

**FRANCHISE AGREEMENT**

**BETWEEN**

**THE TOWN OF PARADISE**

**AND**

**NORTHERN RECYCLING AND WASTE SERVICES, LLC  
FOR**

**SOLID WASTE, RECYCLABLE MATERIALS, AND  
YARD WASTE COLLECTION, PROCESSING, AND  
DISPOSAL SERVICES**

**\* \* \* \* \***

**January 18, 2007**

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COLLECTION, PROCESSING AND DISPOSAL SERVICES**

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**AGREEMENT  
FOR  
SOLID WASTE, RECYCLABLE MATERIALS, AND YARD WASTE  
COLLECTION, PROCESSING AND DISPOSAL SERVICES**

This AGREEMENT is made as of this 18th day of January 2007, by and between the TOWN OF PARADISE, a municipal corporation, (hereinafter referred to as the "Town") and Northern Recycling and Waste Services, LLC, a California Limited Liability Company (hereinafter referred to as "Contractor").

**RECITALS:**

**Whereas**; the Legislature of the State of California, by enactment of Assembly Bill 939 of 1989 (Act) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdiction; and,

**Whereas;** the State of California has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the Act, directed the responsible state agency, and all local agencies, to promote landfill diversion and to maximize the use of feasible waste reduction, Recycling and composting options in order to reduce the amount of Solid Waste that must be disposed of in landfills; and,

**Whereas;** pursuant to California Public Resources Code Section 40059(a)(2), the Town has determined that the public health, safety, and well-being require that a franchise agreement be awarded to a qualified contractor for the Collection of Solid Waste, Recyclable Materials, and Yard Waste, and other services related to meeting the diversion goals, and other requirements of the California Act; and,

**Whereas;** the current Agreements dated December 1, 1995 between Town of Paradise (Town) and Waste Management, Inc. and Norcal Waste Systems of Butte County will expire on April 30, 2007 and shall be terminated upon effectiveness of this Agreement; and,

**Whereas;** the Town declares its intention of maintaining reasonable rates and quality service related to the Collection of Solid Waste, Recyclable Materials, and Yard Waste, the transportation of such material to appropriate places of processing, Recycling, Composting, and/or Disposal, and the Processing of Recyclable Materials and Yard Waste and other services; and,

45 **Whereas;** the Contractor has submitted a plan to provide Solid Waste, Recyclable Materials,  
46 and Yard Waste programs at reasonable costs to the ratepayers of the Town and the Town  
47 has elected to enter into this Agreement based on the advantages of that plan; and,  
48

49 **Whereas;** the Town has selected Contractor based on the strength of its plan to provide the  
50 desired services and the ability of those services to meet the Town's diversion goals and  
51 comply with the requirements of the Act; and,  
52

53 **Whereas;** Contractor agrees to and acknowledges that it shall arrange for the proper  
54 Disposal of all Solid Waste collected in the Town's Service Area and the Town is not  
55 instructing Contractor how to Collect, transport, process and / or Dispose of Solid Waste,  
56 Recyclable Materials, and Yard Waste; and,  
57

58 **Whereas;** Town and Contractor desire to leave no doubts as to their respective roles, and  
59 that by entering into this Agreement, the Town is not thereby becoming a "generator" or  
60 "arranger" as those terms are used in CERCLA 107 (a)(3), and that it is Contractor, not the  
61 Town, which is "arranging for" the Collection of Solid Waste, Recyclable Materials, and  
62 Yard Waste, the transportation of such material to appropriate places of processing,  
63 Recycling, Composting, and/or Disposal, and the Processing of Recyclable Materials and  
64 Yard Waste; and,  
65

66 **Whereas;** this Agreement has been developed by and is satisfactory to the parties.  
67

68 **NOW, THEREFORE,** in consideration of the mutual promises, covenants, and conditions  
69 contained in this Agreement and for other good and valuable consideration, the parties  
70 agree as follows:



71 **ARTICLE 1**  
72 **DEFINITIONS**

73  
74 Unless the context otherwise requires, capitalized terms used in this Agreement will have  
75 the meanings specified in Exhibit A to this Agreement, which is attached hereto and  
76 incorporated by reference.  
77

78 **ARTICLE 2**  
79 **GRANT AND ACCEPTANCE OF AGREEMENT**  
80

81 **2.01 Grant and Acceptance of Franchise.**

82 Subject to Sections 2.04 and 2.06, the Town hereby grants to Contractor the exclusive  
83 right and privilege to Collect, transport, process and / or Dispose of Solid Waste,  
84 Recyclable Materials, and Yard Waste accumulating in Service Area that is required  
85 to be accumulated and offered for Collection to Contractor in accordance with  
86 Paradise Municipal Code Chapter 8.08 and this Agreement. Contractor hereby  
87 accepts the terms and conditions set forth in this Agreement.  
88

89 **2.02 Effective Date and Commencement Date.**

90 The Effective Date of this Agreement shall be January 18, 2007.  
91

92 The Commencement Date shall be May 1, 2007, and shall be the date on which the  
93 Contractor initiates provision of the Franchised Services required by this Agreement.  
94

95 Between the Effective Date and the Commencement Date, Contractor shall perform  
96 all activities necessary to prepare itself to start services required by this Agreement  
97 on the Commencement Date.  
98

99 **2.03 Term.**

100 The term of this Agreement shall commence at midnight April 30, 2007, and shall end  
101 at midnight April 30th, 2017, unless terminated as provided in Section 11.02. In  
102 addition, the term of this Agreement may be extended for an additional three (3)  
103 years subject to the following conditions:

104 **A.** Rates shall not have increased by more than the change in the "California  
105 Statewide, Consumer Price Index, All Items, 1982-84 = 100 for All Urban  
106 Consumers (CPI-U)" over the first seven years of this Agreement exclusive of  
107 pass-through costs.

108 **B.** Contractor shall receive a favorable rating by more than 85% of respondents to a  
109 customer satisfaction survey performed in the fourth and seventh year of this  
110 Agreement.

111 **C.** The Town shall be in compliance with AB939 and not under any penalty.

112 **D.** Liquidated damages as provided in Section 11.03 through the sixth year of the  
113 term of this Agreement shall not exceed \$30,000.

114  
115  
116  
117 **2.04 Conditions to the Effectiveness of Agreement.**

118 The obligation of the Town to permit this Agreement to become effective and to  
119 perform its undertakings provided for in this Agreement is subject to the satisfaction  
120 of each and all of the conditions set out below, each of which may be waived in  
121 whole or in part by the Town at its sole discretion.  
122

123 **A. Accuracy of Representations.** Representations and warranties made by  
124 Contractor throughout this Agreement are accurate, true and correct on and as of  
125 the Effective Date of this Agreement. Any information submitted to the Town  
126 supplementary thereto, on which the Town has relied in awarding this franchise  
127 to Contractor and entering into this Agreement, does not contain any untrue  
128 statement of a material fact nor omit to state a material fact necessary in order to  
129 make the statements made, in light of the circumstances in which they were  
130 made, nor is misleading.  
131

132 **B. Absence of Litigation.** There is no litigation pending in any court challenging  
133 the award of this Franchise to Contractor or the execution of this Agreement or  
134 seeking to restrain or enjoin its performance.  
135

136 **C. Furnishing of Insurance and Bonds.** Contractor has furnished evidence of  
137 the insurance and performance bond required by Article 9.  
138

139 **D. Effectiveness of Town Council Action.** The Town has the authority to enter  
140 into and perform its obligations under this Agreement. The Town has taken all  
141 actions required by law or otherwise to authorize the execution of this  
142 Agreement. The Persons signing this Agreement on behalf of the Town have the  
143 authority to do so. The Town's Resolution No. 07-04 (Town) approving this  
144 Agreement, shall have become effective pursuant to California law on or before  
145 the Effective Date.  
146

147 In the event that any condition set forth in this Section 2.04 is not satisfied or  
148 waived, by the Effective Date, by the Town, this Agreement shall be void and  
149 shall have no further force or effect. The Town may waive the satisfaction of  
150 conditions described in this Section 2.04, allow this Agreement to become  
151 effective, and exercise its rights and remedies under this Agreement for  
152 Contractor's failure to deliver the bond and/or evidence of insurance. Each party  
153 is obligated to perform in good faith the actions, if any, which this Agreement  
154 requires it to perform before the Effective Date and to cooperate towards the  
155 satisfaction of the conditions set forth above.  
156

**2.05 Scope of Franchise.**

Subject to Section 2.06, the Franchise granted to Contractor shall be exclusive for all Solid Waste, Recyclable Materials, and Yard Waste generated in the Service Area, except where otherwise precluded by Federal, State and local laws and regulations or where other current programs provide for Collection and handling of Household Hazardous Waste and/or electronic waste.

**2.06 Limitations to Scope.**

The Agreement for the Collection, transportation, processing, and /or Disposal of Solid Waste, Recyclable Materials, and Yard Waste granted to Contractor shall be exclusive except as described in this Section 2.06. The award of this Agreement shall not preclude the categories of Solid Waste, Recyclable Materials and Yard Waste listed below from being delivered to and/or Collected and transported by others. However, nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the Town which is otherwise required by law:

- A. Solid Waste, Recyclable Materials and Yard Waste, which are removed from any Premises by the Waste Generator, and which are transported personally by the Owner or Occupant of such Premises or by his or her full-time employees or a contractor whose removal of the Solid Waste, Recyclable Materials and/or Yard Waste are incidental to the service being performed;
- B. Collection and Processing of Recyclable Materials not specifically included in the definition of Recyclables in Exhibit A;
- C. Recyclable Materials and Yard Waste which are Source Separated at any Premises by the Waste Generator and donated to youth, civic, or charitable organizations;
- D. Source Separated Recyclable Materials generated in the Service Area that are placed in Containers, collected through a private arrangement with the Generator and the Generator is compensated for the Recyclable Materials Collected; provided, however, that the Owner or Occupant of such Premises shall be required to subscribe to and pay for the basic level of service provided by Contractor. For the purposes of this Agreement, Source Separated loads are loads that consist of 90% or more by weight or volume (whichever is greater) of Source Separated Recyclable Materials or Yard Waste. If Contractor can document that other recyclers are servicing Collection Containers that contain less than 90% Source Separated Recyclable Materials or Yard Waste, it shall report the location and the name of the recycler to the Town along with Contractor's evidence of the violation of the exclusiveness of this Agreement;

- 200 E. Containers delivered for Recycling under the California Beverage Container  
201 Recycling Litter Reduction Act, California Public Resources Code Section 14500,  
202 et. seq.;
- 203
- 204 F. Yard Waste removed from Premises by gardening, landscaping, or tree-  
205 trimming contractors as an incidental part of a total service offered by that  
206 contractor rather than as a hauling service;
- 207
- 208 G. Construction Debris and Demolition Debris which is removed from any  
209 Premise by employees of the construction or demolition contractor, using  
210 equipment owned by the contractor;
- 211
- 212 H. Solid Waste generated by public schools and other State institutions located  
213 within the Service Area;
- 214
- 215 I. Animal waste and remains from slaughterhouse or butcher shops for use as  
216 tallow;
- 217
- 218 J. By-products of sewage treatment, including sludge, sludge ash, grit and  
219 screenings;
- 220
- 221 K. Abandoned cars that are removed from any Premises by a licensed towing  
222 Contractor authorized to do so by the Town; and,
- 223
- 224 L. Hazardous Waste, including Household Hazardous Waste (HHW), and  
225 Designated Waste regardless of its source.
- 226
- 227 M. Material removed pursuant to a nuisance abatement or court order.
- 228
- 229 N. Clean up services including removal of Rubbish from residential or  
230 commercial Premises where all of the following conditions are met:
- 231
- 232 1. The person who transports the Rubbish for Disposal or Processing is the  
233 person who actually enters on the customer's premises and performs the  
234 clean-up services, loads the Rubbish directly to the transportation vehicle,  
235 and removes the Rubbish from the premises
- 236 2. The Rubbish is not stored in a debris box, roll-off box, a container designed  
237 to be emptied by a Collection Vehicle, or a container provided by the  
238 person performing the services.
- 239 3. The services are provided to the particular premises on a temporary basis,  
240 not on a regular or on-going basis.
- 241
- 242 O. Any services not specifically identified in Section 2.05.
- 243

This grant to Contractor of an exclusive right and privilege to Collect, transport, process and / or Dispose of Solid Waste, Recyclable Materials, and Yard Waste shall be interpreted to be consistent with State and Federal laws, now and during the term of the Agreement, and the scope of this exclusive right shall be limited by applicable state and federal laws with regard to the matters contained in this Agreement. In the event that future court interpretations of current law or new laws, regulations, interpretations or trends limit the ability of the Town to lawfully provide for the scope of services as specifically set forth in this Agreement, Contractor agrees that the scope of the Agreement shall be limited to those services and materials which may be lawfully provided and that the Town shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations of the scope of the Agreement. In such an event, it shall be the responsibility of Contractor to minimize the financial impact to other services being provided as much as possible.

## **2.07 Additional Services and Modifications to Service**

**A. General.** The Town shall have the right to direct Contractor to perform additional services (including new diversion programs, billing services, etc.) or to modify the manner in which it performs existing services, including directing the Contractor in the end use of Yard Waste. Pilot programs and innovative services which may entail adding additional Recyclable Materials to existing programs, new Collection methods, targeted routing, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which the Town may direct. Contractor shall be entitled to an adjustment in its compensation in accordance with Article 6 for providing such additional or modified services.

The Town may adopt an ordinance for Construction and Demolition Debris Diversion during the term of this Agreement. It is expected the ordinances will mandate a 50% Diversion Goal based upon the material being taken to a Certified Processing Facility through a contract with the Generator.

**B. New Diversion Programs.** Contractor shall present, within 30 days of a request to do so by the Town, a proposal to provide additional or expanded diversion services. At a minimum, the proposal shall contain a complete description of the following:

1. Collection methodology to be employed (equipment, manpower, etc.).
2. Equipment to be utilized (number and types of vehicles, capacity, age, etc.).
3. Labor requirements (number of employees by job classification).

- 289
- 290 4. Type of materials containers to be utilized.
- 291
- 292 5. Provision for program publicity/education/marketing.
- 293
- 294 6. Estimate of the tonnage to be diverted and the methodology for
- 295 determining that diverted tonnage.
- 296
- 297 7. Five-year projection of the financial results of the program's operations in a
- 298 balance sheet and operating statement format including documentation of
- 299 the key assumptions underlying the projections and the support for those
- 300 assumptions, giving full effect to the savings or costs to existing services.
- 301

302 **C. Town's Right to Permit Others to Provide Services.** Contractor acknowledges

303 and agrees that the Town shall have the right to permit other Persons besides

304 Contractor to provide additional Solid Waste services not otherwise contemplated

305 under Section 2.05 and 2.06 of this Agreement if Contractor and the Town cannot

306 agree on terms and conditions of such services in one hundred twenty (120) days

307 from the date when the Town first request a proposal from Contractor to perform

308 such services.

309

310 **2.08 Town's Right to Direct/ Ownership of Solid Waste.**

311 Once Solid Waste, Recyclable Materials and/or Yard Waste is placed in Containers

312 and properly placed at the Collection location, ownership and the right to possession

313 shall transfer directly from the Waste Generator to Contractor by operation of this

314 Agreement. Contractor is hereby granted the right to retain, recycle, process, Dispose

315 of, and otherwise use such Solid Waste, Recyclable Materials or Yard Waste, or any

316 part thereof, in any lawful fashion or for any lawful purpose desired by Contractor.

317 This right shall be subject to: 1) Contractor's obligation to meet both the Town's and

318 AB 939's diversion goals; and, 2) the Town's right to direct Contractor to process

319 Solid Waste, Recyclable Materials or Yard Waste at a particular licensed Facility or to

320 Dispose of Solid Waste, Recyclable Materials or Yard Waste at a particular licensed

321 Disposal Site, if and only if the Town exercises such right by providing specific

322 written direction to Contractor. Subject to Article 6 and the other provisions of this

323 Agreement, Contractor shall have the right to retain any benefit resulting from its

324 right to retain, recycle, process, dispose of, or reuse the Solid Waste, Recyclable

325 Materials or Yard Waste, which it Collects. Solid Waste, Recyclable Materials or

326 Yard Waste, or any part thereof, which is disposed of at a Disposal Site, Transfer

327 Station, Material Recovery Facility or other Facilities shall become the property of the

328 owner or operator of the Disposal Site(s) once deposited at Facilities by Contractor.

329 The Town may obtain ownership or possession of Solid Waste, Recyclable Materials

330 or Yard Waste placed for Collection upon written notice of its intent to do so;

331 provided, however, nothing in this Agreement shall be construed as giving rise to

332 any inference that the Town has such ownership or possession unless such written

333 notice has been given to Contractor.

**ARTICLE 3**  
**FRANCHISE AND OTHER FEES**

**3.01 Franchise Fee Amount.**

In consideration of the exclusive Franchise provided in Section 2.05 of this Agreement, Contractor shall pay to the Town the Franchise Fee in accordance with the schedule on Exhibit D. Payment shall be calculated as a percentage (%) of Gross Revenues Collected (or another amount as provided in Section 3.05) by the Contractor from services provided in the Service Area.

**3.02 Vehicle Impact Fee.**

Contractor shall pay a Vehicle Impact Fee to the Town each month in accordance to the schedule on Exhibit D.

**3.03 Other Fees.**

The Town shall have the right to set Other Fees, as it deems necessary. Any such fees shall be reflected in the rates that Contractor is allowed to charge and collect from service recipients. The time and method of payment shall be set similar to Section 3.04 below.

**3.04 Time and Method of Payment.**

On or before the twentieth (20th) day after the end of each calendar quarter during the Term of this Agreement, Contractor shall remit to the Town the Franchise Fees, Vehicle Impact Fee, and Other Fees amount. Each quarterly remittance to the Town shall be accompanied by a statement detailing the basis for the Franchise Fee, Vehicle Impact Fee, and Other Fees calculation. If the Fees are not paid on or before the twentieth (20th) day after any calendar quarter, Contractor shall pay to the Town a late payment penalty in an amount equal to two percent (2%) of the amount owing for that quarter. Contractor shall pay an additional two percent (2%) owing on any unpaid balance for each following thirty (30) day period the fee remains unpaid. The late payment penalty amounts are not intended as interest on debt, but rather are intended as a predetermined penalty for failure to meet an obligation under this Agreement.

**3.05 Adjustment to Fees.**

The Town may adjust the amount of any fee annually. Such adjustment shall be reflected in the rates that Contractor is allowed to charge and Collect from service recipients.

373  
374 **ARTICLE 4**  
375 **DIRECT SERVICES**  
376

377 **4.01 General.**

378 The work to be done by Contractor pursuant to this Agreement shall include, but not  
379 be limited to, the furnishing of all labor, supervision, equipment, materials, supplies,  
380 and all other items necessary to perform the services required. The enumeration of,  
381 and specification of requirements for, particular items of labor or equipment shall not  
382 relieve Contractor of the duty to furnish all others, as may be required, whether or  
383 not enumerated elsewhere in the Agreement.  
384

385 The work to be done by Contractor pursuant to this Agreement shall be  
386 accomplished in a thorough and professional manner so that the residents and  
387 businesses within the Service Area are provided reliable, courteous and high-quality  
388 service at all times. The enumeration of, and specification of requirements for,  
389 particular aspects of service quality shall not relieve Contractor of the duty of  
390 accomplishing all other aspects in the manner provided in this Article, whether or  
391 not such other aspects are enumerated elsewhere in the Agreement .  
392

393 **4.02 Solid Waste Collection.**

394  
395 **A. Single-Family Dwellings Collection. For single-family dwelling service,**  
396 Contractor shall Collect Solid Waste from the Contractor-provided Containers  
397 placed for Collection by the Waste Generator at the Curbside or in an approved  
398 other location, not less than once per week. Standard Collection service shall be  
399 once per week Curbside Collection unless another method is approved by the  
400 Town.  
401

402  
403 **B. Commercial, Industrial, Institutional and Multi-Family Residential**  
404 **Complex Collection. For commercial, industrial, institutional and multi-family**  
405 **residential complex services,** Contractor shall Collect Solid Waste from  
406 Contractor-provided Containers not less than once per week. Special  
407 consideration shall be given when determining the pick up area for Commercial,  
408 Industrial, Institutional, and/or Multi-Family Residential Complex accounts to  
409 ensure that the flow of traffic is not impeded and that it does not result in an  
410 aesthetic degradation of an area. The designated pick-up area, if disputed by  
411 service recipient or Contractor, shall be determined by the Town. Additionally, if  
412 in the Town's opinion the location of an existing pick up area is inappropriate, the  
413 Town may require the service recipient or Contractor to relocate the pick up area.  
414

415 **C. Town Facilities' Collection.** Contractor shall Collect, transport and Dispose of  
416 all Solid Waste generated at public facilities according to the specified service  
417 levels identified in Exhibit B. Contractor shall make Collections from Containers



Monday through Friday or on Saturdays following non-working holidays. Collections from bins and debris boxes shall be scheduled at a time mutually agreed upon by Contractor and the Town.

Contractor shall provide to the Town, at Town's direction, additional Collections services to the Town entailing:

1. Collection of Solid Waste and Recyclable Materials from all public sidewalk litter or Recycling Containers;
2. Collection of Solid Waste, Recyclable Materials and Yard Waste from Town's facilities and parks;
3. Collection of materials from debris box as directed by the Town;
4. Collection of Solid Waste, Recyclable Materials and Yard Waste at a maximum of four (4) annual Special Events (Johnny Appleseed Days, Gold Nugget Days, Chocolate Festival and one to be determined) designated by the Town; and,
5. Review of plans for land use or property developments with regard to Solid Waste service issues.

At the option of the Town, exercised in writing, these additional services may be provided at no charge to the Town but shall be reimbursed to the Contractor through the rates charged other service recipients.

**D. Permanent Containers/Debris Box Service.** Contractor shall provide permanent /debris box Containers for the purpose of Collection of Solid Waste. Contractor shall deliver to and Collect debris boxes from the location identified by the service recipient. Containers shall be free of graffiti and in good repair. Containers shall be clearly marked and identifiable as belonging to Contractor. Special consideration shall be given when determining the pick up area for temporary Containers to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated pick up area, if disputed by service recipient or Contractor, shall be determined by the Town. Additionally, if in the Town's opinion the location of an existing pick up area is inappropriate, the Town may require the service recipient or Contractor to relocate the pick up area.

#### **4.03 Recyclable Materials Collection.**

**A. Residential Recyclable Materials Collection.** Contractor shall Collect and remove all Recyclable Materials placed in Recycling Containers at the designated Collection locations for Waste Generator's residing in Single Family Dwellings

and Multi-Family Residential Complex. It is understood that all Single-Family Residential Dwelling's Recyclable Materials Collection service shall be provided at Curbside. Contractor shall work with Residential service recipients to determine mutually acceptable Collection locations to both parties in the event inaccessible to collection service vehicles exist.

Recyclable Materials Collection from Residential Waste Generators within the Service Area shall be weekly or bi-weekly, as determined by the Town. Residential Recyclable Materials Collection shall be on the same day of the week as Solid Waste Collection service. The Collection day may change if prior written approval is received from the Town. Contractor shall notify Recycling service recipients, as is done for regular service, regarding holiday Collection schedules. At a minimum, Contractor shall collect: aluminum cans, glass bottles and jars, metal cans and narrow neck plastic containers (plastic 1 & 7), and newspaper, mixed paper (including but not limited to magazines, junk mail, brown paper bags, and white and colored paper), and corrugated cardboard. The Town reserves the right per Section 2.07 to direct Contractor to add to the list of materials to be collected and described above and to perform additional Residential Recycling services.

- B. Commercial Recyclable Materials Collection.** Contractor shall Collect Recyclable Materials from Commercial Premises as frequently as scheduled by Customer in a Contractor-provided Container at no additional cost. Contractor shall actively and regularly promote this program to ensure that all potential service recipients are aware of this service and shall offer reasonable assistance to help such potential service recipients participate. Collection shall be performed at a time mutually agreed upon by Contractor and the Waste Generator or Owner of the property. The Town reserves the right per Section 2.07 to direct Contractor to add to the list of materials to be collected as part of this program.

#### **4.04 Yard Waste Program.**

- A. Yard Waste Collection.** Contractor shall Collect Yard Waste from Residential Waste Generators within the Town's Service Area weekly or bi-weekly as determined by the Town. Yard Waste Collection shall be on the same day as the Collection of Solid Waste. The Collection day may change if prior written approval is received from the Town. Contractor will notify service recipients at least two (2) weeks in advance of any scheduled Yard Waste and Recycling Collection day change(s), including those required due to route changes and holidays such as Labor Day, Thanksgiving, Christmas, and New Year's Day.

All Yard Waste must fit safely within a standard Yard Waste Container provided by Contractor. As part of its educational activities specified in Section 5.04, Contractor shall instruct residents as to any necessary preparation of Yard Waste,

such as the cutting of large items, and the appropriate use and placement of Yard Waste Containers.

- B. End Uses for Yard Waste.** Contractor agrees to develop, implement, operate, and participate (locally and regionally) in mulching, composting, land application, alternative daily cover, or other programs necessary to achieve the Town's Yard Waste diversion requirements. In accordance with Section 2.07.A, the Town reserves the right to direct Contractor in the end use of Yard Waste.

Contractor shall provide end uses for Yard Waste that maximize diversion credits according to regulations established by the California Integrated Waste Management Board. Also, Contractor shall make end products (compost or mulch) available to Town residents at a cost to residents to be determined by the Town and the cost of providing these products shall be an allowable operating expense. In addition to these uses of Yard Waste, Contractor agrees to be aggressive in the pursuit of new cost-effective opportunities to divert Yard Waste from Disposal and to maximize the distribution of Yard Waste among approved diversion methods.

#### **4.05 Materials Processing Operations.**

- A. Construction/Demolition Debris Diversion Program.** Contractor shall identify and direct loads of Construction Debris and/or Demolition Debris and other selected debris box Containers containing recoverable materials to a Construction/Demolition Debris processing operation. The Construction Debris / Demolition Debris processing operation Contractor has designated shall be the \_\_\_\_\_ owned by \_\_\_\_\_. In accordance with Section 2.08, the Town reserves the right to direct Contractor to process Solid Waste, Recyclable Materials and/or Yard Waste at a particular licensed Facility. Contractor agrees to process such loads for purposes of recovering Recyclable Materials. Contractor shall also provide the Town with an accounting of the total tons processed and recovered as part of its Construction/Demolition Debris processing operation as part of its annual reporting requirements. Any and all compensation due the Contractor for this service is provided for in the Solid Waste Collection Rate Schedule (Exhibit F).

- B. Material Recovery Facility Processing Capacity.** Contractor shall identify and direct targeted loads of Solid Waste and Recyclable Materials from within the Service Area to a Material Recovery Facility processing operation. The Material Recovery Facility Contractor has designated shall be the City of Napa MDF owned by the city of Napa. In accordance with Section 2.08, the Town reserves the right to direct Contractor to process Solid Waste, Recyclable Materials and/or Yard Waste at a particular licensed Facility. Contractor agrees to process such loads for purposes of recovering Recyclable Materials. Contractor shall also provide the Town with an accounting of the total tons processed and recovered as

part of its Material Recovery Facility processing operation as part of its annual reporting requirements. Any and all compensation due the Contractor for this service is provided for in the Solid Waste Collection Rate Schedule (Exhibit F).

#### **4.06 Collection Locations.**

It is understood that all Solid Waste, Recyclable Materials and Yard Waste Collection services shall be provided at Curbside, with the following exceptions:

- A.** On-property collection of Solid Waste, Residential Recyclable Materials, and Yard Waste shall be provided by Contractor to residents who are physically unable to place the cart Curbside. Resident shall present to Contractor a medical waiver from a physician. Such medical waiver shall be updated annually and the Contractor will send a notice to the customer reminding them to get a new waiver. Information about this option shall be provided by the Contractor upon request. Contractor will notify all residents annually, beginning within thirty (30) days of effectiveness of this Agreement, of this Collection option and submit, for approval, a draft notification to the Town prior to distribution to service recipients. New service recipients shall be notified of this option upon requesting service.
- B.** Residents of Multi-Family Residential Complexes of two (2) to four (4) units will use the same Collection Containers as residents of Single Family Dwellings. Contractor shall Collect these Containers at Curbside. Residents of Multi-Family Residential Complexes of five (5) or more units may also use the same Containers as residents of Single Family Dwellings or may be provided with larger Containers such as bins, which shall be Collected in a central location reasonably accessible by Collection vehicles.

#### **4.07 Failure to Collect.**

- A. Solid Waste.** When Solid Waste is not Collected by Contractor from any service recipient, Contractor shall notify its service recipient in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made.
- B. Recyclable Materials or Yard Waste.** Contractor may choose not to Collect Recyclable Materials or Yard Waste that contain ten percent (10%) by volume or greater of Solid Waste, subject to Contractor's best efforts to educate the public. Contractor shall issue written warning notices to such service recipients stating the reason(s) why their Recyclable Materials and/or Yard Waste were not Collected. Monthly, Contractor shall report to the Town any warning notices issued. Contractor shall take direction from the Town with regard to termination or reinstatement of service to a service recipient. Contractor may refuse to Collect Recyclable Materials or Yard Waste from, and shall not be obligated to continue to provide any Recyclable Materials or Yard Waste Container to, any service

recipient who, after efforts to re-educate the service recipient and the second written warning in a twelve (12) month period, fails to sort Recyclable Materials or Yard Waste from other Solid Waste and/or fails to properly set out their Recyclable Materials or Yard Waste Container.

#### **4.08 Marketing of Recyclable Materials and Yard Waste.**

Contractor shall be responsible for delivering Recyclable Materials and Yard Waste Collected pursuant to this Agreement to the Facilities for processing, marketing, sale, donation, or reuse of all such materials.

Contractor shall prepare, submit to the Town for approval, and maintain a marketing plan for all Recyclable Materials and Yard Waste Collected by Contractor under this Agreement. The approved marketing plan for Recyclable Materials and Yard Waste service shall be in place with the execution of this Agreement and at the time of beginning any expanded service. The marketing plan shall fully describe Contractor's marketing methods and approach, targeted primary and contingent markets, pricing policy, and assumed salvage value or cost for each Collected type of Recyclable Materials and Yard Waste.

#### **4.09 Cleanups**

**A. Annual Cleanups.** The Town elects to have Contractor provide two community-wide pre-scheduled cleanups per year during periods mutually established by Contractor and the Town.

**B. Household Hazardous Waste, E-Waste, Oil, Universal Waste and Paint Collection.** Contractor shall provide a permanent Household Hazardous Waste facility within the Town. Such facility shall serve as a drop off site for E-Waste and Universal Waste and a buy-back center. The facility operating hours may be limited subject to the prior approval of the Town.

#### **4.10 Operations.**

**A. Schedules.** Residential Solid Waste, Residential Recyclable Materials and Yard Waste shall be collected on weekdays between 6:00 AM and 6:00 PM. To preserve peace and quiet, no Solid Waste, Recyclable Materials, or Yard Waste shall be Collected from or within two-hundred (200) feet of Residential Premises between 6:00 P.M. and 6:00 A.M. on any day. Collection of Solid Waste and Recyclables from Commercial, industrial and institutional properties shall be scheduled subject to the prior approval of the Town.

Contractor shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the Town or its representatives at least annually. The Town may require more frequent reviews if Contractor's operations are not satisfactorily

performed based on documented observations or reports or Complaints. If the plan is determined to be inadequate by the Town, Contractor shall revise the plan incorporating any changes into a revised plan and review the revised plan with the Town within thirty (30) calendar days.

When notified of a missed pick-up, Contractor shall Collect the Solid Waste, Recyclable Materials or Yard Waste on the same day, if possible, but in no case more than one (1) working day (24 hours) after receipt of notice.

## **B. Vehicles.**

**1. Specifications.** All vehicles used by Contractor in providing Solid Waste, Recyclable Materials and Yard Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have bodies designed to prevent leakage, spillage and/or overflow.

**2. Vehicle Identification.** Contractor's name, local telephone number, and a unique vehicle identification number designed by Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than two and one-half (2 1/2) inches high. Contractor shall not place Town's name or Town's logo on Contractor vehicles. Vehicles used solely for the Collection of Recyclable Materials and Yard Waste shall be labeled to indicate those are the Collected materials.

## **3. Cleaning and Maintenance.**

**a.** Contractor shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.

**b.** Vehicles used in the Collection of Solid Waste, Recyclable Materials and Yard Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The Town may inspect vehicles at any time to determine compliance with this Agreement. Contractor shall also make vehicles available to the Butte County Health Department for inspection, at any frequency it requests.

**c.** Contractor shall repaint or refurbish to the reasonable satisfaction of the Town all vehicles used in the Collection of Solid Waste, Recyclable Materials and Yard Waste within thirty (30) days' notice from the Town, if the Town determines that their appearance warrants painting.

**d.** Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be removed from service and repaired. Contractor shall perform all

687 scheduled maintenance functions in accordance with the  
688 manufacturer's specifications and schedule. Contractor shall keep  
689 accurate records of all vehicle maintenance, recorded according to date  
690 and mileage and shall make such records available to the Town upon  
691 request.

692  
693 e. Contractor shall repair, or arrange for the repair of, all of its vehicles  
694 and equipment for which repairs are needed because of accident,  
695 breakdown or any other cause so as to maintain all equipment in a safe  
696 and operable condition. Contractor shall maintain accurate records of  
697 repair, which shall include the date and mileage, nature of repair and  
698 the verification by signature of a maintenance supervisor that the  
699 repair has been properly performed.

700  
701 f. Contractor shall furnish sufficient equipment to provide all service  
702 required under this Agreement, including back-up Collection vehicles.  
703 Contractor shall furnish within thirty (30) days of request to the Town,  
704 a written inventory of all equipment, including Collection vehicles,  
705 used in providing service, and shall update the inventory annually.  
706 The inventory shall list all equipment by manufacturer, ID number,  
707 and date of acquisition, type, and capacity.

708  
709 g. Contractor shall arrange to store all vehicles and other equipment in  
710 safe and secure location(s) in accordance with all applicable zoning  
711 regulations.

712  
713 4. **Operation.** Vehicles shall be operated in compliance with Federal, State  
714 and local laws and regulations, including but not limited to the California  
715 Vehicle Code, and all applicable safety laws and local ordinances.  
716 Contractor shall not load vehicles in excess of the manufacturer's  
717 recommendations or limitations imposed by state or local weight  
718 restrictions on vehicles.

719  
720 Contractor equipment used for Solid Waste, Recyclable Materials, and  
721 Yard Waste services shall comply with the Town's ordinances or US EPA  
722 noise emission regulations, currently codified at 40 CFR Part 205 and other  
723 applicable noise control regulations, and shall incorporate noise control  
724 features throughout the entire vehicle. Noise and pollution emission levels  
725 of equipment used for Collection shall comply with the Town's ordinance.

#### 726 727 **4.11 Containers.**

728  
729 **A. Single Family Dwelling Solid Waste Containers.** At no additional cost,  
730 Contractor shall offer wheeled carts to all Single Family Dwelling service

recipients in sizes compatible with the Town's variable can rate (20-, 35-, 65-, 95-gallons, or as other sizes approved by Town. ).

All Contractor-provided wheeled carts shall be constructed of heavy gauge plastic with wheels and attached lids in sizes of 20-, 35-, 65-, and 95-gallons, or other sizes approved by the Town. Contractor shall maintain all Contractor-provided Containers in good repair.

- B. Commercial, Industrial, Institutional and Multi-Family Residential Complex Solid Waste Containers.** Contractor shall offer wheeled 35-, 65-, and 95-gallon carts (or other sizes approved by the Town) to all Commercial, Industrial and Institutional Service Recipients and Multi-Family Residential Complex service recipients receiving service of less than (1) cubic yard per week.

Contractor shall furnish Commercial, Industrial and Institutional Service Recipients and Multi-Family Residential Complex service recipients receiving one (1) cubic yard service or more with appropriate Containers to Collect Solid Waste upon service recipient request. Containers with a capacity of one cubic yard or more shall be available in standard sizes. The kind, size and number of Containers furnished to particular service recipients shall be as determined mutually by the service recipient and Contractor. All Containers with a capacity of one cubic yard or more shall meet applicable regulations for Solid Waste bin safety and shall have reflectorized markings. All Containers shall be maintained in good repair with neatly and uniformly painted surfaces and shall prominently display the name and telephone number of Contractor and the types of material accepted.

- C. Residential Recyclable Materials and Yard Waste Containers.** Residential service recipients shall place their Recyclable Materials in the Contractor-provided Recycling Containers for collection by Contractor. Extra Containers shall be provided to service recipients upon request.

Residents shall place their Yard Waste in Contractor-provided 95- gallon Containers for Collection by Contractor. Residence may request 1 additional Container at no additional charge.

- D. Commercial Recyclable Materials and Yard Waste Containers.** Contractor shall furnish Commercial, Industrial and Institutional service recipients Containers for the Collection of Recyclable Materials and Yard Waste of a size appropriate to the particular service recipient's needs and availability of space. Multiple sizes shall be made available by Contractor.

- E. Delivery.** Appropriate Containers of a size requested by the service recipient as described in this Section 4.11 shall be delivered to new service recipients, upon request, within five (5) business days of the service recipient's request for service.



Contractor shall notify the Town if it fails to deliver Containers within five (5) business days.

- F. Container Replacement.** The Town and Contractor acknowledge that from time to time Contractor-provided Containers may be stolen or damaged. When notified of such occurrence, Contractor shall replace the stolen or damaged Container(s), at no charge to the service recipient, not more than one (1) time within any twelve (12) month period. If the service recipient requests more than one (1) replacement set of Containers per twelve (12) month period, the Contractor shall make Containers available for purchase by the service recipient at a price not to exceed the cost to Contractor of purchasing the Containers.

#### **4.12 Litter Abatement.**

- A. Minimization of Spills.** Contractor shall use due care to prevent Solid Waste fluids from leaking being spilled and/or scattered during the Collection or transportation process. If any material or fluids leak or are spilled during Collection, Contractor shall promptly clean up all such materials. Each Collection vehicle shall carry absorbent material, a broom and shovel at all times for this purpose.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the Town.

- B. Clean Up.** During the Collection or transportation process, Contractor shall clean up litter in the immediate vicinity of any storage area (including the areas where Collection bins and debris boxes are delivered for Collection) whether or not Contractor has caused the litter. Contractor shall discuss instances of repeated spillage not caused by it directly with the Waste Generator responsible and will report such instances to the Town. The Town will attempt to rectify such situations with the Waste Generator if Contractor has already attempted to do so without success.

- C. Covering of Loads.** Contractor shall properly cover all open debris boxes during transport to the Disposal or Processing Site.

#### **4.13 Personnel.**

Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner in accordance with all applicable Federal, State and local laws and regulations. If additional personnel are required to meet the service standards of this Agreement, Contractor shall provide such additional personnel if approved in advance by the

Town. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles and participate in periodic driver safety trainings.

Contractor also agrees to establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the Processing Facility or Disposal Site.

Contractor shall train its employees in courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the Town has notified Contractor of a Complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process. Contractor shall provide suitable operations, health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

Before the Commencement date of this Agreement, Contractor agrees to hire its labor force from the existing employees of the previous franchised company(ies) that worked within the Service Area within the last 120 days from the Effective Date at a comparable salary and benefits package ( e.g. equivalent total hourly rate as provided by the previous employer). Contractor agrees to count years of service with the previous franchise company(ies) in determining seniority for job classifications. Applicants shall be subject to the following criteria:

- a. Applicants shall be fit for duty
- b. Applicants shall pass Contractor's drug tests
- c. Applicant's driving records obtained from DMV shall meet Contractor's requirements (drivers).

Contractor shall also provide comparable salary and benefits to such employees with pre-existing medical conditions.

Contractor shall incorporate the use of C.O.V.E., including its clients, subject to the approval of C.O.V.E administration and the Town, that shall at a minimum, include the following:

- a. Assist in the operation of the HHW site; and/or,
- b. Buy back centers

**4.14 Identification Required.**

Contractor shall provide its employees and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the Service Area. The Town may require Contractor to notify service recipients yearly of the form of said identification. Contractor shall provide a list of current employees, and subcontractors to the Town upon request.

**4.15 Fees and Gratuities.**

Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for services or the Collection, transportation, Recycling, Processing, and /or Disposal of Solid Waste, Recyclable Materials and Yard Waste, otherwise required under this Agreement.

**4.16 Non-Discrimination.**

Contractor shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, sexual orientation, physical or mental disability or medical condition in violation of any applicable Federal or State law.

**4.17 Change in Collection Schedule.**

Contractor shall notify the Town thirty (30) days prior to, and Residential service recipients not later than fourteen (14) days prior to, any change in Residential Collection operations which results in a change in the day on which Solid Waste, Recyclable Materials, and Yard Waste Collection occurs. Contractor shall not permit any service recipient to go more than seven (7) days without service in connection with a Collection schedule change.

**4.18 Report of Accumulation of Solid Waste; Unauthorized Dumping.**

Contractor shall direct its drivers to note (1) the addresses of any service recipients at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to the Town within five (5) working days of such observation.

**4.19 Contingency Plan.**

Contractor shall submit to the Town on or before the Effective Date of the Agreement, a written contingency plan demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency, including the events described in Section 11.04.

**4.20 Collection Routes.**

Routes over which Contractor's vehicles travel to effect the Collection and transport of Solid Waste, Recyclable Materials and Yard Waste shall be selected to minimize damage to Service Area and private streets, inconvenience and disturbance to the public and shall be subject to the approval of the Town. Contractor shall use due care to obey all traffic laws and prevent materials being transported from being spilled or scattered during transport. If any materials are spilled within the Service Area, Contractor shall immediately clean up all spilled materials, whether on private or public property.

**4.21 Transportation of Solid Waste.**

Contractor shall transport and deliver all Solid Waste to the Neal Road Landfill.

**4.22 Transportation of Recyclable Materials and Yard Waste.**

Contractor shall Collect, transport and deliver (or arrange for the transportation and delivery of) all Recyclable Materials and Yard Waste to a purchaser, a licensed Material Recovery Facility, licensed Processing Facility, or a Person who will use the materials in a process or product and will not dispose of them in a landfill. The Processing Facility Contractor has designated shall be the City of Napa MDF in Napa Ca, owned by the City of Napa. In accordance with Section 2.08, the Town reserves the right to direct the Contractor to process Recyclable Materials and/or Yard Waste at a particular licensed Facility.

**4.23 Processing of Solid Waste.**

The Town, upon prior written notice to Contractor, reserves the right, prior to Disposal, to direct portions of the Solid Waste stream Collected under this Agreement to a Material Recovery Facility or Processing Facility for separation, reuse, and Recycling of any Recyclable Materials or Yard Waste contained therein. The Contractor agrees to assist the Town by identifying loads suitable for processing in the Material Recovery Facility. The Material Recovery Facility Contractor has designated shall be the City of Napa MDF owned by the City of Napa. In accordance with Section 2.08, the Town reserves the right to direct the Contractor to process Solid Waste, Recyclable Materials and/or Yard Waste at a particular licensed Facility.

**4.24 Disposition of Solid Waste.**

Contractor shall Dispose of all Solid Waste, Collected under this Agreement, at the designated Disposal Site. The Disposal Site Contractor as designated shall be the Neal Road Landfill owned by Butte County. In accordance with Section 2.08 the Town reserves the right to direct Contractor to Dispose Solid Waste at another particular licensed Disposal Site.

**4.25 Service Exceptions; Hazardous Waste Notifications.**

- 952       **A.     Hazardous Waste Inspection and Reporting.** Contractor reserves the right  
953       and has the duty under law to inspect Solid Waste, Recyclable Materials and Yard  
954       Waste put out for Collection and to reject Solid Waste, Recyclable Materials and  
955       Yard Waste observed to be contaminated with Hazardous Waste and the right not  
956       to Collect Hazardous Waste put out with Solid Waste, Recyclable Materials and  
957       Yard Waste. Contractor shall notify all applicable agencies, if appropriate,  
958       including the California Department of Toxic Substances Control and local  
959       emergency response providers and the National Response Center of reportable  
960       quantities of Hazardous Waste, found or observed in Solid Waste, Recyclable  
961       Materials and Yard Waste anywhere within the Service Area. In addition to other  
962       required notifications, if Contractor observes any substances which it or its  
963       employees reasonably believe or suspect to contain Hazardous Wastes unlawfully  
964       Disposed of or released on any of the Town's property, including storm drains,  
965       streets or other public rights of way, Contractor shall immediately notify the  
966       Town.
- 967
- 968       **B.     Hazardous Waste Diversion Records.** Contractor shall maintain records  
969       showing the types and quantities, if any, of Hazardous Waste found in Solid  
970       Waste, Recyclable Materials and Yard Waste and which was inadvertently  
971       Collected from service recipients within the Service Area, but diverted from  
972       landfilling.
- 973

**ARTICLE 5  
OTHER SERVICES**

**5.01 Local Office and Truck Yard.**

Contractor shall operate its local/regional office within the Town limits.. Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays. Responsible and qualified representatives (customer service representatives, office manager, etc) of Contractor shall be available during office hours for communication with the public at the local office. Normal office hour telephone numbers shall be a local call directed to the local office. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall also maintain a local or toll free telephone number for use during other than normal business hours. Contractor shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. Contractor's telephone system shall be able to track customer hold times and the number of calls received on a daily basis by each customer service representative.

Contractor shall locate its truck yard for purposes of parking and maintenance within the Town limits or shall obtain approval from the Town to locate the truck yard outside the Town limits. The Town's approval shall not be reasonably withheld. If the property located at 951 American Way in Paradise becomes available for lease from the Town, Contractor agrees to lease the property at a fair market lease value.

Contractor may locate its Household Hazardous Waste (HHW), E-waste and Buy Back facility as well as its customer service and office functions at the C.O.V.E. property and building or another location within the Town limits, subject to obtaining the necessary operating permits.

**5.02 Service Notice and Service Recipient Billing**

**A. Service Notice.** Contractor shall periodically prepare and distribute, a notice to each service recipient entitled or mandated to receive service under this Agreement listing Contractor's standard service rates, rates for other services, annual holiday schedule, and a general summary of services required under this Agreement to be provided service recipients. Such notice shall be in form subject to the Town's approval prior to its distribution and may be included with Billings made by Contractor.

**B. Billing.** Contractor shall prepare, mail and collect bills (or shall issue written receipts for cash payments) from persons receiving Collection, Disposal, and Processing services. Billing shall be performed quarterly for each Residential account. Bills shall be mailed in advance of the provision of service but no more than one (1) month in advance. The Town shall have the right to revise the billing

format (size, font, frequency, etc.) and to itemize certain charges and to review the Billing procedures. The Town may also direct Contractor to insert mailers relating to service with the Billings. The mailers must fit in standard envelopes and not increase the required postage. Contractor also agrees to insert with the Billings, at the Town's' expense for the incremental cost, mailers describing activities of the Town. The Town will provide not less than thirty (30) days notice to Contractor prior to the mailing date of any proposed mailing to permit Contractor to make appropriate arrangements for inclusion of the Town's materials. The Town will provide Contractor the mailers at least thirty (30) days prior to the mailing date. All Contractor generated mailers must be approved in advance by the Town with the exception of Contractor's quarterly newsletter.

Contractor shall maintain, for inspection by the Town, copies of said Billings and receipts, in chronological order, for a period of three (3) years after the date of service. Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

The Town shall establish, by resolution, rates for the types of service provided. Contractor shall bill and Collect at those rates. Service recipients will be considered delinquent sixty (60) days after start of the quarter in which the services are provided. Contractor may discontinue service to any account, if payment is not received by Contractor within thirty (30) days after the end of the quarter in which the bill was issued. Contractor must provide all accounts with written notice of its intent to discontinue service at least thirty (30) days prior to such discontinuance.

The Town agrees to allow customers subscribing to 35 gallon can – Senior service as of November 1, 2006, to continue to receive a discounted senior rate. Customer will provide proof of eligibility by providing a November 2006 disposal services invoice and a document verifying their age is 65 or older.

Contractor agrees to offer residential customers a Service Suspension for a minimum of four weeks up to six months. Contractor may establish a minimum charge subject to the approval of the Town. Each Single Family Dwelling shall be allowed two Service Suspensions per calendar year for a maximum of six months.

**C. Contractor as Billing Agent.** Contractor shall act as Billing agent on behalf of the Town. Revenues collected on behalf of the Town shall be handled as described in Article 3 of this Agreement.

**D. Review of Billings.** Contractor shall review its Billings to service recipients under Section 5.02.B. The purpose of the review is to determine that the amount which Contractor is billing each service recipient is correct in terms of the level of service (i.e., frequency of Collection, size of container, location of container) being

provided to such service recipient by Contractor. Contractor shall review service recipient accounts not less than every other year, unless the Town shall direct Contractor to do so annually, and submit to the Town a written report of that review annually on the anniversary of the effective day of this Agreement. The intent of this Section 502.D is for the Town to receive reports on an annual basis which will cover the entire list of service recipients every other year. The scope of the review and the reviewer's work plan shall be submitted to the Town for approval no later than six (6) months before the submission of the first report.

### **5.03 Service Recipient Complaint Resolution.**

**A. Complaint Documentation.** All service Complaints shall be directed to Contractor. Daily logs of Complaints concerning Collection of Solid Waste, Recyclable Materials, and Yard Waste shall be retained for a minimum of thirty-six (36) months and shall be available to the Town at all times upon twenty-four (24) hour notice.

Contractor shall log all Complaints received by telephone and said log shall include the date and time the Complaint was received, name, address and telephone number of caller, description of Complaint, employee recording Complaint and the action taken by Contractor to respond to and remedy Complaint.

All Complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. Contractor shall log action taken by Contractor to respond to and remedy the Complaint.

All service records and logs kept by Contractor shall be made available to the Town upon request and at no cost to the Town. The Town shall, at any time during regular Contractor business hours, have access to Contractor's Facilities, records and personnel for purposes that may include monitoring the quality of service or researching Complaints.

### **B. Resolution of Complaints.**

**1. Scope.** The provisions of this Section 5.03.B.1 shall govern the procedure for reviewing Complaints. The provisions of this Section are not exclusive, are cumulative, and are in addition to any and all other remedies which may accrue to the Town as a result of Contractor's performance or failure to perform its duties and obligations, express or implied, hereunder, or otherwise as a result of Contractor's actions in violation of this Agreement.

Nothing in this Section 5.03.B is intended to affect the remedies of third parties against Contractor; nor will the imposition of service recipient



charges prevent the imposition of liquidated damages by the Town pursuant to Section 11.03.

2. **Town Administrator's Review.** All Complaints received or initiated by the Town shall be reviewed by the Town Administrator who shall provide copies thereof to Contractor. The Town Administrator shall review each Complaint to determine whether the Complaint can be resolved informally, or whether the formal action hereunder is warranted. If the Town Administrator determines that formal action is warranted, he or she shall give written notice to Contractor and all interested parties of a hearing to be held by the Town Administrator on each such Complaint not less than ten (10) days from the date of said notice.

At the Town Administrator's hearing on the Complaint, Contractor may present its response thereto, including, but not necessarily limited to, a written response including supporting documents. Within ten (10) days following the hearing, the Town Administrator shall make a determination upon the Complaint. The hearing conducted by the Town Administrator shall be informal, and rules of evidence shall not apply, but the Town Administrator may hear and consider such relevant statements, documents, or other materials as he or she shall determine appropriate under the circumstances.

If the Town Administrator determines that Contractor has violated, or is in continuing violation of, its duties and obligations under this Agreement, or otherwise in violation of any of the provisions hereof, the Town Administrator may issue a Compliance Order to Contractor or may order that the Complaint shall be heard by the Town's Solid Waste Committee. In all cases in which the Town Administrator determines that the appropriate remedy should be termination or payment of compensatory damages, the Complaint shall be heard by the Town Council. If the Town Administrator orders that the Complaint shall be heard by the Town Council, he or she shall prepare a written report to the Town Council which shall state his or her findings, the basis therefore, and a recommended action.

3. **Town's Solid Waste Committee and Town Council Review.** Contractor may appeal a Compliance Order issued by the Town's Administrator to the Town's Solid Waste Committee by filing a notice of appeal with the Clerk of the Town Council within ten (10) days of the date of the Town Administrator's Compliance Order. The Clerk of the Town Council shall set the matter for hearing by the Town's Solid Waste Committee within thirty (30) days of receipt of the notice of appeal unless Contractor consents to an extension of the time for the hearing.

If the Town Administrator orders a Complaint to be heard by the Town's Solid Waste Committee pursuant to this Section, the Clerk of the Town Council shall set the matter for hearing within thirty (30) days of the date of such order, unless the time for hearing is extended by consent of Contractor.

At its hearing the Town's Solid Waste Committee shall consider the Complaint anew, irrespective of whether the hearing is on appeal by Contractor or by order of the Town Administrator. If a Complaint is based upon the manner or quality of Contractor's service to service recipients or members of the public, the hearing shall be a public hearing. If a Complaint is based upon a violation of the standards and procedures implemented under this Agreement, the hearing may, but shall not necessarily, be a public hearing, as the Town Administrator shall determine.

If, upon conclusion of the hearing and consideration of any advisory findings of fact, the Town's Solid Waste Committee determines that Contractor has violated, or is in continuing violation of, any of its duties and obligations, either express or implied, under this Agreement, the Town Council may issue a Compliance Order, Termination Order for violations described in Section 11.01 C, E, F, I, J or K, or Order for Payment of Compensatory Damages, as it deems appropriate. The Town's Solid Waste Committee's decision shall be the final administrative determination, and shall be supported by written findings.

#### **4. Remedies.**

**a. Named.** Remedies available to the Town pursuant to this Article include the issuance of a Compliance Order, Termination Order, or Order for Payment of Compensatory Damages, which terms are defined and described hereinafter. Such Orders may be issued subject to such terms and conditions as the Town Administrator (in the case of Compliance Orders) and the Town's Solid Waste Committee (in the case of all such Orders issued by it) shall deem appropriate.

**b. Compliance Order.** A Compliance Order may be issued by the Town Administrator or the Town's Solid Waste Committee upon a determination that Contractor has violated, or is in continuing violation of, any of its duties or obligations, either express or implied, under this Agreement, and shall direct Contractor forthwith to cease such violation, and may specify, if appropriate, the time within which such violation shall be remedied, and

otherwise establish terms and conditions governing compliance there under.

**c. Termination Order.** If the Town's Solid Waste Committee determines that Contractor has violated, or is in continuing violation of, Section 11.01 C, E, F, I, J or K under this Agreement, the Town Council may order termination of this Agreement. Such Termination Order shall be effective not less than thirty (30) days from the date of the Termination Order. Contractor shall not be entitled to any further revenues from Collection operations authorized hereunder from and after the effective date of termination.

**d. Order for Payment of Compensatory Damages.** If the Town's Solid Waste Committee determines that Contractor has violated, or is in continuing violation of, any of its duties or obligations, either express or implied, under this Agreement, which has caused loss of revenues to the Town, or caused the Town to incur unnecessary costs or has caused loss or damages to any Person, it may order Contractor to pay compensatory damages therefore to the Town, or to the Person so damaged.

**C. Government Liaison.** Contractor shall designate in writing a "Government Liaison" who shall be responsible for working with the Town Administrator and/or the Town Administrator's designated representative(s) to resolve service recipient complaints.

#### **5.04 Education and Public Awareness.**

**A. General.** Contractor acknowledges and agrees that education and public awareness are critical, key, and essential elements of any efforts to achieve diversion and effectively manage Solid and Hazardous Waste. Accordingly, Contractor agrees to take direction from the Town to explore opportunities to expand public and service recipient knowledge concerning needs and methods to reduce, reuse, and recycle Solid Waste, and to cooperate fully with the Town in this regard. Contractor's public education plan is included as Exhibit C.

Contractor shall perform all of the public education activities related to the transition to new services, as described in Exhibit C. These education activities shall include, but not be limited to: mailings prior to the start of service, flyers handed out, follow-up mailings or hand-outs related to the new services, commercial advertising, and the mailing and hand-outs of The Town's newsletters upon request.

**B. Content Approval.** Contractor shall make available to the Town, and the Town shall approve prior to its use, all public educational materials used by Contractor. At a minimum, Contractor materials will describe the specific types of Recyclable Materials and Yard Waste, explain how to prepare materials for Collection, and explain how, where, and when to set out Containers for Collection.

All public educational materials shall be printed on or manufactured from recycled materials and contain the highest practical level of post-consumer content. Contractor's primary educational materials shall be available in English. Contractor may produce materials in additional languages for which there is a demand.

**C. Community Events.** At the direction of the Town, Contractor shall participate in and promote diversion techniques at community events and local activities. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of the Town's waste reduction and recycling programs.

**D. Notification to New Service Recipients.** Immediately upon request for new service, Contractor shall notify the new service recipients of the Recyclable Materials and Yard Waste Collection services offered by Contractor. At the Town's request, such notification shall be available in languages other than English.

#### **5.05 Waste Generation/Characterization Studies.**

Contractor acknowledges that the Town may perform Solid Waste generation and characterization studies periodically. Contractor agrees to participate and cooperate with the Town and their agents and to accomplish studies and data collection and prepare reports, as needed, to determine weights and volumes of Solid Waste and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed to satisfy AB 939 requirements.

#### **5.06 Local Purchases**

Contractor shall purchase, at a minimum, the following supplies and services with the Town and if they are available within the Town limits:

- a. Vehicle supplies(fuel, tires, service parts, etc)
- b. Office and facility supplies
- c. Printing/publishing
- d. Uniforms
- e. Banking
- f. Insurance

1287 **5.07 Vegetative Waste Collection Transfer Station**  
1288

1289 Contractor shall operate and manage the Town's Vegetative Waste Collection  
1290 Transfer station if requested by the Town. During its first year of operation  
1291 Contractor agrees to operate the facility at the current established gate rate or at a  
1292 rate approved and agreed upon by the Town Manager in accordance with Section  
1293 "5" of the services agreement between Waste Management Inc. and the Town. Gate  
1294 rates in subsequent years may be determined for adjustment by the Town Manager  
1295 based upon an annual review of operations costs factors such as, but not limited to,  
1296 current market for biomass fuels, Neal Road Landfill gate fees, CPI index, etc. The  
1297 Town agrees to indemnify and hold harmless Contractor for past environmental  
1298 liabilities and clean-up costs associated with known contamination at the facility.  
1299

**ARTICLE 6  
CONTRACTOR'S RATES**

**6.01 General.**

**A. Rate Resolution.** The Town shall establish by resolution the maximum rates for the services provided by Contractor. The Town shall have the right to structure those rates as it deems appropriate so long as the revenues paid to the Contractor from charging such rates can reasonably be expected to generate sufficient revenues to provide for Contractor's Compensation.

**B. Full and Complete Compensation.** Contractor's Compensation provided for in this Article 6 shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, profit, and all other things necessary to perform all the services required by this Agreement in the manner and times prescribed.

**C. Consulting and Legal Fees.** The Town has incurred consulting and legal costs associated with the Request for Proposal, negotiations for this Agreement and assistance with rate setting. Contractor shall reimburse the Town these costs within thirty (30) days from the Effective Date of this Agreement. These costs shall not be passed through to the ratepayers via the rates but shall be taken out of the Contractor's anticipated net profits. The Contractor shall allow an independent audit, if desired by the Town, or agree to some other method of determining the costs were not passed through to the ratepayers.

The Town may incur costs, including consulting and legal fees, when determining adjustments to the Contractor's Compensation for which the Town shall require the Contractor to reimburse to it such costs within thirty (30) calendar days of receipt of the Town's invoice for such costs. The Contractor shall recover such costs through the Contractor's Compensation by treating it as an allowable Pass-Through Cost as described in Section 6.04.B.4.f. and amortized over the remaining term of the Agreement.

**6.02 Initial Rates.**

**Solid Waste, Recyclable Materials and Yard Waste.** Contractor's maximum rates for the initial eight (8) months of this Agreement (i.e., from May 1, 2007 to December 31, 2007) shall be based on the "Solid Waste Collection Rate Schedule" provided in Exhibit F. The revenue from such rates properly charged shall be the complete compensation due Contractor for the services performed by the Contractor in accordance with this Agreement. Estimated Contractor Compensation for the first rate period is \$2,475,717 (8/12 of \$3,713,576) based upon Contractor's proposal.

1345  
1346 **6.03 Subsequent Rates for Rate Years Two through Four, Rate Years Six through**  
1347 **Thirteen.**

- 1348  
1349 **A. General.** For each Rate Year beginning with Rate Year Two (i.e., from January  
1350 1, 2008 to December 31, 2008), rates shall be adjusted as described below. For  
1351 purposes of this calculation, rates shall be composed of three (3) components: a  
1352 Collection Rate, a Disposal Rate, and a Franchise Fee.  
1353
- 1354 **B. Collection Rate Adjustment.** The monthly Solid Waste Collection Rate,  
1355 monthly Recycling Collection Rate, monthly Yard Waste Collection Rate, roll-off  
1356 haul charge, and other miscellaneous charges shall be adjusted upward or  
1357 downward to reflect seventy-five percent (75%) of the change in the "California  
1358 Statewide, Consumer Price Index, All Items, 1982-84 = 100 for All Urban  
1359 Consumers (CPI-U);" for the most recent twelve (12) month period ending  
1360 December 31, as published by the U.S. Department of Labor, Bureau of Labor  
1361 Statistics. No monthly Collection Rate increase shall exceed five percent (5%) per  
1362 annum.  
1363
- 1364 **C. Disposal Rate Adjustment.** The Disposal Rate shall be adjusted based upon  
1365 the percentage change in the gate rate at the Designated Disposal Site.  
1366
- 1367 **D. Franchise and Other Fee Adjustment.** The Franchise Fee component shall be  
1368 calculated by adding the Collection Rate and the Disposal Rate (as calculated in  
1369 Section 6.03.C above) and multiplying the resulting total by 0.0753. The Other Fee  
1370 component is composed of charges for the Vehicle Impact Fee and other  
1371 miscellaneous fees, as determined by the Town.  
1372
- 1373 **E. Contractor's Application.** By September 1, of each year, the Contractor shall  
1374 submit a Request for Adjustment to Rates for the Solid Waste Collection Rate  
1375 Schedule. This request shall be prepared in accordance with the procedures and  
1376 submitted in a form as described in Exhibit E.  
1377
- 1378 **F. Determination of Adjustment to Rates.** The Town, or their representative,  
1379 will review the Contractor's Request for Adjustment to Rates for compliance with  
1380 this Agreement, accuracy, and reasonableness. The Town shall use its best efforts  
1381 to make the adjustment effective by January 1<sup>st</sup> of each Rate Year. However, the  
1382 Town shall not make any retroactive adjustments to compensate for any delay in  
1383 calculating the adjustment to rates which results from the failure of the  
1384 Contractor to submit its request by September 1, of each year and/or respond  
1385 promptly and completely to requests of the Town for information related to any  
1386 of the calculations required by this Section or from appeals of the determination  
1387 to the Town which extends the process of determination. The revenue from such  
1388 rates properly charged shall be the complete compensation due Contractor for the  
1389 services performed by the Contractor in accordance with this Agreement.

1390  
1391 **6.04 Rates for Rate Year Five.**  
1392

1393 **A. Contractor's Application.** Contractor shall submit an application on June 1 of  
1394 Rate Year Four requesting the amount of Contractor's Compensation for Rate  
1395 Year Five. The application shall be based on the Contractor's actual revenues and  
1396 expenses for Rate Year Three (its supplementary information contained in  
1397 Contractor's cost proposal, which is contained in Contractor's Proposal); audited  
1398 financial statements for Rate Year Three; and actual and forecasted costs of  
1399 Contractor's operations for Rate Years Four and Five; and such application shall  
1400 be prepared in accordance with this Section. Audited financial statements shall  
1401 be submitted in accordance with requirements of Section 8.02.B.4. Contractor's  
1402 application shall also include supplemental schedules, which include the data  
1403 requested in Section 8.02.C, for the most recent audited Rate Year and for the  
1404 most recently completed 12 months. The Town may request additional  
1405 information as part of their review.  
1406

1407 The application shall be submitted in the format and shall calculate Contractor's  
1408 Compensation in the manner described in Section 6.04.B below. Contractor shall  
1409 assemble, provide, and submit such information that is necessary to support the  
1410 assumptions made by Contractor with regard to the assumptions underlying the  
1411 forecasted Contractor's Compensation for Rate Year Five.  
1412

1413 Contractor shall provide all information requested by the Town during its review  
1414 of the application, including, but not limited to, all information from related  
1415 parties requested by the Town regarding any transactions between Contractor  
1416 and any Related-Party Entity pertaining to Contractor's performance under this  
1417 Agreement.  
1418

1419 **B. Determination of Contractor's Compensation.** The Town, or its  
1420 representative, shall review Contractor's application for compliance with this  
1421 Agreement, accuracy, and reasonableness. The application shall clearly  
1422 document Contractor's calculation of Contractor's Compensation based on the  
1423 methodology described in this Section 6.04.B.  
1424

1425 Contractor's Compensation shall equal the sum of forecasted annual cost of  
1426 operations, profit, and forecasted Pass-Through Costs, each of which shall be  
1427 calculated in accordance with procedures set forth below.

1428 **1. Forecasted Annual Cost of Operations.** The forecasted annual cost of  
1429 operations consists of the sum of:

1430 **a.** Forecasted labor-related costs

1431 **b.** Forecasted vehicle-related costs



- 1432 c. Forecasted Recyclable Materials Processing costs
- 1433 d. Forecasted other costs
- 1434 e. Forecasted depreciation expense.

1435 **2. Methodology for Forecasting Annual Cost of Operations**

- 1436 a. Determine Actual Costs. Contractor's audited financial statement
- 1437 shall be reviewed to determine Contractor's actual costs necessary to
- 1438 perform all the services in the manner required by this Agreement
- 1439 for each of the forgoing categories during Rate Year Three. The
- 1440 Contractor's auditor shall determine that costs have actually been
- 1441 incurred and have been assigned to the appropriate cost category.
- 1442 b. Calculate Adjusted Costs. Contractor shall adjust actual costs for
- 1443 Rate Year Three (determined in Section 6.04.B.2.a) above to ensure
- 1444 that non-allowable costs are not included in actual costs. Non-
- 1445 allowable costs include the following:
  - 1446 i. Labor and equipment costs for personnel and vehicles that
  - 1447 are not specified in Exhibit H.
  - 1448 ii. Payments to directors and/or owners of Contractor unless
  - 1449 paid as reasonable compensation for services actually
  - 1450 rendered.
  - 1451 iii. Promotional advertising, entertainment, and travel expenses
  - 1452 (above \$5,000 annually in total) unless authorized in advance
  - 1453 by the Town.
  - 1454 iv. Payments to repair damage to property of third parties or the
  - 1455 Town for which Contractor is legally liable.
  - 1456 v. Fines for penalties of any nature.
  - 1457 vi. Liquidated Damages assessed under this Agreement.
  - 1458 vii. Federal or State income taxes.
  - 1459 viii. Charitable or political donations.

- 1460 ix. Depreciation or interest expense for Collection vehicles,  
1461 Containers, other equipment, offices and other facilities if  
1462 such items are leased as specified in Exhibit E.
- 1463 x. Attorney's fees and other expenses incurred by Contractor in  
1464 any court proceeding in which the Town and Contractor are  
1465 adverse Parties, unless Contractor is the prevailing Party in  
1466 such proceeding.
- 1467 xi. Attorney's fees and other expenses incurred by Contractor  
1468 arising from any act or omission in violation of this  
1469 Agreement.
- 1470 xii. Attorneys' fees and other expenses incurred by Contractor in  
1471 any court proceeding in which Contractor's own negligence,  
1472 violation of law or regulation, or wrong doing are in issue  
1473 and occasion, in whole or in part, the attorneys' fees and  
1474 expenses claimed; and attorneys' fees and expenses incurred  
1475 by Contractor in a court proceeding in which the legal theory  
1476 or statute providing a basis of liability against Contractor also  
1477 provides for separate potential liability for the Authority  
1478 derived from the action of its citizens or rate payers (such as  
1479 in a CERCLA lawsuit) unless the Contractor is found not  
1480 liable in such claims and such claims arise from acts or  
1481 occurrences within the Term of the Agreement.
- 1482 xiii. Payments to Related-Party Entities for products or  
1483 services, in excess of the cost to the Related-Party Entities for  
1484 those products or services, except for Recyclable Materials  
1485 processing.
- 1486 xiv. Goodwill.
- 1487 xv. Unreasonable profit sharing distributions.
- 1488 xvi. Replacement costs for Carts, Bins, or Drop Boxes that  
1489 need to be replaced because the useful life of such Container  
1490 was less than the Term.

- 1491                    **xvii.** Administrative costs greater than the administrative costs  
1492                    proposed for Rate Year One adjusted using the consumer  
1493                    price index described in Section 6.03.B.
- 1494                    **xviii.** Bad debt write-offs in excess of .5% of annual rate  
1495                    revenues.
- 1496                    **c.** Adjust Costs to Reflect Change to Customer Base and Program  
1497                    Changes. The Contractor may propose adjustments to the actual  
1498                    costs for Rate Year Three for the following reasons:
- 1499                        i. To adjust costs that Contractor has demonstrated to the Town  
1500                        to be necessary in order to provide service to Customers due  
1501                        to growth or decline in the Customer base (based on the  
1502                        number of Customers and subscription level).
- 1503                        ii. To adjust for changes in costs due to the Town approved  
1504                        interim compensation adjustment as described in Section 6.07  
1505                        that will carry forward into the following Rate Year.
- 1506                    **d.** Summarize Allowed Costs. The adjusted costs for Rate Year Three  
1507                    determined in accordance with Section 6.04.B.2.c shall be considered  
1508                    “Allowed Costs” for the purposes of forecasting costs for Rate Year  
1509                    Five following procedures described in Section 6.04.B.2.e and shall  
1510                    be presented in cost categories which are consistent with Rate Year  
1511                    Three cost categories as follows:
- 1512                        i. Allowed labor-related costs
- 1513                        ii. Allowed vehicle-related costs
- 1514                        iii. Allowed recycling materials processing costs
- 1515                        iv. Allowed other costs
- 1516                    **e.** Forecast Annual Cost of Operations. Forecasted annual cost of  
1517                    operations for Rate Year Five shall be calculated using allowed costs  
1518                    of operations for Rate Year Three determined in Sections 6.04.B.2.a  
1519                    through 6.04.B.2.d above, adjusted to reflect the impact of consumer  
1520                    price indices, , and forecasted depreciation expenses. The forecasts  
1521                    shall be performed in the following manner:

- 1522 i. Forecasted labor-related costs shall be calculated for Rate  
1523 Year Five by multiplying (i) the Allowed labor-related costs  
1524 for Rate Year Three by one plus 75% of the percentage  
1525 change in the "California Statewide, Consumer Price Index  
1526 (All Urban Consumers; 1982-84=100)," which is compiled and  
1527 published by the U. S. Department of Labor, Bureau of Labor  
1528 Statistics or its successor agency, between the most-recently-  
1529 published monthly index at the time of the application and  
1530 the corresponding monthly index published 12 months  
1531 earlier, and (ii) multiplying the result of step one by the same  
1532 percentage change used in step one.
- 1533 ii. Forecasted vehicle-related costs shall be calculated for the  
1534 Rate Year Five by (i) multiplying the Allowed vehicle-related  
1535 costs for Rate Year Three by one plus the percentage change  
1536 in the "California Statewide, Consumer Price Index (All  
1537 Urban Consumers; 1982-84=100)," which is compiled and  
1538 published by the U. S. Department of Labor, Bureau of Labor  
1539 Statistics or its successor agency, between the most-recently-  
1540 published monthly index at the time of the application and  
1541 the corresponding monthly index published 12 months  
1542 earlier, and (ii) multiplying the result of step one by the same  
1543 percentage change used in step one.
- 1544 iii. Forecasted Recyclable Materials Processing costs shall be  
1545 calculated for Rate Year Five by (i) multiplying Allowed  
1546 recycle materials processing cost for Rate Year Three divided  
1547 by actual recycled tons for Rate Year Three multiplied by one  
1548 plus 75% of the percentage change in the "California  
1549 Statewide, Consumer Price Index (All Urban Consumers;  
1550 1982-84=100)," which is compiled and published by the U. S.  
1551 Department of Labor, Bureau of Labor Statistics or its  
1552 successor agency, between the most-recently-published  
1553 monthly index at the time of the application and the  
1554 corresponding monthly index published 12 months earlier,  
1555 (ii) multiplying the result of step one by the same multiplier  
1556 used in step one, and (iii) multiplying the result of step two  
1557 times the total Tons of Recyclable Materials Collected for the

1558 most-recently reported twelve month Year adjusted to reflect  
 1559 change to customer base and program changes).

1560 **iv.** Forecasted other costs shall be calculated for the Rate Year  
 1561 Five by (i) multiplying the allowed other-related costs for  
 1562 Rate Year Three by 1 one plus 75% of the percentage change  
 1563 in the "California Statewide, Consumer Price Index (All  
 1564 Urban Consumers; 1982-84=100)," which is compiled and  
 1565 published by the U. S. Department of Labor, Bureau of Labor  
 1566 Statistics or its successor agency between the most-recently-  
 1567 published monthly index at the time of application and the  
 1568 corresponding monthly index published 12 months earlier,  
 1569 and (ii) multiplying the result of step one by the same  
 1570 percentage change used in step one.

1571 **v.** Forecasted depreciation expense shall be the amount  
 1572 specified in Exhibit H for vehicles, Containers, and facilities.

1573 **vi.** Forecasted annual cost of operations for Rate Year Five shall  
 1574 equal the sum of the following costs, which shall have been  
 1575 calculated in accordance with procedures in this Section  
 1576 6.04.B.2.e:  
 1577 (1) Forecasted labor-related costs  
 1578 (2) Forecasted vehicle-related costs  
 1579 (3) Forecasted Recyclable Materials Processing costs  
 1580 (4) Forecasted other costs  
 1581 (5) Forecasted depreciation expense

1582 **3. Calculate profit.** Contractor shall be entitled to profit on forecasted annual  
 1583 costs of operations. Profit shall be calculated by dividing the forecasted  
 1584 annual cost of operations, which shall be determined in accordance with  
 1585 procedures described in Section 6.04.B.2.e.vi above, by 90.5% and  
 1586 subtracting the forecasted annual costs of operations from the dividend.

1587 **4. Forecast Pass-Through Costs.** Contractor's Compensation shall include  
 1588 Pass-Through Costs as calculated below:

1589 **a.** Forecasted Disposal cost. Annual forecasted Disposal cost =  
 1590 (Disposal fee at Designated Landfill) x (total Tons of Solid Waste  
 1591 Collected for the most-recently reported twelve-month Year).

- 1592                   b. Forecasted interest expense. Forecasted interest expense shall be  
1593                   amount specified in accordance with Exhibit H.
- 1594                   c. Forecasted lease cost. Forecasted lease cost shall be the amount  
1595                   specified in Exhibit H for vehicles, equipment, Containers, and  
1596                   facilities.
- 1597                   d. Forecasted regulatory fees. The forecasted regulatory fees shall be  
1598                   calculated in accordance with the appropriate methodology for the  
1599                   relevant fees using forecasted Rate Year Five values.
- 1600                   e. Forecasted Franchise Fees, Vehicle Impact Fees, and other fees. The  
1601                   forecasted Franchise Fees, Vehicle Impact Fees, and other fees  
1602                   specified in Exhibit D shall be calculated using forecasted Rate Year  
1603                   Five values.
- 1604                   f. Compensation Review Fee. An amount agreed-upon by the Town  
1605                   and Contractor to reimburse the Contractor payment of the Town's  
1606                   costs, including consulting and legal fees, associated with  
1607                   determination of the Contractor's Compensation under this Article.
- 1608                   5. Determine Contractor's Compensation for Rate Year Five. Contractor's  
1609                   Compensation necessary to perform all the services in the manner required  
1610                   by this Agreement for Rate Year Five shall be equal to the sum of the  
1611                   following:
- 1612                   a. Forecasted annual cost of operations (determined in accordance  
1613                   with Section 6.04.B.2e above)
- 1614                   b. Profit (determined in accordance with Section 6.04.B.3 above)
- 1615                   c. Forecasted Pass-Through Costs (determined in accordance with  
1616                   Section 6.04.B.4 above).

1617                   The Contractor's Compensation for Rate Year Five shall be the only compensation  
1618                   due to Contractor for such Rate Year. No adjustments for actual costs shall be made  
1619                   at the conclusion of Rate Year Five or at any other time during the Agreement.

1620

1621                   **6.05   Variances from Projections**

1622                   The Contractor assumes all risk of variations from the revenue projection such that  
1623                   the Contractor shall retain any revenue from actual revenue being greater than  
1624                   projected but shall not be compensated for actual revenue being less than projected.

In addition, calculations of the rates shall not be adjusted for past variances of actual revenues from those projected.

#### **6.06 Schedule**

The Contractor shall submit its annual Calculation of Rate Adjustment on or before September 1 of each year for the following Rate Year and on or before June 1 for Rate Year Five. The Town shall use their best efforts to make the adjustment effective by January 1 of the following year. However, the Town shall not make any retroactive adjustments to compensate for any delay in calculating the rates which results in whole or in part from the failure of the Contractor to submit its request by September 1 (June 1 for Rate Year Five) and/or respond promptly and completely to requests of the Town for information related to any of the calculations required by this Section. The Town shall make retroactive CPI adjustments calculated in accordance with Section 6.03 and Section 6.04 to compensate for any delay in processing and approving the calculation of the Rate Adjustment that is the sole responsibility of the Town.

#### **6.07 Interim Rate Adjustment.**

In the event the Town directs the Contractor to change its operations in accordance with Section 2.07 of this Agreement or in the event of an extraordinary or unanticipated event including a change in law and such adjustment materially affects the Contractor's cost of operations, then the Contractor or the Town may submit a request for an interim rate adjustment. In such case, the Contractor shall provide the Town with its calculations of the impact of the change in a format approved by the Town. Any proposed change in the approved Rates shall be subject to the Town's review and approval. Nothing in this Section 6.07 shall be construed to require the Town to accept the Contractor's calculations as correct. Adjustments to fees associated with the processing or marketing of Recyclable Materials or Yard Waste are not subject to an interim compensation adjustment. The Contractor assumes all risk associated with any changes to the cost of processing or marketing of Recyclable Materials or Yard Waste.

**ARTICLE 7**  
**REVIEW OF SERVICES AND PERFORMANCE**

**7.01 Performance Hearing.**

The Town may hold a public hearing on or about the first anniversary date of this Agreement and on or about each subsequent anniversary, at which time Contractor shall be present and shall participate, to review its services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, waste reduction, Recycling, Yard Waste diversion, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, waste reduction and diversion system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Within forty-five (45) days after receiving notice from the Town of a Solid Waste performance review hearing, Contractor shall, at a minimum, submit a report to the Town indicating changes recommended and/or new services to improve the Town's ability to meet the Town's waste reduction and recycling obligations and goals and to contain costs and minimize impacts on rates.

The reports required by this Agreement regarding service recipient Complaints shall be used as one basis for review. Contractor may submit other relevant performance information and reports for consideration. The Town may request Contractor to submit specific information for the hearing. In addition, any service recipient may submit comments or Complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste performance hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, service recipient Complaints, amendments to this Agreement, developments in the applicable laws and regulations, new initiatives for meeting or exceeding waste reduction and recycling goals, regulatory constraints and Contractor performance. The Town and Contractor may each select additional topics for discussion at any performance review hearing.

Not later than sixty (60) days after the conclusion of each performance hearing, the Town may issue a report. As a result of the review, the Town may require Contractor to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the Town may direct Contractor to take corrective actions for any performance inadequacies.

**7.02 Annual Diversion Program Review.**

Beginning on the Effective Date of the Agreement, and then on an annual basis thereafter, Contractor shall meet with the Town to describe the progress of each active diversion program. Contractor should document the results of the programs on a monthly basis, including at a minimum the tonnage diverted by material type,



1701 the end use or processor of the diverted materials and the cost per ton for  
1702 transporting and processing each type of material and other such information  
1703 requested by the Town or any other government entity as may be necessary to  
1704 evaluate the performance of each program.  
1705

1706 At each annual meeting, the Town and Contractor shall have the opportunity to  
1707 revise a program based on mutually agreed upon terms. The Town shall have the  
1708 right to terminate a program if in its sole discretion, the Contractor is not cost  
1709 effectively achieving the program's goals and objectives. Prior to such termination,  
1710 the Town shall meet and confer with the Contractor for a period of up to 90 days to  
1711 resolve the Town's concerns. Thereafter, the Town may utilize a third party to  
1712 perform these services if the Town reasonably believes the third party can improve  
1713 on Contractor's performance and/or cost. Notwithstanding these changes,  
1714 Contractor shall continue the program during the meet and confer period and,  
1715 thereafter, until the third party takes over the program.  
1716

1717  
1718 **ARTICLE 8**  
1719 **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**  
1720

1721 **8.01 General.**

1722 Contractor shall conduct data collection, information and record keeping, and  
1723 reporting activities needed to comply with and to meet the reporting and Solid Waste  
1724 program management needs of the Town (including AB939) and other Federal and  
1725 State and local laws and regulations and the requirements of this Agreement. To this  
1726 extent, such requirements set out in this and other Articles of this Agreement shall  
1727 not be considered limiting or necessarily complete. In particular, this Article is  
1728 intended to only highlight the general nature of records and reports and their  
1729 minimum content and is not meant to comprehensively define what the records and  
1730 reports are to be and their content. Further, with the written direction or approval of  
1731 Town, the records and reports to be maintained and provided by Contractor in  
1732 accordance with this and other Articles of the Agreement shall be adjusted in  
1733 number, format, or frequency. Records and reporting may be revised to reflect  
1734 current record keeping and reporting.  
1735

1736 **8.02 Records.**

1737  
1738 **A. General.** In order to administer this Agreement it is necessary for Contractor  
1739 to maintain accurate, detailed financial and operational information in a  
1740 consistent format and to make such information available to the Town in a timely  
1741 fashion. Contractor shall maintain records required to conduct its operations, to  
1742 support requests it may make to the Town, and to respond to requests from the  
1743 Town in the conduct of Town's business. Adequate record security shall be  
1744 maintained to preserve records from events that can be reasonably anticipated  
1745 such as a fire, theft and earthquake. Electronically maintained data/records shall  
1746 be protected and backed up. All records shall be maintained for five (5) years  
1747 after the expiration of this Agreement.  
1748

1749 Contractor agrees that the records of any and all companies conducting  
1750 operations addressed in the Agreement shall be provided or made available to the  
1751 Town and its official representatives during normal business hours.  
1752

1753 **B. Inspection and Retention of Records.**

1754 **1. Contractor's Accounting Records.** Contractor shall maintain accurate and  
1755 complete accounting records containing the underlying financial and  
1756 operating data relating to and showing the basis for computation of all  
1757 costs associated with providing services under this Agreement. The  
1758 accounting records shall be prepared in accordance with Generally  
1759 Accepted Accounting Principles (GAAP) consistently applied.

1760 **2. Inspection of Records.** The Town, and/or agents selected by the Town,  
1761 shall have the right, during regular business hours, to conduct  
1762 unannounced on-site inspections of the records and accounting systems of  
1763 Contractor and to make copies of any documents relevant to this  
1764 Agreement.

1765 **3. Retention of Records.** Unless otherwise herein required, Contractor shall  
1766 retain all records and data required to be maintained by this Agreement for  
1767 at least five (5) years.

1768  
1769 Records and data required to be maintained that are specifically directed to  
1770 be retained shall be retrieved by Contractor and made available to the  
1771 Town.

1772  
1773 Records and data required to be maintained that are not specifically  
1774 directed to be retained that are, in the sole opinion of the Town, material to  
1775 establishing rates or to a determination of the Contractor's performance  
1776 under this Agreement, shall be retrieved by Contractor and made available  
1777 to the Town.

1778  
1779 Records and data required to be maintained that are not specifically  
1780 directed to be retained and that are not material to establishing rates  
1781 and/or not required for the determination of the Contractor's performance  
1782 do not need to be retrieved by Contractor. In such a case, however, the  
1783 Town may make reasonable assumptions regarding what information is  
1784 contained in such records and data, and such assumption shall be  
1785 conclusive in whatever action the Town takes.  
1786

1787 **4. Delivery of Financial Statements, Auditors' Reports.** Financial statements  
1788 shall show Contractor's results of operations on a combined basis for the  
1789 Town, including the specific revenues and expenses in connection with the  
1790 operations provided for in this Agreement and others included in such  
1791 financial statements. The financial statements shall be prepared in  
1792 accordance with Generally Accepted Accounting Principles (GAAP). The  
1793 financial statements shall be prepared by the Contractor and marked  
1794 "unaudited" except for Rate Years Three, Eight and Eleven, if applicable.  
1795 Such statements should include a certification by the Contractor's Chief  
1796 Financial Officer. The financial statements for Rate Years Three, Eight and  
1797 Eleven, if applicable, shall have been examined by and shall be  
1798 accompanied by the report of an independent certified public accountant

1799 (CPA) licensed (in good standing) to practice public accounting in the State  
1800 of California as determined by the State of California Consumer Affairs  
1801 Board of Accountancy. Such accountant's representation shall include that  
1802 it has examined the Contractor's financial statements in accordance with  
1803 Generally Accepted Auditing Standards (GAAS) and the accountant's  
1804 opinion that such statements have been prepared in accordance with  
1805 Generally Accepted Accounting Principles (GAAP) consistently applied  
1806 and fairly reflect the results of operations and Contractor's financial  
1807 condition.

1808  
1809 **C. Solid Waste Records.** Records shall be maintained and made available to the  
1810 Town within 24 hours of written request relating to:

- 1811 1. Service recipient services and billing;
- 1812 2. Character, weight and volume of Solid Waste by type (e.g., Solid Waste,  
1813 Recyclable Materials, and Yard Waste) and line of business (can/cart  
1814 service, bin service, roll-off service, compactor service) especially as related  
1815 to reducing and diverting Solid Waste.
- 1816 3. Routes;
- 1817 4. Facilities, equipment and personnel used;
- 1818 5. Facilities and equipment operations, maintenance and repair;
- 1819 6. Processing and Disposal of Solid Waste;
- 1820 7. Types and quantities of Hazardous Waste inadvertently Collected but  
1821 diverted from landfilling;
- 1822 8. Complaints; and,
- 1823 9. Missed Pick-ups.

1824 Contractor shall maintain records of all Solid Waste Collected in the Town's  
1825 Service Area for the period of this Agreement and all extensions to this  
1826 Agreement or successor Agreements. In the event the Town requests certain  
1827 records or Contractor discontinues providing services to the Town, Contractor  
1828 shall provide all records of all Solid Waste requested to the Town within thirty  
1829

(30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

**D. CERCLA Defense Records.** The Town views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the Town regards the ability to prove where Solid Waste Collected in the Service Area was taken for Transfer or Disposal, as well as where it was not taken, to be matters of concern. Contractor shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the Service Area was disposed of (and therefore establish where it was not landfilled). This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. Contractor shall maintain these records for a minimum of ten (10) years. Contractor shall provide these records to the Town in an organized and indexed manner rather than destroying or disposing of them.

**E. Recyclable Materials and Yard Waste Records.** Records shall be maintained for the Town that relate to:

1. Records described in Section 8.02.C, above;
2. Recyclable Materials, and Yard Waste Collection weekly and /or bi-weekly participation rates.
3. Recyclable Materials sales value;
4. Weight of material by type; and,
5. End use and markets.

**F. Other Programs' Records.** Records for other programs shall be tailored to specific needs. In general, they shall include:

1. Plans, tasks, and milestones; and,
2. Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

### **8.03 Reports.**

**A. Report Formats and Schedule.** Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports,

1865 as needed. Reports are intended to compile recorded data into useful forms of  
1866 information that can be used to, among other things:  
1867

1868 1. Determine the number of subscribers to each service by service level, and  
1869 the total revenues generated.

1870 2. Determine the total quantity of material Collected, transferred, Recycled  
1871 processed and / or disposed through each program and service, by  
1872 material type.

1873 3. Evaluate past and expected progress towards achieving the Town's  
1874 diversion goals and objectives;

1875 4. Determine needs for adjustment to programs; and, evaluate service  
1876 recipient service and Complaints.

1877 5. Prepare AB 939 Annual Reports and any and all other State required  
1878 reports.

1879  
1880 Contractor may propose report formats that are responsive to the objectives and  
1881 audiences for each report. The format of each report shall be approved by the  
1882 Town. Contractor agrees to submit all reports on computer discs or by modem in  
1883 a format compatible with Town's software/computers at no additional charge, if  
1884 requested by the Town. Contractor will provide a certification statement, under  
1885 penalty or perjury, by the responsible Contractor official, that the report being  
1886 submitted is true and correct to the best knowledge of such official after their  
1887 reasonable inquiry.

1888  
1889 Annual Reports shall be submitted not later than April 1st following the calendar  
1890 year.

1891  
1892 All reports shall be submitted to:

1893  
1894 Town of Paradise  
1895 Town Hall  
1896 5555 Skyway  
1897 Paradise, CA 95969  
1898 Attn: Al McGreehan, Community Development Director  
1899

1900 **B. Annual Reports.** Annual Reports are to include the following information, at  
1901 a minimum, compiled and reported for each month of the year, and as an annual  
1902 total. Annual totals are also to be provided for all previous years of the

1903 Agreement for purposes of comparison. The information listed below shall be the  
1904 minimum reported for each service. To the extent that the requested information  
1905 is not tracked directly by the Contractor or can not be specifically established due  
1906 to the nature of the Contractor's operations, the Contractor shall present to the  
1907 Town a proposed method for estimating the required information, the  
1908 reasonableness of which shall be subject to the approval of the Town.  
1909

1910 **1. Solid Waste Collection Services.**

- 1911
- 1912 **a.** Solid Waste tons Collected by Contractor, allocated between  
1913 Residential cart service, Commercial cart and bin service, roll-off  
1914 and compactor service.
- 1915
- 1916 **b.** Number of subscribers by service level
- 1917
- 1918 **c.** Subscriber data including name, address, and service level
- 1919
- 1920 **d.** Total Gross Revenues by service level, including revenues  
1921 generated by each type of "Extra Services".
- 1922
- 1923 **e.** Number of Disabled Accounts.
- 1924
- 1925 **f.** Number of compactor accounts, size of compactors and number and  
1926 size of compactors provided by the Contractor.
- 1927
- 1928 **g.** Number of debris-box pulls by bin size.
- 1929
- 1930 **h.** Tons processed and recovered through each processing operation  
1931 including Construction Demolition Debris Recovery Program,  
1932 Material Recovery Facility and any other processing operations
- 1933
- 1934 **i.** Complaint summary, for month and cumulative for report year, as  
1935 above. Data shall be summarized by nature of Complaints on a  
1936 compatible computer disc.
- 1937
- 1938 **j.** Narrative summary of problems encountered (including  
1939 scavenging) and actions taken with recommendations for the Town,  
1940 as appropriate.
- 1941
- 1942 **k.** Description of promotional and public education materials created  
1943 or distributed.
- 1944
- 1945 **l.** A summary or copy of the Hazardous Waste records required under  
1946 Sections 8.02.C and 8.02.D.

- 1947
- 1948                    **m.** Other information or reports that the Town may reasonably request
- 1949                    or require.
- 1950                    **2. Recyclable Materials and Yard Waste Services.** Contractor shall provide
- 1951                    the same information as Solid Waste service, but for Recyclable Materials
- 1952                    and Yard Waste services, Contractor shall provide:
- 1953
- 1954                        **a.** Total tons diverted by each program/service (e.g., Residential
- 1955                        Curbside Recycling, Residential Yard Waste, Commercial
- 1956                        Recycling), by material type and end use.
- 1957
- 1958                        **b.** Number of accounts for each program/service, number and size of
- 1959                        Containers and total tons Recycled by material type.
- 1960
- 1961                        **c.** Participation and set-out rates in same format as number of
- 1962                        accounts.
- 1963
- 1964                        **d.** Recyclable Materials sales revenue by material type.
- 1965
- 1966                    **3. Other Programs.** For each program, provide activity related and narrative
- 1967                    reports on goals and milestones and accomplishments. Describe problems
- 1968                    encountered, actions taken and any recommendations to facilitate
- 1969                    progress. Describe vehicles, personnel, and equipment utilized for each
- program.
- 1970
- 1971                    **4. Summary Assessment.** Provide a summary assessment of the overall
- 1972                    Franchised Services from Contractor's perspective relative to financial and
- 1973                    physical status of program. The physical status summary is to report:
- 1974                    operating efficiency, economy and effectiveness of the program relative to
- 1975                    the goals and objectives of this Agreement including particularly the
- 1976                    Town's diversion goals; provide recommendations and plans to improve;
- 1977                    highlight significant accomplishments and problems.
- 1978
- 1979                    **C. AB 939 Reports.** As part of the requirements of this Agreement the Contractor
- 1980                    shall prepare and submit all required AB 939 reports to the Town or the Butte
- 1981                    County Regional Waste Management Authority for their submission to the
- 1982                    California Integrated Waste Management Board, including Annual Reports,
- 1983                    reports and other required information related to the existing Compliance Order
- 1984                    (Tracking No: IWMA BR99-04) and any other State required reports. Reports are
- 1985                    to comply with specified formats and are to be submitted according to the
- specified schedules. It is the intent of the Town for the Contractor to be



responsible for all such reporting to the Authority on behalf of the Town, unless otherwise directed by the Town.

**D. Resource Recovery Plan.** As part of its Annual Report to the Town described in Section 8.03.B, Contractor shall submit to the Town an annual proposal describing proposed resource recovery programs, their diversion potential and associated detailed costs for programs that Contractor believes can significantly increase diversion. Within sixty days, the Town shall respond to the Plan in writing. If the Parties reach agreement on implementation of additional programs, Contractor shall be obligated to implement those programs on a schedule and for a cost agreed to by the Parties.

**E. Quarterly Reports.** The Town reserves the right to require more frequent reporting by the Contractor (e.g., quarterly reports) of information for purposes of documenting progress toward meeting its AB 939 reporting requirements or other purpose deemed necessary by the Town.

#### **8.04 Adverse Information.**

**A. Reporting Adverse Information.** Contractor shall provide the Town two (2) copies (one to the Town Administrator, one to the Town's Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission or any other Federal, State or local agencies, including any Federal or State court. Copies shall be submitted to the Town simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to the Town, but shall be made available to the Town promptly upon the Town's written request.

**B. Failure to Report.** The refusal or failure of Contractor to file any required reports, or to provide required information to the Town, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement as described in Section 11.01 and shall subject Contractor to all remedies which are available to the Town under the Agreement or otherwise.

#### **8.05 Right to Inspect Records.**

The Town shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Related Party Entities that the Town shall deem, in its sole discretion, necessary to evaluate annual reports,

2031 compensation applications provided for in this Agreement and Contractor's  
2032 performance provided for in this Agreement.

ARTICLE 9  
INDEMNIFICATION, INSURANCE AND BOND

9.01 Indemnification.

A. **General Indemnification.** Contractor shall indemnify, defend and hold harmless, at Contractor's sole cost and expense, the Town, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature including, but not limit to, injury to and death of any Person and/or damage to property or for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under the Agreement, but not limited to, Contractor's failure to comply with applicable laws or the Contractor's breach of its representation and warranties in this Agreement. The foregoing shall also apply if the Claim is caused by the joint negligence of the Town and Contractor, but only to the extent to Contractor's negligence. This indemnification will not extend to Claims to the extent they are caused by the sole negligence or intentional misconduct or omission of the Town. This general indemnification provision shall survive the termination of this Agreement.

B. **Hazardous Substance Indemnification.** Contractor shall indemnify, defend with counsel selected by the Town, protect and hold harmless the Town and their officers, directors, employees, volunteers, and agents, and member agencies, their officers, directors, employees, volunteers, and agents, (collectively, indemnitee) from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all 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 without limit attorneys' expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (Collectively, "Damages") or any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitee arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, and/or construction and street debris, or other waste Collected under this Agreement. This indemnity afforded indemnitee, shall be limited only to exclude coverage for intentional wrongful acts and active negligence of indemnitee, indemnitee delivery of

material to Contractor which does not conform to the descriptions of Solid Waste under this Agreement and as provided below. The forgoing indemnity is intended to operate as an agreement in recognition of §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Town from liability. This provision is in addition to all other provisions in this Agreement and is intended to survive the end of the Term of this Agreement. Nothing in this paragraph shall prevent Contractor from seeking indemnification or contribution from Persons or entities other than indemnitee, for any liabilities incurred by Contractor, or the indemnitee. As appropriate, Contractor's parent company should provide the guarantees necessary to meet this provision.

Should the Town contract for or direct the Disposal of Solid Waste to a Transfer Station or landfill not owned or solely operated by Contractor or an Affiliate, then in that event, Contractor's Hazardous Substances indemnification and other indemnitee shall not apply to claims, damages, legal proceedings or other liabilities arising from or relating to such non-Contractor owned or operated Transfer Station or Disposal Facility.

## **9.02 AB 939 Indemnification.**

In addition to all other relief provided to the Town under this Agreement, Contractor agrees to indemnify and hold harmless the Town, their officers, directors, Councils, employees, and agents from and against all fines and/or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and Recycling goals or any other requirement of the Act are not met by the Town with respect to the waste stream Collected under this Agreement and such failure is due to the failure of Contractor to meet its obligations under this Agreement and/or for delays in providing information that prevents the Town from submitting reports required by AB 939 in a timely manner.

## **9.03 Insurance.**

**A. Minimum Scope of Insurance.** Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office form number GL 0002 covering Comprehensive or Commercial General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive or Commercial General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

- 2118 2. The most recent editions of Insurance Services Office form number CA  
2119 0001 covering Automobile Liability, code 1 "any auto" and endorsement  
2120 CA 0025.
- 2121 3. Workers' Compensation insurance as required by the Labor Code of the  
2122 State of California and Employers Liability insurance.
- 2123  
2124 **B. Minimum Limits of Insurance.** Contractor shall maintain limits no less than:  
2125
- 2126 1. Comprehensive General Liability: Five Million Dollars (\$5,000,000)  
2127 combined single limit per occurrence for bodily injury, Personal injury and  
2128 property damage.
- 2129 2. Automobile Liability: Five Million Dollars (\$5,000,000) combined single  
2130 limit per accident for bodily injury and property damage.
- 2131 3. Workers' Compensation and Employers Liability: Workers' compensation  
2132 limits as required by the Labor Code of the State of California and  
2133 Employers Liability limits of \$1,000,000 per accident.
- 2134  
2135 **C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured  
2136 retentions are the responsibility of Contractor and shall be declared to the Town.  
2137 At the option of the Town, either: the insurer shall reduce or eliminate such  
2138 deductibles or self-insured retentions as respects the Town, its officials and  
2139 employees, directors, agents and volunteers; or Contractor shall procure a bond  
2140 guaranteeing payment of losses and related investigations, claim administration  
2141 and defense expenses.
- 2142  
2143 **D. Other Insurance Provisions.** The policies are to contain, or be endorsed to  
2144 contain, the following provisions:
- 2145 1. General Liability and Automobile Liability Coverage
- 2146 a. The Town, their officials, employees, directors, agents and  
2147 volunteers are to be covered as additional insured as respects:  
2148 liability arising out of activities performed by or on behalf of  
2149 Contractor; products and completed operations of Contractor;  
2150 Premises owned, leased or used by Contractor; or automobiles  
2151 owned, leased, hired or borrowed by Contractor. The coverage  
2152 shall contain no special limitations on the scope of protection  
2153 afforded to the Town, its officials, employees or volunteers.  
2154

- 2155                   b. Contractor's insurance coverage shall be primary insurance as  
2156                   respects the Town, its officials, directors, employees and volunteers.  
2157                   Any insurance or self-insurance maintained by the Town, its  
2158                   officials, employees, directors, agents or volunteers shall be excess  
2159                   of Contractor's insurance and shall not contribute with it.  
2160  
2161                   c. Any failure to comply with reporting provisions of the policies shall  
2162                   not affect coverage provided to the Town, its officials, employees,  
2163                   directors, agents or volunteers.  
2164  
2165                   d. Coverage shall state that Contractor's insurance shall apply  
2166                   separately to each insured against whom claim is made or suit is  
2167                   brought, except with respect to the limits of the insurer's liability.  
2168

2169                   **2. Workers' Compensation and Employers Liability Coverage.** The insurer  
2170                   shall agree to waive all rights of subrogation against the Town, its officials,  
2171                   employees, directors, agents and volunteers for losses arising from work  
2172                   performed by Contractor for the Town.

2173                   **3. All Coverage.** Each insurance policy required by this clause shall be  
2174                   endorsed to state that coverage shall not be suspended, voided, canceled  
2175                   by either party, reduced in coverage or in limits except after thirty (30)  
2176                   days' prior written notice by certified mail, return receipt requested, has  
2177                   been given to the Town.  
2178

2179                   **E. Acceptability of Insurers.** The insurance policies required by this Section  
2180                   shall be issued by an insurance company or companies admitted or approved  
2181                   non-admitted to do business in the State of California subject to the Authority of  
2182                   the California Insurance Commissioner and with a rating in the most recent  
2183                   edition of Best's Insurance Reports of size category VII or larger and a rating  
2184                   classification of A or better.  
2185

2186                   **F. Verification of Coverage.** Contractor shall furnish the Town with certificates  
2187                   of insurance and with original endorsements affecting coverage required by this  
2188                   clause. The certificates and endorsements for each insurance policy shall be  
2189                   signed by a Person authorized by that insurer to bind coverage on its behalf. The  
2190                   certificates and endorsements are to be on forms provided by or acceptable to the  
2191                   Town and are to be received and approved by the Town before work commences.  
2192                   The Town reserves the right to require complete, certified copies of all required  
2193                   insurance policies, at any time.  
2194

2195 **G. Subcontractor.** Contractor shall include all subcontractors as insured under  
2196 its policies or shall furnish separate certificates and endorsements for each  
2197 subcontractor. All coverages for subcontractors shall be subject to all of the  
2198 requirements stated herein.

2199  
2200 **H. Required Endorsements.**  
2201

2202 **1.** The Workers' Compensation policy shall contain an endorsement in  
2203 substantially the following form:

2204  
2205 "Thirty (30) days prior written notice shall be given to the Town in the event of  
2206 cancellation, reduction in coverage, or non-renewal of this policy. Such notice  
2207 shall be sent to:

2208 Town of Paradise  
2209 Town Hall  
2210 5555 Skyway  
2211 Paradise, CA 95969  
2212 Attn: Al McGreehan, Community Development Director  
2213

2214 **2.** The Public Liability policy shall contain endorsements in substantially the  
2215 following form:

2216  
2217 **a.** "Thirty (30) days prior written notice shall be given to the Town in  
2218 the event of cancellation, reduction in coverage, or non-renewal of  
2219 this policy. Such notice shall be sent to:

2220  
2221 Town of Paradise  
2222 Town Hall  
2223 5555 Skyway  
2224 Paradise, CA 95969  
2225 Attn: Al McGreehan, Community Development Director  
2226

2227 **b.** "The Town, its officers, employees, directors, agents and volunteers  
2228 are additional insured on this policy."  
2229

2230 **c.** "This policy shall be considered primary insurance as respects any  
2231 other valid and collectible insurance maintained by the Town,  
2232 including any self-insured retention or program of self-insurance,  
2233 and any other such insurance shall be considered excess insurance  
2234 only."  
2235

d. "Inclusion of the Town as an insured shall not affect the Town's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect the Contractor and the Town in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."

**I. Delivery of Proof of Coverage.** On or before the Effective Date, Contractor shall furnish the Town with certificates of each policy of insurance required hereunder. Such certificates shall show the type and amount of coverage, effective dates, and dates of expiration of policies and shall note all required endorsements. The certificates for each policy are to be signed by a Person authorized at the insurer to bind coverage on its behalf. If at any time the Towns so requests, complete certified copies of each policy, together with all endorsements, shall also be promptly delivered to the Town. Contractor shall periodically furnish renewal certificates to the Town to demonstrate maintenance of the required coverage throughout the Term.

**J. Other Insurance Requirements.**

1. In the event any services are delegated to a subcontractor, Contractor shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by this Section 9.03.J.1 shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided it meets all of the requirements of this Section 9.03.J.1.

2. Contractor shall comply with all requirements of the insurer's policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim is made by any third party against Contractor or a subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to the Town.

3. If Contractor fails to procure and maintain any insurance by this Agreement, the Town may take out and maintain, at Contractor's expense, such insurance as the Town may reasonably deem proper in accordance with the limits set forth herein and Contractor shall reimburse the Town



2275 for the cost of such insurance within thirty days of being invoiced by the  
2276 Town for such costs.

2277

2278 4. The Comprehensive General Liability insurance required by the Section  
2279 shall be written on an occurrence (not accident) rather than a "claims  
2280 made" basis, if such coverage is obtainable. If its is not obtainable,  
2281 Contractor shall notify the Town and arrange for "tail coverage" to protect  
2282 the Town from claims filed during the three years immediately following  
2283 the expiration or termination of this Agreement relating to incidents which  
2284 occurred prior to such expiration or termination.

2285

2286 **9.04 Letter of Credit.**

2287 Simultaneously with the execution of this Agreement, Contractor shall file with the  
2288 Town an irrevocable letter of credit in a form approved by the Town Attorney  
2289 securing Contractor's performance of its obligations under this Agreement and shall  
2290 maintain such letter of credit on an annual basis and shall be annually renewed  
2291 thereafter throughout the Term of this Agreement. The Town shall have the right to  
2292 make draws from the letter of credit if Contractor breaches this Agreement. The  
2293 principal sum of the letter of credit shall be \$100,000.00.

2294

2295

**ARTICLE 10**  
**TOWN'S RIGHT TO PERFORM SERVICE**

**10.01 General.**

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect or transport any or all Solid Waste, Recyclable Materials, and Yard Waste which it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste, Recyclable Materials, and Yard Waste should accumulate in the Service Area to such an extent, in such a manner, or for such a time that the Town should find that such accumulation endangers or menaces the public health, safety or welfare, then the Town shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Contractor during the period of such emergency as determined by the Town, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take temporary possession of any or all of Contractor's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, Recyclable Materials, and Yard Waste, and to use such property to Collect and transport any Solid Waste, Recyclable Materials, and Yard Waste generated within the Service Area which Contractor would otherwise be obligated to Collect and transport pursuant to this Agreement.

If Solid Waste, Recyclable Materials, and Yard Waste accumulates in the Service Area to such an extent, in such a manner or for such a time that the Town finds that such accumulation represents an immediate danger or menace to the public health safety or welfare, the Town shall not be required to provide the twenty-four (24) hour prior written notice set forth above in order to take the above actions.

Notice of Contractor's failure, refusal or neglect to Collect and transport Solid Waste, Recyclable Materials, and Yard Waste may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

- A. It will take direction from the Town to affect the transfer of possession of equipment and property to the Town for its use.
- B. It will, if the Town so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. The Town may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, Recyclable Materials, and Yard Waste, including, if the Town so desires, employees previously or then employed by Contractor. Contractor further agrees, if the Town so requests, to furnish the Town the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Solid Waste, Recyclable Materials, and Yard Waste Collection, transportation, processing and disposal operations and for the billing and Collection of fees for these services.

The Town agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.04, the Town shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by the Town, for the period of the Town's possession, if any, which extends beyond the period of time for which Contractor has rendered bills in advance of service, for the class of service involved.

Except as otherwise expressly provided in the previous paragraph, the Town's exercise of its rights under this Article 10 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the Town to Contractor; and (3) does not exempt Contractor from any of the indemnity or insurance provisions of this Agreement, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify the Town against claims and damages arising from the negligence or willful misconduct of the Town, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the Town has taken possession of such vehicles.

#### **10.02 Temporary Possession of Contractor's Property.**

If the Town suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 11.04), the Town may take possession of and use all of Contractor's property described above until other suitable arrangements can be made for the provision of the Franchised Services.

#### **10.03 Billing and Compensation to the Town during Town's Possession.**

During such time that the Town is providing Solid Waste services, as above provided, Contractor shall bill and Collect payment from all users of the above-mentioned services as described in Section 5.02. Contractor further agrees that, in such event, it shall reimburse the Town for any and all costs and expenses incurred by the Town beyond that billed and received by Contractor in taking over possession

of the above-mentioned equipment and property for Franchised Services in such manner and to an extent as would otherwise be required of Contractor under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission by the Town to Contractor of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

**10.04 Town's Right to Relinquish Possession.**

It is further mutually agreed that the Town may at any time at their discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the Franchised Services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

**10.05 Duration of Town's Possession.**

Town's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when the event which caused the taking possession under Section 10.01 is cured and the performance bond is fully restored. In any case, the Town has no obligation to maintain possession of Contractor's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

ARTICLE 11  
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

**11.01 Events of Default.**

All provisions of the Agreement and this Agreement to be performed by Contractor are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit.** If Contractor practices, or attempts to practice, any fraud or deceit upon the Town.
- B. Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- C. Failure to Maintain Coverage.** If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.
- E. Failure to Perform.** If Contractor ceases to provide Collection, processing, or Recycling services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor, including labor disputes.
- F. Failure to Pay.** If Contractor fails to make any payments required under this Agreement and/or refuses to provide the Town with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- G. Acts or Omissions.** Any other act or omission by Contractor which violates the terms, conditions, or requirements of this Agreement, the Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued there under and which is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- H. False or Misleading Statements.** Any representation or disclosure made to the Town by Contractor in connection with or as an inducement to entering into

this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

**I. Attachment.** There is a seizure of, attachment of, or levy on, the operating equipment of Contractor, including without limits its equipment, maintenance or office facilities, or any part thereof.

**J. Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Contractor related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days.

**K. Failure to Provide Assurance of Performance.** It Contractor fails to provide reasonable assurances of performance as required under Section 11.06.

Contractor shall be given ten (10) business days from written notification by the Town to cure any default arising under subsections C, E, F, I, J and K provided, however, that the Town shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach within a twenty-four (24) month period.

#### **11.02 Right to Terminate Upon Default.**

In the event that Contractor should default and subject to the right of the Contractor to cure, in the performance of any provisions of this contract, and the default is not cured for any default arising under Section 11.01 C, E, F, I, J or K, within ten (10) days' notice if the public health or safety is threatened, or otherwise thirty (30) days after receipt of written notice of default from the Town, then the Town may, at its option, terminate this Agreement and/or hold a hearing at its next Town Council meeting to determine whether this contract should be terminated. In the event the Town decides to terminate this contract, the Town shall serve twenty (20) days' written notice of its intention to terminate upon Contractor. In the event the Town exercises its right to terminate this contract, the Town may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of the Town upon a failure of Contractor to perform its obligations under this Agreement.

The Town's rights to terminate this Agreement and to take possession of Contractor's Facility are not exclusive, and the Town's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the Town may have. By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality

service, the time required to effect alternative service, and the rights granted by the Town to Contractor, the remedy of damages for a breach hereof by Contractor may be inadequate and the Town may seek injunctive relief.

### 11.03 Liquidated Damages.

**A. General.** The Town finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the Town as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that Franchised Services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

**B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties further acknowledge that consistent, reliable Solid Waste, Recyclable Materials, and Yard Waste Collection is of utmost importance to the Town and that the Town has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, the Service Area and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the Town will suffer. Therefore, without prejudice to the Town's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the Town that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel

and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor

Town

Initial Here \_\_\_\_\_

Initial Here \_\_\_\_\_

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

### **1. Collection Reliability.**

- a. For each failure to commence service to a new service recipient account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00
- b. For each failure to Collect Solid Waste, Recyclable Materials, and Yard Waste, which has been properly set out for Collection, from an established service recipient account on the scheduled Collection day and not Collected within the period described in this Agreement which exceeds forty-five (45) such failures quarterly: \$150.00
- c. For each failure to Collect Solid Waste, Recyclable Materials, and Yard Waste, which has been properly set out for Collection, from the same service recipient on two (2) consecutive scheduled pickup days: \$150.00
- d. For each failure to perform and submit billing reviews: \$250.00

### **2. Collection Quality.**

- a. For each occurrence of damage to private property which exceeds seven (7) such occurrences annually: \$250.00
- b. For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with lids secured (in areas where service recipients own their containers, if applicable) which exceeds ten (10) such occurrences annually: \$150.00
- c. For each occurrence of excessive noise or discourteous behavior: \$250.00
- d. For each failure to clean up Solid Waste, Recyclable Materials, and Yard Waste spilled by Contractor from Containers which exceeds fifteen (15) such failures annually: \$150.00
- e. For each occurrence of Collecting Solid Waste, Recyclable Materials and Yard Waste during unauthorized hours which exceeds ten (10) such occurrences annually: \$250.00

### **3. Service Recipient Responsiveness.**



- a. For each failure to initially respond to a service recipient Complaint within one (1) business day: \$100.00
- b. For each failure to process service recipient Complaints to the Town as required by Article 5: \$500.00

- 4. Timeliness of Submissions to Town/State Agencies.** Reports shall be considered late, after the seventh late day, until such time as a correct and complete report is received by the Town. For each calendar day a report is late, the daily liquidated damage amount shall be:
- a. Annual reports to the Town: \$100 per day
  - b. Required reports to State agencies per Section 8.03.C of this Agreement: \$100 per day

Liquidated damages will only be assessed after Contractor has been given the opportunity but failed to rectify, in a timely manner, the breach as described in this Agreement. The Town may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of service recipient Complaints.

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

**C. Amount.** The Town may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

**D. Timing of Payment.** Contractor shall pay any liquidated damages assessed by the Town within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the Town may proceed against the performance bond required by the Agreement or order the termination of the Agreement granted by this Agreement, or both.

**11.04 Excuse from Performance.**

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, terrorist attacks, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including, but not limited to, strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Contractor's employees or directed at Contractor is not an excuse from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section 11.04.

The interruption or discontinuance of Contractor's services caused by one or more of the events excused shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations to Collect; transfer, transport, process and Dispose of Solid Waste hereunder for any of the causes listed in this Section for a period of ten (10) days or more, the Town shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of Contractor's land, equipment and other property and engaging Contractor's personnel in Article 10 and this Article 11 will apply.

**11.05 Notice, Hearing and Appeal of Town/ Breach.**

Should Contractor contend that the Town is in breach of this Agreement, it shall file with the Town Administrator a written request with the Town's Solid Waste Committee for an administrative hearing. Said request shall be made within ninety (90) days of the event or incident which allegedly gave rise to the breach. The Town Administrator shall notify Contractor of the time and date said hearing shall be held within thirty (30) days of receipt of Contractor's request. Contractor shall present its position and all relevant facts first and then the Town Administrator shall make his or her presentation. Contractor shall be notified of the Town's Solid Waste Committee's ruling in writing within fourteen (14) days of the administrative hearing.

If Contractor is not in agreement with the ruling issued by the Committee at the administrative hearing, it shall have the right to appeal this ruling to Town Council. This appeal shall be made in writing to the Town Administrator no later than fourteen (14) days after receipt of the administrative hearing ruling. The Town Administrator shall notify Contractor of the time and date the Town Council will review Contractor's allegation. Contractor shall present its position and all relevant facts. Contractor shall be notified in writing within thirty (30) days of the Town

Council's ruling. The Town Council's ruling shall be final, and Contractor shall have no further rights of administrative appeal.

**11.06 Assurance of Performance.**

Each party may, at its option and in addition to all other remedies it may have, demand from the other Party reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the Party may require. If the other Party fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the Party, such failure or refusal shall be an event of default.

**11.07 Damage to Property.**

Contractor shall endeavor to resolve all claims as soon as reasonably practicable following receipt thereof, made by Owners or occupants of property served by Contractor, for damages to property including, but not limited to, Containers. In the event such damage shall have been caused by the negligence or intentional acts of Contractor, its officers, agents, or employees, Contractor shall promptly repair or replace such damaged property. The provisions of this Section 11.07 shall not be deemed a limitation upon any other provisions of this Agreement, or any rights or remedies which may accrue to the Town by reason of Contractor's acts or omissions to act hereunder.

**11.08 Town Remedies Cumulative; Specific Performance.**

The Town's rights to suspend or terminate this Agreement or to perform under Article 10 are not mutually exclusive, and the Town's exercise of one such right shall not constitute a selection of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the Town may have.

**ARTICLE 12**  
**OTHER AGREEMENTS OF THE PARTIES**

**12.01 Relationship of Parties.**

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by the Town and neither as an officer or employee of the Town nor as a partner of or joint venture with the Town. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of the Town. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and all Persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the Town's employees by virtue of their employment with the Town.

**12.02 Compliance with Law.**

In providing the services required under this Agreement, Contractor shall at all times comply with all applicable laws (including but not limited to the "Environmental Laws") of the United States, the State of California, the County of Butte, the Service Area and with all applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the Term, collectively, the "Laws"). In the event of any conflict between this Agreement and Laws, the requirements of the Laws shall govern, and Contractor shall not be in breach of this Agreement if Contractor complies with the Laws in contravention of this Agreement, provided that nothing in this Section 12.02 is intended to limit or enlarge Contractor's obligations or diminish its right to satisfy its obligation to provide Solid Waste, Recyclable Materials, Yard Waste Collection, Processing, and/or Disposal.

**12.03 Governing Law.**

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

**12.04 Jurisdiction.**

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in Butte County, California.

2739 **12.05 Assignment by Contractor.**

2740  
2741 **A. General.** Contractor acknowledges that this Agreement involves rendering a  
2742 vital service to the Town's residents and businesses, and that the Town has  
2743 selected Contractor to perform the services specified herein based on (1)  
2744 Contractor's experience, skill and reputation for conducting its operations in a  
2745 safe, effective and responsible fashion, at all times in keeping with applicable  
2746 Environmental Laws, regulations, and best management practices, and (2)  
2747 Contractor's obligations to the Town under this Agreement. The Town has relied  
2748 on each of these factors, among others, in choosing Contractor to perform the  
2749 services to be rendered by Contractor under this Agreement.

2750  
2751 **B. Assignments.** Contractor shall not assign its rights nor delegate or otherwise  
2752 transfer its obligations under this Agreement to any other Person.

2753  
2754 If Contractor requests the Town's consideration of and consent to an assignment,  
2755 the Town may deny or approve such request using its sole discretion. No request  
2756 by Contractor for consent to any assignment need be considered by the Town  
2757 unless and until Contractor has met the following requirements:

- 2758
- 2759 **1.** Contractor shall undertake to pay the Town its reasonable expenses for  
2760 attorney's fees and investigation costs necessary to investigate the  
2761 suitability of any proposed assignee, and to review and finalize any  
2762 documentation required as a condition for approving any such  
2763 assignment;
  - 2764 **2.** Contractor shall furnish the Town with audited financial statements of the  
2765 proposed assignee's operations for the immediately preceding three (3)  
2766 operating years;
  - 2767 **3.** Contractor shall furnish the Town with satisfactory proof: (i) that the  
2768 proposed assignee has at least ten (10) years of Solid Waste, Recyclable  
2769 Materials, and Yard Waste management experience on a scale equal to or  
2770 exceeding the scale of operations conducted by Contractor under this  
2771 Agreement; (ii) that in the last five (5) years, the proposed assignee has not  
2772 suffered any significant citations or other censure from any Federal, State  
2773 or local agencies having jurisdiction over its Solid Waste, Recyclable  
2774 Materials, and Yard Waste management operations due to any significant  
2775 failure to comply with State, Federal or local Environmental Laws and that  
2776 the assignee has provided the Town with a complete list of such citations

and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste, Recyclable Materials, and Yard Waste management practices in accordance with sound Solid Waste, Recyclable Materials, and Yard Waste management practices in full compliance with all Federal, State and local laws regulating the Franchised Services including Hazardous Substances; (v) that the proposed assignee can meet the guaranty and performance bond requirements met by Contractor; and , (vi) of any other information required by the Town to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the Town be obligated to consider any proposed assignment by Contractor.

**C. Assignment Defined.** For the purpose of this Section 12.05.C, when used in reference to Contractor, "assignment" shall include, but not be limited to (1) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party regardless of whether said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, organization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of Contractor.

#### **12.06 Binding on Assigns.**

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns of the parties.

#### **12.07 Affiliated Companies.**

Contractor shall maintain accounting records and financial statements on a basis showing the results of Contractor's operations under this Agreement separately from operations in other locations, as if Contractor were an independent entity providing service only to the Town. For purposes of this Agreement, the costs and revenues

associated with providing service to the Town shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by Contractor in other locations, or with those of an Affiliate.

If Contractor enters into any financial transactions with a Related Party Entity or Affiliate for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship shall be disclosed to the Town, and in the financial reports submitted to the Town. In such event, the Town's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or entities.

#### **12.08 Subcontracting.**

Contractor shall not engage any subcontractors for Collection, Processing or Disposal of Solid Waste, Recyclable Materials, and Yard Waste without the prior written consent of the Town.

#### **12.09 Transition to Next Contractor.**

If the transition of services to another Contractor occurs through expiration of term, subsequent Contractor(s) to assist in an orderly transition which will include Contractor providing route lists and billing information. Contractor will not be obliged to sell Collection vehicles, bins and Containers to the next Contractor. Depending on Contractor's circumstances at the point of transition, Contractor at its option may enter into negotiations with the next Contractor to sell (in part or all) Collection vehicles, bins and Containers.

#### **12.10 Parties in Interest.**

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

#### **12.11 Waiver.**

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

#### **12.12 Contractor's Investigation.**

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

2862 **12.13 Notice.**

2863 All notices, demands, requests, proposals, approvals, consents and other  
2864 communications which this Agreement requires, authorizes or contemplates shall be  
2865 in writing and shall either be personally delivered to a representative of the parties at  
2866 the address below or be deposited in the United States mail, first class postage  
2867 prepaid, addressed as follows:  
2868

2869 If to the Town:

2870 Town of Paradise  
2871 Town Hall  
2872 5555 Skyway  
2873 Paradise, CA 95969  
2874 Attn: Al McGreehan, Community Development Director  
2875  
2876

2877 If to the Contractor: \_

2878 Northern Recycling & Waste Services  
2879 P.O Box 239  
2880 Napa, CA 94558  
2881 Attn: Greg Kelley  
2882  
2883

2884 The address to which communications may be delivered may be changed from time  
2885 to time by a notice given in accordance with this Section 12.13.  
2886

2887 Notice shall be deemed given on the day it is personally delivered or, if mailed, three  
2888 days from the date it is deposited in the mail.  
2889

2890 **12.14 Representatives of the Parties.**

2891  
2892 **A. Representatives of the Town.** References in this Agreement to the "Town"  
2893 shall mean the Town Administrator and all actions to be taken by the Town shall  
2894 be taken by the Town Administrator who may delegate his/her authority in  
2895 writing to another Town employee, Contractor may rely upon actions taken by  
2896 such delegates if they are within the scope of the Town and properly delegated to  
2897 him/her.  
2898

2899 **B. Contractor Representatives.** Contractor shall, by the Effective Date, designate  
2900 in writing a responsible officer who shall serve as the representative of Contractor  
2901 in all matters related to the Agreement and shall inform The Town Administrator  
2902 in writing of such designation and of any limitations upon his or her authority to  
2903 bind Contractor. The Town Administrator may rely upon action taken by such  
2904 designated representative as actions of Contractor if they are within the scope of  
2905 the Contractor and properly delegated to him/her by Contractor.  
2906



**12.15 Town Free to Negotiate with Third Parties.**

The Town may investigate all options for the Collection and processing of Solid Waste after the expiration of the Term. Without limiting the generality of the foregoing, the Town may solicit proposals from Contractor and from third parties for the provision of services, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.01 of this Agreement.

**12.16 Compliance with the Town's Codes.**

Contractor shall comply with those provisions of the ordinances and municipal codes of the Town which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement provided, however, that if a change in any such municipal code materially affects Contractor's annual cost of operations, the Contractor shall be entitled to an interim compensation adjustment as provided for in Section 6.04. Moreover, no such change may revoke or override the grant to Contractor of the exclusive franchise in Section 2.01 of this Agreement or override the Contractor's designations of a Material Recovery Facility and Disposal Site pursuant to this Agreement.

**12.17 Privacy.**

Contractor shall strictly observe and protect the rights of privacy of service recipients. Information identifying individual service recipients or the composition or contents of a service recipient's waste stream shall not be revealed to any Person, governmental unit, private agency, or Contractor, unless upon the authority of a court of law, by statute, or upon valid authorization of the service recipient. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939.

**12.18 Integrated Contract.**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written agreement signed by both the Town and Contractor.

**12.19 Inserted Provisions.**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either party.

**12.20 Execution.**

This Agreement shall be executed in duplicate original counterparts by the parties. Irrespective of the date this Agreement is so executed, the Effective Date hereof shall be, and is January 18, 2007.

**12.21 Non-Discrimination.**

Consistent with Town's policy that harassment and discrimination are unacceptable employer-employee conduct, Contractor agrees that harassment or discrimination directed toward a job applicant, a Town employee, or a citizen by Contractor or Contractor's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, mental or physical disability, Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC), cancer-related medical condition, refusal of family care leave, marital status, denial of pregnancy disability leave, veteran status, age, sex, sexual orientation or sexual preference will not be tolerated. Contractor agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**12.22 Dispute Resolution.**

Prior to initiation of litigation under this Agreement, the parties shall attempt to resolve their disputes by means of mediation. If the parties cannot agree on a mediator, the Superior Court of Butte County shall appoint a mediator. Each party shall bear their costs and attorney fees arising out of the mediation and shall share equally the cost of the mediator, provided, however, that if the matter is not resolved by way of mediation, the prevailing party in any subsequent litigation shall be entitled to collect their costs of mediation as an element of their costs of suit, including reasonable attorney fees (incurred both in the mediation process as well as the subsequent court proceedings).

**ARTICLE 13**  
**REPRESENTATIONS AND WARRANTIES OF CONTRACTOR**

Contractor represents and warrants as follows:

**13.01 Company Status.**

Contractor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

**13.02 Company Authorization.**

Contractor has the authority to enter into and perform its obligations under this Agreement. The Managers and Members of the Company have taken all actions required by law, its operating agreement, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor has authority to do so.

**13.03 Agreement Will Not Cause Breach.**

To the best of Contractor's knowledge, after reasonable investigation, neither the execution or delivery of this Agreement nor the performance of this Agreement by Contractor: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agencies or other governmental authority, or any agreement or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default there under.

**13.04 No Litigation.**

To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agencies or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Contractor of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Agreement or which would have a material adverse effect on the financial condition of Contractor or any surety guaranteeing Contractor's performance under this Agreement, which has not been waived by the Town in writing.

**13.05 No Adverse Judicial Decisions.**

To the best of Contractor's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Agreement and may subject this Agreement to legal challenge.

3024  
3025 **13.06 Ability to Perform.**  
3026 Contractor possesses the business, professional, and technical expertise to manage,  
3027 handle, treat, store and Dispose of the Solid Waste, and possesses the equipment,  
3028 plant, and employee resources required to perform this Agreement.  
3029

**ARTICLE 14**  
**MISCELLANEOUS PROVISIONS**

**14.01 Entire Agreement.**

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.

**14.02 Section Headings.**

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

**14.03 References to Laws and Other Agreements.**

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties.

**14.04 Interpretation.**

This Agreement, including the Exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

**14.05 Agreement.**

This Agreement may not be modified or amended in any respect except by a writing signed by the parties. Any conflict between the body of the Agreement and the Exhibits shall be resolved in favor of the Agreement.

**14.06 Severability.**

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

**14.07 Exhibits.**

Each of Exhibits identified as Exhibit "A" through "J" is attached hereto and incorporated herein and made a part hereof by this reference.

**14.08 Attorneys' Fees.**

The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

3073 **14.09 Compilation of Information for State Law Purposes.**  
3074 Contractor shall compile information on amounts of Solid Waste delivered to the  
3075 Facilities and other information, which the Town may reasonably request.  
3076  
3077 **14.10 Definitions.**  
3078 Capitalized terms used in this Agreement without definition have the meanings  
3079 specified in Exhibit A, unless the context clearly requires otherwise.  
3080  
3081 **14.11 Counterparts.**  
3082 This Agreement may be executed in counterparts, each of which shall be deemed to  
3083 be an original.  
3084

3085 IN WITNESS WHEREOF, the Town and Contractor have executed this Agreement  
3086 (Effective January 18, 2007) as of the day set forth by their respective signature.  
3087

3088 Date: \_\_\_\_\_

TOWN OF PARADISE

3089  
3090 ATTEST: BY: \_\_\_\_\_

3091  
3092  
3093 \_\_\_\_\_  
3094 Town Clerk

3095  
3096 Date: \_\_\_\_\_

3097  
3098  
3099 \_\_\_\_\_  
3100 (Contractor)

3101 BY: \_\_\_\_\_  
3102  
3103 \_\_\_\_\_

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# EXHIBITS

Definitions .....	Exhibit A
Town’s Facilities/Special Events .....	Exhibit B
Contractor Public Education Plan.....	Exhibit C
Payments to Town.....	Exhibit D
Rate Adjustment Methodology .....	Exhibit E
Solid Waste Collection Rate Schedule .....	Exhibit F
Notary Certification .....	Exhibit G
Contractor’s Proposal .....	Exhibit H



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**EXHIBIT A**  
**Definitions**

# Exhibit A

## DEFINITIONS

This Agreement will be construed in accordance with the following definitions.

### **Act**

“Act” means the Act of 1989 (AB939) Public Resources Code, Section 40000 et seq., as it may be amended from time to time.

### **Affiliate**

“Affiliate” means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be “Affiliated with” Contractor and included within the term “Affiliates” as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

### **Agreement**

“Agreement” means this Agreement, including any amendments, between the Town and Contractor.

### **Billings**

“Billings” means any and all statements of charges for services rendered, howsoever made, described or designated by Contractor, or made by others for Town or Contractor, to Owners or occupants of property, including Residential Property and commercial, industrial and institutional Property, served by Contractor for the Collection of Solid Waste, Recyclable Materials, and Yard Waste.

### **Collect/Collection**

“Collect” or “Collection” means to take physical possession, transport, and remove Solid Waste, Recyclable Materials, and Yard Waste within and from the Service Area.

1   **Commencement Date**

2   “Commencement Date” means the date specified when Collection, Processing, and  
3   Disposal services required by this Agreement shall be provided.

4   **Commercial, Industrial and Institutional Service Recipient**

5   “Commercial, Industrial and Institutional Service Recipient” means Waste Generators  
6   whose business activity includes but is not limited to retail sales, services, wholesale sales,  
7   research and development, government, non-profit, hospital, manufacturing and  
8   industrial operations, but excluding businesses conducted upon Residential Property  
9   which are permitted under applicable zoning regulations and are not the primary use of  
10   the property.

11   **Complaint**

12   “Complaint” means the written statement (prepared by the Town Administrator, if based  
13   on oral statements made by members of the public or Owners or occupants of property)  
14   made by members of the public, Owners or occupants of properties served by Contractor,  
15   or officers, employees or agents of the Town alleging non-performance or deficiencies in  
16   performance of Contractor’s duties and obligations under this Agreement, or otherwise  
17   alleging a violation by Contractor of the provisions of this Agreement.

18   **Composting (Compost)**

19   “Composting” means a controlled biological decomposition of organic materials yielding a  
20   safe and nuisance free compost product.

21   **Construction Debris**

22   “Construction Debris” means used or discarded construction materials generated during  
23   the construction or renovation of a structure.

24   **Containers**

25   “Containers” means any and all types of Solid Waste, Recyclable Materials, and Yard  
26   Waste receptacles including but not limited to metal or plastic cans, carts, bins, tubs,  
27   bins/dumpsters, roll-off boxes, or debris boxes.

28   **Contractor**

29   “Contractor” means Northern Recycling & Waste Services, a limited liability company  
30   organized and operating under the laws of the State of California and its managers,  
31   members, directors, employees, agents, companies and subcontractors. The members of  
32   the limited liability company are: Recovery Products & Services, Inc., a California  
33   corporation, Garbarino Northern Recycling & Waste Services, LLC, Pestoni Paradise  
34   City, LLC and Garaventa Enterprises, Inc., a California corporation.

35   **Contractor Compensation**

36   “Contractor Compensation” means the revenue received by the Contractor from Billings  
37   for providing services in accordance with this Agreement.  
38

**Contractor's Proposal**

"Contractor's Proposal" means the proposal submitted by the Contractor and received on April 7, 2006 by the Town in response to the Town's February 2006 Request for Proposals for the Solid Waste, Recyclable Material, and Yard Waste Collection, Processing and Disposal Services and certain supplemental written materials, which are included as Exhibit H to this Agreement and are incorporated by reference.

**Curbside**

"Curbside" means the location of a Container for pick-up, not more than fifteen (15) feet from the street curb. Where no street curb exists, the location shall be within five (5) feet from the outside edge of the street nearest the property's entrance.

**Demolition Debris**

"Demolition Debris" means used or discarded construction materials generated during the razing or renovation of a structure.

**Designated Waste**

"Designated Waste" means non-hazardous waste which may pose special disposal problems because of its potential to contaminate the environment and which may be disposed of only in Class II disposal sites, or Class III disposal sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as designated waste by the State of California, in 23 California Code of Regulations Section 2522.

**Dispose/Disposal**

"Dispose" or "Disposal" means the ultimate disposition of Solid Waste collected by Contractor at a Disposal Site in Full Regulatory Compliance.

**Disposal Site(s)**

"Disposal Site(s)" means the Solid Waste facility or facilities utilized for the ultimate landfill Disposal of Solid Waste Collected by Contractor. The Neal Road Landfill owned by the County of Butte, shall be the initial designated Disposal Site of Contractor as of the effective date of this Agreement.

**Effective Date**

"Effective Date" means the date on which the latter of the two Parties signs the Agreement and the date on which Contractor may begin to take actions and incur costs in preparation to provide Collection, Processing, and Disposal services required by this Agreement.

**Electronic Waste**

"Electronic Waste" (E-Waste) means discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPU's), laptop computers, external computer hard drives, computer keyboards, computer mice, computer printers, DVD and VCR players.

1   **Environmental Laws**

2   “Environmental Laws” means all federal and state statutes, County, local and Town  
3   ordinances concerning public health, safety and the environment including, by way of  
4   example and not limitation, the Act, the Comprehensive Environmental Response,  
5   Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation  
6   and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.;  
7   the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and  
8   Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California  
9   Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act,  
10   California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality  
11   Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic  
12   Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force  
13   or as hereafter amended, and all rules and regulations promulgated there under.

14   **Extra Services**

15   “Extra Services” means services provided by Contractor beyond the standard subscribed  
16   services to customers.

17   **Facility/Facilities**

18   “Facility/Facilities” means any plant or site, owned or leased and maintained, operated or  
19   used by Contractor or the Town for purposes of performing Contractor’s obligations  
20   under this Agreement.

21   **Fiscal Year**

22   “Fiscal Year” means the same as calendar year (January 1 through December 31).

23   **Franchise**

24   “Franchise” means the special right granted by the Town for the Collection of Solid Waste,  
25   Recyclable Materials, and Yard Waste within the Service Area, the transportation of such  
26   material to appropriate places of processing, Recycling, Composting and/or Disposal, and  
27   the Processing of Recyclable Materials.

28   **Franchise Fee**

29   “Franchise Fee” means the fee paid by Contractor to the Town for the right to hold the  
30   franchise granted by this Agreement.

31   **Franchised Services**

32   “Franchised Services” means the Collection of Solid Waste, Recyclable Materials and Yard  
33   Waste within the Service Area, the transportation of such material to appropriate places of  
34   processing, Recycling, Composting, and/or Disposal and the Processing of Recyclable  
35   Materials and Yard Waste.

1

2 **Full Regulatory Compliance**

3 “Full Regulatory Compliance” means compliance with all applicable permits for a Facility  
4 such that the Contractor will at all time maintain the ability to fully comply with its  
5 obligations under this Agreement.

6 **Garbage**

7 “Garbage” means putrescible animal, fish, food, fowl, fruit or vegetable matter, or any  
8 form thereof, resulting from the preparation, storage, handling, or consumption of such  
9 substances.

10 **Generator**

11 “Generator” means any person as defined by the Public Resources Code, whose act or  
12 process produced Solid Waste, Recyclable Materials, or Yard Waste as defined in the  
13 Public Resources Code, or whose act first causes Solid Waste to become subject to  
14 regulation.

15 **Gross Revenues**

16 “Gross Revenues” means any and all revenue or compensation in any form to Contractor  
17 or other Affiliates of Contractor, for services performed pursuant to this Agreement,  
18 determined in accordance with Generally Accepted Accounting Principles, including, but  
19 not limited to, service recipient fees for Collection of Solid Waste, Recyclable Materials and  
20 Yard Waste within the Service Area, the transportation of such material to appropriate  
21 places of processing, Recycling, Composting, and/or Disposal and the Processing of  
22 Recyclable Materials and Yard Waste without subtracting Franchise Fees or any other cost  
23 of doing business.

24 **Gross Revenues Collected**

25 “Gross Revenues Collected” shall mean cash receipts collected by the Contractor for the  
26 Collection of Solid Waste, Recyclable Materials, and Yard Waste within the Service Area,  
27 the transportation of such material to appropriate places of processing, Recycling,  
28 Composting and/or Disposal, and the Processing of Recyclable Materials, without  
29 subtracting Franchise Fees or any other cost of doing business, except for any Town  
30 surcharges.

31 **Hazardous Substance**

32 “Hazardous Substance” shall mean any of the following: (a) any substances defined,  
33 regulated or listed (directly or by reference) as “Hazardous Substances”, “hazardous  
34 materials”, “Hazardous Wastes”, “toxic waste”, “pollutant” or “toxic substances” or  
35 similarly identified as hazardous to human health or the environment, in or pursuant to (i)  
36 the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42  
37 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC  
38 §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv)  
39 the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-

25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

#### **Hazardous Waste**

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated there under.

#### **Household Hazardous Waste**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Premises within the Service Area.

#### **Materials Recovery Facility (MRF)**

"Materials Recovery Facility" means a permitted Facility where Solid Waste, Recyclable Materials, or Yard Waste are sorted or separated for the purposes recovering reusable or Recyclable Materials.

#### **Missed Pick-up**

"Missed Pick-up" means failure of Contractor to pick up Solid Waste, Recyclable Materials, and/or Yard Waste that has been set out by the customer at the time, at the weight, in the volume, in the proper container, with the lawful contents in accordance with this Agreement, and at the prescribed level of service, as mutually agreed upon by the customer and Contractor.

#### **Multi-Family Residential Complex**

"Multi-Family Residential Complex" means any residential Premises, other than a Single Family Dwelling, used for residential purposes. Such Premises normally have centralized Solid Waste and Recyclable Materials Collection service for all units in the building and are billed as one address.

#### **Occupant**

"Occupant" means the Person who occupies a Premises.

#### **Other Fees**

"Other Fees" means fees paid by the Contractor at the direction of the Town, including but not limited to, a Vehicle Impact Fee.

1   **Owner (Ownership)**

2   “Owner” means the Person holding the legal title to the real property constituting the  
3   Premises to which Solid Waste, Recyclable Materials and Yard Waste Collection service is  
4   to be provided under this Agreement.

5   **Party (Parties)**

6   “Party” refers to the Town and Contractor, individually or together (Parties).

7   **Pass-Through Costs**

8   “Pass-Through Costs” means a cost to which no element of overhead, administrative  
9   expense, profit, or other cost is added nor with respect to which any other amount is  
10   credited, such that the specific amount of such cost is included without modification in the  
11   calculations or reports to which such costs pertain.

12   **Person**

13   “Person” means any individual, firm, association, organization, partnership, corporation,  
14   business trust, joint venture, the United States, the State of California, the County of Butte,  
15   towns, cities, or special purpose districts.

16   **Premises**

17   “Premises” means any land, or building in Service Area where Solid Waste, Recyclable  
18   Materials or Yard Waste is generated or accumulated.

19   **Processing**

20   “Processing” means to prepare, treat, or convert through some special method.

21   **Processing Facility (site)**

22   “Processing Facility” means a permitted Facility where Yard Waste or Recyclable  
23   Materials are processed for reuse, recycling, composting, mulching, transformation or  
24   purpose other than Disposal.

25   **Rates**

26   “Rates” means the unit to be charged customers by Contractor for providing the Collection  
27   of Solid Waste, Recyclable Materials, and Yard Waste within the Service Area, the  
28   transportation of such material to appropriate places of processing, Recycling, Composting  
29   and/or Disposal, and the Processing of Recyclable Materials. Rates may be adjusted time  
30   to time in accordance to this Agreement.

31   **Rate Year**

32   “Rate Year” means the twelve month period, commencing January 1, of one year and  
33   concluding December 31 of the same year, for which Contractor compensation is  
34   calculated.



## **Recyclable Materials**

“Recyclable Materials” means discarded materials that are re-used, remanufactured or processed. Materials shall include, but not be limited to: Metal Items - Aluminum cans, tin & steel cans, clean aluminum foil, empty aerosol cans, small scrap metal items, pots, pans & utensils, loose lids from jars;; Plastic Bottles - narrow neck (#1-#7), CRV containers, all colors – lids/caps removed, rinsed and empty; Glass – all beverage & food containers, all colors – lids / caps removed, rinsed and empty; and Mixed Paper – newspaper, magazines, catalogs & gloss paper, brown paper bags, paper packaging, egg cartons, milk and juice cartons, carbonless paper, office paper (all colors), phone books & soft cover books, envelopes, junk mail, shredded paper in clear bags, box board and cardboard.

## **Recycling**

“Recycling” means the process of collecting, sorting, cleansing, treating and reconstituting discarded materials which meet the quality standards necessary to be re-used, remanufactured or processed. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

## **Related Party Entity**

“Related Party Entity” means any Affiliate which has financial transactions with Contractor pertaining to this Agreement.

## **Residential**

“Residential” shall mean of, from, or pertaining to a Single-Family or Multi-Family Dwellings and Premises including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

## **Residential Property**

“Residential Property” means property used for residential purposes.

## **Rubbish**

“Rubbish” means all waste wood, wood products, printed materials, paper, paste board, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Garbage, Hazardous Substance, Yard Waste or Recyclable Materials, and such materials defined as “rubbish” by applicable local ordinances in existence as of the Effective Date of this Agreement.

## **Service Area**

“Service Area” means that territory within the Town of Paradise with respect to which the Town exercises franchising authority for the Collection of Solid Waste, Recyclable Materials and Yard, the transportation of such material to appropriate places of processing, Recycling, Composting, and/or Disposal and the Processing of Recyclable Materials and Yard Waste which territory is shown on a map on file in the office of the Town Administrator, to which reference is hereby made for the description of said area.

1    **Service Suspension**

2    “Service Suspension” means an option for a residential customer to elect to stop service for  
3    an extended period of time due to Premises being vacant. Absent period must be greater  
4    than four (4) weeks and may only occur two times per year.

5    **Single Family Dwellings**

6    “Single Family Dwellings” means each Premises used for or designated as a single family  
7    residential dwelling, including each unit of a duplex, triplex or townhouse condominium  
8    in all cases in which there is separate or individual Solid Waste, Recyclable Materials, and  
9    Yard Waste Collection are provided separately to each dwelling unit.

10   **Solid Waste**

11   “Solid Waste” means all putrescible and non-putrescible solid, semisolid, and liquid  
12   wastes, as defined in California Public Resources Code §40191, as that section may be  
13   amended from time to time. For the purposes of this Agreement, “Solid Waste” does not  
14   include abandoned vehicles and parts thereof, Hazardous Waste or low-level radioactive  
15   waste, medical waste, Recyclable Materials, or Yard Waste.

16   **Solid Waste Committee**

17   “Solid Waste Committee” means two Town council members and the Town Manager or his/her  
18   designee.

19   **Source Separate**

20   “Source Separate” means to have the generator segregate from Solid Waste material which  
21   otherwise would become Solid Waste, such as Recyclable Materials or Yard Waste, for the  
22   sole purpose of reuse, Recycling, or composting, to be collected by Contractor or others.

23   **Term**

24   “Term” means the time period of this Agreement.

25   **Town**

26   “Town” means the Town of Paradise a municipal corporation of the State of California,  
27   and all the territory lying within the municipal boundaries of the Town as presently  
28   existing or as such boundaries may be modified, named a party to this Agreement.

29   **Town Administrator**

30   “Town Administrator” means the Town Manager or his or her designee.

31   **Transfer Station**

32   “Transfer Station” means a Facility primarily used for the purpose of transferring Solid  
33   Waste from collection vehicles to transfer vehicles (but which may include recovery  
34   attributes) to more efficiently transport said Solid Waste to its ultimate Disposal Site.

1   **Universal Waste**

2   “Universal Waste” means Universal Waste as defined in California Code of Regulations  
3   Title 22, Division 4.5, Ch 11, Article 1, §66261.9. Included in the definition are, but are not  
4   limited to, common household batteries, fluorescent tubes and bulbs and other mercury-  
5   containing lamps, thermostats, electronic devises, electrical switches and relays, pilot light  
6   sensors, mercury gauges, mercury-added novelties, mercury thermostats and non-empty  
7   aerosol cans that contained hazardous materials.

8   **Vehicle Impact Fee**

9   “Vehicle Impact Fee” means the fee paid by the Contractor to reimburse the Town for  
10   street maintenance costs incurred because of Collection vehicles traveling on Service Area  
11   streets.

12   **Waste Generator**

13   “Waste Generator” means any Person, whose act or process produced Solid Waste, or  
14   whose act first causes Solid Waste to become subject to regulation.

15   **Yard Waste**

16   “Yard Waste” means a subset of organic Recyclable Materials consisting of grass cuttings,  
17   weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees (not  
18   more than six (6) inches in diameter) and four (4) feet in length, and similar materials  
19   generated at Premises within the Service Area, separated and set out for Collection,  
20   processing, and Recycling. Yard Waste does not include materials not normally produced  
21   from farms, gardens or landscapes, such as, but not limited to, brick, rock, gravel, large  
22   quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood or  
23   wood products. Diseased plants and trees are also excluded from Yard Waste.  
24

**EXHIBIT B**

**Town Facilities /  
Special Events**

## Exhibit B

### TOWN FACILITIES / SPECIAL EVENTS

Town of Paradise Facilities/ Locations and Service Levels		
Facility	Location	Service Level
Fire Station No. 1	767 Birch Street	2-yd Container & Recycling bin
Fire Station No. 2	5545 South Liberty Road	2-yd Container
Fire Station No. 3	1250 Wagstaff Road; or at CDF facility - Forest Service Road	2-yd Container
Police Station	5595 Black Olive Drive	2-yd Container & Recycling bin
Town Hall	5555 Skyway	2-yd Container & Recycling bin
Paradise Animal Shelter	925 American Way	2-yd Container
Town Public Works Yard	925 American Way	2-yd Container
Paradise Community Park	NE corner of Black Olive Drive & Pearson Road intersection	Roll Carts and/or Fixed Small Containers
Paradise Memorial Trailway	Locations (3 or 4) along trailway (near public road intersections)	Roll Carts and/or Fixed Small Containers
Bus Stop	Skyway in front of Town Hall building	Roll Carts and/or Fixed Small Containers
Bus Stop	Skyway in front of Terry Ashe Recreation Center, 6626 Skyway	Roll Carts and/or Fixed Small Containers
Bus Stop	Skyway in front of Les Schwab Tire Store	Roll Carts and/or Fixed Small Containers
Bus Stop	Clark Road in front of Paradise Plaza shopping center	Roll Carts and/or Fixed Small Containers
Bus Stop	Butte Community Bank near Clark Road & Wagstaff Road intersection	Roll Carts and/or Fixed Small Containers

### Special Events

Johnny Appleseed Days  
 Gold Nugget Days  
 Chocolate Festival  
 4th of July

## **EXHIBIT C**

### **Contractor Public Education Plan**

(Included in Exhibit H)

**EXHIBIT D**

**Payments to Town**

## EXHIBIT D

### PAYMENTS BY CONTRATOR

#### 1. Franchise Fees

Contractor shall pay a monthly Franchise Fee using the following %'s:

Town of Paradise	7%
------------------	----

#### 2. Vehicle Impact Fees

Contractor shall pay a monthly Vehicle Impact Fee as follows:

Town of Paradise	\$ 0
------------------	------



**EXHIBIT E**

**Rate Adjustment  
Methodology**

# **Exhibit E**

## **RATE ADJUSTMENT METHODOLOGY**

### **General**

The Solid Waste Collection Rate Schedule set forth in Section 6.02 shall be adjusted as of January 1, 2008 and annually thereafter to reflect changes in the California Statewide, Consumer Price Index, All Items, 1982-1984 = 100 for all Urban Consumers (CPI-U), compiled and published by the United States Department of Labor, Bureau of Labor Statistics.

The annual adjustment to the rates will be based on 75-percent of the percentage change in the CPI for July of the current year as compared to July of the prior year (the Rate Adjustment Factor), applied to the then current rates, net of any surcharges or other expenses not related to the Contractor's final negotiated revenue requirement. In addition, this adjustment shall not apply to Solid Waste Disposal fees (Landfill Tip Fees) which are not regulated by the Contractor or Affiliate of the Contractor but shall apply to any such fees which are regulated by the Contractor or Affiliate of the Contractor. Any Landfill Tip Fees that are not regulated by the Contractor or Affiliate of the Contractor shall be adjusted in proportion to any changes in said fees, if and when such changes occur. No other adjustment to this portion of the rates will occur.

Figure 1 documents that portion of the Residential, Commercial and Debris Box Collection Revenue requirements that shall be subject to a proportional adjustment (Proportionally Adjusted Revenue Requirements) and that portion which shall be subject to the CPI adjustment (CPI Adjusted Revenue Requirements).

Figure 2 provides an example of the CPI 75% Rate Adjustment Factor calculation. Figure 3 provides an example calculation of the Overall Rate Adjustment Factor for the Residential and Commercial Solid Waste Collection rates using the CPI 75% Rate Adjustment Factor calculated in Figure 2 and illustrates how this Overall Rate Adjustment Factor would be applied to the existing rates to generate the new adjusted rates. Figure 4 provides a similar example calculation for the Debris Box rates.

The "Revenue Requirements" and "Percent of Total Expenses" used to calculate the Overall Rate Adjustment Factor for the Residential, Commercial and Debris Box Collection rates shall be adjusted on an annual basis in proportion to the Overall Rate Adjustment Factor as shown in Figures 2 and 3. These adjusted Revenue Requirements and Percent of Total Expenses will form the basis for calculating the rate adjustment for the following year.

### **Request for Rate Adjustment Requirements**

In submitting its Request for Rate Adjustment for the Solid Waste Collection Rate Schedule the Contractor is required to provide the following information no later than September 1 of the current year:

- Documentation of the CPI for the period ending July of the current year and beginning July of the prior year.
- The CPI 75% Rate Adjustment Factor calculation consistent with the example shown in Figure 2.
- The calculation used to determine the Overall Rate Adjustment Factor consistent with the examples in Figures 3 and 4.
- Copies of the current Residential, Commercial and Debris Box Collection Rate Schedule.

**Figure 1**  
**RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION REVENUE REQUIREMENTS**

	Proposal Form	Solid Waste Disposal Fees	Total Proportionally Adjusted Revenue Requirement	All Other Fees	Total CPI Adjustment Revenue Requirement	Total Revenue Requirement
Residential Solid Waste Collection	5 Rev_Req	\$ 237,000	\$ 237,000	\$ 1,020,692	\$ 1,020,692	\$ 1,257,692
Residential Recycling Collection	5 Rev_Req		-	535,084	535,084	\$ 535,084
Residential Yard Waste Collection	5 Rev_Req		-	909,193	909,193	\$ 909,193
Commercial Solid Waste Collection	5 Rev_Req	124,800	124,800	380,233	380,233	\$ 505,033
Commercial Recycling Collection	5 Rev_Req		-	158,179	158,179	\$ 158,179
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		\$ 361,800	\$ 361,800	\$ 3,003,381	\$ 3,003,381	\$ 3,365,181
% of Total Revenue Requirement			10.8%		89.2%	100.0%

**DEBRIS BOX REVENUE REQUIREMENT**

	Proposal Form	Solid Waste Disposal Fees	Total Proportionally Adjusted Revenue Requirement	All Other Fees	Total CPI Adjustment Revenue Requirement	Total Revenue Requirement
Debris Box Solid Waste	5 Rev_Req	\$ 92,700	\$ 92,700	\$ 255,695	\$ 255,695	\$ 348,395
Construction/Demolition Debris Recovery Program	5 Rev_Req	-	-	-	-	-
		<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
		\$ 92,700	\$ 92,700	\$ 255,695	\$ 255,695	\$ 348,395
% of Total Revenue Requirement			26.6%		73.4%	100.0%

**Figure 2**  
**EXAMPLE RATE ADJUSTMENT CALCULATION**

**Index Point Change**

Current Year CPI (1)	188.4
Minus Prior Year CPI (2)	<u>- 182.4</u>
Equals Index Point Change	6.0

**Percent Change**

Index Point Change	6.0
Divided by Prior Year CPI	6.0 / 182.4
Equals	= 0.033
Multiplied by 75%	0.033 x .75
Equals "RATE ADJUSTMENT FACTOR"	= 0.025

**Rate Adjustment**

Current Monthly Rate	\$15.00
Times (1 + RATE ADJUSTMENT FACTOR)	\$15.00 x (1 + 0.025)
Equals New Rate	= \$15.37

- (1) CPI for July of the current year
- (2) CPI for July of prior year

**Figure 3**  
**EXAMPLE RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION RATE ADJUSTMENT CALCULATIONS**

**Example 1 - No Change in Disposal Fees**

Calculation of Overall Rate Adjustment Factor

Assumptions:

Disposal Tip Fee per Ton	0%
CPI 75% Rate Adjustment Factor	2.5%

Rate Adjustment Percentage Calculation:

	Base Year Expense net of Franchise Fees	Franchise Fees	Base Year Expenses	Percent Adjustment	Adjusted Revenue Requirement for Next Year (1)
Disposal Fees	361,800	27,232	389,032	0.0%	389,032
CPI Adjusted Expenses	2,767,818	208,330	2,976,149	2.5%	3,050,552
Franchise and Other Franchisor Fees					
	3,129,618	235,563	3,365,181		3,439,585

OVERALL RATE ADJUSTMENT FACTOR

2.2%

Adjustment of Rates Using Overall Rate Adjustment Factor

	Total Existing Rate	Overall Rate Adjustment Factor	New Adjusted Rate
32 - Gallon Cart with Recycling and Yard Waste	\$ 20.00	2.2%	\$ 20.44

Notes:

- (1) Revenue Requirement and Percent of Total Expense to be adjusted each year in proportion to Rate Adjustment Factor  
 (2) Franchise Fees adjustment reflects the additional fees due on the CPI Adjusted Expenses.

**Figure 3 (continued)**  
**EXAMPLE RESIDENTIAL AND COMMERCIAL SOLID WASTE COLLECTION RATE ADJUSTMENT CALCULATIONS**

**Example 1 - Change in Disposal Fees**

Calculation of Overall Rate Adjustment Factor

Assumptions:

Disposal Tip Fee per Ton % Change	10%
CPI 75% Rate Adjustment Factor	2.5%

Rate Adjustment Percentage Calculation:

	Base Year Expense net of Franchise Fees	Franchise Fees	Base Year Expenses	Percent Adjustment	Adjusted Revenue Requirement for Next Year (1)
Disposal Fees	361,800	27,232	389,032	10.0%	427,935
CPI Adjusted Expenses	2,767,818	208,330	2,976,149	2.5%	3,050,552
Franchise and Other Franchisor Fees					
	3,129,618	235,563	3,365,181		3,478,488

OVERALL RATE ADJUSTMENT FACTOR

3.4%

Adjustment of Rates Using Overall Rate Adjustment Factor

	Total Existing Rate	Overall Rate Adjustment Factor	New Adjusted Rate
32 - Gallon Cart with Recycling and Yard Waste	\$ 20.00	3.4%	\$ 20.67

Notes:

(1) Revenue Requirement and Percent of Total Expense to be adjusted each year in proportion to Rate Adjustment Factor

**Figure 4**  
**EXAMPLE DEBRIS BOX RATE ADJUSTMENT CALCULATIONS**

**Example 1 - No Change in Disposal Fees**

Calculation of Overall Rate Adjustment Factor

Assumptions:

Disposal Tip Fee per Ton	\$ 30.00	Rate used in proposal	\$ 30.00
CPI 75% Rate Adjustment Factor	2.5%		

Rate Adjustment Percentage Calculation:

	Base Year Expense net of Franchise Fees	Franchise Fees	Base Year Expenses	Percent Adjustment	Adjusted Revenue Requirement for Next Year (1)
Disposal Fees	92,700	6,977	99,677	0%	99,677
CPI Adjusted Expenses	231,307	17,410	248,718	2.5%	254,936
	324,007	24,388	348,395		354,613

Adjustment of Rates

	Existing Haul Charge including Franchise Fees	Percent Adjustment	New Adjusted Haul Charge	Existing Disposal Charge per Ton including Franchise Fees	Percent Adjustment	New Disposal Charge per Ton
20 Yard Box	\$ 175.82	2.5%	\$ 180.22	\$ 32.26	0%	\$ 32.26

Notes:

(1) Revenue Requirement and Percent of Total Expense to be adjusted each year in proportion to Rate Adjustment Factor



**Figure 4 (continued)**  
**EXAMPLE DEBRIS BOX RATE ADJUSTMENT CALCULATIONS**

**Example 1 - No Change in Disposal Fees**

Calculation of Overall Rate Adjustment Factor

Assumptions:

Disposal Tip Fee per Ton at Neal Rd Landfill	\$	35.00	Rate used in proposal	\$	30.00
CPI 75% Rate Adjustment Factor		2.5%			

Rate Adjustment Percentage Calculation:

	Base Year Expense net of Franchise Fees	Franchise Fees	Base Year Expenses	Percent Adjustment	Adjusted Revenue Requirement for Next Year	(1)
Disposal Fees	92,700	6,977	99,677	17%	116,290	
CPI Adjusted Expenses	231,307	17,410	248,718	2.5%	254,936	
	324,007	24,388	348,395		371,226	
Estimated Tons	3,090					

Adjustment of Rates

	Existing Haul Charge including Franchise Fees	Percent Adjustment	New Adjusted Haul Charge	Existing Disposal Charge per Ton including Franchise Fees	Percent Adjustment	New Disposal Charge per Ton
20 Yard Box	\$ 175.82	2.5%	\$ 180.22	\$ 32.26	17%	\$ 37.63

Notes:

(1) Revenue Requirement and Percent of Total Expense to be adjusted each year in proportion to Rate Adjustment Factor

**EXHIBIT F**

**Solid Waste Collection  
Rate Schedule**

## **Town of Paradise**

### **Solid Waste Collection Rates**

*Effective May 1, 2007*

#### **Residential (includes solid waste, recycling and yard waste)**

35-gallon – Senior*	\$ 17.50
35-gallon	\$ 20.00
65-gallon	\$ 26.00
95-gallon	\$ 29.00

\* Available only to residents receiving a senior discount rate as of November 1, 2006.

#### **Commercial carts**

35-gallon	\$ 20.00
65-gallon	\$ 27.30
95-gallon	\$ 37.09

#### **Commercial – 1 Yard**

1 p/u per week	\$ 65.49
2 p/u per week	\$ 99.07
3 p/u per week	\$132.63
4 p/u per week	\$166.54
5 p/u per week	\$199.75
6 p/u per week	\$233.40

#### **Commercial – 1.5 Yards**

1 p/u per week	\$ 78.74
2 p/u per week	\$121.70
3 p/u per week	\$155.86
4 p/u per week	\$201.18
5 p/u per week	\$238.56
6 p/u per week	\$271.28

#### **Commercial – 2 Yards**

1 p/u per week	\$ 89.09
2 p/u per week	\$148.59
3 p/u per week	\$197.66
4 p/u per week	\$240.88
5 p/u per week	\$287.63
6 p/u per week	\$339.04

#### **Commercial – 3 Yards**

1 p/u per week	\$110.00
2 p/u per week	\$180.46
3 p/u per week	\$251.26
4 p/u per week	\$327.33
5 p/u per week	\$384.81
6 p/u per week	\$451.98

## **Town of Paradise**

### **Solid Waste Collection Rates**

*Effective May 1, 2007*

#### **Commercial – 4 Yards**

1 p/u per week	\$135.71
2 p/u per week	\$226.83
3 p/u per week	\$315.63
4 p/u per week	\$410.52
5 p/u per week	\$501.97
6 p/u per week	\$593.29

#### **Commercial – 6 Yards**

1 p/u per week	\$159.03
2 p/u per week	\$289.86
3 p/u per week	\$414.84
4 p/u per week	\$533.96
5 p/u per week	\$653.09
6 p/u per week	\$778.08

#### **Insta-bins**

4 yards	\$ 95.00
6 yards	\$120.00

All commercial customers will be charged an additional \$12.00 per month to support the Town's Vegetative Waste Facility.

**Debris Box – Haul Charge Only. Disposal will be added based upon the current tip fee at Neal Road Landfill.**

#### **Loose:**

10 cubic yards	\$178.08/per pull
20 cubic yards	\$178.08/per pull
30 cubic yards	\$178.08/per pull
40 cubic yards	\$178.08/per pull

#### **Compactor:**

10 cubic yards	\$210.00/per pull
20 cubic yards	\$210.00/per pull
30 cubic yards	\$210.00/per pull
40 cubic yards	\$210.00/per pull

## Town of Paradise

### Solid Waste Collection Rates

*Effective May 1, 2007*

#### Special Charges

Extra Pulls	\$ 20.00 /Cubic Yard/Pull
Lock Service	\$ 5.00 /lock/month
Pushout Charge	\$ 5.00 /25 feet/month
Container Cleaning	\$ 40.00 /cleaning
Weight Surcharge (Solid waste containers exceeding 300lbs per cubic yard)	\$ 33.00 /ton
Cart Replacement (in addition to one per year at no additional cost)	\$ 50.00 /replacement
Roll Off and Insta bin rental after 5th day	\$ 5.00 /day
Additional Yard Waste Cart( first 2 free)	\$ 5.00 /month
Footage Charge	
5 to 100 feet	\$ 14.00 /month
101 to 300 feet	\$ 18.00 /month
301 to 500 feet	\$ 22.00 /month
501 to 700 feet	\$ 26.00 /month
701 to 999 feet	\$ 28.00 /month
1000 to 1999 feet	\$ 30.00 /month
Over 2000	\$ 40.00 /month

**EXHIBIT G**

**Notary Certification**

NOTARY CERTIFICATION

STATE OF CALIFORNIA

COUNTY OF \_\_\_\_\_ ss:

On \_\_\_\_\_, \_\_\_\_\_, before me, the undersigned, a Notary Public in and for the State of California, Personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT H**

**Contractor's Proposal**



## **FIRST AMENDMENT TO THE FRANCHISE AGREEMENT**

This First Amendment to the Franchise Agreement dated January 18, 2007 between the Town of Paradise (Town) and Northern Recycling and Waste Services LLC (Contractor) is made on August 28, 2007.

**WHEREAS**, on January 18, 2007, the Town and Contractor entered into an agreement for solid waste, recyclable materials, and yard waste collection processing and disposal services; and

**WHEREAS**, section 6.02 and Exhibit F of the Agreement need to be amended to reflect the intent that "pass-through costs", as defined in the Agreement, may be included in the Contractor's billings on the effective date of an increase in such pass-through costs.

**NOW, THEREFORE**, the Town and Contractor agree to amend the Agreement as follows:

1. Section 6.02 of the Agreement shall be amended to read:

**"Solid Waste, Recyclable Materials and Yard Waste.** Contractor's maximum rates for the initial eight (8) months of this Agreement (i.e., from May 1, 2007 to December 31, 2007) shall be based on the "Solid Waste Collection Rate Schedule" provided in Exhibit F except for increases relating to pass-through costs. The revenue from such rates properly charged shall be the complete compensation due Contractor for the services performed by the Contractor in accordance with this Agreement. Estimated Contractor Compensation for the first rate period is \$2,475,717 (8/12 of \$3,713,576) based upon Contractor's proposal."

2. Exhibit F of the Agreement shall be amended by the addition of the following:

"On the effective date of pass-through costs, as defined in this Agreement, Contractor may add such costs to its billings."

3. Any conflicts between this First Amendment and the Agreement shall be controlled by this First Amendment.
4. All other provisions of the Agreement shall remain in full force and effect.

This First Amendment shall be effective on August 28,, 2007.

Town of Paradise

Northern Recycling & Waste  
Services, LLC

By: 

Charles L. Rough, Jr.  
Town Manager

By: 

Greg Kelley

ATTEST:

By: 

Joanna Gutierrez  
Town Clerk

APPROVED AS TO FORM:

By: 

Dwight L. Moore  
Town Attorney

EXHIBIT F

Solid Waste Collection  
Rate Schedule

**Town of Paradise**

**Solid Waste Collection Rates**

*Effective May 1, 2007*

**Residential (includes solid waste, recycling and yard waste)**

35-gallon – Senior*	\$ 17.50
35-gallon	\$ 20.00
65-gallon	\$ 26.00
95-gallon	\$ 29.00
Mobile Home Space	\$ 9.02

\* Available only to residents receiving a senior discount rate as of November 1, 2006.

**Commercial carts**

35-gallon	\$ 20.00
65-gallon	\$ 27.30
95-gallon	\$ 37.09

**Commercial – 1 Yard**

1 p/u per week	\$ 65.49
2 p/u per week	\$ 99.07
3 p/u per week	\$132.63
4 p/u per week	\$166.54
5 p/u per week	\$199.75
6 p/u per week	\$233.40

**Commercial – 1.5 Yards**

1 p/u per week	\$ 78.74
2 p/u per week	\$121.70
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3 p/u per week	\$251.26
4 p/u per week	\$327.33
5 p/u per week	\$384.81
6 p/u per week	\$451.98

- NOTE: "On the effective date of pass-through costs, as defined in this Agreement, Contractor may add such costs to its billings."

## Town of Paradise

### Solid Waste Collection Rates

*Effective May 1, 2007*

#### **Commercial – 4 Yards**

1 p/u per week	\$135.71
2 p/u per week	\$226.83
3 p/u per week	\$315.63
4 p/u per week	\$410.52
5 p/u per week	\$501.97
6 p/u per week	\$593.29

#### **Commercial – 6 Yards**

1 p/u per week	\$159.03
2 p/u per week	\$289.86
3 p/u per week	\$414.84
4 p/u per week	\$533.96
5 p/u per week	\$653.09
6 p/u per week	\$778.08

#### **Insta-bins**

4 yards	\$ 95.00
6 yards	\$120.00

All commercial customers will be charged an additional \$4.15 per month to support the Town's Vegetative Waste Facility.

**Debris Box – Haul Charge Only.** Disposal will be added based upon the current tip fee at Neal Road Landfill.

#### **Loose:**

10 cubic yards	\$178.08/per pull
20 cubic yards	\$178.08/per pull
30 cubic yards	\$178.08/per pull
40 cubic yards	\$178.08/per pull

#### **Compactor:**

10 cubic yards	\$210.00/per pull
20 cubic yards	\$210.00/per pull
30 cubic yards	\$210.00/per pull
40 cubic yards	\$210.00/per pull

- **NOTE:** "On the effective date of pass-through costs, as defined in this Agreement, Contractor may add such costs to its billings."

## Town of Paradise

### Solid Waste Collection Rates

*Effective May 1, 2007*

#### Special Charges

Extra Pulls	\$ 20.00 /Cubic Yard/Pull
Lock Service	\$ 5.00 /lock/month
Pushout Charge	\$ 5.00 /25 feet/month
Container Cleaning	\$ 40.00 /cleaning
Weight Surcharge (Solid waste containers exceeding 300lbs per cubic yard)	\$ 33.00 /ton
Cart Replacement (in addition to one per year at no additional cost)	\$ 50.00 /replacement
Roll Off and Insta bin rental after 5th day	\$ 5.00 /day
Additional Yard Waste Cart( first 2 free)	\$ 5.00 /month
Footage Charge	
5 to 100 feet	\$ 14.00 /month
101 to 300 feet	\$ 18.00 /month
301 to 500 feet	\$ 22.00 /month
501 to 700 feet	\$ 26.00 /month
701 to 999 feet	\$ 28.00 /month
1000 to 1999 feet	\$ 30.00 /month
Over 2000	\$ 40.00 /month

- NOTE: "On the effective date of pass-through costs, as defined in this Agreement, Contractor may add such costs to its billings."

## SECOND AMENDMENT TO THE FRANCHISE AGREEMENT

This Second Amendment to the Franchise Agreement dated January 18, 2007 between the Town of Paradise (Town) and Northern Recycling and Waste Services LLC (Contractor) is made on April 08, 2008.

**WHEREAS**, on January 18, 2007, the Town and Contractor entered into an agreement for solid waste, recyclable materials, and yard waste collection processing and disposal services; and

**WHEREAS**, section 6.03 and Exhibit E of the Agreement need to be amended to reflect the intent that "subsequent rate year adjustment" and "pass-through costs", as defined in the Agreement, may be included in the Contractor's billings on the same effective date of an increase in such rate adjustment and pass-through costs.

**NOW, THEREFORE**, the Town and Contractor agree to amend the Agreement as follows:

1. Section 6.03 of the Agreement shall be amended to read:

**6.03 Subsequent Rates for Rate Years Two through Four, Rate Years Six through Thirteen.**

**A. General.** For each Rate Year beginning with Rate Year Two (i.e., from July 1, 2008 to June 30, 2009), rates shall be adjusted as described below. For the rate period of January 1, 2008 through June 30, 2008, the rates will not be adjusted, however one-half of 75% of the CPI change for the most recent twelve (12) month period ending December 31 will be added to the rate computation for the period of July 1, 2008 through June 30, 2009. For purposes of this calculation, rates shall be composed of three (3) components: a monthly Collection Rate, a monthly Disposal Rate, and a Franchise Fee.

**B. Monthly Collection Rate Adjustment.** The monthly Solid Waste Collection Rate, monthly Recycling Collection Rate, and monthly Yard Waste Collection Rate shall be adjusted upward or downward to reflect seventy-five percent (75%) of the change in the "California Statewide, Consumer Price Index, All Items, 1982-84 = 100 for All Urban Consumers (CPI-U);" for the most recent twelve (12) month period ending February, as published by the U.S. Department of Labor, Bureau of Labor Statistics. No monthly Collection Rate increase shall exceed five percent (5%) per annum.

- C. **Monthly Disposal Rate Adjustment.** The monthly Disposal Rate shall be adjusted based upon the percentage change in the gate rate at the Designated Disposal Site.
- D. **Franchise and Other Fee Adjustment.** The Franchise Fee component shall be calculated by adding the monthly Collection Rate and the monthly Disposal Rate (as calculated in Section 6.03.C above) and multiplying the resulting total by 0.0753. The Other Fee component is composed of charges for the Vehicle Impact Fee and other miscellaneous fees, as determined by the Franchisors, individually or collectively.
- E. **Contractor's Application.** By **April 10**, of each year, the Contractor shall submit a Request for Adjustment to Rates for the Solid Waste Collection Rate Schedule. This request shall be prepared in accordance with the procedures and submitted in a form as described in Exhibit E.
- F. **Determination of Adjustment to Rates.** The Franchisors, or their representative, will review the Contractor's Request for Adjustment to Rates for compliance with this Agreement, accuracy, and reasonableness. The Franchisors shall use its best efforts to make the adjustment effective by the anniversary of the **Commencement Date** of this Agreement. However, the Franchisors shall not make any retroactive adjustments to compensate for any delay in calculating the adjustment to rates which results from the failure of the Contractor to submit its request by **April 10**, of each year and/or respond promptly and completely to requests of the Franchisors for information related to any of the calculations required by this Section or from appeals of the determination to the Franchisors which extends the process of determination. The revenue from such rates properly charged shall be the complete compensation due Contractor for the services performed by the Contractor in accordance with this Agreement.

2. Exhibit E of the Agreement shall be amended to read as follows:



## EXHIBIT E

### RATE ADJUSTMENT METHODOLOGY

#### General

The Solid Waste Collection Rate Schedule set forth in Section 6.02 shall be adjusted as of **July 1, 2009** and annually thereafter to reflect changes in the California Statewide, Consumer Price Index, All Items, 1982-1984 = 100 for all Urban Consumers (CPI-U), compiled and published by the United States Department of Labor, Bureau of Labor Statistics.

The annual adjustment to the rates will be based on 75-percent of the percentage change in the CPI for **February** of the current year as compared to **February** of the prior year (the Rate Adjustment Factor), applied to the then current rates, net of any surcharges or other expenses not related to the Contractor's final negotiated revenue requirement. In addition, this adjustment shall not apply to Solid Waste Disposal fees (Landfill Tip Fees) which are not regulated by the Contractor or Affiliate of the Contractor but shall apply to any such fees which are regulated by the Contractor or Affiliate of the Contractor. Any Landfill Tip Fees that are not regulated by the Contractor or Affiliate of the Contractor shall be adjusted in proportion to any changes in said fees, if and when such changes occur. No other adjustment to this portion of the rates will occur.

Figure 1 documents that portion of the Residential, Commercial and Debris Box Collection Revenue requirements that shall be subject to a proportional adjustment (Proportionally Adjusted Revenue Requirements) and that portion which shall be subject to the CPI adjustment (CPI Adjusted Revenue Requirements).

Figure 2 provides an example of the CPI 75% Rate Adjustment Factor calculation. Figure 3 provides an example calculation of the Overall Rate Adjustment Factor for the Residential and Commercial Solid Waste Collection rates using the CPI 75% Rate Adjustment Factor calculated in Figure 2 and illustrates how this Overall Rate Adjustment Factor would be applied to the existing rates to generate the new adjusted rates. Figure 4 provides a similar example calculation for the Debris Box rates.

The "Revenue Requirements" and "Percent of Total Expenses" used to calculate the Overall Rate Adjustment Factor for the Residential, Commercial and Debris Box Collection rates shall be adjusted on an annual basis in proportion to the Overall Rate Adjustment Factor as

shown in Figures 2 and 3. These adjusted Revenue Requirements and Percent of Total Expenses will form the basis for calculating the rate adjustment for the following year.

### Request for Rate Adjustment Requirements

In submitting its Request for Rate Adjustment for the Solid Waste Collection Rate Schedule the Contractor is required to provide the following information no later than **April 10** of the current year:

- Documentation of the CPI for the period ending **February** of the current year and beginning **March** of the prior year.
  - The CPI 75% Rate Adjustment Factor calculation consistent with the example shown in Figure 2.
  - The calculation used to determine the Overall Rate Adjustment Factor consistent with the examples in Figures 3 and 4.
  - Copies of the current Residential, Commercial and Debris Box Collection Rate Schedule.
3. Any conflicts between this Second Amendment and the Agreement shall be controlled by this Second Amendment.
4. All other provisions of the Agreement shall remain in full force and effect.

This Second Amendment shall be effective on April 8, \_\_\_\_\_, 2008.

Town of Paradise

By: \_\_\_\_\_

Charles L. Rough, Jr.  
Town Manager

Northern Recycling & Waste  
Services, LLC

By: \_\_\_\_\_

Greg Kelley

APPROVED AS TO FORM:

By: \_\_\_\_\_

Dwight L. Moore  
Town Attorney

ATTEST:

By: \_\_\_\_\_

Joanna Gutierrez  
Town Clerk