AGREEMENT

ARTICLE 1. DEFINITIONS

1.1 Definitions. Unless otherwise defined in this Contract, capitalized terms used in this Contract shall have the meanings set forth in the definitions contained in Attachment A.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

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

2.2 Authority. Contractor has the authority to enter into and perform its obligations under this Contract. Contractor has taken all actions required by law, or otherwise to authorize the execution of this Contract.

2.3 Contract Duly Executed. The Persons signing this Contract on behalf of Contractor have been authorized to do so, and this Contract constitutes a legal, valid and binding obligation of Contractor.

2.4 No Conflict with Applicable Law or Other Documents. Neither the execution and delivery by Contractor of this Contract, nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates or will result in a violation of any existing applicable law; or (ii) conflicts with, violates or will result in a breach or default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing contract or instrument to which Contractor is a party, or by which Contractor is bound.

2.5 No Litigation. There is no action, suit, proceeding, or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against Contractor, or otherwise affecting Contractor, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect Contractor's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Contract, or which would have a material adverse effect on the financial condition of Contractor.

2.6 Financial Condition. Contractor has made available to City information on its financial condition. City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Contract. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

2.7 Expertise. Contractor has the expertise and professional and technical capability to perform all of its obligations under this Contract.

2.8 Contractor's Investigation. Contractor has made an independent investigation and analysis, the results of which are satisfactory to Contractor, of the conditions and circumstances surrounding the Contract, its content and preparation, and the work to be performed by Contractor under the Contract. The Contract accurately and fairly represents the intentions of Contractor, and Contractor enters into this Contract on the basis of that independent investigation and analysis.

2.9 Statements and Information in Proposal. The Proposal submitted to City by Contractor and information submitted to City supplementary thereto does not contain any untrue statement of a material fact nor omit to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. City and Contractor agree that the information contained in the Proposal is a material part of this Contract and shall be binding on Contractor. In the event of any conflict between the terms of this Contract and the Proposal, the terms of the Contract shall prevail. The Proposal is attached hereto as Attachment E.

ARTICLE 3. TERM OF AGREEMENT

3.1 Effective Date. The Effective Date of this Contract shall be July 1, 2010.

3.2 Term. The Term of this Contract shall commence on the Effective Date and shall end at midnight on June 30, 2017, unless earlier terminated. Contractor's obligation to collect Municipal Solid Waste and Recyclable Materials shall begin on July 1, 2010 at 12:01 a.m.

3.3 Option to Extend Term. The City, by it's own action or on request of the Contractor, may extend the Term of this Contract for one or more periods of one year, up to a maximum of three (3) years, on the same terms and conditions. It City wishes to

extend the Term it shall deliver a written notice to Contractor at least six months before the expiration of the Term (i.e. on or before January 1, 2017) specifying the number of years, from one to three, by which it wishes to extend the Term. If the City initially elects to extend the Term for less than three years, it may subsequently elect to further extend the Term in increments of one year, up to a total of three years, i.e. until June 30, 2020. If the City so elects, it shall deliver written notice to Contractor at least six months prior to the expiration of the Term, as initially extended.

3.4 Conditions to Effectiveness of Agreement.

A. Obligation of City to Perform. The obligation of the City to perform under this Contract is subject to satisfaction, on or before the Effective Date, of each of the conditions set out below, each of which may be waived in whole or in part by City:

1. Accuracy of Representations. The representations and warranties made by Contractor in Article 2 of this Contract shall be true and correct on and as of the Effective Date.

2. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Contract or seeking to restrain or enjoin its performance.

3. Furnishing of Bond. Contractor has furnished the performance bond required by Section 11.03 which meets the requirements of this Contract.

4. Furnishing of Evidence of Insurance. Contractor has furnished satisfactory evidence of insurance required by Section 11.02.

5. Effectiveness of City's Approval. The approval of this Contract by City shall have become effective, pursuant to California law, on or before the Effective Date.

B. Obligation of Contractor to Perform. The obligation of Contractor to perform under this Contract is subject to the satisfaction on or before the Effective Date of both of the conditions set forth below, each of which may be waived in whole or in part by Contractor.

1. Absence of Litigation. There shall be no litigation pending on the Effective Date in any court challenging the execution of this Contract, or seeking to enjoin its performance.

2. Effectiveness of City's Approval. The approval of this Contract by the City shall have become effective, pursuant to California law.

C. **Notice**. If either party wishes to assert that a condition for its benefit has not been satisfied and has not been waived, it must deliver written notice to that effect to the other party on the Effective Date. If no such notice is received, the Contract will become effective on the Effective Date.

Each party is obligated to perform in good faith the actions, if any, which this Contract requires it to perform before the Effective Date and to cooperate towards the satisfaction of the conditions set forth above.

ARTICLE 4. COLLECTION OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS

4.1 Scope of Work – General. Contractor shall (a) collect Municipal Solid Waste ("MSW") generated at Residential Premises, Commercial and Business Establishments, City facilities, Buellton Union School District facilities, Multi-family dwellings, and Special Events within the City and deliver it to the Disposal Site approved by City, and (b) collect Recyclable Materials and other items specified in Attachment B placed for Collection by participating residential Customers, commercial and business Customers, City facilities, Multi-family dwellings, and Special Events within the City and deliver it to the Materials Recovery Facility, and/or Compost/Mulch Facility, and/or Construction and Demolition Debris Processing Facility designated by City.

The work to be done by Contractor includes the furnishing of all labor, supervision, equipment, materials, supplies, vehicles and equipment, storage and maintenance facilities, and all other items necessary to perform the services required under this Contract in a thorough, workmanlike and efficient matter, so that residents, businesses and public and private institutions within the City are provided reliable, courteous and high-quality services at all times. The enumeration of, and specification of, requirements for particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others that may be required, whether enumerated or not.

Contractor shall perform all work in accordance with Attachment B, all provisions of which are incorporated herein by this reference, whether or not such provisions are specifically referred to in any other section of this Contract.

Contractor shall also implement programs and utilize Processing Facilities in order to obtain the highest and best use for Diverted materials (e.g. Yardwaste should be composted or mulched and used for landscaping applications rather than being chipped or ground and used for alternative daily cover at landfills).

4.2 Implementation Plan. The parties recognize that substantial planning and preparation will be required to ensure a successful initiation of Collection operations by Contractor on July 1, 2010. The schedule to implement the change over to service by the Contractor contained in the Proposal is made a material part of this Contract. Contractor shall diligently adhere to the Implementation Plan and shall meet periodically, whenever City requests, to review its progress. Failure to adhere to the Implementation Plan, including its schedule, shall constitute a breach of this Contract which, if uncured, shall constitute a default under Section 13.01.

4.3 Residential MSW Collection.

A. Regular Collections. Contractor shall collect all MSW generated at Residential Premises within the City and placed for Collection in Contractor authorized Containers at curbside, and at sideyard/backyard locations by occupants who are eligible for such Collection under Section 2.2.1 of Attachment B. MSW shall be collected from such Premises at the frequencies and in the manner described in Attachment B, Section 2.

4.4 Commercial/Business MSW Collection. Contractor shall collect all MSW generated at Commercial and Business Establishments within the City and placed for Collection. MSW shall be collected from such Premises at the frequencies and in the manner described in Attachment B, Section 3.

4.5 City and School District Facilities/Events MSW/Recyclable Collection. Contractor shall collect all MSW and Recyclable Materials generated at Premises owned and/or operated by the City at no additional charge, and at up to four (4) City-sponsored events at no additional charge to the City. The facilities to be provided service and the type and frequency of service are listed on Attachment B, Section 3.11. Contractor shall collect all MSW and Recyclable Materials generated at Premises owned and/or operated by the Buellton Union School District (i.e., Oak Valley Elementary and Jonata Middle School) at no additional charge to the School District.

4.6 Diversion Programs.

A. Residential Recycling. The Contractor shall collect Recyclable Materials generated at Residential Premises, placed for Collection in Contractor authorized Containers at the curbside. Contractor shall also collect Recyclable Materials generated at Residential Premises, placed for Collection at curbside and backyard or sideyard locations by occupants who are eligible for backyard or sideyard Collection under Section 2.2.1 of Attachment B.

Recyclable Materials shall be collected from Residential Premises at the frequencies and in the manner described in Attachment B, Section 2.

B. Commercial/Business Recycling. Contractor shall collect Recyclable Materials from participating Commercial and Business Establishments at the frequencies and in the manner described in Attachment B, Section 3.

4.7 Other Services and Special Services.

A. Other Services. Contractor shall provide other Collection services as requested by waste Generators in the City on an on-call basis, including Bin and Roll off Box service described in Attachment B, Section 3.8.

B. Missed Pick-ups. When notified of a missed pick-up, Contractor shall collect MSW, Recyclable Materials and Yardwaste by 5:00 P.M. of the following business day.

C. Special Services. Contractor shall provide special services as described in Attachment B that include, but are not limited to:

- Bulky Goods Collections
- Special Events Collections
- Operation of Residential Buy-Back Center
- Curb-side Christmas Tree Collection
- Christmas Tree Recycling
- Electronic and Hazardous Waste Collection and Recycling
- Universal Waste Diversion Program
- Collection and Recycling of Bulky Goods containing Freon
- Assistance With Planning Review For City
- "Sharps" Collection
- Household battery pick-up

4.8 Hours of Collection. Collection of MSW and/or Recyclable Materials may occur only within the hours authorized by the City. Contractor may not collect MSW or Recyclable Materials earlier than 7:00 a.m. local time or later than 6:00 p.m. for Residential Premises and Commercial and Business Establishments. Temporary site and route-specific exceptions may be granted by the City Manager or his/her designee if requested by Contractor. At the sole discretion of the City Manager, Contractor shall adjust the early morning start point of Collection routes to address and minimize customer complaints when warranted and practicable.

No Collections shall occur on the following days: January 1, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Sundays. No Collections shall occur on Saturdays for Residential Premises except for missed pick-up service and for a holiday that falls on a preceding Friday. When a holiday falls on a weekday, Collection service will be performed on the following day. For example, if a holiday falls on a Monday, service scheduled for Monday will be provided on Tuesday, service scheduled for Tuesday on Wednesday and so on. If a holiday falls on a Saturday, service will be provided the following Monday.

Contractor shall coordinate with the City Manager or his or her designee to ensure that the Collection of MSW, Yardwaste and/or Recyclable Materials is compatible with, and does not interfere with, City's street sweeping operations.

4.9 Collection Standards.

A. **Care of Property**. Contractor shall use due care when handling MSW and Recycling Containers. Containers shall not be thrown from trucks, roughly handled, damaged or broken. Containers shall be returned to the Collection point upright, with lids properly closed.

Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by the Customer, and avoid crossing landscaped areas and climbing or jumping over hedges and fences.

City shall refer complaints about damage to private property, including common areas in common-area subdivisions, to Contractor. Contractor shall promptly repair, or arrange for the repair of, all damage to private property caused by its employees at Contractor's sole expense.

B. **Noise**. All Collection operations shall be conducted as quietly as possible and shall conform to City noise level regulations. The noise level during the stationary compaction process shall not exceed 75 decibels at a distance of 25 feet from the Collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall submit to City, upon City's request, a certificate of vehicle noise testing by an independent testing facility of a representative sample of Collection vehicles. The City may also conduct random checks of noise emission levels to ensure such compliance.

C. **Private and Public Streets**. Contractor shall use its best efforts to prevent damage to all streets over which its Collection equipment may be operated, and Contractor shall obtain all required approvals for operation of its Collection vehicles on private streets. Contractor shall comply with all requirements for placement of Containers, including Roll Off boxes in the public right of way, including compliance with encroachment permits obtained by the Customer. Contractor shall use its best efforts to prevent spills of fuel, fluids (such as oil, hydraulic fluid, brake fluid, etc.) on streets, and if such a spill occurs, Contractor shall immediately notify the City (including the Director of Public works or his/her designee and the City's NPDES Coordinator) and all proper regulatory authorities of said spill and release of fluids, and shall clean, at Contractor's expense, the spilled fluids in coordination with, and to the satisfaction of, City and applicable regulatory agencies. Upon a release of such fluids, the driver shall immediately park the vehicle and it shall remain parked until the leak is repaired. In such event. Contractor shall not park the leaking vehicle within two hundred (200) feet of a storm drain and shall utilize absorbent, sand bags or other appropriate means to prevent leaking fluids from entering storm drains. In the event of any type of spill or other emergency, Contractor shall be responsible for securing the immediate safety of

the vehicle driver, all other employees of Contractor and all persons and property in the surrounding vicinity.

D. Customer Privacy. Contractor shall strictly observe and protect the rights of privacy of customers. Information identifying the contents and composition of a customers MSW or Recyclable Materials shall not be revealed to any Person, governmental unit, private agency or company, unless authorized by the customer or by order of a court of law, or by statute. This provision shall not be construed to prohibit Contractor from preparing, participating in, or assisting in the preparation of solid waste characterization studies, waste stream analyses that may be required by the Act, or in performing the audits required pursuant to Section 9 or providing information necessary for City to comply with the Act and to obtain information required for City to exercise its police powers. Contractor shall not market or distribute customer mailing lists to any party except the City.

4.10 Litter Abatement.

A. Minimization of Spills. Contractor shall use due care to prevent MSW, Yardwaste and Recyclable Material from being spilled or scattered during the Collection or transportation process. If any MSW, Yardwaste or Recyclable Material is spilled, Contractor shall promptly clean up all spilled materials whether on private or, public property. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street or private roadway, unless it is necessary to do so because of mechanical failure or damage to a Collection vehicle which renders it inoperable and the vehicle cannot be towed.

B. Clean Up of Existing Litter. The Contractor shall clean up existing litter in the immediate vicinity of any MSW or Recyclable Materials Collection area (including the areas on private and public property where Collection Containers are delivered for Collection) whether or not Contractor has caused the litter. Contractor shall-notify the Customer and the City of existing litter and shall send City a photograph of the littered area. City's Code Enforcement Officer and Contractor's Recycling Coordinator will make an on site inspection to discuss the situation with the property owner or manager. If the litter and debris is being caused by illegal dumping, the City and the Recycling Coordinator will work with the property owner and manager to utilize locked enclosures or Bins with locking lids to prevent entry. If the cause of the litter is under-subscription to the Collection service, the City and Recycling Coordinator will work with the property owner and manager to determine the appropriate size Container(s) and frequency of Collection required to alleviate the problem.

C. **Clean Up of Illegal Dumping**. Contractor shall respond to all calls from City regarding spilled or illegally dumped MSW, Yardwaste, Recyclable Materials, or Bulky Items that are identified in locations other than customer MSW enclosures or City arterial litter Containers (such as empty parking lots, on City streets, etc.) during regularly scheduled routes and, in emergencies, at night and on weekends. Contractor shall collect and deliver such material to the City designated Disposal Facility (or, in the case of Recyclable Materials, to the City-designated MRF, CompostMulch Facility, or Construction and Demolition Debris Processing Facility) provided such material does not exceed in volume the amount which can be collected by a two-person crew utilizing a pick up truck or Collection vehicle.

D. **Covering of Loads**. Contractor shall place covers on all open debris Containers and transfer trucks during transport to the Disposal facility, Materials Recovery Facility, Compost/Mulch Facility, and/or Construction and Demolition Debris Processing Facility.

4.11 Hazardous Waste

A. **General**. Contractor shall be aware of, and comply with, all laws and regulations relating to the handling and transportation of Hazardous Waste, including those requiring training and documentation. If Contractor observes any substances which it believes to contain Hazardous Waste within the City, including but not limited to in Containers designed for MSW, Yardwaste or Recyclable Materials, Contractor shall not collect such Hazardous Waste but shall immediately notify the appropriate regulatory agencies and the City. The preceding sentence does not apply to the Collection of Electronic Waste and Universal Waste components that are classified as Hazardous Waste (currently CRTs and LCDs) or Bulky Goods (i.e. refrigerators) that contain Freon, pursuant to this Contract.

B. **Notice to Customers**. Contractor shall notify all Customers at least once a year with a mailing of: (i) the prohibition against the Disposal of Hazardous Waste in authorized Containers, Bins or Roll-off Boxes, and (ii) the obligation of each Customer to provide for the proper handling and disposition of Hazardous Waste. To the extent that Contractor has actual knowledge of the existence of such Hazardous Waste in a Container placed for Collection, Contractor shall not collect such Container. Contractor shall, prior to leaving the location where such Hazardous Waste has been observed, leave a tag at least 2" x 6" which informs the customer why the Collection was not made and lists the telephone number for the Santa Barbara County Fire Department.

C. **Contractor to Segregate and Dispose**. In the event Contractor inadvertently collects any Hazardous Waste and during the course of transportation and disposition and becomes aware that it has collected such Hazardous Waste, Contractor shall segregate Hazardous Waste, and shall arrange for its transport and Disposal to a properly permitted Recycling, treatment or disposal facility of Contractor's choosing at Contractor's sole expense. Contractor shall be solely responsible for the transport and disposition of all Hazardous Waste that is collected by the Contractor. Contractor will cooperate with City attempts to locate and collect the costs of such transport and disposition from the responsible Customer.

D. **Operating Procedures and Employee Training**. Contractor shall establish, implement and maintain written operating procedures designed to ensure Contractor's utilization of techniques generally accepted in the waste hauling industry for cities of the size and nature of the City of Buellton, to handle and dispose of Hazardous Waste and its compliance with the provisions of this Section 4.11. Contractor shall establish, implement and maintain an employee training program and shall ensure that employees responsible for the identification of Hazardous Waste are fully trained. Contractor shall maintain documentation which describes the training received by its employees.

4.12 City's Right to Change Scope of Work. City may, without amending this Contract, direct Contractor to cease performing one or more of the types of services described in Articles 4, 5 and/or 6, may direct Contractor to modify the scope of one or more of such services, may direct Contractor to perform additional Collection services, processing services and may similarly modify Contractor's obligations under other provisions of this Contract.

The type of changes that City may direct, include, but are not limited to, program expansions, new Diversion Programs to comply with the Act, modifying or stopping certain Diversion programs, providing pilot programs and innovative services which may entail new Collection methods, different types of services and/or new requirements for Customers.

If such changes cause an increase or decrease in the cost of performing the services, an appropriate adjustment in the Contractor's compensation shall be made as provided in Section 12.08.

4.13 Attendance At Meetings With City. Contractor shall attend status meetings with City representatives as requested by the City Manager. The date, time and location for meetings will be established by the City, in consultation with the Contractor. Contractor shall provide all necessary and appropriate personnel to attend each meeting such that the topics on the agenda can be addressed fully and completely.

4.14 Ownership of Municipal Solid Waste and Recyclable Materials. Once MSW, Yardwaste and Recyclable Materials are placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Customer to the Contractor by operation of this Contract and the Buellton Municipal Code.

4.15 Abandoned Item Collection. Contractor shall, at no additional charge, Collect abandoned items in the streets and alleys when notified by City and provide a Roll-Off box at the City yard for disposal of abandoned items collected by City crews. Abandoned items to be collected by the Contractor include Bulky Goods.

4.16 Contamination Warning Notice. Contractor shall place a hang tag on Recycling or Yardwaste Containers that contain contamination of Recyclable Materials. (Contamination of Recyclable Materials is defined in Attachment B.) The wording and format of the notice shall be submitted to the City for approval prior to use. If after two sequential written hang tag warnings, the Container continues to be contaminated, Contractor's Recycling Coordinator shall telephone and/or make a site visit to the Premises to discuss the problem with the owner or occupant. If, after contact by the Recycling Coordinator, there are two additional consecutive occurrences of contamination, Contractor may remove the Recycling or Yardwaste Container from Customer's Premises. Contractor shall report monthly to the City on all warning notices issued, Recycling Coordinator contacts, and on all Recycling Containers or Yardwaste Containers removed from Premises due to contamination problems.

ARTICLE 5. TRANSPORTATION AND DISPOSAL OF MSW OR PROCESSING OF RECYCLABLE MATERIALS

5.1 Transportation and Disposal of MSW. Contractor shall transport and deliver all MSW collected pursuant to this Contract to the Tajiguas Landfill, or to such other Disposal site designated by the City Manager or his/her designee in the future.

Contractor shall cooperate with the operator(s) of the Disposal site with regard to operations therein, including by way of example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with the operator's Hazardous Waste exclusion program, and cooperating with the operator's tonnage tracking system.

5.2 Transportation of Recyclable Materials. Contractor shall transport and deliver for processing Recyclable Materials to the City-approved Processing Facility(ies) identified as Contractor's MRF Facility. City Manager or his/her designee may designate different MRF facility(ies) in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.

5.3 Transportation of Yardwaste. Contractor shall transport and deliver all Yardwaste to the City-approved Processing Facility(ies). Yardwaste may be either transported to a Composting/Mulch facility or processed at Contractor's facility as available mulch for distribution as provided in this Contract. City Manager or his/her designee may designate a different Compost/Mulch facility(ies) in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.

5.4 Transportation of Construction and Demolition Debris. Contractor shall transport and deliver all Construction and Demolition Debris collected from Bins and Roll Off Boxes pursuant to this Contract to the City-approved Construction and Demolition Waste Processing Facility(ies). The City Manager or his/her may designate different Construction and Demolition Debris Processing Facilities in the future if said facility(ies) become unavailable due to lack of required permits or other unforeseen events.

5.5 Designated Processing Facilities Unavailable. If any of the Processing Facilities described in Sections 5.02, 5.03 and 5.04 become unavailable for use by the City during the Term or superior Processing Facility(ies) become available or designated under new State or local Diversion Programs, City may designate a new Processing Facility pursuant to Section 4.12. At City's request Contractor shall research and propose alternate Processing Facility(ies) for the material(s) requiring Processing, and shall submit a written analysis and recommendation to the City within five (5) working days concerning the cost for use of alternate facilities and any logistical changes that would be required to utilize such alternate facilities. City and Contractor will discuss the advantages and disadvantages of use of the potential alternate Processing Facilities and City will designate a selected facility. The decision of the City will be final.

ARTICLE 6. PROCESSING AND MARKETING OF RECYCABLE MATERIALS

6.1 General. The costs proposed by Contractor include the costs of furnishing of all labor, supervision, equipment, materials, supplies and all other items necessary to perform the processing and materials marketing services required in a thorough, workmanlike and efficient matter.

6.2 Permits. Contractor shall utilize only processing facilities that are fully licensed and permitted under all applicable federal, state, regional and local laws and regulations. On or before the Effective Date, Contractor shall deliver to City a package

containing copies of all of the permits, as applicable, for the Materials Recovery Facilities, the Compost/Mulch Facility, the Construction and Demolition Debris Processing Facility and for any other Processing Facility approved by City that Contractor will use to process materials collected within City. Contractor shall simultaneously submit original signed contracts with each processing facility (unless owned by Contractor) evidencing the terms and conditions under which Contractor is entitled to utilize said facilities for processing of City's materials.

6.3 Delivery of Residue to Landfill. Contractor shall deliver, or arrange to be delivered, all non-recyclable Residue from the operations at the Materials Recovery Facility, the Compost/Mulch Facility, and the Construction and Demolition Debris Processing Facility to the City designated landfill.

6.4 MRF, Compost/Mulch and CID Facility Operating Requirements. Contractor shall operate the Materials Recovery Facility, Compost/Mulch Facility and Construction and Demolition Debris Processing Facility it owns in compliance with all applicable federal, state, regional and local laws and regulations and shall adhere to the requirements of all permits for each facility. If Contractor is using facilities it does not own, it shall be Contractor's responsibility to investigate and determine that said facilities are operating in compliance with all applicable laws, regulations and permit requirements. If, at any time during the Term, said facilities are not operating in compliance with all legal requirements, it shall be the duty of Contractor to immediately report the situation to the City. Upon receipt of such information, City may conduct an independent investigation of the situation, may require Contractor to utilize a different facility while City is conducting its investigation, or may take other actions City deems reasonable and necessary to protect the interest of the City, its customers, public health and safety and the environment.

The Composting/Mulch Facility must be capable of processing residential and commercial Yardwaste. The Construction and Demolition Debris Processing Facility must be capable of processing all of the Construction and Demolition Debris that is collected by the Contractor in the City.

6.5 Processing Requirements. Contractor shall process Source-Separated Recyclable Materials and Single Stream Recyclable Materials in a manner that yields diversion levels to satisfy the requirements of Section 6.6.

6.6 Annual Diversion Requirement. Contractor shall ensure compliance with State mandated diversion goals, currently at 50%, on a calendar year basis, beginning with the 2011 calendar year. Additionally, Contractor commits to double the tons of commercial diversion from the 390 tons (as of the Effective Date) during the first four (4) years of the Term of this Contract. The Annual Diversion Rate shall be calculated and demonstrated to City utilizing accepted California standards set by the Act and any guidelines established under the Act.

6.7 **Reporting of Annual Diversion Rate Achieved**. On or before March 15, 2011, and on or before March 15 in all subsequent years of the Term, Contractor shall report to City the Annual Diversion Rate for the preceding year (or portion of the initial Term year), including copies of all reports from Santa Barbara County and the California Integrated Waste Management Board, all Processing Facilities and all other records used as source documents for the Tons collected, processed and Disposed by Contractor for the prior calendar year. Contractor's report shall include a list of all Tons of MSW Disposed by Contractor at Disposal facilities, and shall include Residue from all Processing Facilities utilized by Contractor including but not limited to clean and dirty MRFs, Compost/Mulch Facilities, Construction and Demolition Debris Processing Facilities and Transformation Facilities. The report will show the total Tons from City that have been Disposed. The report will also list the total Tons of MSW, Source Separated Recyclable Materials, Single Stream Recyclable Materials, Yardwaste, Construction and Demolition Debris and all other materials Collected from within City by Contractor, and the total number of Tons of said materials. Said report shall show the total number of Tons collected and diverted in each of the following categories: (a) Single Family residential, (b) Multi-Family residential, (c) Commercial and Business Establishments, and (d) Roll Off Service. For purposes of this report Roll Off shall include both permanent and temporary Bins and Roll Off Box service, Collection of Compactors of ten (10) cubic yards or larger in size, and Collection of Construction and Demolition Waste. The report shall show the annual Diversion rate calculation as described in Section 6.06 and the resulting percentage of Tons disposed, as shown in Attachment E. Contractor shall provide a written response to any questions from City concerning the Diversion calculations and shall, if requested, meet with City to discuss the calculations, the underlying tonnage reports, and any other related issues. If requested by City, Contractor shall supply all additional documentation required to substantiate the Diversion rate calculation to the satisfaction of City. If requested, Contractor shall make available its personnel, consultants and other Persons who performed the Diversion rate calculations or prepared the tonnage reports used therein, to respond to questions from City or City's agents concerning the calculations. Contractor must provide explanations for and substantiation of all tonnages used in the Diversion Rate calculations including tons of materials delivered to transfer stations, materials recovery facilities, waste-to-energy and transformation facilities, construction and demolition waste processing facilities, composting or mulch facilities and Disposal Facilities. Any discrepancies in reported tonnages will be investigated by the City and must be resolved to the satisfaction of the City. No exceptions will be allowed to these reporting requirements. Failure to substantiate discrepancies in reported tons to the City's satisfaction by May 15 of each year will result in the suspension of annual rate increases described in Section 12.03. If the tonnage discrepancies are not resolved to the satisfaction of the City and the California Integrated Waste Management Board (CIWMB) by the time the City's AB 939 Annual Report is due to the CIWMB for the calendar year in question, the City may give Contractor notice of termination of this Contract and shall initiate a Request for Proposal Process to procure a new Contractor. Falsification of any tonnage record, negligent or intentional submittal of misleading or false information concerning the Tons Collected, processed, or Disposed, or use of false or misleading information in the Diversion calculation, shall be considered a

material breach of this Contract and grounds for immediate termination of Contractor's services by City.

6.8 Diversion Debit. If the minimum annual Diversion rate of fifty percent (50%) set forth in Section 6.06 has not been achieved, liquidated damages as described in Section 13.09 H shall apply. In addition, if Contractor fails to achieve the minimum fifty percent (50%) Diversion rate in any two consecutive years, the Term of this Contract shall be reduced by one (1) year. If Contractor again fails to achieve the minimum fifty percent (50% Diversion rate in any two consecutive years, the Term of this Contract shall be reduced by one (1) additional year. By way of example, if Contractor fails to divert the minimum fifty percent (50%) in both years one and two of the Contract, one (1) year will be deducted from the remaining Term. If Contractor again fails to achieve the required Diversion in year three, the failure in years two and three constitutes a failure in two consecutive years of the Term, and an additional one (1) year is deducted from the Term of the Contract.

6.9 City Access to Processing Facilities. In addition to City's rights under other provisions of this Contract, City and its agents shall have the right at all reasonable times to enter each of the Processing Facilities to (a) observe operations, (b) observe compliance with permit requirements, (c) observe tonnage allocation and tonnage tracking procedures, and (d) for any other reasonable purpose.

ARTICLE 7. EQUIPMENT, FACILITIES AND PERSONNEL

7.1 General. Contractor shall furnish all facilities, vehicles and equipment necessary to perform safely and efficiently the services required by this Contract.

7.2 Facilities.

A. General. Contractor shall provide all facilities required for storage, maintenance, repair and deployment of all vehicles and equipment required to perform the services required by this Contract. Contractor shall also provide the necessary facilities and office space for personnel of Contractor providing the services required by this Contract. The facility or facilities used by Contractor to perform the required services shall be fully permitted in compliance with all Federal, State and local laws and regulations. In the event the City receives complaints about the facilities (whether for noise, odor, litter, traffic problems or any other issue), Contractor shall promptly take action to address the issue(s) and shall resolve the problem within five (5) business days.

7.3 Vehicles.

A. General. Contractor shall provide Collection and auxiliary vehicles of the type, size and configuration, and in the quantities shown in the Proposal. All front loader, rear loader, side loader and Roll Off vehicles shall be and suitable in design and construction for arduous heavy-duty service. Contractor specifically acknowledges that the necessity to purchase newer vehicles shall not be grounds to adjust the rates specified in Attachment C or any amendment to the terms of this Contract for a change in services to the City. Collection within the City for MSW, Recyclable Materials, Yardwaste, and Construction and Demolition Debris shall be calculated by Contractor such that when the Collection vehicles are weighed at the Disposal facility and/or at the Processing Facilities, one hundred percent (100%) of the Tons attributable from collection within the City shall be allocated to the City's diversion amount. Any new vehicles purchased for service in the City shall be compressed natural gas fueled. In addition, Contractor shall use it best efforts to have such new vehicles utilize non-hydraulic technology for all loader/lift and compression functions on such new vehicles.

B. Cleaning and Maintenance.

1. General. Contractor shall maintain all of its equipment used in providing service under this Contract in a safe, neat, clean and operable condition at all times.

2. Cleaning. The exterior and interior of vehicles used in the Collection of MSW, Recyclable Materials, Yardwaste, and Construction and Demolition Wastes shall be thoroughly washed by Contractor at least once a week or more often as needed to maintain a clean appearance and thoroughly steam cleaned at least once a month or more often as needed to maintain a clean appearance. City may inspect vehicles at any time to determine compliance with sanitation requirements and aesthetic conditions. Contractor shall make vehicles available to the Santa Barbara County Fire Department and the City for inspection, at any frequency it requests.

3. Painting. All vehicles used in Collection of MSW, Yardwaste, Recyclable Materials and Construction and Demolition Wastes shall be repainted by Contractor at least once every five (5) years, unless the City determines that repainting specific vehicles at that frequency is not necessary because the vehicle's appearance is satisfactory or unless the City determines that repainting a specific vehicle earlier (due to graffiti, wind damage, etc.) is necessary to ensure that the vehicle gives the appearance of having been repainted within the preceding sixty (60) months. All graffiti shall be removed or painted over within seventy-two (72) hours of occurrence.

4. Maintenance. Contractor shall (i) inspect each vehicle daily to ensure that the vehicle and all equipment is operating properly.. Vehicles which are not operating properly shall be taken out of service until they are repaired and do operate properly; and (ii) perform or cause to be performed all scheduled maintenance

functions in accordance with the manufacturer's specifications and schedule. Contractor shall keep accurate records of all vehicle maintenance, recorded according to part or vehicle I.D., date, and mileage, and shall make such records available to the City upon request.

5. Leaking Vehicles. In the event that City receives a report of a leaking vehicle, Contractor shall, upon notification by City, immediately take the vehicle out of service and repair the leak. Contractor shall be responsible for cleanup of any spilled fluids whether on public streets, private streets, public property or private property.

C. Operation. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety regulations and local ordinances. Vehicles shall be operated only by employees of Contractor who are appropriately licensed by the California Department of Motor Vehicles. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles. Contractor is solely responsible for paying any fines imposed by the California Highway Patrol, or other regulatory agencies, for violation of these requirements.

7.4 MSW and Recyclable Materials Containers.

A. General. Contractor shall provide new wheeled Carts for all Residential and Commercial premises on the schedule as specified in the Proposal and as further described in Attachment B, Section 1.4.

Contractor shall, during the entire Term of the Contract, provide Containers for the storage of (i) MSW, (ii) Recyclable Materials, and (iii) Yardwaste for Commercial and Business Establishments Collection service as stated in Attachment B, Section 1.4.

All Containers provided by the Contractor shall conform to the specifications in the Proposal. The type, size and number of Containers shall be sufficient to contain, with the lid closed, all MSW, Recyclable Materials and Yardwaste generated between Collections. Containers shall be designed to close automatically, and remain closed when upright, following loading onto collection vehicles.

B. Repair, Replacement, and Exchange. Contractor shall repair or replace any Container which is damaged, broken, lost or stolen; provided that Contractor may charge Customer the current market price for a new Container for damage or loss due to Customer negligence or intentional damage. Contractor shall repair or replace all Containers which do not meet vendors' warranties. Contractor shall not have to replace a non-repairable Bins or Compactor not owned or leased by it to a Customer.

Upon request from a Residential Premises Customer, Contractor shall exchange a Cart which is in Customer's possession and not damaged, broken, lost or stolen for a new Cart within two (2) days of request. Contractor shall not charge the Customer for a

Cart exchange.

C. Cleaning, Painting and Maintenance of Contractor-Furnished Containers. Contractor shall maintain all Contractor-furnished Containers in a functional condition and so as to present an attractive appearance. Such Containers shall be painted and repainted as requested by City or Contractor shall replace any Container with a new or re-conditioned Container, of like-size, as directed by City. Contractor-furnished Containers that have been painted or marked with graffiti shall be repainted or removed from the Premises by Contractor within seventy-two (72) hours of notification by the Customer or City. At the same time as such Containers are removed, they shall be replaced by like-sized Containers furnished by Contractor without evidence of graffiti. Contractor shall clean and maintain all Contractor-furnished Containers in a safe and sanitary condition and whenever the City, or another agency with jurisdiction as a regulator, determines that cleaning is required to abate a health concern or nuisance condition.

7.5 Personnel.

A. General. Contractor shall furnish such competent and qualified drivers, laborers, mechanical, supervisory, clerical, managerial and other personnel as may be necessary to provide the services required by this Contract in a safe, efficient, reliable and courteous manner. The minimum complement of employees which Contractor will provide for the scope of work described in this Contract shall be as set forth in the Proposal.

B. Driver Qualifications. All drivers shall be trained and qualified in the operation of waste Collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Each driver shall carry his/her license during work hours.

C. Uniforms. Contractor shall require its drivers, and all other employees who come into contact with the public in the City during working hours, to wear standardized uniforms bearing the Contractor's name, and to carry an identification badge or other means of identifying the employee. The City shall have the right to approve the style and color of the uniforms. Such uniforms shall present a freshly cleaned appearance. Employees shall be instructed to present employment identification cards to City staff, customers, security guards and law enforcement officers upon request, during work hours.

D. Safety Training. Contractor shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for

Collection or processing of MSW, Recyclable Materials, Yardwaste and Construction and Demolition Debris or who are otherwise directly involved in such Collection or processing.

E. **No Gratuities**. Contractor shall not permit any officer, agent or employee to demand or solicit, directly or indirectly,

F. any additional compensation or gratuity from members of the public, any City representative or employee, or any other Person or entity for the Collection of MSW, Recyclable Materials, Yardwaste, Construction and Demolition Debris or any other material under this Contract.

G. **Employee Conduct and Courtesy**. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Contract, Contractor shall take all necessary corrective measures, including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous behavior, Contractor shall, upon request of City, reassign the employee to duties not entailing contact with the public while the Contractor is pursuing its investigation or disciplinary process.

H. **Ongoing Training and Testing**. Contractor shall provide regular safety training on an ongoing basis and shall conduct random drug and alcohol testing of employees in safety-sensitive positions in compliance with regulations issued by the U.S. Department of Transportation.

I. **Use of Workers Not Employed by Contractor**. If Contractor' engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor or agency:

1. Complies with the nondiscrimination requirements in Section 14.01;

2. Maintains Comprehensive General Liability, workers compensation and Employer's Liability insurance covering such workers in the amount required by Section 11.02A and with policies meeting the other requirements of Section 11.02.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work which Contractor is required to perform and the standards it is required to

meet, under this Contract.

All drivers, mechanics, supervisory and managerial workers shall be direct employees of Contractor.

ARTICLE 8. OTHER COLLECTION-RELATED SERVICES

8.1 Billing.

A. General. Contractor shall: (i) bill Customers for MSW and Recyclable Materials Collection at the rates in Attachment C, as adjusted per the Contract; (ii) maintain accurate billing and payment records; and (iii) bill Customers on a monthly, bimonthly or quarterly schedule as approved by City. Customer's bills shall be itemized showing the charges for each classification of services. Customer billing shall be performed pursuant to the requirements contained in Attachment B, Section 1.

B. City Inserts. City may direct Contractor to produce and insert mailers with billings relating to City-sponsored events, integrated waste management activities and other environmental programs at least six (6) times per year. If a postage increase is incurred for said mailing, the City will be responsible for paying said increase.

8.2 Billing Records. Contractor shall keep records of all billing documents and customer account records including, but not limited to, invoices, customer payment coupons mailed with the invoice and collection notices, for a period of three (3) years after the date of receipt or issuance. Contractor may, at its option, maintain those records in electronic form, hard copy, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

8.3 City Access to Billing Information. Contractor shall provide City with prompt access to all current and up-to-date billing information necessary to allow the City to respond to customer inquiries or complaints or as otherwise required by City. At request of City, Contractor shall provide "read only" electronic access to Contractors Customer billing records such that City employees can research billing inquiries and Customer account history from City Hall.

8.4 Public/Customer Service and Accessibility.

A. Office Hours and Location. Contractor shall maintain an office that will be available for customers to pay bills, subscribe to service, change service,

stop service and otherwise contact Contractor. Contractor's office shall be open to the public from 7 a.m. to 5:30 p.m. Monday through Friday and from 7 a.m. to 3 p.m. on Saturdays. The office may be closed on Sundays and holidays as defined in this Contract.

B. **Availability of Representative**. A knowledgeable representative of the Contractor shall be available during office hours to communicate with the City and members of the public in person and by telephone and to assist customers making payment in person.

C. **Telephone**. Contractor shall maintain a telephone in operation at its office during business hours. Incoming calls will be answered as directed by City. Contractor shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest weekday. Contractor shall also maintain an emergency telephone number for use during other than normal business hours and shall provide that number to City. Contractor shall have a representative, or an answering service to contact such representative, available at the emergency telephone number during hours when the office is closed. Contractor shall arrange for the regular telephone number to be listed in all telephone directories generally distributed in the City and on all Contractor's bills and invoices.

If City receives complaints that Customers are unable to reach Contractor's office by phone, or are subject to excessive waiting time "on hold" prior to reaching a customer service representative, City may require that Contractor install additional telephone lines.

8.5 Service Complaints. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints relating to service and billing. Contractor shall record in a separate log, the format of which is approved by the City, all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. This complaint log shall be available for inspection by City. In addition, Contractor shall compile a summary statistical table of the complaint log (or a copy of the log if requested by City) and submit the table, or copy, to City once per quarter or more often if requested by the City Manager.

Contractor shall respond to all complaints from Customers within eight (8) working hours of its receipt of notice of the complaint. In particular, if a complaint involves a failure to collect MSW from a Premises as required by this Contract, Contractor shall collect the MSW in question within such eight (8) working hour period, provided it has been placed for Collection in accordance with the City's Municipal Code. If the complaint is received after normal working hours, Contractor shall respond to the complaint within eight (8) working hours of the time Contractor's employees receive the complaint information (i.e. for a complaint left at 7:00 p.m. on a weekday, Contractor's employees would receive the complaint at 8:00 a.m. the following morning and would resolve the complaint before 4:00 p.m. the same day).

8.6 Right to Terminate Service to a Premises. The Contractor may suspend or terminate MSW Collection services provided to any Premises if the Owner or occupant thereof (or other party responsible for payment) is delinquent in payment of such bills as described in Section 1 of Attachment B.

Contractor will promptly notify City of its intention to suspend or terminate service to a customer.

8.7 Change in Collection Schedule. Contractor shall obtain written approval from City prior to any change in Collection operations which results in a change in the day on which Collection occurs at Residential Premises. Contractor will comply with the requirements in Attachment B regarding notice to customers of changes in operations.

8.8 Report of Accumulation of MSW or Unauthorized Dumping. Contractor shall direct its drivers to note: (i) the addresses of any Premises at which they observe that MSW is accumulating and is not being placed for Collection and (ii) the address, or other location description, at which MSW has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within two (2) working days of such observation.

ARTICLE 9. RECORD KEEPING, REPORTING, INSPECTIONS AND AUDITS

9.1 General. Contractor recognizes that maintenance of accurate and complete records of its operations and timely submission to City of accurate and complete reports is an essential aspect of the service to be provided by it under this Contract.

9.2 Record Keeping. Contractor shall maintain accurate records of: (i) personnel, (ii) equipment, (iii) Collection operations, (iv) Disposal of MSW and MRF, Composting/Mulch Facility, Construction and Demolition Debris Processing Facility and Transformation Facility Residue, (v) Diverted Tons of Recyclable Materials, Yardwaste, and Construction and Demolition Debris, (vi) customer service, (vii) billing and payment, (viii) sale of Recyclable Materials, Compost/Mulch and Construction and Demolition materials, (ix) financial matters, and (x) other matters in such detail and format necessary to compile the reports required by this Contract, including Attachment D.

9.3 Reporting. Contractor shall compile and submit complete and accurate reports required by this Contract, including Attachment D, in the format and at the frequencies specified.

9.4 Inspection by City. The City shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations involved in providing services under this Contract to determine whether Contractor is performing in accordance with this Contract and applicable laws and regulations. Contractor shall cooperate fully with such inspections. In connection therewith, the City shall have the right to enter any of Contractor's facilities, speak to any of Contractor's employees and receive a response to any inquiries directed to such employees, and review and make copies (at City's expense), of all of Contractor's operational and business records related to this Contract. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections.

City shall have the right to observe Containers of MSW and/or Recyclable Materials, Yardwaste, and Construction and Demolition Debris for the purpose of conducting waste audits as needed during the Term.

9.5 Compliance Reporting. Contractor shall submit monthly, quarterly and annual reports to the City documenting the disposition of MSW and shall format such reports so that they may be used by the City for City's compliance with the reporting requirements of the Act or any other subsequently enacted federal, state or local laws or regulations governing integrated waste management. All Contractor's reports are subject to audit by City, or by a third-party designated by City, and if material discrepancies are discovered during audit of Contactor's reporting, the Contractor shall pay the City for its costs associated with the investigation of the discrepancies.

ARTICLE 10. INDEPENDENT CONTRACTOR

10.1 Contractor an Independent Contractor. In the performance of services under this Contract, the Contractor shall be, and is, an independent contractor, and is not an agent or employee of the City. Contractor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all Persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's employees and other agents.

10.2 No Partnership or Joint Venture Created. Nothing in this Contract shall be construed as creating a partnership or joint venture between the City and Contractor, or as giving the City a duty to supervise or control the acts or omissions of any Person performing services or work under the Contract.

10.3 No Entitlement to City Benefits. Neither Contractor nor its officers, employees, agents or subcontractors shall be entitled to any retirement benefits,

workers' compensation benefits or any other benefits which accrue to any City employees, and Contractor expressly waives any claim it may have to acquire to such benefits. Contractor agrees to defend and indemnify City for and claims brought by Contractor's employees against City for such benefits.

ARTICLE 11. INDEMNITY, INSURANCE, BOND

11.1 General Indemnification. Contractor shall indemnify, defend and hold harmless City, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limited to, injury to and death of any person and damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Contract. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the sole negligence or the intentional misconduct of City, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other Persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to City) City, its officers, employees, and agents. Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Contract.

11.2 Insurance.

A. Types and Amounts of Coverage. Contractor shall procure from an insurance company or companies licensed to do business in the State of California and shall maintain in force at all times during the Term the following types and amounts of insurance:

1. Workers' Compensation and Employer's Liability. Contractor shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Contractor shall maintain employer's liability insurance in an amount not less than One Million Dollars ($1,000,000) per accident or disease. Contractor shall not be obligated to carry workers compensation insurance if (i) it qualifies under California law and continuously complies with all statutory obligations to self-insure against such risks; (ii) furnishes a certificate of Permission to Self Insure issued by the Department of Industrial Relations; and (iii) furnishes updated certificates of Permission to Self Insure periodically to evidence continuous self insurance.

2. Comprehensive General Liability (and Automobile Liability). Contractor shall maintain comprehensive general liability insurance with a combined single limit of not less than Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) annual aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, services under this Contract.

The insurance required by this subsection shall include:

(i) Premises Operations (including use of owned and non-owned equipment);

(ii) Products and Completed Operations (including protection against liability resulting from use of Recyclable Materials by another Person);

(iii) Personal Injury Liability with employment exclusion deleted;

(iv) Broad Form Blanket Contractual with no exclusions for bodily injury, personal injury or property damage (including coverage for the indemnity obligations contained herein);

(v) Owned, Non-Owned, and Hired Motor Vehicles;

(vi) Broad Form Property Damage.

The comprehensive general liability insurance shall be written on an "occurrence" basis-(rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Contractor must arrange for "tail coverage" on a "claims made" policy to protect City from claims filed within four years after the expiration or termination of this Contract relating to incidents that occurred prior to such expiration or termination. Any excess or umbrella policies shall be on a "following form" basis.

3. Pollution Liability. Contractor shall maintain contractor's environmental liability insurance with limits in an amount of not less than One Million Dollars ($1,000,000) per occurrence and annual aggregate covering claims for on-site, under-site, or off-site bodily injury and property damage and regulatory fines as a result of pollution conditions arising out of its operations under this Contract.

4. Physical Damage. Contractor shall maintain comprehensive (fire and theft) physical damage insurance covering the vehicles and equipment used in providing service to City under this Contract, with a deductible or self-insured retention not greater than One Hundred Thousand Dollars ($100,000). The deductible limit may be increased by City with acceptable proof of self-insurance. Notwithstanding the foregoing, Contractor shall be allowed to self-insure for physical damage to its vehicles provided Contractor provides adequate audited financial information to City and City is reasonably satisfied that Contractor has the financial net worth to cover any losses.

B. **Acceptability of Insureds**. The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

C. **Required Endorsements**. Without limiting the generality of Sections 11.02.A and B, the policies shall contain endorsements in substantially the following form:

1. Workers' Compensation and Employers' Liability Policy.

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

CITY OF BUELLTON
Office of the City Manager
107 West Highway 246
Buellton, California 93427
Attention: City Manager

"Insurer waives all right of subrogation against City and its officers and employees for injuries or illnesses arising from work performed for City."

2. Comprehensive General Liability Policy; Pollution Liability

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

CITY OF BUELLTON
Office of the City Manager
107 West Highway 246
Buellton, California 93427
Attention: City Manager

"The City of Buellton, its officers, employees, and agents, are additional insureds on this policy."

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

"Inclusion of the City of Buellton as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Contractor. This policy shall protect Contractor and the City in the same manner as

though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

3. Physical Damage Policy.

Notice of cancellation, reduction in coverage or non-renewal, as provided in Section 11.02. Cross liability endorsement, as provided in Section 11.02. Waiver of subrogation against City.

D. Delivery of Proof of Coverage. No later than fourteen (14) days before the commencement of operations, Contractor shall furnish City one or more certificates of insurance form and required endorsements substantiating that each of the coverages and endorsements required hereunder are in force, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City in one complete package. Contractor shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the Term. Each year on or before the renewal date for all insurance policies required herein, Contractor shall deliver to City a new package containing all insurance certificates with all of the required endorsements and copies of all insurance policies required by this Contract.

E. Other Insurance Requirements.

1. In the event performance of any service is delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by Subsection 11.02.A.2 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 11.02.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Contract, including those imposed by Section 11.01. If any Claim is made by any third Person against Contractor or any subcontractor on account of any occurrence related to this Contract, Contractor shall promptly report the facts in writing to the insurance carrier and to the City.

3. If Contractor fails to procure and maintain any insurance required by this Contract, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor. Alternatively, the City may treat the failure as a Contractor Default.

4. City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

11.3 Faithful Performance Bond. Not later than ten (10) days before the commencement of services, Contractor shall file with City a bond securing the Contractors faithful performance of its obligations under this Contract. The principal sum of the bond shall be Two Hundred Thousand Dollars ($200,000). The bond shall be executed as surety by a corporation admitted to issue surety bonds in the State of California, regulated by the California Insurance Commissioner and with a financial condition and record of service satisfactory to City.

The term of the bond shall be not less than twelve (12) months, or until June 30, 2011, whichever occurs first. The bond shall be extended, or replaced by a new bond in the same principal sum, for the same term (i.e., twelve (12) months) and in the same form, annually thereafter. Not less than ninety (90) days before the expiration of the initial bond, the Contractor shall furnish either a replacement bond or a continuation certificate executed by the surety.

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

11.4 Alternative Security. City may, in its sole discretion, allow Contractor to provide alternative security in the amount set forth in Section 11.03, in the form of (a) a prepaid irrevocable standby letter of credit in form and substance satisfactory to City and approved by the City Attorney and issued by a financial institution acceptable to City, or (b) a certificate of deposit in the name of the City with a term satisfactory to City and with a financial institution acceptable to City.

11.5 Hazardous Waste Indemnification.

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

1. Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in anyway obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Waste (as defined herein); or

2. Relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

B. Contractor's obligations pursuant to this section shall apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the. Resource Conservation and. Recovery Act (NRCRA"), 42 U.S.C. § 9601 et seq., the California Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health & Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

2. Any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any facility;

3. Any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor;

4. Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Contract.

C. The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

D. For purposes of this Contract, the term "Hazardous Waste" shall mean any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(1); any "hazardous substance, " as that term is defined herein or under California Health & Safety Code Sections 25281(f), 25501(e), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "Hazardous Waste," as that term is defined under Title 42, Section 6093(5) of the United States Code and under California Health & Safety Code Section 2550(m); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Waste" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Contract.

E. The provisions of this section shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Contract.

11.6 Integrated Waste Management Act Indemnification. Contractor agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by the California Integrated Waste Management Board (CIWMB) or the City: (i) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by the CIWMB or the City; (ii) caused or contributed to by the Contractor's failure to perform its obligations under this Contract, including the Annual Diversion Rate requirement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40659.1 but is enforceable to the maximum extent allowable by that Section.

ARTICLE 12. COMPENSATION TO CONTRACTOR; RATE ADJUSTMENTS; FRANCHISE FEE

12.1 General. Contractor shall perform the services required by this Contract in consideration for: (i) the right to charge customers the rates set forth on Attachment C as they may be adjusted as provided in this Article, and (ii) the right to retain revenues, if any, from the sale of Recyclable Materials, Yardwaste and Construction and Demolition Debris. The revenues received from these two sources shall be the full, entire and complete compensation due to Contractor for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit and all other things necessary to perform all the services required by this Contract in the manner and at the times prescribed. Contractor does not look to City for any payments under this Contract.

12.2 Initial Rates. The rates which Contractor may charge for services provided commencing July 1, 2010 shall be those set forth in Attachment C. These rates shall not be changed for the first twenty-four (24) months of the Term.

12.3 Rate Adjustments. Provided the Contractor is in full and complete performance of its material obligations hereunder, the rates for service as set forth in Attachment B shall be adjusted as of July 1, 2012 and as of July 1 for each ensuing year in accordance with the following:

A. CPI Increase. The rates in Attachment B shall be escalated as calculated by computing the percentage change in the Consumer Price Index (the

"CPI") for each February 1 available each March, and multiplying the applicable amount to be escalated by one-hundred percent (100.0%) of this calculated CPI. "CPI Index" means the Pacific Cities and U.S. City Average All-Items Index (Los Angeles-Anaheim-Riverside) (All Urban Consumers 1982-84=100) compiled and published by the United States Department of Labor, Bureau of Labor Statistics.

B. Change Beyond Control of Contractor. The Contractor may request an adjustment of the rates upon occurrence of an uncontrollable circumstance which increases its costs of providing services; provided that if a dispute whether an change beyond the control of Contractor has occurred either City or Contractor may submit such dispute to an Mediator in accordance with 12.10; and provided further that Contractor shall first apply the proceeds of any insurance available to mitigate or eliminate the need for any such adjustment. Changes beyond the control of Contractor shall only be items caused by outside circumstances (example, additional state or local regulations, closing of Disposal Site causing extra mileage, new County diversion programs) and not by the internal error or miscalculation of Contractor.

12.4 Disposal Charge (Tip Fee) Adjustments. If the tip fee charged at the City designated Disposal Site is changed (increased or decreased) for whatever reason including, but not limited to, new or increased taxes or regulatory fees, the rates shall be adjusted. Disposal Charges are a pass through cost and Contractor shall not be entitled to receive or charge any profit, markup, overhead or administrative costs on Disposal Charges.

12.5 City Franchise Fee. In consideration of the exclusive right to provide services in accordance with this Contract, Contractor shall pay City a franchise fee equal to ten percent (10%) of Contractor's gross receipts hereunder, including all income, revenues and receipts received by Contractor (including any subcontractor of Contractor) from Customers for providing services. Contractor shall pay on or before the twentieth day of each month the Franchise Fee collected during the previous month. The City may amend the amount of that fee at any time provided that it correspondingly adjusts the rates in accordance with Section 12.3.

12.6 Late Fees. If payments to be made to the City as provided above are not paid on time the Contractor shall pay City a late fee, and not as interest, in an amount equal to ten percent (10%) of the amounts owing for that month. Contractor shall pay an additional ten percent (10%) late fee for each additional thirty (30) day period that any amount remains unpaid. Contractor agrees that the late fees described herein reasonably reflect the City's costs to process delinquency calculations and notices, and to monitor the Contractor's services.

12.7 Adjustments to Rates Based on City-Directed Changes In Scope of Work. If the City has directed a change in the scope of work under Section'4.12 and either party believes that such change will increase or decrease the costs of providing service, the party which believes the rates should be adjusted shall, within thirty (30) calendar days after issuance of the notice of scope change, submit to the other party a proposed adjustment with complete supporting documentation of the cost calculations therein, and the parties shall thereafter meet and discuss the matter. City may request additional documentation, calculations and other information from Contractor in order to analyze information submitted by Contractor, or in order to make its own internal calculations of the cost change. Once the parties have formulated a cost adjustment, the City Council shall review the proposed adjustment and in the City Council's sole discretion, make the determination as to the appropriate amount of the adjustment.

12.8 Other Fees. The City shall have the right to establish other fees and to collect such fees in rates, as City deems necessary in City's sole discretion. City shall provide Contractor with written notice of the establishment of any new fees along with the corresponding change in rates and remittance schedule. Any such new fees shall be a pass through adjustment in the same manner as provided in Section 12.4.

12.9 Mediation. Differences between the parties over the application of Article 12 shall be settled by Mediation before a neutral Mediator agreed to by the parties. The costs of Mediation shall be equally split by the City and Contractor.

ARTICLE 13. DEFAULT AND REMEDIES

13.1 Events of Default. Each of the following shall constitute an event of default ("Contractor Default") hereunder:

A. (i) Contractor fails to perform its obligations under Articles 4, 5, 6 or 7 of this Contract and the failure to perform is not cured within two (2) business days after receiving notice from the City specifying the breach; or (ii) in the case of any other breach of this Contract, the breach continues for more than fifteen (15) calendar days after written notice from the City for the correction thereof.

B. There is a seizure or attachment of, or levy affecting possession of, the operating equipment of Contractor, including without limitation, its vehicles, maintenance or office facilities, of such proportion as to substantially impair Contractor's ability to perform under this Contract, and which is not released, bonded or otherwise lifted within two (2) business days.

C. There is any termination or suspension from any cause (including labor unrest such as strike, work stoppage or slowdown, sickout, picketing, or other concerted job action) of the Contractor's ability to collect MSW, Recyclable Materials, Yardwaste or Construction and Demolition Debris for more than five (5) business days.

D. Contractor files a voluntary case for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's operating assets or any substantial part of Contractor's property used to provide service to City pursuant to this Contract, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

E. A court having jurisdiction enters a decree or order for relief in respect of the Contract, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, and such proceeding shall remain undismissed or unstayed for a period of ninety (90) days or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.

F. Contractor fails to furnish a replacement bond or a continuation certificate of the existing bond not less than sixty (60) days before expiration of the performance bond, as required by Section 11.3 of the Contract or fails to maintain all required insurance coverages in force. The default shall occur immediately upon such failure without any necessity for notice from City of the breach. City shall have the right to give notice of termination under Section 13.2 immediately upon such default.

G. Contractor fails to provide reasonable assurance of performance required under Section 14.10.

H. A representation or warranty contained in Article 2 proves to be false or misleading in a material respect as of the date such representation or warranty was made.

I. Contractor falsifies tonnage reports or provides information that is materially misleading in any report or documentation provided to the City.

J. Contractor fails to honor any of its indemnity obligations herein.

K. Contractor, or any of its officers or employees are convicted of a felony in connection with performance of this Contract.

L. Contractor is found to have violated the Act, any Environmental Law, or any permit, order or rule of any regulatory agency in connection with Contractor's performance of this Contract and such finding has become final and not subject to further appeal.

13.2 Right to Suspend or Terminate Upon Default.

A. Upon any Contractor Default, City shall have the right to suspend or terminate this Contract, in whole or in part. Such suspension or termination shall be effective thirty (30) days after City has given notice of suspension or termination to Contractor, except that such notice may be effective immediately if the Contractor Default is one which endangers the health, welfare or safety of the public. Notice may be given orally in person or by telephone to the representative of Contractor designated in or under Section 14.6 (or, if he/she is unavailable, to a responsible employee of Contractor) and shall be effective immediately. Written confirmation of such oral notice of suspension or termination shall be sent by personal delivery, facsimile, or other expedited means of delivery to Contractor within twenty-four (24) hours of the oral notification. Contractor shall continue to perform the portion of the Contract not suspended, in full conformity with its terms.

B. City will also have the right to suspend or terminate this Contract, upon the same notice provisions, if Contractor's ability to perform is prevented or materially interfered with by a cause which excuses nonperformance under Section 14.12, despite the fact that nonperformance in such a case is neither a breach nor default by Contractor.

13.3 Specific Performance. By virtue of the nature of this Contract, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by City to Contractor, the remedy of damages for a breach hereof by Contractor is inadequate, and the City shall be entitled to injunctive relief to require Contractor to perform its obligations herein.

13.4 City's Right to Cure. In the event that Contractor fails to perform any of its obligations under Articles 4, 5, 6 or 7 and fails to perform such work within two (2) business days after notice from City, City shall have the right to use any of Contractor's land, equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and collection of fees for those services. The City shall have the right to continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider.

13.5 Right to Perform. If this Contract is suspended and/or terminated due to a Contractor Default, City shall have the right to perform and complete, by contract or otherwise, the work herein or such part thereof as it may deem necessary and to procure labor, equipment, and materials and incur all other expenses necessary for completion of the work. If such expenses exceed the amounts which would have been payable to Contractor under this Contract if it had been fully performed by Contractor, then Contractor shall pay the amount of such excess to City.

13.6 Use of Property Upon Default. In the event of Contractor's Default, the City shall have the right to use any of Contractor's equipment, facilities and other property reasonably necessary for the provision of services hereunder and the billing and Collection of fees for those services. The City shall have the right to continue use of such property until other suitable arrangements can be made for the provision of such services, which may include the award of a contract to another service provider. If the City continues use thereof after the period of time for which Contractor has already been paid, Contractor shall be entitled to the reasonable rental value of such property, which shall be offset against the damages due the City as a result of Contractor's Default. Contractor agrees that it will fully cooperate with the City to effect the City's use of such property. The City may immediately engage all or any personnel necessary for the provision of services, including, if the City so desires, employees previously employed by Contractor. Contractor further agrees, if the City so requests, to assist the City in securing the services of any or all management or office personnel employed by Contractor whose skills are reasonably necessary for the continuation of services. The City agrees that it assumes complete responsibility for the proper, normal use of such equipment and facilities while in its possession. Contractor agrees that the City's exercise of its rights under this section: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any liability on the part of the City to Contractor other than the payment of reasonable rental value as provided for in this subsection; (iii) does not exempt Contractor from the indemnity provisions of Article 11 which are meant to extend to circumstances arising under this Section.

13.7 Damages. Contractor shall be liable to City for all direct and consequential damages arising out of Contractor's Default. This section is intended to be declarative of existing California law. The City may offset such damages against sums which would otherwise be due to Contractor.

13.8 City's Remedies Cumulative. City's rights to suspend or terminate the Contract under Section 13.2, to obtain specific performance under Section 13.3, to cure under Section 13.4 and to perform under Section 13.5 are not exclusive, and City's exercise of one such right shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that the City may have, including a legal action for damages, including incidental, consequential and/or special damages under Section 13.7.

13.9 Liquidated Damages. The parties acknowledge that consistent, courteous and efficient Collection of MSW, Recyclable Materials, Yardwaste and Construction and Demolition Debris is of utmost importance and City has considered and relied on Contractor's representations as to its quality of service commitment in entering into this Contract. The parties further recognize that quantified standards of performance are necessary and appropriate to ensure consistent and reliable service. The parties further recognize that if Contractor fails to achieve the performance standards, City and its residents will suffer damages and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of damages that City will suffer. Therefore, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Contract, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party had ample opportunity to consult with legal counsel and obtain an explanation of this liquidated damage provision at the time that this Contract was made.

Contractor Initial Here: _____ City Initial Here: _____

Contractor agrees to pay to City (as liquidated damages and not as a penalty) the amount set forth below:

A. Collection Reliability.

1. For each failure to commence service to a new customer account within seven (7) days after order, in excess of five (5) such failures annually. $150.00
2. For each failure to collect MSW, Recyclable Materials, or Yardwaste which has been properly set out for Collection, from an established customer account, on the scheduled Collection day, in excess of five (5) such failures annually' $150.00
3. For each failure to collect MSW, Recyclable Materials, or Yardwaste which has been properly' set out for Collection, from the same customer on two (2) consecutive scheduled pick up days: $150.00

B. <u>Collection Quality</u>.

1. For each occurrence of damage to private property which is not corrected to the satisfaction of the property owner within thirty (30) days and which exceed five (5) such occurrences annually.....$250.00
2. For each failure to properly return any empty container to avoid pedestrian or vehicular traffic impediments or to place any Cart in an upright position with lid securely closed, in excess of five (5) such occurrences annually:...$150.00
3. For each occurrence of discourteous behavior to a customer:.....$250.00
4. For each occurrence of excessive noise: $500.00
5. For each failure to clean up MSW, Recyclable Materials or Yardwaste spilled from Containers, in excess of five (5) such failures annually $150.00
6. For each occurrence of collecting. MSW, Recyclable Materials or Yardwaste during unauthorized hours, in excess of five (5) such occurrences annually $500.00

C. <u>Responsiveness to Customer</u>.

1. For each failure to initially respond to a customer complaint within eight (8) working hours:.....$100.00

2. For each failure to carry out responsibilities for establishing service: $500.00
3. For each failure to conform to the litter abatement requirements of Section 4.10: $250.00

D. Timeliness of Submissions to City.

Any report shall be considered late until such time as a correct and complete report is received by City.

1. Monthly report $100.00
2. Quarterly report $250.00
3. Annual report $500.00
4. Annual Diversion Report including calculations and supporting documentation $500.00

E. Accuracy of Billing.

Each customer billing that is not prepared in accordance with City's approved schedule of rates: $250.00

F. Diversion Requirements.

Failure of Contractor to achieve the minimum Annual Diversion Rate of 50% as described in Section 6.6. The amounts below reflect the cost of outside accountants and review to audit diversion reports and to pay for outside contractors to achieve the minimum Diversion Rate. Diversion percentage achieved:

48% – 49% $50,000
45% - 47% $100,000
42% – 44% $400,000
40% - 41% $600,000
39% and below $800,000

G. Compliance Reporting Audit.

Each day, after the due date on City invoice, Contractor fails to reimburse City for audit as described in Section 9.5: ... $250.00

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees, agents or representatives or through investigation of customer complaints.

Prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-

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

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

I. Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed.

City's right to recover liquidated damages for Contractor's failure to meet the service performance standards shall not preclude City from obtaining equitable relief for persistent failures to meet such standards nor from terminating the Contract for such persistent failures.

13.10 City Default. City shall be in default under this Contract ("City Default") in the event City commits a material breach of the Contract and fails to cure such breach within thirty (30) days after receiving notice from the Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, City shall not be in default so long as City promptly commences the cure and diligently proceeds to completion of the cure.

In the event of a City Default Contractor shall continue to perform all of its obligations hereunder until a court of competent jurisdiction has issued a final judgment declaring that City is in Default.

ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES

14.1 Compliance with Law; Non-Discrimination. In providing the services required under this Contract, Contractor shall at all times comply with all applicable laws of the United States, the State of California and City, with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term and with all permits affecting the services to be provided. Contractor shall not discriminate nor permit discrimination against any Person in a manner prohibited by federal or state law.

14.2 Assignment. Contractor acknowledges that this Contract involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on: (i) Contractor's experience, skill and reputation for conducting their operations in a safe, effective and responsible fashion, and (ii) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Contract. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Contract.

A. City Consent Required. Contractor shall not assign its rights or delegate or otherwise transfer its obligations under this Contract to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a Contractor Default.

B. Assignment Defined. For the purpose of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other transfer to a third party of substantially all of Contractor's assets dedicated to service under this Contract; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor, to a third party which results in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this Contract, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any Such transfer or change of ownership, or change of control of Contractor.

C. Consent Requirements. If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

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

2. Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;

3. Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of solid waste/recycling management experience on a scale equal to or exceeding the scale of operations conducted by Contractor; (ii) that in the last five (5) years, the proposed assignee has not been the subject of any administrative or judicial proceedings initiated by a federal, state or local agency having jurisdiction over its operations due to an alleged failure to comply with federal, state or local laws or that the proposed assignee has provided City with a complete list of such proceedings and their status; (iii) that the proposed assignee conducts its operations in a safe and environmentally conscientious manner, in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of MSW and all Environmental Laws; (iv) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.

14.3 Subcontracting. Contractor shall not engage any subcontractors to perform any of the services required of it by this Contract without the prior written consent of City. Contractor shall notify the City no later than ninety (90) days prior to the date on which it proposes to enter into a subcontract. City may approve or deny any such request in its sole discretion if the proposed subcontractor is to perform services required under Articles 4, 5, 6, or 7.

Contractor may, in cases of emergency, engage subcontractors for up to seven (7) consecutive days. Contractor shall give prompt notice to City of any such emergency subcontracting and any such engagement must be approved by City in writing if it is to extend beyond seven (7) days, or if Contractor wishes to renew it after an interval of less than thirty (30) days.

14.4 No Affiliated Entity. Contractor will not form or use any Affiliated Entity to perform any of the services or activities which Contractor is required or allowed to perform under this Contract, other than as a subcontractor approved by City under Section 14.3. The limitations of this Section shall not be deemed to include the owners of leased or rented equipment or property used in the provision of the services under this Contract.

14.5 Contractor's Investigation; No Warranties by City. Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding the Contract and the work to be performed by it, and the Recycling and Source Reduction programs now in effect in the City.

14.6 Notice. All notices, demands, requests, proposals, approvals, consents and other communications which this Contract requires, authorizes or contemplates shall, except as provided in Section 13.2, be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested), addressed as follows:

If to City:

City Manager
City of Buellton
107 West Highway 246
Buellton, California 92780

with a copy to the Buellton City Attorney at:

Burke, Williams & Sorensen
2875 Michelle Drive, Suite 350
Irvine, California 92606
Attn: Ralph D. Hanson

If to Contractor:

MarBorg Industries
136 North Quarantina Street
Santa Barbara, California 93140

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

14.7 Representatives of the Parties.

A. Representatives of City. References in this Contract to "City" shall mean the Buellton City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate authority to the City Manager, and/or to other City officials and may permit such officials, in turn, to delegate some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

B. Representatives of Contractor. Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Contract and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Contractor. City may

rely upon action taken by such designated representative as actions of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to City.

14.8 Right to Inspect Contractor Operations. City shall have the right, but not the obligation, to observe and inspect all of the Contractor's operations under this Contract. In addition, upon reasonable notice and without interference with Contractor's operations, City may review and copy any of Contractor's operational and business records related to this Contract. If City so requests, Contractor shall make specified personnel available to accompany City employees on inspections and/or shall provide electronic copies of records stored in electronic media.

14.9 Maintenance and Review of Records, Submission of Reports. Contractor shall compile, on a daily basis, accurate records of its operations in sufficient detail to allow for accurate determinations of all matters that require periodic determination under this Contract. City shall have the right during regular business hours to review and make copies of (at City's expense) any documents relevant to this Contract, including, but not limited to, Contractor's billing and collection records, tonnage reports, route lists, maps and records maintained in electronic, magnetic and other media.

Contractor shall prepare and submit complete, accurate and timely reports on forms provided or approved by City as described in this Contract.

14.10 Right to Demand Assurances of Performance. If Contractor: (i) persistently suffers the imposition of liquidated damages under Section 13.9; (ii) is the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (iii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or (iv) is the subject of a civil or criminal proceeding brought by a federal, state, regional or local agency for violation of an Environmental Law, City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Contract, in such form and substance as the City may require.

14.11 Right of City to Permit Collection By Third Parties. Pursuant to Public Resources Code Section 40105, City designates Contractor as City's Authorized Recycling Agent. However, if Contractor fails to achieve the minimum required Diversion of fifty percent (50%) during any 2 successive calendar years, as required by Article 6, the parties acknowledge and agree that from and after the date of such failure the City may (without Contractor's approval) permit, authorize or allow entities other than Contractor to collect, Recycle and/or Dispose of Recyclable Materials generated at Commercial, Industrial or Institutional Premises, regardless of whether or not the customer pays for the Collection and Recycling of such materials.

14.12 Force Majeure. Neither party shall be in default of its obligations under this Contract in the event, and for so long as, it is impossible or extremely impracticable for it to perform its obligations due to an "act of God" (including, but not limited to, flood, earthquake or other catastrophic events), war, insurrection, riot, or other similar cause not the fault of, and beyond the reasonable control of, the party claiming excuse. Labor unrest, picketing, strikes, work stoppage or slow down, sick outs or other concerted job action shall not constitute events of Force Majeure. A party claiming excuse under this Section must (1) have taken reasonable precautions, if possible, to avoid being affected by the cause, and (2) notify the other party in writing within five (5) days after the occurrence of the event specifying the nature of the event, the expected length of time that the party expects to be prevented from performing, and the steps which the party intends to take to restore its ability to perform. The party claiming excuse under this Section shall use its best efforts to remedy its inability to perform as quickly as possible.

A. Force Majeure. Neither Contractor nor the City shall be excused from the performance of its obligations under this Contract except where a party's failure to perform is due to an event of Force Majeure, as defined in this Contract.

B. City's Rights in the Event of Force Majeure. The partial or complete interruption or discontinuance of Contractor's services caused by an event of Force Majeure shall not constitute an event of default under this Contract. Notwithstanding the foregoing: (i) the City shall have the right to make use of Contractor's facilities and equipment in accordance with Section 13.6 of this Contract in the event of non-performance excused by Force Majeure; (ii) if Contractor's excuse from performance for reason of Force Majeure continues for a period of thirty (30) days or more, the City shall have the right, in its sole discretion, to immediately terminate this Contract; (iii) if Contractor is unable to collect and dispose of MSW as required by this Contract for a period of three (3) or more consecutive days or for any (3) days in a seven (7)-day period as a result of Force Majeure, the City shall have the right to make use of Contractor's property in accordance with Section 13.6, and (iv) if Contractor's inability to collect and dispose of MSW continues for fourteen (14) days or more from the date by which Contractor gave or should have given notice under Subsection C above, the City may terminate this Contract.

14.13 Cooperation During Transition. At the expiration or earlier termination of the Term, Contractor shall cooperate fully with the City to ensure an orderly transition to any and all new service providers. In addition, during the last twelve months of the Term, Contractor shall allow prospective operators to observe its operations and shall make available to City all records and reports required to be submitted by this Contract for use in the transition including, but to limited to, complete route lists and maps, customer account lists including customer name, address, type and frequency of service, billing information, and number, type and location of all Containers deployed by Contractor within City.

14.14 No Damages for Invalidation of Contract. If a final judgment of a court of competent jurisdiction determines that this Contract, or any portion thereof, is illegal or was unlawfully entered into by the City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory.

14.15 Diversion Programs Not Restricted. Nothing in this Contract shall restrict City's participation or non-participation, or the nature or extent of its participation in, any Recycling and Diversion program, developed or operated by City, other agencies, or by one or more residents, businesses, commercial, industrial or retail operators, or other Persons, within City or other jurisdictions.

14.16 Reports as Public Records. The reports, records and other information submitted (or required to be submitted) by Contractor to City are public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 et seq. Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by the City upon request.

14.17 Business License. Contractor and all City-approved subcontractors shall annually, if requested by City, a City of Buellton Business License prior to performing work on this Contract.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.1 Governing Law. This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

15.2 Jurisdiction. Any lawsuits between the parties arising out of this Contract shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Contract is made in and will be performed in Santa Barbara County and the exclusive venue is the Superior Court located in Santa Barbara County.

15.3 Binding on Successors. The provisions of this Contract shall inure to the benefit of and be binding on .the successors and permitted assigns of the parties.

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

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

15.6 Attachments. Each of the attachments are attached hereto and incorporated herein and made a part hereof by this reference.

15.7 Entire Agreement. This Contract, including the Attachments, represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations and agreements, either written or oral.

15.8 Section Headings. The article headings and section headings in this Contract are for convenience of reference only and are not intended to be used in the construction of this Contract nor to alter or affect any of its provisions.

15.9 Interpretation. This Contract shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

15.10 Amendment. This Contract may not be modified or amended in any respect except by a writing signed by the parties.

15.11 Severability. If a court of competent jurisdiction holds any non-material provision of this Contract to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Contract which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

15.12 Costs and Attorneys' Fees. The prevailing party in any action brought to enforce the terms of this Contract or arising out of this Contract may recover its

reasonable costs expended in connection with such an action from the other party. However, each party shall bear its own attorneys' fees.

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

15.14 City's Municipal Code. Contractor is aware of the provisions of City's Municipal Code relating to the Collection and Disposal of solid waste including the right of City to amend those provisions.

City may, in its sole discretion, determine whether and in what circumstances enforcement of any provisions of the City's Municipal Code relating to the obligation of owners and occupants of Premises to use the services of Contractor is in the public interest. City undertakes no obligation, by virtue of this Contract, to Contractor to enforce such provisions through civil actions, or termination of other utility services provided by City. City does agree that it will not, during the Term and so long as Contractor is not in default, and so long as Contractor is meeting the minimum annual Diversion level described in Article 6, enter into a contract with a third party to provide services within the scope of services required of Contractor.

If, in any calendar year, Contractor fails to meet the fifty percent (50%) minimum annual Diversion required by Section 6.6, City may (without Contractor's approval) authorize, permit or allow entities other than Contractor to Collect, Recycle, Divert and Dispose of Recyclable Materials, Yardwaste, Organics, Construction and Demolition Debris or other materials generated at Residential, Commercial, Business Establishments, Institutional or other Premises, regardless of whether or not the customer pays for the Collection, Recycling or Diversion of such materials. Furthermore, in the event that City and Contractor cannot agree on the cost or other terms for a change in the scope of work pursuant to Section 4.12 within ninety (90) days of City's direction of the change in scope, City may (without Contractor's approval) authorize, permit or allow entities other than Contractor to Collect, Recycle, Divert and Dispose of Recyclable Materials, Yardwaste, Organics, Construction and Demolition Debris or other materials generated at Residential, Commercial, Business Establishments, Institutional or other Premises, regardless of whether or not the customer pays for the Collection, Recycling or Diversion of such materials.

The parties acknowledge that City may permit the Collection, Recycling, Diversion and/or Disposal of any or all of the following materials without seeking or securing any approval of Contractor:

A. Recyclable Materials Source-Separated from MSW by the customer which the customer sells, or for which he/she is otherwise compensated in a manner resulting in a net payment to the Customer;

B. MSW and Recyclable Materials which is removed from any Premises by the property owner or occupant, and which is transported by the property owner or occupant (or by his or her full-time employees) to a processing or Disposal facility;

C. Recyclable Materials which are Source-Separated by the Customer and donated to youth, civic, or charitable organizations;

D. Source-Separated Recyclable Materials not collected by Contractor which are delivered to a permitted recycling drop off or buy-back center or facility;

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

F. Construction and Demolition Debris that is incidentally removed by a licensed construction or demolition company as part of a total service offered by said licensed company or by the City, utilizing its own equipment;

G. Yardwaste removed from a Premises by a gardening, landscaping or tree trimming company utilizing its own equipment as an incidental part of a total service offered by the company rather than as a hauling service;

H. The casual or emergency Collection and Disposal of MSW by City employees in the normal course of their employment;

I. Animal waste and remains from butcher shops and grease collected from restaurants for use as tallow;

J. Hazardous Waste, regardless of the source; and

K. Cleanup services whose primary business is the cleanup of MSW on the property of another and who, incidental to such business: (a) hauls only the MSW which he cleans up and no other MSW; (b) performs cleanup services such as removing junk from businesses, garages and residential properties, but does not remove MSW from Construction and Demolition sites; (c) uses his/her own vehicle to haul the MSW which he/she clean up; and (d) does not use a Bin, Roll Off Box or other

Container, whether or not such Bin, Roll Off Box or Container is left at the cleanup site, to accomplish the cleanup, Collection or transportation of the MSW.

15.15 Non-Discrimination. Contractor shall not discriminate, nor permit any City-approved subcontractor to discriminate, in the provision of services or the employment of Persons engaged in the performance of this Contract on account of race, color, religion, sex, age, national origin, ancestry, physical handicap, sexual orientation, marital status or medical condition in violation of any applicable federal, state or local law.

15.16 Guaranty. No later than ten (10) days before the Effective Date of this Contract, Contractor shall furnish a properly executed Guaranty of its performance under this Contract, in the form of Attachment F.

(signatures on following page)

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

MARBORG INDUSTRIES

By: _____

By: _____

CITY OF BUELLTON

By: _____
Victoria Pointer, Mayor

ATTEST:

CITY CLERK

By: _____
Linda Reid, City Clerk

APPROVED AS TO FORM

By: _____
Ralph D. Hanson, City Attorney