

**REVISED AND RESTATED SOLID WASTE FRANCHISE AGREEMENT BETWEEN  
THE CITY OF HIGHLAND, AND BURRTEC WASTE INDUSTRIES, INC.**

This Franchise Agreement (“Franchise Agreement”) is entered into this 26<sup>th</sup> day of June, 2018 by and between the CITY OF HIGHLAND (“City”) and BURRTEC WASTE INDUSTRIES, INC (“Grantee”). In consideration of the mutual promises, covenants and conditions contained in the Agreement and for good and other valuable consideration, City and Grantee agree as follows:

**RECITALS**

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

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(1), the City Council of the City of Highland (“City”) has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified enterprise for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and for providing temporary bin/rolloff services in residential, commercial, construction, and industrial areas in the City of Highland;

WHEREAS, City and Grantee’s predecessor in interest, Cal Disposal, previously entered into that certain Revised and Restated Agreement between the City of Highland, and Cal Disposal, for the Collection Transportation, Recycling, Composting, and Disposal of Solid Waste and Construction and/or Demolition Debris and for Providing Temporary Bin/Rolloff Services dated November 1, 2006 (the “Prior Cal Disposal Agreement”);

WHEREAS, City and Grantee previously entered into that certain Revised and Restated Agreement between the City of Highland, and Burrtec Waste Industries, Inc., for the Collection Transportation, Recycling, Composting, and Disposal of Solid Waste and Construction and/or Demolition Debris and for Providing Temporary Bin/Rolloff Services dated November 1, 2006 (the “Prior Burrtec Agreement” and together with the Prior Cal Disposal Agreement the “Prior Agreements”);

WHEREAS, Grantee has represented and warranted to City that it has the experience, responsibility and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the Franchise Area for the collection and safe transport to disposal facilities of municipal Solid Wastes, and to conduct the necessary diversion programs;

WHEREAS, the City finds that Grantee has performed as the franchise contractor under the Prior Agreements in a good and workmanlike manner;

WHEREAS, the City Council of the City of Highland declares its intention of maintaining reasonable rates for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and for providing temporary bin/rolloff services within City limits; and

WHEREAS, the City and Grantee desire to enter into this Agreement for the purpose of amending, combining and restating the Prior Agreements.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1. GRANT OF COMMERCIAL, RESIDENTIAL, CONSTRUCTION, INDUSTRIAL, AND TEMPORARY BIN EXCLUSIVE FRANCHISE.**

This Franchise Agreement grants a franchise as provided herein and pursuant to Municipal Code Chapter 8.12 of City of Highland and California Public Resources Code Section 40059(a)(1) to Grantee, for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and for providing temporary bin/rolloff box services in commercial, residential, construction, and industrial areas within the City. City reserves the right to amend Municipal Code Chapter 8.12, and the terms of this Agreement in any manner necessary for the safety or welfare of the public or to protect the public interests. This Franchise Agreement shall be in force and effect within the City Limits as they now or may hereafter exist (the "Franchise Area").

**SECTION 2. DEFINITIONS.**

Whenever any term used in this Franchise Agreement has been defined by Municipal Code Chapter 8.12 of the City or California Public Resources Code, the definitions in the City Municipal Code or Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

- A. AB 939. "AB 939" shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code Section 40000 et seq., as it may be amended from time to time.
- B. Affiliate. "Affiliate" means a business in which Grantee owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Grantee and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Grantee. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- C. Bins. "Bins" shall mean a metal Container, provided by Grantee for commercial, industrial, construction, and multi-family residential uses. Bins are of two types:

(1) Bins (usually three (3) cubic yards in size) which are picked up by refuse trucks by means of front loading apparatus; and (ii) Rolloff Boxes (usually 40 cubic yards in size) which are picked up by trucks using rear loading winches onto rails.

- D. Bulky Items. “Bulky Items” means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); and clothing. Bulky Items do not include car bodies, construction waste or items requiring more than two persons to remove. In the event a question ever arises as to whether a specific item, or category of items meets the definition of Bulky Items, the City Manager shall be responsible to determine whether said definition shall apply, which determination shall be final.
- E. Cart. “Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.
- F. City. “City” shall mean the City of Highland, a municipal corporation, located in San Bernardino County, California.
- G. City Limits. “City Limits” shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Highland, and which are from time to time amended to reflect changes.
- H. City Manager. “City Manager” shall mean the City Manager of the City of Highland or his or her designee.
- I. Collect/Collection. “Collect” or “Collection” shall mean to take physical possession of, transport, and remove Solid Waste from a premises.
- J. Commercial Premises. “Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement Premises upon which Hotels, and Motels are operated, and Multi-Family Dwellings shall be deemed to be Commercial Premises.
- K. Container. “Container” means any and all types of Solid Waste receptacles, including Carts, Bins, and receptacles provided by Grantee.

- L. Customer. “Customer” shall mean any person receiving Solid Waste Handling Services from Grantee within the Franchise Area.
- M. Dwelling Unit. “Dwelling Unit” shall have the meaning set forth in the Municipal Code.
- N. E-Waste. “E-Waste” means appliances, devices, and other objects containing electronic components, and includes (but is not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR’s, and televisions.
- O. Effective Date. “Effective Date” shall mean August 1, 2018.
- P. Environmental Laws. “Environmental Laws” means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §1601 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.
- Q. Franchise Area. “Franchise Area” shall mean all Premises within the City Limits.
- R. Franchise Fee. “Franchise Fee” shall mean the franchise fee set forth and more fully defined in Section 6 hereof.
- S. Grantee. “Grantee” means Burrtec Waste Industries, Inc., the entity granted the Franchise pursuant to this Franchise Agreement.
- T. Gross Receipts. “Gross Receipts” shall mean and include all monies, fees, charges, consideration, and revenue received, charged or imputed to Grantee and any Affiliate of Grantee, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Grantee pursuant to this Agreement. Gross Receipts includes, without limitation, monthly Customer charges for Collection of Solid Waste, without subtracting Franchise Fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, transportation charges, and revenues from the sale of salvageable or Recyclable Material.
- U. Hazardous Substance. “Hazardous Substance” shall mean any of the following:  
(a) any substances defined, regulated or listed (directly or by reference) as

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

- V. Hazardous Waste. “Hazardous Waste” means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder..
- W. Multi-Family Dwelling. “Multi-Family Dwelling” means either (i) any building or lot containing four or more Dwelling Units, or (ii) any building or lot containing two or more Dwelling Units which Grantee determines (and City agrees) must receive Solid Waste Handling Services through the use of shared Bins, since they are not reasonably able to receive individualized Solid Waste Handling Service through the use of Carts or Customer provided Containers. Any ambiguity as to whether a Customer’s Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.
- X. Municipal Code. “Municipal Code” shall mean City of Highland’s Municipal Code.
- Y. Organics/Organic waste. "Organics" or "Organic waste" shall mean food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.
- Z. Person. “Person” shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Bernardino, towns, cities, and special purpose districts.

- AA. Premises. “Premises” shall mean any land, building, and/or structure within the City Limits where Solid Waste is generated or accumulated.
- BB. Recyclable Material. “Recyclable Material” or “Recyclables” shall mean that Solid Waste discarded within the Franchise Area which is capable of being recycled.
- CC. Residential Premises. “Residential Premises” shall mean all premises upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement Premises upon which hotels, and motels are operated, and Premises upon which four or more Dwelling Units exist shall be deemed to be Commercial Premises.
- DD. Rolloff Box. “Rolloff Box” means Solid Waste Collection Containers of 10-yards or larger, including compactors.
- EE. Single Family Dwelling. “Single Family Dwelling” means a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Handling Service and the number of Dwelling Units on the premises is less than four (4). Any ambiguity as to whether a Customer’s Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by City.
- FF. Solid Waste. “Solid Waste” shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of “Nonhazardous Solid Waste” set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include hazardous (Class 1) waste, low-level radioactive waste, untreated medical waste, or Special Wastes as defined herein.
- GG. Solid Waste Handling Services. “Solid Waste Handling Services” means the Collection, transfer, transport, recycling, processing, and disposal of Solid Waste.
- HH. Special Wastes. “Special Wastes” shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, hazardous waste, animal waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.
- II. Temporary Service. “Temporary Service” shall mean Solid Waste Handling Services provided by Grantee on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes.

- JJ. Term. "Term" shall have the meaning ascribed in Section 8 of this Agreement.
- KK. Transform. "Transform" means incineration, pyrolysis, distillation, gasification, or biological conversion. Transformation does not include composting.
- LL. Universal Wastes. Universal wastes are hazardous wastes that are more common and pose a lower risk to people and the environment than other hazardous wastes. (see California Code of Regulations, Div. 4.5, chapter 23.) They include, for example; mercury thermostats, switches and thermometers; batteries; fluorescent and high-intensity lamps; nonempty aerosol cans; certain consumer electronic devices; and cathode ray tubes such as those found in television and non-flat monitors.
- MM. Wastestream. "Wastestream" means all Solid Waste and Recyclable Materials collected by Grantee pursuant to this Agreement or delivered by any Person to the Materials Recovery Facility.

### **SECTION 3. ACCEPTANCE AND WAIVER.**

Grantee agrees to be bound by and comply with all the requirements of Municipal Code Chapter 8.12 and this Franchise Agreement. Grantee waives Grantee's right to challenge the terms of this Franchise Agreement and Municipal Code Chapter 8.12 under Federal, State or local law, or administrative regulation, as such laws and regulations, exist as of the date of execution of this Agreement, or as the same may be amended in the future. Grantee waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

### **SECTION 4. FRANCHISE AREA.**

The Franchise Area granted by this Franchise Agreement shall be all residential, commercial, industrial, and construction premises located within the corporate boundaries of the City of Highland, as they now or may hereafter exist.

### **SECTION 5. SERVICES PROVIDED BY GRANTEE.**

- A. General. Grantee shall provide the collection, transportation, recycling, green waste composting, and disposal of Solid Waste and construction debris and shall provide temporary bin/rolloff box services within the Franchise Area in accordance with the terms of this Franchise Agreement and Municipal Code Chapter 8.12. These services shall be provided according to the Schedule of Rates in Exhibit "A", except as may be modified by the terms of this Agreement and by resolution of the City Council.
- B. Automation. Grantee shall continue to operate an automated collection method of all Residential Solid Waste, Green Waste and recyclables. Failure to operate all automated all residential routes continuously shall be considered a material breach of this Franchise Agreement.

C. Single Family Residential.

1. Weekly Service. Once each week Grantee shall collect the Solid Waste, compostables, and recyclables (except Bulky Items and household hazardous waste) which have been placed, kept or accumulated in containers at single family residences within the Franchise Area and placed at curbside prior to Grantee's normal weekly collection time. All Solid Waste, compostables, and recyclables must be placed within containers, at curbside, without obstructions, so as to permit collection. City agrees to use its best efforts to enforce parking and other ordinances so as to facilitate this curbside collection system. Grantee may negotiate special pickup procedures, above and beyond the normal services described above, with customers for an additional fee in an amount provided in Exhibit "A". Grantee shall be prohibited from providing permanent or temporary Bin Containers to residential customers unless Grantee has verified that customer has complied with the requirements of Municipal Code Chapter 8.12, Section 8.12.350 regarding an "Exception to Container Placement for Residential Use."
- (2) Bulky Item Services. Grantee shall provide temporary Bin Rolloff Box services to customers for numerous items from annual cleanups, moving, extensive yard work, minor construction projects, etc. according to the rate schedule in Exhibit "A" as that rate schedule may be amended by the City Council.

Grantee shall provide collection at the curbside on demand from residential unit subscribers four (4) times per calendar year to each residential customer in the City for Bulky Items. The Grantee shall provide such on demand service during a designated week of each quarter scheduled by the City and Grantee. Customer requests for such service may be done in person, over the telephone, or in writing. Grantee shall require customer to request Bulky Item pick-up service no later than Wednesday of the week prior to the scheduled service week. Collection of waste materials such as dirt, rock, concrete, and asphalt are not included in or required of Grantee for this service. Bulky Items shall not exceed five (5) items per collection. Grantee may bill any customer for services in excess of the four (4) free collections or in excess of five (5) items, in accordance with the approved rates.

- (3) Mobile -Household Hazardous Waste Collection Program. At least annually, the Grantee will participate with the County of San Bernardino in a Mobile Household Hazardous Waste Collection Program designed to collect not only non-permit required household hazardous wastes but also permit required household

hazardous wastes, e.g., pesticides, herbicides, oil base paint, etc. These County and Grantee roundups should be coordinated in an effort to provide all residents with non-permit required and permit required roundups annually. If the Household Hazardous Waste Program is discontinued or modified by San Bernardino County, the Grantee may be required, at City's request, to operate a similar program under terms and conditions negotiated with the City, by amendment to Exhibit "A".

- (4) Public Education Materials. Grantee shall produce, keep current, and provide public education materials specifically outlining the Bulky Item pickups, Household Hazardous Waste roundups, Recycling and Recyclable items and Green Waste programs. These materials shall be distributed to the residents on a minimum quarterly basis by direct mailing with customer invoices, or more frequently as designated by City. All public education materials shall be approved by the City Manager prior to the distribution. Grantee shall provide said public education materials to the City for their distribution.

D. Commercial Industrial, and Multi-Family Residential.

- (1) Multi-Family Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises where the Bins are located, Grantee shall collect the Solid Waste (including Bulky Items which have been placed in a closed bin), compostables, and recyclables (except household hazardous waste) which have been placed for collection in Solid Waste or recycling Bins.
- (2) Bulky Item Services. Annually, Grantee shall, in response, to written request by the City Manager, deliver and collect roll-off containers for use in multifamily neighborhood Bulky Item clean-up programs at no charge. These services shall consist of a single collection day beginning at 9:00 a.m. and ending at 5:00 p.m. The City shall notify Grantee in writing not less than thirty (30) calendar days prior to the date of the service. The notice to the Grantee shall specify the date of delivery and collection of the roll-off containers, the location(s) for delivery, and the number and size of the roll-off containers to be delivered.
- (3) Commercial and Industrial Weekly Service. Not less often than once per week, and more frequently if required to handle the waste stream of the premises where the Bins are located, Grantee shall collect the Solid Waste, compostables, and recyclables which have been placed for collection in Solid Waste or recycling Bins.

- (4) Wastestream Audits. During the first year of this Agreement and at least bi-annually during the term of this Agreement, Grantee shall conduct a wastestream audit of all multi-family and commercial accounts to verify that maximum diversion of Solid Waste is being achieved. Annually, Grantee shall provide a report to City containing at the minimum, account name, address, percentage of diversion and any changes and/or suggestions due to the audit .
- E. Construction and Temporary Bin/Rolloff Box Services. Grantee shall provide construction and temporary bin/Rolloff Box services using rates reflected in Exhibit "A", as those rates may be amended by resolution of the City Council.
- F. Diversion Programs.
- (1) The Grantee shall conduct Diversion Programs in the Franchise Area in accordance with the City's Source Reduction and Recycling Element and current SB 1066 Extension. If at any time during the term of this Agreement the City must enter into any new agreement and/or plan for increased diversion of Solid Waste, the Grantee shall provide the additional programs as necessary. The City will give Grantee the opportunity to comment on any amendments and/or additions to the existing Diversion Programs conducted in the City.
- (2) Within sixty (60) days of the effective date of this Agreement, Grantee shall present a proposal for the City's review and approval to provide additional or expanded diversion services consistent with the current statutory and regulatory mandates including those applicable to green waste, organic materials, construction and demolition waste and residential and commercial recycling. The proposal shall contain a complete description of the following:
- a. Collection methodology to be employed (equipment, manpower, etc.).
  - b. Equipment to be utilized (vehicle number, types, capacity, age, etc.).
  - c. Labor requirements (number of employees by classification).
  - d. Type of materials Containers to be utilized.
  - e. Provision for program publicity/education/marketing.
  - f. Projection of the annual financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

The Grantee shall be entitled to a reasonable adjustment in its compensation, subject to the approval of the City Council for providing any additional or modified services the City or

applicable State law may require pursuant to this Section 5F(2) based on costs that exceed the current rate component allocations.

- (3) Bulky Items Collected pursuant to this Agreement may not be landfilled until the following hierarchy of diversion efforts has been followed by Grantee:
  - a. Reuse as is (if energy efficient)
  - b. Disassemble for reuse or Recycling
  - c. Recycle, Transformation, other means of diversion
  - d. Disposal

The disposition of Bulky Items shall be tracked by Grantee and this information shall be included in Grantee's quarterly reports to City.

G. Collection on Holidays. If the day of collection on any given route falls on a Holiday observed by the landfill or other lawful disposal site to which refuse or debris collected within the Franchise Area is taken for disposal, or recycling facility to which recyclables are taken, Grantee shall provide collection for such route on the workday next following such Holiday and shall not provide collection on such Holiday, except that Grantee shall not be required to provide collection on New Year's Day, Thanksgiving Day, or Christmas Day.

H. Additional Services. The following additional services are hereby provided to City, free of charge, by Grantee:

- (1) Grantee shall provide Rolloff Boxes to any non-profit group, e.g. Boy Scouts, Girl's Club, churches, Earth Clubs, etc., free of charge, for the express purpose of the group collecting recyclable materials. Grantee shall deliver said materials to a recycler of the group's choice and remit all revenues received to the group less the Grantee's transportation cost.
- (2) Grantee shall clean up litter in the immediate vicinity of any Solid Waste storage area, including the areas where containers are placed for collection, when Grantee has caused the litter. Grantee shall clean out any overflowing' Bins or enclosures within twenty-four (24) hours of notification by City, free of charge to the City. Grantee shall provide the City Manager the identification of continual problems in customer Bins or enclosures.
- (3) Grantee shall begin pickup of all Christmas trees on the first scheduled pickup day after New Year's Day and shall continue pickup of Christmas trees on scheduled pickup days through January 12. The trees shall be diverted from the landfill, either by deposit at a composting facility, a tree farm or nursery, or a

grinding operation, without additional charge to the customer or to the City.

- (4) Grantee, at City's sole option, shall provide refuse collection and recycling to the following locations ("City Facilities") within the Franchise Area, at no charge to City or the entities listed:
  - (a) City Fire Stations,
  - (b) City Police Stations, and
  - (c) City Hall, City Buildings, Public Works Yard, and City Parks.
- (5) Grantee, at City's sole option, shall collect a monthly fee, set by City Council, for the City's Annual National Pollutant Discharge Elimination System permit.
- (6) Grantee, at City's sole option, shall collect a monthly fee, set by City Council, for the City's Household Hazardous Waste Program.
- (7) Grantee will mail notices and/or newsletters from the City on a quarterly basis at no charge, provided the sizes of the notices/newsletters are compatible with Grantee's custom mailing envelope.
- (8) Grantee, at City's sole option, shall provide refuse collection and recycling for the following Community Events, at no charge to City or entities listed:
  - (a) Monthly Highland Improvement Team (HIT) clean ups within the Franchise Area;
  - (b) Annual Run through Highland sponsored by the YMCA;
  - (c) Highland portion of the annual Redlands Bicycle Classic;
  - (d) Annual Highland Citrus Harvest Festival; and
  - (e) City sponsored or co-sponsored parades.
- (9) If the City determines that there are not sufficient local buy back centers available to the City, Grantee will, through written direction by the City Manager, establish and operate a Buy Back Center limited to collection of California Redemption Value items. This center shall be in operation within six (6) months after receiving approval from the State of California, and shall be continuously operated for as long as the State of California

underwrites a value redemption program or the term of this agreement, whichever terminates first.

(10) Grantee shall provide clean up services in Right-of-Way areas within the City as per Exhibit B.

(11) Grantee shall provide E-Waste Collection at City Facilities.

I. Special Wastes. Grantee may, but is not required to, provide such collection, transportation, and disposal services for special wastes. Grantee may provide such services for special wastes if contracted to do so by customers under separate written contracts negotiated between Grantee and the customer generating such special wastes. A schedule of fees for these special waste services shall be approved by the City Manager.

J. Street sweeping. Grantee shall continue to provide all labor, materials, equipment and permits required to conduct public street sweeping services in accordance with accepted standards for municipal street cleaning. The term “curb” shall mean the paved area between the normal curb line of a roadway or the median face, whether an actual curb line exists or not. The term debris shall mean all materials normally picked up by a mechanical sweeper, such as sand, glass, paper, cans, rocks, leaves, and other materials. Failure to provide efficient and effective street sweeping services shall be considered a material breach of this Franchise Agreement.

(1) Weekly Service. Grantee shall sweep and remove all debris from all commercial, industrial, and residential public streets including all curbs and medians, and future areas obtained through annexation. Commercial and industrial streets shall be swept in accordance with a schedule prepared by City. Residential streets shall be swept on the following day after the area’s designated refuse collection day.

(2) Public Education. Through the public education program, residents shall be encouraged not to park on residential streets on the day scheduled for Solid Waste curbside and street sweeping services. City may, at City’s sole discretion, implement no parking zones, with or without a violation system; on scheduled Solid Waste curbside and street sweeping days if the public education program is deemed ineffective and the mechanized refuse collection and street sweeping services are adversely affected.

(3) Proper Cleaning. When necessary for proper cleaning, Grantee shall make more than one pass on a street without extra charge. Grantee shall immediately respond when notified by City Manager to re-sweep unsatisfactory areas at no charge. Grantee will not be

required to make more than one pass on a street when there are obstructions hindering the sweeping.

- (4) Hours. Sweeping residential streets is authorized between the hours of 6:00 A.M. and 6:00 P.M., and commercial and industrial streets shall be swept between the hours of 12:01 A.M. and 6:00 A.M., Monday through Saturday. During a holiday week, the routes that are scheduled for Saturday collection are not to be swept that week but are to resume the normal sweeping schedule the following week. In the event of inclement weather, Grantee shall notify City Manager when Grantee is prevented from performing effective sweeping services due to inclement weather. Sweeping services deferred due to inclement weather shall be completed the next regularly scheduled sweeping date, weather permitting.
  - (5) Disposal. Grantee shall dispose of all debris collected by hauling the same to legally established disposal areas. Transfer points for storage of debris must be approved by the City Manager. Every effort shall be taken by Grantee to legally divert, as much as possible, the debris destined for the disposal at the landfill. Grantee shall make arrangements with the local water authority for use of fire hydrants to obtain water necessary for the operation. Neither debris disposal costs nor water costs shall be charged to City. All collection and disposal shall be in compliance with City's National Pollutant Discharge Elimination System permit(s)
  - (6) Additional Services. Street sweeping before and after two (2) City sponsored or co-sponsored events are to be provided at no additional cost. Any additional sweeping services requested by City that are above and beyond that which is described above shall be billed to the City at the cost of the Grantee plus a ten percent (10%) Administration fee per hour.
  - (7) On Call Services. Grantee shall provide ten (10) on call response street sweeping events per year to the City, free of charge.
- K. Non-Collection Notices. When any refuse or debris is deposited for collection is not collected by Grantee, Grantee shall have a non-collection notice securely attached to the customer's containers or on the door to customer's premises indicating the reasons for the refusal to collect refuse or debris.
- L. No Commingling. Grantee shall not commingle, in the collection vehicles or otherwise, any refuse with any recyclables or green waste. Provided, however, Grantee shall not be deemed to have violated this section where such material were commingled prior to collection by Grantee.

M. News Media Relations. Grantee shall notify the City Manager by telephone followed by facsimile of all requests for news media interviews related to the services within twenty-four (24) hours of Grantee'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, Grantee will discuss Grantee's proposed response with City.

N. Transformation.

- (1) Grantee acknowledges that AB 939 requires Solid Waste diversion from landfill disposal and that "transformation," provides for a maximum ten percent (10%) diversion credit towards meeting the fifty percent (50%) diversion goal.
- (2) To the extent possible, Grantee shall not process by means of transformation any recyclables or green waste materials targeted for collection through City's recycling and green waste collection programs, nor shall Grantee ship, transport, deliver, or otherwise make available any such recyclables or green waste to any person for the purpose of transformation, without the express prior written authorization of the City Manager. However, if residue from any processing facility is disposed through transformation, Grantee will provide City with the data to support diversion credit, if any.
- (3) Grantee will provide City with the data to support diversion credit from transformation.
- (4) If at any time during the term of this Agreement the California State Legislature amends the percentage of credit that the City can obtain through transformation then Grantee shall make all reasonable efforts to obtain the new diversion percentage credit.

O. Staff Position. Grantee shall fund the cost of a Code Compliance Staff Position in the Public Services Division of the City in accordance with the City's salary schedule (salary and benefits) for a Code Compliance Officer, to address solid waste program compliance, during the entire Term of this Agreement. Actual cost shall be billed by the City to the Grantee each quarter in arrears.

P. Tracking System. Within sixty (60) days of the effective date of this Agreement, Grantee shall provide a web based construction debris tracking system.

Q. Overflowing Bin Program. Within sixty (60) days of the effective date of this Agreement, Grantee shall present a proposal for an overflowing Bin Program.

R. Emergency Service Plan. Within sixty (60) days of the effective date of this Agreement, Grantee shall provide the City with an Emergency Service Plan.

S. New Customer Package. Grantee shall distribute a brochure to each Residential Customer that describes, at a minimum, the services available, billing and payment procedures and the City's Diversion Programs. Grantee shall submit to City for review and approval of the brochure not later than (120) days after the beginning of the Term.

## **SECTION 6. FRANCHISE FEES.**

Grantee shall pay to City, a franchise fee equal to ten percent (10%) based on Grantee's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement, (the "Franchise Fee"). Franchise Fee shall be paid to City quarterly, and payable by the end of the month following the end of each calendar quarter. Should any such due date fall on a weekend or holiday in which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The Franchise Fee due hereunder shall also apply to Gross Receipts of Grantee collected after the expiration of the Term hereof relating to Grantee's performance during the Term hereof. Franchise Fees shall be accompanied by a statement certified by an officer of Grantee attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City.

## **SECTION 7. CASH BOND: INSURANCE COVERAGE.**

A. Cash Bond. Contemporaneously with the execution of this Franchise Agreement, the Grantee shall deposit a cash bond in the sum of one twelfth of the estimated annual franchise fee, adjusted annually, in an interest bearing account for the benefit of the Grantor. The cash bond shall be on terms acceptable to the City Attorney. The cash bond shall serve as security for the faithful performance by Grantee of all provisions and obligations of this Franchise Agreement.

- (1) After thirty (30) days following Grantee's failure to pay the City an amount owing under this Franchise Agreement, the cash bond maybe assessed by the City upon five (5) days prior written notice to the Grantee for purposes including, but not limited to:
  - (a) Failure of Grantee to pay the City sums due under the terms of the Franchise Agreement.
  - (b) Reimbursement of costs borne by the City to correct Franchise Agreement violations not corrected by Grantee, after due notice.
  - (c) Monetary remedies or damages assessed against Grantee due to breach of the Franchise Agreement.
- (2) The Grantee shall deposit a sum of money sufficient to restore the cash bond to the original amount within thirty (30) days after notice from the City that any amount has been withdrawn from the cash bond.

- B. Insurance Coverage. Contemporaneously with execution of this Franchise Agreement, the Grantee shall deposit copies of insurance policies or endorsements evidencing the existence of policies of insurance required pursuant to this Franchise Agreement.
- C. City Business License. The Grantee shall annually obtain a City Business License to operate in the City, and Grantee shall pay to City the business license fee as established by the City Council.

## **SECTION 8. TERM AND EXTENSIONS.**

This Franchise Agreement shall continue for a period of twenty (20) years from the effective date hereof. Beginning in year ten (10) of this Franchise Agreement commencing on August 1, 2028 and annually thereafter, the term of this Agreement shall be extended for an additional one year, unless within thirty (30) days prior thereto either the City or the Grantee gives written notice of non-renewal to the other party. In the event such a notice is given at any such anniversary date, there shall be ten (10) years remaining on the term of this Agreement and such ten (10) year period may not be reduced for any reason except termination for default.

## **SECTION 9. FRANCHISE TRANSFERRABLE: CITY CONSENT REQUIRED.**

- A. The franchise granted by this Franchise Agreement shall not be transferred, sold, hypothecated, sublet, or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold, or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any person, except the Grantee, either by act of the Grantee or by operation of law, without the prior written consent of the City expressed by Resolution. Transfer or assignment of this franchise in whole or in part, without the consent of City shall void this franchise agreement.
- B. If the Grantee transfers the franchise prior to obtaining City consent, all of the profits or twenty-five percent (25%) of the Gross Operator Receipts, from the date of transfer until the date of City consent, whichever is greater, shall be returned to the City and the City shall have the absolute right to terminate the Franchise Agreement without notice.
- C. The City shall not unreasonably withhold its consent to a transfer of the franchise granted by this Franchise Agreement. The City may impose conditions of approval on a Franchise Agreement transfer, including, but not limited to conditions requiring acceptance of amendments to Municipal Code Chapter 8.12 and this Franchise Agreement, and the payment of a transfer fee to the City.
- D. City consent is also required for any change in control of Grantee. "Change in control" shall mean any sale, transfer, or acquisition of Grantee. Grantee is a corporation, and any acquisition of more than twenty-five percent (25%) of Grantee's voting stock by a person, or group of persons acting in concert, who already owns less than 50% of the voting stock, shall be deemed a change in control.

- E. Any change in control, as defined in D, above, of the Grantee occurring without prior City approval shall constitute a material breach of this Franchise Agreement.

**SECTION 10. FRANCHISE TRANSFER: FEES**

- A. Any application for a franchise transfer or approval of a change in control of Grantee shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, the Grantee shall reimburse the City for all costs not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.
- B. These franchise transfer fees are over and above any franchise fees specified in this Franchise Agreement.

**SECTION 11. IMPOSITION OF DAMAGES OR TERMINATION**

- A. If the City Manager determines that the Grantee's performance pursuant to this Franchise Agreement has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Franchise Agreement, the requirements of Highland Municipal Code Chapter 8.12 the requirements of the California Integrated Waste Management Board, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Franchise Agreement) or any other applicable Federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, the City Manager may advise Grantee in writing of such deficiencies. The Manager may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by the Grantee of such written notice. The City Manager shall review the Grantee's response and refer the matter to the City Council or decide the matter and notify the Grantee of that decision, in writing. A decision or order of the City Manager shall be final and binding on Grantee if the Grantee fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the City Manager's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager shall either refer the appeal to the City Council for proceedings in accordance with Section 12 C-D, below, or refer the matter to a hearing office as provided in Section 12, below.
- B. The City Council, in such case, may set the matter for hearing. The City Council shall give Grantee, and any other person requesting the same, fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies,

and shall give the Grantee, or its representatives and any other interested person, a reasonable opportunity to be heard.

- C. Based on the evidence presented at the public hearing, the Council shall determine by Resolution whether the Franchise Agreement should be terminated or liquidated damages imposed. If based upon the record, the City Council determines that the performance of Grantee is in breach of any material term of this Franchise Agreement or any material provision of any applicable Federal, State, or local statute or regulation, the city Council, in the exercise of its sole discretion, may terminate forthwith, the Franchise Agreement or impose liquidated damages, as defined below. The decision of the City Council shall be final and conclusive, subject to referral of the matter for an administrative hearing pursuant to Section 12, below. Grantee's performance under its franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.
- D. This right of termination or to impose liquidated damages is in addition to any other rights of City upon a failure of Grantee to perform its obligations under this Franchise Agreement.
- E. The City further reserves the right to terminate Grantee's franchise or impose liquidated damages in the event of any of the following:
  - (1) If the Grantee practices, or attempts to practice, any fraud or deceit upon the City.
  - (2) If the Grantee becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Grantee in a bankruptcy proceeding.
  - (3) If the Grantee fails to provide or maintain in full force and effect, the worker's compensation, liability, indemnification coverage, or cash bond as required by the Franchise Agreement.
  - (4) If the Grantee willfully violates any orders or ruling of any regulatory body having jurisdiction over the Grantee relative to this Franchise Agreement, provided that the Grantee may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the franchise shall be deemed to have occurred.
  - (5) If the Grantee ceases to provide collection services as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reason within the control of the Grantee.
  - (6) If the Grantee willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide City with

required information, reports, and/or test results in a timely manner as provided in the Franchise Agreement.

- (7) Any other act or omission by the Grantee which materially violates the terms, conditions, or requirements of this franchise, Municipal Code Chapter 8.12, the California Integrated Waste Management Act of 1989, as it may be amended from time to time or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Grantee cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Grantee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

F. Liquidated Damages.

- (1) The City finds, and the Grantee agrees, that as of the time of the execution of this Franchise Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a material breach by Grantee of its obligations under this Franchise Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Franchise Agreement to individual members of the general public for whose benefit this Franchise Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Franchise Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.
- (2) Accordingly, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Seven Hundred and Fifty Dollars (\$750.00) per day, for each calendar day that service is not provided by Grantee in accordance with this Franchise Agreement. The amount of the liquidated damages shall be increased by the past year's consumer price index for the San Bernardino Riverside area on March 1 and effective July 1 of each year. In addition, the Council may order the assessment against the

cash bond required by Section 7A, above, the termination of the Franchise Agreement, or both.

- (3) The City finds, and the Grantee acknowledges and agrees that the above described liquidated damages provisions represent a reasonable sum in light of all the circumstances. Said liquidated damages sums shall be applicable to each business day of delay during which Grantee has been found by the City Council to be in material default pursuant to this Section. The Grantee shall pay any liquidated damages assessed by the City Council within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withdraw them from the security fund established by the cash bond required by Section 7A, above, order the termination of the franchise granted by this Franchise Agreement, or both.

- G. Cooperation During Transition. In the event Grantee's early termination of this Franchise Agreement, Grantee shall cooperate fully with City and any subsequent grantee(s) to assure a smooth transition of services described in this agreement, including transfer of records (including but not limited to computer data, files, and tapes); complete routing information, route maps, vehicle fleet information, and customers billing lists; providing other reports and data required by this agreement; and coordinating with City and any subsequent grantee(s) with respect to exchanging containers. With respect to the exchange of container, if the Grantee provided containers, Grantee 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 (3) months after the termination of this agreement. Such obligations of Grantee shall survive the termination of this agreement.

## **SECTION 12. ADMINISTRATIVE HEARING PROCEDURES.**

- A. Should Grantee contend that the City is in breach of this Franchise Agreement, it shall file a written request with the City Manager for an administrative hearing on the allegation, within fourteen (14) days of the alleged breach or of Grantee's notice thereof.
- B. If either the City Manager or the City Council refers a matter to a hearing officer, or if the Grantee should allege a breach of the franchise by the City, city and Grantee shall mutually agree on a hearing officer. If agreement is not reached within twenty (20) working days of the filing of the notice of appeal, then Grantee shall select the hearing officer from a list of three potential hearing officers who are retired California Superior Court judges or Appellate Court justices, none of whom are related to the parties, prepared by the City Manager and approved by the City Council.

- C. The hearing shall be conducted according to California Code of Civil Procedure Section 1280, et seq. The exclusive venue shall be in San Bernardino County, California. A hearing officer to whom a matter is referred shall have the authority to 1) order the City or the Grantee to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; 2) assess damages and/or levy a penalty upon the Grantee consistent with the terms of this' Franchise Agreement; or 3) find there has been no breach. If the hearing officer finds there has been no breach, such a decision precludes the City from conducting a default hearing. For any occurrence or series of related occurrences, the penalty may be up to Five Thousand Dollars (\$5,000.00). The amount of the penalty shall be reasonably related to the seriousness of the breach of the Franchise Agreement, and may be levied in addition to damages.
- D. The party losing the hearing shall be liable for the hearing officer's fees.
- E. Any failure of the Grantee to comply with the hearing officer's order shall be deemed a material breach of the Franchise Agreement, and may be grounds for termination of the Franchise Agreement.
- F. The bearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights. Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure Section 1283.05 shall apply.
- G. Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.
- H. Until final decision is entered from the bearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in the Franchise Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon a finding that the party subject thereto acted with substantial justification or if the interest of justice so require.

- I. Any party to a hearing may petition the Superior Court in San Bernardino County, California to confirm, correct, or vacate the award on the grounds stated in the General Arbitration Act. Any proceedings on appeal shall be in accordance with Code of Civil Procedures § 1294 and § 1294.2.

**SECTION 13. CITY’S ADDITIONAL REMEDIES.**

In addition to the remedies set forth in Section 11 and 12, above, City shall have the following rights and remedies:

- A. To rent or lease equipment from Grantee at its fair and reasonable rental value for the purpose of collecting, transporting, recycling, composting, and disposing of Solid Waste and construction debris and providing temporary Bin/Rolloff Box services which Grantee is obligated to collect, transport, recycle, compost, and dispose of Solid Waste and construction debris and provide temporary Bin/Rolloff Box services pursuant to this Franchise Agreement, for a period not to exceed six (6) months, In the case of equipment not owned by Grantee, Grantee shall assign to City, to the extent Grantee is permitted to do so under the instruments pursuant to which Grantee possesses such equipment, the right to possess the equipment. If City exercises its rights under this Section, City shall pay to Grantee the reasonable rental value of the equipment so taken for the period of City’s possession thereof;
- B. The right to license others to perform the services otherwise to be performed by Grantee hereunder, or to perform such services itself; and
- C. The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach-under the terms of this Franchise Agreement by Grantee, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Franchise Agreement and to enjoin the breach thereof.

**SECTION 14. RIGHTS OF CITY TO PERFORM DURING EMERGENCY.**

- A. Should Grantee, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 26A, “Force Majeure,” below, refuse or be unable to collect, transport, recycle, compost, and dispose of Solid Waste and construction debris and provide temporary Bin/Rolloff Box services any or all of the refuse, compostables, and recyclables which it is obligated under this Franchise Agreement for a period of more than seventy-two (72) hours, and if as a result thereof, debris, refuse, compostables, recyclables, and construction debris should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety, or welfare, then in such event City shall have the right, upon twenty-four (24) hour prior written notice to Grantee, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Grantee previously used in the collection, transportation,

recycling, composting, and disposal of Solid Waste and construction debris and provide temporary Bin/Rolloff Box services under this Franchise Agreement, and to use such equipment and facilities to collect, recycle, compost, and transport any or all debris, refuse, compostables, recyclables, and construction debris and provide temporary Bin/Rolloff Box services which Grantee would otherwise be obligated to collect, recycle, compost, transport, and dispose of Solid Waste and construction debris and provide temporary Bin/Rolloff Box services pursuant to this Franchise Agreement. Grantee agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

- B. Grantee agrees that, in such event, City may take temporary possession of and use all of said equipment and facilities without paying Grantee any rental or other charge, provided that City agrees that, in such event, it assumes complete responsibility for the proper and normal use-of such equipment and facilities. City agrees that it shall immediately relinquish possession of all of the above mentioned property to Grantee upon receipt of written notice from Grantee to the effect that is able to resume its normal responsibilities under this Franchise Agreement.

**SECTION 15.           PRIVACY.**

- A. Grantee shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Grantee from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939.
- B. Grantee shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of customers.
- C. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State law.

**SECTION 16.           REPORTS AND ADVERSE INFORMATION.**

- A. Annual Reports. The City shall require that within sixty (60) days after the close of Grantee's fiscal year, the Grantee shall submit a written annual report, in an auditable form approved by the City, including, but not limited to, the following information:
  - (1) A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class of service;

- (2) A report, in a form satisfactory to the City, on the City's progress in meeting, and maintaining its ability to meet its goals, under AB 939, along with any recommended changes.
  - (3) A revenue statement, setting forth quarterly Franchise Fees and the basis for the calculation thereof, certified by an officer of the Grantee;
  - (4) A revenue statement setting forth quarterly revenue received from the sale of recyclables collected pursuant to this Agreement.
  - (5) A list of Grantee's officers and members of its board of directors.
  - (6) A list of stockholders or other equity investors holding five percent (5%) or more the voting interest in the Grantee and any subsidiaries unless Grantee is a public corporation whose annual reports are publicly available.
- B. AB 939 Reporting. Grantee shall be responsible for the preparation of all reports required under AB 939. This shall include development of all data and reports required by the Integrated Waste Management Board. Reports will be prepared and delivered to the City in a form acceptable to the City.
- C. Adverse Information. Grantee shall provide City two copies of all reports, or other material adversely affecting the Franchise Agreement, submitted by Grantee to the EPA, the California Integrated Waste Management Board, or any other Federal or State agency. Copies shall be submitted to City simultaneously with Grantee's filing of such matters with said agencies. Grantee's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request, as provided in Section 24, below.
- (1) The Grantee shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind, submitted by the Grantee to, as well as copies of all decisions, correspondence, and actions by, any Federal, State, and local courts, regulatory agencies, and other government bodies relating specifically to Grantee's performance of services pursuant to this Franchise Agreement. Any confidential data exempt from public disclosure by State or Federal law shall be retained in confidence by the City and its authorized agents and City shall make every reasonable effort to ensure that it is not made available for public inspection, except that City shall not incur liability for its inadvertent disclosure of such information.
  - (2) Grantee shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.

- (3) All reports and records required under this or any other section shall be furnished at the sole expense of the Grantee.
  - (4) A copy of each of Grantee's annual and other periodic public financial reports and those of its parent, subsidiary, and affiliated corporation and other entities, as the City requests, shall be submitted to the City within thirty (30) days after receipt of a request.
- D. Street Sweeping Reports and Records. Grantee shall periodically prepare and submit to the City such reports concerning Grantee's performance of street sweeping services required by this Agreement as the City Manager shall require. Grantee shall keep such books and records as shall be necessary to perform the street sweeping services required by this Agreement and enable the City to comply with City's National Pollutant Discharge Elimination System permit(s). The City Manager shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, and make records and transcripts from such records.
- E. Failure to Report. The refusal, failure, or neglect of the Grantee to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by the grantee in such report shall be deemed a material breach of the Franchise Agreement, and shall subject the Grantee to all remedies, legal or equitable, which are available to, the City under the Franchise Agreement or otherwise.

**SECTION 17. ANNUAL REVIEW OF PERFORMANCE, QUALITY OF SERVICE, AND SYSTEM AND SERVICE REVIEW.**

- A. At City's sole option, within ninety (90) calendar days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, City may hold a public hearing at which the Grantee shall be present and shall participate, to review the Grantee's performance and quality of service. The reports required by this Franchise Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.
- B. Within thirty (30) calendar days after the conclusion of the public hearing, City may issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the franchise is found, City may direct Grantee to correct the inadequacies in accordance with Sections 11 and 12, above.
- C. At City's sole option, City may hold a public hearing, at which the Grantee shall be present and shall participate, to review the refuse collection and recycling system and services.

- D. Annually, and at any time after receiving notice from the City, the Grantee shall, within sixty (60) calendar days, submit a report to City indicating the following:
- (1) All refuse collection, composting, and recycling services reported in refuse collection, and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided to City; and
  - (2) Changes recommended to improve the City's ability to meet the goals of AB 939 and any subsequent Legislation.
  - (3) Any specific plans for provision of such new services by the Grantee, or a justification indicating why Grantee believes that such services are not feasible for the Franchise Area.
  - (4) A report on the value or recyclables, the revenue obtained through the sale of recyclables, and the expense of collecting and transporting the recyclables.
- E. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB 939 goals and regulatory constraints.
- F. City and the Grantee may each select additional topics for discussion at any systems and services review hearing.
- G. Not later than sixty (60) days after the conclusion of each system and service review hearing, City shall issue a report. The report shall include a listing of any refuse collection, and recycling services not then being provided to City that are considered technically and economically feasible by City. City may require Grantee to provide such services within a reasonable time, for reasonable rates and compensation.

## **SECTION 18. COMPENSATION**

- A. Grantee Rates. Grantee shall provide the services described in this Franchise Agreement in accordance with the rates fixed by City from time to time, all as described as set forth in the Exhibit "A", "Schedule of Rates", as those rates may be amended by resolution of City Council.
- B. Modification and Adjustment of Rates. Except as provided in Exhibit "A", the rates set forth on Exhibit "A" shall remain in effect until adjusted by City by a Resolution of the City Council.

- C. Basis for Adjustment of Rates and Fees. Based on a finding that revenues from sales of recyclables have been increased or decreased, upon sixty (60) days' notice to Grantee of the proposed change in rates, City Council may adopt a resolution adjusting rates proportionate to the increased or decreased cost or sales of recyclables.
- D. Notice of Rate Increases. The Grantee shall provide the City and customers, written notice of the implementation of changes in any of its rates and charges which are not subject to regulation by the City. The notice shall include a statement of the reasons for the rate increase.
- E. Resolution of Disputes Regarding Rate Adjustments. Any dispute regarding the Annual Rate Adjustment and Landfill Tipping Fee adjustment, or the computation thereof, described in Exhibit "A", or any other dispute regarding Grantee's reimbursement for fees, special services, or extraordinary costs described in Exhibit "A", shall be decided by the City Manager, or referred by the City Manager to the City Council, or to a hearing officer as provided in Section 12 above. The rates in effect at the time such dispute is submitted to the City Manager, City Council, or a hearing officer shall remain in effect pending resolution of such dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall reasonably be determined by the City Manager, City Council, or the hearing officer, as appropriate.
- F. Billing and Payment.
- (1) Residential Customers. The City shall conduct proceedings as required by law to place the Solid Waste Services charge for Residential Premises on the property tax rolls beginning the fiscal year 2018-2019 and continuing thereafter. Any administrative fee or charge on the property tax rolls incurred due to the placement of the Solid Waste Services charge shall not be billed to or borne by any residential customer. Payment shall be made by City to Grantee within thirty (30) days after the City's receipt of revenue from the tax rolls for Solid Waste Services from the County Tax Collector. If, for any reason, billing for a Customer at a Residential Premises is not placed on the tax rolls as contemplated by the parties herein, such Customer shall be billed for services by Grantee in the same manner as other Customers, as set forth herein below. The maximum rate Grantee may charge Customers at a Residential Premises that are billed "directly" rather than through the tax rolls shall be as indicated on the attached Exhibit A.
  - (2) Commercial, Industrial, Construction, and Multi-Family Residential Customers. In connection with any Customer not billed on the County tax rolls for services provided hereunder, Grantee shall provide itemized bills for Solid Waste Handling Services, distinctly showing charges for all classifications of services, including charges

for late payments. Billings shall be made monthly for Commercial and Multi-Family Customers. Customers may be billed in advance of, or subsequent to services being provided at the option of Grantee.

- G. Payment Drop-off Locations. Until such time as the Solid Waste Services charges are placed on the property tax rolls, Grantee shall provide its Residential customers a payment drop box at City Hall, at no additional cost, to the City or customers within the City limits.
- H. Delinquent Accounts. All accounts and billings shall indicate that notice has been given to the current and responsible property owner of record of the account and that any unpaid or delinquent bills may become a lien against the property. Grantee shall be responsible for payment to City of all franchise fees deemed uncollectible because of Grantee's failure to properly notify the property owner.
- I. Refunds. Grantee shall refund to each customer, on a pro rata basis, any advance service payments made by such customer for service not provided when service is properly terminated by the customer.

#### **SECTION 19. COLLECTION EQUIPMENT.**

- A. Grantee shall provide an adequate number of vehicles and equipment for the collection, transportation, recycling, and disposal of Solid Waste for which it is responsible under this Franchise Agreement. The equipment of Grantee used under this Franchise Agreement shall be subject to inspection by City on a semiannual basis but shall not be subject to any permit fees therefor. Said inspection shall be conducted by the City of Highland Police Department or other agency as approved by the City Manager.
  - (1) All vehicles used by Grantee under this Franchise Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair and shall be uniformly painted. A sufficient supply of parts must be kept on hand to ensure timely and continuous fulfillment of this Franchise Agreement.
  - (2) All Carts, Bins and Rolloff Boxes provided shall be kept in a reasonable condition and appearance, and graffiti shall be removed within forty-eight (48) hours of notification.
  - (3) Grantee has agreed to name the specific organization that shall provide all of the services under this Franchise Agreement, Burrtec Waste Industries, Inc. This name shall be used for all correspondence, billing statements, directory listings, references, signs, vehicle identification, public education material, etc.
  - (4) Solid Waste collection vehicles shall be washed at least once every seven (7) calendar days.

- (5) Burrtec Waste Industries, Inc., a local or toll free telephone number, and vehicle number shall be visibly displayed on all vehicles in letters and figures no less than five inches (5”) high. All refuse collection vehicles shall display the words “Serving the City of Highland” in letters no less than five inches (5”) high.
- (6) Grantee shall design, with the aid of the City, and produce interchangeable signs containing messages designed to alert the public to special Solid Waste diversion programs in English and Spanish. Grantee shall install such City-approved signage on collection vehicles no later than six (6) months after the effective date of this Agreement. New signage must be introduced annually.
- (7) Accident, Vehicle Fire, and Spill Containment Plan. All vehicles used by Grantee under this Franchise Agreement shall be equipped with emergency equipment applicable to suppress a vehicle fire, and the containment of hydraulic and motor oil spills. An Accident, Vehicle Fire, and Spill Containment Plan shall be established by the Grantee and presented to the City for approval. Grantee shall be responsible for training all drivers used under this Franchise Agreement on the proper emergency procedures outlined in said plan.
- (8) Service Assets. Grantee shall finance, procure, repair, and maintain, at its own cost and expense and without any compensation in excess of its service fee, service assets in sufficient number, design and capacity to enable Grantee to perform services without interruption in accordance with the terms of this Franchise Agreement.

**SECTION 20. PUBLIC ACCESS TO GRANTEE.**

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

Grantee shall provide City with a current emergency telephone number of Grantee’s key personnel for use by City personnel during other than normal office or telephone hours. City shall maintain the confidentiality of said telephone numbers.

B. Service Complaints.

- (1) All customer complaints shall be directed to Grantee. Grantee shall record all complaints received by mail, by telephone, or in person (including date, name address of complainant, and nature of complaint). Grantee agrees to use its best efforts to resolve all complaints by close of business of the second business (waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City Manager. Unless a settlement satisfactory to complainant, the Grantee, and the City Manager is reached, the complainant may refer the matter to the City Council for review.
- (2) Grantee shall maintain records listing the date of consumer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Grantee to resolve the complaint. All such records shall be maintained and shall be available for inspection by City, as described in Section 24. Grantee shall prepare monthly summaries of consumer complaints. The summaries shall be available and delivered monthly to the City Manager.

C. Government Liaison Person. The Grantee shall designate a “government liaison person” who shall be responsible for working with the City Manager to resolve customer complaints.

D. Quality of Life Task Force. The Grantee shall designate a representative who shall participate in the City’s Quality of Life Task Force.

**SECTION 21. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS.**

- A. The Grantee shall notify customers of this complaint resolution procedure at the time customers apply for or are provided service.
- B. A customer dissatisfied with Grantee’s decision regarding a complaint may ask the City to review the complaint. To obtain this review, the customer must request City review within 30 days of receipt of Grantee’s response to the Complaint, or within 45 days of submitting the complaint to the Grantee, if the Grantee has failed to respond to the complaint. The City may extend the time to request its review for good cause.
- C. Before reviewing the complaint, the City Manager shall refer it to the Grantee. If the Grantee fails to cure the complaint within ten (10) days, the City Manager shall review the customer’s complaint and determine if further action is warranted. The City Manager may request written statements from the Grantee and customer, and/or oral presentations.

- D. The City Manager shall determine if the customer's complaint is unresolved, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach.
- E. The City Manager may delegate these duties to a designee. The decision of the City Manager or his designee shall be final on any matter under Five Thousand Dollars (\$5,000.00). In the event of a decision on a matter awarding five thousand dollars (\$5,000) or more, Grantee may seek review pursuant to Section 12, above.

**SECTION 22. OWNERSHIP OF SOLID WASTE.**

Once refuse, compostables, recyclables, and construction debris are placed in Bins/Rolloff Boxes for collection, or containers at curbside, ownership shall transfer directly to Grantee, subject to the terms of this Franchise Agreement, by operation of law. Subject to Grantee's duty to meet the source reduction and recycling goals which apply to City, Grantee is hereby granted the right to retain, recycle, compost, dispose of, and otherwise use such refuse, compostables, recyclables, street and construction debris, or any part thereof, in any lawful fashion or for any lawful purpose desired by Grantee. Subject to the provisions of this Franchise Agreement, Grantee shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of, or use the refuse, compostables, recyclables, and street and construction debris which it collects. Refuse, compostables, recyclables, street and construction debris, or any part thereof, which is disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station, or material recovery facility) shall become the property of the owner or operator of the disposal site or sites once deposited there by Grantee. At no time does City obtain any right of ownership or possession of Solid Waste placed for collection, and nothing in this Franchise Agreement shall be construed as giving rise to any inference that City has any such rights. Grantee shall conduct an annual rate audit and recommend, if necessary, a rate adjustment, including a reduction in rates to reflect an increase in the value of recyclables.

**SECTION 23. INDEMNIFICATION AND INSURANCE.**

- A. Indemnification of City. Grantee agrees that it shall protect, defend with counsel approved by City, indemnify, and hold harmless City, its officers, employees, and agents and at no cost to City, from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, or judgments, including attorney's fees, arising out of or resulting in any way from Grantee's exercise of this franchise, unless such claim is due to the sole negligence or willful acts of the City, its officers, employees, agencies, or contractors, or from the City's grant of this franchise to Grantee. Subject to the scope of this indemnification and upon demand of the City, made by and through the City Attorney, the Grantee shall appear in and defend the City and its officers, employees, and agents in any claims or actions, whether judicial, administrative, or otherwise arising out of the exercise of the Franchise Agreement. This provision is in addition to all other provisions of this Agreement and is intended to survive the end of the term of this Agreement. Grantee further agrees that it shall promptly compensate City for all damage to city property from the activities permitted under this Franchise Agreement. Grantee further agrees that it will indemnify and defend City with

counsel of City's choice, its officers, employees, and agents and at no cost to City, from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities, or judgments, including attorney's fees, in any challenge to either the award of this contract, or to the City's decision to place Solid Waste Service Charges on the tax rolls.

- B. Indemnification of Grantee. The City shall indemnify, defend and hold the Grantee, its affiliates and their respective officers, directors, employees, and shareholders harmless from and against any and all liabilities, losses, damages, claims, actions, causes of action, judgments, costs, and expenses (including reasonable attorneys' fee) arising from or in any manner related to the sole negligence or willful acts of the City, its officers, employees, agents, or contractors. Subject to the scope of this indemnification and upon demand of the Grantee, made by and through its Attorney, the City shall appear in and defend the Grantee and its officers, employees, and agents in any claims or actions, whether Judicial, administration, or otherwise arising out of the exercise of the Franchise Agreement.
- C. Household Hazardous Substances Indemnification. To the full extent permitted by law, Grantee shall indemnify, defend with counsel approved by City, protect and hold harmless City, its officers, employees, agents, assigns, and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees, agents, or Grantees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any household hazardous substance or household hazardous wastes at any place where Grantee stores or disposes of municipal Solid Waste or construction and street debris pursuant to this Franchise Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, among other laws, to insure, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provisions of this Agreement and is intended to survive the end of the term of this Agreement.
- D. AB 939 Indemnification. City agrees in good faith, subject to the request of Grantee, to take those actions necessary to adopt the regulations and/or measures necessary to provide for customer compliance with AB 939 to the maximum extent permitted by law. Grantee agrees to protect, defend, with counsel approved

by City, and indemnify City against all fines or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and recycling goals or any other requirement of AB 939 are not met by City with respect to the waste stream covered by this Franchise Agreement, or Grantee's delays in providing information to prevent City from submitting reports required by AB 939 in a timely manner. Grantee further agrees at no cost to City, to appear and represent the City in any appeals proceedings and/or litigation brought against City for alleged failure to comply with AB 939. One year prior to each compliance reporting date (or at any time prior to the reporting date within that one year period) pursuant to AB 939, if in the opinion of the City, based upon information provided by the Grantee and the State of California, the City is not reasonably convinced that the Grantee will attain compliance, the City may require Grantee to provide a performance bond in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) until such time as compliance is attained.

- E. Workers' Compensation Insurance. Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Franchise Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, agents, or Grantees for losses which arise from work performed by the persons insured for the City.
- F. Public Liability Insurance. Grantee shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of FOUR MILLION DOLLARS (\$4,000,000.00) aggregate and ONE MILLION DOLLARS (\$1,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding \$200,000.00 per occurrence. Said insurance shall protect Grantee and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by Grantee itself, or by its agents, employees, and/or subgrantees. Copies of the policies or endorsements evidencing the above required insurance coverage shall be filed with the City Clerk. All of the following endorsements are required to be made a part of the insurance policies required by this Section:
- (1) "The City, its employees, agents, Grantees, and officers, are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Grantee."

- (2) “This policy shall be-considered primary insurance as respects any other valid and collectible insurance the city may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it.”
- (3) “This insurance shall act for each insured, as though a separate policy had been written for each. This, however, shall not act to increase the limit of liability of the insuring company.”
- (4) “Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits, or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Clerk.”

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time and match the coverage provided by the City’s own liability insurance policy. The City shall be included as a named insured on all policies and endorsements.

- G. Modification. The insurance requirements provided herein may be modified or waived in writings by the City Council upon the request of Grantee, or in the sole discretion of the City, provided the City Council determines such modification or waiver is in the best interests of City considering all relevant factors, including the fact that the parent of Grantee may be self-insured up to a certain acceptable amount.

#### **SECTION 24. COMPLIANCE WITH ADOPTED WASTE DISPOSAL AGREEMENT**

- A. The terms of the Waste Disposal Agreement entered into on July 10, 2001 by the City with the County of San Bernardino shall be incorporated herein in full as a part of this Franchise Agreement, grantee shall comply with all obligations imposed on the City’s waste hauler by the Waste Disposal Agreement. Grantee shall have the right to review and comment on any successive proposed Waste Disposal Agreement contemplated by the City with any other agency or landfill prior to its adoption by the City. However, upon acceptance by the City of any waste Disposal Agreement and/or Waste Disposal Covenant, and upon receipt of final executed copy of such Agreement and/or Covenant, the terms of which shall be incorporated herein in full as a part of this Franchise Agreement, grantee shall comply with all obligations imposed on the City’s waste hauler by the Waste Disposal Agreement or Waste Disposal Covenant.
- B. In the event that any new Waste Disposal Agreement would result in increased costs to Grantee in the performance of Grantee’s obligations hereunder, Grantee shall be entitled to a modification of the rates charged hereunder which will compensate Grantee for such increases in costs. Grantee shall be entitled only to

such modifications as will offset the actual cost increases incurred by Grantee as a result of the new Waste Disposal Agreement or Waste Disposal Covenant.

- C. Noncompliance by the Grantee with the requirements of any such waste Disposal Agreement or Waste Disposal Covenant shall result in suspension, revocation and/or termination of Grantee's collection of rights and privileges and/or imposition of fines or collection of damages, and the exercise of injunctive relief for noncompliance by Grantee with the requirements of the Waste Disposal Agreement, subject to the provisions of Section 11 herein.
- D. Grantee further agrees to and shall indemnify and hold harmless the City for Grantee's failure to comply with the terms of any such Waste Disposal Agreement and/or Waste Disposal Covenant in accordance with Section 24 herein.

**SECTION 25. GRANTEE'S BOOKS AND RECORDS: AUDITS.**

- A. Grantee shall maintain in auditable form all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, accounts receivable records, maps, AB 939 compliance records, and customer complaints, for the full term of this Franchise Agreement, and an additional period of not less than three (3) years, or any longer period required by law or by the City. The City shall have the right, upon five (5) business days advance notice, to inspect all maps, AB 939 compliance records, customer complaints, and other like materials of the Grantee which reasonably relate to Grantee's compliance with the provisions of the Franchise Agreement. Such records shall be made available to City at Grantee's regular place of business, but in no event outside the County of San Bernardino.
- B. Should any examination or audit of Grantee's records reveal an underpayment of any fee required under this Franchise Agreement, the amount of such underpayment shall become due and payable to City (with interest) not later than fifteen (15) days after written notice of such underpayment is sent to Grantee by City. Should any underpayment of more than three percent (3%) be discovered, Grantee shall bear the entire cost of the audit.

**SECTION 26. GENERAL PROVISIONS.**

- A. Force Majeure. Grantee shall not be in default under this Franchise Agreement in the event that the temporary Bin/Rolloff Box services and the collection, transportation, recycling, composting, and disposal of Solid Waste and street and construction debris provided by the Grantee are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, and fires, strikes, lockouts, and other labor disturbances or other catastrophic events which are beyond the reasonable control of Grantee. Other catastrophic events do not include the financial inability of the Grantee to

perform or failure of the Grantee to obtain any necessary permits or-licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Grantee. In the event a labor disturbance interrupts temporary Bin/Rolloff Box services and the collection, transportation, recycling, composting, and disposal of Solid Waste and street and construction debris by Grantee as required under this Franchise Agreement, City may elect to exercise its rights under Section 14 of this Agreement.

- B. Independent Contractor. Grantee is an independent contractor and not an officer, agent, servant, or employee of City. Grantee is solely responsible for the acts and omissions of its officers, agents, employees, Grantees, and subgrantees, if any. Nothing in this Franchise Agreement shall be construed as creating a partnership or joint venture between City and Grantee. Neither Grantee nor its officers, employees, agents, or subgrantees shall obtain any rights to retirement or other benefits which accrue to City employees.
- C. Pavement Damage. Grantee shall be responsible for any damage, due to Grantee's negligence, to City's driving surfaces or other City property, whether or not paved, resulting from the weight and/or mechanical condition of the vehicles providing services under this Agreement.
- D. Property Damage. Any physical damage to public or private property, or other City property caused by the negligent or willful acts or omissions of Grantee, its employees, agents, or subgrantees shall be repaired or replaced by Grantee.
- E. Right of Entry. Grantee shall have the right, until receipt of written notice revoking permission to pass is delivered to Grantee, to enter or drive on any public or private street, court, place, easement, or other private property necessary for the purpose of providing temporary Bin/Rolloff Box services and the collection, transportation, recycling, composting, and disposal of Solid Waste and construction and street debris pursuant to this Franchise Agreement.
- F. Law to Govern: Venue. The- law of the State of California shall govern. this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of San Bernardino. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Central District of California.
- G. Fees and Gratuities. Grantee shall not, nor may it permit any agent, employee, or subgrantee employed by it to, request, solicit, or demand, either directly or indirectly, any compensation or gratuity for street sweeping and temporary Bin/Rolloff Box services and the collection, transportation, recycling, composting, and disposal of Solid Waste and construction and street debris except as otherwise required under this Franchise Agreement.

- H. Prior Agreement and Amendment. This Franchise Agreement is intended to carry out City's obligations to comply with the provisions of the California Integrated Waste Management Act of 1989, ("AB 939") as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board ("Regulations"), as they from time to time may be amended. In the event that AB 939 or other State or Federal laws or regulations enacted after this Franchise has been enacted, prevent or preclude compliance with one or more provisions of this Franchise Agreement, such provisions of the Franchise shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. Except as otherwise provided herein, no other amendment of this Franchise Agreement shall be valid unless in writing duly executed by the parties. Any modification or amendment maybe subject to rate modifications as provided by Section 18.
- I. Compliance with Franchise Agreement. Grantee shall comply with those provisions of the San Bernardino County Code as adopted by the City of Highland, as well as any ordinances, resolutions or regulations enacted by the City of Highland which are applicable and with any and all amendments to such applicable provisions during the term of this Franchise Agreement.
- J. Notices. All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by telecopier (fax), or United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City: Joseph A. Hughes, City Manager  
 CITY OF HIGHLAND  
 27215 Base Line  
 Highland, CA 92346  
 Facsimile (909) 862-3180

Copy To: Craig Steele, City Attorney  
 RICHARDS, WATSON & GERSHON  
 355 South Grand Avenue, 40th Floor  
 Los Angeles, CA 90071-3101  
 Facsimile (213) 626-0078

To Grantee: Michael Arreguin, Vice President  
 BURRTEC WASTE INDUSTRIES, INC.  
 9890 Cherry Avenue  
 Fontana, CA 92335  
 Facsimile (909) 429-4290

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

K. Savings Clause and Entirety. If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement. If any material provision of this Franchise Agreement shall be held to be invalid or unenforceable, the entire Franchise Agreement may be declared by either party to be terminated and void subject to those rights which may have existed prior to the date of this Agreement.

- (1) If any clause, sentence, provision, subsection, Section hereof or Exhibit hereto shall be ruled invalid by any court of competent jurisdiction, then the City and Grantee shall:
  - (a) 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 City and Grantee therein;
  - (b) if necessary or desirable to accomplish preceding item (a) above, apply to the court having declared such invalidity for a judicial construction of the substituted portion of this agreement; and
  - (c) 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 (a) and (b) above to effect the intent of the City and Grantee in the invalid provision.

L. Interpretation. This Agreement shall be interpreted and construed reasonably and neither for nor against City or Grantee, regardless of the degree to which City or Grantee participated in its drafting. Grantee acknowledges that it determined to participate in the procurement of this Agreement upon its choice and initiative with full knowledge of the terms and conditions. The City and Grantee have negotiated this Agreement at arm's 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.

M. Incorporated. Exhibits "A" and "B" are attached to and incorporated into this Franchise Agreement by reference.

N. Identification Required.

- (1) Grantee shall provide its employees, Grantees, and subgrantees with identification for all individuals who may make personal contact with residents of the City.

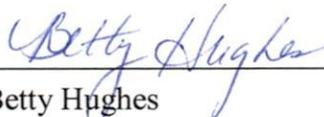
- (2) The Grantee shall provide a list of current employees, Grantees, and subgrantees to the City upon request. The City may require the Grantee to notify customers yearly of the form of said identification.

WITNESS the execution of this Agreement on the day and year written above.

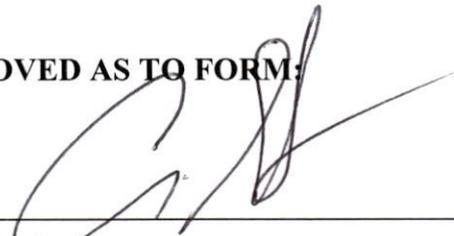
**CITY OF HIGHLAND**

By:   
Larry McCallon, Mayor

**ATTEST:**

  
Betty Hughes  
City Clerk

**APPROVED AS TO FORM:**

  
Craig Steele  
City Attorney

**BURRTEC WASTE INDUSTRIES, INC.**

  
Cole Burr, President  
BURRTEC WASTE INDUSTRIES, INC.

**EXHIBIT "A"**  
**CITY OF HIGHLAND**  
**SOLID WASTE COLLECTION RATES**

**CITY OF HIGHLAND  
2016 RATE**

Service Type		Rate	Service Type		Rate
<b>Residential Barrel Service</b>			<b>Commercial Barrel Service (trash &amp; recycling barrels)</b>		
Trash Service (1st unit)		\$ 23.91	96-gallon trash barrel		\$ 39.11
Trash Service (senior)		\$ 19.13	Extra trash barrel		\$ 10.57
Trash Service (second units)		\$ 23.57	Extra recycling barrel		\$ 10.59
Additional trash barrel		\$ 8.15	<b>Commercial Trash Service</b>		
Additional recycling barrel		\$ 2.04	Size	Freq	
Additional green waste barrel		\$ 4.08	1.5	1	\$ 125.70
<hr/>			1.5	2	\$ 191.75
Temporary Bins		\$ 103.29	1.5	3	\$ 248.37
Temporary Bins - Extra Pick-Up		\$ 62.81	1.5	4	\$ 313.65
Lock (initial set-up)		\$ 30.58	1.5	5	\$ 378.93
Lock rental (monthly)		\$ 7.14	1.5	6	\$ 445.70
Extra pick-up (barrel)		\$ 15.80	2	1	\$ 140.82
Extra pick-up (bin)		\$ 40.26	2	2	\$ 219.25
<hr/>			2	3	\$ 296.90
<b>Additional Commingled Recycling Bins (new program)</b>			2	4	\$ 376.55
1.5	1	\$ 97.21	2	5	\$ 456.17
1.5	2	\$ 135.92	2	6	\$ 537.48
3	1	\$ 116.73	3	1	\$ 172.19
3	2	\$ 162.59	3	2	\$ 272.12
3	3	\$ 207.52	3	3	\$ 371.08
<hr/>			3	4	\$ 469.97
<b>Green Waste Bin Service</b>			3	5	\$ 568.87
1.5	1	\$ 69.55	3	6	\$ 669.89
3	1	\$ 139.06	4	1	\$ 204.80
<hr/>			4	2	\$ 337.72
<b>Roll-Offs (Trash)</b>			4	3	\$ 455.48
20 yard (5 tons)		\$ 498.75	4	4	\$ 655.25
40 yard (5 tons)		\$ 498.75	4	5	\$ 706.16
40 yard compactor (7 tons)		\$ 609.17	4	6	\$ 830.43
Demo box (7 tons)		\$ 609.17	6	1	\$ 247.31
Green waste box (5 tons)		\$ 446.30	6	2	\$ 424.53
10 yard C&D (plus disposal)		\$ 222.69	6	3	\$ 601.74
40 yard Green Waste (+ disposal)		\$ 222.69	6	4	\$ 778.94
End Dump (Hourly Rate)		\$ 185.92	6	5	\$ 956.11
Excess disposal		\$ 55.21	6	6	\$ 1,133.31
Excess green waste		\$ 44.01	<b>Commercial Compactor Trash Service</b>		
Rental fee (per day in excess of 7 days)		\$ 28.23	2	1	\$ 198.94
Relocation/extra trip charge		\$ 65.00	2	2	\$ 302.90
<hr/>			2	3	\$ 405.85
<b>Commercial Food Waste Service</b>			2	4	\$ 504.39
Bin Size	Freq		2	5	\$ 603.03
1.5	1	\$ 175.86	2	6	\$ 701.83
1.5	2	\$ 306.92	3	1	\$ 238.48
1.5	3	\$ 428.91	3	2	\$ 367.62
1.5	4	\$ 549.72	3	3	\$ 496.73
1.5	5	\$ 669.19	3	4	\$ 626.29
1.5	6	\$ 788.95	3	5	\$ 755.08
2	1	\$ 217.96	3	6	\$ 884.20
2	2	\$ 394.92	4	1	\$ 279.15
2	3	\$ 558.70	4	2	\$ 440.65
2	4	\$ 723.66	4	3	\$ 601.22
2	5	\$ 913.92	4	4	\$ 761.72
2	6	\$ 1,051.71	4	5	\$ 923.23
Barrel Size	Freq		4	6	\$ 1,084.71
65Gal	1	\$ 63.62			
65Gal	2	\$ 116.39			
65Gal	3	\$ 165.71			
65Gal	4	\$ 215.32			
65Gal	5	\$ 271.62			
65Gal	6	\$ 314.07			

ADDITIONAL SPECIAL SERVICE RATES

1. Excess bulky item beyond the five (5) free items during the four (4) free annual pickups is ten dollars (\$10.00) per item. Any additional bulky item pickups after the first two (2) free trips shall be charged a thirty-five dollar (\$35.00) trip charge and ten dollars (\$10.00) per item.
2. Additional Carts shall be billed the following per month per cart:
  - Refuse - \$8.15
  - Greenwaste - \$4.08
  - Recycle - \$2.04

If a resident requires an additional Cart it they must keep it for at least four (4) months. If the resident desires to return the Cart prior to the required four (4) month period they will be charged a \$20.00 restocking fee.

3. If a Grantee is required to return to a residence to service the carts due to the carts not being placed out for pick-up timely the account will be charged a ten dollar (\$10.00) trip charge.
4. If a resident requests a Cart to be replaced that is not damaged or a Cart to be cleaned by the Grantee the resident shall be charged twenty dollars (\$20.00). This shall include graffiti removal.
2. Special cleanup services by pickup truck requested by and customer shall be charged at \$40.00 per hour plus any applicable landfill fees. If a compactor refuse truck is necessary, the charge shall be \$60.00 per-hour plus any applicable landfill fees.
3. "Senior Citizen Rates," equivalent to twenty percent (20%) discount to individuals that meet the following criteria;
  - a. Over sixty (60) years of age
  - b. Residing head of household
  - c. Single Family residence
  - d. Applies to Grantee and provides proof of items a-c.
4. Exemption from mandatory service shall be in accordance with the Ordinance and resolutions.

## ANNUAL ADJUSTMENT OF RATES

As of July 1st of each year, the above refuse rates shall be adjusted as follows:

1. The landfill fee portion of each rate designated above shall be adjusted in accordance with an increase or decrease percentage to correspond with any increase or decrease percentage in the landfill fee charged by the County of San Bernardino.
2. The Operator Fee shall be adjusted based on the change in the "Consumer Price Index, Los Angeles-Anaheim (Unadjusted), All Urban Consumers, All Items" (CPI) as published by the Bureau of Labor Statistics until 2020 and then the "Consumer Price Index, Ontario/Riverside/San Bernardino, All Urban Consumers, All Items" shall be used. Any adjustment in excess of 5% shall be subject to approval by the City Council before implementation by the operator.
3. The Pavement Management Fee component of each rate designated above shall be adjusted as directed by the City.
4. The Residential Street Sweeping cost component will be reduced by fifty percent (50%) for the first two fiscal years billing cycles, Fiscal Year 2018/19 and 2019/20. The remaining fifty percent (50%) will be reduced to zero percent (0%) commencing Fiscal Year 2020/21 and will remain at zero percent (0%) throughout the term of this Agreement.
5. The Commercial Street Sweeping component of each rate designated above shall be adjusted as directed by the City.

The information necessary to determine the annual rate adjustments set forth in this Exhibit A shall be submitted to the City by Grantee on or before March 1 of each year.

## EXTRAORDINARY ADJUSTMENT OF RATES

Subject to the approval of the City Council, the operator may request special rate adjustments in the event its operating conditions significantly change, i.e., the County of San Bernardino or the City directs the operator to a different landfill, there is a change in State or Federal laws applicable to the operators refuse business, or there is a significant change in the County's collection of tipping fees and fees to operate the Household Hazardous Waste program.

EXHIBIT "B"

CITY OF HIGHLAND

**RIGHT-OF-WAY CLEAN-UP SERVICE**

Grantee will provide routine patrols and conduct Right of Way collection activities throughout the City of Highland. A primary work schedule will be established within ninety (90) days of the effective date of this agreement to follow the City of Highland's main arterials and gateways. Grantee will also respond to other areas of concern based on the requests from City staff and code enforcement.

Grantee's Right of Way team will remove illegally dumped items such as tires, shopping carts, inert materials, furniture, bagged trash and e-waste. Grantee will attempt to divert as much material as possible from the public right of way to support the City's diversion goals.

Grantee's Right of Way team will respond daily to illegal dumping requests within two business days in addition to the routine patrols the Right of Way team will conduct within the City.