

**AMENDED AND EXTENDED
EXCLUSIVE FRANCHISE AGREEMENT
BETWEEN
THE CITY OF PORTOLA AND
INTERMOUNTAIN DISPOSAL, INC. FOR
SOLID WASTE AND RECYCLABLE MATERIAL
COLLECTION SERVICES
AND
OPERATION OF THE ENVIRONMENTAL RECLAMATION
CENTER
AT PORTOLA LANDFILL**



AMENDMENT NO. 1, MODIFY SECTION 5.3, EXECUTED AUGUST 25, 2021

AMENDMENT NO. 2, ADD SECTION 5.6, EXECUTED APRIL 13, 2022

AMENDED AND EXTENDED EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE AND RECYCLABLE MATERIALS COLLECTION SERVICES AND OPERATION OF THE ENVIRONMENTAL RECLAMATION CENTER AT PORTOLA LANDFILL

This Amended and Extended Exclusive Franchise Agreement for Solid Waste Collection and Recycling Services, (“Agreement”) is entered into this ____ day of _____, 2017 by and between the City of Portola (“City”) and Intermountain Disposal, Inc., a California corporation (“Company”).

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 *et. seq.*) (“AB 939”), 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 jurisdictions to meet the goals and requirements of AB 939 and its successor legislation;

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that in order to protect the public health and safety of the residents and business within the City of Portola, it is appropriate to provide for solid waste collection and disposal by a private waste hauler as an alternative to providing such services through public resources; and to that end has determined that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and Recyclable Materials and other services to meet the goals and requirements of AB 939; which Franchise can be appropriately integrated into and function as part of the solid waste system provided by the City;

WHEREAS, Public Resources Code Section 40059 permits the City to impose terms and conditions on the award of a solid waste franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions;

WHEREAS, Company has represented and warranted to the City that it has the experience, responsibility, and qualifications to conduct the services detailed herein for the collection, safe transportation and disposal of Franchise Materials as described herein;

WHEREAS, the City Council of the City of Portola determines and finds that: (i) based on Company’s qualifications, technical proposal, and financial strength, as well as cost to the City, the proposal of the Company’s to provide Collection, transportation, Recycling, and Disposal of Solid Waste services for single family residences, multifamily dwellings and commercial service Customers, as described in this Franchise, is in the best interest of the City and the public health and safety; and, (ii) the public health, safety and well-being require the grant of a franchise on the terms and conditions contained in this Franchise;

WHEREAS, Chapter 8.04.031 of the City of Portola Municipal Code (City Code) requires, among other things, that a commercial collector or transporter of solid waste be properly franchised by the City;

WHEREAS, the Company agrees to and acknowledges that it shall lawfully dispose of all Solid Waste collected pursuant to this Agreement at a permitted disposal facility; and

WHEREAS, the City and the Company (“Parties”) initially entered into a franchise agreement effective November 1, 2002 and hereto desire to enter into this amended and extended Agreement.

NOW, THEREFORE, in consideration of the Recitals stated above, for good and valuable consideration, and of the terms, conditions, covenants and agreements contained herein, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of the City of Portola Municipal Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the City Code shall apply first and then the Public Resources Code shall apply, unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et. seq.), as it may be amended from time to time.

1.2 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, and Disposal of Solid Waste, Recyclable Materials, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.3 Appliances

“Appliances” means refrigerator, freezers, ovens, ranges, clothes washers and dryers, water heaters and dishwashers.

1.4 Billings

“Billings” means invoices generated by the Company for the purpose of collection of payments for the residential and commercial solid waste collection services.

1.5 Bin

“Bin” means a solid waste container possessing a lid, the top of which shall not exceed 72 inches in height from the surface of the ground and having a capacity of at least one cubic yard, but not more than eight cubic yards.

1.6 Bulky Waste

"Bulky Waste" means large, oversize items such as an appliance, furniture, mattress and box spring.

1.7 Can

“Can” means a solid waste container provided by the Customer, serviced by manual collection and not exceeding thirty-two (32) gallons in volume and not exceeding 40 pounds in weight.

1.8 Cart

"Cart" means a plastic container with a hinged lid and wheels with a capacity of thirty-two (32), sixty-four (64) and/or ninety-six (96) gallons.

1.9 City

“City” means the City of Portola, a California Public agency.

1.10 City Manager

"City Manager” means the city council appointed manager of the affairs of the city of Portola.

1.11 City Code

“City Code” means the City of Portola Municipal Code – Solid Waste Ordinance, as it may be amended from time to time.

1.12 Collect/Collection

"Collect" or "Collection" means to take physical possession, transport, and remove Solid Waste and Recyclable Materials within and from the City of Portola.

1.13 Collection Vehicle

"Collection Vehicle" means any vehicle or equipment specifically designed and manufactured for the purpose of Solid Waste and Recyclable Materials Collection.

1.14 Company

"Company" means Intermountain Disposal, and its officers, directors, employees, agents, companies owned by Company and, if the City approves a subcontractor pursuant to Section 10.4, its Subcontractors and/or, in the event of an assignment pursuant to Section 10.3, its assignees.

1.15 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.16 Commercial Customer

"Commercial Customer" means any person who produces commercial solid waste and uses a container, bin or debris box for accumulation thereof.

1.17 Construction and Demolition Debris

"Construction and Demolition Debris" means waste building materials and rubble resulting from construction, remodeling, repair and demolition operations on pavements, houses, commercial buildings and other structures.

1.18 Containers

"Containers" means any and all types of Solid Waste and Recycling receptacles, including Carts, Bins, and Debris Boxes.

1.19 County

"County" means the County of Plumas, California

1.20 Customer

"Customer" means the Person having the care and control of any Premises in the City of Portola who receives Solid Waste and Recyclable Material Collection services from the Company.

1.21 Debris Box

"Debris Box" means an open-top solid waste container with a capacity of at least 10 cubic yards, but not greater than 50 cubic yards.

1.22 Disposal Site

"Disposal Site" means the facility at which the City directs the Company to Dispose of Solid Waste. The Disposal Site may not be the site of ultimate disposition of Collected Solid Wastes.

1.23 Dispose or Disposal

"Dispose" or "Disposal" means the disposition of Solid Waste Collected by the Company at the Disposal Site.

1.24 Disposal Cost

"Disposal Cost" means the portion of the fee charged to the Customer that represents the cost of Disposal of the Solid Waste Collected, commonly referred to as the "gate fee."

1.25 Effective Date

"Effective Date" means the date this Agreement takes effect, as defined in Section 2.3.

1.26 "Electronic Waste" or "E-Waste"

"Electronic Waste" and "E-Waste" means discarded consumer products such as computers, televisions, monitors, cell phones, radios and stereo equipment.

1.27 End Market

"End Market" means the established destination for recyclable material that qualifies as a waste diversion credit for the purpose of compliance with AB 939.

1.28 Environmental Laws

"Environmental Laws" means all federal and state statutes, County and City ordinances concerning public health, safety and the environment including, without limitation, the Collection, transport and Disposal of Solid Waste, Hazardous Wastes and/or Recyclables, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et. seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et. seq.; the Federal Clean Water Act, 33 USC §1251 et. seq.; the Toxic Substances Control Act, 15 USC §1601 et. seq.; the Occupational Safety and Health Act, 29 USC §651 et. seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et. seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et. seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et. seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et. seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.29 Facility

"Facility" means any plant or site, owned or leased and maintained, operated or used by the Company for purposes of performing under this Agreement.

1.30 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste and Recyclable Materials Collection services within the incorporated boundaries of the City of Portola.

1.31 Franchise Fee

"Franchise Fee" means the fee paid by the Company to the City for the right to hold the Franchise granted by this Agreement.

1.32 Gross Receipts

"Gross Receipts" means any and all revenues, receipts, or compensation in any form received by the Company for Solid Waste and Recyclable Materials Collection pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles (GAAP), including, but not limited to, Customer fees for Collection of Solid Waste and Recyclable Materials. Sales revenue from the sale of Recyclable Materials is excluded from Gross Receipts; revenue generated by Company as the operator of a transfer station is also excluded to the extent the fees charged under this Agreement for such services are no more than the fair market value for such expenses.

1.33 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601. et. seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802 et. seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et. seq.; (iv) the Clean Water Act, 33 USC §1251 et. seq.; (v) California Health and Safety Code §§25115-25117, 25249.8,25281, and 25316; (vi) the Clean Air Act, 42 USC §7901; (vii) California Water Code §13050; (viii) any amendments, rules or regulations promulgated to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.34 Hazardous Waste

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

1.35 Holiday

“Holiday” means the days defined as holidays in City of Portola Municipal Code section 8.04.052C, which, as of the date this Agreement is executed, are New Year’s Day, Independence Day, Thanksgiving Day, and Christmas Day.

1.36 Inert Wastes

“Inert Wastes” means broken pieces of concrete and/or asphalt, free of reinforcing wire or steel bars and free of other decomposable materials.

1.37 Minimum Service

“Minimum Service” means the required minimum level of Solid Waste Collection service and includes one 32-gallon Cart collected at least once per week. Minimum Service includes Recycling service for Commercial Customers but not for Residential Customers.

1.38 Multi-Family Residential Complex

“Multi-Family Residential Complex” means complexes with three or more residential dwelling units including apartments, condominiums, triplexes, four-plexes and mobile home parks which are located on a single parcel.

1.39 Occupied

“Occupied” means to dwell in a premise on a continuous, permanent basis, be it a residence or commercial structure. A primary residence is considered “occupied,” whereas a secondary or weekend residence is not. Proof of primary residency outside of Portola City limits may be established through documentation, including tax documents, credit card statements and voter registration documents.

1.40 Owner

"Owner" means the Person or Persons holding the legal title to the real property constituting the Premises to which Solid Waste or Recyclable Materials Collection service is to be provided under this Agreement.

1.41 Party/Parties

“Party” means either the Company or the City, and “Parties” means both the Company and the City.

1.42 Pass-Through Cost

“Pass-Through Cost” means any cost controlled and/or imposed by the City, county, state or federal government, over which the Company has no control, including, for example, tipping fees, increased franchise fees by the City, or other governmental mandates which has an effect upon the costs of fulfilling this Agreement which are not fully accounted for in the change in the

Consumer Price Index. A complete list of the Pass-Through Costs is attached hereto as Exhibit A.

1.43 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Plumas, the City of Portola, or special purpose district.

1.44 Premises

"Premises" means any land or building in the City of Portola where Solid Waste and/or Recyclable Materials are generated or accumulated.

1.45 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances of odors, gases or other offensive conditions, and includes materials such as food wastes, offal, and dead animals.

1.46 Rates

"Rates" mean the compensation Customers must pay Company for the Solid Waste and/or Recyclable Materials Collection Services, as detailed in Exhibit B.

1.47 Rate Year

"Rate Year" means the twelve-month period from January 1st to December 31st, for each year of the Franchise agreement, except for year one of this Agreement which shall be from November 1, 2017 to December 31, 2018.

1.48 Recycle or Recycling

"Recycle" or "Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.49 Recyclable Materials

"Recyclable Materials" means those materials that are normally part of the solid waste stream which have market value and can be segregated from non-recyclable wastes.

1.50 Residential Customer

"Residential Customer" means that Customer receiving services for a residential Property.

1.51 Scrap Metal

“Scrap Metal” means discarded metallic materials, generally free wood, plastic, paper and glass, including steel, tin, iron, aluminum and copper. Scrap metal does not include wire.

1.52 Solid Waste

"Solid Waste" means putrescible and non-putrescible solid and semi-solid non-hazardous wastes generated by residential and commercial enterprises including, without limitation, garbage, refuse, trash, yard waste, construction and demolition debris, industrial wastes, and inert wastes.

1.53 Universal Waste

“Universal Waste” means waste antifreeze, vehicle batteries and waste motor oil and used oil filters.

1.54 Waste Tire

"Waste Tire" means a tire that is not on the wheel of a vehicle and is not suitable for its original intended use due to wear or damage

1.55 Yard Waste or Green Waste

“Yard Waste” or "Green Waste" means lawn cuttings, weeds, leaves, and shrub and tree pruning materials which are less than six inches in diameter and less than four feet long.

ARTICLE 2. GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, and all applicable federal, state and local laws, regulations and/or ordinances, the City hereby grants to the Company an exclusive Franchise to Collect, transport, recycle, process, and Dispose of Solid Waste and Recyclable Materials accumulating in the City of Portola.

The Company hereby accepts the exclusive Franchise on the terms and conditions set forth in this Agreement. Company acknowledges and agrees that the grant of the Franchise hereunder is intended to benefit the public interest in securing appropriate Solid Waste and Recyclable Materials services. The grant of this Franchise shall not preclude the City from adopting such ordinances or regulations as the City may determine are necessary for the public interest (including, but not limited to, the protection of the public health, safety and welfare). Company shall be entitled to an increase in Rates, pursuant to Section 5.4, in the event that any such ordinance or regulation the City promulgates subsequent to the grant of this Franchise financially impacts the Company's cost(s) of performing this Agreement.

2.2 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.6 below, or as may otherwise be provided by federal or state law, the rights granted to the Company under this Agreement shall be exclusive to the Company. Except as otherwise provided for herein, the City will not enter into any agreement with any other Person for the performance of the services exclusively granted to Company pursuant to Section 2.1.

Company shall have the right to take such legal action against third parties as it deems appropriate to protect the exclusive nature of its Franchise. City shall, so long as it is at no cost to the City, cooperate with Company to protect the Company's exclusive rights.

2.3 Effective Date

The Effective Date of this Agreement shall be November 1, 2017.

2.4 Term of Agreement

The term of this Agreement shall be ten (10) years and two (2) months, commencing November 1, 2017 and ending December 31, 2027, with an option for a five (5) year extension following the ten year and two month term, upon the mutual consent and agreement of the City and Company.

2.5 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager, and the actions of the City specified in this Agreement, unless otherwise stated, shall be taken by the City Manager. The City Manager shall not have any authority to

issue any instructions to or to authorize any actions by Company that are inconsistent with this Franchise, the City Code or any federal/state law or regulation.

2.6 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste and Recyclables listed in this Section. The granting of this Franchise shall not preclude the categories of Solid Waste and Recyclables listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City, which is otherwise required by law:

- (a) Solid Waste and Recyclable Materials which are removed from any Premises by the occupant and which are transported personally by the occupant of such Premises, by his relatives or friends without compensation of any type or form, or by his or her full-time employees, to a processing or Disposal Site;
- (b) Recyclable Materials which are donated to youth, civic, nonprofit, or charitable organizations and containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- (c) Construction and demolition waste that is removed by a duly licensed construction or demolition company as part of a total service offered by said licensed company (provided that such construction and demolition waste is separated from Solid Waste), or by the City or by an other governmental entity;
- (d) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- (e) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- (f) Hazardous Waste, Hazardous Substances and radioactive waste, regardless of its source;
- (g) The Disposal, diversion, or casual Collection or removal of Solid Waste by the City, the County and/or any government entity by their officers or employees in the normal course of their employment; and,
- (h) Any public or semi-public entity removing Solid Waste from its facilities or property with any public or semi-public entity equipment.
- (i) Industrial wastes, motor vehicles and parts thereof, discarded home and industrial appliances, and dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste and Recyclable Materials shall be interpreted to be consistent with state, federal and local laws and regulations, now existing or hereafter enacted during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by

current and any future state, federal and local laws and regulations with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement.

2.7 City's Right to Direct Changes

The City may direct the Company to perform additional services (including new diversion programs, etc.) or to modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and new requirements for Customers are included among the kinds of changes which the City may direct. Pursuant to Section 5.4, the Company shall be entitled to an adjustment in its Rates for providing any additional or modified services the City may request or require pursuant to this Section 2.7. Within ninety (90) days from the date when the City first requests the Company to perform such services, the Company and the City shall, in good faith, negotiate the terms and conditions of such additional or expanded services and the additional compensation due Company for the additional or expanded services. The Company shall be allowed such retroactive adjustments to its compensation, to be reflected in the Rates, to compensate the Company for any such additional services. The City shall also have the right, upon ninety (90) day written notice, to order the reduction or elimination of such additional services and to require a corresponding reduction in the Rates.

2.8 Ownership of Solid Waste

Once Solid Waste and Recyclable Materials are placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. The Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste and Recyclable Materials which it Collects. Solid Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. In no event shall Company Dispose of Recyclable Materials without first advising City, and obtaining City's consent that no viable market options then exist for the Recyclable Materials; Company shall provide City with such information as City may request with regard to any such proposed Disposal of Recyclable Materials by Company.

2.9 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under applicable laws. It is qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.10 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Person(s) signing this Agreement on behalf of the Company have authority to do so. Company shall designate one employee as a single point of contact for the City for issues arising under this Agreement, and this employee's actions shall be conclusively presumed to be taken on behalf of and with the full approval of the Company.

2.11 Validity of Company's Information and Representations

Company warrants that the information supplied by Company and all representations made by Company and its officers, employees, agents and representatives in anticipation of the grant of this Franchise and as part of the negotiations leading to said grant are true and correct in all material respects.

2.12 Mandatory Service

All Premises within City limits which are Occupied shall subscribe to Solid Waste Collection service provided by the Company. Any Person electing not to accept such service shall be required to pay the Minimum Service charge for solid waste service. Solid Waste Collection services shall be in the name and responsibility of the property owner. Property owners or representatives of Occupied property shall make arrangements for Solid Waste Collection services directly with the Company. A current owner of an Occupied property is not responsible for a prior owner's payment of Collection fees to the Company. Failure to pay such Minimum Service charge shall constitute a violation of section 8.04.100 of the City Code.

ARTICLE 3. SERVICES

3.1 General Scope of Services

The work to be done by the Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The work to be done by the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste and Recyclable Materials Collection at all times.

3.2 Disposal Site

The City shall have the right to direct Solid Waste Collected under this Agreement to a Disposal Site. Unless and until City notifies the Company of a change, Solid Waste shall be transported for Disposal to the Delleker Transfer Station in Plumas County. If the City elects to designate an alternate disposal site, any and all additional costs, including, without limitation, additional gate fees and transportation costs, shall be deemed a Pass-Through Cost and the Rates shall be adjusted accordingly in accord with Section 5.4.

3.3 Collection Services

Customers shall receive: Solid Waste Collection services not less than one (1) time per week; curbside Recyclable Materials Collection shall be not less than once every other week; and elective curbside Yard Waste Collection services shall be once per week during the months of April through October.

Collection services shall occur Monday through Friday between the hours of 7:00 A.M. and 6:00 P.M., unless Saturday collection shall be necessary due to Holiday scheduling. If the regularly scheduled collection day falls on a Holiday, alternate collection shall be performed on the day prior to or following the Holiday, unless the alternate day falls on a Sunday; if the alternate day falls on a Sunday, then Collection shall be performed on the following Monday. Collection services are not allowed on Sundays unless explicitly directed by the City Manager. The Company shall notify Customers in advance of changes in Collection services schedules.

3.3.1 Carts

Upon request of a Customer, Company shall supply the Customer with one 32-gallon or one 64-gallon or one 96-gallon Cart (unless a Commercial Customer requests Bin service) with an option to obtain additional Carts at the Rates shown in Exhibit B. Carts shall be the property of Company during the term of this Agreement.

3.3.2 Bins

A Commercial Customer may request the Company provide Bin service. In this event, Company shall provide the Commercial Customer with the requested Bin at the Rates shown on Exhibit B. Bins shall be the property of the Company during the term of this Agreement.

3.3.3 Recyclable Materials Collection

3.3.3.1 Curbside Recyclables Collection

Company shall provide curbside Recyclable Materials Collection services. Company shall issue each Residential Customer requesting Curbside Recycling Collection services with a 64 gallon Cart and shall assess charges for the Cart at the Rates shown in Exhibit B. Recycling Carts shall be Collected by Company biweekly.

Additional 64 gallon Carts for Recycling service shall be assessed monthly charges at the Rates shown in Exhibit B. Fees shall not be assessed to Customers for delivery and/or pick-up of Recycling Carts.

Company shall Collect and remove all Recyclable Materials placed in Carts at the curbside. Recyclable Materials Collection from Carts within the City shall include, at a minimum, the following types of recyclable materials from Residential Customers: newsprint; cardboard; plastic containers (Nos. 1 to 6); glass containers; and aluminum containers

Recycling Carts shall remain the property of Company at all times during the term of this Agreement and at termination.

3.3.3.2 Curbside Green Waste Collection

Company shall provide curbside Green Waste Collection services. Company shall issue each Customer requesting Green Waste Collection services with at 96 gallon Cart and shall assess charges for the Cart at the Rates shown in Exhibit B. Green Waste Carts shall be Collected by Company weekly during the months of April through October.

Additional 96 gallon Carts for Green Waste service shall be assessed monthly charges at the Rates shown in Exhibit B. Fees shall not be assessed to Customers for delivery and/or pick-up of Green Waste Carts.

Green Waste Carts shall remain the property of Company at all times during the term of this Agreement and at termination.

3.3.4 Double-Up

Customers who forget or who are unable to put their Containers out for Collection on any given week shall be allowed to put out their previous week's Solid Waste and/or Recyclable Materials, along with the current week's Solid Waste and/or Recyclable Materials, on their next scheduled Collection day.

3.3.5 Other Services on Exhibit B

The Company shall provide additional Collection services, including, without limitation, Disposal of car and truck tires, Freon-free appliances, and mattresses. The Company shall charge the Rates stated in Exhibit B

3.3.6 Collection Location

In the event physical conditions or safety concerns prevent curbside placement of Solid Waste and/or Recyclable Materials Containers, Company shall immediately notify Customer, in writing, of the reasons for the need to change the Container(s) location. Customer and Company shall mutually agree on an alternate Container(s) location. If the parties cannot agree on the alternate Container(s) location, the City and the Company shall mutually agree on the appropriate Container(s) location.

Debris Boxes shall not be dropped or placed on a public sidewalk, street or way, except: 1) in that portion of a sidewalk, street or way that may have been temporarily closed during the course of construction of an improvement on an adjoining property by order of the city; or 2) if an encroachment permit is obtained in advance from the City of Portola.

3.3.6.1 Enclosures

Where the Collection location is within an enclosure, Company shall be responsible for the removal and replacement of all Bins or Containers placed therein that are at street level. Company shall use sufficient care in the handling of such Bins or Containers to prevent damage to the enclosure, the enclosure doors, and adjacent facilities or improvements, so long as such items do not obstruct access to the enclosure. Company shall repair, at its own expense, any damage to such enclosure or adjacent facility or improvement within thirty (30) days of receipt of notice from City.

Company shall not be responsible for repair of damage to buildings, grounds and appurtenances on Customer Premises, except for damage that was caused by Company negligence or willful misconduct.

3.4 Other Services

3.4.1 Debris Box Services

The Company shall offer Debris Box Services for the Collection of Non-Putrescible Solid Wastes and/or Construction and Demolition Debris. Putrescible Wastes shall be prohibited from disposal in Debris Boxes. The Company shall deliver and Collect Debris Boxes and shall assess Customer charges at the Rates shown in Exhibit B.

3.4.2 Free Clean-up Day

The Company operates the Delleker Transfer Station under an agreement with Plumas County. On the second Saturday of May each calendar year, Company shall allow City of Portola Residential Customers free access to the Delleker Transfer Station for Disposal of Solid Wastes the entire day the transfer station is open for trash Disposal. The quantity of free Disposal shall not exceed five (5) cubic yards (roughly equivalent to one standard size pick-up truck bed capacity) per Residential Customer. Free disposal shall not include car and truck tires and bulky items (such as appliances). Residential Customers shall be required to provide proof of City residence in a manner acceptable to Company for free clean-up day services.

3.4.3 Free Yard Waste Disposal

The Company operates the Environmental Reclamation Center at Portola Landfill under agreement with the City. Company shall, in conjunction with this Agreement, allow City of Portola Residential Customers free access for Yard Waste Disposal at the Recycling Facility at Portola Landfill during the month of May annually. Residential Customers shall be required to provide proof of City residence in a manner acceptable to Company for free Yard Waste disposal services.

3.5 Litter Abatement

The Company shall use due care to prevent Solid Waste, Recyclable Materials or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, the Company shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose. The Company shall not transfer loads from one vehicle to another on any public street unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a method pre-approved by the City for Solid Waste transfer between vehicles.

3.6 Service Exceptions; Hazardous Waste Notifications

3.6.1 Contaminated Recycling and Green Waste Carts

The Company shall warn Customers who have non-recyclables and non-green wastes in their Recycling and Green Waste Carts, respectively. If, after two (2) sequential written warnings, the Recycling or Green Waste Cart continues to be contaminated, the Company may remove the Cart from the Customer's Premises. The Company shall report monthly to the City any such warning notices issued and Recycling and Green Waste Carts that have been removed from a Customer's Premises.

3.6.2 Hazardous Materials

The Company reserves the right to inspect Solid Waste and Recyclable Materials put out for Collection, the right to reject Solid Waste and Recyclable Materials observed to be contaminated with Hazardous Waste and/or Hazardous Substances, and the right to not Collect Hazardous Waste and/or Hazardous Substances put out with Solid Waste.

Further, the Company shall reasonably inspect Solid Waste and Recyclable Materials for Hazardous Waste and/or Hazardous Substances that are exposed and obvious during the normal and customary provision of the services, and shall not Collect such Hazardous Waste and/or Hazardous Substances. The Company shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste or Recyclable Materials anywhere within the City. In addition to other required notifications, if the Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes or Hazardous Substances unlawfully disposed of or released on any City or other public property, including storm drains, streets or other public rights of way, the Company will immediately notify the City or the appropriate public entity.

3.6.3 Failure to Collect Notices

When Solid Waste or Recyclable Materials are not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made, through the use of a "tag" or similar written notice, explaining the reasons why the Collection was not made.

3.7 Missed Collections; Requested Pick-ups

Under City Code, Customers shall set-out Containers by 7:00 AM on regularly scheduled Collection days. If the Customer has set-out Container by 7:00 AM and the Company misses the pick-up, the Company shall Collect the Solid Waste and/or Recyclable Materials within one (1) business day at no additional charge to Customer. If the Customer does not set-out the container by 7:00 AM, Customer is allowed to double-up on the next scheduled Collection day, in accordance with Section 3.3.4. If the Customer does not set-out the container by 7:00 AM and desires for pick-up within one (1) day, Company may assess Customer a return trip charge, in accordance with Exhibit B.

3.8 Customer Service

3.8.1 Company Office

Company shall provide an office proximately located to Portola, California, and office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Automated telephone answering systems with menu-driven options must provide callers with an option to connect to a live operator. Phone answering staff shall be competent to handle questions on Company's specific programs. The Company shall also maintain a telephone number for use during other than normal business hours. The Company shall have a representative, answering service, or message providing/receiving live or voice-mail service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day. Company shall provide the City with the phone number of a representative who may be reached twenty-four (24) hours a day.

3.8.2 Customer Service Complaints

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all reasonable times upon request.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service complaint records and logs kept by the Company shall be provided to the City on a quarterly basis. Company shall supply the City, within fifteen (15) days of end of the calendar quarter, copies of all complaints, and the Company shall indicate the disposition of each complaint. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

3.9 Education and Public Awareness

3.9.1 General

Company acknowledges and agrees that education and public awareness are critical and essential elements of any efforts to achieve AB 939 goals and subsequent legislation regarding waste reduction and diversion from landfill disposal. Accordingly, the Company agrees to implement a public education program to expand public and Customer awareness concerning the need to and methods of reducing, reusing and Recycling appropriate Recyclable materials. City shall cooperate fully with Company in this regard.

All public education materials shall be approved in advance by the City. All printed materials shall be printed on recycled paper.

City may require the Company to perform mailing services, related to Solid Waste matters, on the City's behalf. City will provide not less than thirty (30) days notice to the Company prior to the mailing date of any proposed mailing to permit the Company to make appropriate arrangements for inclusion of the City's materials. The City will provide the Company the mailers at least fifteen (15) days prior to the mailing date. The City shall bear the expense of reproduction and distribution of such additional information, including, without limitation, postage and insertion costs, only to the extent it is in excess of the Company's normal billing costs and represents services beyond the approved public education plan.

Company will provide a minimum of the following public education items to be developed and distributed at Company's expense:

- Annual Brochures – The Company shall prepare and distribute a brochure informing customers of the available services, how to use such services, rates for services, Holiday schedules, and of the Recycling programs the Company offers.
- Corrective Action Notice – For use in instances where the Customer sets out inappropriate materials.
- Public Service Announcements – Company shall produce and distribute two (2) public service announcements per year to advertise such events as, for example, Free Disposal Day. Such announcements shall be at least 1/8 of a newspaper page in size.
- Recycling information, tips, state requirements and how to instructions related to AB 341 and AB 1826 regarding commercial recycling and organic wastes diversion.

All brochures, mailings, and other educational materials shall bear the City of Portola seal, unless otherwise approved by the City. The Company shall obtain the City's approval, which shall not be unreasonably withheld, before distributing any public education materials.

3.10 Personnel

3.10.1 General

The Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

The Company also agrees to establish and vigorously enforce an educational program which will train the Company's employees in the identification of Hazardous Waste. The Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles.

The Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, the Company shall take necessary corrective measures. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company shall provide suitable health and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

3.10.2 Identification Required

The Company shall provide its employees with identification for all individuals who may make personal contact with residents or businesses in the City of Portola. The City may require the Company to notify Customers yearly of the form of said identification. Company shall require its drivers and helpers to wear clean, standardized shirts and/or safety vests bearing the name “Intermountain Disposal.”

3.10.3 Fees and Gratuities

Company shall not permit its employees or agents to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the services under this Agreement. Notwithstanding the foregoing, Company’s employees shall be entitled to receive unsolicited de minimus gratuities including, but not limited to, Christmas tips or presents.

3.10.4 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, sexual orientation, age, physical handicap or medical condition in violation of any applicable federal or state law.

3.11 Equipment

3.11.1 Collection Vehicles

The Company shall not use any truck or other vehicle for the removal or transportation of any Solid Wastes and Recyclable Materials from any property within the City unless the same conforms to the specifications set forth in this section.

Vehicles used for the collection of any and all Solid Wastes shall be of the mechanical-compaction type, provided that in the case of an emergency such as mechanical breakdown or other cause beyond the control of the Company, the City Manager may, upon the request of the Company, approve the use of non-mechanical compaction-type equipment for a limited period of time during such emergency, as determined by the City Manager. Only enclosed covered-body-type vehicles shall be used for the collection of solid wastes.

Each collection vehicle shall be maintained in a clean and mechanically safe condition. Each collection vehicle shall be constructed and maintained in such manner that it is watertight and free from odor leakage.

All vehicles shall be painted and legibly bear the name of the Company. Said company name, colors, and size of lettering must first be approved by the City Manager. Advertising on the Company's refuse collection vehicles for companies or entities other than the Company is prohibited.

Doors and openings to collection vehicle bodies shall be kept closed at all times when said vehicles are not being loaded or unloaded of Solid Wastes and Recyclable Materials. All vehicles shall be of such type and design and shall be operated in such manner so as not to incur any damage to public or private property in their use and operation.

3.11.2 Solid Waste Containers

Except as otherwise provided in this chapter, Carts for the storage of Solid Wastes shall:

- Have tight-fitting covers for holding garbage without leakage or escape of odors;
- Have suitable handles and wheels;
- Be constructed of watertight metal or plastic materials;
- Be provided to residences in sizes of 32, 64 and 96 gallons, as specified by each Residential or Commercial Customer.

3.11.3 Bins

Bins for the collection of commercial solid wastes shall possess a tight-fitting lid, the top of which shall not exceed 72 inches in height from the surface of the ground and shall have a capacity of at least one cubic yard, but not more than eight cubic yards. Bins shall be water tight and shall not be in such a state of disrepair as to constitute an unsightly nuisance. Bins shall contain the Company name in a conspicuous place on the exterior of the bin.

3.11.4 Debris Boxes

Debris boxes for collection of dry solid wastes (non-putrescible) shall be an open-top container with a capacity of at least 10 cubic yards and not greater than 50 cubic yards. Such boxes shall be so maintained and handled as to not permit the contents placed therein to fall or be blown from to create litter. To this end, all filled or partially-filled debris boxes shall be covered during transport to prevent litter generation.

Debris Boxes shall not be in such a state of disrepair as to constitute an unsightly nuisance. Debris Boxes shall contain the Company name and phone number in a conspicuous place on the exterior of the box

3.12 Operation of the Environmental Reclamation Center at Portola Landfill

3.12.1 Scope

The Company shall operate Environmental Reclamation Center (ERC) sited at Portola Landfill. The following materials shall be accepted by the Company at the ERC:

- Yard Wastes
- Tree Stumps

Yard wastes, defined as grass, leaves, and branches, shall be accepted for disposal. Any ash generated by burning of yard wastes shall be disposed of by the Company at an approved facility, but not at Portola Landfill. Company shall be responsible for lawful Disposal of all Yard Wastes.

The Company may accept additional materials for recycling at the ERC, provided, however, that the City grants approval to do so and appropriate permit modifications are obtained from state and local environmental agencies.

3.12.2 Hours of Operation

The ERC shall be open to the public (includes both City of Portola and County of Plumas residents) on Saturday's, during the hours of 10 a.m. to 2 p.m. from the first Saturday in April through the last Saturday in October. The ERC may be closed if a national holiday, such as Independence Day, falls on a Saturday. The ERC shall be fully staffed by the Company, including personnel to inspect loads and assess and collect fees and to monitor the public for safe and proper unloading of the recyclable materials.

The Company may, at the Company's discretion, allow commercial generators access to the ERC during times and hours mutually agreed to between the Company and the commercial entity.

3.12.3 Term

Company operation of the ERC shall coincide with Section 2.4 of this Agreement.

3.12.4 Compensation for Operation of the ERC

The Company shall be compensated for operation of the ERC solely from gate fees collected during the Hours of Operation. The gate fee schedule for the ERC is included in Exhibit B. The Company may petition the City Council for modifications to the ERC fee schedule, as necessary. The City shall have access for disposal of tree trimmings and Yard Wastes at the ERC free of charge.

3.14.5 Permit Compliance

The Company shall abide by all conditions established for operation of the ERC, as enforced by the State of California, and all state and federal laws and regulations applicable to operation of the ERC. This includes, but is not limited to, those portions of the Solid Waste Facility Permit No. 32-AA-0007 and Waste Discharge Requirements Order No. R5-2015-0083 which directly affect operation of the ERC (such as storm water runoff controls), and applicable regulations enforced by the Northern Sierra Air Quality Management District.

3.14.6 Health and Safety

The Company shall ensure that all employees working at the ERC are provided appropriate health and safety equipment (such as safety vests, glasses and shoes) and have appropriate training to handle both exposure and response to hazardous materials and/or other emergency conditions. To this end, the Company shall file with the City and keep current the Company's Injury and Illness Prevention Plan prior to commencing operation of the ERC. The Company shall be responsible for the clean-up of any spills of hazardous materials associated with operation of the ERC.

3.14.7 Equipment

The Company shall provide all equipment necessary for operation of the ERC and shall maintain equipment in good working order, including compliance with all state and federal OSHA regulations

3.14.8 Records

The Company shall maintain all records of receipt of materials at the ERC and dates and disposition of all materials. The Company shall report recorded data to the City by the 15th day following the calendar quarter in which the materials were collected and/or disposed of.

3.14.9 Additional Services

The City shall be entitled to request additional services of the Company for mutually agreed to compensation regarding other needed activities at Portola Landfill.

3.14.10 Insurance for Operation of the ERC

The Company shall procure and keep in force the following insurance policies and minimum coverage amounts during the term of this agreement for operation of the ERC. The City, and its elected and appointed officers, employees, agents and assigns shall be named as additional insured on said policies. The Company shall deliver the insurance policies with endorsements to the City at least 7 days prior to commencement of operation of the ERC.

- \$1,000,000 for the death of or injury to any one person in any one accident;
- \$2,000,000 for the death of or injury to more than one person in any one accident;
and
- \$1,000,000 for property damage in any one accident.

3.14.11 Violations

Company shall be responsible for regulatory agency issued violations (and noted areas of concern) of the permits required for operation of the ERC. City shall be responsible for regulatory agency issued violations (and noted areas of concern) of the permits required for Portola Landfill.

ARTICLE 4. BILLINGS AND OTHER FEES

4.1 Billing for Services

Company shall bill Customers directly for Solid Waste, Recyclable Materials and Green Waste Collection services provided pursuant to this Agreement. Company shall design billing formats that show a composite fee reflecting the total cost of the service provided. New Customers shall be billed on a pro-rata basis based upon the date services for that Customer commence. The Franchise Fee the City may set in accord with this Agreement shall not be separately itemized on the bill unless otherwise directed by the City. Company shall bill Commercial Customers monthly in advance and Residential Customers quarterly in advance. Customers who request Debris Box services shall pay for such services in advance. Customers may also be billed for replacement of containers if damaged beyond normal wear. Company shall retain all billing records for not less than five (5) years. In the event of a billing dispute with a Customer, Company and City will mutually agree on a resolution.

4.2 Delinquencies; Termination of Service

All Company billings shall be paid in full within 30 days of the billing date. For any bills that become delinquent due to no fault of the Company, Company shall send Customer a notice of delinquency. Arrangements for collection of delinquent payments shall be made between the Company and an individual customer. Late fees for past due invoices may be assessed by the Company at an interest rate of not more than eighteen percent (18%) per annum (or 1.5% per month).

4.3 Franchise Fee

Company shall pay the City for the privilege, and as the sole and exclusive consideration of the licenses granted hereby, a ten percent (10%) Franchise Fee on all Gross Receipts generated as a result of Company providing service in the City of Portola. In no event shall Company pay the City a Franchise Fee on the receipts from the sale of Recyclable Materials the Company may Collect in the City of Portola. Company shall remit the Franchise Fee semi-annually on or before May 15th and November 15th for the prior six (6) month period. In the event that Company fails to timely pay the Franchise Fee, the City shall be entitled to make a demand on the Performance Bond required pursuant to Section 7.3 to secure payment of the fees; provided, however, that the City must first provide Company reasonable written notice of its intent to make a demand against the Performance Bond to offer the Company the opportunity to seek dispute resolution procedures pursuant to Section 9.6.

Documentation to support the Franchise Fee amount shall be included with the semi-annual payment. Documentation shall include the basis of calculation for the Franchise Fee amount and shall be certified as true and correct by an officer of the Company. Said documentation shall include revenues received under this Agreement, outstanding accounts receivable, bad debt write-offs and recoveries.

City may raise or lower the Franchise Fee above or below ten percent (10%) during the term of this Agreement. If City elects to increase the Franchise Fee percentage, such fees shall be deemed a Pass-Through Cost and Company shall be entitled to an immediate adjustment in

accordance with section 5.4 of this Agreement. If City lowers the Franchise Fee, Company and City shall negotiate an adjusted fee schedule commensurate with the lower fee.

4.4 Other Fees

The City shall reserve the right to set other fees, as it deems reasonably necessary. The amount, time and method of payment will be set as provided in Section 4.3 above. Such fees shall be deemed a Pass-Through Cost and Company shall be entitled to an immediate adjustment retroactive to the date of implementation in accordance with section 5.4 of this Agreement.

ARTICLE 5. COMPANY COMPENSATION AND RATES

5.1 Receipts from the Sale of Recyclable Materials

The City and Company agree that the Company will retain all proceeds from the sale of Recyclable Materials.

5.2 Initial Rates

Except as provided in Paragraph 5.4 below, the Rates for the first year of this amended and extended Agreement (November 1, 2017 through December 31, 2018) shall not exceed those set forth in Exhibit B. Thereafter, Rates will be adjusted annually based on the formula set forth in section 5.3.

5.3 Annual Adjustments to Rates (Amendment No. 1)

Effective January 1st of each Rate Year, commencing on the 1st day of Rate Year 2 (January 1, 2019) the Company shall automatically be entitled to increase the Rates for all services by an amount equal to the following formula:

- Annual Rate Adjustment = Current Rate x [1 + {(0.9 x Percent Change CPI Index) + (0.1 x Percent Change Fuel Index)}], where:

Percent Change CPI Index = Annual Percent Change in the ~~September~~ August Consumer Price Index for All West Urban Consumers, Non-seasonally Adjusted, for the Preceding Year (Bureau of Labor Statistics Series ID CUUR400SAO), and

Percent Change Fuel Index = Annual Percent Change in the ~~September~~ August California No. 2 Diesel Retail Sales by All Sellers, as published by the U.S. Energy Information Administration.

For Rate Year 5 (commencing January 1, 2022), the annual adjustment to Rates shall base the CPI and fuel calculations using indices from September 2020 through August 2021. For Rates which were adjusted on April 1, 2021, the CPI and fuel calculation shall use indices from April 2021 through August 2021. Thereafter, all subsequent annual Rate increases (commencing Rate Year 6) shall use August to August CPI and fuel indices.

In the event the change in the rate increase, under the above formula, is greater than five percent (5%) in any given Rate Year, then the percentage increase in excess of the five percent (5%) shall be carried over to the next Rate Year, subject to the five percent maximum annual increase.

Company may petition City for a waiver of the Rate adjustment 5% cap if the calculated increase exceeds 5% annually for two consecutive years. No Rate increase pursuant to this Section 5.3 shall be effective until, and unless, Company provides the City sixty (60) day written notice of its intent to exercise its right to an annual Rate increase and after compliance with Proposition 218, provided there has been an insufficient protest to prohibit an increase in Rates.

The City and the Company may mutually agree for the City to adopt a schedule of rates authorizing automatic adjustments for inflation for up to five (5) years in accordance with California Government Code section 53756.

5.4 Proposition 218 Compliance

Company shall prepare and issue State of California Proposition 218 compliance notices to all Customers in conjunction with any increase to Rates. City shall provide to Company written Proposition 218 notice language. For annual adjustment to Rates, all Proposition 218 notices shall be prepared and mailed to Customers no later than October 31st.

Company shall be entitled to charge Customers no more than \$0.10 per month per Customer monthly invoice for expenses related to printing and mailing of City-supplied Proposition 218 notices.

5.5 Pass-Through Costs

The Company shall be entitled to petition the Portola City Council for Rate increases based on increases in the cost of doing business for costs other than those normally associated with the Consumer Price Index and California Diesel Retail Sales costs. Those Pass-Through Costs are described in Exhibit B.

For adjustments to the Rates above and beyond the annual increases, the Company shall document the changed conditions that have caused increases in the cost of doing business and provide justification for the requested Rate increases. The Portola City Council shall consider the Company's documentation and any other relevant information prior to approving any Pass-Through Cost Rate increase. The City Council may, at its sole discretion, after compliance with Proposition 218 and provided that there has been an insufficient protest to prohibit an increase in Rates, approve all, a portion, or none of the Company's request for a Rates adjustment.

If the City Council does not approve, or the Parties cannot otherwise agree on, the Rate increase, then, within ten (10) days of the City Council denying the Rate increase, the Company may seek mediation, in which case, the Parties shall mediate the dispute pursuant to Section 9.6. If mediation is unsuccessful, then the Company may request arbitrations, in which case the Parties shall arbitrate the dispute pursuant to Section 9.6. The decision of the arbitrator shall be final and non-appealable by either Party.

5.6 Elimination of Customer-Supplied Cans (Amendment No. 2)

To facilitate Company's transition to new Residential Solid Waste Collection equipment during calendar year 2022, Company shall replace Customer-supplied Cans with a Waste Cart coincident with Company's deployment of an automated side-loader Collection vehicle.

Company shall contact each Customer who uses and are charged fees for Customer-supplied Cans at least two (2) weeks prior to the date of the anticipated change to an automated side-loader Collection vehicle. Company shall confirm with each affected Customer the size of Waste Cart to replace the Customer-supplied Can(s).

Company shall waive Waste Cart delivery charge for all affected Customers who subscribe to and pay fees for Customer-supplied Cans at the time of Company's transition to an automated side-loader Collection vehicle.

The Rates for Customer-supplied Cans in the Rates schedule shall be eliminated upon Company's commencement of Residential Solid Waste Collection using an automated side-loader Collection vehicle.

ARTICLE 6. RECORDS AND REPORTS

6.1 General

The Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, the Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City.

6.2 Records

6.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data records shall be protected and backed up. All records shall be maintained for three (3) years after the expiration of this Agreement.

The Company agrees that the records of operations addressed in the Agreement shall be provided or made available to the City during normal business hours. The City may review or utilize any of the records described in this section for any purpose whatsoever.

6.2.2 Solid Waste and Recycling Records

Records shall be maintained by the Company for the City relating to:

- (a) Customer services and billing;
- (b) Routes;
- (c) Facilities, equipment and personnel used;
- (d) Complaints;
- (e) Missed pick ups;
- (f) Number of Solid Waste and Recycling Containers; and
- (g) Tons of Solid Waste Company Collects, processes, diverts, Recycles, and Disposes; and
- (h) Any other records that City may request in order to comply with any reporting obligations under any federal, state or local law or regulation

and/or as a condition of any grant, loan or other funding agreement to which City may presently or hereinafter be a party.

6.2.3 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 8.3 for five (5) years after the term of this Agreement, or provide copies of such records to the City.

6.2.4 Complied Financial Statements

Company shall provide City with full disclosure compiled financial statements no less than every six months. Company shall provide City with access to financial records that pertain to services performed under this Agreement. The Company shall cooperate in making financial records available to City at reasonable times. The City Manager (or designee) may inspect financial records in the Company's business office. City shall have the right to examine revenue and other related records as deemed necessary by the City. At the City's request, the Company financial statements shall be examined by an independent Certified Public Accountant, at the City's expense. If significant and/or material discrepancies are found during the examination by the Certified Public Accountant, a more comprehensive review or audit shall be conducted at the Company's expense.

6.3 Reports

6.3.1 Report Formats and Schedule

The Company shall submit quarterly and annual reports to the City in a form prescribed by the City Manager and which provides information on the Company's solid waste Solid Waste and Recyclable Materials Collection operations, within the boundaries of the City. Said reports shall be submitted to the city no later than thirty (30) days after the end of each calendar quarter. Documentation supporting the amount of Recyclable Materials Collected, delivered to appropriate End Markets, or otherwise disposed of, and any other documentation and necessary to verify the Company's Recycling operations, shall be maintained by the Company for at least three years

All reports shall be submitted to:

City Manager
City of Portola
P.O. Box 1225
Portola, CA 96122

6.3.2 Quarterly Reports

The information listed shall be the minimum reported:

- (a) Solid Waste Collected, Recycled, and Disposed of by the Company for the quarter (in tons).
- (b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- (c) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- (d) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- (e) Number of accounts by category shown for each month for Customers billed by the Company.
- (f) Copies of promotional and public education materials sent during the quarter.

6.3.4 Annual Report

The Annual Report is to be essentially in the form and content of the quarterly reports combined, but shall also include:

- (a) An account list of all commercial Customers billed by the Company, including service address, billing address, service levels (i.e. number of Containers, Container size, and frequency of service) and monthly rates.
- (b) Number of Carts in service by type of Customer (Residential, Commercial), service (Solid Waste, Recycling).
- (c) CERCLA Defense records required under Section 6.2.3.
- (d) Name, address, and phone numbers of all residential Customers.

ARTICLE 7. INDEMNIFICATION, INSURANCE AND BOND

7.1 Indemnification

The Company hereby agrees to and shall defend, indemnify and hold harmless the City, its elected and appointed officers, employees, and agents (collectively the “Indemnitees”) from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the actions, omissions, negligence or willful misconduct of the Company, its officers, employees, agents, and Subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, and Subcontractors to comply in any and/or all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of the Company, its officers, employees, and agents in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys reasonably acceptable to the City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

7.2 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid defense, indemnity and hold harmless obligations, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision.

Company shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Company, his agents, representatives, employees, or subcontractors. With respect to General Liability, Errors & Omissions, Contractors Pollution Liability, and/or Asbestos Pollution Liability, coverage should be maintained for a minimum of five (5) years after contract completion.

A. Minimum Scope and Limit of Insurance.

The Company shall maintain in force for the term of this Agreement insurance coverage as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering any auto (Code 1), or if Company has no owned autos, hired (Code 8) and non-owned (Code 9) autos, with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions** applicable to the work being performed, with a limit no less than \$2,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year.

If the Company maintains broader coverage and/or higher limits than the minimums set forth above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Company. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

B. Self Insured Retentions

Self-insured retentions must be declared to and approved by the City. At the option of the City, the Company shall provide coverage to reduce or eliminate such self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Company shall provide evidence satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

C. Other Insurance Provisions

1. The General Liability, Automobile Liability, Contractors Pollution Liability, and/or Asbestos Pollution policies are to contain, or be endorsed to contain, the following provisions:
 - a. **The City, its officers, officials, employees, and volunteers are to be covered as additional insureds** with respect to liability arising out of work or operations performed by or on behalf of the Company including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Company's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used).
 - b. For any claims related to this project, **the Company's insurance coverage shall be primary insurance** coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials,

employees, agents, or volunteers shall be excess of the Company's insurance and shall not contribute with it.

c. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

2. The Automobile Liability policy shall be endorsed to include Transportation Pollution Liability insurance, covering materials to be transported by Company pursuant to this Agreement. This coverage may also be provided on the Contractors Pollution Liability policy.

3. If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverages are written on a claims-made form:

a. The retroactive date must be shown, and must be before the date of this Agreement or the beginning of contract work.

b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.

c. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Company must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

d. A copy of the claims reporting requirements must be submitted to the City for review.

e. If the services involve lead-based paint or asbestos identification / remediation, the Contractors Pollution Liability shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification / remediation, the Contractors Pollution Liability shall not contain a mold exclusion and the definition of "Pollution" shall include microbial matter including mold.

D. Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII if admitted in the State of California.

E. Verification of Coverage

Contractor shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this Agreement) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Company's obligation to provide them. The City reserves the right

to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

F. Waiver of Subrogation

Company hereby grants to City a waiver of subrogation which any insurer may acquire against City, its officers, officials, employees, and volunteers, from Company by virtue of the payment of any loss. Company agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Company, its employees, agents, and subcontractors.

G. Subcontractors

Company shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Company shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

H. Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

I. No Limitation of Liability

The minimum amounts set forth in this Agreement for such insurance shall not be construed to limit the liability of the Company to the City under this Agreement to the amounts of such insurance

7.3 Faithful Performance Bond

The Company shall, at least fourteen (14) days prior to the commencement of operation, file with the City a performance bond in the amount of fifty thousand dollars (\$50,000) payable to the City for all losses and damages the City may sustain as a result of any act or omission of the Company, its employees and agents arising from the operation or termination of the services under this Agreement, and including any payments required to be made to the City hereunder. Such bond shall be obtained from an insurance company licensed to do business in the State of California with a Best's Guide rating of "B" or better, or, in the alternative, an unlicensed, U.S. domiciled company with a Best's Guide rating of "A", and shall be in a form approved by the City Manager. In no event shall the amount of such bond be construed to limit the liability of the Company for damages.

ARTICLE 8. FAILURE TO PERFORM

8.1 City's Right to Perform Services

In the event that Company fails, refuses, or is unable to Collect and Dispose of Solid Waste or operate the ERC at Portola Landfill, as this Agreement requires, at the time and manner provided in this Agreement, for a period of ten (10) days, then the City shall have the right, but not the obligation, upon written notice to Company, to perform, or cause to be performed, such services itself with its own personnel and/or with the services of any other person, firm, entity or corporation. In such an event, Company shall not be liable for the actions or omissions of the City or any other party with whom City engages to perform the services; provided, however, Company shall be liable to the City for the cost of providing the Solid Waste services until such time as either Company fully resumes proper and appropriate services or this Agreement is terminated pursuant to Article 9; provided, however, that Company's liability to City for the cost of providing the services pursuant to this Section 8.1 shall be limited to the cost City incurs, either directly or indirectly under a contract with a third party. Notice of Company's failure, refusal or neglect to Collect and Dispose of Solid Waste may be faxed to Company at its principal office and shall be effective immediately. Written confirmation of such faxed notification shall be sent to Company within twenty-four (24) hours of the faxed notification.

ARTICLE 9. DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

9.1 Events of Default

The Company shall be deemed to be in default with respect to the performance of its obligations under its this Agreement upon the occurrence of any of the following events:

- A. The Company is in violation of the provisions of this Agreement, the Solid Waste Ordinance portion of the City Code, or any federal or state law or regulation applicable to the operation of the Company's service in the City and such violation is not corrected within thirty (30) days following receipt of written notice thereof from the City Manager specifying such violation or, if more than thirty (30) days are reasonably required to correct such violation, within such additional time as the City Manager shall consider reasonably necessary to effect such correction.
- B. The Company has failed to perform according to the specifications and standards in this Agreement, including, but not limited to, any required standards for the maintenance of collection schedules, hours of collection, vehicle and equipment maintenance and condition, collection of missed collections within a specified time, and maintenance of a business office location with specified hours of operation and procedures for responding to customer complaints.
- C. The Company has engaged in repeated violations of any of its material obligations under this Agreement, the Solid Waste Ordinance portion of the City Code or any material federal or state law or regulation applicable to the operation of the Company's service in the City, which shall be deemed to exist if the same or similar violation occurs three (3) or more times within any twelve (12) month period. In any such case, the Company shall not be entitled to notice or a period to correct the third such violation.

9.2 Remedies upon Default

Upon the occurrence of any event of default by the Company, the City Council may invoke any or all of the following remedies upon default:

- A. Assess against the Company monetary penalties not to exceed One Thousand Dollars (\$ 1,000.00) for each such event of default or series of related events of default and/or require the Company to cure each such event of default within such time, in such manner, and upon such terms and conditions as the City Council shall designate; or
- A. Implement the procedures required to exercise the City's rights under the conditions of the Performance Bond; or
- B. Revoke and terminate the Company's franchise and this Agreement.

9.3 Public Hearing

Prior to imposing any such remedy or remedies upon the Company upon the occurrence of any such event of default, the City shall do the following:

- A. The City shall provide the Company with at least fifteen (15) days prior written notice of the time and place of a public hearing to be held before the City Council for purposes of determining whether such event of default has occurred and, if it has occurred, whether such event of default was for just cause. Notice as to the time and place of such hearing shall be published at least once ten (10) days before such hearing in a newspaper of general circulation within the City;
- B. The Company shall be afforded full due process in connection with such hearing, including, but not limited to, an opportunity to introduce evidence, to require the production of evidence, and to introduce and/or question persons connected with or having knowledge of the alleged default. A transcript may be made of the hearing at the Company's expense;
- C. The City Council shall hear any persons interested therein and, based upon the evidence presented at such hearing, shall determine whether or not an event of default by the Company has occurred;
- D. If the City Council shall determine that an event of default occurred by the Company and such default was with just cause, the City Council shall direct the Company to correct or remedy the same within such additional time, in such manner, and upon such terms and conditions as the Council determines to be necessary; or
- E. If the City Council shall determine that an event of default occurred by the Company and such default was without just cause, then the City Council may, by resolution, impose any one or more of the remedies set forth in section 9.2 and 9.4 of this Agreement.

9.4 Liquidated Damages

The City finds, and the Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by the Company of its obligations under this Agreement. The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages that the City will suffer. Therefore, the parties agree that the following liquidated

damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement

A. Collection Reliability

1. For each failure to Collect Solid Waste, which has been properly set out for Collection on the scheduled Collection day and not Collected within the period described in this Agreement which exceeds ten (10) such failures annually: \$100.00
2. For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$100.00

B. Collection Quality

1. For each occurrence of uncompensated damage to private property which exceeds five (5) such occurrences annually: \$200.00
2. For each occurrence of excessive noise or discourteous behavior: \$200.00
3. For each failure to clean up Solid Waste spilled from Solid Waste Containers which exceeds ten (10) such failures annually: \$100.00
4. For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$200.00
5. For each failure to clean or replace Containers in accordance with this Agreement which exceeds ten (10) such failures annually: \$50.00

C. Customer Responsiveness

1. For each failure to initially respond to a Customer complaint within one (1) business day: \$75.00
2. For each failure to process Customer complaints to the City as required by this Agreement: \$250.00

D. Timeliness of Submissions to the City

Any report shall be considered late until such time as a correct and complete report is received by the City. For each calendar day a report is late, the daily liquidated damage amount shall be:

- | | | |
|----|--------------------|---------------|
| 1. | Quarterly Reports: | \$75 per day |
| 2. | Annual Reports: | \$150 per day |

Liquidated damages will only be assessed after the Company has been given the opportunity but failed to rectify the damages as described in this Agreement.

The City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing liquidated damages, the City shall follow the procedure set forth in section 9.4.1.

9.4.1 Procedure for Review of Liquidated Damages

City may assess liquidated damages pursuant to this Section 9.4 on a quarterly basis. At the end of each month during the term of this Agreement, City shall issue a written notice to Company of the liquidated damages assessed and the basis for each assessment. The assessment shall become final unless, within ten (10) days of the day Company receives such notice, Company provides a written request for a meeting with the City to present evidence that the assessment should not be made. The Parties shall meet with ten (10) days of City’s receipt of Company’s notice. City shall consider Company’s evidence in good-faith and render a written decision sustaining or reversing any disputed liquidated damages within five (5) days of the meeting. If the total assessed charges for any one (1) quarterly assessment are equal to or less than One Thousand Five Hundred Dollars and No/100 Cents (\$1,500.00), then the decision of the City shall be final and non-appealable. If the total assessed damages are greater than One Thousand Five Hundred Dollars and No/100 Cents (\$1,500.00), then, within five (5) days of receiving the City’s written decision, the Company may seek alternate dispute resolution pursuant to Section 9.6.

9.4.2 Non-Exclusive Damages

City’s assessment or collection of liquidated damages shall not preclude or prevent City from exercising or seeking any other right or remedy, including, without limitation, the assessment of any administrative penalties, termination, or seeking legal recourse in a court of equity or in law.

9.5 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), picketing at Customer Collection locations that blocks access to container pick up points, and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's

employees or directed at the Company is not an excuse from performance and the Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section. The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement.

9.6 Mediation and Arbitration

Any dispute arising out of or relating to this Agreement shall first be mediated between the Parties. Within five (5) days of receiving notice from the other Party of a request to mediate a dispute, the Parties shall mutually agree on a mediator. Mediation shall occur within fifteen (15) days of receiving notice from the other Party of the request to mediate a dispute. Unless otherwise agreed at mediation, the costs of mediation shall be borne equally between the Parties. Unless agreed otherwise by the parties, mediation shall take place in Portola, California.

Upon the written request of a Party, any dispute arising out of or relating to this Agreement which was not resolved by mediation as required herein shall be submitted within five (5) days for binding arbitration in accordance with its Commercial Comprehensive Rules of the American Arbitration Association, unless the Parties agree otherwise and consent, in writing, to a different method of dispute resolution. The Parties agree to use their best efforts to arbitrate the dispute within thirty (30) days of a Party making a written request for arbitration. The arbitrator shall be vested with the power to allocate the costs of arbitration as it deems appropriate. The decision of the arbitrator shall be in writing. Unless agreed otherwise by the parties, arbitration shall take place in Portola, California.

Until the arbitrator makes its final decision, the parties shall maintain the status quo and all terms and conditions of this Agreement shall remain in full force and effect, including, without limitation, the Company's obligation to perform Solid Waste Collection services and the Company's right to bill Customers and receive Company Compensation for such services.

9.7 Assurance of Performance

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

ARTICLE 10. MISCELLANEOUS

10.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent of Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, and agents. Neither the Company nor its officers, employees, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

10.2 Compliance with Law

In providing the services required under this Agreement, the Company shall comply with all applicable laws and regulations of the United States, the State of California, the County and the City, now in force and as they may be enacted, issued or amended during the term of this Agreement. The City shall comply with all applicable regulations promulgated by federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the term of this Agreement.

Company acknowledges and warrants that it is fully acquainted with the provisions of the City Code; Company agrees that, in performing this Agreement, it will comply with those provisions of the City Code that are applicable to the work or business in which it is herein licensed or engaged, and with any and all amendments to those provisions of said City Code during the term of this Agreement. If the City or the County should enact any law, regulation, ordinance that materially impacts the terms of this Agreement, the Company shall be entitled to increase the Rates in accord with Section 5.4.

10.3 Assignment

This Franchise is awarded based in the selection of Company, its demonstrated ability to perform, and the relationship previously established between Company's personnel and the City. Accordingly, this Franchise shall not be transferred, sold, pledged, hypothecated, leased, or assigned, nor shall any of the rights or privileges herein be transferred, sold, pledged, hypothecated, leased or assigned, either in whole or in part, without the prior written approval of the Portola City Council. Any attempt by Company to effectuate any of the foregoing without the City Council's approval shall be null and void. City may impose conditions and restrictions on any assignment or request for assignment, including, without limitation, conditions relating to payment of all of City's costs relating to such transfer and the acceptance of amendments to this Franchise.

10.4 Subcontracting

The Company shall not engage any companies or Subcontractors for Collection, transfer, Recycling or Disposal of Solid Waste without the prior written approval of the City Council.

10.5 Notice

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

If to City: City Manager
 City of Portola
 P.O. Box 1225
 Portola, CA 96122

If to the Company: General Manager
 Intermountain Disposal, Inc.
 P.O. Box 1596
 Portola, CA 96122

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date of the postmark.

10.6 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste and Recyclable Materials at any time prior to the expiration of the term of this Agreement. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of Collection services, Disposal services, Recycling services, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement.

10.7 Privacy

The Company shall strictly observe and protect the rights of privacy of 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 upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude the Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement.

10.8 Cooperation Following Termination

At the end of the term of this Agreement or in the event this Agreement is terminated for cause prior to the end of the term of this Agreement, the Company agrees to immediately pay all amounts due to the City, cooperate fully with the City and any subsequent company to assure a smooth transition of Solid Waste management services. The Company's cooperation shall include, but not be limited to, providing operating records needed to service all properties covered by this Agreement.

10.9 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. Regular monthly, quarterly, and annual reports are not proprietary. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

10.10 Waiver

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

10.11 Binding on Assigns

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

10.12 Governing Law; Jurisdiction; Attorney's Fees

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Any lawsuits, mediation, or arbitration between the parties arising out of this Agreement shall be brought and concluded in the Superior Court in and for the County of Plumas, State of California, if in state court, or in the Federal District Court for the Eastern District of California, if in federal court, which shall have exclusive jurisdiction over such lawsuits. The prevailing party in any arbitration or court action to enforce or interpret this Agreement shall be entitled to an award of reasonable attorneys' fees and costs, except if that Party did not request or participate in mediation when required to so pursuant to this Agreement.

10.13 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained nor shall such

verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this Agreement.

10.14 Section Headings

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

10.15 Amendment

This Agreement may be amended or modified only by written agreement duly authorized by the Portola City Council and executed by the parties hereto.

10.16 Interpretation

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

10.17 Severability

Except as may otherwise be expressly provided for herein, if any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein. If any material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the parties agree to negotiate, in good faith, valid and enforceable provisions to replace the invalid or unenforceable provision. If, after good faith negotiations, the Parties are not able to agree on such alternate terms, then either Party may terminate this Agreement in accord with Section 9.3; provided; however, that the parties have exhausted all dispute resolution procedures pursuant to this Agreement.

10.18 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written at the top of this Agreement.

CITY OF PORTOLA

By: ROBERT MEACHER

Its: CITY MANAGER

INTERMOUNTAIN DISPOSAL, INC.
a California corporation

By: RICKY ROSS

Its: VICE PRESIDENT/GENERAL MANAGER

ATTEST:

APPROVED AS TO FORM:

MELISSA KLUNDBY
City Clerk

STEVEN GROSS
City of Portola Counsel

Exhibit A – Pass Through Costs
Exhibit B – Rate Schedules