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**INTEGRATED SOLID WASTE AGREEMENT  
BETWEEN THE CITY OF FONTANA  
AND  
BURRTEC WASTE INDUSTRIES, INC.**

This Agreement is made and entered into as of the 1st day of January, 1997, by and between the City of Fontana, a municipal corporation ("City") and Burrtec Waste Industries, Inc., a California corporation ("Contractor").

Recitals


A. Pursuant to the California Integrated Waste Management Act, City has the authority to grant an exclusive franchise for the collection, transportation, processing and disposal of solid waste and recyclable materials generated within the boundaries of City.

B. City desires to grant Contractor an exclusive franchise agreement for the collection of residential and commercial solid waste in the City and Contractor desires to provide such service upon the terms and conditions set forth herein.

C. City, for the purpose of insuring the continued protection and preservation of the public health, welfare and convenience of the people of City, deems it advisable to provide for collection of residential and commercial solid waste within City by this Agreement.

NOW, THEREFORE, in consideration of the promises and of the covenants and conditions hereinafter contained, City and Contractor mutually agree as follows:

1. INCORPORATION BY REFERENCE OF THE SOLID WASTE AND RECYCLING ORDINANCE

 Chapter 24 of the Code of the City of Fontana, California ("City Code"), is expressly made a part of this Agreement and is incorporated herein by reference as though set forth in full herein. A copy of said Chapter, is attached hereto as Exhibit "A." Contractor and City agree to be bound by the terms of Chapter 24 of the City Code and any amendments thereto that may be adopted from time to time which affect the collection, disposal, composting, and/or recycling of refuse garbage, rubbish and solid waste in the City. It is understood that said Chapter 24 sets forth the minimum standards pertaining to Contractor's obligations under this Agreement and that higher standards and regulations may apply to Contractor under this Agreement. In the event of any conflict between the City

Code and this Agreement, the provision containing the higher standard shall control.

## 2. TERM AND COMPENSATION

### (a) Duration of Agreement

(i) The term of this Agreement shall commence on January 1, 1997 and continue for a period of ten years unless otherwise terminated earlier pursuant to this Agreement; provided, however, that on January 1, 1998, and on January 1st of each subsequent year thereafter which this Agreement is in effect, the Contractors' performance shall be reviewed by the City Manager and if found in compliance with the terms of this Agreement, the term of this Agreement may be extended by the City Manager for an additional one (1) year so that the full term of this Agreement shall remain at a minimum of ten (10) years unless the City or Contractor provides notice as provided in subsection (iv) below.

(ii) The City may terminate this Agreement upon thirty (30) days written notice in the event the people of Fontana, by initiative or referendum vote, require the City to furnish refuse collection, composting, and/or recycling services by the use of City's municipal employees.

(iii) During the term of this Agreement, the City, upon 180 days written notice to the Contractor, may terminate this Agreement for cause and provide the services called for in the Agreement for the Contractor at no penalty. In the case that the City takes over the services, City shall not be obligated to pay any compensation to the Contractor under this Agreement. For purposes of this Section 2.a(iii), "Cause" shall mean an uncured breach hereof pursuant to Section 6 hereof.

(iv) Should either party wish to terminate the annual renewal provided for in subsection (i), above, such party shall give the other party written notice to that effect at least sixty (60) days prior to January 1st of the year in which they decide to terminate the agreement. Such notice shall terminate the annual renewal provisions and this Agreement shall remain in effect only for the ten year balance of the term. Such remaining period may be reduced through mutual agreement by the parties evidenced in writing.

If the City Manager does not grant the extension to the Contract as set forth in subsection (i) above, then the Contractor may appeal said decision to the City Council within ten (10) days from the date of the City Manager's denial. The Contractor's appeal must be in writing and must contain the reason for the appeal. The City Council shall address the appeal at a regularly scheduled City

Council meeting as soon as practically and reasonably possible. The decision of the City Council shall be final.

(b) Payment of Fees To City

The Contractor shall pay to the City during the term of this Agreement a Franchise Fee, Household Hazardous Waste Fee and Surplus Disposal Fee component as follows:

1. Franchise Fee

The Contractor shall pay to the City an amount equal to 12.0 percent of the gross monthly receipts of the Contractor derived from the Contractor's business conducted within the boundaries of the City of Fontana in consideration for this Agreement under which the Contractor may collect refuse, recyclables, garbage, rubbish and solid waste as it now, or in the future exists, from residential and commercial properties within the City of Fontana, and for the administration of the City of Fontana's Integrated Solid Waste Management (Assembly Bill 939) Act's responsibilities.

2. Household Hazardous Waste Fee

The Contractor shall pay to the City an amount equal to 2.0 percent of the gross monthly residential and multi-family commercial receipts of the Contractor derived from the Contractor's business conducted within the City of Fontana for the administration and operation of the City's household hazardous waste facilities.

3. Surplus Disposal Fee

The Contractor and City shall assume an aggregate annual net value for all recyclables collected. The assumed value shall be used in all rate calculations. In the event that the actual net value exceeds the assumed value by 125% then the Contractor shall rebate of 50% of the amount in excess of 125% in the following year's rate. The City and Contractor recognize that the disposal fees, which are a component of the City refuse rate, are set by the entity owning and operating the landfill disposal facility. That entity may change its landfill charge at any time. This may occur in a situation where the Contractor has billed and collected a rate which includes a disposal component in excess of actual disposal charges. In the event this occurs, the Contractor shall submit this excess disposal component to the City in the same manner as the Franchise Fee.

#### 4. Payment of Franchise Fee and Household Hazardous Waste Fee

The Franchise Fee and Household Hazardous Waste Fee payments due to the City under subsections 1 and 2, above, shall be computed monthly. The applicable accounting period shall be calendar month unless otherwise agreed to in writing by the City and the Contractor.

The monthly payments shall be due and payable on or before the 20th (twentieth day) of the month immediately following the month for which the franchise fee is calculated. Each payment shall be accompanied by a brief report from the Contractor showing the basis for the computation and a written statement, signed under penalty of perjury by an officer of the Contractor, which identifies in detail the sources and amounts of gross revenues received by the Contractor during the month for which payment is made. No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim that the City may have for further or additional sums payable under the provisions of Chapter 24 of the City Code.

Any Franchise Fees or Household Hazardous Waste Fees which remain unpaid after the due date above shall be deemed delinquent, shall result in a penalty equal to 10% of the unpaid amount and the unpaid amount shall thereafter accrue interest at 10% per year, compounded daily, until paid.

The Contractor shall, upon five (5) days' written notice from the City, make available to the City its accounting records for confidential inspection and audit. If the results of the audit show an underpayment of greater than two (2) percent, the Contractor shall pay all costs associated with the audit in addition to any other amounts owed as shown by the audit. If the results of the audit show an underpayment of greater than ten (10) percent, the Contractor shall pay the cost of the audit plus fifty (50) percent of the total error as a penalty in addition to any amount owed as shown by the audit. If the results of the audit show an underpayment of less than two (2) percent or an overpayment, the City shall pay its own costs associated with the audit. Any underpayment shall result in a penalty equal to 10% of the underpayment and the amount of such underpayment shall accrue interest at the rate of 10% per annum, compounded daily from the date the underpayment should have been paid until the date the underpayment is paid.

By accepting the franchise granted pursuant to this Agreement the Contractor irrevocably waives the defenses of any statute of limitation, laches, waiver or other equitable doctrine of similar import or effect in any action brought by the City to recover any payments, interest or penalties due under this Agreement.



(c) No Charge City Services. The Contractor shall provide the following services to the City of Fontana at no charge; provided, that the annual value of said no charge collection services and disposal fees will not exceed 8.6% of the net annual service component receipts (gross receipts less landfill component), derived from the Contractor's business conducted within the City of Fontana, for the previous year's service. In the event said amount is exceeded, the Contractor shall be entitled to recover the excess costs. The City will be invoiced and credited according to the Contractor's cost as provided in the rate structure for service cost component plus actual disposal/processing charge.

(i) Provide semi-annual "Clean-Up Day" collection service throughout the City, including roll-off debris box service, and large hard-to-handle item collection, in the manner and at the locations and times directed by the City, said service does not include landfill fees. In addition, Contractor shall assist the City in quarterly events as requested by the City.

(ii) Provide collection of all City generated refuse, at the locations and frequency as directed by the City, including roll-off debris box or bin service at the City yard, City Hall, City Parks, City Community Centers and all other City facilities, (including sweepings and trimmings with two satellite debris box locations).

(iii) Provide a recycling program at City buildings, as directed by the City, (including containers for paper, news, aluminum and glass)

(iv) Provide recycling drop-off bins at the City Yard and Parks, as directed by the City.

(v) Provide an annual curbside Christmas Tree collection and recycling program, as directed by the City.

(vi) Contractor shall maintain all bins located at City Yards and Parks in good condition. Bins shall be checked on a regular basis, changed out, and returned to the designated locations to maintain a good appearance.

(d) Aid to Handicapped and Frail. At no direct cost to the City or to the Contractor's customers, the Contractor shall provide service to move collection and recycling containers between special residential customers individual storage and collection points, and then back again. Special customers are those whose health, handicap, age, frailty, or other physical or mental condition prevents them from safely moving their refuse and recycling containers.

The determination of which citizens qualify as special citizens is to be made by the City Manager based on: the severity of the special residents' frailty or handicap; whether the special resident lives with or near a friend or relative who is able to take out the special residents' containers; and whether the special resident can have his or her contractor, such as a gardener, take out the containers. The City shall routinely verify the above qualifications of the special residential customers who shall be notified by first class U.S. mail if they no longer qualify and are to be returned to regular service.

(e) Senior Citizens Rate. The Contractor shall provide a reduced service rate to as directed by the City in accordance with the provisions of Section 11 of the Contract.

(f) Contract Reopener. The Contractor and City recognize that the disposal site, method and cost is an integral component of the integrated solid waste system. The City is currently in negotiations regarding a long term agreement for disposal capacity. In the event the City enters into an agreement for refuse disposal and the City determines that the disposal agreement may affect any provision of this Agreement, both Contractor and City agree that the terms of this Agreement may be reopened and amendments negotiated to eliminate the impacts of the disposal agreement. In the event amendments cannot be agreed by Contractor and City, the City may determine to terminate this Agreement with a six month notice provided to the Contractor.

### 3. SCOPE OF AGREEMENT

The Contractor shall provide all necessary labor, equipment and materials to ensure that all solid waste refuse, garbage and rubbish is picked up and disposed of at the frequency specified herein. The Contractor hereby agrees, at his or her own expense and cost, to collect, recycle, and dispose of residential, apartment, commercial and industrial refuse within the City of Fontana and to perform all the work herein set forth and described, and in the manner herein prescribed. In consideration therefor, the Contractor shall charge his or her customers the rates set forth in Exhibit A as said rates may be amended from time to time by resolution of the City Council.

(a) Changes in Service Level. Notwithstanding anything to the contrary herein, the City shall have the right to require a change in service of refuse collection. In the event of such determination, the City shall notify the Contractor of its findings and determinations and the City and the Contractor shall mutually determine the time period to change the service to comply therewith. The Contractor shall receive an adjustment in compensation based on the cost of the changes required in the manner or scope of services provided by Contractor. In the event of a failure upon the part of the Contractor to so change the service level by July 1, 1997, the City may terminate this Agreement.

(b) Exclusive Agreement. It is understood that subject to the following exceptions, the Contractor is the exclusive collector of residential and commercial refuse, garbage, rubbish and solid waste and the exclusive recycler of residential refuse within the City of Fontana. However, the Contractors' rights under this exclusive Agreement shall not interfere and shall not be deemed to preempt the rights of:

(i) Any person holding a valid City business license to engage in the nursery or gardening business;

(ii) Any person removing hazardous waste as defined in the City Code;

(iii) Non-commercial, individual refuse self-haulers pursuant to the City Code including any person removing recyclables, trimmings, or oversized items from their own premises,

(iv) Holders of valid permits for Individual and Small Collectors pursuant to the City Code;

(v) Holders of valid permits for Non-Municipal Commercial Recycling pursuant to the City Code; or

(vi) Charitable organizations, schools, service clubs, churches, and youth sports groups which are non-profit and conduct a recycling goods collection as a fund raising.

(c) Automated Collection and Containers. The Contractor shall provide automated refuse collection and containers to all residential customers. The minimum container size shall be 90 gallon for refuse and a 60 gallon for recyclables, with the container approved by the City unless the City approves a reduced rate smaller container and the customer requests a smaller container. The minimum container size for Senior Citizen rate payers shall be 60 gallons, with the container approved by the City. The Contractor shall provide collection once per week to residential customers (unless otherwise directed by the City). In the event the containers are damaged, repair or replacement shall be made by Contractor within five days of notification by the customer or by the City.

(d) Scope of Services: Recycling. The Contractor shall provide all necessary labor, equipment, and materials to ensure a successful recycling program designed to meet the requirements of the California Integrated Waste Management Act of 1989 (as it is thereafter amended, substituted, or interpreted) ("AB 939"). The Contractor shall commence a residential recycling

program with the following elements no later than 90 days following the date it receives notice from the City to do so:

(i) One or more of each a recycling and a green waste containers shall be provided by the Contractor for each residential unit served with a household solid waste container with the container approved by the City.

(ii) For residential developments served by refuse bins, the Contractor shall develop a plan, in cooperation with the owner or manager of the development, for the provision of recycling and green waste containers. The plan shall consider the appropriate location for the containers, space availability, and the amount of recyclable materials generated at the development.

(iii) However, in any residential development served by refuse bins, where the Contractor deems it feasible and the residents so prefer, the Contractor may provide one or more recycling/green waste containers per unit.

(iv) Recycling/green waste containers shall be appropriately marked and color coded for their particular uses, with design, color and markings subject to the approval of the City.

(v) The contents of residential recycling/green waste containers shall be collected from the same location on the same day, although not necessarily at the same time, as residential solid waste containers, at a frequency determined by the City, but at least once a week in residential, commercial and industrial zones (or less frequently if approved by the City).

(vi) Recyclable items to be collected shall include newsprint, magazines, mixed paper, aluminum cans, bi-metal cans, glass, PET plastic, HDPE plastic and cardboard. Green waste shall include leaves, grass, tree and shrub trimmings.

(vii) The Contractor shall conduct an extensive public information program, as directed and approved by the City, to inform and remind residents of the recycling programs and their operation. Such program shall include media releases, advertisements, public appearances, community involvement programs to encourage participation in recycling efforts. A program plan shall be submitted to the City prior to January 1st of each year for approval.

(viii) The Contractor shall diligently seek the most productive markets for recycled materials in the most revenue effective manner, as approved by the City, so that the revenues from recycled materials can offset the costs of collection to the maximum extent possible.

(ix) The Contractor shall seek the most cost effective green waste disposal location as approved by the City, so that the disposal costs for green waste collected can be reduced to the maximum extent possible.

(x) The Contractor shall keep records and produce reports as are required herein and as may be required by the City or the State of California. Such records and reports shall be accurate and timely.

(xi) The Contractor shall keep separate records of the costs and revenues of the Fontana recycling program distinct from those of the Contractor's other operations. If any costs are pro-rated, the Contractor shall report to the City how the costs were pro-rated and the basis for the pro-rations.

(xii) The Contractor shall keep separate records of the sale of recycled materials from Fontana. Such records shall list each sale, the materials sold, the amount of such material, the buyer and the revenue received.

(xiii) The Contractor shall keep records of the level of residential participation in the recycling program.

(xiv) The Contractor shall report costs, revenues and recycling participation levels to the City on a monthly basis within 30 days of the end of each month.

(xv) The Contractor agrees to assist the City in complying AB939. The Contractor understands that the City's Integrated Waste Management Plan's Source Reduction and Recycling Element (SRRE) contains an implementation schedule which shows that the City will divert 25 percent of all solid waste from landfill or transformation facilities and 50% by January 1, 2000, by means of source reduction, recycling, and composting activities.

(xvi) The Contractor shall prepare annual reports and draft SRRE updates in a format consistent with the Act and applicable regulations and submit to the City for approval and submission to the State.

(xvii) The Contractor shall implement a commercial/industrial recycling program which is consistent with the adopted fees for service and as mutually agreed by Contractor and the City.

(e) Billings.

(i) The Contractor is responsible for the billing and collection of all residential and commercial accounts, and shall keep a record of the cost of customer billings, as directed by the City.



(ii) The City may, with 90 days written notice to the Contractor, perform the billing and collection of accounts and adjust the rate of compensation to the contract accordingly, based on the records kept pursuant to (e) (i) above. In this event, the City shall make bi-monthly payments to the Contractor for services rendered under this Agreement, provided that City shall not pay for those services which the Contractor is to provide hereunder free of charge.

(f) Liens. Pursuant to the City Code if bills to residential and commercial accounts are unpaid to the Contractor beyond 90 days, then the Contractor may cause a report of delinquent solid waste utility fees to be sent to the City. Within 60 days after collection of fees by the City pursuant to the process set forth in the City Code, the City shall provide to Contractor payment of the unpaid charges. City shall retain any City administrative fee.

(g) Manner of Performance

The Contractor is responsible for the performance of each of the responsibilities and obligations of the Contractor as set forth in the Agreement.

The services to be provided hereunder shall be done in a thorough and workmanlike manner under the direction, and to the satisfaction, of the City Manager.

In the event the Contractor's manner of performance under this Agreement is determined deficient and unsatisfactory, as per the City Manager, the City shall notify the Contractor in writing of all performance deficiencies (except for items listed in Sections 15(e), (f) and (g). The Contractor shall have 60 days thereafter within which to cure or remedy the performance deficiencies. In the event the performance deficiencies are not cured to the satisfaction of the City, the City may take action based on a breach of contract which would be dealt with as provided within Section 6 of this Agreement.

4. BUSINESS AGREEMENTS

(a) Business License. As a condition of this Agreement, the Contractor shall secure, pay for, and maintain a valid business license to operate in the City of Fontana, and any other licenses or permits which may be required by federal, state, county or City laws, ordinance and/or regulation.

(b) Laws and Regulations. The Contractor shall observe all the terms of all City ordinances, or resolutions or regulations now in effect, or the same as may be amended hereafter by the City Council of the City of Fontana, governing or affecting the collection, removal, disposal and recycling of residential, and commercial refuse, garbage, solid waste and rubbish collection,

composting, and recycling in the City of Fontana. The Contractor further agrees to comply with all applicable state and federal laws governing employment, wages, working conditions, use of materials, equipment, supplies and the like.

(c) Heirs and Successors. The terms, covenants and conditions of this contract shall apply to and shall bind the heirs, successors, executors, administrators and assigns of the Contractor.

(d) Assignment. The Contractor shall not assign or sell this Agreement or any interest herein, or any privilege or rights granted herein during the term of this Agreement without the prior written consent of the City Council of the City first being obtained, and then only to a person, corporation, partnership or enterprise approved by said Council, and subject to such terms and conditions as the City Council may require. Consent to one assignment shall not be deemed a consent to any subsequent assignment. Any assignment without such consent and approval shall be void.

(e) Fees and Gratuities Not to be Accepted by Contractor. The Contractor shall not, nor shall he or she permit any agent or employee employed by him or her, to request, solicit, demand or knowingly accept, either directly or indirectly, any compensation or gratuity for the collection, recycling and/or composting of refuse as defined herein, except such charges as may be hereinafter provided.

(f) Contract Not an Asset. In the event the Contractor files a voluntary petition in bankruptcy under the Bankruptcy Act, or an involuntary proceeding is instituted against the Contractor under said Act which is not dismissed within 60 calendar days, or the Contractor is unable to perform hereunder by virtue of any operation of law, this Agreement shall immediately terminate and shall not be treated as, nor shall it be, an asset of the Contractor.

(g) Encroachment Permit. The Contractor shall not place any solid waste or recycling bin, dumpster, or other container in the public right-of-way without the approval of the City.

## 5. LITIGATION

In the event of any dispute concerning this Agreement including but not limited to a breach of this Agreement, the prevailing party shall be entitled to court costs including reasonable attorney's fees in connection with such litigation. However, prior to either party's attempting litigation, non-binding arbitration shall be required prior to litigation.

## 6. BREACH OF CONTRACT

In the event the Contractor commits a material breach of this Agreement, the City shall give written notice thereof to the Contractor or to any such person as he or she may have designated to the City as his or her agent for receiving notice. The Contractor shall have sixty calendar days thereafter within which to cure or remedy the breach. In the event the breach is not cured to the satisfaction of the City, the Contractor has the right to an appeal before the City Council before any termination may become effective where upon the City shall have the right to cancel this Agreement without further notice, suit or proceeds and the rights and privileges of the Contractor hereunder shall be canceled.

In the event of such termination, the City shall have the right to take possession of the operating equipment of the Contractor as may be necessary to perform the services agreed to be performed hereunder, including, but not limited to, trucks, containers, route books and maps. The City shall have the right to retain possession of said equipment for a reasonable period of time until other suitable operating equipment can be obtained by the City. During the time of possession by the City of said equipment, the City shall pay the Contractor a monthly rental equal to 1/120th of the net acquisition cost of such piece of operating equipment, plus a five percent overhead charge to cover the expense involved in processing the release and return of said equipment. Notwithstanding anything to the contrary herein, the City shall be entitled to deduct from said rental the amount necessarily expended to put such equipment in operating condition. During this period of time, the City shall be liable for operating and maintaining said equipment and shall return the same in due course to the Contractor in substantially the same condition as received by the City.

## 7. PUBLIC LIABILITY INSURANCE

The Contractor, and any subcontractors, shall secure and maintain during the term of this Agreement such public liability and property damage insurance as shall protect it from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this Agreement, whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor. The amounts of such insurance shall be as follows:

|                                    |  |
|------------------------------------|--|
| Bodily Injury<br>(including death) | \$5,000,000 each person<br>\$10,000,000 each occurrence; |
| Property Damage                    | \$250,000 each occurrence;                               |

or

Combined Single Limit

\$10,000,000 aggregate bodily  
injury and property damage

The City reserves the right to increase the amounts of insurance consistent with the terms and conditions of this Agreement; and the Contractor shall immediately comply with said increase.

Policies or certificates evidencing the above required coverage shall be filed with the City Clerk subject to the approval of the City Attorney. Said policies or certificates shall include the City as an additional insured and shall provide that the policy will not be canceled without 45 days' prior written notice to be given to the City by certified or registered mail.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "B+", "A" or "A+" in the most recent edition of Best Rating Guide, the Key Rating Guide or in the Federal Register, and only if they are of a financial category Class XI or better, unless otherwise approved by the City.

8. CONTRACTOR TO INDEMNIFY AND HOLD HARMLESS THE CITY

(a) Indemnification: The Contractor shall indemnify, defend, and hold harmless the City, its Mayor and Council, officers, agents and employees for and from any and all claims, losses, liabilities, demands, actions or suits of every kind or nature arising or resulting from this Agreement, except City take-over and operation of the Contractor's equipment, or any operation of the Contractor hereunder or in exercising any license or privilege granted to him or her by this Agreement or by an ordinance of the City. The Contractor shall, upon demand of the City, at the sole cost and expense of the Contractor, provide a defense by counsel of the City's choosing, for the City and its officers, agents and employees against any and all claims, actions or suits brought against the City or its officers, agents and employees, arising or resulting from or in any way connected with the operations of the Contractor pursuant to this Agreement. Excluded from the scope of this indemnification is any loss or damage attributable to the willful misconduct or sole negligence of the City or its Mayor and Council, officers, agents or employees.

(b) Hazardous and Unacceptable Waste Indemnification: All refuse and materials collected by the Contractor shall become the property of Contractor at the point of collection. The Contractor is responsible to perform adequate inspection and exclusion to insure that hazardous materials or other inappropriate wastes are not disposed illegally or in a manner which is unacceptable to the disposal site operator. In the event of such an occurrence,

the Contractor bears all cost and penalties associated with remediation. The Contractor agrees to indemnify, hold harmless, and defend the City from all claims, actions or suits, demands, remediation, penalties or other costs related to improper handling and disposal of refuse and materials collected.

9. FAITHFUL PERFORMANCE BOND

The Contractor shall furnish to the City and maintain and file with the City Clerk of the City, a corporate surety bond, approved by the City Attorney of the City, executed by the Contractor as principal and by a corporate surety as surety, in a sum as hereinafter provided, conditioned upon the faithful performance by the Contractor of its obligations and responsibilities under this Agreement. The amount of said bond shall be set at \$250,000 and renewed each year during the term of this Agreement.

10. WORKERS' COMPENSATION INSURANCE

The Contractor and his or her subcontractors, if any, shall obtain and maintain in full force and effect throughout the entire term of the contract, full workers' compensation insurance in accord with the provisions and requirements of the Labor Code of the State of California, and any other applicable law. Certificates of such insurance, subject to approval by the City Attorney, shall be filed with the City Clerk. Said certificates shall provide that the City shall be given 45 days written notice by certified or registered mail prior to cancellation.

11. LEVELS OF SERVICE/RATE ADJUSTMENT

The rates charged by the Contractor are set forth in Exhibit A. Such rates contained therein may be amended by resolution of the City in accordance with this Section 11.

On or before January 1st of each year which this Agreement is in effect, the levels of service provided by the Contractor hereunder shall be evaluated by the City. The City shall prepare an annual performance report. The City shall consider the following determinants in deciding an adjustment the Contractor's existing service rates pursuant to this Agreement.

(a) Increases in tipping fees at the approved processing or disposal sites, (once approved by the site owner), increases in City franchise fees and charges, and City required service level changes shall be considered as they occur;

(b) Any rate adjustment due to contractor's cost changes shall be made no more than on a yearly basis (except for changes to tipping fees, city franchise fees or charges, or City required service level changes), beginning on



July 1, 1997, based on the Contractor's actual costs and not to exceed the Los Angeles, Orange, Riverside Counties CPI Index. The Contractor shall submit a request for evidence of such rate adjustment 60 days prior to proposed implementation;

(c) The Contractor and City shall assume an aggregate annual net value for all recyclables collected. The assumed value shall be used in all rate calculations. In the event that the actual net value exceeds the assumed value by 125% then the Contractor shall rebate of 50% of the amount in excess of 125% in the following year's rate.

(d) The Contractor's satisfactory maintenance of the following levels of service:

(i) Contractor's Personnel. Contractor's personnel who may be in contact with residential, commercial and/or industrial customers must be competent for such work. Such personnel shall be employees of the Contractor and shall not be considered employees of the City, nor shall the Contractor's employees be under the direction of the City. Further, the contractor's employees, and those of any subcontractor, are to treat the general and business public within Fontana in a courteous manner and do its utmost to service the public well, faithfully, and courteously. In disputes with the public concerning rates, charges, or service of the Contractor or the subcontractor, the Contractor and any subcontractors are encouraged to give the benefit of the doubt to the public. Records of such complaints against the Contractor's and any subcontractors' employees during their City operations shall be enumerated and routinely submitted to the City Manager or his or her designee who will also collect similar figures that have been generated or received by the City, and combine in an annual report. Evidence of accomplishing an acceptable service level in this category shall be shown by comparing the number(s), nature and severity of the most current year's complaints with those of the similar previous period.

(ii) Driver's License. All of Contractor's personnel, while engaged in the operation of Contractor's vehicles, shall have and carry a valid California vehicle operator's license of the proper class for operation of the vehicle.

(iii) Labor Disputes. In the event of war, riot, strike and/or labor disputes during which time the Contractor is unable to perform services under the terms of this Agreement, and as a result thereof a health hazard or public nuisance is determined to exist by the City Manager, then the Contractor shall permit the City to operate at the City's risk the contractor's collection and disposal vehicles on such schedules and in such numbers as are required to continue service to eradicate said health hazard or nuisance. All costs thereof

which would have been incurred by the Contractor had it not been for the war, riot, strike and/or labor dispute, including costs of the operation and maintenance of the vehicles and costs of laborers or drivers and other help employed in rendering collection and disposal services, shall be payable by the contractor to the City and may be deducted from any funds due the contractor. In the event of strike or other labor disputes, in addition to these costs, the City shall charge an additional 15 percent of all employee salary plus benefit costs as overhead expenses, which may be deducted from any monies owed to the contractor.

(iv) Collection Days. Collection of residential, commercial and industrial refuse shall not be allowed on Sundays. Collection shall not be required on days in which County landfills are closed including the following holidays: Memorial Day, Labor Day, Thanksgiving Day, July 4th, Christmas Day, or New Year's Day when said holidays fall upon a regular collection day, except in case of emergency and upon the express approval of the City Manager. At all other times the contractor shall provide collect as specified by City Resolution.

(v) Routes and Frequency of Refuse and Recyclables' Collection. All residential, commercial and industrial refuse shall be collected on a Monday through Saturday basis. Residential refuse collection shall be made at a frequency of at least once each week. Unless otherwise specified by the City Manager, who may require a greater number of collections per week under specific conditions (see the City Code), commercial and industrial refuse shall be collected at a frequency as contracted by the customer but at a minimum of once a week or more as directed by the City. Recyclables and green waste shall be picked up at least once a week on the same day as refuse collection in residential, commercial and industrial zones (or less frequently if approved by the City).

For purposes of refuse, rubbish, solid waste, and garbage collection, the Contractor shall divide the service area into collection districts or zones and provide for different days of collection as necessary. The Contractor shall prepare route books and maps or similar information for each route, which outlines the daily collection of refuse, rubbish, solid waste, and garbage. Changes in the maps and/or collection route shall be published in the local newspaper and each affected customer shall be notified in writing at the Contractor's expense and with approval by the City Manager or his or her designee prior to implementation of the new map and/or collection route.

(vi) Collection Time. The Contractor shall make no collections in residential areas, or at apartments, or at commercial/industrial areas immediately adjacent to a residential area earlier than 6:00 a.m. or later than 5:00 p.m. unless otherwise directed by the City.

(vii) Collection Vehicles. The Contractor's collection vehicles shall be operated in full compliance with the California Vehicle Code and all local ordinances. Contractor shall cause said vehicles to be thoroughly washed inside the collection body each day and the outside of each vehicle is to be thoroughly cleaned and washed daily at the expense and convenience of the contractor. Vehicles shall be maintained in good appearance. The Contractor shall make available at City request, sign boards on the vehicles to advertise service programs.

(viii) Vehicle Operation. All trucks and equipment of a contractor used within the City of Fontana shall be maintained at all times in a safe and operable condition. All collection trucks shall be clearly identified by an assigned equipment number, and with the name of the contractor and the contractor's Fontana telephone number in letters not less than three inches in height, and on both sides and the vehicle rear.

(ix) Vehicle Inspection. The Contractor shall cause all of his or her collection vehicles operated in Fontana to be inspected by the California Highway Patrol bi-annually, and a report of said inspections shall be provided to the City Manager at the completion of each inspection for that year. Any costs for these inspections shall be the responsibility of the contractor.

(x) Vehicle Replacement. Each year during the life of this agreement, the contractor shall replace or rebuild those collection vehicles that exceed ten years of service life.

(xi) Customer Vacation Period - Suspend Billing. When notified by a customer of a stop and start date for vacation, the contractor shall suspend service and billing for that period. This shall apply to a minimum period of two consecutive weeks and a maximum of four weeks per year. Longer periods shall be handled as stop service orders due to an exemption granted by the City.

(xii) Condition of Contractor's Containers. Within one week of receiving written notification from the City of the location of the contractor's refuse, green waste or recycling containers that are damaged, unsightly, graffiti covered, continually unsanitary, or which have broken or missing lids or locks, or which are not in their designated enclosure(s), or which have been placed in the public right of way, the contractor is to promptly abate these conditions. Nothing in this Agreement shall be construed as standing in the way of the contractor's bringing a civil suit for monetary damages or seeking injunctive relief against the contractor's customers who own or occupy properties where the contractor has been required by this subsection to abate the herein mentioned conditions. Contractor shall conduct an annual survey of containers and report to the City on

the overall condition, useful remaining life, and any remedial actions needed to insure continuing compliance with the performance of the contract.

(xiii) Achievement of Recycling Diversion Objectives. The contractor is required to work with the City of Fontana in attempting to reach the latter's recycling mandates of California's Integrated Waste Management Act of 1989. The Contractor shall prepare annual reports pursuant to Section 3(d)(xvi) of this Agreement.

## 12. DETACHABLE CONTAINER SERVICE

The contractor shall supply his or her customers, excepting single-family residences and multiple dwelling with four or fewer residences unless otherwise required by the City Manager or his or her designee, with sufficient numbers of one- to four-yard detachable containers, temporary roll-off containers or other containers as agreed between the customer and the contractor. Said containers shall meet the standards set by the City. The contractor shall be responsible for the general repair and upkeep of the containers so provided. The contractor shall be responsible for placing bins in enclosures subsequent to dumping when enclosures are present. In the event the containers are damaged beyond repair, the contractor shall replace the same within five working days after notification by the Contractor's customer or by the City of Fontana.

## 13. DISPOSAL/PROCESSING SITE

The processing by the Contractor or disposal by the Contractor of refuse, garbage, solid waste or rubbish collected in City pursuant to this Agreement shall be as approved or directed by the City. Nothing in this Agreement shall limit the rights of the Contractor to recycle material if authorized by the City.

## 14. SANITATION REQUIREMENTS

(a) Litter. The Contractor shall not litter any property in making collections and shall take all necessary precautions to prevent any refuse from leaking, blowing or falling from collection vehicles. If, in spite of normal precautions, any leaks, spills or littering occurs in the area of the pickup, the contractor shall remove the same and clean up said area of spillage immediately. In no event shall the time in which such leaks, spills or littering are corrected exceed 12 hours from the time the Contractor is notified by telephone of a problem. Appropriate brooms and clean-up tools shall routinely accompany each collection vehicle operating with the City of Fontana.

(b) Missed Collection. The Contractor shall collect and remove from the usual collection point within 24 hours of notice from the customer or from the City any and all refuse which the Contractor failed to collect and remove



at the regular collection time. Notification of collection misses may be made directly to the Contractor by its customers or by City forces; both the customers and City personnel may make such notification via the Contractor's toll-free from Fontana telephone number per section 15(c) of this Agreement. Any dispute as to missed collections may be jointly investigated by the City and the Contractor upon the request of either party.

15. ADMINISTRATION OF THIS CONTRACT

(a) By the City. The City shall administer and supervise the Contractor's operation under the terms of this Agreement, and in accord with this Agreement. Complaints regarding the contractor's service will be referred to the contractor for appropriate action. Customer's request for corrections or adjustments in their billings must be received at least ten days before the next billing cycle for the matter to be investigated so that corrections may be made on the next billing.

(b) Contractor's Office. The Contractor shall maintain an office within the City and keep said office open for business from 8:00 a.m. to 5:00 p.m. Monday - Friday. When the Contractor's office is open for business, said office shall be staffed with personnel who have the authority to represent the Contractor in relations with the City and customers in the City.

(c) Contractor's Telephone. The Contractor agrees to maintain a 24-hour-a-day, seven-days-a-week telephone number that is toll free from Fontana where Fontana customer may call in any collection misses, billing disputes, or other refuse- or recycling related problems. This telephone number is to be staffed by the Contractor's employee(s) as the days listed in (b) above, and thereafter by a telephone answering device. The contractor shall provide prompt review and response to the calls received.

(d) Contractor's Compliant Log

The Contractor shall keep a log of all complaints and responses and submit monthly to the City.

(e) Reports, Schedules, and Forfeiture Payments

(i) All reports, program plans and schedules required by this Agreement shall be submitted by Contractor to the City and approved by the City.

(ii) Failure by Contractor to submit required reports, program plans and schedules shall results in the forfeiture of one hundred dollars (\$100) per working day by the Contractor to the City.



(iii) Failure by Contractor to complete the services as required in the approved reports, schedules and program plans, including public education, AB 939 reports and advertising, shall result in forfeiture of two hundred and fifty dollars (\$250) per day by the Contractor to the City.

(iv) In the event this failure to perform by Contractor affects City AB 939 compliance status, the Contractor agrees to indemnify the City and bear all costs, fines and penalties imposed on the City by the California Integrated Waste Board or Local Enforcement Agency resultant from Contractor's failure to perform.

(f) Service Performance and Forfeiture Payments

(i) Failure by Contractor to respond to a service compliant as directed in writing or verbally by the City contract manager shall result in the forfeiture of one hundred dollars (\$100) per working day per compliant site by the Contractor to the City.

(ii) Failure by Contractor to respond to a compliant regarding graffiti or disrepair of a Contractor's container as directed in writing or verbally by the City contract manager shall result in the forfeiture of twenty-five dollars (\$25) per working day per container by the Contractor to the City.

(iii) All forfeiture payments shall be made at the same time and manner and in addition to the franchise fee payments.

(g) Cooperation/Participation with City Alternative Fuels Programs. Contractor agrees to cooperate with City alternative fuels programs. Contractor agrees to fair share participation, as mutually agreed by City and Contractor, in alternative fuels programs for vehicles, including conversion of collection vehicles and field supervisory vehicles to Compressed Natural Gas.

17. CONTRACTOR NOT AGENT.

The Contractor shall, at all times, act as an independent contractor, and neither the Contractor, his or her agents, or employees shall be considered agents or employees of the City of Fontana. However, the Contractor shall be responsible for the results accomplished under this Agreement and realizes that sufficient achievement of the service levels detailed in this Agreement is a key determinant of whether the Agreement will be renewed. Further, the contractor, his or her agents or employees shall have no authority to bind the City of Fontana in any manner or on any matter whatsoever.

18. DAMAGES

Inasmuch as breach of the service and sanitation requirements of this Agreement, or of any rules or regulations established by the City, will cause serious and substantial damage to the City and to the contractor's customers, and because of the nature of this Agreement, it would be impractical or extremely difficult to fix the actual damage sustained by the creation of a fire or other health hazard due to any such breach, it is agreed that in case of breach of the service of sanitation requirements of this contract, or of any other rules or regulations of the City of Fontana, the contractor will owe the City the following amounts as damages as set forth below:

The actual cost of providing City forces and City equipment, plus 15 percent of the City labor cost as administrative overhead, for the City's providing clean-up or collections of any dangerous, unsafe, or unsanitary condition that was brought about by the contractor's operation in the City, and after the Contractor has been given reasonable notification (as determined by the City Manager).

19. NOTICE

Any notice given by one party to the other under or concerning this Agreement shall be in writing and delivered to the address for the party to be notified as set forth below, and shall be effective upon delivery during regular business hours at such address.

| <u>Contractor</u>  | <u>City</u>  |
|--|--|
| Cole Burr<br>Burrtec Waste Industries, Inc.<br>9890 Cherry Avenue<br>Fontana, California 92335 | City Manager<br>City of Fontana<br>8353 Sierra Avenue<br>Fontana, California 92335 |

Either party may change its address for notice by giving notice to the other party in accordance with the foregoing provisions.

19. CITY RIGHTS

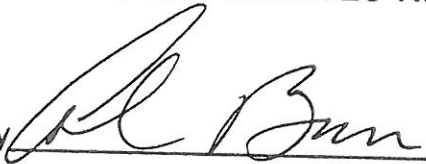
The City's rights and remedies set forth in this Agreement and Chapter 24 of the City Code are cumulative, and the City's exercise of one does not preclude it from exercising any other legal or equitable remedy available to it.

20. AGREEMENT

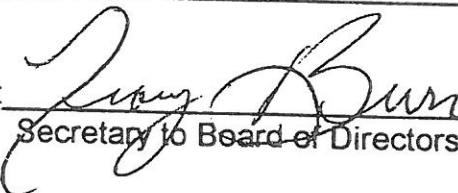
This Agreement and Chapter 24 of the City Code represents the entire Agreement between the parties and supersede all previous Agreements or oral Understandings. This Agreement may be amended, but only in writing as approved by the City Council.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

CONTRACTOR: BURRTEC WASTE INDUSTRIES, INC.

By 


Title President

Attest   
Secretary to Board of Directors

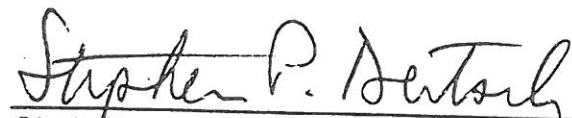
CITY OF FONTANA  
a Municipal Corporation

  
Gregory Devereaux  
City Manager

ATTEST:

  
Kathy Montoya  
City Clerk

APPROVED AS TO FORM:

  
Clark Alsop or Stephen Deutsch  
City Attorney

## EXHIBIT A

Effective 1/1/97

Residential

| <u>Standard Rate</u> |          | <u>Senior Rate (15% discount)</u> |          |
|----------------------|----------|-----------------------------------|----------|
| Service              | 10.85    | Service                           | 9.22     |
| Franchise Fee        | 2.17     | Franchise Fee                     | 1.85     |
| HazMat Fee           | 0.36     | HazMat Fee                        | 0.31     |
| Refuse Disposal      | 4.56     | Refuse Disposal                   | 3.88     |
| Greenwaste Disposal  | 0.36     | Greenwaste Disposal               | 0.31     |
| MRF Processing       | (0.14)   | MRF Processing                    | (0.12)   |
| Total                | \$ 18.16 | Total                             | \$ 15.45 |

\$54.48

\$46.35

Extra Barrel Charges

|            |           |
|------------|-----------|
| Refuse     | \$ 3.00   |
| Recycling  | no charge |
| Greenwaste | no charge |

Residential Multiple Units

|          |          |
|----------|----------|
| Per Unit | \$ 18.16 |
|----------|----------|

### Industrial

Rolloff rates include container delivery and material disposal at a minimum of once every seven days.  
Boxes pulled at intervals exceeding 7 days are subject to a daily rental fee.

#### **Permanent Rolloff Refuse Rate per load**

| Component | 40 yard   | 20 yard   | 10 yard   | Compactor<br>40 yard |
|-----------|-----------|-----------|-----------|----------------------|
| Service   | 130.20    | 132.60    | 145.80    | 132.60               |
| Franchise | 40.25     | 49.58     | 60.38     | 49.58                |
| Disposal  | 165.00    | 231.00    | 297.00    | 231.00               |
| Total     | \$ 335.45 | \$ 413.18 | \$ 503.18 | \$ 413.18            |

#### **Temporary Rolloff Refuse Rate per load**

| Component | 40 yard   | 20 yard   | 10 yard   | Compactor<br>40 yard |
|-----------|-----------|-----------|-----------|----------------------|
| Service   | 139.20    | 142.50    | 145.80    | 142.50               |
| Franchise | 41.48     | 50.93     | 60.38     | 50.93                |
| Disposal  | 165.00    | 231.00    | 297.00    | 231.00               |
| Total     | \$ 345.68 | \$ 424.43 | \$ 503.18 | \$ 424.43            |

Disposal fees exceeding these amounts will be charged at prevailing per ton disposal rate plus franchise fees.

#### Additional Fees

|                  |                              |
|------------------|------------------------------|
| Daily Rental Fee | \$ 20.00                     |
| Relocation Fee   | \$ 50.00 (per 5 mile radius) |

#### Recycling

##### All rolloff boxes

|                  |                               |
|------------------|-------------------------------|
| Service-per load | \$125.00                      |
| Franchise        | 12%                           |
| Disposal         | Prevailing Rate               |
| Material Rebate  | Revenues less processing fees |



Effective 1/1/97

**Commercial**

| Bin Size | Component | Bin Service |           |           |           |           |           |
|----------|-----------|-------------|-----------|-----------|-----------|-----------|-----------|
|          |           | Frequency   |           |           |           |           |           |
|          |           | 1           | 2         | 3         | 4         | 5         | 6         |
| 1        | Service   | 34.61       | 48.99     | 58.46     | 69.02     | 77.83     | 88.47     |
|          | Franchise | 5.74        | 8.73      | 11.04     | 13.51     | 15.73     | 18.21     |
|          | Disposal  | 7.51        | 15.02     | 22.53     | 30.04     | 37.55     | 45.06     |
|          | Total     | \$ 47.86    | \$ 72.74  | \$ 92.03  | \$ 112.57 | \$ 131.11 | \$ 151.74 |
| 1.5      | Service   | 37.86       | 55.93     | 69.90     | 83.41     | 96.27     | 109.31    |
|          | Franchise | 6.70        | 10.70     | 14.14     | 17.52     | 20.81     | 24.13     |
|          | Disposal  | 11.27       | 22.53     | 33.81     | 45.06     | 56.35     | 67.62     |
|          | Total     | \$ 55.83    | \$ 89.16  | \$ 117.85 | \$ 145.99 | \$ 173.43 | \$ 201.06 |
| 2        | Service   | 43.17       | 68.20     | 87.40     | 107.07    | 138.00    | 145.66    |
|          | Franchise | 7.94        | 13.40     | 18.06     | 22.79     | 29.06     | 32.15     |
|          | Disposal  | 15.02       | 30.04     | 45.06     | 60.08     | 75.10     | 90.12     |
|          | Total     | \$ 66.13    | \$ 111.64 | \$ 150.52 | \$ 189.94 | \$ 242.16 | \$ 267.93 |
| 3        | Service   | 46.30       | 78.17     | 101.47    | 126.12    | 149.88    | 174.74    |
|          | Franchise | 9.39        | 16.80     | 23.05     | 29.49     | 35.80     | 42.26     |
|          | Disposal  | 22.53       | 45.06     | 67.59     | 90.12     | 112.65    | 135.18    |
|          | Total     | \$ 78.22    | \$ 140.03 | \$ 192.11 | \$ 245.73 | \$ 298.33 | \$ 352.18 |

Additional Pickups \$ 30.00 per pickup, per bin

Temporary Bin-3 yards \$ 58.00 for 7 days

**Locking Bars**

Initial Set-up (1 time fee) \$ 20.00

Monthly Fee \$ 4.00

**Barrel Service**

Service 13.36

Franchise Fee 2.42

Refuse Disposal 4.56

MRF Processing (0.14)

Total \$ 20.20

Accounts requiring a service level in excess of two barrels will be placed on commercial bin service.

Effective 1/1/97

Multi-Family Bin Rates

| Bin<br>Size | Component | Frequency |           |           |           |           |           |
|-------------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
|             |           | 1         | 2         | 3         | 4         | 5         | 6         |
| 1           | Service   | 34.61     | 48.99     | 58.46     | 69.02     | 77.83     | 88.47     |
|             | Franchise | 5.88      | 8.93      | 11.30     | 13.82     | 16.10     | 18.63     |
|             | HazMat    | 0.98      | 1.49      | 1.88      | 2.30      | 2.68      | 3.11      |
|             | Disposal  | 7.51      | 15.02     | 22.53     | 30.04     | 37.55     | 45.06     |
|             | Total     | \$ 48.98  | \$ 74.43  | \$ 94.17  | \$ 115.18 | \$ 134.16 | \$ 155.27 |
| 1.5         | Service   | 37.86     | 55.93     | 69.90     | 83.41     | 96.27     | 109.31    |
|             | Franchise | 6.86      | 10.95     | 14.47     | 17.92     | 21.30     | 24.69     |
|             | HazMat    | 1.14      | 1.82      | 2.41      | 2.99      | 3.55      | 4.11      |
|             | Disposal  | 11.27     | 22.53     | 33.81     | 45.06     | 56.35     | 67.62     |
|             | Total     | \$ 57.13  | \$ 91.23  | \$ 120.59 | \$ 149.38 | \$ 177.47 | \$ 205.73 |
| 2           | Service   | 43.17     | 68.20     | 87.40     | 107.07    | 138.00    | 145.66    |
|             | Franchise | 8.12      | 13.71     | 18.48     | 23.32     | 29.73     | 32.90     |
|             | HazMat    | 1.35      | 2.28      | 3.08      | 3.89      | 4.96      | 5.48      |
|             | Disposal  | 15.02     | 30.04     | 45.06     | 60.08     | 75.10     | 90.12     |
|             | Total     | \$ 67.66  | \$ 114.23 | \$ 154.02 | \$ 194.36 | \$ 247.79 | \$ 274.16 |
| 3           | Service   | 46.30     | 78.17     | 101.47    | 126.12    | 149.88    | 174.74    |
|             | Franchise | 9.60      | 17.19     | 23.59     | 30.17     | 36.63     | 43.24     |
|             | HazMat    | 1.60      | 2.87      | 3.93      | 5.03      | 6.11      | 7.21      |
|             | Disposal  | 22.53     | 45.06     | 67.59     | 90.12     | 112.65    | 135.18    |
|             | Total     | \$ 80.03  | \$ 143.29 | \$ 196.58 | \$ 251.44 | \$ 305.27 | \$ 360.37 |

Additional Pickups      \$ 30.00 per pickup, per bin

Temporary Bin-3 yards    \$ 58.00 for 7 days

**Large/Bulky Item Collection**

|            |          |
|------------|----------|
| 1-3 items  | \$ 20.00 |
| 4-6 items  | \$ 25.00 |
| 7-10 items | \$ 30.00 |

Items will be collected on a scheduled day each week.  
Requested collections will be routed accordingly.

Collections requested off schedule will be subject to a \$25.00  
service fee in addition to the item collection fees.

**Special Pickups**

Residents requesting a special pickup, in addition to  
their weekly service, will be subject to a \$10.00 fee.