;

(iii) satisfactory proof that the proposed assignee has at all times conducted any solid waste management operations in an environmentally safe and conscientious fashion;

(iv) satisfactory proof that the proposed assignee conducts its municipal 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;

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(v) of any other information required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

Guarantor 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.

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

(x) to sell, exchange or otherwise transfer to a third party any of Guarantor's assets dedicated to performance under this Guaranty.

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

(4) 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 said undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the Contractor 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 Contractor or any assignee of the Contractor, 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 Contractor 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 Contractor and release, discharge or otherwise offset Contractor'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 or amendment or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Agreement by the Contractor;

(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 Contractor, or both, including without limitation, any consequential loss by the Guarantor of its

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right to recover any deficiency, by way of subrogation or otherwise, from the Contractor or any other person or entity;

(e) the recovery of any judgment against the Contractor 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 Contractor 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 Contractor 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 Contractor to City from which Contractor would be discharged, released or otherwise excused under the provisions of the Agreement.

(5) 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;

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

(e) any right to require a proceeding first against the Contractor 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 Contractor or any other person, or in respect of any collateral or lien, before proceeding hereunder;

(f) (i) any demand for performance or observance of, or (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 Contractor under the Agreement; any pursuit of exhaustion of remedies against the Contractor or any other obligor 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 Contractor under the Agreement, except any Notice to the Contractor required pursuant to the Agreement or Applicable Law which Notice preconditions the Contractor'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 Contractor under the Agreement, and hereby expressly agrees that the right of the City hereunder may be enforced notwithstanding any partial performance by the Contractor or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given by the Contractor for its performance of any of its obligations under the Agreement.

(6) Agreements between City and Contractor; 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 Contractor, the City and Contractor may, from time to time

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

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

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(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 Contractor 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 Contractor under, the Agreement.

(7) 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 Contractor or Guarantor or otherwise, all as though such payment had not been made.

(8) 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 Contractor could assert against any party seeking to enforce the Agreement against the Contractor, and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

(9) 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.

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

(11) 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.

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

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

(14) Term. The obligations of the Guarantor under this Guaranty shall remain in full force and effect until (i) all monetary obligations of the Contractor 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 said obligations in accordance with the terms of the Agreement.

(15) No set-offs, etc.

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.

By Contractor. The obligation of Guarantor under this Guaranty shall be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor 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 Contractor may assert independently of and outside the Agreement.

(16) 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.

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(17) No merger; no conveyance of assets. Guarantor agrees that during the term hereof in accordance with Section (14) Guarantor shall not consolidate with or merge into any other corporation where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets to any person, firm, joint venture, corporation and other entity ("**Person**"), unless the City consents thereto in accordance with Section (3) above.

(18) 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.

(19) 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.

(20) Separate suits. Each and every payment default by Contractor 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.

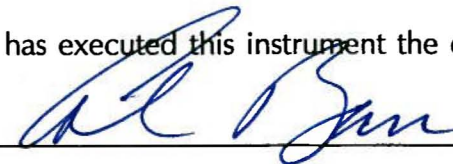
(21) Headings. The Section headings appearing herein are for convenience only and shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

(22) 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.

(22) 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 with this guaranty shall be taken against any such director, officer, employee or stockholder.

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

By: _____



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**EXHIBIT 7.01
CONTRACTOR SERVICE FEE**

Contractor shall maintain on Computerized Format each Customer's monthly charges (**Customer Rate**) for Services provided by Contractor at the following rates, as applicable. All Customer Rates include the City Impact Fee.

A. WHEELED Toter COLLECTION SERVICES

Single Family Base Services			
Service Level	Container Configuration (Refuse, Recycling, Green Waste Sizes in Gallons)		
	90/60/60	60/60/60	40/60/60
Monthly Rate	\$10.89	\$10.00	\$9.50
Additional Service Requirements¹		Per Unit Monthly Service Fee	
Additional 90 Gallon Refuse Collection		\$5.00 each container	
Additional 60 Gallon Refuse Collection		\$4.00 each container	
Additional 40 Gallon Refuse Collection		Not Available	
Additional 60 Gallon Recycling Container		No Charge	
One Additional Recycling Container		\$1.00 each container	
Two Or More Additional Recycling Containers		\$1.00 each container	
Additional 60 gallon Green Waste Container		\$1.00 each container	
Container Exchange in Excess of Once Per Year		\$15.00	
Additional Bulky Waste Pickup (Fee per pickup)		2 free; \$15.00 for each additional collection	
Base Services Fee For Seniors and/or Handicapped ²		\$8.99	
Back Yard Collection			
Resident Requested Convenience Collection		\$15.00 + base fee	
Resident Requested Shuttle Collection		\$15.00 + base fee	
Manual Backyard Collection		\$20.00 + base fee	
Senior and/or Handicapped Collection		base fee only	

¹ Base Services includes refuse, recyclables, and green waste collection.

² Applies only to 40 gallon refuse, 60 gallon recycling and 60 gallon green waste containers, and includes backyard collection fee.

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B. RESIDENTIAL BIN COLLECTION SERVICES

1. RESIDENTIAL REFUSE BIN COLLECTION

Bin Size	Frequency					
	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
1 Yard	\$54.00	\$88.92	N/A	N/A	N/A	N/A
1.5 Yard	\$58.62	\$94.71	N/A	N/A	N/A	N/A
2 Yard	\$73.56	\$114.50	N/A	N/A	N/A	N/A
3 Yard	\$78.72	\$120.05	\$174.88	\$222.96	\$271.03	\$319.11
4 Yard	\$104.95	\$157.94	\$210.93	\$263.92	\$316.92	\$369.91
6 Yard	\$157.44	\$219.16	\$280.87	\$342.58	\$404.29	\$466.00
20 Yard	\$225.39 ³	N/A	N/A	N/A	N/A	N/A
30 Yard	\$225.39 ³	N/A	N/A	N/A	N/A	N/A
40 yard	\$225.39 ³	N/A	N/A	N/A	N/A	N/A
Compactor	\$260.94 ³	N/A	N/A	N/A	N/A	N/A

2. RESIDENTIAL RECYCLABLES BIN COLLECTION

Bin Size	Frequency					
	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
1.5 Yard	\$35.85	N/A	N/A	N/A	N/A	N/A
2 Yard	\$44.10	\$52.64	N/A	N/A	N/A	N/A
3 Yard	\$50.12	\$62.84	\$89.08	\$108.56	\$128.03	\$147.51

³ Landfill components are based on 5 ton maximum. Excess tonnage will be billed as a separate line item.

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3. RESIDENTIAL GREEN WASTE AND MANURE BIN COLLECTION

Bin Size	Frequency					
	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
1.5 Yard	\$37.92	N/A	N/A	N/A	N/A	N/A
2 Yard	\$55.66	\$111.32	N/A	N/A	N/A	N/A
3 Yard	\$75.83	\$115.02	\$166.21	\$211.40	\$256.59	\$301.78
20 yard	\$125.00 ⁴	N/A	N/A	N/A	N/A	N/A
30 Yard	\$125.00 ⁴	N/A	N/A	N/A	N/A	N/A
40 Yard	\$125.00 ⁴					

4. RESIDENTIAL BIN COLLECTION MONTHLY RENTAL RATES

Service Requirement	Service Fee
1 Yard Container	No Charge
1½ Yard Container	No Charge
2 Yard Container	No Charge
3 Yard Container	No Charge
4 Yard Container	No Charge
6 Yard Container	No Charge
20 Yard Container	No Charge
30 Yard Container	No Charge
40 Yard Container	No Charge
40 Yard Compactor	No Charge

⁴ Plus Disposal Costs and Franchise Fees on Disposal

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5. RESIDENTIAL BIN COLLECTION HANDLING RATES

Service Requirement	Service Fee
1. Initial Installation	No Charge
2. Delivery Subsequent to Initial Installation	No Charge
3. Bin Removal	No Charge
4. Cleaning in Excess of Once Per Year	No Charge
5. Exchange (for increased bin size, not decrease) In Excess on once per year	No Charge
6. Repair (excluding lock)	No Charge
7. Lock Removed/Damaged by Customer	\$20.00
8. Lock Removed on Customer Request	No Charge
9. Lock Installed	\$3.50
10 Lock Repair	No Charge

6. RESIDENTIAL BIN COLLECTION PUSH RATES

Distance	Frequency		
	1 X Week	2 X Week	3 X Week
0- 25 Feet	No Charge	No Charge	No. Charge
26 - 50 Feet	\$4.60	\$9.20	\$13.80
51 - 75 Feet	\$6.90	\$13.80	\$20.70
76 - 100 Feet	\$9.20	\$18.40	\$27.60
101 - 125 Feet	\$11.50	\$23.00	\$34.50
126 - 150 Feet	\$13.80	\$27.60	\$41.40
151 - 175 Feet	\$16.10	\$32.20	\$48.30
176 - 200 Feet	\$18.40	\$36.80	\$55.20
Over 200 Feet	\$0.10/foot	\$0.20/foot	\$0.30/foot

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C. COMMERCIAL BIN COLLECTION SERVICES

1. COMMERCIAL WHEELED TOTES COLLECTION

Service Item	Frequency	Cost
90 Gallon Refuse & 60 Gallon Recycling	1 Collection Per Week	\$15.14

2. COMMERCIAL REFUSE BIN COLLECTION

Bin Size	Frequency					
	1/Week	2/Week	3/Week	4/Week	5/Week	6/Week
1 Yard	\$54.00	\$88.92	N/A	N/A	N/A	N/A
1.5 Yard	\$58.62	\$94.71	N/A	N/A	N/A	N/A
2 Yard	\$73.56	\$114.50	N/A	N/A	N/A	N/A
3 Yard	\$78.72	\$120.05	\$174.88	\$222.96	\$271.03	\$319.11
4 Yard	\$104.95	\$157.94	\$210.93	\$263.92	\$316.92	\$369.91
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30 Yard	\$225.39 ⁵	N/A	N/A	N/A	N/A	N/A
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Compactor	\$260.94 ⁵	N/A	N/A	N/A	N/A	N/A

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3 Yard	\$50.12	\$62.84	\$89.08	\$108.56	\$128.03	\$147.51

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3 Yard	\$75.83	\$115.02	\$166.21	\$211.40	\$256.59	\$301.78
20 yard	\$125.00 ⁶	N/A	N/A	N/A	N/A	N/A
30 Yard	\$125.00 ⁶	N/A	N/A	N/A	N/A	N/A
40 Yard	\$125.00 ⁶					

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5. COMMERCIAL BIN COLLECTION MONTHLY RENTAL RATES

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40 Yard Container	No Charge
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Distance	Frequency		
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D BIN STAGING

1. RESIDENTIAL BIN STAGING

Burrtec will stage refuse, recycling and green waste/manure bins for collection at curbside for those accounts that have been determined to be inaccessible by a standard refuse vehicle or present a time or safety hazard to the hauler, or may result to damage to residential property. This service will be provided at no charge. Accounts requesting bin staging and do not qualify as per the above will be charged the bin push-out rates in addition to the monthly service fee.

2. COMMERCIAL BIN STAGING

Burrtec will stage refuse, recycling and green waste/manure bins for collection at curbside for those accounts that have been determined to be inaccessible by a standard refuse vehicle or present a time or safety hazard to the hauler, or may result to damage to commercial property. This service will be provided at no charge. Accounts requesting bin staging and do not qualify as per the above will be charged the bin push-out rates in addition to the monthly service fee.