MUNICIPAL SOLID WASTE COLLECTION AGREEMENT

BETWEEN

CITY OF AVENAL, CALIFORNIA

AND

MID-VALLEY DISPOSAL, LLC

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MUNICIPAL SOLID WASTE COLLECTION AGREEMENT

BETWEEN THE

CITY OF AVENAL

AND

MID-VALLEY DISPOSAL, LLC

This Agreement ("**Agreement**") is entered into this first day of February 2024, by and between the City of Avenal ("**City**") and Mid-Valley Disposal, LLC, a California Limited Liability Company ("**Contractor**"), for the collection, transportation and disposal of Solid Waste and for other services as further specified herein in **EXHIBIT A**.

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("**AB-939**"), (California Public Resources Code §§ 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;

WHEREAS, the State of California found and declared that the amount of solid waste generated in California, coupled with diminishing disposal capacity and interest in minimizing potential environmental impacts from landfilling and the need to conserve natural resources, has created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. Through enactment of **AB 939** (1989) and subsequent related legislation including, but not limited to, the Jobs and Recycling Act of 2011 (**AB 341**), the Event and Venue Recycling Act of 2004 (**AB 2176**), the Per Capital Disposal Measurement System Act (**SB 1016**, 2008), the Mandatory Commercial Organics Recycling Act of 2014 (**AB-1826**), and the Short-Lived Climate Pollutants Bill of 2016 (**SB-1383**), the State has directed its responsible State agency, and all local agencies, to promote a reduction in landfill disposal and to maximize the use of feasible waste reduction, reuse, recycling, and composting options in order to reduce the amount of material that must be disposed;

WHEREAS, SB-1383 establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of State-wide organic waste disposal reduction targets;

WHEREAS, SB-1383 Regulations require the City to implement Collection programs, meet Processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements; and, the City of Avenal has chosen to delegate some of its responsibilities to Contractor, acting as the City's designee, through this Agreement;

WHEREAS, pursuant to California Public Resources Code § 40059(a)(2), the City Council has determined that that the public health, safety, and well-being require that an agreement for discarded materials management for single-family, multi-family, and commercial customers be awarded to a qualified solid waste enterprise for the Collection and subsequent transfer, transportation, recycling, processing, and/or disposal of discarded materials;

WHEREAS, the Contractor desires to continue to engage in the business of solid waste collection and related services within the City, and has lawfully conducted such services in the City of Avenal for several years, and delivered a level of service to customers commensurate with the highest industry standards and, therefore, Contractor as of the date of this Agreement is well-qualified to continue providing solid waste collection and related services;

WHEREAS, the City wishes to continue to utilize the Contractor's service to offer solid waste collection and related services to single-family, multi-family, commercial, industrial and institutional waste generators within the City of Avenal, and the previous agreement and amendments between City and Contractor will, thereby be updated and superseded;

WHEREAS, the Contractor has expressed a need for a longer than usual term for this Agreement in order to obtain more favorable financing terms for the acquisition of equipment and facilities needed to implement SB-1383 requirements and services, and in order for the City to continue to benefit from solid waste collection services overseen by the Contractor's existing leadership the City is amenable to accommodating such one-time request for this Agreement;

WHEREAS, in consideration of a long-term agreement, Contractor has agreed to waive and release the City from all prior claims related to the previous agreement; and

WHEREAS, the Avenal City Council declares its intention of ensuring the delivery of adequate solid waste collection and related services while maintaining reasonable fees for the provision of such services within the City.

NOW, THEREFORE, in consideration of the promises above stated and the terms, conditions, covenants, and agreements contained herein, the Parties do hereby agree as follows:

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION 1 - COVENANTS, REPRESENTATIONS AND WARRANTIES

A. Covenants, Representations and Warranties of Contractor

Contractor hereby makes each and all of the following covenants, representations and warranties for the benefit of the City as of the date of this Agreement.

(1) Contractor is duly organized and validly existing as a limited liability company and is in good standing with, and under the laws of, the State of California.

(2) Contractor has full legal right, power and authority to execute, deliver and perform this Agreement, and has duly authorized the execution and delivery of this Agreement.

(3) Each person signing this Agreement on behalf of Contractor has been and is authorized by Contractor to do so, and this Agreement has been duly executed and delivered by Contractor, and constitutes a legal, valid and binding obligation of Contractor, and is enforceable against Contractor in accordance with its terms.

(4) To the best of Contractor's knowledge, there is no action, suit or proceeding before any court or governmental entity against Contractor, or affecting Contractor, wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of Contractor.

(5) Contractor has sufficient financial resources to perform all aspects of its obligations hereunder. There has been no material adverse change in Contractor's or, if applicable, in Contractor's parent company's, financial circumstances since the date of the most recent financial statements or information, submitted to the City or reviewed by the City at the offices of Contractor.

(6) Contractor has the expertise, and professional and technical capability to perform all of its obligations under this Agreement and will maintain such expertise and capability at all times during Contractor’s performance of this Agreement.

(7) Prior to providing any service authorized by this Agreement, Contractor will have provided to the City Manager the security instrument and certificates of insurance required by the Agreement.

(8) Prior to providing any service authorized by this Agreement, Contractor will have provided to the City Manager reasonably acceptable proof that the Contractor has obtained all necessary permits, authorizations and licenses which are required for furnishing such contracted services.

B. Covenants, Representations and Warranties of the City

The City hereby makes the following covenants, representations and warranties to and for the benefit of Contractor as of the date of this Agreement:

(1) The parties executing this Agreement on behalf of the City are duly authorized to do so. This Agreement constitutes the legal, valid and binding Agreement of the City and is enforceable against the City in accordance with its terms.

(2) To the best of the City's knowledge without having conducted any research, there is no action, suit, or proceeding against the City before any court or governmental entity wherein an unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Agreement.

(3) The City shall reasonably, and consistent with its governmental duties, cooperate with Contractor in preserving the confidentiality of Contractor's proprietary information, including trade secret information, and preventing its disclosure. It will be the obligation of Contractor to in writing designate what information it deems to be a trade secret or otherwise in need of protection at the time such information is provided to City. No copies of such proprietary information shall be retained by City as disclosable public records under California law. Such information may include financial information that concerns activities or aspects of the Contractor's business that are unrelated to any work performed for the City, and any other information from which the identity of any account, customer, vendor, buyer, supplier, end user, or other source or transferee of recyclable material may be reasonably ascertained, such as name, address, or other identifying information. Contractor shall defend and indemnify City, elected officials, officers, employees, contractors, consultants, attorneys, agents and volunteers, including for City attorney fees, staff costs, awards and judgments, for any claims brought against City under State law for failure to produce any requested documentation related to Contractor and its business in possession of City.

(4) The City shall use its reasonably best efforts to update and amend applicable provisions of its Municipal Code to the extent the City determines such changes are necessary to conform to this Agreement and to meet its obligations hereunder.

SECTION 2 - DEFINITIONS

Whenever any term used in this Agreement has been defined by Government Code §§ 40100-40201 or in the Municipal Code, the definitions therein, as presently defined, and as they may be amended in the future, shall apply unless the term is defined otherwise in this Agreement. In the event of conflict between the definition found in said statutes, in the Municipal Code and this Agreement, the definition within this Agreement shall be controlling, and the definition within the Municipal Code shall take precedence over any conflicting definition contained within the statutes. The definitions are set forth on the attached and incorporated **EXHIBIT C**.

SECTION 3 - AWARD OF RESIDENTIAL AND COMMERCIAL SOLID WASTE AND RELATED SERVICES

A. Award of Contract

Pursuant to the provisions of the City Code and pursuant to AB-939, and subject to the terms and conditions of this Agreement (including all extensions or renewals), City hereby awards to Contractor the sole and exclusive right and privilege to provide each and all of the solid waste collection and related services described in **EXHIBIT A** (Scope of Services) to this Agreement to all single family units, multifamily units and commercial, industrial and institutional premises within the City, and to use the City streets and roads for such purpose. City shall actively enforce the exclusive rights of Contractor to provide services within Avenal. By this Agreement and subject to its terms, the City grants the broadest form of exclusive solid waste handling contract permissible under applicable laws and its general municipal police powers, including the specific authority given to local agencies by California Public Resources Code § 40059 to determine aspects of solid waste handling which are of local concern. The foregoing reference to Public Resources Code § 40059 includes the relevant appellate case law interpreting that statute.

B. Acceptance of Contract

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives, terminates and hereby releases any right or claim to serve any part of the City under any prior grant of franchise, contract, license or permit issued or granted by any governmental entity.

C. Exceptions to Exclusivity

The foregoing excludes the following:

(1) Self-Haul. Any Solid Waste otherwise within the Scope of this Agreement which is removed and personally transported from any premises by the owner or occupant who generated the solid waste using his or her own equipment thereof for the purpose of lawfully delivering same to a Solid Waste Facility authorized to receive and handle solid waste. The use of a subcontractor by City is not "self-haul" within the meaning of this exception.

(2) Gardeners and Landscapers. The collection, transportation and disposal by a gardener or landscaper of green waste or yard trimmings which are generated as an incidental part of providing gardening, landscaping or landscape maintenance services, provided that the gardener or landscaper is not a hauling service or solid waste enterprise, does not separately or additionally charge for the incidental service of removing, transporting or disposing of the green waste or yard trimmings, and utilizes only his or her own employees and equipment to collect, transport and dispose of same.

(3) Sale or Gift of Recyclable Materials. Source separated Recyclable Materials which are either donated or sold by the generator of the materials to a party other than Contractor. A mere discount or reduction in price of the Contractor's charges for the handling of such materials is not a sale or donation within the meaning of this Agreement. For purposes of this Agreement, materials shall be deemed "solid waste" within the meaning of California Public Resources Code § 40191, and shall be regulated as such, whether or not they may be potentially recyclable, in either of the following instances: (a) when the material is mixed or commingled with other types of solid waste, or (b) where the payment of a fee, charge, or other consideration, in any form or amount, is directly or indirectly solicited or received from the generator by any person or combination of persons in exchange for collection, removal, transportation, storage, processing, handling, consulting, container rental or disposal services ("**fee for service**" recycling), whether or not arranged by or through a subcontractor, broker, agent, consultant, or affiliate of the provider of such service.

(4) State and other Public Agencies Not Within the City's Regulatory Authority. See *City of Santa Ana v. Board of Education* (1976) 255 Cal. App. 2d 178.

SECTION 4 – TERM AND TERMINATION

The initial term of this Agreement shall commence at 12:00 a.m. on February 1, 2024 and expire at 12:00 a.m. on June 30, 2034. Thereafter, beginning on July 1, 2025, and on each July 1 anniversary date thereafter, the term of this Agreement will be extended automatically for one (1) additional year, so as to have a rolling term of ten (10) years. Should either party desire that said automatic renewal and extension provision be terminated, such party shall give the other written notice of nonrenewal between January 1 and June 30 in any year, but not before the year 2025. Any such notice, properly given, shall serve to terminate the automatic one-year renewal and extension provision only, and this Agreement shall remain in effect for the balance of the term then outstanding. In the event that either party exercises its right to terminate the automatic renewal and extension provision under this paragraph, the parties may subsequently reinstate the automatic renewal and extension provision by mutual written agreement. Termination of this Agreement may also occur pursuant to the Section 10 "Failure to Perform and Remedies," hereafter stated in this Agreement.

SECTION 5 - SERVICE AREA

The Service Area granted by this Agreement is the legally established geographic limits of the City, as the same now exist or may hereinafter be revised by annexation or otherwise. Contractor shall perform Solid Waste Handling services pursuant to this Agreement only in such Service Area.

SECTION 6 - SERVICES PROVIDED BY CONTRACTOR

The following minimum operating requirements shall apply to Contractor, except to the extent any operating requirement is specifically eliminated or modified in **EXHIBIT A**:

A. Employees

(1) Each employee or other Person driving Contractor's vehicle shall at all times have a valid California vehicle operator's license appropriate for the vehicle being driven.

(2) All Contractor employees shall wear clean clothing of a uniform type when engaged in collection operations under this Agreement.

(3) Each employee dealing with Customers, including without limit those engaged in collection or billing, shall identify themselves upon request of a Customer and at all times behave in a courteous manner.

(4) Noncompliance with the employee items above are a material breach and subject to the terms of Section 10, Failure to Perform and Remedies.

B. Hours of Collection

Contractor shall not collect Solid Waste within a residential area or within a commercial area which is contiguous to a residential area between the hours of 10:00 P.M. and 5:00 A.M. the next day.

C. Office for Inquiries and Complaints

City shall receive and log customer inquiries and complaints, and transmit any service requests or complaints to Contractor electronically or via other mutually agreed upon method. Contractor shall maintain an office at some fixed place and keep regular business hours and shall maintain a locally listed telephone number. Such listing shall be in the Contractor's name or in the registered fictitious business name under which Contractor provides Solid Waste Handling services to the Area. This Section shall not require the Contractor to maintain an office which is different than or separate from the office for inquiries and complaints maintained by Contractor.

D. Records and Reports

Contractor shall prepare, maintain and provide to the City such records and reports as required in this Agreement, as well as records related to services in this Agreement required under any other applicable law.

E. Requested Service

Contractor shall provide Solid Waste Handling services to all Customers within its approved Service Area who request such service, except when denial or discontinuance of service is specifically authorized by this Agreement. Such service shall commence within seven (7) working (waste collection) days after the Customer's request.

F. Collection Frequency

For health and safety purposes, minimum collection frequency for all Solid Waste Handling Customers shall be once per week, in accordance with § 17331 of Title 14, California Code of Regulations. Contractor shall correct any missed collection of a Customer's Solid Waste within two (2) working (waste collection) days of notice thereof, unless the next regular collection of such waste is scheduled to occur within three (3) working (waste collection) days of such notice.

G. Containers

In addition to any requirement Contractor is subject to under its Health and Safety Permit, each container shall be replaced into its proper place, in a neat and orderly manner; any litter spilled from a container by Contractor's employees while emptying a container must be immediately cleaned up by Contractor's employees prior to leaving. Contractor shall provide a complimentary bin exchange or cleaning to multi-family complexes at least once per calendar year.

H. Noise

In addition to any requirement Contractor is subject to under applicable law, Contractor shall not create any noise in excess of what is reasonable and necessary in providing Solid Waste Handling services to its Customers. Further, Contractor shall actively evaluate and strive to implement noise reduction measures on an ongoing basis, consistent with common industry practice and standards applicable in similar circumstances.

I. Collection Equipment

Contractor shall provide an adequate number of vehicles and equipment to provide the Solid Waste Handling services required under this Agreement. No vehicle shall be used for the collection and transportation of Solid Waste prior to such initial and/or periodic inspection and approval by the Department of Public Health, Division of Environmental Health Services to the extent required under the Contractor's applicable Health and Safety Permit and/or related regulations.

All motor vehicles used by Contractor under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean and in good repair, and shall be uniformly painted. In addition, vehicles must be in compliance with the California Air Resources Board requirements and any other applicable State or federal laws and/or regulations pertaining to the operation of Solid Waste handling equipment.

J. Privacy

Contractor shall strictly observe and protect the rights of privacy of its Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless as part of a legitimate inquiry by a governmental unit, or as authorized by a court of law or by statute, or upon written authorization of the Customer who knowingly and voluntarily waive their reasonable expectation of privacy affirmed herein. 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, or the City, provided that no such analysis shall identify any person or connect any person to any particular waste. In addition,

Contractor shall not market, sell, convey or donate to any Person any list with the name or address of Customers except that Contractor may provide such lists to authorized employees and authorized representatives of the City as necessary to comply with this Agreement. Contractor shall, at all times and consistent with prevailing industry standards, utilize encryption or other security measures reasonably calculated to protect Customer information from unauthorized disclosure.

K. Customer Complaints

Contractor shall respond to customer complaints whether received directly from customers, or by customer through City. Contractor must designate a government liaison Person responsible for working with the City to resolve Customer complaints. The name of the liaison Person and a 24-hour availability telephone number must be provided to the City Manager. Customer complaints must be resolved in accordance with Section 10(B) herein, "Resolution of Customer Complaints."

L. Property Damage

(1) Any physical damage caused by the act or omissions of employees, officers, or agents of the Contractor to private or public property resulting from operations under this Agreement shall be promptly repaired or replaced by Contractor at Contractor's sole expense.

(2) With respect to driving surfaces, Contractor shall be responsible for damage (excluding normal wear and tear), whether or not paved, resulting from the weight of vehicles providing Solid Waste Handling services on public or private property when it can be demonstrated that such damage is the result of the vehicle exceeding speed limits or maximum weight limits set by the City or State of California, or by other negligent or reckless operation of vehicles by Contractor's employees.

M. Gratuities

Contractor shall not, nor shall it permit any of its officers, agents or employees, to request, solicit or demand, either directly or indirectly, any gratuity for services authorized or required under its Agreement.

N. Laws and Licenses

Contractor shall comply with all applicable federal, State, City and/or County laws, ordinances, rules and regulations, as may be amended from time to time, pertaining to the performance of the Solid Waste Handling services provided under this Agreement and shall obtain and maintain in full force and effect all licenses and permits necessary to perform such services throughout the term of this Agreement.

O. Services During Strikes, Lockouts or Other Labor Disturbances

In the event of labor strikes, lockouts or other labor disturbances, Contractor and City agree to cooperate fully in developing and implementing contingency plans for the continued collection and handling of Solid Waste in order to safeguard public health and avert imminent and substantial threats to public health and safety. Without limitation, these cooperation efforts may include prioritizing the collection of Solid Waste from certain businesses in order to control the accumulation of Solid Waste that may lead to more immediate threats to public health such as putrescible waste, sewage sludge and manure or other animal waste.

SECTION 7 - OWNERSHIP OF SOLID WASTE INCLUDING RECYCLABLE MATERIALS

Except as otherwise provided by applicable laws, ownership of Solid Waste shall transfer to Contractor at such time as the Solid Waste is discarded by the Solid Waste Handling service Customer, subject to the terms and conditions of this Agreement. City makes no claim of ownership to the discarded solid waste.

SECTION 8 - WASTE DELIVERY DESIGNATION

City reserves the right to designate the disposal facility or facilities to which Contractor shall deliver Solid Waste generated within City and collected by Contractor pursuant to this Agreement. This designation, when made, shall be subject to the following:

(1) Solid Waste that Contractor determines to be suitable for Processing or green composting may be delivered by Contractor to a Materials Recovery Facility or Designated Source Separated Organic Waste Facility selected by Contractor, if and only if the same does not increase costs to City customers to any degree, and only the Residual Solid Waste resulting from Processing will be subject to the waste delivery designation.

(2) If the City Manager or his/her designee in writing directs Contractor to deliver residual Solid Waste collected pursuant to this Agreement to a Solid Waste Facility which is different from the facility Contractor is then using for the disposal of such waste, or in amounts which are different than the amount that Contractor is currently delivering to that facility, and this direction results in increased operating costs to the Contractor, Contractor shall be entitled to a corresponding fee adjustment to fully compensate Contractor for the increased costs.

SECTION 9 - INDEMNIFICATION AND INSURANCE AND PERFORMANCE BOND

A. Indemnification of City

The Contractor agrees to indemnify, defend (with counsel chosen by City) and hold harmless the City and its authorized elected officials, officers, employees, contractors, consultants, attorneys, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of Contractor's performance of services under this Agreement, except to the extent, if at all, that such liability arises as a result of City's own gross negligence or willful misconduct.

Hazardous Waste Indemnification

Without limiting the generality of the foregoing, if Contractor is alleged to have, or determined to have, or not disputed allegations that it has negligently or willfully acted or failed to act with respect to the collection, handling or transportation of Hazardous Waste, Contractor shall indemnify, defend with counsel chosen by City, protect and hold harmless the City and its respective elected officials, officers, employees, contractors, consultants, attorneys, agents, volunteers, assigns, and any successor or successors harmless from and against all claims, actual damages (including, but not limited to, special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including, but not limited to, attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its respective officers, employees, agents, or contractors arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste as to which Contractor has negligently or willfully acted or failed to act with respect to its collection, handling or transportation at any place where Contractor stores, handles, transports or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity does not extend to liability arising from de minimis amounts of household hazardous waste that Customers may place in solid waste receptacles, and excludes liability arising from City's decision to exercise its waste delivery designation rights under Section 8 of this Agreement. The foregoing indemnity is intended to operate and shall operate as an agreement pursuant to § 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. § 9607(e) and California Health and Safety Code § 25364, to ensure, protect, indemnify, and hold the City harmless from liability. This Section 9A shall survive the termination, lapse or any change in the relationship of the Parties hereto.

B. Insurance Requirements

Insurance Requirements

(1) Commercial General Liability

i. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than five million dollars ($5,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Contractor's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.

ii. Any failure to comply with reporting provisions of the policies by Contractor shall not affect coverage provided to the City pursuant to this Agreement.

iii. Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

iv. Coverage shall contain a waiver of subrogation in favor of the City.

(2) Business Automobile Liability

i. Contractor shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than five million dollars ($5,000,000) per accident.

(3) Workers' Compensation and Employers' Liability

i. Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance with limits of at least one million dollars ($1,000,000). Contractor shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

(4) All Coverages

i. Each insurance policy required by the Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

ii. All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.

iii. Evidence of Insurance - Prior to commencement of work, the Contractor shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Contractor must agree to provide complete, certified copies of all required insurance policies if requested by the City.

iv. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an A.M. Best rating of A- VII or higher.

v. Subcontractors and Consultants - A category of risk and the applicable insurance requirements will be determined on a "per subcontractor" or "per consultant" basis, considering the particular work to be done by the subcontractor or consultant and the interrelationship of that work to other work being conducted by the Contractor.

C. Performance Bonds or Other Security

Contractor shall furnish to the City without additional charge a corporate surety bond, a letter of credit or other security device acceptable to the City in City's sole discretion, as security for performance under this Agreement (collectively "**Security**"). The amount of the Security shall be the lesser of six month's expected Gross Receipts, or Two Hundred and Fifty Thousand Dollars ($250,000.00). Adequate proof of the existence of the Security shall be provided (e.g., a certificate from the surety showing that the bond premiums have been paid in full shall accompany the bond and each renewal thereof). The surety on the bond, the bank on which the letter of credit is drawn and the surety for any other Security device shall be a company acceptable to the City and shall be authorized to do business in the State of California.

D. Modification

The requirements of this Section 9 may only be modified or waived in writing by the governing body of the City upon the request of Contractor, provided that the City reasonably determines such modification or waiver is in the best interest of City and of the

public welfare, considering all relevant factors, including acceptable financial guarantees provided by Contractor or by a parent company of Contractor.

SECTION 10 - FAILURE TO PERFORM AND REMEDIES

The rights of the Contractor and City upon the failure of either to perform as required under this Agreement shall be as provided below:

A. Administration, Enforcement and Remedies

(1) If the City Manager determines at any time that the Contractor's performance of the Solid Waste Handling services authorized and/or required pursuant to this Agreement, are not in conformity with the provisions of the Agreement, or applicable federal, state, or local law or regulation, including, but not limited to, the laws governing collection, transfer, storage and/or disposal of Solid Waste, the City Manager or designee will notify Contractor in writing of such deficiencies ("**Notice of Deficiency**").

The Notice of Deficiency may provide a reasonable time within which correction of all noted deficiencies is to be made by Contractor. Unless a shorter or longer period of time is specified in the notice of deficiency sent by the City Manager, a reasonable time for correction shall be thirty (30) consecutive calendar days from the receipt by the Contractor of such written notice. If the Contractor cannot reasonably correct or remedy a noted deficiency within the time specified in the Notice of Deficiency, but the Contractor immediately commences to correct or remedy such deficiency within the time set forth in the Notice of Deficiency and diligently pursues and successfully completes such correction or remedy without delay, thereafter Contractor shall not be deemed to have failed to correct or remedy the Notice of Deficiency. The Parties agree that while uncured defaults of material provisions of the Agreement which present an imminent and substantial threat to public health and safety should result in termination of the Agreement, minor defaults should be the subject of liquidated damages as set forth herein. For purposes of this section, assessment of liquid damages in total of more than $10,000.00 in any twelve (12) month period shall be deemed a material breach. The maximum level of liquidated damages shall be adjusted each year utilizing the same COLA adjustment process utilized to update the Contractor's Fee Schedule.

(2) The City Manager shall review the Contractor's response to the Notice of Deficiency. If the City Manager determines that the Contractor has not timely cured the deficiency, or if there is no cure period provided in the Notice of Deficiency given the nature of the deficiency, the City Manager shall either:

i. Refer the matter directly to the City Council for decision pursuant to subsection (4) of this Section 10–A; or

ii. Decide the matter and notify the Contractor of that decision, in writing.

- The decision of the City Manager may be to terminate the Agreement or may be to impose some lesser sanction;
- The decision of the City Manager shall be final and binding on Contractor unless the Contractor files a "Notice of Appeal" with the City Manager within fifteen (15) calendar days after receipt of the City Manager's decision. The Notice of Appeal shall be in writing, shall contain a detailed and precise statement of the basis for the appeal.
- Within fourteen (14) working days of receipt of a Notice of Appeal, the City Manager shall refer the appeal to the City Council for proceedings in accordance with subsection (4) of this Section 10–A.

(3) Should the City Manager refer the Notice of Deficiency to the City Council in the first instance, or if the matter reaches the City Council pursuant to a Notice of Appeal, the City shall consider the matter and allow the Contractor an opportunity to present information to the Council for consideration.

(4) Contractor's performance under this Agreement is not excused during the period of time prior to the City Manager's or the City Council's final determination, as the case may be, regarding the validity of, and appropriate response to, the deficiencies noted in the Notice of Deficiency.

(5) In the event Contractor: (i) has received a Notice of Deficiency and fails to perform Solid Waste Handling services; or (ii) has had this Agreement terminated; the City, reserves the right, in addition to all other rights available to the City, to take any one or combination of the following actions:

i. To rent or lease from Contractor, at its respective fair and reasonable rental value, all or any part of the Contractor's equipment (including collection containers utilized by Customers and office equipment and billing programs), utilized by Contractor in providing the Solid Waste Handling services required under this Agreement. The City may rent or lease such equipment for a period not to exceed six (6) months, for the purpose of performing the Solid Waste Handling services, or any part thereof, which Contractor is (or was), obligated to provide pursuant to this Agreement. The City may use said rented equipment to directly perform such Solid Waste Handling service or to assign it to some other Contractor or Person to act on the City's behalf. Contractor shall be held responsible for the costs to insure the City or its assignee from all liability resulting from the

operation of Contractor's equipment. In the case of equipment not owned by Contractor, Contractor shall assign to the City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses and uses such equipment, the right to possess and use the equipment.

ii. As used in this subsection, "reasonable rental value" means the rate for such equipment as listed in the State Division of Transportation publication, "Labor Surcharge and Equipment Rental Rates," in effect at the time the City leases the equipment. If a particular piece of equipment is not listed in said publication or if said publication is not current, the reasonable rental value may be established by the City Manager by any equitable alternative method.

iii. If the City exercises its rights under this subsection, the City shall pay or owe Contractor the reasonable rental value of the equipment so taken for the period of the City's possession thereof. The City may offset any amounts due to Contractor pursuant to this provision against any amounts due the City from Contractor.

iv. All revenues owed by Customers which are attributable to services performed by or at the direction of the City during City's assumption of Contractor's Solid Waste Handling duties shall be billed by and paid to the City. To the extent Contractor receives such revenue after City's assumption of Contractor's Solid Waste Handling duties, Contractor shall pay such revenue to City promptly after receipt thereof (or promptly after City has performed the services related to such revenue, if the revenue was received by the Contractor prior to the City's assumption of duties) and Contractor shall be deemed to have assigned to City all of Contractor's right and interest to any such revenues.

(6) The City rights set forth in this Section 10–A are in addition to, and not in limitation of, any other powers or rights available to the City upon failure of Contractor to perform its obligations under this Agreement. Further, by entering into this Agreement Contractor acknowledges, admits and agrees, for use as evidence in any proceeding of any nature, and from time to time, that its material violation of any terms of this Agreement shall cause the City to suffer irreparable injury and damages sufficient to support injunctive relief to enforce the provisions of the Agreement, and to enjoin the breach thereof. Contractor hereby agrees that the City may deem the foregoing a stipulation, for any purpose or proceeding.

(7) Events of Default:

Notwithstanding any other provision in this Agreement to the contrary, each of the following shall constitute an event of default ("**Event of Default**") hereunder:

i. Contractor fails to perform any of its obligations under this Agreement, or future amendment to this Agreement, and: (1) if the failure or refusal of Contractor to perform as required by Section 6(F) of this Agreement is not cured within seven (7) calendar days after receiving notice from the City specifying the breach; or (2) in the case of any other breach of the Agreement, the breach continues for more than thirty (30) calendar days after written notice from the City for the correction thereof, provided, however, that where such breach cannot be cured within such thirty (30) day period, Contractor shall not be in default of this Agreement if Contractor shall have commenced such action required to cure the particular breach within ten (10) calendar days after such notice, and Contractor continues such performance diligently and with continuity until completed;

ii. Contractor has made any representation or disclosure to the City in connection with or as an inducement to entering into this Agreement or any future amendment to this Agreement which is 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;

iii. There is a seizure or attachment (other than a pre-judgment attachment) of, or levy affecting possession on, the operating equipment of Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof, of such proportion as to substantially impair Contractor's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours, excluding weekends and holidays;

iv. Contractor files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of the Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing;

v. A court having competent jurisdiction shall enter a decree or order for relief in respect of the Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of Contractor; and

vi. Contractor fails to provide reasonable assurances of performance as required under Section 10(A)(8).

Upon a default by Contractor, the City shall have the right to summarily terminate this Agreement upon ten (10) days written notice.

(8) Right to Demand Assurances of Performance:
Notwithstanding any other provision in this Agreement to the contrary, if Contractor (1) is the subject of a civil or criminal judgment or order entered by a federal, state, regional or local agency for violation of an environmental law; (2) appears in the reasonable judgment of the City to be unable to regularly pay its bills as they become due; or (3) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; and the City Manager believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City Manager believes in good faith is reasonably necessary under the circumstances to evidence continued ability to perform under this Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 10(A)(7).

B. Resolution of Customer Complaints

Procedures for resolution of complaints and other disputes shall be as follows:

(1) Contractor agrees to use its best efforts to resolve all complaints received by close of business of the second working (waste collection) day following the date on which such complaint is received. (See Office of Inquiries and Complaints section herein). Service complaints may be investigated by City Manager or the same's designee, as necessary to resolve it. Contractor shall provide reasonable cooperation in the event of such investigation. Contractor shall maintain records listing the date

of Customer complaint, the name, address and telephone number of Customer, the nature of the complaint or request, and the date when and nature of the action taken by the Contractor to resolve the complaint. All such records shall be maintained for at least three (3) years after Contractor's receipt of the complaint or inquiry and shall be available for inspection by City during all business hours. Service complaints shall be responsibility of Contractor whether received by City and forwarded to Contractor, or received directly by Contractor.

(2) If the Contractor fails to cure a complaint, the City Manager or designee shall review the complaint and determine if further action is warranted. The City Manager or designee may request written statements from the Contractor and Customer, or oral presentations or both written and oral presentations.

(3) The City Manager or designee shall determine if the Customer's complaint is justified, and if so, what remedy, if any, shall be applied. The remedy provided to the Customer under this Section shall be limited to a refund of Customer charges related to the period of violation of any of the terms of the relevant enforcement sections of the City's Municipal Code or of the breach of any term of this Agreement. In addition to any other remedy of City contained in this Agreement, City may impose upon Contractor liquidated damages of up to one hundred dollars ($100.00) payable to the City for any single event, or actual damages as demonstrated during the resolution procedure. The maximum level of such liquidated damages shall be adjusted each year utilizing the same COLA adjustment process utilized to update the Contractor's Fee Schedule.

(4) The City Manager may delegate the duties under this Section to a designee. The decision of the City Manager or a designee shall be final on any matter of five hundred dollars ($500.00) or less. In the event of a decision on a matter awarding more than five hundred dollars ($500.00), Contractor may seek review pursuant to the Notice of Appeal procedure contained in Section 10–A of this Agreement. The aforementioned sum shall be adjusted each year utilizing the same COLA adjustment process utilized to update the Contractor's Fee Schedule.

SECTION 11 - TRANSFER

The rights of the Contractor in regard to the transferability of its interest in this Agreement shall be as set forth below:

(1) Neither this Agreement nor any right or privilege granted in this Agreement shall voluntarily or involuntarily be transferred, sold, hypothecated, sublet, assigned or leased, in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest, or property therein, pass to or vest in any Person other than the

Contractor (collectively referred to herein as "**transfer**"), either by act of the Contractor or by operation of law, without the prior written consent of the governing body of the City. Any attempt by Contractor, or by operation of law, to transfer this Agreement without the prior written consent of the City shall be void and deemed a material breach of this Agreement.

(2) This Agreement shall terminate upon any Change in Ownership of Contractor or other transfer, unless the same has been consented to, in writing, by the City prior to the effective date thereof.

(3) The City shall review a request by Contractor that the City approve a transfer of all or part of Contractor's interest in this Agreement, or that the City consent to a Change in Ownership of Contractor, using such criteria as it deems necessary including, but not limited to, those listed below. The City shall not unreasonably withhold its consent to the transfer of this Agreement or to any Change in Ownership of Contractor.

If the Contractor requests that the City consider and consent to a transfer or a Change in Ownership of Contractor, the proposed transferee must at a minimum meet each and all of the following requirements:

i. The Contractor shall pay to the City a maximum of $50,000.00 for incurred attorney's fees and related administrative and investigation costs necessary to determine the suitability of any proposed transferee or proposed new owners, and to review and finalize any documentation required by City, in its sole and absolute discretion to determine what form of documentation will be used in terms of effecting a proper transfer, as a condition for approving any such transfer or Change in Ownership.

ii. The Contractor shall furnish the City with independently audited financial statements of the proposed transferee's operations for the immediately preceding three (3) operating years.

iii. The Contractor shall furnish the City with proof satisfactory to City, in its sole and absolute discretion:

- that the proposed transferee or the proposed management of the Contractor under the proposed new owner has at least three (3) years of solid waste management experience of a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement;

- that in the last five (5) years, the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Contractor under the proposed new owner) has not received any citations, Notice of Violations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any failure to comply with state, federal or local waste management laws or regulations or permit requirements, including any such failure which either: (i) evidences a pattern of disregard for such state, federal or local waste management laws or any operating permit(s) requirements; or (ii) involves actions which endangered the public health, or the lives or property of any Person. Contractor shall supply the City with a complete list of such citations, Notices of Violations and censures, if any;

- that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Contractor under the proposed new owner) has at all times conducted its operations in an environmentally safe and conscientious fashion;

- that the proposed transferee or any company managed by the proposed new owner (or by the proposed management of the Contractor under the proposed new owner) conducts its solid waste management operations in accordance with sound waste management standards and practices and in full compliance with all federal, state and local laws and permits regulating the collection and disposal of waste;

- of the adequate financial strength of proposed transferee or of the Contractor under the proposed new ownership; and

- of the ability of the proposed transferee or of the Contractor under the proposed new ownership to obtain and maintain required insurance and bonds.

(4) Contractor must timely disclose in writing to the City each and all anticipated transfers no less than twenty (20) working days before they become effective, and must in writing disclose each and all completed transfer no later than ten (10) working days after their effective date.

(5) Notwithstanding any provision in this Agreement to the contrary, and unless otherwise approved in a separate writing between the City and Contractor, as a

condition precedent to the City's consent to any transfer under this Section 11, the parties agree that immediately upon any such transfer, the term under Section 4 of this Agreement shall be deemed to be fixed and shall expire at the end of the day on June 30, 2034.

SECTION 12 - REPORTS

Contractor shall provide the City Manager with such reports and information and make its records available for review as provided below:

A. General

(1) Contractor shall keep and maintain, and furnish copies of such operating records and reports as may be requested by City to ascertain compliance with this Agreement, and support requests for any and each fee adjustment. City and Contractor agree that Contractor's financial data and operational records shall remain confidential with respect to third parties, and shall be protected from disclosure to the extent they contain proprietary information, including trade secrets, whether or not designated as such by Contractor; and

(2) All information required to be kept, maintained or furnished to the City shall be maintained a minimum of five (5) years after the entry of the most recent item therein.

B. Reporting Requirements

During the term of this Agreement, if the City requests, Contractor shall in writing submit to the City quarterly, and more often if required by law, information reasonably required by City to meet each and all of its reporting obligations imposed by CalRecycle, including under AB-939, AB-901 and SB1383, as amended, and implementing regulations, in a manner acceptable to City. Contractor agrees to submit such reports and information as reasonably requested by the City. Contractor agrees to render all reasonable cooperation and assistance to the City in meeting the requirements of the City's source reduction and recycling element and non-disposal facility element.

C. Annual and Quarterly Reports

(1) Contractor shall assist City in preparation of all Annual and Quarterly reporting required by CalRecycle, City Council, or successor agency, in accordance with this Agreement.

(2) Quarterly reports may be submitted, at the City's request, no later than forty-five (45) days following the end of each calendar quarter. The quarterly reports must include each and all of the following:

i. Amount (in tons) and type of material collected.

ii. Amount and types of material deposited in the Solid Waste Facility.

iii. Amount and types of material recycled, processed or diverted.

iv. Customer complaint log for complaints received during the quarter.

v. Summary assessment of services, and identification of impediments to meeting service requirements.

vi. An annual presentation will be made to the Avenal City Council upon an agreed date that is acceptable to both parties.

vii. Any other information reasonably necessary to satisfy each and all regulatory reporting requirements.

SECTION 13 - COMPENSATION

A. Compensation and Billing

Each party shall provide/maintain accurate and complete accounting and billing records. Either party may request and be entitled to review the other party's accounting and billing records related to this Agreement.

(1) **Billing and Payment**. All requests for service, or for changes in service, shall be processed by City and promptly reported to Contractor. City shall provide billing services to all residential, commercial and industrial customers who receive service pursuant to this Agreement, except that Drop Box services will be billed and collected by Contractor.

On a monthly basis, City shall remit to Contractor the full amount of services provided based on the Contractor Fees Schedule set forth on **EXHIBIT D**. The monthly compensation payment to Contractor shall be paid by City within thirty (30) days after the end of the applicable billing cycle. Said fees paid to Contractor are exclusive of fees collected by City for invoicing costs, customer services provided by the City, contract management, enterprise fund management,

Proposition 218 rate-setting costs and Contractor's Fees under this Agreement. The parties acknowledge City's right to add and retain such fees.

Each party's accounting and billing shall be accurate and complete. Either party may request and be entitled to review the other party's accounting and billing related to this Agreement.

(2) **Contractor's Fee Schedule**. Contractor shall provide solid waste handling services pursuant to this Agreement at the fees set forth in the attached **EXHIBIT D**, the contents of which are incorporated by this reference. The **EXHIBIT D** Fee Schedule will apply at the inception of this Agreement, and is subject to adjustment as set forth elsewhere herein.

The parties acknowledge their understanding that the **EXHIBIT D** Fee Schedule is not necessarily reflective of the total charges that City will actually bill to customers. The City expressly reserves the right to charge customers whatever rates and fees it deems reasonable or appropriate, and the actual charges to a customer will include additional amounts, over and above the amount which will be paid to Contractor, to cover such administrative, finance, collection or other fees as the City determines proper. If no fee has been established for a particular Contractor service billed by City, Contractor and City shall mutually agree on an appropriate charge for that service or service level. If no Rate has been established for a service billed directly by Contractor, then Contractor shall determine with Customer the appropriate charge, subject to City approval. Contractor shall promptly notify City of any new Rates to be billed directly by Contractor.

The **EXHIBIT D** Fee Schedule is inclusive of all Solid Waste Handling services to be provided, including collection, transportation, processing, composting, disposal, and cart and bin costs, and costs associated with moving bins from standard enclosures such distance as is reasonably necessary to empty them (but not including costs associated with moving bins beyond such distance in unusual circumstances or due to special requests by customers). No other charges shall be imposed by Contractor for such services unless approved by City.

B. Adjustment to Fees

The following annual and special rate adjustments shall be made to the Fee Schedule provided for in this Agreement and, notwithstanding any provision in this Agreement to the contrary, any such adjustment shall not be collectable by Contractor until after the City has had a reasonable opportunity to commence and complete Proposition 218 rate proceedings.

(1) Annual Cost of Living Adjustment (**COLA**)

Beginning July 1, 2029, and each July 1 thereafter, the Fee Schedule shall be adjusted by adding a COLA using the Consumer Price Index percentage change from the previous year, as published by the California Department of Industrial Relations (San Francisco-Oakland-Hayward), to the then current Fee Schedule.

(2) Extraordinary Adjustment

The parties acknowledge that there may be infrequent and unforeseen extraordinary events which, although they do not prevent either party from performing, and thus do not implicate the Force Majeure provisions hereof, nevertheless are not within the reasonable control of either of the parties and such event(s) increase the cost of providing service such that Contractor's compensation and the Fee Schedule adjustment mechanism provided in this Agreement result in Contractor's suffering losses which are substantially outside the commercially reasonable expectations of the parties. The obligation of the parties in such event is to act reasonably toward each other in arriving at an appropriate adjustment in Fees. Accordingly, at its option, Contractor may apply to the City at any time, but not more frequently than once annually, for an extraordinary Fee Schedule adjustment should an event or circumstance arise (including a change in landfill tipping fee) that is not the result of a Change in Law or Change in Service Level which negatively impacts the economic operation of Contractor and which is in excess of the Fee Schedule adjustment resulting from the application of the annual COLA adjustment above. An interim adjustment in Fees will be deemed justified if it is necessary for the Contractor to make a substantial change in its operations, or substantial capital expenditure or investment in order to perform its obligations under this Agreement due to the occurrence of an unforeseen event or circumstance other than a Change in Law or Change in Service Level which is beyond the reasonable control of Contractor. In the event of such an application for an extraordinary Fee increase, it is understood that the Contractor shall have the burden of demonstrating to the reasonable satisfaction of City the basis for the extraordinary increased cost.

(3) Change in Scope Level Adjustment

i. The Fee Schedule shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the level of the Solid Waste Handling services which may be required of, or agreed to by, Contractor. City shall provide Contractor at least ninety (90) days prior notice of any requested changes in scope of services under this Agreement. A Change in Scope Adjustment shall be effective on and after the actual date of the requirement to or agreement to

change operations which results from the change in service, but, absent the consent of the Manager, not sooner than the effective date of the change in service. In no event shall any Change in Scope Adjustment be effective prior to the City's approval of an amendment to the Agreement.

ii. In the event that the City Manager and the Contractor claiming to be affected by the change in scope cannot agree on either the existence, or the effect on demonstrable costs, of a change in service level, the dispute resolution provisions of Section 13–C (1) shall apply.

(4) Change in Law Adjustments

i. The Fee shall be increased (or decreased) by one hundred percent (100%) of the increase (or decrease) or incremental increase (or incremental decrease), as the case may be, in the demonstrable costs (i.e., on any direct or indirect cost, whether fixed or variable) associated with the change in the manner or nature of conducting Solid Waste Handling services necessitated by a Change in Law. A Change in Law Adjustment shall be effective on and after the actual date of the change in operations which resulted from the Change in Law, but, absent the consent of the Manager, not sooner than the effective date of the Change in Law. In no event shall any Change in Law Adjustment be effective prior to the City's approval of an amendment to the Agreement.

ii. In the event that the City Manager and the Contractor claiming to be affected by the Change in Law cannot agree on either the existence, or the effect on demonstrable costs, of a Change in Law, the dispute resolution provisions of Section 13–C (1) shall apply.

C. Dispute Resolution Regarding Adjustment to Fees

(1) Any dispute regarding any Change in Service Level Adjustment or Change in Law Adjustment provided for in Section 13 above, which cannot be resolved between the Contractor and City within thirty (30) days of the receipt by City of such documents as City may reasonably request, shall be submitted to a mutually agreed upon and wholly neutral expert in the subject matter area of the dispute to resolve the dispute as to either or both: (i) the existence of a needed Change in Service Level or a Change in Law; and/or (ii) the effect on the Contractor's demonstrable costs of a Change in Service Level or a Change in Law. The expert must under penalty of perjury and disclose to the parties in writing each and all actual and potential conflicts of interest. The decision of the expert shall be binding on the Contractor and the City. The cost of the expert shall be borne equally by the Contractor and the

City and the Parties shall pay to the expert(s) each party's respective share on demand by the expert(s). If the Contractor and City cannot mutually agree upon an expert, either may petition the Superior Court of the County of Kings to have a qualified expert chosen by the court. The City and Contractor shall each have the right to suggest two qualified experts to the court; the court shall choose one of the suggested experts.

(2) Any dispute regarding the current Fee schedule or Fee adjustments (except those disputes related to a Change in Service Level Adjustment or Change in Law Adjustment) shall be decided by the City Manager within ten (10) working days after receipt of a written statement from the Contractor of the nature and basis of the dispute with a request that it be resolved by the City Manager. Contractor shall have the right to appeal the Manager's decision in writing to the City Council within thirty (30) days after the City Manager has given the Contractor written notice of the decision, otherwise it is deemed waived. Such appeal shall conform to the appeal provisions set forth in Section 10–A of this Agreement in respect to the form of the Notice of Appeal, the time limits for processing the appeal, and the amount of fees, if any, connected therewith. The City Council or designee may consider the appeal.

(3) The most recent Fee Schedule approved by the City Manager in effect at the time a dispute is submitted to either the expert or City Manager, as the case may be, shall remain in effect pending resolution of such dispute. The effective date of any dispute resolution, whether retroactive or prospective, shall be determined by the expert, the City Manager, the City or a hearing officer, as appropriate.

D. Discontinuance of Service

Contractor may discontinue service for non-payment of Customer's billing (when directed by City for accounts billed by City, or in the event of non-payment by a Customer billed by Contractor), or Customer's failure to substantially comply with the requirements of the applicable provisions of state or local law which govern use, storage and collection of Solid Waste in accordance with this Agreement.

SECTION 14 - FORCE MAJEURE

A. Contractor

Contractor shall not be in default under this Agreement in the event that the services provided by the Contractor are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, acts of terrorism, civil disturbances, insurrection, explosion, pandemics, quarantines, acts of God, acts of government or governmental restraint, and natural disasters such as floods, earthquakes, landslides, and fires, severe

weather or other catastrophic events which are beyond the reasonable control of Contractor and which Contractor could not reasonably be expected to have prevented or controlled. Catastrophic events do not include the financial inability of the Contractor to perform or failure of the Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Contractor.

B. City's Right to Cancel Agreement if Proposition 218 Rate Increase Fails

Notwithstanding any provision in this Agreement to the contrary, in this Agreement, a force majeure event as to City shall include, without limitation, any event beyond the reasonable control of the parties hereto, which prevents a party from fulfilling its obligations under this Agreement. This Agreement contemplates that the previous solid waste collection and related services rates charged to Customers will be increased to cover increased costs and to address periods of inflation. However, the City's ability to raise the rates of solid waste collection and related services is not absolute and is limited by, among other things, Proposition 218's procedures and requirements. Accordingly, if the City is unable to increase these rates because a majority of affected landowners or customers submit a protest to new proposed rates to be charged, it shall be declared a force majeure and City shall have the right, but not the obligation, to terminate this Agreement before the expiration of the term of this Agreement without any penalties or consequences for the early termination and shall have no further obligations under this Agreement.

SECTION 15 - OTHER PROVISIONS

A. Independent Contractor

Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, and employees, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, agents, or employees shall obtain any rights to retirement or other benefits which accrue to City employees. Notwithstanding this independent contractor relationship, City shall have the right to monitor and evaluate the performance of Contractor to assure compliance with this Agreement.

B. Right to Pass

Contractor shall have the right to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Solid Waste Handling services pursuant to this Agreement, so long as it is not in receipt of a written notice revoking permission to pass and so long as Contractor's vehicles do not exceed posted weight restrictions. Contractor shall have no rights greater than those then held by City.

C. Compliance with Municipal Code

Contractor shall comply with provisions of the Municipal Code that are applicable to operations hereunder, and with any and all amendments, from time to time, to such provisions during the Term of this Agreement.

D. Notices

Any notice, information, request or reply ("**Notice**") required or permitted to be given under the provisions of this Agreement shall be in writing and shall be given or served personally, by mail, or by email. If given or served by mail, such Notice shall be deemed sufficiently given if: (1) (i) deposited in the United States mail, with postage prepaid and delivery confirmation service, or (ii) sent by overnight service provided proof of delivery service is available; and (2) addressed to (i) the Contractor at its most recent address of record with City or (ii) to the Manager at the then-current address of City, as the case may be. If given by email, such Notice shall be deemed sufficiently given if the receiving party confirms receipt. The addresses of the parties at the time of signing this Agreement are:

CITY:	With A Copy To:
City Manager **CITY OF AVENAL** 919 Skyline Boulevard Avenal, California 93204	Moses Diaz, City Attorney **PUBLIC INTEREST LAW FIRM** A Professional Corporation 2924 West Main Street Visalia, California 93291 559-900-3500 559-900-3555 – Fax
CONTRACTOR:	With A Copy To:
Attn: Contract Administrator **MID-VALLEY DISPOSAL, LLC** 15300 West Jensen Avenue Kerman, California 93630	_____ _____ _____

Either party may from time to time change or otherwise update the information above by providing written Notice to the other given in accordance with this Section. Notice shall be deemed effective or received on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail, or if by facsimile transmission, upon receipt of confirmation of delivery which confirmation may be transmitted by the same means. Service by email or facsimile transmission shall not be effective unless the original or a hardcopy of the document being served is deposited in the United States mail, postage prepaid, within twenty-four (24) hours after the facsimile

transmission has been confirmed. Emails shall be deemed effective upon confirmation of receipt.

E. Exhibits Incorporated
Recitals and **EXHIBIT A** through **EXHIBIT E** are attached hereto and incorporated within this Agreement by this reference as if fully set forth.

F. Laws and Licenses
City and Contractor shall, at their own separate costs, comply with all federal, State, and City laws, ordinances, rules, and regulations applicable to the performance of the services hereunder and Contractor shall obtain and maintain in full force and effect throughout the term of this Agreement all licenses and permits necessary to perform the services hereunder.

G. Governing Law
This Agreement shall be governed by the laws of the State of California, with venue in the Superior Court of the County of Kings or the Federal District Court with jurisdiction over City.

H. Waiver
No waiver by either party of any one or more defaults or breaches by the other party in the performance of this Agreement shall operate or be construed as a waiver of any already established or future defaults or breaches, whether of a like or different character or degree.

I. Counterpart Signatures
This Agreement may be executed in counterpart pages (counterparts), each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become fully executed when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same signature pages of this Agreement. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted electronically shall be deemed to be their original signatures for all purposes.

SECTION 16 - SEVERABILITY

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

effect of nullification of any invalid, unenforceable or conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the party whose material benefit(s) is adversely affected. In all other cases the remainder of the Agreement shall continue in full force and effect.

SECTION 17 - ENTIRE AGREEMENT; AMENDMENT

This Agreement and its incorporated EXHIBITS constitute the entire agreement between the parties concerning the subject matter hereof and supersede any and all other communications, representations, proposals, understandings or agreements, either written or oral, between the parties hereto with respect to such subject matter. This Agreement may not be modified or amended, in whole or in part, except by written agreement signed by both parties hereto. Notwithstanding the forgoing, the parties acknowledge the provisions of "**Chapter 6.2, Solid Waste Management**" any other relevant portions of the Municipal Code as currently enacted are included herein and, further, that if and when such City Code provisions are amended, that the amended provisions shall apply to this Agreement, without any action being required of either party. The City Manager shall provide Notice to Contractor upon changes to the Municipal Code that require a change in this Agreement.

SECTION 18 - CONSTRUCTION OF AGREEMENT

The parties hereto have negotiated this Agreement at arm's length and with advice of their respective attorneys, and no provision contained herein shall be construed against either party solely because it prepared the actual physical Agreement executed by the parties.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below. WITNESS the execution of this Agreement on the day and year written above.

[SIGNATURES ON NEXT PAGE]

//

CONTRACTOR:

Corporations Code section 17703.01(d) requires that contracts with a limited liability corporation be signed by two managers, unless the contract is accompanied by a copy of the limited liability company's articles of organization stating that it is managed by only one manager.

MID-VALLEY DISPOSAL, LLC

☒ N/A, single manager LLC; articles attached.

Joseph Kalpakoff Digitally signed by Joseph Kalpakoff Date: 2024.01.25 09:20:12 -08'00'

Joseph Kalpakoff, Manager

(date) 1/25/24

_____

(date)

_____,

Manager

CITY:

APPROVED AS TO FORM:

Antony V. López Digitally signed by Antony V. López Date: 2024.01.25 08:11:52 -08'00'

Antony V. López, City Manager

(date) 1/25/24

_____

Moses Diaz, City Attorney or Deputy

(date)

ATTEST:

_____

Maria A. Ortiz, City Clerk

(date)

CONTRACTOR:

Corporations Code section 17703.01(d) requires that contracts with a limited liability corporation be signed by two managers, unless the contract is accompanied by a copy of the limited liability company's articles of organization stating that it is managed by only one manager.

MID-VALLEY DISPOSAL, LLC

☒ N/A, single manager LLC; articles attached.

Joseph Kalpakoff Digitally signed by Joseph Kalpakoff Date: 2024.01.25 09:20:12 -08'00'

Joseph Kalpakoff, Manager

(date) 1/25/24

_____ (date)

_____,

Manager

CITY:

APPROVED AS TO FORM:

Antony V. López Digitally signed by Antony V. López Date: 2024.01.25 08:11:52 -08'00'

Antony V. López, City Manager

(date) 1/25/24

Moses Diaz 2/1/2024

Moses Diaz, City Attorney or Deputy

(date)

ATTEST:

Maria Ortiz

Maria A. Ortiz, City Clerk

(date) 1/25/24

EXHIBIT A - PROVIDED SERVICES

This **EXHIBIT A** sets forth the level of services to be provided by Contractor pursuant to this Agreement, and the manner of providing such services which are in addition to the manner of providing services specified in this Agreement.

Contractor shall provide the Solid Waste Handling services in conformity with all provisions of this Agreement, including:

A. Single Family Residential

(1) Weekly 3 Cart Service - Unless otherwise required under applicable law or regulation, once per week Contractor shall collect the Solid Waste (except bulky items and Hazardous Waste), which has been separated, placed, kept, or accumulated, in containers at residential units within the Service Area and placed at curbside prior to Contractor's normal weekly collection time. All Solid Waste must be placed within containers at curbside without obstructions so as to permit collection, unless otherwise agreed upon by City and Contractor. Contractor shall supply containers, and shall require the use of specific containers as specified in **EXHIBIT A** and/or **EXHIBIT B**. Contractor may provide special pickup procedures, above and beyond the services described above, with customers consistent with the Fees paid Contractor in **EXHIBIT D**. Contractor shall notify City immediately of any Changes in Service Level, and similarly, City shall notify Contractor of any Changes in Service Level.

B. Commercial, Industrial, and Multi-Residential

(1) Multi-Residential Weekly Service - Unless otherwise required under applicable law or regulation, at least once per week Contractor shall collect the Solid Waste (including bulky items which have been placed in a closed bin, and excepting metallic white goods and Hazardous Waste) which have been placed, kept or accumulated for collection in Solid Waste Bins at Multi-Residential Units.

(2) Commercial and Industrial Weekly Service - Unless otherwise required under applicable law or regulation, at least once per week Contractor shall collect the Solid Waste which have been placed, kept or accumulated for collection in Solid Waste Bins at commercial units.

C. Source Separated Materials – Contamination

Contractor shall conduct contamination monitoring as defined in **EXHIBIT B** of this Agreement.

D. Construction and Demolition Waste Temporary Drop Box Services

Contractor shall provide construction and demolition debris removal, including temporary Drop Box services using Fees reflected in **EXHIBIT D** unless debris is generated by a declared emergency disaster such as floods, fires, earthquake or other such occurrence as deemed meeting the criteria of disaster debris. The City may provide for Rates and services solely for the timely and efficient removal of "disaster debris" with the Contractor or other qualified public or private entity.

E. Special Collection Programs

The following minimum special collection programs shall apply to this Agreement:

(1) City Facilities: Contractor shall provide front load commercial service to the City at no cost for the following City-owned facilities:

i. Corporation Yard – 1290 Hydril Road
ii. Avenal City Hall – 919 Skyline Blvd
iii. Floyd Rice Park – Monterey St
iv. Veterans' Memorial Hall - 108 W Kings St
v. Scout House – 708 E San Joaquin St
vi. Avenal Theater & Event Center – 233 E Kings St
vii. Avenal Police Department - 317 E Alpine St
viii. Water Plant
ix. Waste Water Plant

(2) Contractor shall participate in the Two (2) annual community clean-up day by providing Curbside Pick Up for senior and disabled customers identified by the City.

(3) Illegal Dumping: At Cities direction, Contractor agrees to provide targeted clean up of illegal dumping up to ten (20) tons annually.

(4) Tumble Weed abatement: Twice (2) per year Contractor will provide a packer truck to assist City with collection tumble weeds.

(5) Christmas Trees: Contractor shall collect and dispose of Christmas trees left at curbside by Customers during the three regular pickups following each Christmas day.

(6) Senior and Handicapped Service: When a Customer produces evidence that he or she is at least 65 years of age or a medical practitioner's statement showing that he/she is physically unable to place his/her solid waste bins at the curb for collection, together with his/her affidavit certifying that no able-bodied person under 65 years of age on the premises is available for such purposes, Contractor will provide walk-in service to such premises.

(7) Special Events: Contractor will provide free special event containers and portable toilets for City Sponsored Events such as Old Timers Day, Pistachio Days Festival, 4th of July, Holiday Magic, Food Distributions, and Farmers Market.

(8) Street Sweeping Services: Contractor will provide street sweeping services per **EXHIBIT E**.

F. Emergency Disaster Debris Removal Services

(1) In the event of a declared emergency disaster such as a fire, flood, earthquake, or other such occurrence as deemed to satisfy the criteria of a disaster in which debris is created, the Contractor will be given the first right of refusal in its Service Area to offer temporary bin/roll off services using the Fee Schedule reflected in **EXHIBIT D**, to transport debris to a staging area or disposal facility designated by the City Manager.

(2) During any period of time that Contractor is unable to service its Service Area during such declared emergency, either for loss of transportation, lack of assistance or an overabundance of debris material or other similar circumstances, the City reserves the right to contract with third-party entities for temporary bin/roll off services, including transportation of debris to a Solid Waste Facility. Contractor shall notify City when it regains its ability to recommence service in its Service Area and City will, within a reasonable time period, terminate any contract with third-party entities for the same services, as long as termination of such contract does not subject the City to any penalties or payments for early termination.

(3) The City reserves the right to direct roll off bin service to areas that have been designated as critical due to the emergency conditions.

EXHIBIT B - SB-1383 COMPLIANCE PROGRAMS

To support the City in complying with regulations under SB-1383, Contractor shall implement the programs identified in this **EXHIBIT B**. These programs are designed to meet the implementation and education requirements of SB-1383, and its implementing regulations, and help the City achieve annual diversion requirements set by CalRecycle. The City's actual annual diversion rate depends on participation of businesses and residents, their respective adherence to program requirements and local code, the City's enforcement of applicable codes, and the City's implementation of other programs outside the scope of this Agreement. Accordingly, City shall amend or update the City code to incorporate requirements necessary for the implementation of these programs.

1. Collection Requirements and Container Labeling

Contractor shall provide a 3-container collection services program for Solid Waste, Recyclables, and Mixed Organics. Collection containers shall be Grey (MSW), Blue (Recyclables), and Green (Organic Waste). Hardware such as hinges and wheels may be different colors.

New containers or lids placed by Contractor shall include language or graphic images, or both, that indicate the primary materials accepted and the primary materials prohibited in that container. Labels shall clearly indicate items that are prohibited contaminants for each container.

2. Education and Outreach

To promote public education about recycling requirements, Contractor shall create public education materials and conduct education programs and activities described in this Section.

Annual Notice: Contractor shall prepare and distribute to each Generator in the City a mailer that includes information specified in 14 CCR § 18985.1(a). Such mailer shall be distributed by Contractor to all Residential and Commercial mailing addresses including individual Multi-Family Dwelling Units. Contractor shall also make this notice available in an electronic format through the Contractor's website.

Instructional Service Guide: Contractor shall prepare a service guide that describes available services, including how to place Containers for Collection, which materials should be placed in each Container and prohibited materials, and provides Collection holidays

Property Owners and Businesses: Contractor shall annually provide Property Owners and Commercial Business owners with public education materials in

electronic format for their distribution to all employees, contractors, tenants, and Customers of the properties and businesses. The Contractor's public education materials shall include, at a minimum, information about Organic Waste recovery requirements and proper sorting of Discarded Materials. A Commercial Business or Multi-Family Property Owner may request these materials more frequently than the standard annual provision if needed to comply with the requirement of 14 CCR § 18984.10 for Commercial Businesses and Multi-Family Property Owners to provide educational information to new tenants and employees before or within fourteen (14) days of occupation of the Premises. In this case, the Commercial Business or Multi-Family Property Owner may request delivery of materials by contacting the Contractor's customer service department not later than two (2) weeks in advance of the date when the materials are needed.

Technical Assistance Program: Contractor shall provide ongoing technical assistance for Commercial and Multi-family generators who are required to participate in source separated recycling under applicable laws including AB-341, AB-1826, and SB-1383 and corresponding regulations. Technical assistance may include on-site training, instructional guides, printed or electronic materials and other resources that satisfy regulation requirements.

Contamination Monitoring: Contractor shall perform contamination inspections by utilizing on-board monitoring systems or physical container inspections. For physical container inspections, Contractor's personnel shall lift the Container lid and observe the contents. For Collection vehicles equipped with a video camera and monitoring system, Contractor's personnel shall observe, via the hopper video camera and monitoring system, the contents of the Containers as the materials are emptied into the vehicle. Upon finding Prohibited Container Contaminants in a Container, Contractor shall follow the contamination noticing procedures set forth below.

3. Waste Evaluations

Sampling Method: Contractor shall, at its sole expense, conduct waste evaluations that meet the requirements of 14 CCR § 18984.5(c). The Contractor shall conduct waste evaluations for contaminants using the Standard-Compliance Approach or other methods approved by Cal Recycle at least twice per year and the studies shall occur in two distinct seasons of the year. Contractor shall provide adequate notice to City of when waste evaluations will occur, and City reserves the right to observe waste evaluations.

Contamination Notifications: If the sampled weight of Prohibited Container Contaminants exceeds twenty-five percent (25%) of the measured sample for any material stream, the Contractor shall notify City within fifteen (15) working days.

Contractor may perform targeted waste audits to determine the source of contaminants and provide technical assistance to those generators, or notify all generators of their obligation to properly source separate materials. The Contractor may provide this information by placing a written notice on the Generator's Containers or the gate or door of the Premises; and/or by mail, e-mail, or electronic message to the applicable Generators.

Contractor will coordinate with City to develop procedures regarding alleged violations of these recycling programs.

4. Procurement

Contractor agrees to provide City with at least one hundred (100) tons of mulch annually to help City meet its procurement requirements. Contractor also agrees to provide City with any available procurement credits from renewable fuel purchases used by vehicles within City.

5. Waivers

The City shall be responsible for granting waivers to commercial or multi-family generators that meet the de minimis requirements subject to the requirements under SB-1383, pursuant to 14 CCR § 18984.11, or other requirements that may be specified by City. This includes physical space waivers where services may be impacted.

Contractor shall provide City with required generator information on services and activity that is needed as part of the waiver application. Contractor may also assist generators with waiver applications or submit on their behalf.

6. Edible Food Recovery

Contractor shall provide City with necessary data and reporting to determine which customers are considered tier 1 and tier 2 commercial edible food generators.

At least annually, the Contractor shall provide Commercial Edible Food Generators with the following information:

- Information about the City's Edible Food Recovery program;
- Information about the Commercial Edible Food Generator requirements under 14 CCR, Division 7, Chapter 12, Article 10;
- Information about Food Recovery Organizations and Food Recovery Services operating within the City, and where a list of those Food Recovery Organizations and Food Recovery Services can be found; and,
- Information about actions that Commercial Edible Food Generators can take to prevent the creation of Food Waste.

7. Reporting

Contractor will provide the data or prepare reports required to meet SB-1383 requirements which includes:

- The number of generators that receive organic waste collection service
- The number of route reviews conducted for prohibited container contaminants
- The number of times notices, violations, or targeted education materials were issued to generators for prohibited container contaminants.
- The results of waste evaluations performed to meet the container contamination minimization requirements and the number of resulting targeted route reviews
- The number of commercial edible food generators located within the jurisdiction

EXHIBIT C - DEFINITIONS

For the purposes of this Agreement, the following terms, when used with initial capitalization, shall have the meanings set forth in this Section:

A. AB-939. "**AB-939**" means the California Integrated Waste Management Act of 1989, being Division 30 of the California Public Resources Code, commencing with § 40000 thereof, as it may be amended from time to time.

B. AB-1826. "**AB-1826**" means the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), also commonly referred to as "AB-1826," as amended, supplemented, superseded, and replaced from time to time

C. BULKY WASTE. "Bulky Waste" means discarded furniture (including but not limited to chairs, sofas, mattresses, and rugs); appliances (including but not limited to refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as "white goods"); discarded stereos, televisions, computers, VCR's, and other similar items (commonly known as "Electronic-Waste"); wood waste, tree trunks and large branches if more than six inches in diameter or four feet in length, scrap wood, rocks, sod and earth. Bulky Waste does not include construction and demolition waste, or large items such as car bodies, Jacuzzi tubs or spas, or other items that cannot be handled by two persons. In addition, Bulky Waste does not include waste tires.

D. CHANGE IN LAW. "Change in Law" means the imposition (or removal), after the establishment of a Fee relative to a Agreement, of any duty or burden imposed upon the Contractor in the performance of the Solid Waste Handling services required of it under the Agreement which is or becomes additional to (or is subtracted from) or different from those duties required or contemplated in this Agreement, or which must be performed in a different manner from that in which it is initially contemplated to be performed, and which results from any of the following:

(1) the enactment, issuance, adoption, repeal, amendment or modification of any federal, state or local law, statute, ordinance or regulation.

(2) a regulatory agency or other administrative agency interpreting a regulation, a judicial decision of a federal court interpreting federal law or statute, or a judicial decision of a court having jurisdiction within California interpreting a federal, state or local law, statute, ordinance or regulation, in a manner

different from the interpretation which had previously been generally relied upon in California within the solid waste collection and hauling industry.

E. CHANGE IN LAW ADJUSTMENT. "Change in Law Adjustment" means the adjustment to the Fee Schedule as determined under the provisions of Section 13–B (6) of this Agreement.

F. CHANGE IN OWNERSHIP. "Change in Ownership" occurs when either a transaction or event, results in fifty percent (50%) or more (in the aggregate) of the total beneficial ownership of the Contractor being different than such ownership as of the date of the approval by the City of the Agreement or, if applicable, as of the date of the most recent consent of the City to a Change of Ownership. The owners of the beneficial ownership of Contractor on the date of the approval of the Agreement or, if applicable, on the date of the most recent consent of the City to a Change of Ownership, shall be referred to in this subsection as an "Initial Owner". A Change in Ownership will be determined by application of the following:

(1) Any beneficial interest owned by an individual related by blood or marriage to an Initial Owner shall be considered as owned by an Initial Owner in determining if a Change in Ownership has occurred.

(2) Sales, transfers, issuances or pledges of non-voting shares of stock will not be considered in determining if a Change in Ownership has occurred, until and unless and only to the extent that such stock is converted into voting shares of stock.

(3) The pledge of, or any other action taken relative to, voting shares of stock which results in any voting rights of such stock being exercised by other than an Initial Owner shall be considered to be a transfer of such stock for the purposes of determining if a Change in Ownership has occurred.

G. CHANGE IN SCOPE ADJUSTMENT. "Change in Scope Adjustment" means the adjustment to the Fee Schedule as determined under the provisions of Section 13–B (5) of this Agreement.

H. COMMERCIAL EDIBLE FOOD GENERATORS. “Commercial Edible Food Generator” means a Businesses identified as Tier One and Tier Two edible food generators as defined in 14 CCR § 18982.

I. CONSUMER PRICE INDEX. “Consumer Price Index” or “CPI” means the Consumer Price Index, All Items, Not Seasonally Adjusted, San Francisco-

Oakland-Hayward, California, as published by the California Department of Industrial Relations.

J. CITY. "City" means the City of Avenal, State of California.

K. CITY SOLID WASTE DISPOSAL SYSTEM. "City Solid Waste Disposal System" means at any particular time, the then-existing Solid Waste Facilities which the City owns, leases or has a contractual right to use.

L. CUSTOMER. “Customer” means any Person receiving Solid Waste Handling services pursuant to this Agreement.

M. DESIGNATED SOURCE SEPARATED ORGANIC WASTE FACILITY: “Designated Source Separated Organic Waste Facility” means a facility identified by Contractor that meets the definition of 14 CCR § 18982(a)(33).

N. DROP BOX. “Drop Box” means a steel, open-top container holding at least eight (8) cubic yards that rolls off and on a transport truck.

O. EFFECTIVE DATE. “Effective Date” means February 1, 2024.

P. ELECTRONIC WASTE. “Electronic Waste” for purposes of this Agreement means electronic waste materials generated by residential or commercial Customers that render the items hazardous depending upon their condition and density, such as, but not limited to, televisions, computer monitors containing Cathode Ray Tubes (CRTs), cell phones, scanners, fax machines and other items as determined by applicable laws and regulations.

Q. EXCLUDED WASTE. “Excluded Waste” means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, Medical Waste, infectious, regulated radioactive waste, and toxic substances or material that Approved/Designated Facility operator(s) reasonably believe(s) would, as a result of or upon acceptance, Transfer, Processing, or Disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be Disposed of in Class III Landfills or accepted at the Facility by permit conditions, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe Collection, Processing, Recycling, treatment, and Disposal of batteries and

paint in compliance with §§ 41500 and 41802 of the California Public Resources Code.

R. FEE. "Fee" means the inclusive Fee Schedule attached to this Agreement as **EXHIBIT D**, which provides the Fees to be paid to Contractor by City in consideration of the Solid Waste Handling services provided by Contractor hereunder.

S. FOOD SCRAPS. “Food Scraps” means all discarded food such as fruits, vegetables, beans, pasta, and other materials accepted at the designated organics processing facility.

T. FRANCHISE AGREEMENT. "Agreement" means the Agreement entered into between the City and the Contractor which authorizes/requires the Contractor to provide Solid Waste Handling services in a specified Service Area.

U. FRANCHISE FEE. [Reserved].

V. GRANTEE. "Grantee" means “Contractor” and Mid-Valley Disposal, LLC, a California Limited Liability Company.

W. GREEN WASTE. "Green Waste" means discarded Solid Waste consisting of grass clippings, leaves, branches, tree trunks and other vegetative matter not more than six (6) inches in diameter or four (4) feet in length.

X. GROSS RECEIPTS.

(1) "Gross Receipts" means all monies received by Contractor for providing the Solid Waste Handling services specified in this Agreement.

(2) "Gross Receipts Less Disposal Charges" means Gross Receipts less that part of the monies received by the Contractor that are collected from Customers for payment of the fee imposed for disposing of the Solid Waste at a Solid Waste Facility.

Y. HAZARDOUS WASTE. "Hazardous Waste" means any waste material or mixture of waste which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or which generates pressure through decomposition, heat or other means, if such waste or mixture of waste may cause substantial personal injury, serious illness or harm to humans, domestic animals or wildlife during or as a proximate result of any disposal of such waste or mixture of wastes as defined in Article 2, Chapter 6.5, § 25117 of the California Health and Safety Code and Title 22 of California Code of Regulations, § 66261.3. The terms "toxic,"

"corrosive," "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substances Act (Chapter 12, commencing with § 28740.1, Division 21 of the California Health and Safety Code).

Z. MANAGER. “Manager” means the City Manager of the City of Avenal, or designee of City Manager.

AA. MATERIALS RECOVERY FACILITY. “Materials recovery facility” or “MRF” is a facility designed to remove recyclables and other valuable materials from the waste stream collected through a residential, commercial or industrial Solid Waste Handling program that is approved to operate by the appropriate state and local agencies.

BB. MULTI-JURISDICTION LOAD REPORT. "Multi-Jurisdiction Load Report" means a report which sets out the amount, and place of collection, of Solid Waste delivered to the City Solid Waste Disposal System.

CC. ORGANIC MATERIAL. “Organic Material” means Green Waste and Food Waste which are specifically accepted at an organics processing facility. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste and Recyclable Material.

DD. PERSON. "Person" includes, without limitation, individuals, associations, clubs, societies, firms, partnerships, joint ventures, sole proprietorships, corporations, limited liability companies, schools, colleges and all governmental agencies and entities.

EE. PROCESSING. "Processing" means the reduction, separation, recovery, conversion or recycling of Solid Waste.

FF. PROHIBITED CONTAINER CONTAMINANTS. “Prohibited Container Contaminants” means (i) items placed in the Blue Container that are not identified as acceptable Recyclable Materials; (ii) items placed in the Green Container that are not identified as acceptable organic waste; (iii) items placed in the Gray Container that are acceptable to be placed in City’s Green Container and/or Blue Container ; and (iv) Excluded Waste placed in any Container.

GG. RATES. “Rate” or “Rates” means rates charged by City of Avenal or by Contractor, as applicable, to Customers for Solid Waste Handling Services provided.

HH. RECYCLABLE MATERIALS. "Recyclable Materials" means discarded Solid Waste which may be sorted, cleansed, treated, processed, and/or reconstituted, and which is segregated for the purpose of reuse or recycling, including, but not limited to, separated paper, glass, cardboard, plastic, ferrous materials or aluminum.

II. RESIDUAL SOLID WASTE. “Residual Solid Waste” means the solid waste destined for disposal, transformation, further transfer/processing as defined in section 17402(a)(30) or (31) of the California Code of Regulations Title 14, Article 6, which remains after processing has taken place.

JJ. SB-1383. “SB-1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added §§ 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with § 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

KK. SECURITY. "Security" means a corporate surety bond, a letter of credit or other security device acceptable to City, as provided in Section 9–F.

LL. SOLID WASTE. Except as provided in sub-subsections (1), (2), (3) and (4), "Solid Waste" means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances (subject to salvage and other special handling requirements under applicable law and regulation), dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes, including Recyclable Materials and Green Waste.

(1) "Solid Waste" does not include Hazardous Waste and does not include low-level radioactive waste regulated under Chapter 7.6 (commencing with § 25800) of Division 20 of the California Health and Safety Code.

(2) "Solid Waste" does not include medical waste (except treated medical waste) which is regulated pursuant to the Medical Waste Management Act (Chapter 6.1 (commencing with § 25015) of Division 20 of the California Health and Safety Code).

(3) Solid Waste does not include petroleum or a petroleum product or fraction thereof at reasonably detectable levels, asbestos and, with respect to a

particular Solid Waste Facility, any waste or material which a regulatory agency, the Facility's solid waste facility permit or City policy, does not allow to be accepted for transfer, Processing, composting, transformation or disposal at that Facility.

(4) Solid Waste does not include items which would be Recyclable Materials but for the fact that they are personally separated from other Solid Waste by the generator thereof and are donated or sold to third parties. For purposes of this section, no donation or sale shall be deemed to have occurred in any instance where a generator directly or indirectly pays the third party any sum (including without limit as a consulting fee, container rental or other fees or tangible consideration) either: (i) in lieu of being directly charged for collecting, transporting, processing or recycling such item; or (ii) to offset the payment to the generator for the purported sale of such item to the third party. Nor shall the receipt of a discount of, or reduction in, the disposal service rate on un-segregated Solid Waste containing such an item be deemed to be the donation or sale of such an item to a third party.

MM. SOLID WASTE FACILITY. "Solid Waste Facility" means any facility that is designed to manage any type of Solid Waste and includes transfer, Processing, composting, transformation and disposal facilities.

NN. SOLID WASTE FACILITY FEE. "Solid Waste Facility Fee" means the fee charged for use of a Solid Waste Facility.

OO. SOLID WASTE HANDLING. "Solid Waste Handling" means one or more of the following: the collection of Solid Waste from a commercial, residential, construction or industrial source; the transportation of such Solid Waste to a Solid Waste Facility; and the transfer, Processing, composting, transformation or disposal of such Solid Waste at the Solid Waste Facility.

PP. SPECIAL WASTES. "Special Wastes" means all the items and materials which are designated as such in an Agreement.

QQ. TRANSFORMATION. "Transformation" as used in this Agreement shall have the same meaning as set forth in Public Resources Code § 40201, as it may be amended from time to time.

EXHIBIT D - FEE SCHEDULE

Contractor Rates					
	2/1/2024	2/1/2025	2/1/2026	2/1/2027	2/1/2028
Residential Customers					
Residential 3-Cart 64Trash-96Recycle-96Organics	$22.00	$23.00	$24.00	$25.00	$26.00
Senior Rate - 64Trash-64Recycle-64Organics	$20.00	$21.00	$22.00	$23.00	$24.00
Additional 96 gallon Grey Cart 1x week	$11.00	$11.00	$11.00	$12.00	$13.00
Additional 96 gallon Blue Cart 1x week	$9.00	$9.00	$9.00	$10.00	$12.00
Additional 96 gallon Green Cart 1x week	$10.00	$10.00	$10.00	$11.00	$12.00
Street Sweeping	$2.00	$2.25	$2.50	$2.75	$3.00
Commercial Customers					
96 gallon Grey Cart 1x week	$13.00	$15.00	$18.00	$19.00	$20.00
96 gallon Grey Cart 2x week	$21.00	$25.00	$30.00	$32.00	$33.00
96 gallon Blue Cart 1x week	$7.00	$8.00	$10.00	$11.00	$11.00
96 gallon Blue Cart 2x week	$12.00	$14.00	$17.00	$18.00	$19.00
96 gallon Green Cart 1x week	$11.00	$13.00	$15.00	$16.00	$17.00
96 gallon Green Cart 2x week	$21.00	$25.00	$30.00	$32.00	$33.00
96 gallon Green Cart 3x week	$32.00	$38.00	$45.00	$47.00	$50.00
Commercial Trash					
1 Yard Bin					
1 X Week	$54.00	$63.00	$75.00	$79.00	$83.00
2 X Week	$89.00	$104.00	$125.00	$131.00	$138.00
3 X Week	$125.00	$146.00	$175.00	$184.00	$193.00
2 Yard Bin					
1 X Week	$79.00	$92.00	$110.00	$116.00	$121.00
2 X Week	$139.00	$163.00	$195.00	$205.00	$215.00
3 X Week	$207.00	$242.00	$290.00	$305.00	$320.00
3 Yard Bin					
1 X Week	$93.00	$108.00	$130.00	$137.00	$143.00
2 X Week	$179.00	$208.00	$250.00	$263.00	$276.00
3 X Week	$268.00	$313.00	$375.00	$394.00	$413.00
4 X Week	$354.00	$413.00	$495.00	$520.00	$546.00
5 X Week	$439.00	$513.00	$615.00	$646.00	$678.00
4 Yard Bin					
1 X Week	$104.00	$121.00	$145.00	$152.00	$160.00
2 X Week	$193.00	$225.00	$270.00	$284.00	$298.00
3 X Week	$279.00	$325.00	$390.00	$410.00	$430.00
4 X Week	$364.00	$425.00	$510.00	$536.00	$562.00
5 X Week	$450.00	$525.00	$630.00	$662.00	$695.00
Commercial Recycling					
2 Yard Bin					
1 X Week	$39.00	$46.00	$55.00	$58.00	$61.00
2 X Week	$68.00	$79.00	$95.00	$100.00	$105.00
3 X Week	$96.00	$113.00	$135.00	$142.00	$149.00

3 Yard Bin					
1 X Week	$46.00	$54.00	$65.00	$68.00	$72.00
2 X Week	$75.00	$88.00	$105.00	$110.00	$116.00
3 X Week	$111.00	$129.00	$155.00	$163.00	$171.00
4 Yard Bin					
1 X Week	$61.00	$71.00	$85.00	$89.00	$94.00
2 X Week	$100.00	$117.00	$140.00	$147.00	$154.00
3 X Week	$143.00	$167.00	$200.00	$210.00	$221.00
6 Yard Bin					
1 X Week	$86.00	$100.00	$120.00	$126.00	$132.00
2 X Week	$143.00	$167.00	$200.00	$210.00	$221.00
3 X Week	$211.00	$246.00	$295.00	$310.00	$325.00
Commercial Organics					
64 Gallon cart					
1 X Week	$13.00	$15.00	$18.00	$18.00	$18.00
2 X Week	$23.00	$27.00	$32.00	$32.00	$32.00
Per Cubic Yard Bin					
1 X Week	$32.00	$38.00	$45.00	$45.00	$45.00
2 X Week	$64.00	$75.00	$90.00	$90.00	$90.00
Locking Lid Charge per Month	$35.00	$36.00	$37.00	$38.00	$39.00
Temporary Rent a Bins (3yd)					
Delivery	$75.00	$90.00	$105.00	$115.00	$125.00
Per Service	$60.00	$70.00	$80.00	$90.00	$100.00
Roll-Off					
Delivery	$70.00	$75.00	$80.00	$85.00	$90.00
Per Service	$275.00	$300.00	$325.00	$350.00	$375.00
Contamination Fee (per occurrence)					
1st occurrence	$18.00	$19.00	$20.00	$21.00	$22.00
2nd occurrence	$35.00	$40.00	$45.00	$50.00	$55.00
3rd or more occurrence	$60.00	$65.00	$70.00	$75.00	$80.00
Bin exchange/cleaning fee (per bin each occurrence)	$40.00	$42.00	$44.00	$46.00	$48.00
Bulky Items					
Appliance	$25.00	$25.00	$25.00	$35.00	$45.00
Couch/Furniture	$35.00	$35.00	$35.00	$45.00	$55.00
Per Yard (overload)	$35.00	$40.00	$45.00	$50.00	$55.00

EXHIBIT E – STREET SWEEPING

In connection with the solid waste services provided, Contractor shall provide street sweeping services for the City as outlined below. All provisions of the Municipal Solid Waste Collection Agreement ("**Agreement**") shall apply to the street sweeping services where applicable.

1. City currently owns two street sweepers, as identified below:

   TYMCO 600
   Year: 2006
   Model: FC80 FREIGHTLINER
   Truck VIN#1FVAB36BV26DV11693
   Sweeper Serial #2006095NP60564BAH
   Auxiliary Engine Model: 4045T-115HP-2 JOHN DEER
   Auxiliary Engine Serial: PE4045T478362

   TYMCO 600
   Year: 2006
   Model: N106042SB FL70FREIGHTLINER
   Truck VIN#1FVABTAK24DM41454
   Sweeper Serial # 1FVABTAK24DM41454
   Auxiliary Engine Model: 3060G/9 11SD JOHN DEER
   Auxiliary Engine Serial: 292676 03028

2. City agrees to lease the street sweepers to Contractor, without warranty, express or implied, at the cost of $1.00 per month, plus applicable tax, if any.

3. Contractor shall maintain insurance for the Sweeper(s) consistent with the requirements of the Agreement, and such insurance shall cover Contractor's street sweeping services as described herein.

4. Contractor will provide a driver to operate the City owned street sweeper(s). Contractor shall be responsible for hiring and maintaining all employees relating to the operation of the sweeper.

5. In the event that one of the two street sweepers are unavailable or under maintenance/repair, the Contractor is to use the other available street sweeper to meet the obligations of this exhibit. Should both street sweepers be unavailable, the Contractor is under no obligation to perform street sweeping services until a street sweeper is made available by the City.

6. Contractor shall be responsible for fuel costs related to the operation of the sweeper(s).

7. City shall be responsible for routine maintenance and repairs to the street sweeper(s). However, if any repairs and/or maintenance are required for any of the street sweepers as a result of Contractor's negligent or improper operation, the Contractor shall be responsible for such maintenance and repairs. If Contractor obtains maintenance and/or repairs from any source other than the City, Contractor shall be responsible for all such costs, without right of contribution from City.

8. Unless otherwise agreed in writing, the Contractor shall empty the street sweeper at the City's designated dumping area in the City's public works yard. The street sweeper must be empty before parking the street sweeper at the conclusion of running a route. The City shall be responsible for disposing of all materials collected during Contractor's street sweeping services.

9. Unless otherwise agreed in writing, the street sweeper, when not being used, shall be kept at the City's public works yard.

10. City shall retain the right to utilize the Street sweeper at no cost or obligation to Contractor.

11. Sweeping Conditions: Contractor shall adjust the travel speed of the street sweeper depending on how heavy the street curb is loaded with debris. The lighter the curb debris, the faster the street sweeper can sweep. However, in no event shall Contractor exceed ten (10) miles per hour while actively engaged in street sweeping. The following speeds are recommended by TYMCO and shall, to the extent possible, be observed by Contractor:

Street Curb Condition	Maximum Travel Speed (MPH)
Paper, leaves, and/or light trash	1-10
Normal accumulation of dirt, sand and/or gravel	3-5
Heavy accumulation of dirt, sand and/or gravel	1-3

12. Quality of Street Sweeping Services: While performing sweeping services, Contractor shall remove all debris from all streets for each sweeping cycle. If debris remains on the street after making an initial sweeping pass, Contractor shall make additional sweeping passes until all debris is removed from the street and curb.

    If, after a sweeping cycle, City determines that debris remains on the street and was capable of being collected by the sweeper, City reserves the right to

require that Contractor re-sweep the area in question. Any re-sweeps requested by City shall be made within [thirty-six (36) hours of receipt of verbal or written notification. Any curb miles logged by Contractor while performing a re-sweep pursuant to this section shall not be charged to City nor included in Contractor's monthly invoice to the City.

13. Sweeping Schedule:

    a. Contractor shall sweep residential streets once (1) per week and Skyline Boulevard (SR 269 from Hydril Road to SR 33), San Joaquin Street, Kings Street, and 7th Street twice (2) per week.
    b. Special Events: No more than six (6) times per year, Contractor will provide street sweeping services for special events as instructed by City. These street sweeping services shall be provided before, during and/or after all City special events in which street sweeping services have been requested by City. City shall provide notice to Contractor at least three (3) weeks before any special event wherein the City requests street sweeping services.
    c. City reserves the right to amend this sweeping schedule to add, delete, or amend the areas to be swept.

14. Contractor shall keep detailed records of its street sweeping activities within the City and submit these records to City monthly. These records, at a minimum, shall document for each street sweeping session: 1. The identity of the operator of the street sweeper; 2. The beginning and ending time of the street sweeping; 3. The route traveled and cleaned by the street sweeper; 4. The beginning and ending mileage for each street sweeping session; 5. Any unusual circumstances experienced by the operator during his or her operation of the street sweeper; and 6. Any circumstances that prevented or impeded any street sweeping activities.

15. Termination for convenience. The governing board of City may terminate this agreement for street sweeping services at any time without cause by giving thirty (30) days written notice to Contractor of such termination.

16. Contractor's compensation for sweeping under this agreement for street sweeping services shall be calculated according to actual curb miles swept per invoice period. Contractor shall supply individual mileage logs to the City with each monthly invoice. Areas that the City has requested to be re-swept to meet its satisfaction level should not be included as a basis for payment in the milage log accompanying the invoice.

a. Commencing in 2024, the rate per curb mile of street sweeping is $19.34, based on 2080 utility customers with an expected average of 49.5 total residential curb miles per week.
b. The rate per mile that the Contractor can bill the City shall be mutually updated on a yearly basis in January and agreed upon in writing. The rate shall be based on the total number of street sweeping customers and/or total curb miles to be swept including any newly dedicated curb miles of residential streets. This rate shall not exceed the Contractor's total costs to provide the street sweeping service, and/or the fees collected by the City for contracting the street sweeping service. The City's fees are based on the number of utility customers subscribed to street sweeping at the approved monthly rate, minus administrative costs for the City.