

CITY OF BIG BEAR LAKE, CALIFORNIA



**REQUEST FOR INFORMATION
FOR
SOLID WASTE MANAGEMENT, COLLECTION AND DISPOSAL SERVICES**

to include collection, transfer, and disposal of residential and commercial solid waste, recycling, and organics within the City of Big Bear Lake

Date Issued: January 28, 2022

Responses Due: February 10, 2022; 5:00 p.m.

Request for Information Purpose and Goals

The issuance of this Request for Information (RFI) by the City of Big Bear Lake is intended to obtain responses from organizations that would be interested in proposing on and providing solid waste management services within the City of Big Bear Lake, California. Solid waste services within the City of Big Bear Lake are currently provided under an existing franchise agreement and the current extension period is due to expire on June 30, 2022. The City and the existing waste hauler are engaged in negotiations to establish either a new long-term franchise agreement or an extension period to conduct a request for proposals process in the coming months.

The responses gained from this RFI will serve the City to determine the viability of conducting a competitive request for proposal process and provide information that could be beneficial in developing the request for proposals. This is an RFI only and there is to be no award of services to be made from this request. All information transmitted will become property of the City of Big Bear Lake, may be utilized in any future efforts of the City, and is subject to the California Public Records Act (CPRA) to the extent authorized by the law.

Request for Information Process

The RFI is seeking background information from interested firms, including their experience, particularly any experience in rural communities similar to Big Bear Lake, and a general description of available resources to provide the desired services. Additionally, the RFI will allow respondents to provide thoughts, observations, or alternative considerations for the processes and programs that the City is proposing.

The submission of an RFI is nonbinding and submittals will not be deemed as complete or responsive for any purposes. This will not serve as a qualifier for any future proposal requests.

There will not be a pre-submittal meeting or conference of any kind. Respondents may review the information included within this packet or any other publicly available information through the City's website. A summary of available information is included within.

For the purposes of transparency, all submissions will be made publicly available as required by the California Public Records Act (CPRA).

The City's sole point of contact during this process will be Sean Sullivan, Director of Public Services. Please submit any inquiries or questions directly to Sean Sullivan at ssullivan@citybigbearlake.com.

All responses are to be submitted digitally by 5:00 p.m. on Thursday, February 10. Responses should be limited to a single PDF not exceeding 15 pages and emailed to ssullivan@citybigbearlake.com. Links to file sharing sites (i.e. Dropbox) will be accepted to accommodate larger size files as necessary.

Community Background

The City of Big Bear Lake is “Southern California’s only Four-Season Resort Community” and is located at an elevation of 6,752’ surrounding Big Bear Lake. The City is located within the San Bernardino National Forest and is approximately two-hours from the major metropolitan cities of Los Angeles and San Diego. Visitors to the area drive the tourism-based economy and can enjoy the beautiful alpine lake, mountain ski resorts, and year-round outdoor recreational opportunities. The City’s full-time population is approximately 5,500 residents but the community can host from 20,000 – 100,00 weekend and holiday visitors depending on the season and events.

The City of Big Bear Lake represents approximately 6.42 square miles and maintains approximately 10,000 residential housing units. About 25% of the housing stock is occupied full-time, 25% are licensed vacation rentals, and 50% are second or weekend homes.

The 6.42 square miles of the City of Big Bear Lake are a part of the overall Big Bear Valley that represents more than 30 square miles and an additional full-time population of more than 12,500. While the City operations are limited to the City Limits, the sphere of influence often extends throughout the Valley.

General Service Background

At present, all solid waste management within the City of Big Bear Lake is managed through a franchise agreement with Big Bear Disposal. Since 1991, Big Bear Disposal has maintained all collection and disposal of solid waste within the City of Big Bear Lake for all customers, both residential and commercial. The general service offering includes:

Residential service is provided through two options:

- Weekly Curbside Collection
- Bulk Collection using two drop off sites

Curbside collection is available to all single-family residential households within the City, which totals about 8,500. These residential units are assessed a refuse fee on the property tax roll meaning that all properties pay for and are eligible for service and all residential billing is done to the City rather than the individual properties. The waste hauler bills the City monthly and the billing is a factor of the established monthly rate and the total eligible housing units; billing considerations are not made based upon occupancy or participation in services. It is believed that approximately 1,800 – 2,200 households routinely utilize curbside collection. At present, there is no sign up for service meaning that any residential unit can place their containers out on the designated collection day and receive service.

Curbside collection includes up to two (2) 32-gallon containers (provided by the property owner), up to two (2) 32-gallon recycling containers (provided by the hauler), and vegetative (green) waste collection. Green waste is accepted through property owner provided bins, stacked bundles, and bags of pine needles. Curbside collection routes service one time per week.

The City currently provides for two bulk collection sites known as Clean Bear Sites. These locations provide the ability for full-time residents, part-time residents, or visitors from vacation rentals to dispose of residential solid waste without managing the logistics of curbside collection.

The sites are located at 41970 Garstin Road (owned by Big Bear Disposal) and 39690 Big Bear Boulevard (owned by City of Big Bear Lake). The sites are heavily utilized by the community, both within the City of Big Bear Lake and beyond, and recent evidence indicates that 25%, or more, of all usage originates outside the City limits.

Based upon the annual reports provided by the current hauler, below is a five-year overview of the residential tonnage collection:

	2017	2018	2019	2020	2021*
Curbside Trash	1,171.43	1,326.48	1,509.16	1,488.75	937.1
Curbside Recycling	119.81	101.83	117.04	73.67	152.2
Total Curbside	1,291.24	1,428.31	1,626.20	1,562.42	1,089.30
Clean Bear Trash	6,168.55	5,321.39	5,348.43	6,535.66	6,536.96
Clean Bear Recycling	372.08	310.75	317.64	361.04	222.52
Total Clean Bear	6,540.63	5,632.14	5,666.07	6,896.70	6,759.48
Total Residential Tonnage	7,831.87	7,060.45	7,292.27	8,459.12	7,848.78*

*2021 is for period January 1, 2021 – November 30, 2021 (11-months)

Current residential solid waste hauler fees, for Fiscal Year 2021-22, are as follows:

	Monthly Fee	Billing Units
Residential Service	\$ 22.92	8,459
Vacant Parcels	\$ 1.27	1,420

Commercial collection is provided through direct contract between the commercial customer and the hauler. Commercial service is generally provided through bin service and it allows for flexibility to meet the needs of the customer through varying sized containers and frequency of collection. At present, there are 312 commercial service accounts that include commercial businesses, multi-family housing complexes of four or more units (condos, mobile home parks, etc.), and other governmental or institutional customers. These commercial accounts comprise the remaining 1,500 housing units that are not eligible for curbside collection.

Commercial services also include temporary bin rental for construction, demolition, other requested services, and special events. Construction and demolition disposal is also arranged through commercial services, as needed.

The chart below provides the total collected tonnage for commercial service over the past five years inclusive of recycling.

	2017	2018	2019	2020	2021*
Total Commercial Tonnage	7,719.84	8,239.94	7,948.81	7,843.12	7,778.54*

*2021 is for period January 1, 2021 – November 30, 2021 (11-months)

Proposed Service Delivery Design for New Agreement

Over the past year or more, staff from the City and Big Bear Disposal has been engaged in discussion related to the service offerings and potential programmatic enhancements to better serve the community and ensure adherence to best practices and regulations, especially SB 1383. This effort has included frequent meetings and discussion as well as two (2) presentations and discussions with the City Council.

To further identify and discuss community need, the Mayor appointed a Solid Waste Working Group comprised of three (3) full-time residents and two (2) representatives of the vacation rental industry. This group met on two occasions to have structured discussions pertaining to proposed changes and enhancements to the solid waste programs offered by the City and perceived impacts related to their respective interests. Staff has engaged with other stakeholders including residents and visitors, business owners, and other representatives of the hospitality and vacation rental industries to gather feedback and input on these issues.

The following scope of services represents the staff's best effort to capture the needs and desires of the community to develop a program that meets their varying needs. Program and service design is able to be modified based upon different ideas or feedback received, especially from entities with tangible, professional experience in this field. The intent of this RFI is to gain additional insight for that may aid in determining the final service design.

The proposed scope of work will continue to serve all residential commercial customers within the City of Big Bear Lake. Staff intends to propose a contract term of ten (10) years for the solid waste management contract. All contract terms, including duration, are subject to approval of the City Council.

Contract Terms and Conditions

The contract terms and conditions will be built upon those within the existing service contract (included within this packet). The terms will be updated to reflect current regulatory requirements, industry best practices, and community needs. Updated contract terms would be included in an RFP if pursued. The final contract terms are to be negotiated with the selected hauler and are subject to the approval of the City Council.

Residential Service

Residential service will be provided through both of the following programs:

- Curbside Collection
- Operation of Clean Bear Sites

As stated previously, all single-family residential properties are assessed a refuse fee on the property tax roll, which includes a City refuse fee and a pass-through fee to the City's franchise waste hauler. The waste hauler bills to the City the contracted costs associated with residential services rendered. These assessment and billing practices will not change regardless of the new contract or service model. The hauler will directly bill the City monthly for services. The billing is a factor of the monthly rate and the number of eligible housing units; billing considerations are not made for occupancy or participation in the services. By virtue of the property tax assessment for

solid waste services, all residential properties within the City (approximately 8,500) are eligible for the residential solid waste service offerings.

Curbside Collection

Curbside collection, as intended, shall be:

- Available to all single-family residential properties (approximately 8,500) one time per week.
 - Every effort possible should be made to consolidate curbside, residential collection into Monday and Tuesday of each week to accommodate heavy weekend visitation.
- Implemented as a three (3) cart/barrel, source separated model for general refuse, recyclables, and organic materials/vegetative debris. All containers shall be serviced on the same designated day for each property.
- For the purposes of service delivery going forward, the City is proposing an Opt-In / Sign Up System. All single-family residential properties are eligible for curbside collection by virtue of refuse fees being billed through the property tax roll for all properties. Staff is proposing an opt-in/sign up program, to be managed collectively by the City and Hauler, whereby residents must “opt-in” or declare their intent to participate in curbside service.
 - Anecdotal evidence indicates routine participation of about 1,800 – 2,200 properties. This does not guarantee that the level of participation will not increase or decrease.
 - This is not an effort or attempt to dissuade usage; all properties are eligible be them full-time, part time, or vacation rental properties.
 - The opt-in provision is design to allow for route optimization and control over the quantity of collection containers to be distributed.
 - Property owners can opt in anytime and service should commence on the next normal collection day.
 - Carts / containers will only be provided to customers who have opted in.
- Service will transition to cart service. The hauler shall furnish three (3) typical 96-gallon carts to each customer who has opted in for service. All carts shall be compliant with the color and marking requirements of SB 1383.
 - Smaller carts shall be made available, by request only, to situations with logistical concerns (i.e. disabled, senior citizens, property issues).
 - Carts shall be standardized to lockable / wildlife resistant.
 - The means and methods for the servicing of the carts shall be determined by the hauler. The City is not mandating either fully automated or semi-automated servicing. The servicing method shall be determined by the hauler's selected equipment and available manpower, taking into consideration all conditions (topography, street widths, and weather) that impact curbside collection within the City.
- Vegetative Debris / Green Waste shall be collected as part of the curbside collection from April through October.
 - Provisions shall be made for occasional high-volume green waste disposal which is typically bagged pine needles.
 - The City will continue to offer an on demand, curbside chipping program to encourage brush clearance. Residents will call for service and City staff or a contractor will chip and haul the material. The material may either be retained by

the contractor or hauled to a designated bin within the City for disposal by the waste hauler.

- The collection of hauling of ashes shall be included with the curbside collection service. The hauler will determine proper handling procedures, such as a separate container or requirements that they be watered down / totally extinguished.
- The resident / guest/ vacation rental manager for properties participating in this service shall be responsible for placing and removing the carts for service.
 - The hauler may develop a pull out and return service for residents who request such a service. The associated costs will be determined by the hauler, subject to City review, and will be billed directly to the participating property owner.
- The hauler shall develop means of enhancing or modifying service levels, which may include additional collections or additional containers, for property owners upon request (i.e. to accommodate vacation rental usage).
 - The hauler shall develop the appropriate costs associated with increased service levels, subject to City review, and those costs will be billed directly to the participating property owner.

Clean Bear Sites

The hauler shall operate two (2) bulk collection facilities known as *Clean Bear Sites*. The current location of the *Clean Bear Sites* are:

- Site No. 1 - 41790 Garstin Drive
- Site No. 2 - 39690 Big Bear Boulevard

The location on Garstin Drive is on property owned by the incumbent hauler. Should a new hauler be selected and transitioned to service, they will be responsible for identifying and furnishing a site for similar operations that is convenient to the City populous. The site located on Big Bear Boulevard is on property owned by the City of Big Bear Lake.

Clean Bear Site Operations

At least one of the two sites shall be staffed, by the hauler, 24/7/365 and shall be always available for public use. The subsequent site, if not 24/7/365, shall be staffed by the hauler from 06:00 – 21:00, at a minimum, 365 days per year. The site should be able to be secured and surveilled during periods of nonoperation.

- Clean Bear Sites shall be available to property owners, residents, visitors/guests, vacation rental managers or operations, or approved third-party vendors so long as the point of origin of the user and associated waste shall be a residential property within the City of Big Bear Lake.
 - Commercial entities are not permitted to use the sites. For the purposes of determining eligibility, vacation rentals /short-term rentals operating in residential properties are not considered commercial entities.
 - City staff will work with the hauler to develop a validation system for eligibility to use these sites (i.e. card, QR code, or other method).
- Clean Bear Sites presently accept general refuse, recyclables, and green waste/organics/vegetative debris.
- The historic tonnage information for these sites is provided within the table above.
- It is believed that at present, and historically, that 25%, or more, of the users and total waste collected at these sites originate outside of the City of Big Bear Lake and are not

eligible for the use. Current tonnage figures for the Clean Bear Sites reflect this non-restricted usage.

- Beginning no later than July 1, 2022, the sites will no longer accept waste generated outside of the City limits. This will be managed through the staffing of the site by the hauler and the implementation of a validation system.
- The City will provide supplemental staff support, on site, during this roll out period.
- There are desired capital improvements to be considered for both existing sites. Concepts consider the complete enclosure of the sites in a warehouse type building with drive through capabilities. The hauler will be asked to make considerable investment in the current site, Site No. 1, or an identified replacement site should a new hauler be selected for these services. The City will coordinate and fund the desired improvements to the existing Clean Bear Site No. 2. The City is also pursuing the possible relocation of that site to a yet to be identified location.

Popup Sites, or temporary collection sites, may be used during peak periods of visitation as requested by the City. As has been previously utilized by the City and the current hauler, popup sites will be established sporadically to alleviate the traffic flow and burden to the existing Clean Bear Sites. The City will facilitate a location and the hauler will provide a staff, multiple bins, and a truck to service them. Staff anticipates that on any given year, these may be desired on 15 – 20 occasions.

Commercial Service

Commercial service will continue to include commercial business customers, multi-family residential properties greater than four (4) units, and other governmental or institutional customers within the City of Big Bear Lake service area. Current records show a total of 312 Commercial Service Accounts. There are an additional 32 multifamily accounts and 14 HOA accounts which account for the remaining 1,500 housing units. Commercial service is to be provided through individual accounts between the customer and the hauler. The City shall maintain the right to review and approve the commercial service rates. Commercial service is anticipated to operate as it has historically, with bin service of varying sizes and collection frequencies to meet the needs of the customer.

Commercial service shall also include temporary bin rental for construction, demolition, special events, and other services as required. Staff is also working to update the construction and demolition program and will coordinate closely with the hauler on implementation.

Environmental Requirements

SB 1383

SB 1383, the short-lived climate pollutants legislation, went into effect on January 1, 2022, and provides a revised framework for the ongoing management of organic materials as present within the waste stream. The impacts of SB 1383 will have a considerable impact on solid waste management programs going forward.

SB 619 offered local agencies the opportunity to delay elements of the required implementation associated with SB 1383. On February 7, 2022, City of Big Bear Lake staff are presenting to the City Council, for their approval, an SB 619 implementation plan that allows appropriate time to establish for a new solid waste services agreement and the associated start up period.

As of January 13, 2022, the City of Big Bear Lake has an approved High Elevation Waiver which will serve to exempt the waste generators within the City from having to comply with the food separate and recover elements of SB 1383. Additionally, the City is prepared to coordinate with all eligible generators on the issuance of de minimis waivers of physical space waivers where appropriate.

The residential solid waste program, consisting of a three (3) cart system is designed with SB 1383 compliance in mind. The details of the legislation provide for varying options to achieve compliance, such as a one or two cart system provided the material is processed through a certified high-diversion recovery, amongst other options. This system was specified by the City as it is perceived as generally universal. The City is willing to consider additional options or approaches to this service delivery so long as it is focused on customer service, quality service delivery, and regulatory compliance. We understand that haulers may have different approaches based upon different business models or access to different resources and other options for service will be considered.

Additional Legislative / Regulatory Requirements

The hauler will work, with the City, to implement the services in accordance with all existing and future legislation pertaining to solid waste management including recycling, commercial recycling, organic recycling, and any other relevant legislation.

Resources / Information

The following resources and information are available to support your efforts in developing a response to this RFI

- Current Contract for Services is available as a PDF that was distributed with this RFI.
- City Council Review and Discussion - The Big Bear Lake City Council received reports and held discussion associated with solid waste services at the following meetings:
 - December 6, 2021
 - January 11, 2022
- Agendas, reports, and video are available at www.citybigbearlake.com
- Incumbent Provider: Big Bear Disposal, Inc. www.bigbeardisposal.com
- Regulatory Information www.calrecycle.ca.gov

City Contact Information

The City has designated Sean Sullivan, Director of Public Services, as the sole point of contact for this process. Please contact Sean Sullivan directly with any questions or concerns throughout this process and refrain from contacting other City employees or representatives.

Sean Sullivan, Director of Public Services
ssullivan@citybigbearlake.com;
(909) 866-5831 X 113

CITY OF BIG BEAR LAKE, CALIFORNIA



**REQUEST FOR INFORMATION
FOR
SOLID WASTE MANAGEMENT, COLLECTION AND DISPOSAL SERVICES**

A. Respondent Information: Provide the following information regarding the Company.

Respondent Name: _____

Primary Address: _____

City: _____ **State:** _____ **ZIP:** _____

Year Company Established: _____

Number of Solid Waste Collection / Disposal Contracts in CA: _____

Primary Contact for RFI: _____

Title: _____

Telephone Number: _____

Email Address: _____

B. RFI Response While not mandatory, the RFI Response should include the following elements, in addition to any other information that your company chooses to provide. Responses should be limited to 15 pages and a single PDF.

1. A cover letter, on company letterhead, describing your company's interest in proposing on and providing these services.
2. Company Background – provide background information on the company including:
 - When the company was established
 - Years of experience in solid waste collection and disposal services
 - Primary Area of Service (i.e. Southern California, Los Angeles County, San Bernardino County, Riverside County, etc.)
 - Quantity and location of collection and disposal contracts
 - Location of key facilities and operations
3. Does your company have experience providing services in isolated, rural communities similar to Big Bear Lake? Would you propose to provide the service from an existing company location or would you propose to establish a location within the Big Bear Valley?
4. Describe the company's available resources, or access to resources, required to properly service this contract.

C. Scope of Work & Contract This section offers the opportunity to provide any comment, thoughts, observations, or suggestions on the proposed scope of work and contract terms. Questions for consideration may include:

Scope of Work

1. Would your company consider proposing a collection methodology different from the proposed three (3) cart system?
2. Would your company consider the use of certified high-diversion facilities to meet compliance with SB 1383?
3. Do you disagree with any of the terms of the proposed scope of work? Would you suggest alternative approaches to any of the proposed scope items?
4. Do any of your current contracts utilize a sign up or "opt in" provision? Is that program, or anything similar, managed by your staff?

Contract Terms

1. Is your company comfortable with a ten (10) year contract term? As a potential new service provider, does this term allow for the appropriate timeline to procure property, equipment, and personnel to service this contract?
 - a. If not, what is the minimum preferred contract term?
2. As stated, the billing for residential services shall be done monthly, directly to the City. Additional services, as requested, shall be billed directly by the hauler to the requesting property owner. Does your company have any concerns with these billing practices?

3. The outlined timeline is tentative and subject to change. If your company were selected for this service contract what would be an appropriate and comfortable timeline to establish service?
4. Are there any terms that are not included within the scope of work or existing contract terms that should be? Are there any terms that are included that should be omitted?

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4-13-09

THIS AGREEMENT FOR THE COLLECTION OF SOLID WASTE ("Agreement") is made and entered into this 13 day of April 2009 between the CITY OF BIG BEAR LAKE, a California municipal corporation, ("CITY"), and BIG BEAR DISPOSAL, INC., a California corporation organized under the laws of the State of California, ("CONTRACTOR"). CITY and CONTRACTOR are collectively referred to as the "Parties".

It is a condition precedent to the effectiveness of this Agreement that the CONTRACTOR completely fulfill its obligations under, and retire the debt described in, the Asset Purchase Agreement, Promissory Note and Security Agreement (as those terms are defined below).

RECITALS

The California Integrated Waste Management Act (California Public Resources Code Section 40000, et seq.) provides the CITY with the authority to grant an exclusive franchise for the collection, transportation and disposal of Solid Waste and Recyclable Materials generated within the boundaries of CITY.

On October 9, 1991, the Parties entered into an Agreement for the collection of Solid Waste.

On April 25, 1996, the Parties entered into an Amended Agreement for the collection of Solid Waste.

On September 25, 1997, the Parties entered into a Second Amended Agreement for the collection of Solid Waste.

On April 1, 1998, the Parties entered into a First Amendment to the Second Amended Agreement for the collection of Solid Waste.

On or about April 1, 1998, the Parties entered into an Asset Purchase Agreement ("Asset Purchase Agreement").

On or about April 1, 1998, CONTRACTOR executed a promissory note, promising to pay for the assets purchased through the Asset Purchase Agreement ("Promissory Note").

On or about April 1, 1998, the Parties entered into a Security Agreement to secure the payment of the amounts owed under the Promissory Note to CITY ("Security Agreement").

On or about July 1, 2001, the Parties entered into a new Agreement for Collection of Solid Waste.

On or about June 23, 2008, the Parties entered into the First Amendment to the existing Agreement for Collection of Solid Waste.

The Parties desire to enter into this Agreement for the purpose of rescinding and superseding all prior Agreements and understandings (other than the Asset Purchase Agreement, Promissory Note and Security Agreement), whether or not listed in these Recitals, between the Parties to accurately reflect the rights and obligations of the CITY and CONTRACTOR solely as set forth in this Agreement.

The City Council of CITY further declares its intention of maintaining reasonable rates for collection, processing and disposal of Solid Waste within CITY.

The City Council of CITY has determined that the public health, safety and well being of its residents require that Solid Waste collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be provided by an exclusive Solid Waste contract.

The City Council of CITY has determined that maximum waste reduction and recycling are essential services under this contract, and that putting useful materials in landfills is not acceptable.

The City Council of CITY has determined that CONTRACTOR, by demonstrated experience, reputation and capacity is qualified to continue to exclusively provide for the collection of Solid Waste (except to the extent self-hauling is permitted pursuant to this Agreement) within the corporate limits of CITY and to transport such Solid Waste to places of processing and, as a last resort, disposal, which may be designated in accordance with this Agreement, and CITY and CONTRACTOR desire that CONTRACTOR be engaged to perform such services on the terms and conditions set forth in this Agreement.

In consideration of the respective and mutual covenants and promises contained and made in this Agreement, and subject to all the terms and conditions of this Agreement, the Parties agree as follows:

1. DEFINITIONS

Affiliated Companies means all businesses which are directly or indirectly related to CONTRACTOR by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in CONTRACTOR.

Applicable Law means all law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of San Bernardino, CITY, regional or local government authorities,

agencies, boards, commissions, courts or other bodies having applicable jurisdiction, including AB 939, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and the San Bernardino County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendment or remodifications thereof, unless otherwise specifically limited.

Ash Container means a perforated metal receptacle, 5 gallons or less, the contents of which must have been soaked with wafer.

Bins means Front Loading Bins and Roll-Off Bins provided by CONTRACTOR for Commercial Premises, Clean Bear Sites, and Multi-Unit Residential Premises.

Bulky Household Items means all discarded household waste matter which is too large to be placed in a Container including, but not limited to, furniture, appliances, discarded carpets, discarded mattresses, residential waste and similar large items produced from Residential Premises, but excluding Construction and Demolition Waste.

City Code means the City of Big Bear Lake Municipal Code, as amended from time to time.

City Manager means the City Manager of CITY. The City Manager or his designee is the authorized agent of CITY in enforcing the terms of this Agreement.

Clean Bear Site means a location (as they currently exist as described in Exhibit C or as they may be established from time to time throughout the term of this Agreement) within the territorial limits of CITY at which residents of the CITY or persons visiting the CITY for purposes primarily other than solely waste disposal may dispose of Solid Waste generated within the CITY.

Collector means CONTRACTOR as the term "Collector" is used in the City Code.

Commercial Premises means all properties or points of Solid Waste collection on which there are the following non-residential uses: industrial, manufacturing, industrial warehouse, restaurants, wholesale or retail stores, service establishments, professional offices, construction sites, mobilehome parks, trailer courts, hotels or motels (as both are defined in Chapter 8.16 of the City Code) and bed and breakfast facilities as described in Section 17.28.030(M) of the City Code (but not including homes used for transient rentals when the owner is not present). Commercial Premises shall also include all Multi-Unit Residential Premises (whether serviced by Bin, Can or Barrel pick-up).

Commercial Recycling Program means the program described in Section 6.c.ii. hereinafter.

Commingle means solely Recyclable Materials, that are combined in a single Container or Bin by the generator, collected and transported together.

Composting Facility means a facility or facilities permitted by the California Integrated Waste Management Board for the controlled biological decomposition of Green Waste or organic material that have been source separated from the CITY's municipal Solid Waste stream, or which have been separated at a centralized facility.

Construction and Demolition Waste means Solid Wastes typically including, but not limited to building materials, packaging, trash, debris, carpet, tile, steel, glass, brick, concrete, asphalt, rubble, roofing materials, pipe, gypsum wallboard and lumber resulting from construction, remodeling, repair and demolition operations, and rocks, soil, tree remains, trees and other vegetative matter that normally results from land clearing.

Container means any can, barrel, or other receptacle constructed from a durable material and designed specifically for the storage and collection of Refuse, which does not exceed 32 gallons in capacity and forty (40) pounds in weight when filled, and which has a tight fitting lid. Container includes receptacles provided by CONTRACTOR to Customers for the storage and collection of Recyclable Material, and Green Waste once Green Waste collection has commenced as provided for in this Agreement, provided that receptacles provided by CONTRACTOR may exceed the capacity and/or weight limits otherwise applicable to Containers. CITY or CONTRACTOR may remove any Container that does not conform to the provisions of this Section, or which is severely damaged or has jagged or sharp edges, from future use. Such removal shall be made by attaching a tab to the Container for purposes of notice to the Customer. In addition to the foregoing items, plastic bags containing pine needles and not exceeding 33 gallons in size shall be considered Containers for purposes of this Agreement.

Contract Year means any period commencing on July 1 and ending June 30 during the initial and any extended term of this Agreement.

Customer means each person or business directly receiving Solid Waste services.

Disposal Facility means a facility or facilities permitted by the California Integrated Waste Management Board for disposing of Refuse and/or residue from a Processing Facility or Composting Facility. Disposal Facility also may mean a transfer station where refuse is received and taken to ultimate disposal.

Electronic waste ("E-waste") shall mean electronic equipment that is no longer useful as originally intended, but can be reused or recycled into a new product.

Front-Loading Bins means Bins which are picked up by CONTRACTOR by means of front-loading apparatus, and which are smaller in size than Roll-Off Bins.

Green Waste means material generated from any landscape, including grass clippings, leaves, prunings, tree trimmings, pine needles, weeds, branches and brush collected pursuant to this Agreement and not exceeding three inches (3") in diameter and four feet (4') in length.

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

- a. "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as Hazardous Waste, Acutely Hazardous Waste, or Extremely Hazardous Waste by Section 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522;
- b. materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations;
- c. materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;
- d. materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder; and
- e. materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for

purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition shall be employed for purposes of this Agreement.

Holiday means a day officially observed as a holiday by the County of San Bernardino and on which the County Disposal Facility is not in operation.

Litter Containers means Containers owned and maintained by CITY and located at bus benches, bus stops, in parking lots, on CITY sidewalks and other public rights-of-way or on CITY facilities adjacent thereto, all within CITY limits.

Multi-Unit Residential Premises means any building, and/or structure, or portion thereof, in the CITY, which is used for residential housing purposes, whether transient, recreational, temporary or permanent, and having four (4) or more SCLU's as determined by the CITY in its periodic land use survey now entitled "City Service Fees By Land Use." All such Multi-Unit Residential Premises shall be deemed Commercial Premises for all purposes under the terms, conditions and provisions of this Agreement.

Organic Material excludes Green Waste, and means food discards from residential and commercial kitchens and food processing activities.

Overloaded Bin means any Container the lid of which cannot close properly because the Container has been filled beyond its capacity.

Processing Facility means a facility or facilities, permitted or exempted by the California Integrated Waste Management Board, for sorting and/or processing commingled or source separated Recyclable Materials and/or Refuse.

Public Bins means those Bins provided by CONTRACTOR at the Clean Bear sites for non-commercial use by residents of the CITY and for use by commercial customers as described in this Agreement. Public Bins also means those Bins provided by the CONTRACTOR at the CITY facilities identified on Exhibit C, which Bins shall be solely for the use of the CITY and its employees in connection with their official CITY duties.

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

Recycling Center means a facility operated and maintained under section 6.f.i. of this Agreement, which maintains certification as a California Refund Value beverage container recycling operation, and which accepts other Recyclable Material for drop-off or buy-back.

Recyclable Materials means materials which have been discarded, thrown away or abandoned by the generator or owner thereof and are commonly collected in recycling programs in Southern California, including, but not limited to:

Newsprint
Corrugated material
High-grade paper and mixed paper
White paper
Mixed paper
Telephone books and magazines
Glass
Aluminum cans
Tin cans
Steel and other types of scrap metals
Ferrous metals
Non-ferrous metals
PET polyethylene terephthalate containers ("PET") marked "1"
High density polyethylene containers ("HDPE") marked "2"
Low density polyethylene containers ("LDPE") marked "4"
Rigid plastic containers
California redemption containers
Christmas trees and other holiday trees

(This list may be expanded to include any other material that is designated by CITY to constitute Recyclable Material during the term of this Agreement.)

Recycling Rate means the percentage calculated by (i) subtracting the net weight of collected Solid Waste that is sent to a landfill from the net weight of all collected Solid Waste, and (ii) dividing the result by the net weight of all collected Solid Waste.

Refuse means Solid Waste, other than Recyclable Materials, Green Wastes, and Organic Materials.

Residential Premises means any building or structure, or portion thereof, in the CITY, which meets both of the following criteria:

- (i) Is identified by one, and only one, individual assessor's parcel number on the County Tax Collector's records, and
- (ii) Is used for residential purposes, whether transient, recreational, temporary or permanent, and has three (3) or fewer SCLU's, as determined by the City in its periodic summary now entitled "City Services Fees by Land Use."

Roll-Off Bins means Bins picked up by CONTRACTOR by means of rear loading winches onto rails. Roll-Off Bins are much larger in size than Front-Loading Bins.

Self-Contained Living Unit or "SCLU" means a dwelling unit, as defined in Section 8.16.040 of the City Code, occupied by residents who are transient, temporary, or permanent.

Solid Waste means all putrescible and nonputrescible solid and semi-solid wastes, excluding any Solid Waste defined as a Special Waste, but including:

Recyclable Materials;

Green Waste;

Organic Materials;

Garbage;

Trash;

Debris;

Paper;

Rubbish;

Industrial wastes that do not contain Special Wastes;

Commercial wastes that do not contain Special Wastes;

Construction and Demolition Waste;

Bulky Household Items and industrial appliances;

Vegetable or animal solid and semi-solid wastes;

Ash; and,

Other discarded solid and semi-solid wastes not otherwise defined in this Agreement which are not Hazardous and/or Special Wastes.

Source Separated means Recyclable Materials that has been separated from other Solid Waste, kept separate by the generator and collected with other separated materials. Source Separated include Commingled Materials and high concentrations of Recyclable Materials.

Special Services means any service offered to Customers for an additional service fee, including all services contained in Section 7(b) of this Agreement.

Special Waste means any waste matter requiring special preparation by the Customer prior to collection and special handling or processing by either CONTRACTOR or transfer station operator due to its large size or volume, or other unique feature, including Hazardous Waste and those items considered Special Waste as set forth on Exhibit A, attached to this Agreement and incorporated by this reference.

Swill means all wet garbage or kitchen grease.

Universal waste means low risk hazardous waste falling into any of three categories: thermostats (including mercury thermostats), batteries (except auto

batteries), and lamps (including but not limited to fluorescent tubes, discharge lamps, and mercury vapor lamps).

2. GRANT OF EXCLUSIVE CONTRACT

CITY grants to CONTRACTOR during the term of this Agreement, and subject to the conditions and limitations hereof, the exclusive right and privilege (except to the extent that self-hauling or sale of source separated Recyclable Materials by a Customer is permitted under this Agreement) to collect and transport to a Processing Facility, a Composting Facility, or a Disposal Facility all Solid Waste (exclusive of Hazardous and Special Waste) produced, generated, kept and/or accumulated within CITY limits as those limits may exist at any time during the term of this Agreement.

3. CONSIDERATION

In consideration of this Agreement and the permit and franchise given CONTRACTOR under this Agreement, CONTRACTOR shall pay to CITY an administration and franchise fee ("Franchise Fee") equal to six percent (6%) of CONTRACTOR'S or Affiliated Companies' gross revenues from all collection, transportation, processing and disposal operations of CONTRACTOR or Affiliated Companies derived from within the CITY, including revenues received from CITY, pursuant to this Agreement. **Gross revenues do not include payments received by CONTRACTOR or Affiliated Companies from the sale of Recyclable Materials.** Except as provided in the following paragraph, payments shall be made in monthly installments based on the amount of the previous month's receipts, which installments shall be payable to CITY by the thirtieth (30th) day of each calendar month.

The CITY may deduct in advance the applicable Franchise Fee from any payments due from CITY to CONTRACTOR under this Agreement.

All sums payable by CONTRACTOR to CITY under this Agreement shall in lawful money of the United States and shall be in lieu of any license tax which might otherwise be imposed by CITY for the privilege of CONTRACTOR conducting its business under this Agreement in CITY, other than any business license tax imposed by CITY pursuant to the City Code.

4. CONTRACTOR RESPONSIBILITY

CONTRACTOR agrees to perform all of its obligations under this Agreement for the term of this Agreement. CONTRACTOR shall furnish all of the labor and equipment necessary for the collection, processing and disposal of all Solid Waste subject to the terms, conditions and provisions of this Agreement. CONTRACTOR represents that it has the professional and technical personnel required to perform the services in conformance with such terms, conditions and provisions of this Agreement. CONTRACTOR shall perform all services under this Agreement in a skillful and

competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

5. TERM OF AGREEMENT

The initial term of this Agreement shall commence upon July 1, 2009 (the "Effective Date"), and shall expire as of 11:59 p.m. on June 30, 2019. Nothing in this section shall be construed as limiting CITY's right to terminate this Agreement for cause pursuant to any applicable provision of this Agreement. Throughout the term of this Agreement, CITY may request CONTRACTOR to meet and confer over the implementation of new solid waste industry standards and/or innovations in collection, disposal, transportation, and/or recycling equipment and materials.

6. SCOPE OF SERVICES

a. General

(i) CONTRACTOR shall provide Solid Waste collection, transportation, processing, and disposal services within CITY in accordance with the terms of this Agreement. CONTRACTOR shall not be required to provide such collection, transportation, processing, and disposal services for Special or Hazardous Waste unless specifically provided for under this Agreement. CONTRACTOR may provide such services for Special or Hazardous Waste if contracted to do so by CITY or Residential Service or Commercial Service Customers under separate written contracts negotiated between CONTRACTOR and the Customer generating such Special or Hazardous Waste, provided that CONTRACTOR obtains all necessary permits and performs in accordance with Applicable Law, and provided that CITY is notified by CONTRACTOR prior to commencement of such service.

(ii) Unless otherwise approved by CONTRACTOR, only Containers, Bins, Front-Loading Bins, Roll-Off Bins, Litter Containers, and Public Bins are authorized to be used by Customers for the deposit of Solid Waste. In addition to the obligations described in Section 6.k. hereof, CONTRACTOR shall replace existing Containers, Bins, Front-Loading Bins, Roll-Off Bins, and Public Bins with clean and freshly painted replacements at no cost to CITY or any Customer, as often as deemed necessary by CITY and requested by CITY, but in no event more than once per Contract Year. Notwithstanding the preceding sentence, CONTRACTOR shall repaint or replace Containers, Bins, Front-Loading Bins, and Roll-Off Bins upon which graffiti has been left, without limitation and within 24 hours of notice from CITY or a Customer to do so. All cleaning and/or painting covered by this paragraph shall be completed in full compliance with all Applicable Laws, including any requirements of the National Pollution Discharge Elimination System.

(iii) CONTRACTOR's employees and agents while engaged in the collection or gathering of Solid Waste within the CITY shall be attired in clean uniforms acceptable to CITY. All CONTRACTOR's employees shall make collections as

reasonably quiet as possible and shall avoid any unnecessary shouting, whistling or other unnecessary disturbance in the course of providing the services under this Agreement. CONTRACTOR and its employees shall not trespass or loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. CONTRACTOR shall exercise due care when handling Containers and shall not cause the Containers to be thrown or dropped during collection services.

(iv) CONTRACTOR shall be responsible for any damage to any property resulting from CONTRACTOR's vehicles exceeding the legal maximum weight limits of the State of California, or CONTRACTOR's negligent operation of the vehicles. In addition to damage caused by overweight vehicles, CONTRACTOR shall be responsible for damage to public and private property caused by its vehicles, and shall repair or replace such damaged property to the satisfaction of the CITY and the owner of the damaged property.

(v) CITY reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing CONTRACTOR from driving an established collection route, in which event CONTRACTOR will adjust its route without cost adjustment therefor.

(vi) CONTRACTOR shall submit all collection routes to CITY in writing and shall give CITY notice of any route changes at least twenty (20) days prior to the date of any changes. CONTRACTOR shall implement such route changes so that no Customer is left without collection services for more than six days. CITY reserves the right to conduct audits of CONTRACTOR's collection routes.

(vii) Within eighteen (18) months of the effective date of this Agreement, CONTRACTOR shall develop and provide to CITY a plan that presents the methods by which CONTRACTOR will divert from landfills the maximum feasible amount of recyclable or divertible materials, and comply with all diversion requirements imposed by any governmental agency and/or set forth in this Agreement. The plan shall be updated every eighteen (18) months thereafter to ensure compliance with the latest diversion requirements. This obligation shall be in addition to, and not in lieu of, CONTRACTOR's obligations under subsections b and c of this Section 6.

(viii) Within eighteen (18) months of the effective date of this Agreement, CONTRACTOR shall commence collecting Green Waste from Residential Premises (as specified in subsection b of this Section 6), and diverting the Green Waste collected from landfills. This obligation shall be in addition to, and not in lieu of, CONTRACTOR's obligations under subsections b and c of this Section 6.

b. Residential Premises

CONTRACTOR shall, no less than once per week, collect Solid Waste (other than Construction and Demolition Waste) which has been placed, kept or accumulated in no more than:

Two (2) Containers provided by the Residential Customer for Refuse;

Two (2) Containers provided by the CONTRACTOR for Recyclable Material, provided that the CONTRACTOR shall provide the second Container only upon request of the Residential Customer;

One (1) Container provided by the CONTRACTOR at the Residential Customer's request for Green Waste, or, at the Residential Customer's option, bundles of Green Waste not exceeding the equivalent of one Container in volume;

One (1) Container provided by the Customer for Ashes.

The Containers shall be placed at or near the curbside prior to CONTRACTOR'S normal weekly collection time. Collection service at Residential Premises may not start before 6:00 a.m. or continue after 8:00 p.m., except as is specifically approved in writing by the City Manager or his designee. CONTRACTOR shall not be required to collect materials from Containers that do not conform to the provisions of this Agreement.

Upon verbal or written Customer request made prior to 4:00 p.m. on the day prior to CONTRACTOR's regular pickup day (for Customers receiving curbside service), or the day prior to the requested pickup (for Customers not receiving curbside service), CONTRACTOR shall collect from each Customer Green Waste in a Container as described above, an unlimited number of Bulky Household Items, and an unlimited number of plastic bags of pine needles not exceeding 33 gallons in size, and provided that all pine needles shall be segregated from other Green Waste. CONTRACTOR shall make no charge for the first fifteen (15) bags of pine needles set out on a given day, and may charge for each additional bag at the rate set forth in Exhibit "B". Three times per year, for two weeks at a time during spring, summer, and fall months at times specified by CITY, CONTRACTOR shall collect an unlimited number of bags of pine needles from residential Customers at no charge.

This service provided by CONTRACTOR under the preceding paragraphs shall be provided to all residential Customers, regardless of whether they are signed up to receive curbside Solid Waste collection service.

CONTRACTOR shall not charge or receive compensation, including sign-up or similar charges, directly from Residential Premises Customers except for Special Services, as set forth in 7.c.hereafter. All other compensation due to CONTRACTOR for services provided to Residential Premises Customers shall be provided to CONTRACTOR by CITY as set forth in this Agreement.

c. Commercial Premises

CONTRACTOR shall, as frequently as negotiated with Customer but in no event less than once per week, collect the Solid Waste that has been placed, kept or accumulated in Bins or Containers, at Commercial Premises. Except for Special Services, CONTRACTOR shall be entitled to charge Commercial Customers only those charges provided for in Exhibit B.

Containers may be provided for Commercial Premises where the volume of refuse and/or recyclable materials, or space constraints for Bin placement and collection, make Bin service unnecessary or infeasible. CONTRACTOR shall provide CITY a list of all Commercial Container Customers.

Shared Bin service may be utilized at adjacent properties or at adjacent Commercial Premises that do not individually generate sufficient Refuse or Recyclable Material volume to justify separate Bin collection service. In order to receive Shared Bin service, one Customer must enter into an agreement with CONTRACTOR to be responsible for payment to CONTRACTOR for the Shared Bin service.

i. Hours of Collection

Collection service at Commercial Premises may not start before 6:00 a.m. or continue after 8:00 p.m., except as is specifically approved in writing by the City Manager or his designee.

ii Commercial Recycling Program

Within eighteen (18) months of the effective date of this Agreement, CONTRACTOR shall implement a Commercial Recycling Program for Recyclable Materials generated at Commercial Premises within CITY. CONTRACTOR shall survey every Commercial Premise and document the type, concentrations and volume of Recyclable Materials generated; indicate those Commercial Premises made a part of the Source-Separated Commercial Recycling Program; and provide an explanation justifying any non-inclusion of a particular commercial Customer in the Source-Separated Commercial Recycling Program.

iii. Roll-Off Service

CONTRACTOR will provide Roll-Off Bins for Commercial Premises, including temporary Roll-Off Bins for Construction and Demolition Waste. CONTRACTOR shall be entitled to charge for such services in accordance with Exhibit B.

CONTRACTOR will survey each Roll-Off Bin to determine its inclusion in Recycling, Commercial Recycling, or Construction and Demolition Waste diversion programs (once such programs are implemented as provided in this Agreement). CONTRACTOR will document such surveys, and provide an explanation to justify each Roll-Off Bin's inclusion in the appropriate program.

CONTRACTOR agrees that Construction and Demolition Waste is included as Recyclable Material for purpose of inclusion in diversion programs, and will develop a Construction and Demolition Waste diversion program for all such material, satisfactory to CITY.

d. Public Litter and Recycling Containers

CONTRACTOR shall provide daily collection service at locations designated by CITY from time to time within CITY's limits for all Litter and Recycling Containers. Such locations, the frequency of collection, and the number of Litter and Recycling Containers may be changed in City Manager's, or his or her designee's, sole and absolute discretion.

CONTRACTOR shall bill to CITY, and CITY shall pay to CONTRACTOR, the rates shown in Exhibit "B" for collection services under this section, irrespective of the frequency of collection service provided by CONTRACTOR under this section.

e. Clean Bear Sites (Public Bin Site Service)

i. Service to Clean Bear Sites. At the time of the execution of this Agreement, CONTRACTOR services two (2) Clean Bear Sites within the territory of CITY, which Clean Bear Sites are described in Exhibit C. CONTRACTOR currently owns Clean Bear Site No. 1, which includes a Recycling Center. CITY owns Clean Bear Site No. 2. CONTRACTOR shall provide and service, as reasonably required as determined by CITY, the number and type of Public Bins identified on Exhibit C at each Clean Bear Site for purposes of permitting residents of the CITY to dispose of the following types of residential Solid Waste at such Clean Bear Sites: Recyclable Materials, Green Waste, Refuse, and Ashes (if Ash Containers are provided at such Site). In addition, CONTRACTOR shall collect e-waste and universal waste at Clean Bear Site No. 1, and transport all universal waste (other than e-waste) to CITY's corporation yard facility, but only during such times as the County of San Bernardino is conducting Household Hazardous Waste collection. CONTRACTOR shall transport e-waste to a facility that is licensed to properly dispose of it, or deliver the e-waste to a Household Hazardous Waste collection event or facility operated by the County of San Bernardino or another public agency.

CONTRACTOR shall provide disposal services from the Clean Bear Sites as frequently as needed to prevent overflow, but in no event fewer than once per day. CONTRACTOR shall provide CITY a schedule showing the normal service times for each Clean Bear Site. CONTRACTOR shall not be entitled to receive additional payment from CITY or Customers for collection and disposal services provided at the Clean Bear Sites.

ii. Cleaning, Maintenance and Operation. CONTRACTOR shall clean, maintain and operate both Clean Bear Sites. CONTRACTOR shall staff both Clean Bear Sites between the hours of 7:00 a.m. and 5:30 p.m. seven days per week,

devoting a minimum of 70 hours per week of employee time to such staffing, divided equally between the two Clean Bear Sites, and not including any staffing of the recyclable materials buy-back center at Clean Bear Site No. 1. CONTRACTOR shall keep both Clean Bear Sites open 24 hours a day, at no charge to CITY or any customers, except as provided in subparagraph iv below, provided that CONTRACTOR may request CITY approval to provide more limited access between the hours of 11:00 p.m. and 7:00 a.m.. The approval of any such request shall be conditioned upon CONTRACTOR providing at least two disposal bins accessible to the public outside the closed areas and adjacent to the public right-of-way, in a location approved by CITY. Notwithstanding the foregoing, CONTRACTOR shall not be required to staff Clean Bear Site No. 2 until CITY has completed improvements to Clean Bear Site No. 2. CONTRACTOR shall install a security camera system at Clean Bear Site No. 1 within 60 days of the Effective Date, and at Clean Bear Site No. 2 upon CITY's completion of improvements there. The security camera systems shall function 24 hours a day seven days per week, and shall be monitored by an employee of CONTRACTOR between the hours of 7:00 a.m. and 5:30 p.m. Monday through Friday.

Upon completion of the improvements described in subparagraph iii, CITY will consider changes to the staffing and operating hours of the Clean Bear Sites. The hours of staffing and operation shall be amendable by mutual agreement of CITY and CONTRACTOR. All utilities, fencing, landscaping, asphalt maintenance, and snow removal of Site No. 2, sufficient to prevent the Clean Bear Sites from becoming dangerous or a nuisance, shall be provided by CITY; CONTRACTOR shall provide all such services as to Site No. 1. CONTRACTOR shall at its sole cost and expense, obtain and maintain all necessary governmental permits and approvals, including, without limitation, any necessary permits from the County of San Bernardino, in order for the Clean Bear Sites to operate according to Applicable Law. CONTRACTOR shall maintain all Clean Bear Sites in strict accordance with all Applicable Law, including without limitation, any permits issued pursuant to the National Pollution Discharge Elimination System (NPDES).

iii. Enhancements to Clean Bear Site No. 1. No later than CITY's completion of improvements to Clean Bear Site No. 2 including the demolition of the existing building and reconfiguration of the site, CONTRACTOR shall complete the improvements to Clean Bear Site No. 1 described below (with the exception of items c and i, which shall be completed within eighteen (18) months of the Effective Date), provided that prior to commencing construction CONTRACTOR shall submit to CITY for its review and approval plans for the construction of the improvements:

- a. Cleaning and painting of CONTRACTOR's current Recycling Redemption Center at Site No. 1;
- b. Expanded recycling and solid waste bins at Site No. 1;
- c. Construction of a decorative block wall along the edge of Site No. 1 facing Garstin Road which will allow vehicular access to Site No. 1;

- d. Installation of additional landscaping to improve the appearance of Site No. 1;
- e. Installation of a security camera system;
- f. Compliance with all applicable regulatory standards, including but not limited to drainage and runoff;
- g. Cleaning and painting of all buildings at Site No. 1;
- h. New signage at Site No. 1; and
- i. Improved vehicular circulation.

iv. Access to Clean Bear Sites by Commercial Customers. CONTRACTOR shall permit commercial Customers that: (i) hold a City business license (ii) have a current commercial account with CONTRACTOR; (iii) are either home-based businesses or lack space for Containers or Bins on the business premises; and (iv) are not delinquent in their payment of solid waste bills to dispose of Recyclable Materials and Refuse at the Clean Bear Sites upon payment of the rates specified in Exhibit "B". Commercial Customers shall be permitted to dispose of Solid Waste only during the hours in which the Clean Bear Sites are staffed, unless CONTRACTOR institutes a system of controlled after-hours access that allows after-hours use to be restricted to paying Customers and allows after-hours users to be identified.

f. Recycling Redemption Center

CONTRACTOR shall maintain and operate a Recycling Redemption Center. The redemption center shall be open to the public on at least three (3) days during each five (5) day workweek and on at least one day of each weekend. The hours of operation shall be 9:00a.m. to 1:00p.m. and 2:00p.m. to 6:00p.m. from Memorial Day to Labor Day, and from 8:00 a.m. to 11:30 a.m. and 12:30 p.m. to 5:00 p.m. at all other times.

g. Diversion.

i. Separation. CONTRACTOR shall collect Refuse and Recyclable Materials in separate vehicles, or in separate bins in a single vehicle, and keep such materials separate. Once Green Waste diversion has commenced, CONTRACTOR shall collect Green Waste in a separate vehicle (or in separate compartments in a vehicle equipped with dual compartments) and keep Green Waste separate from other materials. CONTRACTOR shall not be deemed to have violated this section where such materials were combined prior to CONTRACTOR collection.

ii. Processing

(1) Facility Selection. CONTRACTOR shall transport and deliver all Recyclable Materials collected within the CITY to a Processing Facility.

(2) Weighing and Record Requirements. CONTRACTOR shall ensure that, at a minimum, all materials shall be weighed upon delivery to a Processing

Facility or Composting Facility, and all weight and related delivery information recorded. CONTRACTOR will provide reports to CITY showing weight of all material delivered to a Processing Facility or Composting Facility, weight of material recovered or composted at the facility (by recovered material type), value of recovered material, and weight of un-recovered material disposed of as residue, and residue disposal location of un-recovered material. CONTRACTOR shall make arrangements with the Processing or Composting Facility to allow the CITY to review during such facility's normal operating hours any records including photographs, recordings or video of tipping.

(3) Recyclable Materials Specifications. CITY is not responsible for the quality of Recyclable Materials delivered to or rejected by a Processing Facility; or quality of Organic Materials delivered to or rejected by a Composting Facility. CITY makes no warranty, either express or implied, with respect to the Recyclable Materials or Organic Materials, including but not limited to any warranty of merchantability and any warranty of fitness for a particular purpose.

(4) Disposal of Residue. CONTRACTOR shall dispose or cause to be disposed of any and all residue remaining from the processing of Recyclable Materials and any non-processible material in accordance with Applicable Law, and San Bernardino County Waste Disposal Agreement terms.

iii. Marketing. CONTRACTOR shall update its marketing and diversion programs to stay current with market conditions.

iv. Indemnification. CONTRACTOR agrees to protect and defend CITY, with counsel selected by CITY, and to indemnify and hold harmless CITY from and against all fines or penalties imposed by the California Integrated Waste Management Board, if such fines or penalties are due to CONTRACTOR's negligence or breach of this Agreement.

Upon California Integrated Waste Management Board issuance of a compliance order, or other enforcement action, due to the CITY's failure to implement required programs or meet diversion goals, and provided that CONTRACTOR's indemnity obligations set forth in the preceding paragraph are applicable, the CITY may require CONTRACTOR to increase the Performance Bond (or letter of credit) required under Section 12c hereinafter to the amount of Two Hundred Fifty Thousand Dollars (\$250,000), and may proceed against the Performance Bond. Following expiration or termination of this Agreement, CONTRACTOR may request CITY to approve a reduction of the Performance Bond (or letter of credit) to the amount of One Hundred Thousand Dollars (\$100,000) for the remaining duration of CONTRACTOR's indemnity obligations. CITY shall not unreasonably deny such a request.

v. Future Recycling. CONTRACTOR may initiate changes to collect additional Recyclable Materials that can be made at no additional cost to Customers or CITY, and shall submit such changes to CITY for approval. CITY may request that CONTRACTOR undertake additional recycling services, or CONTRACTOR may identify

additional recycling services, including collection of additional Recyclable Materials, that will require an additional cost. CONTRACTOR shall consider such additional services and identify a price therefor. CITY and CONTRACTOR shall confer on the cost of providing any additional services which will require an additional cost, and CITY may approve or reject the additional cost and additional services. Nothing in this section shall authorize CONTRACTOR to receive increased compensation for recycling services necessary to meet CONTRACTOR's recycling and diversion obligations under this Agreement. Notwithstanding the foregoing, if state-mandated diversion and recycling standards, and/or CONTRACTOR's other diversion-related obligations in Section 6 of this Agreement, become unduly unreasonable for CONTRACTOR to achieve without significant residential and or commercial customer participation, the City shall consider legislative or economic incentives to encourage participation, such as a new ordinance requiring diversion and recycling, or a tiered rate structure designed to encourage customers to minimize solid waste disposal and increase recycling efforts.

If the CITY finds that additional programs are necessary to meet any required diversion goals, the CITY may require that CONTRACTOR submit proposals for such additional diversion programs. CITY and CONTRACTOR shall enter into good faith negotiations on program terms and cost. If agreement regarding programs and/or rate adjustments cannot be reached, the matter shall be referred for resolution by an independent mediator mutually selected by the CITY and CONTRACTOR. The CITY and CONTRACTOR shall share equally in the costs of the independent mediator. Both parties shall, in good faith and in writing, promptly provide the independent mediator with any all information and documentation required or requested by the independent mediator in order to make its determination.

vi. Diversion Rate. Until the fourth anniversary of the effective date of this Agreement, CONTRACTOR shall cause CITY's recycling rate with respect to the Solid Waste controlled by this Agreement to be no less than that required for the City to meet the per-capita disposal and program requirements established by the California Integrated Waste Management Board ("CIWMB"). Following such date, CONTRACTOR shall cause CITY's Recycling Rate with respect to the Solid Waste controlled by this Agreement to be at least thirty-five percent (35%) for any twelve-month period, and ensure that the City meets the per-capita disposal and program requirements established by the CIWMB regardless of the recycling rate required to meet such requirements. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR's failure to maintain the above recycling rates, or ensure that the City meets the per-capita disposal and program requirements established by the CIWMB, shall constitute a material breach of this Agreement. For purposes of calculating the recycling rate under this paragraph, CONTRACTOR may include recycling and other diversion performed by CONTRACTOR's commercial customers, to the extent that: (i) CITY receives diversion credit from the California Integrated Waste Management Board for such recycling and diversion; and (ii) the amount of material diverted or recycled is verified by a third party, such as a Processing Facility or the customer generating the recycled or diverted material. For purposes of calculating the Recycling Rate under this paragraph, CONTRACTOR may include documented

recycling and other diversion for materials collected by CONTRACTOR within the City compared to the total amount of material collected by CONTRACTOR within the City. Documentation may include material diverted or recycled by a third party, such as a Processing or Composting Facility or the customer generating the recycled or diverted material.

h. Bin Service.

Except for Premises receiving Container Commercial Service pursuant to Section 6.c., and Premises authorized to self-haul pursuant to Section 6.j., CONTRACTOR shall lease to all Commercial Premises within CITY a Bin or Bins for use in the collection of Solid Waste. The size of the Bins and the frequency of their collection (which shall not be less than once a week) shall be determined by contract between the Customer and CONTRACTOR which shall also be subject to review and adjustment by CITY. Each Multi-Unit Residential Premises shall be required to provide Solid Waste Bin collection volume on site of at least one-half (½) cubic yard of capacity per week per Self-Contained Living Unit. No Bin shall be filled to such an extent that the lid cannot be closed tightly. Swill must be disposed of in sealed Containers by the Customer. Bins shall be placed on hard surface locations, which are accessible to CONTRACTOR and located entirely on the Customer's property. The exterior of the Bins supplied by CONTRACTOR shall, at all times, be maintained by CONTRACTOR in a well-kept appearance. Roll-Off Bins shall be marked with reflectorized material where such Bins are or may reasonably be expected to be located in the public right-of-way. CONTRACTOR shall offer Customers renting Bins a Bin cleaning service to be performed at the request of the Customer or CITY for a fee specified in such contract for the purpose of cleaning and deodorizing the interior of the Bins.

CONTRACTOR shall be entitled to collect from the Customer the amount set forth in Exhibit B for Bin service, based on the number of Bins and the frequency of service, except as increased by any fees for Special Services set forth in Section 7.c.

i. Collection on Holidays

If the day of collection on any given route falls on a Holiday or a day on which the Disposal Facility utilized by CONTRACTOR is closed, CONTRACTOR may provide collection service for such route on the next workday following such Holiday or Disposal Facility closure day or shall provide such collection service on such Holiday or Disposal Facility closure day, except that CONTRACTOR shall never provide collection service on New Year's Day, Thanksgiving Day or Christmas Day, with the exception of Commercial Premises service, Clean Bear Sites and Public Litter Containers, which shall have collection on those dates on an as-needed basis.

j. Self-Haul from Residential and Commercial Premises

Any owner or occupant of a Residential Premise in the CITY may "self-haul" Solid Waste generated at that owner's or occupant's Residential Premise to a Clean Bear Site. Such self-hauling shall be limited to the transportation and delivery of Solid Waste, as described in this Agreement. No person may use the Clean Bear Sites to dispose of any Solid Waste generated from a Commercial Premise, since the Clean Bear Sites are intended for the disposal of residential Solid Waste.

The owner or tenant of any Commercial Premises may submit a written request to the City Manager, pursuant to Section 8.64.250 of the City Code, to satisfy its mandatory service requirement by executing a self-haul agreement with CITY for collection, recycling, and disposal of Solid Waste generated from or on the Commercial Premises. If approved by the City Manager, such owner or tenant may make such Self-Haul to a designated landfill, processing facility or composting facility. The City Manager shall provide CONTRACTOR a copy of any self-haul agreement approved by the CITY. The CONTRACTOR shall not receive any compensation from any Commercial Premise exercising self-haul privileges.

CONTRACTOR and CITY agree that a generator of Recyclable Material may sell or donate such material in accordance with Section 11 of this Agreement.

k. Provision and Replacement of Recyclable Material Containers and Bins

CONTRACTOR shall promptly provide without cost to each new Residential Customer one (1) Container, for collection and storage of Recyclable Material and shall furnish additional Recyclable Materials Containers at no cost upon Customer's request. Upon request of any Customer for a replacement Container for Recyclable Material, CONTRACTOR shall provide such Container at no cost to Customer. CONTRACTOR shall provide all Bins to Customers including, without limitation, CITY, who receive Bin service; provided that a Customer receiving Bin service for Refuse can request a Container, rather than a Bin, for Recyclable Materials if a Container provides sufficient capacity for the volume of Recyclable Materials generated.

l. E-waste

As part of its residential and commercial collection obligations, CONTRACTOR shall collect an unlimited number of e-waste items from residential and commercial customers. Customers wishing to place e-waste items for collection shall segregate such items from other Solid Waste, affixing a tag or using another means determined by CONTRACTOR to designate the e-waste items. CONTRACTOR shall assist CITY in publicizing the availability of e-waste disposal, including lists of e-waste items.

m. Material Value. CONTRACTOR may retain the proceeds of the sale of Recyclable Materials collected under this agreement.

n. Anti-Scavenging Laws. CONTRACTOR shall cooperate with CITY in enforcing anti-scavenging laws on collection routes and at Clean Bear and Public Litter and Recycling sites.

7. OTHER SERVICES OF CONTRACTOR

a. Clean-up Week

During the entirety of May and the last two weeks in October of each year of the term of this Agreement, CONTRACTOR shall provide a community-wide clean-up. During such community-wide clean-up periods, Residential Customers may bring an unlimited amount of Bulky Household Waste to a central collection point for free recycling, diversion and disposal by CONTRACTOR. Additionally, during such community-wide clean-up periods, CONTRACTOR shall provide and service daily Roll-Off Bins at Clean Bear Sites No. 1 and 2 (as designated on Exhibit C).

b. City Facilities

CONTRACTOR shall, upon written request by CITY, provide Front-Loading Bins and related collection, transportation and disposal services at the CITY Facilities described on Exhibit C as frequently as requested by CITY. CONTRACTOR shall, upon written request of CITY, provide one Roll-Off Bin at any CITY Facility designated by CITY and shall provide related collection, transportation, recycling, and disposal services for the Roll-Off Bin as frequently as requested by CITY. The number and location of the Front-Loading Bins and the location of the Roll-Off Bin shall be changed by CONTRACTOR upon receipt of written notice from the City Manager or his designee regarding such changes. CITY shall not be required to make payments to CONTRACTOR for such provision and service, except: (1) as provided by the immediately following paragraph, and (2) so long as the transportation of such Bins to a CITY-designated Disposal or Recycling Facility does not exceed twenty (20) miles beyond the City limits. In the event of such transportation exceeds said distance, CONTRACTOR may submit a claim to CITY for reimbursement."

Anything in this Agreement to the contrary notwithstanding, CONTRACTOR shall be obligated to remove and dispose of cinder waste resulting from City's snow removal and control operations. CITY shall reimburse CONTRACTOR any tipping fees in excess of Five Thousand Dollars (\$5,000) per year of the term of this Agreement incurred by CONTRACTOR for the disposal of such cinder waste. If CONTRACTOR requests reimbursement under this provision, CONTRACTOR shall provide CITY with receipts, invoices, or other documents sufficient to support CONTRACTOR's claim for reimbursement.

c. Special Services

CONTRACTOR shall offer to its Customers the following Special Services for additional service fees under a separate contract to be negotiated between the Customer and CONTRACTOR:

- i. Manual "pull out" service for Front-Loading Bins, including opening and closing of enclosure doors;
- ii. Service for special sized Containers.
- iii. Collection service for Containers with locking lids or other special lids;
- iv. Collection, transportation, and diversion of Construction and Demolition Waste;
- v. Any other collection, transportation or disposal service as agreed upon between CONTRACTOR and Customer and not expressly provided for and described in Section 6 of this Agreement;
- and
- vi. Collection of Refuse from more than two (2) Containers per week;
- vii. Overloaded Bins.

In addition to the exclusions set forth in Section 2 to the exclusive rights and privileges granted to CONTRACTOR in this Agreement, nothing in this Section 7.c. shall prohibit a Customer from calling upon a third party to render a specific Special Service in the event that CONTRACTOR is either unwilling or unable to perform, following that Customer's request for CONTRACTOR to perform a specific Special Service at or below the rate or fee for which the Customer has a written offer to perform the Special Service from another vendor of the Special Service.

CONTRACTOR shall receive fees for performance of Special Services as agreed upon in separate contracts between CONTRACTOR and each Customer requesting such Special Service. Subject to the dispute resolution provisions of Section 10.b of this Agreement, CITY will have no responsibility regarding provision or payment for such services.

d. Reporting Requirements

- i. Monthly. CONTRACTOR shall maintain and provide to the CITY, monthly reports containing detailed audit information including:

Residential service summary with: (i) total number of Residential Premises receiving curbside service; (ii) total number of refuse, recycling, and Green Waste Containers collected; (iii) weight of refuse, recycling and Green Waste Containers collected; (iv) list of disposal, processing and composting facilities receiving material from CITY; (v) weight of recovered Recyclable Materials and diverted Green Waste; (vi)

weight of residue from processing and composting facilities, and disposal location for residue; (vii) percentage breakdown of Recyclable Materials weight by commodity; and (viii) value paid by weight and total for each Recyclable Materials commodity.

Commercial service summary with: (i) total number of Commercial Premises receiving service; (ii) total number of bins and Containers collected for refuse and Commercial Source-Separated Recycling; (iii) weight of material collected for each program; (iv) list of disposal, processing and composting facilities receiving material from CITY; (v) weight of recovered Recyclable Materials and diverted Green Waste; (vi) weight of residue from processing and composting facilities, and disposal location for residue; (vii) percentage breakdown of Recyclable Materials weight by commodity; and (viii) value paid by weight and total for each Recyclable Materials commodity.

Public Bins maintained at the Clean Bear sites are considered Commercial for reporting purposes.

ii. Annually, CONTRACTOR shall submit annual reports to the CITY on or before June 1 of each year totaling the information contained in the monthly reports for the previous year. CONTRACTOR shall cooperate fully with CITY's reporting requirements imposed by Applicable Law, including requirements imposed by the California Integrated Waste Management Board and/or California Department of Conservation, by providing CITY with requested information within a reasonable time of CONTRACTOR's receipt of CITY's request, but in no event longer than forty-five (45) days after such receipt. To the extent that CONTRACTOR receives, later than this deadline, records or reports from the Victorville facility to which materials are taken, CONTRACTOR shall provide such records or reports as soon as possible following their receipt. CONTRACTOR shall make an oral presentation of the annual report to the City Council of CITY at a City Council meeting specified by the CITY. In addition, CONTRACTOR shall conduct an annual survey of the top twenty percent (20%) Commercial Premises Customers (by volume of Solid Waste generated), describing materials generated by each customer.

iii. Additional Information. CONTRACTOR shall use Reasonable Business Efforts to incorporate into the reports required by this section 7.d any additional information reasonably requested by the CITY. CONTRACTOR shall incorporate into such reports any new reporting information required by Applicable Law.

e. Co-Operation

CONTRACTOR shall cooperate with CITY on any and all customary and reasonable waste characterization studies, at no additional cost to CITY.

f. Illegal Dumping

Within two (2) hours of receiving CITY's request during regular work hours, or within a reasonable time period for non-regular work hours, CONTRACTOR shall collect and deliver to a Disposal Facility all spilled or illegally dumped Solid Waste.

g. Hazardous Waste

CONTRACTOR shall use Reasonable Business Efforts to screen, identify and prevent against the disposal of Hazardous Wastes at any Processing Facility, Composting Facility or Disposal Facility used by CONTRACTOR under this Agreement. If CONTRACTOR inadvertently delivers Hazardous Waste to any Processing Facility, Composting Facility or Disposal Facility and CONTRACTOR cannot remove it or fails to do so, CONTRACTOR shall arrange for the proper disposal of the Hazardous Waste in accordance with Applicable Law. CONTRACTOR shall use Reasonable Business Efforts to recover the costs of such disposal from the Customer that generated such Hazardous Waste, if known, and charge such cost to such Customer.

h. Indemnification

CONTRACTOR shall indemnify, defend with counsel approved by CITY, protect and hold harmless the CITY from and against all claims, actions, damages or liabilities paid, incurred or suffered by, or asserted against, the CITY arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where CONTRACTOR delivers, stores, processes, recycles, composts or disposes of materials or wastes to the extent that such liabilities are caused by CONTRACTOR's negligence or willful misconduct. Nothing in this subsection shall be construed to require CONTRACTOR to indemnify the CITY for liabilities caused by the sole negligence of the CITY. In addition to the foregoing, to the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by CONTRACTOR's breach of or noncompliance with a provision of this Agreement, CONTRACTOR agrees to protect and defend CITY, with counsel selected by CITY, and to indemnify and hold harmless CITY from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in the California Public Resources Code are not met by the CITY with respect to the Solid Waste collected by CONTRACTOR under this Agreement.

i. Notification of New Services

CONTRACTOR shall use Reasonable Business Efforts to ensure that Customers are informed in a timely manner about new service programs or the introduction of new elements in services required by the CONTRACTOR and approved by the City. CONTRACTOR shall inform Customers of such changes through a public awareness plan, which shall include direct mailings and/or local advertising, prior to the implementation of such changes.

J. Community Relations Plan

CONTRACTOR shall use Reasonable Business Efforts to provide outreach and education to the public on the importance of recycling and separating Solid Waste in order to achieve maximum waste diversion. CONTRACTOR shall prepare and submit a Community Relations Plan for CITY review by April 1, to be effective July 1, during each Contract Year. Each Community Relations Plan shall include a description of prior Contract Year's activities implementing the Plan, including samples of all materials produced and distributed.

k. Distribution of Materials

CONTRACTOR shall prepare and distribute community relations materials to all Residential and Commercial Customers at least two (2) times during each Contract Year. Bilingual information will be available upon request. CONTRACTOR shall notify the CITY of all requests for media interviews related to CONTRACTOR's services under this Agreement. All community relations and promotional materials and related news releases shall be developed at CONTRACTOR's sole cost and expense and shall be subject to the CITY's prior review.

8. BILLING AND PAYMENTS

a. Residential Premises, Clean Bear Sites, Public Bins and Litter Containers.

The CITY shall pay to CONTRACTOR a total monthly sum equal to the base rate shown in Exhibit "B" (the "Base Rate") multiplied by the total number of Residential Premises in the CITY. The total number of Residential Premises to be used for this calculation shall be as determined by the Tax Collector of the County of San Bernardino immediately prior to the commencement of each fiscal year of the CITY, i.e., each July 1 of each calendar year. This numerical adjustment shall be automatic without further action by either Party.

The CITY shall also pay the amounts set forth in Exhibit "B" for: (1) Public Litter Container Service, and (2) vacant lot pine needle collection by CONTRACTOR.

b. Commercial Service

CONTRACTOR shall charge Commercial Premises the monthly fee set forth on Exhibit B for each Container or Bin, based on the size of the Bin or the number of Containers, and the frequency of the service. All amounts due and payable to CONTRACTOR from Commercial Customers under this Agreement shall be solely collectable by CONTRACTOR and not by CITY. CONTRACTOR shall retain full responsibility for billing and prosecuting any collection actions, including, without limitation, referral to collection agencies or instituting legal proceedings. All rates authorized above and set forth on Exhibit B hereto shall remain in effect until July 1, 2010, except as modified pursuant to Section 8.c. Contractor shall exercise diligent

good faith efforts to ensure all Commercial Premises (other than those subject to a self-haul agreement) subscribe to Collection Services and shall diligently pursue and collect past due accounts.

c. Cost of Living Adjustment

Except as otherwise provided in this paragraph, in addition to the annual adjustment in the number of Residential Premises, the Base Rate to be paid each month by the CITY to the CONTRACTOR for all Residential Premises, the rate to be paid pursuant to Section 6.d for Public Litter Container Service, and the Commercial Service rates shall also be adjusted each July 1st in accordance with changes in the Consumer Price Index ("CPI") for all Urban Consumers, West Urban, Los Angeles, Riverside, Orange County Metropolitan Area. The CPI adjustment shall be equal to the percentage amount derived by comparing the rate for March of the previous calendar year, to the rate for the most recent March; provided that no single year's increase shall exceed five percent (5%). The percentage of increase or decrease in the CPI Index rates for these two months, subject to the 5% cap, shall be the same percentage increase or decrease by which the Base Rate is adjusted on each July 1. This CPI adjustment in the Base Rate and Public Litter Container Service charges shall be automatic without further action by either Party hereto. Notwithstanding the foregoing, if CONTRACTOR fails to meet the recycling and composting rate requirements of Section 5 in any year after the first five years, CONTRACTOR shall not be entitled to a rate adjustment pursuant to this Section 8.c during the next period for which a rate adjustment would otherwise be given.

d. Landfill Tipping or Gate Fees.

The Parties acknowledge and agree that the fees set forth in Exhibit "B" include compensation to CONTRACTOR for landfill tipping or gate fees. Notwithstanding any provision in this Agreement to the contrary, CONTRACTOR shall not be entitled to receive from CITY, or any Customer, a separate or additional payment for landfill tipping or gate fees, except as pertains to Roll-Off services. In addition to any other rate adjustments to which CONTRACTOR may be entitled, CONTRACTOR may increase its rates to the extent necessary to recover increased landfill, transfer station, and material recovery facility tipping or gate fees, provided that the landfill, transfer station, or material recovery is not owned or operated by CONTRACTOR. CONTRACTOR shall provide CITY with notice of the proposed new rates as soon as such notice is received from the County of San Bernardino, and shall provide CITY with a copy of any notice from the County regarding an increase in landfill tipping or gate fees. The landfill adjustment shall be automatic without CITY approval required, but CITY may treat an adjustment for which no copy of the County rate increase notice is provided as a breach of this Agreement. Notwithstanding the foregoing, to the extent that CONTRACTOR owns or operates a landfill, transfer station, or material recovery facility, CONTRACTOR shall not increase the rates set forth in Exhibit "B" to recover increased tipping or gate fees, without prior approval from CITY.

e. Extraordinary Rate Adjustments

The CONTRACTOR may petition the CITY for an extraordinary rate adjustment or adjustments at any time during the term of this Agreement, provided that such petition may be made based only upon increases in fuel costs or increased costs as a result of federal, state, or county mandates which require changes in CONTRACTOR's service or operations under this Agreement, and further provided that the effective date of any such extraordinary rate adjustment shall be concurrent with the effective date of an adjustment under Section 8.c. The CONTRACTOR shall include in its petition a financial presentation which demonstrates the extraordinary increase in operating costs. Any petition shall be heard by the City Council of CITY at a public hearing held as soon as possible after the filing of the Petition, following the 45-day notice to customers required by Proposition 218. If the City Council determines that a rate adjustment is justified, it shall authorize the rate increase requested by the CONTRACTOR for a period not to exceed the twelve (12) billing months after the date of approval. The City Council may reject any such Petition in its sole discretion.

Before the end of the twelfth (12th) billing month after the date of any such approval, the CONTRACTOR shall submit a new petition for continuation or adjustment of the extraordinary rate increase. If no such subsequent petition is so filed, the approved rate adjustment shall expire on the thirteenth (13th) monthly anniversary of its date of approval. Any new petition shall demonstrate that the previous rate adjustment is still warranted due to operating costs which were and still are beyond the CONTRACTOR's control. The City Council, in its discretion, may: (1) continue the rate adjustment previously approved; (2) increase the rate adjustment to reflect additional extraordinary costs or (3) decrease or decline the rate adjustment to reflect the reduction of such extraordinary operating costs.

CITY reserves the right to verify all documents supplied by the CONTRACTOR with any and all petitions. CONTRACTOR agrees to fully cooperate with the CITY during the verification process. CONTRACTOR will provide detailed accounting information to document any petition for rate adjustment. CONTRACTOR will further reimburse the CITY for the reasonable cost incurred by the CITY to verify the rate adjustment request, and to provide notice of the hearing on any rate adjustment request.

f. Special Services.

CONTRACTOR may also charge those fees described on Exhibit B for performance of Special Services as agreed upon in separate contracts between CONTRACTOR and each Customer requesting such Special Service. Special handling and special equipment shall also be subject to additional fees.

9. COLLECTION EQUIPMENT

a. Vehicle Maintenance

CONTRACTOR shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which CONTRACTOR is responsible under this Agreement. All vehicles used by CONTRACTOR under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, and in good repair, shall keep all collected materials covered during transportation, and shall be regularly inspected and certified by the San Bernardino County Health Department. Such vehicles shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid. CONTRACTOR's name, phone number and vehicle number shall be visibly displayed on its vehicles in light reflective letters and figures no less than four (4") inches high, in accordance with County of San Bernardino requirements.

b. Vehicle Replacement and Compliance With Air Quality Requirements

Within fifteen (15) days of the effective date of this Agreement, CONTRACTOR shall place orders for two new low-sulfur diesel collection vehicles, and shall place such vehicles into service within six months of the effective date of this Agreement. CONTRACTOR shall place into service one additional low-sulfur diesel collection vehicle within twelve months of the effective date of this Agreement, and shall place into service two more low-sulfur diesel collection vehicles within eighteen months of the effective date of this Agreement. Notwithstanding the foregoing, CONTRACTOR shall at all times comply with Rule 1193 adopted by the South Coast Air Quality Management District, as it may be amended, to the extent that Rule 1193 applies to CONTRACTOR. Following the procurement of all the vehicles described in this paragraph, no Regular Commercial or Residential Collection Route vehicle used under this Agreement shall be older than ten (10) years. In addition to the foregoing, CONTRACTOR shall, within 5 years of the Effective Date, replace the engine of any truck used to service Roll-Off Bins with a new low-sulfur diesel engine that meets all applicable requirements imposed by the South Coast Air Quality Management District and California Air Resources Board. Every vehicle introduced into service in Big Bear Lake by CONTRACTOR following the effective date of this Agreement shall be painted a uniform color that is different from the color used on vehicles in service prior to the effective date of this Agreement, and any vehicle wraps or advertisements placed on the vehicles shall be subject to CITY's approval. For purposes of this paragraph, a vehicle's "age" shall consist of the age of its chassis and cab. During the term of this Agreement, CONTRACTOR shall not introduce into service in Big Bear Lake vehicles previously used elsewhere that are not "alternative-fuel heavy-duty vehicles" or "pilot-ignition heavy-duty vehicles," as those terms are defined in Rule 1193 adopted by the South Coast Air Quality Management District, as it may be amended. Notwithstanding the foregoing, CONTRACTOR may use vehicles not meeting the criteria in the preceding sentence on a temporary basis, not to exceed thirty (30) days. In providing services under this Agreement, CONTRACTOR shall comply in all respects with: (i) Rule 1193; (ii) the "Final Regulation Order" adopted by the California Air Resources Board regarding diesel particulate matter control measures for solid waste collection vehicles, including all implementing regulations, as they may be amended; and (iii) all other applicable rules, statutes,

orders, or other forms of mandate issued or adopted by a government agency with jurisdiction over air quality. Upon request from CITY, CONTRACTOR shall provide records of all collection vehicles in service in Big Bear Lake, including fuel source and engine and chassis numbers. In addition to any indemnification obligations set forth elsewhere in this Agreement, CONTRACTOR shall defend, indemnify, and hold harmless CITY against any fines, penalties, losses, or claims arising out of CONTRACTOR's failure to comply with this paragraph.

c. Cleanup of Spilled Materials

CONTRACTOR shall not cause or permit the private property or CITY streets or property to be littered with trash or other debris because of CONTRACTOR's activities under this Agreement. CONTRACTOR shall clean up any such trash or debris in the immediate vicinity of any Container and/or storage area that results from collection services under this Agreement. In the event of repeated litter not caused by CONTRACTOR directly, CONTRACTOR shall first notify the Customer and, if litter continues, CONTRACTOR may request the CITY's assistance to rectify the situation.

10. PUBLIC ACCESS TO CONTRACTOR

a. Local Office, Regular Hours and Route Maps

CONTRACTOR shall establish and maintain its principal office within the territorial limits of CITY. CONTRACTOR'S office hours shall be, at a minimum, from 8a.m. to 5p.m. daily, except Saturdays, Sundays and Holidays. A representative of CONTRACTOR shall be available during office hours for communication with the public at CONTRACTOR'S principal office. The representative shall, at a minimum, provide route maps and service information to the public. CONTRACTOR shall also maintain an emergency telephone number for use during other than normal business hours. CONTRACTOR shall have a representative or answering service available at said emergency telephone number during all hours other than normal office hours. In addition to providing route maps to the public, CONTRACTOR shall provide to CITY full route maps of all routes.

b. Service Complaints and Customer Dispute Resolution

All service complaints by Customers shall be directed to CONTRACTOR. All billing complaints by Customers received by CITY from regular Customers and Special Service Customers billed directly by CONTRACTOR shall also be directed to CONTRACTOR. CONTRACTOR shall record all complaints received (including date, name, address and nature of complaint). CONTRACTOR shall make all such records available for inspection by the City Manager or his or her designee during normal business hours, upon demand by the City Manager. CONTRACTOR agrees to use its best efforts to resolve each complaint within two (2) business days after the complaint is received.

CONTRACTOR shall report in writing to the City Manager, or his or her designee, as to the action taken or other disposition made of each complaint. Such report shall be provided to CITY within 72 hours of CONTRACTOR receiving the complaint (excluding Saturdays, Sundays, and Holidays).

If CONTRACTOR misses a scheduled pickup, it shall provide, if weather permits, a special pickup within twenty-four (24) hours (Sundays and Holidays excepted) at no charge to Customer or CITY.

CONTRACTOR shall provide CITY with monthly reports listing each customer complaint received in the previous month, the disposition of the complaint, and each scheduled pickup missed. Each monthly report shall be provided to CITY no later than the fifteenth (15th) day of the month following the calendar month covered by the report. Failure to timely provide any monthly report shall be considered a default by CONTRACTOR entitling CITY to impose liquidated damages pursuant to Section 14.

The Customer making the complaint may appeal CONTRACTOR's resolution to the City Manager or his or her designee within 30 days of the initial complaint. CONTRACTOR shall promptly make this appeal right known to the Customer making complaints. The City Manager shall recommend a resolution within 7 days of receiving the appeal, and provide a written copy of the resolution to CONTRACTOR and the Customer appealing CONTRACTOR's handling of the complaint.

The Customer making the complaint or CONTRACTOR may appeal the City Manager's recommended resolution to the City Council of CITY within 30 days of the City Manager's recommended resolution. The City Council of CITY shall consider the appeal within 30 days of receipt and make a finding affirming, modifying, or rejecting the City Manager's recommended resolution.

In the event that the City Manager determines that CONTRACTOR has failed to render performance in accordance with the requirements of this Agreement, he or she may assess damages against CONTRACTOR and reduce payment otherwise due to CONTRACTOR accordingly. CONTRACTOR shall in all cases be given a reasonable opportunity to remedy the defect in performance prior to such assessment of damages.

c. Customer Information

CONTRACTOR shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by Applicable Law, the CITY or a court of competent jurisdiction.

11. OWNERSHIP OF SOLID WASTE

All Solid Waste collected pursuant to this Agreement shall be the property of the Customer until placed in a Bin or Container for collection pursuant to this Agreement. Except as provided in the next paragraph, ownership of the Solid Waste shall transfer to CONTRACTOR once it is deposited in Containers, Bins or CONTRACTOR'S vehicles. CONTRACTOR is granted the right to collect, transport, process, recover, recycle, retain, market, compost, dispose of or otherwise use any such Solid Waste, or any part thereof, in any fashion, and retain all benefits or profits resulting therefrom. All Solid Waste shall be collected, transported, and disposed of in accordance with federal, state and local law.

This Agreement shall not prohibit any person from selling Recyclable Material or giving Recyclable Material away to persons or entities other than CONTRACTOR prior to such Recyclable Material being placed in a Bin or Container for collection by CONTRACTOR. However, in either instance, the Recyclable Material must be segregated from and not mixed with Refuse and the seller/donor may not pay the buyer/donee any consideration for collecting, transporting, processing or recycling such Recyclable Material.

12. INSURANCE, INDEMNIFICATION AND PERFORMANCE BOND

a. Indemnification of CITY

CONTRACTOR agrees that it shall indemnify and hold harmless CITY, its officers, officials, employees, agents, assigns and any successor or successors to CITY's interest, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of every kind and description, arising or resulting from: (i) the acts or omissions of CONTRACTOR, its agents, employees or subcontractors, in exercising the privileges granted to it by this Agreement; and (ii) the failure of CONTRACTOR, its agents, employees and/or subcontractors, to comply in all respects with the provisions and requirements of this Agreement. CONTRACTOR shall, upon demand of CITY, at CONTRACTOR'S sole cost and expense, defend with an attorney chosen by CITY to defend CITY, its officers and/or employees against any and all claims, actions or suits in any legal proceedings, (whether judicial, quasi-judicial, administrative or legislative in nature) brought against CITY, its officers and/or employees arising or resulting from those situations described in (i) and (ii) above.

CONTRACTOR shall indemnify, defend with an attorney selected by CITY, protect and hold harmless CITY, its officers, officials, employees, agents, assigns and any successor or successors to CITY's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, CITY or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where CONTRACTOR stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to and shall be construed to operate as an agreement pursuant to Section 107(c) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9067(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify CITY from liability.

The foregoing shall not apply to the extent that any costs and damages arise out of the active negligence or willful misconduct of CITY, its agents, employees, officers and contractors. CONTRACTOR shall have an affirmative duty to select for disposal of CITY's Solid Waste only those landfill facilities which comply with state and federal law.

This Section 12.a. shall survive the expiration of the period during which collection services are to be provided under this Agreement, and shall remain in effect in perpetuity except to the extent limited by an applicable statute of limitations.

Notwithstanding the provisions of this Section 12.a., CONTRACTOR shall not be required to appear or act in any litigation based solely upon the negligent acts or omissions of CITY.

b. Insurance

CONTRACTOR shall obtain and shall require its subcontractors to obtain insurance of the types and in the amounts described below and satisfactory to CITY.

i. Commercial General Liability Insurance

CONTRACTOR shall maintain time of occurrence based commercial general liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or be no less than two times the occurrence limit. Such insurance shall:

(a) Name CITY, its officials, officers, employees, agents, and consultants, as insureds with respect to performance of Services. Such insured status shall contain no special limitations on the scope of its protection to the above listed insured's.

(b) Be primary with respect to any insurance or self insurance programs covering CITY, its officials, officers, employees, agents, and consultants.

(c) Contain standard separation of insureds provisions.

ii. Business Automobile Liability Insurance

CONTRACTOR shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

iii. Workers' Compensation Insurance

CONTRACTOR shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 per accident.

iv. Certificates/Insurer Rating/Cancellation Notice

(a) CONTRACTOR shall, prior to commencement of the Services, furnish to CITY properly executed certificates of insurance, and certified copies of endorsements, and policies if requested by CITY, which shall clearly evidence all insurance required in this Section. CONTRACTOR shall not allow such insurance to be canceled, allowed to expire or be materially reduced in coverage except on 30 days' prior written notice to CITY.

(b) CONTRACTOR shall maintain such insurance from the time the Services commence until the Services are completed, except as may be otherwise required by this Section.

(c) CONTRACTOR shall place insurance with insurers having an A.M. Best Company rating of no less than A:VIII and licensed to do business in California.

(d) CONTRACTOR shall replace certificates, policies and endorsements for any insurance expiring prior to completion of the Services.

c. Performance Bond

Prior to execution of this Agreement, CONTRACTOR shall deposit with CITY either a letter of credit or a performance bond (collectively referred to as the

"Performance Bond") in the amount of \$100,000. The Performance Bond shall serve as security for the faithful performance of CONTRACTOR of all of the provisions and obligations of this Agreement. The Performance Bond shall contain terms acceptable to CITY. If CONTRACTOR deposits a letter of credit with CITY, interest, if any, relating to any cash deposits that may exist with regard to that letter of credit shall accrue to CONTRACTOR. If CITY assesses liquidated damages pursuant to Section 14, CITY shall be entitled to recover the amount of liquidated damages assessed from the Performance Bond. Upon written notice from CITY that the Performance Bond amount has been reduced to less than \$100,000, CONTRACTOR shall take such steps as are necessary to make the amount of the Performance Bond \$100,000. Any claim by CITY to assess against the Performance Bond shall not be subject to review under Section 16 hereinafter, but CITY shall hold a City Council hearing concerning the proposed assessment of damages against the Performance Bond, if so requested by CONTRACTOR. If such a hearing is held, CITY shall provide CONTRACTOR written notice of the hearing, and CONTRACTOR shall have the opportunity to appear and present testimony at the hearing.

13. RIGHTS OF CITY TO PERFORM DURING EMERGENCY

Should CONTRACTOR, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 15.a. below, fail, refuse or be unable to collect, transport, process and dispose of any or all of the Solid Waste for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than forty-eight (48) hours, and if as a result thereof Solid Waste should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, CITY shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hours' prior written notice to CONTRACTOR, or without such notice should the CITY determine that a further delay would endanger the health, safety, and welfare of CITY residents during the period of such emergency, to take possession of any or all equipment and facilities of CONTRACTOR previously used in the collection, transportation, processing and disposal of Solid Waste or which CONTRACTOR would otherwise be obligated to collect and transport pursuant to this Agreement. CONTRACTOR agrees that in such event it will fully cooperate with CITY to affect such a transfer of possession for CITY's use. CONTRACTOR agrees that, in such event, CITY may take possession of and use all of said equipment and facilities without paying CONTRACTOR any rental or other charge, provided that CITY agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

CONTRACTOR further agrees that, in such event, it shall reimburse CITY for any and all costs and expenses, including the cost of CITY employees and/or third party laborers in the performance of emergency services pursuant to this Section, incurred by CITY in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of CONTRACTOR under the terms of this Agreement. CITY shall first subtract such reimbursement costs from

compensation otherwise due CONTRACTOR under this Agreement, and to the extent such costs exceed those due CONTRACTOR, an itemized statement of costs and expenses shall be submitted for reimbursement to CONTRACTOR. To facilitate reimbursement of costs and expenses to CITY, CONTRACTOR agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by CITY and further agrees to allow CITY to collect such payments directly from the Customers. CITY agrees that it shall relinquish possession of all of the above-mentioned property to CONTRACTOR upon written notice from CONTRACTOR to the effect that it is able to resume its responsibilities under this Agreement. It is agreed that CITY's exercise of its rights under this Section shall not affect Section 12 of this Agreement.

14. CITY'S REMEDIES UPON DEFAULT BY CONTRACTOR

a. Liquidated Damages

IN THE EVENT THAT THE CONTRACTOR FAILS TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, THE PARTIES AGREE THAT CITY WILL SUSTAIN DAMAGES BY REASON THEREOF WHICH WOULD BE UNCERTAIN. IT IS IMPRACTICABLE AND EXTREMELY DIFFICULT TO FIX THE AMOUNT OF SUCH DAMAGES TO CITY, BUT THE PARTIES ARE OF THE OPINION, UPON THE BASIS OF ALL INFORMATION AVAILABLE TO THEM, THAT SUCH DAMAGES WOULD APPROXIMATELY EQUAL FIVE HUNDRED DOLLARS (\$500) FOR EACH VIOLATION OF THIS AGREEMENT OR THE CITY CODE PER DAY BEYOND THE CURE PERIOD SET FORTH IN SUBPARAGRAPH (c) BELOW (IF APPLICABLE) THAT CONTRACTOR FAILS TO CURE ANY SUCH DEFAULT. THEREFORE, THE PARTIES FURTHER AGREE THAT, UPON ANY VIOLATION BY CONTRACTOR OF THIS AGREEMENT OR THE CITY CODE, CITY SHALL BE ENTITLED TO PAYMENT, AS LIQUIDATED DAMAGES, OF FIVE HUNDRED DOLLARS (\$500) PER DAY BEYOND THE CURE PERIOD SET FORTH IN SUBPARAGRAPH (c) BELOW (IF APPLICABLE) THAT CONTRACTOR FAILS TO CURE ANY SUCH DEFAULT, FOR EACH VIOLATION OF THIS AGREEMENT OR THE CITY CODE. THE PARTIES AGREE THAT SUCH LIQUIDATED AND AGREED DAMAGES SHALL BE DUE AND PAYABLE TO CITY BY THE HOLDER OF THE PERFORMANCE BOND REQUIRED BY SECTION 12(C) OF THIS AGREEMENT AND WITHOUT ANY ACTION ON CONTRACTOR'S PART. CITY'S EXERCISE OF ITS RIGHTS UNDER THIS PARAGRAPH SHALL NOT PRECLUDE CITY FROM TERMINATING THIS AGREEMENT AS PROVIDED HEREIN.

CONTRACTOR AND CITY SPECIFICALLY ACKNOWLEDGE THIS LIQUIDATED DAMAGES PROVISION BY THEIR SIGNATURES BELOW:

CONTRACTOR

CITY

b. Termination

CITY may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement at any time as a result of a violation of this Agreement by CONTRACTOR by giving written notice to CONTRACTOR of such termination and the violation, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon receipt of a notice of termination, unless CITY has already provided CONTRACTOR with a notice of default pursuant to paragraph c of this section and the applicable cure period has expired, CONTRACTOR shall have thirty (30) days to cure or correct the violation of this Agreement noted by CITY. During the 30-day cure period (if applicable), CONTRACTOR shall have the right to a hearing before the City Council to discuss the violation and proposed termination, provided that the request for a hearing is made in sufficient time to schedule a hearing at a regular meeting of the City Council falling within the 30-day cure period. If the violation has not been cured or corrected within the 30-day cure period (if applicable), CITY may proceed with the termination of this Agreement on the noticed date. Upon termination, CONTRACTOR shall be compensated only for those Services which have been adequately rendered to CITY, and CONTRACTOR shall be entitled to no further compensation. However, if, in CITY's determination (which determination may be made in the sole and absolute discretion of CITY), the violation endangers public health, safety or welfare, termination may be effective immediately.

The rights and remedies of CITY under this Agreement, including the right to make claim under the Performance Bond deposited with CITY by CONTRACTOR for reimbursement of any costs borne or damages incurred by CITY as a result of a default by CONTRACTOR under this Agreement and the right to perform during an emergency, shall be in addition to any and all other rights and privileges CITY may have, and shall not be deemed to limit any such other rights or privileges of CITY under this Agreement or by virtue of any law.

c. Notice and Opportunity to Cure. Unless otherwise provided by a specific provision of this Agreement to the contrary, neither CITY nor CONTRACTOR shall be in default under this Agreement, and neither party may exercise any right or remedy with respect to such default, if, within thirty (30) days following receipt of notice of default from the nondefaulting party, the defaulting party undertakes and diligently prosecutes to completion a complete cure of such default; provided, further, that if such default is of a nature that it cannot reasonably be completely cured within such thirty (30) day period, the party alleged to be in default commences the cure of such default within said thirty (30) day period and diligently prosecutes such cure to completion thereafter. Notwithstanding the foregoing, CITY shall not be required to provide a cure period for any reoccurrence of a violation as to which CITY has previously provided notice to CONTRACTOR, following the expiration of the cure period triggered by such notice.

15. GENERAL PROVISIONS

a. Force Majeure

CONTRACTOR shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of CONTRACTOR are temporarily interrupted or discontinued for any of the following reasons: riots, wars, civil disturbances, insurrections, epidemics, hurricanes, earthquakes, floods, weather, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of CONTRACTOR. It is specifically understood that "other catastrophic events" include strikes, lockouts and other labor disturbances. When any of these events interrupt collection, transportation, processing and/or disposal of Solid Waste by CONTRACTOR as required under this Agreement, CITY may elect to exercise its rights under Section 13.

b. Annexation

In the event that any community, neighborhood or other territory is hereafter annexed to CITY, Solid Waste collection, transportation, processing, disposal and recycling services shall, if requested by CITY, be immediately provided to such area by CONTRACTOR pursuant to this Agreement. CITY agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.

c. Independent Contractor

It is expressly understood and agreed that CONTRACTOR shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of CITY; that CONTRACTOR shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing shall be construed as creating a partnership or joint venture between CITY and CONTRACTOR. Neither CONTRACTOR nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to CITY employees.

d. Governing Law and Venue

It is understood and agreed by the Parties that the law of the State of California shall govern the interpretation of this Agreement. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of or for San Bernardino County, California.

e. Fees and Gratuities

CONTRACTOR shall not, nor shall it permit any agent, employee or subcontractor employed by it to, request, solicit, demand or accept, either directly or

indirectly, any compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Agreement.

f. Amendment

Except as may otherwise be specifically provided in this Agreement, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both CITY and CONTRACTOR.

g. Assignment and Transferability; Subcontracting

This Agreement is not assignable or transferable in whole or in part by CONTRACTOR, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. In addition, the services to be performed by CONTRACTOR pursuant to this Agreement shall not be subcontracted to any third party without the written consent of CITY.

Except as provided below, the sale, transfer, assignment or hypothecation of any ownership interest in CONTRACTOR after the effective date of this Agreement shall be deemed an assignment within the meaning of this Section and is prohibited in the absence of a written amendment to this Agreement. The only exceptions to the foregoing are that the shares or other units of ownership of CONTRACTOR may be sold, transferred, assigned or hypothecated without written amendment to this Agreement a) between Arthur Kazarian and Thomas K. Blackman and their respective natural heirs; and b) to any employee or employees of CONTRACTOR (other than Arthur Kazarian and Thomas K. Blackman) in an aggregate amount not to exceed 49%.

Any dispute between the CITY and the CONTRACTOR with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in CONTRACTOR has occurred or will occur shall be subject to the dispute resolution procedures in Section 16.

h. Compliance with Applicable Law

CONTRACTOR agrees that it will comply with all provisions of the Applicable Law.

i. Notices

All notices, demands, requests, consents or other communications which this Agreement contemplates, authorizes, requires or permits either Party to give to the other, shall be in writing and shall be personally delivered; or sent by overnight mail, delivery service, or registered or certified mail, postage prepaid, return receipt requested; or by facsimile transmission, all addressed to the respective Party as follows:

To CITY: City of Big Bear Lake

39707 Big Bear Blvd.
P.O. Box 10000
Big Bear Lake, California 92315
Attention: City Manager

Copy to: **BEST BEST & KRIEGER LLP**
3750 University Avenue
P. O. Box 1028
Riverside, California 92502
Attention: Stephen P. Deitsch, City Attorney

To CONTRACTOR: Big Bear Disposal, Inc.
41974 Garstin Road
P.O. Box 2837
Big Bear Lake, California 92315
Attention: General Manager

Copy to: JENSEN & COEUR-BARRON LLP
5100 Campus Drive, Suite 200
Newport Beach, California 92660
Attention: VerLyn N. Jensen

Either Party may from time to time designate by notice an additional or alternative address. Such notice shall be deemed effective on the date personally served or, if mailed, three (3) days from the date such notice is deposited in the mail.

J. Savings Clause and Entirety

If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement.

k. Attorneys' Fees

In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

I. Entire Agreement

This Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties. However,

nothing in this Agreement shall be construed as affecting the CITY and CONTRACTOR's rights and obligations under the Asset Purchase Agreement, Promissory Note and/or Security Agreement, which shall remain in effect until fully executed or modified by the Parties.

m. Termination of Agreement

i. CITY may, by written notice to CONTRACTOR, terminate the whole or any part of this Agreement at any time for cause by giving written notice to CONTRACTOR of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon termination, CONTRACTOR shall be compensated only for those Services which have been adequately rendered to CITY, and CONTRACTOR shall be entitled to no further compensation. CONTRACTOR may, by written notice to CITY, terminate this Agreement for cause by giving written notice to CITY of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination.

ii. In the event this Agreement is terminated in whole or in part as provided in paragraph m. of this section, CITY may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

n. Reimbursement of CITY's Attorneys' Fees

Within 60 days following the effective date of this Agreement, CONTRACTOR shall reimburse CITY's properly documented attorneys' fees incurred in the preparation and negotiation of this Agreement, in an amount in the aggregate not to exceed \$16,000.

16. ALTERNATIVE RESOLUTION OF DISPUTED MATTERS

The parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. If this good faith negotiation fails to resolve any dispute, claim, or controversy referred to above, upon the mutual written consent of both Parties, which may be given, withheld or conditioned in each party's sole and absolute discretion, the resolution of disputes hereunder may be made subject to the following alternative dispute resolution mechanism:

a. A dispute shall be heard and determined by a Referee pursuant to California Civil Procedure Section 638 in effect as of the date hereof. The venue of any proceeding hereunder shall be in San Bernardino County, California unless changed by order of the Referee.

i. The party seeking to resolve the dispute shall serve a complaint or statement of claim on the other party, describing the matters in dispute in the manner

prescribed for giving of notice hereunder. Within five (5) business days after the service of the complaint or statement of claim, the party seeking relief shall make a written request for the specific designation of a Referee to try the dispute. The Referee shall be chosen from the panel maintained by the nearest office of JAMS. Thereafter the parties shall use their best efforts to agree upon the selection of a Referee. If the parties are unable to agree upon a Referee within ten (10) business days after a written request to do so by any party, then either party may petition the Presiding Judge of the San Bernardino County Superior Court to appoint a Referee from the panel maintained in San Bernardino County by JAMS.

ii. The provisions of California Code of Civil Procedure Section 640, 642, 643, 644, and 645 shall be applicable to dispute resolution by a Referee hereunder. In an effort to clarify and amplify the provisions of California Code of Civil Procedure Sections 644 and 645, the parties agree that the Referee shall decide the dispute submitted by the parties for decision in the same manner as required for a trial by court as set forth in California Code of Civil Procedure Section 631.8 and 632, and Rule 3.1590 of the California Rules of Court. The Referee shall try and decide the dispute according to and based on all of the substantive and procedural statutory and decisional law of the State of California, unless the parties stipulate to the contrary. When the Referee has decided the dispute, the Referee shall also cause the preparation of a judgment based on said decision. The judgment to be entered by the Superior Court, based upon the decision of the Referee, shall be appealable in the same manner as if the judge signing the judgment had tried the case.

b. The parties shall diligently cooperate with one another and the person appointed to resolve the dispute, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute. If either party refuses to diligently cooperate, and the other party, after first giving notice of its intent to rely on the provisions of this Section 16, incurs additional expenses or attorneys' fees solely as a result of such failure to diligently cooperate, the Referee may award such additional expenses and attorneys' fees to the party giving such notice, even if such party is not the prevailing party in the dispute.

c. The cost of the proceeding shall initially be borne equally by the parties to the dispute, but the prevailing party in such proceeding shall be entitled to recover, in addition to reasonable attorneys' fees and all other costs, its contribution for the reasonable cost of Referee as an item of recoverable costs. If either party refuses to pay its share of the costs of the proceeding, at the time(s) required; the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest, even if that party is not the prevailing party. The Referee shall include such costs in his judgment or award.

17. REPORTING, ACCOUNTING AND AUDITING

a. CONTRACTOR shall maintain financial records concerning its operations under this Agreement in accordance with generally accepted accounting principles.

b. CONTRACTOR's records, reports and methods of accounting relating to the PARTIES' financial obligations to each other hereunder shall be made available to an independent certified public accountant (the "Auditor") during normal business hours to allow the Auditor to review CONTRACTOR's and its Affiliated Companies' accounting systems and procedures. CITY agrees that its audit and inspection rights as described herein are limited to an inspection of CONTRACTOR's and its Affiliated Companies' records, reports and methods of accounting related only to PARTIES' financial obligations to each other hereunder; provided, however, nothing herein shall be deemed to limit any right that either Party may have to discovery in accordance with any applicable provision of law during any litigation or arbitration initiated to enforce or protect the Parties' rights or obligations under this Agreement. Such reviews shall be conducted by the Auditor at any time as directed by CITY. Additionally, CITY may direct its employees or designees, to review records of CONTRACTOR and its Affiliated Companies pertaining to billings to CITY and payments by CONTRACTOR required under this Agreement, and CONTRACTOR and its Affiliated Companies shall make its records available to such employees and designees during normal business hours.

c. CONTRACTOR shall maintain service account records for all Customers including, without limitation, CITY. Records shall include residential and commercial customer lists showing beginning date, name, service address, type and frequency of service (including Recyclable Material and Refuse collection). Commercial billing and payment records shall be included. Public Bin service records should include number and frequency of Bin service by date, time and location (including Recyclable Material and Solid Waste collection), Bin volume for each service by date, time of day, method of disposal, and Clean Bear site maintenance activity.

d. CONTRACTOR shall submit reports identifying the services provided to Residential Customers and to CITY on a monthly basis.

e. CONTRACTOR shall make its service account records available to CITY during normal business hours for review.

f. Any report from the Auditor to CITY resulting from the Auditor's review of CONTRACTOR's or its Affiliated Companies' records shall be distributed in such a way as to protect the confidential nature of any proprietary information of CONTRACTOR or its Affiliated Companies, to the extent permitted by law. The report shall be limited to a letter of compliance relating to the adequacy of the accounting procedures, verification of increases or decreases in CONTRACTOR's or its Affiliated Companies' costs, and verification that the proper administration and franchise fees are being paid, and shall not set forth CONTRACTOR's or its Affiliated Companies' actual operating results. The Auditor shall also make such recommendations as it deems necessary as to the

adequacy of CONTRACTOR's data collection methods, and as to the availability and sufficiency of the information, including direct, indirect and joint costs, with respect to any request by CONTRACTOR for increased compensation, and shall furnish CITY with its opinion as to whether an increase or decrease is supported and justified by CONTRACTOR's or its Affiliated Companies' records.

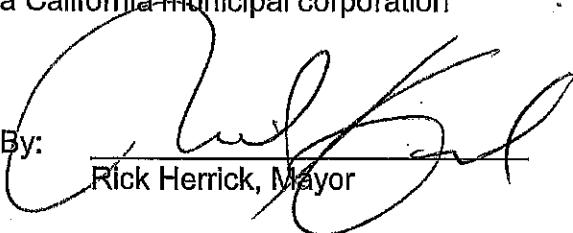
g. The CITY shall initially bear the cost of any audit. If such audit discloses a material breach of this Agreement or any underpayment of the Franchise Fee in excess of five percent (5%) of the amount which should have been paid, CONTRACTOR shall repay such underpayment, together with interest at the rate of seven percent (7%) computed from the date of underpayment, and shall further reimburse CITY for the entirety of CITY's audit costs, including, without limitation, Auditor's costs and expenses, CITY's internal costs and expenses, and CITY's legal and other third party expenses. If such audit discloses a Franchise Fee underpayment of less than five percent (5%), CONTRACTOR shall repay such underpayment, together with interest at the rate of seven percent (7%) computed from the date of underpayment, but CITY shall bear its audit costs.

[Signatures on following pages]

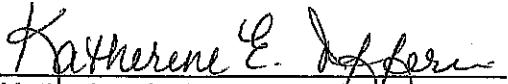
SIGNATURE PAGE TO
AGREEMENT FOR COLLECTION OF SOLID WASTE

CITY OF BIG BEAR LAKE
a California municipal corporation

By:

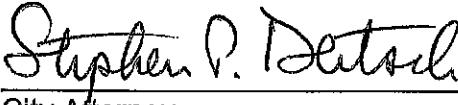

Rick Herrick, Mayor

ATTEST:


Katherine Jefferies, City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP


Stephen P. Deutsch
City Attorney

BIG BEAR DISPOSAL, INC.
a California corporation

By: 
Gino Scopesi
Its: Chief Operating Officer

**EXHIBIT A TO
AGREEMENT FOR COLLECTION OF SOLID WASTE**

Special Waste

Flammable waste.

Containerized waste (e.g., a drum, barrel, portable tank, pair, etc).

A waste from any pollution control process.

Residue and debris from the cleanup of a spill or release of chemical substances, commercial products or any other Special Wastes.

Contaminated soil, waste, residue, debris and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, recycling, reclamation or disposal of any other Special Wastes.

Dead animals.

Manure.

Explosive substances.

Radioactive materials.

Materials which have been exposed to highly infectious or contagious diseases.

Medical waste as defined by State and Federal agencies.

Sludge waste (also known as "bio-solids").

Liquid waste.

Hazardous Waste from an industrial process.

Waste motor oil.

Asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos;

Ash residue from the incineration of Infectious Waste described below, sludge, and agricultural wastes described above;

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

Industrial byproducts, including cement kiln dust, ore process residues and grit or screening removed from a waste water treatment facility;

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

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

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

Sewage sludge comprised of residue produced by humans (not industrial), excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semi-dry form;

Wastes designated from time to time by the California Integrated Waste Management Board, including contaminated soil;

Tires;

Automotive parts (including wheels) and bodies.

Other wastes that because of change in any applicable California law may no longer be treated as Solid Waste but may be handled under special requirements set forth in applicable statute, rule, permit, or the California Integrated Waste Management Act of 1989 as amended from time to time.

JULY 2009

EXHIBIT B
SERVICE RATES
CITY OF BIG BEAR LAKE

<u>Residential Rates</u>	<u>Monthly Rate</u>
Three (3) or less equivalent dwelling units One (1) time per week service (paid by City to Contractor)	\$17.96 per unit
Each additional refuse container service \$1.78 per container per pick-up (paid by Customer to Contractor)	\$6.67 each
Pine Needles – fifteen (15) bags per week Each additional bag (paid by Customer To Contractor)	No charge \$1.25
<u>Village litter containers</u>	\$40.63 per container
<u>Vacant lots</u>	\$1.00 per lot
<u>Commercial Trash Rates</u>	
<u>2 Yard Bin Service</u>	
1 time per week service	\$72.72
2 times per week service	\$145.41
3 times per week service	\$218.12
4 times per week service	\$290.86
5 times per week service	\$364.50
6 times per week service	\$436.26
7 times per week service	\$208.99

JULY 2009

EXHIBIT B

3 Yard Bin Service

1 time per week service	\$108.63
2 times per week service	\$217.32
3 times per week service	\$325.96
4 times per week service	\$434.64
5 times per week service	\$543.18
6 times per week service	\$651.92
7 times per week service	\$760.62

4 Yard Bin Service

1 time per week service	\$144.60
2 times per week service	\$289.21
3 times per week service	\$434.53
4 times per week service	\$579.23
5 times per week service	\$723.35
6 times per week service	\$868.43
7 times per week service	\$1,013.04

Roll-off Containers

30 yards – seven (7) day use (Includes delivery and one (1) dump)	\$223.10 plus landfill fees
Rental fees after seven (7) days	\$7.40 per day

Commercial Can Service

Monthly Rate

2 cans solid waste – 1 can recycle	\$18.80
3 cans solid waste – 1 can recycle	\$25.92
4 cans solid waste – 2 cans recycle	\$35.71
5 cans solid waste – 2 cans recycle	\$42.71
6 cans solid waste – 2 cans recycle	\$52.21
7 cans solid waste – 3 cans recycle	\$59.59

JULY 2009

EXHIBIT B

Recycle Containers-32 Gallon Can No Charge
(replacement)

Special Services

Manual pull-out services for front-loading bins (including opening and closing of enclosure doors) \$3.81 per occurrence

Install front loading bins with locking lids or other special lids \$44.43 one time charge

Commercial start-up fee and bin delivery fee \$40.52 one time charge

Overloaded Bin Rates

Extra

Additional Charges

2 yard	1 / 4 over full	\$6.78
	1 / 3 over full	\$8.14

3 yard	1 / 4 over full	\$9.43
	1 / 3 over full	\$11.50

4 yard	1 / 4 over full	\$12.17
	1 / 3 over full	\$14.94

Weekend Rates \$10.41 per yard

JULY 2009

EXHIBIT B

Commercial Recycling

2 Yard Bin Service

1 time per week service	\$48.82
2 times per week service	\$97.63
3 times per week service	\$146.44
4 times per week service	\$195.28
5 times per week service	\$245.04
6 times per week service	\$292.90
7 times per week service	\$341.73

3 Yard Bin Service

1 time per week service	\$72.79
2 times per week service	\$145.64
3 times per week service	\$218.44
4 times per week service	\$291.28
5 times per week service	\$363.98
6 times per week service	\$436.88
7 times per week service	\$509.74

4 Yard Bin Service

1 time per week service	\$96.82
2 times per week service	\$193.63
3 times per week service	\$291.17
4 times per week service	\$388.09
5 times per week service	\$484.41
6 times per week service	\$581.71
7 times per week service	\$678.55

**EXHIBIT C TO
AGREEMENT FOR COLLECTION OF SOLID WASTE**

City of Big Bear Lake Facilities and Clean Bear Sites
(all sites are located within the City of Big Bear Lake)

City Facilities	No. of Bins
Civic Center, 39707 Big Bear Blvd.	One (1) - 3 yard
Fire Station, 39690 Big Bear Blvd.	One (1) - 2 yard
Corporation Yard, 42040 Garstin Road	Four (4) - 3 yard
DWP, 41972 Garstin Road	Two (2) - 3 yard
Boulder Bay Park, 39080, 39108, 39112, 39126 Big Bear Blvd.	One (1) - 4 yard

Clean Bear Sites

#1 – Sufficient bins to accommodate Solid waste, Bulky Items (for the entire month of May and two weeks each October), Green Wastes, and recyclables, plus two 2-yard ash bins.

#2 – Sufficient bins to accommodate Solid waste, Bulky Items (for the entire month of May and two weeks each October), Green Wastes, and recyclables, plus two 2-yard ash bins.

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