



Office of the
City Manager

1010 Tenth Street
Suite 6100
P.O. Box 642
Modesto, CA 95353
209/577-5223
209/571-5128 Fax

Hearing and Speech
Impaired Only
TDD 209/526-9211

December 5, 2007

Mr. Bert Bertolotti
President & CEO
Bertolotti Disposal Service
P.O. Box 127
Ceres, Ca 95307

RE: Letter Amendment to 2001 Service Agreement (As Previously Amended)

Dear Mr. Bertolotti:

On December 4th, 2007, the Modesto City Council authorized me to execute a Letter Amendment to the Service Agreement currently held by Bertolotti Disposal Service to extend the 2001 Service Agreement (as previously amended) through September 18, 2014. The Council also authorized a change to the Agreement to automatically extend the term of the Agreement for an additional year on September 18th of each year, unless the City notifies the company in writing of its intent to not extend the Agreement prior to that date.

This letter constitutes an Amendment to the 2001 Service Agreement (as previously amended) between the City of Modesto and Bertolotti Disposal Service. Section a of the 2001 Agreement (as previously amended) is hereby amended to read as follows:

“This Service Agreement shall be in force for a term of seven (7) calendar years commencing on September 18, 2007. On each anniversary of this agreement the term will automatically be extended one (1) additional year, until such time as either the CITY or the COLLECTOR submits in writing to the other that it is their intent to terminate said agreement. This Service Agreement, or any extensions thereof, may be terminated under the provisions of this Service Agreement or the provisions of Chapter 5 of Title V of the Modesto Municipal Code. Nothing herein shall be deemed or construed to impair or affect in any way the right of the CITY to acquire the equipment and assume the operations of COLLECTOR at any time during the initial term of this Service Agreement or any extensions thereof by purchase of COLLECTOR’S equipment at a fair and just market value, which shall not include any amount for the Service Agreement itself or for any of the rights or privileges granted by this Service Agreement.”

Mr. Bert Bertolotti
Bertolotti Disposal Service
December 5, 2007
Page Two

Section b, paragraph 1 of the 2001 Agreement (as previously amended) is hereby amended to read as follows:

“The CITY may terminate this Service Agreement on September 18, 2012, if COLLECTOR has not reasonably satisfied each of the following preconditions to the sole satisfaction of the CITY, notwithstanding the provisions of the more general language of paragraph c. making “reasonableness” a requirement of any discretionary decision relating to the performance of this Agreement. The CITY may cause the termination by written notification of the collector prior to July 18, 2012.”

Section b, paragraph 2 of the 2001 Agreement (as previously amended) is hereby amended to read as follows:

“Notwithstanding any other provisions herein, the CITY may terminate this Service Agreement for its convenience, without cause, upon a decision by the CITY to assume, with its’ employees, performance of the services required of COLLECTOR hereunder. This Service Agreement shall terminate sixty days after CITY gives COLLECTOR written notice of its election to terminate this Service Agreement. Upon such termination by CITY, CITY shall pay to the COLLECTOR the anticipated return on COLLECTOR’s capital investment for two years, if such notice is given on or before July 18, 2010; for eighteen months, if such notice is given after July 18, 2010 but on or before July 18, 2011; for one year if such notice is given after July 18, 2011 but on or before July 18, 2012; and for six months if such notice is given after July 18, 2012.”

All of the other current terms and conditions of the 2001 Agreement, (as previously amended), will remain in full force and effect. Copies of the Council Resolution and Consent Form are attached for your reference.

We look forward to continuing to work with Bertolotti Disposal Service in a cooperative business relationship that will ensure our community's residents and businesses the highest level of service. Should you have any questions, please contact Jocelyn Reed, Solid Waste Manager, at (209) 577-5492.

Sincerely,


George W. Britton
City Manager

cc: City Attorney
Parks, Recreation and Neighborhoods Director

Attachments: Consent Form
Council Resolution

CONSENT TO LETTER AMENDMENT TO 2001 SERVICE AGREEMENT
(AS PREVIOUSLY AMENDED)

This Letter Amendment to the 2001 Service Agreement (as previously amended) shall go into effect and be in full force and operation upon execution by both parties thereto.

IN WITNESS WHEREOF, the parties have agreed to this Letter Amendment to the 2001 Service Agreement (as previously amended) this 4 day of December, 2007.


CITY OF MODESTO, a municipal corporation

By 
George W. Britton, City Manager

COLLECTOR*


By 

By 

ATTEST: 
Jean Morris, City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM:

By 
Susana Alcala Wood, City Attorney

APPROVED AS TO RISK MANAGEMENT FORM:

By 
Mary Akin, Risk Manager

*Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.
Partnership - signature of a partner required
Sole Proprietorship - signature of proprietor require



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December 18, 2006

Bert Bertolotti, President & CEO
Bertolotti Disposal Service
P.O. Box 127
Ceres, Ca 95307

Re: Letter Amendment to 2001 Service Agreement. (As Previously Amended)

Dear Mr. Bertolotti:

On November 8th, 2006, the Modesto City Council held a public hearing to consider reallocating Waste Management's service area to Bertolotti Disposal Service and Gilton Solid Waste Management. At that hearing, the Council authorized me to execute a Letter Amendment to the Service Agreements currently held by Bertolotti Disposal Service and Gilton Solid Waste Management to reference the revised service area maps approved by the Council at the hearing.

The companies are to begin serving the newly reallocated areas effective January 1, 2007. In addition, the Council directed that language be added to require the both companies to notify the City of their intent to stop providing collection services in Modesto no less than 18 months prior to ceasing to provide the services.

This letter constitutes an Amendment to the 2001 Service Agreement (as previously amended) between the City of Modesto and Bertolotti Disposal Service. The following sections of the 2001 Agreement (as previously amended) are hereby amended to read as follows:

Paragraph 1 of Section b shall be amended to read; "This Service Agreement shall be an exclusive Service Agreement to collect commercial/residential garbage/recyclables and containerized yard waste and a nonexclusive Service Agreement to collect industrial garbage, salvageable waste, and recyclable materials within the areas delineated and marked on that certain map entitled "Option 2: City of Modesto Proposed Two Hauler Districts" dated November 8, 2006, on file in the office of the CITY Clerk, and to which reference is hereby made. COLLECTOR shall commence providing services to existing customers within those portions of the City formerly served by Waste Management and reallocated to COLLECTOR in the above referenced map effective January 1, 2007."

Letter to Bert Bertolotti, President & CEO, Bertolotti Disposal Service
December 18, 2006
Re: Letter Amendment to 2001 Service Agreement (As Previously Amended)

Page 2

A new paragraph shall be added at the end of Section u, as follows; "COLLECTOR shall notify CITY of its intent to cease providing service within the City of Modesto no less than 18 months prior to ceasing to provide services."

All of the other current terms and conditions of the 2001 Agreement, (as previously amended), will remain in full force and effect. A copy of the Council Resolution is attached for your reference. Please execute in triplicate the attached pages consenting to this Letter Amendment and return them to the City Clerk by no later than December 20, 2006.

We look forward to continuing to work with Bertolotti Disposal Service in a cooperative business relationship that will ensure our community's residents and businesses the highest level of service. Should you have any questions, please contact Jocelyn Reed, Solid Waste Manager, at (209) 577-5492.

Sincerely,



George W. Britton
City Manager

cc: City Attorney
Parks, Recreation and Neighborhoods Director

Attachments: Consent Form
Council Resolution

CONSENT TO LETTER AMENDMENT TO 2001 SERVICE AGREEMENT
(AS PREVIOUSLY AMENDED)

This Letter Amendment to the 2001 Service Agreement (as previously amended) shall go into effect and be in full force and operation on January 1, 2007.

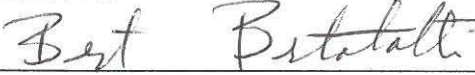
IN WITNESS WHEREOF, the parties have agreed to this Letter Amendment

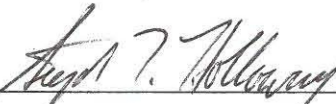
to the 2001 Service Agreement (as previously amended) this 8th day of November, 2006. Approved by the City Council and attested by the City Clerk on November 8, 2006 by Resolution No. 2006-708.


CITY OF MODESTO, a municipal corporation

By 
George W. Patton, City Manager

COLLECTOR*

By 

By 

ATTEST: 
Jean Morris, City Clerk

(SEAL)

APPROVED AS TO LEGAL FORM:

By 
Susana Alcala Wood, City Attorney

APPROVED AS TO RISK MANAGEMENT FORM:

By 
Mary Akin, Risk Manager

*Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.
Partnership - signature of a partner required
Sole Proprietorship - signature of proprietor require

AMENDMENT TO SERVICE AGREEMENT

This Amendment to Service Agreement is made and entered into in the City of Modesto, County of Stanislaus, State of California, this 13 day of November, 2003, by and between Bertolotti Modesto Disposal, Inc., a California Corporation, hereinafter referred to as "COLLECTOR", and the CITY OF MODESTO, a municipal corporation, hereinafter referred to as "CITY".

This Amendment to Service Agreement is made with reference to the following recitals:

WHEREAS, a Service Agreement was entered into on the 18th day of September, 2001, between CITY and COLLECTOR for the collection of solid waste in the CITY of Modesto, including the collection of garbage/recyclables, recyclables, industrial garbage, containerized yard waste, and salvageable waste, and

WHEREAS, on September 25, 2003, the City Clerk received a request from Bertolotti Disposal Inc. for an Assignment and Extension of their Service Agreement to collect commercial/residential garbage/recyclables, containerized yard waste, and industrial garbage, salvageable waste, and recyclables in the City of Modesto, and

WHEREAS, Bertolotti Disposal Inc., wishes to assign its rights and interests under said agreement to its newly formed affiliate company, Bertolotti Modesto Disposal, Inc., and

WHEREAS, in accordance with Modesto Municipal Code section 5-5.24, a public hearing was held on Thursday, November 13, 2003, at 5:30pm in the Tenth Street Place Chambers located at 1010 10th Street, Modesto, California, to consider COLLECTOR's request, and

WHEREAS, by unanimous vote, the Modesto City Council approved the Two-Year Extension of the Service Agreement between the City of Modesto and Bertolotti Disposal, Inc. and the assignment of the Service Agreement to Bertolotti Modesto Disposal, Inc., and authorized the City Manager, or his designee, to execute the assignment and extension.

NOW, THEREFORE, the parties hereto mutually agree that the above referenced Service Agreement be amended as follows:

1. Pursuant to Section a of the Service Agreement, the term of the Agreement is hereby extended for an additional two (2) years, through September 18, 2010.
2. The Service Agreement is hereby assigned to Bertolotti Modesto Disposal, Inc., a California Corporation.

Except as otherwise provided herein, each and every and all of the terms and conditions of the Service Agreement between CITY and COLLECTOR dated September 18, 2001 shall continue in full force and effect.

IN WITNESS WHEREOF, the City of Modesto, a municipal corporation, has authorized the execution of this Amendment to Agreement in duplicate by its City Manager and attestation by its City Clerk under authority of Resolution No., 2003-603 adopted by the Council of the City of Modesto on the 13 day of November, 2003, and CITY has caused this Amendment to Agreement to be executed.

ATTEST:

By Jean Zahr
JEAN ZAHR
City Clerk

CITY OF MODESTO, a
municipal corporation
By Jack Crist
JACK CRIST
City Manager

(SEAL)

APPROVED AS TO FORM:
By Michael D. Milich
MICHAEL D. MILICH
City Attorney

COLLECTOR*
By Bert Bertelatt
By Steph. T. Holbourn

* Corporations – signature of two (2) officers required, or one (1) officer plus corporate seal
Partnership – signature of a partner required
Sole Proprietorship – signature of proprietor required

SERVICE AGREEMENT BETWEEN THE CITY OF MODESTO AND BERTOLOTTI DISPOSAL, INC., A CALIFORNIA CORPORATION, FOR THE COLLECTION OF SOLID WASTE IN THE CITY OF MODESTO, INCLUDING THE COLLECTION OF GARBAGE/RECYCLABLES, RECYCLABLES, INDUSTRIAL GARBAGE, CONTAINERIZED YARD WASTE, AND SALVAGEABLE WASTE.

THIS SERVICE AGREEMENT is executed pursuant to the authority provided in, and pursuant to, all of the provisions, terms, and conditions of, Article XIV of the Charter of the City of Modesto and Chapter 5 of Title V of the Modesto Municipal Code.

THIS SERVICE AGREEMENT is hereby made and entered into in the City of Modesto, State of California, this 18 day of September and between the City of Modesto, a municipal corporation of the State of California, hereinafter referred to as "CITY", and Bertolotti Disposal, Inc., a California Corporation, hereinafter referred to as "COLLECTOR".

THIS SERVICE AGREEMENT is made with regard to the following recitals:

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1990 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for handling solid waste, including garbage, garbage/recyclables, recyclables, yard waste, industrial garbage, and salvageable waste handling within their jurisdictions; and

WHEREAS, pursuant to California Public Resources Code Section 40059, the City Council of the City of Modesto has determined that the public health, safety, and well-being require that a service agreement be executed with a qualified firm for the collection, transport, recycling, and disposal of solid waste, including garbage, garbage/recyclables, recyclables, containerized yard waste, industrial garbage, and salvageable waste in residential, commercial, and industrial areas and construction/demolition sites in the CITY; and

WHEREAS, the City Council of the City of Modesto declares its intention of maintaining reasonable rates for the services to be provided within the City limits by COLLECTOR under this Agreement; and

WHEREAS, pursuant to California Public Resources Code Section 49510 (b), the

City Council of the City of Modesto finds that it is in the public interest to foster and encourage solid waste enterprises so that, at all times, there will continue to be competent enterprises willingly and financially able to furnish needed solid waste handling services; and,

WHEREAS, before consenting to grant a City Service Agreement to COLLECTOR, the CITY met with representatives of COLLECTOR who represented and warranted that COLLECTOR would agree to a stipulation in its Service Agreement that would prohibit the acquisition of COLLECTOR by either of the two other companies currently holding City Service Agreements, or their subsidiaries or other corporate affiliates; and

WHEREAS, representatives of COLLECTOR have represented and warranted that COLLECTOR will agree to contract terms which hold it to certain performance standards; will commit to provide outstanding performance with integrity, both as a service provider and a corporate citizen, to the citizens of Modesto; will guarantee delivery of all the acceptable waste it collects pursuant to the Service Agreement to the Stanislaus Resource Recovery Facility; will cooperate in the implementation of new programs or modifications to existing programs; and, will commit to the inclusion in the Service Agreement of reasonable language regarding the conduct of its representatives.

NOW, THEREFORE, in consideration of this agreement, and the mutual promises, covenants, and stipulations hereinafter contained, the parties agree as follows:

- a. Except as it may be extended by mutual agreement of the parties, this Service Agreement shall automatically expire on September 18, 2008, subject to satisfaction of the preconditions provided in Paragraph b, unless terminated earlier pursuant to the provisions of this Service Agreement or the provisions of Chapter 5 of Title V of the Modesto Municipal Code. Upon successful performance of two (2) years of services under this Agreement, and every two (2) years thereafter, COLLECTOR may submit a request for extension of the term of this Agreement for an additional two (2) years. Upon any such request, CITY shall hold a public hearing to consider whether it may or may not extend the term of this Agreement for an additional two (2) years, at CITY's sole discretion. Nothing herein shall be deemed or construed to impair or affect in any way the right of the CITY to acquire the equipment and assume the operations of COLLECTOR at any time during the initial term of this Service Agreement or any extensions thereof by purchase of COLLECTOR'S equipment at a fair and just market value, which shall not include any amount for the Service Agreement itself or for any of the rights or privileges granted by this Service Agreement.

- b. 1. The CITY may terminate this Service Agreement on September 18, 2006, if COLLECTOR has not reasonably satisfied each of the following preconditions to the sole satisfaction of the CITY, notwithstanding the provisions of the more general language of paragraph c. making "reasonableness" a requirement of any discretionary decision relating to the performance of this Agreement. The CITY may cause the termination by written notification of the collector prior to September 18, 2006.
 - (a). At all times during the term of this Service Agreement, including extensions, the COLLECTOR shall have timely paid all reasonably undisputed fees and charges owed to CITY under the terms of this Agreement and the Modesto Municipal Code, including without limitation all penalties for violations under the Modesto Municipal Code Section 5-5.33, compensatory and/or liquidated damages hereunder, environmental or other indemnities, and any other sums due and payable to CITY.
 - (b). At all times during the term of this Service Agreement, including extensions, the COLLECTOR shall have disposed of or recycled all waste collected under the provisions of this Service Agreement pursuant to Section x of this Agreement.
 - (c) At all times during the term of this Service Agreement, including extensions, the number of unresolved complaints during any given 12-month period that pertain to the operations of the COLLECTOR under this Service Agreement, which number has been substantiated and verified to the reasonable satisfaction of CITY, shall not exceed two and one half tenths of one percent (0.25%) of the total annual stops for the prior year.
 - (d) At all times during the term of this Service Agreement, including extensions, the COLLECTOR shall not have failed materially to comply with any provision of the Modesto Municipal Code, any of the terms or conditions of this Service Agreement, or failed to comply with any federal, state or local laws, ordinances, rules or regulations pertaining, directly or indirectly, to the COLLECTOR's operations under this Service Agreement; provided, however, that CITY, in its sole discretion, may waive any failure to comply that it deems to be minor and determines that such waiver is in the public interest.
 - (e) At all times during the term of this Service Agreement, COLLECTOR shall meet the requirements of Sections x and y pertaining to recycling and yard waste diversion and other City solid waste programs.

2. Notwithstanding any other provisions herein, the CITY may terminate this Service Agreement for its convenience, without cause, upon a decision by the CITY to assume, with its' employees, performance of the services required of COLLECTOR hereunder. This Service Agreement shall terminate sixty days after CITY gives COLLECTOR written notice of its election to terminate this Service Agreement. Upon such termination by CITY, CITY shall pay to the COLLECTOR the anticipated return on COLLECTOR's capital investment for two years, if such notice is given on or before June 18, 2004; for eighteen months, if such notice is given after June 18, 2004 but on or before June 18, 2005; for one year if such notice is given after June 18, 2005 but on or before June 18, 2006; and for six months if such notice is given after June 18, 2006.
- c. This Service Agreement shall be an exclusive Service Agreement to collect commercial/residential garbage/recyclables and containerized yard waste and a nonexclusive Service Agreement to collect industrial garbage, salvageable waste, and recyclable materials within the areas delineated and marked on that certain map entitled "Service Areas" approved by the City Council on January 23, 2001, on file in the office of the CITY Clerk, and to which reference is hereby made.

This Service Agreement replaces and terminates the License dated July 8, 1992, as extended by Council Resolution in June, 1997, between the CITY of Modesto and Bertolotti Disposal, Inc., a California Corporation, for the collection of garbage in the CITY of Modesto, including the collection of industrial garbage, recyclable materials, and salvageable waste.

COLLECTOR waives any right or claim to serve the CITY or any part of the CITY under any prior grant of franchise, contract, license, or permit issued or granted by the CITY, or, in the case of annexations, any other governmental entity.

In consideration of the rights and privileges granted by this Service Agreement, COLLECTOR shall pay quarterly to CITY within thirty (30) days following the close of each calendar quarter an amount equivalent to eight-tenths of one percent (8.0%) of the gross receipts derived from the furnishing of such garbage collection services within the CITY for the preceding quarter. Within thirty (30) days following the close of each quarter, COLLECTOR shall also pay the CITY a business license mill tax of two-tenths of one percent (0.2%) of the gross receipts derived from the furnishing of such garbage collection services within the CITY for the preceding quarter. Calendar quarters shall terminate on March 31, June 30, September 30, and December 31. CITY further reserves the right to increase said fee in consideration of this Service Agreement to a maximum of 10.3% plus mil tax of two-tenths of one percent (0.2%). COLLECTOR further agrees to pay CITY the sum of Eight Thousand Dollars (\$8,000) in consideration of CITY'S reasonable costs to process

COLLECTOR'S application for said Agreement. Whenever, in this Agreement, either CITY or COLLECTOR is given the right of making a discretionary decision affecting the performance of this Agreement, such decision shall be made in a reasonable and prudent manner.

- d. In accepting this Service Agreement, COLLECTOR thereby agrees to serve the areas covered by the Service Agreement for the terms herein specified in compliance with the provisions of this Service Agreement and the provisions of Chapter 5 of Title V of the Modesto Municipal Code.
- e. This Service Agreement shall automatically extend to any portion of COLLECTOR'S service area, as shown on the map referred to in Section c, above, which is hereafter annexed to the CITY, except that CITY may permit any person or firm franchised by the County of Stanislaus and then serving such area or portions thereof to continue to serve such area or portions thereof for such period of time, not to exceed five (5) years from the date of annexation, as the CITY deems proper. COLLECTOR, when required to serve new portions of the CITY, shall promptly extend its routes and services and, when necessary, shall hire additional personnel and obtain additional equipment. CITY reserves the right to revise service areas to improve collection efficiency upon a reasonable determination by the CITY Council, after notice and negotiation with the affected COLLECTOR/COLLECTORS, that such revision is warranted.
- f.
 - (1) Maximum rates and charges to be charged by the COLLECTOR for the collection of commercial/residential garbage/recyclables and containerized yard waste shall be established by the Council by resolution, however, COLLECTOR is free to vary its rates and charges for customer classes, but not within customer classes, so long as they remain less than or equal to the then current maximum rate or charge. Service charges and costs of operation of COLLECTOR will be reviewed annually by the CITY and, if deemed necessary by the CITY Council, maximum rate adjustments shall be made to become effective on July 1 of each year.
 - (2) The CITY reserves the right to require adjustments in commercial/residential garbage/recyclables and containerized yard waste operations of the COLLECTOR due to changing community needs, and/or developments in the field of garbage collection and disposal. Maximum rate adjustments will be considered in such cases, and, if determined by the CITY to be reasonable and necessary, will be made. Which adjustments may be retroactive to the date on which COLLECTOR started to perform the duties involved in the discharge of such obligations, provided that such duties result in additional costs.
 - (3) Notwithstanding any contrary provision, for purposes of establishing the maximum rate, COLLECTOR shall not be entitled to pass through as an allowable

business expense, the cost of purchasing or acquiring this Agreement or company or business entity that holds any right or interest to this Agreement. This provision shall be binding upon any and all heirs, legal representatives, successors and assigns, including without limitation any acquiring parent company or subsidiary of such parent company or the COLLECTOR.

- g. COLLECTOR shall bill and collect all garbage/recyclables and yard waste service charges, provided, however, that COLLECTOR may contract with the CITY so that all or some of said garbage/recyclables and yard waste service charges are billed by CITY, COLLECTOR to pay to the CITY fees, to be determined by the CITY, for such billing service. In no event shall CITY use its police power or other governmental power to collect garbage charges for COLLECTOR.
- h. The CITY reserves the right to revise the provisions of Chapter 5 of Title V of the Modesto Municipal Code, from time to time, as required in order to protect the public health, safety and welfare of the CITY .
- i. COLLECTOR shall comply with all existing and future State and Federal laws, and all ordinances and regulations which may in any manner affect COLLECTOR'S operations under the terms and conditions of this Service Agreement.
- j. The Engineering and Transportation Director of the CITY of Modesto shall administer and supervise COLLECTOR'S operations under the terms of this Service Agreement and in accordance with the provisions of Chapter 5 of Title V of the Municipal Code.

In the event of any disagreement between COLLECTOR and customers regarding the type or extent of service provided by COLLECTOR, the Engineering and Transportation Director shall make an investigation and determination, and the decision of the Engineering and Transportation Director shall be final. In no event shall COLLECTOR be required to provide or resume collection service to any person who is in arrears on payment for collection services provided by COLLECTOR at the time the service request is made. COLLECTOR may require pre-payment of up to two-month's residential collection rate actually charged by it of any person requesting service who has not established satisfactory credit history with COLLECTOR.

- k. COLLECTOR shall establish and maintain an office within the CITY of Modesto, or within two (2) miles of the City limits of Modesto, or other location approved by the CITY Manager, and shall keep said office open for business from 8:00 a.m. to 5:00 p.m. of every day except Saturday, Sunday, and all legal holidays observed by the CITY of Modesto.

- (1) COLLECTOR shall keep and maintain in said office at all times during the hours it is required to be open, competent personnel who shall have authority to represent COLLECTOR in its relations with the CITY and with the public, and provide accurate information about collection and disposal/recycling services and programs in the CITY. COLLECTOR shall obtain and keep in said office sufficient listed telephones and personnel to courteously, quickly, and expeditiously receive and answer all telephone and other calls to said office. A daily log of service calls received and the disposition thereof shall be kept by COLLECTOR for all operations hereunder. COLLECTOR shall make this daily log of service calls available for inspection by the CITY upon reasonable advance request no greater than one business day in advance. COLLECTOR shall provide a service to receive calls/complaints at all other times, and an emergency telephone number so that a designated responsible representative of COLLECTOR can be reached by the service/CITY staff 24 hours a day as circumstances warrant.
 - (2) COLLECTOR warrants on behalf of itself and all subcontractors engaged for the performance of this Service Agreement that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.
 - (3) All employees of COLLECTOR who have routine contact with the public shall be trained in customer service and shall conduct themselves in a helpful, courteous, efficient manner consistent with the CITY'S "Citizens First" Policies as provided to COLLECTOR by the CITY. The CITY shall have the right to monitor the performance of COLLECTOR'S employees at all times. In the event that any employee is found to be discourteous or not to be properly performing the services required by this Agreement, COLLECTOR shall initiate necessary corrective measures.
1. COLLECTOR shall maintain full and complete books of account and other records showing all business transacted in connection with this Service Agreement including but not limited to records of all special monthly collections, receipts, expenses, profits, supporting statements and vouchers, balance sheets, profit and loss statements, and other documents, accurately reflecting and showing all business of the COLLECTOR. All such books and records shall be subject to audit and inspection at any and all reasonable times by the CITY and its authorized officers, agents, or employees, and shall be made available at said office for such inspection or audit at any and all reasonable times upon written request or demand of the CITY Attorney, CITY'S independent Auditor, Manager, or Engineering and Transportation Director no less than two (2) business days in advance.

- m. (1) COLLECTOR shall provide the CITY annually, not later than one hundred twenty (120) days after the end of the fiscal year ending June 30th, with five (5) copies of an annual balance sheet and profit and loss statement. The annual financial statement shall include a separate description of costs and revenues resulting from residential/commercial garbage/recyclables, containerized yard waste, detachable container, drop box, recycling and salvage operations hereunder and shall encompass cumulative data from the monthly statistical reports required by Section x, subsection (4), below. Financial statements submitted by the COLLECTOR to the CITY shall be regarded by the CITY as confidential financial records of the COLLECTOR, and shall not be released as a public record for inspection by any party other than authorized CITY officers, agents, or employees, unless requested in accordance with the provisions of the Public Records Act.
- (2) The CITY may require COLLECTOR to provide a complete financial audit prepared by a Certified Public Accountant with his or her opinion attached thereto and such other financial information deemed necessary by the CITY when considering a request for maximum rate adjustments. Such audit shall be an allowable expense recoverable by COLLECTOR in its rates.
- (3) COLLECTOR shall submit to CITY at its request, which shall not be more than annually: (1) a reviewed balance statement of its parent company, prepared in accordance with Generally Accepted Accounting Principles (GAAP), prepared by an independent certified accountant, and (2) all public financial reports required to be filed by Bertolotti Disposal Services, Inc., with the federal Securities Exchange Commission.
- (4) COLLECTOR may utilize services provided by affiliates provided that (1) COLLECTOR identifies all such expense items and (2) the cost of such services do not exceed the market rate charged by unrelated third parties for similar services. If such an allowed item of expense is questioned by CITY, COLLECTOR must submit proof that the item is reasonable.
- n. COLLECTOR shall collect and remove from any and all customer premises, not later than twenty-four (24) hours after notice, demand or request, any and all garbage/recyclables and containerized yard waste which COLLECTOR shall have failed to collect and remove at the regularly scheduled time. The customer's failure to place garbage/recyclables and containerized yard waste for collection at the regularly scheduled time and place shall not be deemed a missed collection.

- o. COLLECTOR shall collect garbage/recyclables and containerized yard waste at least once each calendar week, Mondays through Fridays, for residential collections, and on Mondays through Saturdays for commercial and industrial collections. COLLECTOR shall, at no additional charge, provide special pickup procedures beyond the normal services described herein to customers who are unable to place their containers out for collection due to physical handicap or disability as determined by a site visit and/or reasonable investigations, and authorized by CITY'S Engineering and Transportation Director.
- (1) For purposes of such collection, COLLECTOR shall divide the CITY into collection routes. Such collection routes shall be each wholly within the CITY limits, and shall be approved by the Engineering and Transportation Director. Upon approval of the proposed routes by the Engineering and Transportation Director, COLLECTOR shall prepare route books or other route documents or a route database which shall indicate the address of each service, number of containers, frequency of collection, and such other pertinent information as the Engineering and Transportation Director may require. COLLECTOR shall keep route books/route data up to date at all times.
 - (2) COLLECTOR shall give reasonable written notice to the general public as to the days and times for collection on each route. No changes in collection schedules shall be made without the approval of the Engineering and Transportation Director and reasonable written notice thereof by COLLECTOR to the affected customer. The notice shall include the day or days of the week upon which collection will occur, the name, address, and telephone number of COLLECTOR, and other reasonable information deemed necessary by the CITY.
 - (3) COLLECTOR is not required to make collections on Sundays or legal holidays observed by the CITY. COLLECTOR may arrange with commercial and industrial customers for Sunday and holiday collections, however. Scheduled collections not made on legal holidays shall be made within twenty-four (24) hours, Sundays excepted.
- p. The COLLECTOR shall make garbage collection service available on request to all schools, public agencies, institutions, and other nonresidential premises at the same rates established for business locations, except that COLLECTOR shall provide such services at all facilities as shown in Exhibit A, owned/operated by the CITY of Modesto at no direct charge. In special cases where unusual quantities of materials, special types of materials, or special methods of handling and/or disposing are required, the Engineering and Transportation Director may permit independent arrangements between COLLECTOR and the special customer.

- q. COLLECTOR shall furnish, to all residential customers, a black standard sixty (60) gallon or ninety (90) gallon automated collection container for the collection of garbage/recyclables, and a dark green standard sixty (60) gallon or ninety (90) gallon automated collection container for the collection of containerized yard waste. COLLECTOR shall be responsible for the general repair and upkeep of all the standard automated collection containers furnished to the residential customers. Containers shall be kept in serviceable condition at all times.
- (1) Upon consultation with COLLECTOR, if the Engineering and Transportation Director makes a reasonable determination that it is necessary for public information purposes to affix a sticker with instructions on either container or provide another form of notification or public education, to improve the efficiency of either program or to prevent contamination of materials being collected, COLLECTOR shall perform this task at COLLECTOR's expense.
 - (2) When notified of the theft of a container, or destruction of a container through an action not the fault of the customer, and following receipt of a Police Report number from customer in the instance of a stolen container or Fire Department Report in the instance of a burned container, where such a Fire Department Report is available, COLLECTOR shall replace the stolen or destroyed container by no later than the customer's next collection day at no cost to the customer or CITY.
 - (3) COLLECTOR shall have approved detachable containers for apartment, commercial, business and industrial services on a rental basis. COLLECTOR shall be responsible for the general repair and upkeep of all detachable containers. Containers shall be kept in serviceable condition at all times. COLLECTOR shall provide detachable container cleaning service at a rate approved by the Engineering and Transportation Director.
 - (4) Detachable containers shall be metal and so constructed that no liquid can leak from said containers. However, containers made of materials other than metal may be proposed by COLLECTOR for the approval of the Engineering and Transportation Director during the term of this Service Agreement. No materials may be substituted without prior approval.
 - (5) Within 45 days of a written request from CITY, COLLECTOR shall submit a plan subject to approval by CITY, detailing how yard waste collection services shall be provided to multi-family dwelling units, businesses, institutions, and other customers with detachable container and/or drop box service, including a cost proposal. Engineering and Transportation Director.

- r. COLLECTOR shall supply all occupants or premises in the COLLECTOR's service areas with printed information cards approved by the Engineering and Transportation Director containing information regarding amounts of garbage/recyclables and containerized yard waste which will be collected, complaint procedures, charges, regulations, and days of collection. The information cards will also include the name, address, and telephone number of the COLLECTOR. Such cards shall be distributed as required by the Engineering and Transportation Director, and, in addition, upon request by occupants or owners of any premises and in advance of a change in collection day.
- s. COLLECTOR shall not litter any premises or public property in making collections of garbage/recyclables and containerized yard waste, nor shall garbage/recyclables and containerized yard waste be allowed to leak, blow, or fall from collection vehicles; however, if in spite of normal precautions against spillage, litter is caused on any premises or public property, COLLECTOR shall immediately remove same and clean up the area of spillage. COLLECTOR shall equip every vehicle used for the collection or transportation of solid waste within the CITY with a broom, shovel, and other equipment as necessary to clean and pick up any debris deposited upon the streets, roads, highways, sidewalks, or private property by reason of the activity of COLLECTOR within the CITY. COLLECTOR shall, without delay, after removing garbage/recyclables and containerized yard waste from any container, replace the container in its designated position on the premises with covers closed on lidded containers, and shall repair or replace at its expense any containers damaged as a result of its handling thereof, normal wear and tear excepted.
- (1) COLLECTOR shall close all gates after making collections and shall avoid crossing private or public planted areas and climbing or jumping over hedges and fences. Particular attention should also be given to the location of water meters, transformers, guy wires, utility poles and irrigation structures. COLLECTOR's personnel shall make all collections in a quiet and orderly manner, shall refrain from making unnecessary disturbances and noise, and shall be courteous and professional in all dealings with the public. If, for any reason, garbage/recyclables and containerized yard waste is not picked up, such as overweight container, not in container, etc., COLLECTOR shall attach a tag to the container explaining the reason therefor, and shall maintain a log or record of such refusals.

- (2) COLLECTOR shall strictly observe and protect the rights of privacy of customers. Information identifying the individual customers, or the composition or contents of a customer's garbage/recyclables and containerized yard waste, shall not, except upon order of a police officer who is properly identified as such, 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 by the customer. The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to Federal or State law. This provision shall not be construed to preclude COLLECTOR from participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required for the purposes/needs of CITY, or to comply with the requirements of the California Integrated Waste Management Act of 1989.
- (3) Collection vehicles shall be operated safely at all times so as not to pose any hazard to school children going to or coming from school. No person shall collect solid waste from any location within two hundred feet (200') of a public or private elementary, junior high, or high school, where such school is shown on an official map of the city, as designated by the Engineering and Transportation Director, as said map shall be periodically updated, during the forty-five (45) minutes before the commencement of the regular school day and forty-five (45) minutes following the conclusion of the regular school day, where such locations are accessible to and used by children as routes to or from school. Notwithstanding the above restrictions, if, following an investigation, the Engineering and Transportation Director makes a determination that additional restrictions should be imposed on the collection of solid waste near a particular school based on the material circumstances as determined by the investigation, COLLECTOR acknowledges that it has a duty to comply with these restrictions as a condition of this Service Agreement.
- (4) COLLECTOR shall be responsible for any damage in excess of normal wear and tear to the CITY's driving surfaces, whether or not paved, resulting from the illegal weight of, or any leakage or spillage of oils, fluids or solids by vehicles providing services under this agreement.
- (5) COLLECTOR's collection vehicles shall be inspected as required by the California Highway Patrol and pursuant to the Department of Transportation regulations and operated in full compliance with the California Vehicle Code and this Service Agreement. COLLECTOR shall allow CITY to review inspection records at CITY's reasonable advance request. Vehicles shall be thoroughly washed and disinfected inside the collection body each day, or as

approved by the Engineering and Transportation Director, and the exterior of each vehicle shall be cleaned and washed at least once a week.

- (6) COLLECTOR shall not hire or continue to employ any person as a collection vehicle operator if they fail for any reason to have, and/or maintain, a valid, unexpired, unsuspended Class "A" or "B" driver's license as required by the Department of Transportation and the California Highway Patrol as appropriate for the vehicle to be operated by such person.
 - (7) COLLECTOR shall develop, maintain, and enforce a Vehicle Operator Training/Evaluation program for its drivers who perform services under the terms of this Agreement.
- t. All equipment used for the collection and hauling of garbage shall be approved by the Engineering and Transportation Director and shall be so constructed and maintained as to prevent leakage, spillage, or overflow. Trucks shall not be loaded in excess of requirements of the California Vehicle Code.

All trucks and collection equipment shall be clearly identified by an assigned equipment number and with the firm name and local telephone number affixed thereto. Collection trucks shall be painted white, or another color approved by the Engineering and Transportation Director, and shall be equipped with the safety devices and warning lights required by the California Vehicle Code.

All vehicles and equipment used in the collection of garbage, if kept within the boundaries of the CITY, shall, at all times when not in use in the collection of garbage, be kept on private property in the appropriate zone and not on streets or other public ways.

- u. All garbage collection vehicles shall be well maintained, properly identified, painted, clean and in satisfactory mechanical condition. COLLECTOR shall institute a complete and comprehensive system of preventive maintenance on all vehicles and shall keep them lubricated and in good repair. Records in a form approved by the Engineering and Transportation Director to provide data on operating, maintenance and repair costs shall be kept on each piece of equipment.

- v. For purposes of this paragraph the following definitions apply:

(1) "Interruption of service" means:

- (a) Any time period during which garbage/recyclables and containerized yard waste collection services by COLLECTOR are interrupted by a labor dispute and scheduled collections are discontinued or

substantially reduced; or

- (b) Any time period after notice by the CITY of the termination of the Service Agreement by reason of a breach or default by COLLECTOR and until other suitable equipment can reasonably be purchased or otherwise acquired by the CITY for such purpose.
- (2) "Equipment" means any and all vehicles and equipment used by the COLLECTOR for the purpose of performing the services provided for in the Service Agreement at any time within the ninety (90) days immediately prior to the commencement of the interruption of service.
 - (3) "Payment for use" has the following meaning:
 - (a) In the case of equipment subject to a contract, "payment for use" shall mean any installment payment coming due under a contract for such equipment while the CITY is possessing and using such equipment pursuant to this paragraph during an interruption of service. Payment for use shall not be deemed to include any payment coming due under such contract either prior to, or after the expiration of, such period. Payment for use shall be made by the CITY, from time to time, directly to the person or company to whom the payment is owed under the contract, and the making of such payment or payments shall constitute full compensation to all persons for the CITY's temporary use of such equipment.
 - (b) In the case of equipment not subject to a contract, "payment for use" shall mean the reasonable rental value of such equipment for such period of time during which the CITY possesses and uses such equipment pursuant to this paragraph during an interruption of service. Such payment shall, at termination of service interruption, be applied against any sums then owed to the CITY by COLLECTOR, or, if none, shall be paid by the CITY to COLLECTOR.
 - (4) "Contract" means any conditional sales contract, mortgage, encumbrance, lease, rental agreement, or other agreement which provides for retention of title to said equipment or grants a security interest therein, that may exist at the commencement of the interruption of service.
 - (5) "Notice" means written notification actually received by the person to be notified or mailed to him or her by registered or certified mail at the most recent address furnished by him or her to the CITY Clerk of the CITY of

Modesto. As to the holder of a contract, the CITY shall be required to give notice only if the holder's identity is known to the CITY and the holder has furnished his or her address to said CITY Clerk.

In the event of an interruption of service, the CITY shall be entitled to have the temporary possession of all or any portion of the equipment of COLLECTOR on the condition that the CITY all, from time to time, make the payment for use as provided in Section v, Subsection (3), above. Upon taking such temporary possession, CITY shall forthwith give notice thereof to COLLECTOR and to the holder at that time, if any, of the contract on such equipment. Such temporary use shall not be deemed a breach of the terms of any contract regarding said equipment, but it shall otherwise be subject to the terms of such contract which are not in conflict herewith, except that the CITY shall not be required to make any payment other than the payment for use prescribed in Section v, Subsection (3), above. The CITY's payment for use prescribed in Section v, Subsection (3) shall be deemed to be compensation only for the temporary use of such equipment and the CITY shall not thereby acquire any ownership interest in such equipment.

So long as the CITY continues to make the payment for use of equipment when due or within ten (10) days thereafter, such equipment may be retained by the CITY and shall not be repossessed from the CITY. In the event the CITY fails to make a payment for use when due or within ten (10) days thereafter, the CITY's right to continued temporary use of such equipment shall cease, and possession of such equipment may be retaken by COLLECTOR or by the holder of any contract thereon.

At the expiration of the CITY's temporary possession of any such equipment, the CITY shall give written notice of such expiration to COLLECTOR and to the current holder, if any, of a contract on such equipment. In the event COLLECTOR shall fail to take possession of such equipment within ten (10) days after such notice, COLLECTOR shall be deemed to have abandoned such equipment and waived all interest therein, and the CITY shall be free to use and dispose of such equipment without liability or compensation to COLLECTOR, subject to the terms of any contract that may then exist with regard to such equipment.

All equipment used by COLLECTOR for the purpose of performing the services provided for in this Service Agreement shall be solely owned by COLLECTOR except that COLLECTOR may, with the prior approval of the CITY Manager, enter into contracts as defined in Section v, Subsection (4), above, with respect to such equipment. All such contracts shall provide for

temporary possession by the CITY as set forth herein and shall provide that such temporary possession shall not be deemed a breach of such contract.

w. All vehicles and equipment used by COLLECTOR for the collection and hauling of garbage shall be solely owned by COLLECTOR, except that COLLECTOR may, with the prior approval of the CITY Manager, enter into conditional sales contracts, mortgages, encumbrances, leases, rental agreements, and other appropriate agreements for the purpose of purchasing, leasing or renting vehicles and equipment to be used in providing the services provided for in this Service Agreement. All such documents shall provide for temporary possession by the CITY as set forth in Section v, Subsection (5) above and shall provide that such temporary possession shall not be deemed a breach of the agreement.

x. 1. COLLECTOR shall guarantee delivery to the Stanislaus Resource Recovery Facility ("SRRF"), 4040 Fink Road, Crows Landing, California, of all waste collected pursuant to the Service Agreement except as noted in the following paragraph.

Should the amount delivered by COLLECTOR to the SRRF fall below the historical average of weekly deliveries from CITY and County sources, CITY shall conduct an investigation of the cause of the tonnage reduction and shall, following consultation with COLLECTOR, determine what corrective actions, if any, shall be taken by COLLECTOR. Upon investigation and determination in its sole discretion that COLLECTOR has willfully failed to deliver all waste collected pursuant to this Service Agreement ("Delivery Default"), the CITY may impose damages as specified in Section x, Subsections 5 and 6 of this Agreement. Should the investigation determine that a diversion program or other activity conducted by the CITY pursuant to AB 939 is the cause of the reduction, the CITY and COLLECTOR agree to meet and determine whether adjustments should be made in the tonnage specified from CITY and County Sources. Wastes that are not acceptable for disposal at the Stanislaus Resource Recovery Facility (SRRF) shall be disposed of at the Fink Road Sanitary Landfill or other sanitary landfill areas as directed by the CITY, depending on the makeup of the waste. CITY further reserves the right to direct the collector to dispose of waste at an alternative facility at City's sole discretion. Disposal of garbage at all facilities will be in compliance with regulations in effect for the same as they now exist or may hereafter be amended.

2. Industrial garbage collected by COLLECTOR shall be lawfully disposed of or recycled in accordance with the provisions of Section 5-5.04 of the Modesto Municipal Code.

3. Containerized yard waste collected under the terms of this Agreement will be taken to the CITY's composting facility or such other locations as directed by the Engineering and Transportation Director. COLLECTOR shall be responsible for the removal of contaminants from the yard waste to an acceptable level as determined by the CITY. The cost of said removal, where reasonable and necessary as determined by the CITY, will be made a component of the maximum rate. The CITY reserves the right to reject or direct to alternative disposal any loads determined to be too contaminated to process.
4. On or before the end of each month, COLLECTOR shall furnish to CITY a certified statement verifying the total number of tons of materials collected during the previous month by COLLECTOR under this Service Agreement, the number of materials separately disposed of at the Stanislaus Resource Recovery Facility, the Fink Road Landfill or other alternate disposal facility, whether or not such facility is or has been approved by CITY. Upon request of CITY, the COLLECTOR shall provide documentation substantiating the monthly statement, including weigh slips or tickets.
5. For each ton of materials collected by COLLECTOR under this Service Agreement that COLLECTOR fails to deliver pursuant to Section x, Subsection 1 above ("Diverted Tons"), as demonstrated by weigh bills at such other facility or other evidence satisfactory to CITY, including reports of any such monitoring party described in Section x, Subsection 8 below ("Diversion Documentation"), COLLECTOR shall pay CITY within thirty days following receipt of an invoice therefore from CITY, compensatory damages equal to all damages or other payment obligations CITY consequently directly or indirectly incurs under the *Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste Among Stanislaus Waste Energy Company, the City of Modesto and the County of Stanislaus* and related agreements (the "SRRF Service Agreement"), including, without limitation:
 - (1) an amount equal to payments for lost electricity revenues related to such tonnage shortfall, as provided in Section 8.11(a) of the SRRF Service Agreement; and
 - (2) an amount equal to the lost Energy Credit, as defined in Section 8.11 (c) of the SRRF Service Agreement; and
 - (3) an amount equal to the lost tipping fee for the total tonnage of Diverted Tons not delivered by COLLECTOR as required under and

in accordance with this Service Agreement.

6. In addition to compensatory damages, COLLECTOR acknowledges that SRRF generates less electricity revenue if the projected level of tonnage is not delivered to the SRRF and that CITY loses such revenue. COLLECTOR further acknowledges that CITY has consented to a third Service Agreement in consideration and reliance upon COLLECTOR's commitment and promise to provide disposal services at the SRRF. COLLECTOR further recognizes that in the event of a Delivery Default, CITY and its residents may suffer damages in addition to those compensatory damages described above and that it is and will be impracticable and extremely difficult to ascertain and determine the exact amount of such damages.

Therefore, COLLECTOR and CITY agree that in addition to the compensatory damages stipulated in Section x, Subsection 5, above, the following liquidated damages represent a reasonable estimate of the amount of such additional damages, considering all of the circumstances existing on the date hereto, including the relationship of the sums to the range of harm that reasonably could be anticipated and anticipation that proof of actual damages would be costly or inconvenient. In signing this Service Agreement, COLLECTOR and CITY each specifically warrants and represents that it has received independent legal advice from its attorneys or the opportunity to seek such advice and obtain an explanation of this liquidated damage provision at the time that this Service Agreement was made.

Within thirty days from delivery of written notice to COLLECTOR from CITY of a Delivery Default, COLLECTOR shall therefore pay as liquidated damages, in addition to the compensatory damages stipulated by this Service Agreement and not as a penalty, the sum of \$1,000.00 for each day that COLLECTOR fails to deliver materials to the SRRF under the terms of this Service Agreement.

7. In the event of a Delivery Default, as demonstrated by Diversion Documentation, in addition to or in lieu of terminating this Service Agreement, assessing compensatory damages or exercising any of its other remedies at law or equity, including specific performance, CITY, in its sole discretion, may retain a third party to monitor COLLECTOR's subsequent disposal services and COLLECTOR shall reimburse CITY for its Direct Costs thereof, plus fifteen percent for overhead and administrative costs, within thirty days of CITY submitting an invoice to COLLECTOR for such costs. For the purposes of this section, "Direct Costs" means the sum of (1)

weighted payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, workers compensation insurance, deferred compensation, federal and state unemployment taxes and all medical and health insurance benefits, plus (2) the costs of materials, services, direct rental costs and supplies, plus (3) the reasonable costs of any payments to subcontractors necessary to and in connection with the performance hereunder, plus (4) any other cost or expense which is directly or normally associated with the task performed. Direct Costs shall be substantiated by (1) a certificate signed by an authorized representative of CITY or his or her designee, as the case may be, setting forth the amount of such cost and the reason why such cost is properly chargeable to CITY and stating that such cost is an arms's length transaction and a competitive price, if there are competitive prices, for the service and materials supplied, and (2) if COLLECTOR requests, such additional backup documentation as may be available to reasonably substantiate any such Direct Cost, including invoices from suppliers and subcontractors.

COLLECTOR's liability to pay city any damages or customers any rebates shall survive the termination of the agreement.

8. Specific performance: COLLECTOR acknowledges that CITY's remedy of damages for a breach hereof by COLLECTOR may be inadequate for reasons including:
 - a. The urgency of timely, continuous and high-quality waste management service hereunder, including:
 1. Collection and disposal of materials which may be putrescible and constitute a threat to public health, and
 2. CITY's obligation to deliver guaranteed tonnage to the SRRF pursuant to the terms of the Amended and Restated Service Agreement for the Supply and Acceptance of Solid Waste among Stanislaus Waste Energy Company, CITY and County of Stanislaus (the "SRRF Service Agreement");
 - b. The long time and significant investment of money and personnel (both CITY staff and private consultants, including engineers, underwriters, bond counsel, financial advisors and contracts procurement counsel) required to procure, finance and re-finance the SRRF and the SRRF Service Agreement as the case may be; and

- c. CITY's reliance on COLLECTOR'S waste management experience, references and reputation for complying with the terms and provisions of its agreements;

Consequently, CITY shall be entitled to all available equitable remedies, including injunctive relief.

- 9. If any clause, sentence or provision of this Paragraph x or any subdivision thereof is determined to be invalid by any court of competent jurisdiction, such clause, sentence or provision shall not be severed from this Service Agreement, but either CITY or COLLECTOR, in its sole discretion, shall have the right to terminate this Agreement upon thirty days written notice thereof to the other party.
- y. 1. COLLECTOR shall furnish all labor and equipment required and make any and all modifications to its operations, equipment, or facilities, to sort out and recycle all materials placed in blue bags in the garbage/recyclables collection containers, including garbage/ recyclables collection containers at multi-family units, subject to the following limitations:
 - (a) Materials shall be prepared by the residents for recycling as directed by the CITY in public education materials furnished to said residents by CITY;
 - (b) Materials shall be placed in blue, see-through recycling bags purchased by residents for the purpose of separating recyclables from household garbage.

To the extent the revenues from the sale of recyclables diverted from disposal by this method are less than the costs of sorting and selling such recyclables, the COLLECTOR may account for such excess as an allowable expense item, if determined by the CITY to be reasonable and necessary.

- 2. The CITY reserves the right to inspect COLLECTOR's vehicles and facilities without prior notice to ensure that such removal of blue bags and recycling of their contents is occurring.
- 3. Concurrent with the delivery of the yard waste containers to residents, COLLECTOR agrees to deliver an initial supply of blue recycling bags furnished by COLLECTOR/CITY, and promotional materials furnished by CITY, to each new customer.

4. CITY and COLLECTOR agree to conduct a joint analysis of the program to determine whether this method is performing adequately to meet the CITY's recycling goals. Should the analysis determine that the above method is not significantly increasing diversion of recyclables above the 2% levels attained in the curbside program, COLLECTOR and CITY agree to work together in a diligent effort to either improve diversion through promotion or other methods, or to develop an alternative method to attain the increased diversion. Should CITY determine that a change in recycling operations is required, the provisions of paragraph f(2) above shall apply.

Should the analysis show that this method of recycling is providing adequate, cost-effective diversion to meet community needs and expectations, the benchmark tonnage to be recycled may be adjusted annually to reflect population growth, technological breakthroughs, or other factors, as determined by the CITY upon consultation with COLLECTOR.

5. COLLECTOR shall file with the CITY written quarterly statistical reports, in a format approved by the CITY, no later than thirty (30) days following the end of each quarter, to report the quantities of recyclables being diverted from the City of Modesto. Reports shall be sent to the Solid Waste Program Manager or their designee, at P. O. Box 642, Modesto, California, 95353. The reports shall include monthly volumes diverted for aluminum cans, bi-metal/steel cans, PET plastic, glass, newspaper, cardboard, magazines, and other recyclables as determined by the Engineering and Transportation Director. Such reports may be subject to field audits and reviews as deemed necessary by the CITY.
6. COLLECTOR shall provide reasonable public access to its facility where recyclable materials may be dropped off and where used motor oil may be deposited for recycling.
7. Pursuant to this Service Agreement, COLLECTOR shall collect and remove for recycling used motor oil that has been placed at the curb of the public street fronting on all single family residences and from designated locations near multi-family dwellings in an approved container on the scheduled service day. COLLECTOR shall also replace each one (1) gallon container collected with a clean container furnished by the CITY. COLLECTOR shall file with the CITY written quarterly statistical reports, no later than thirty (30) days following the end of each quarter, to report the volumes of oil being diverted. Pursuant to the terms and conditions of its Used Motor Oil Block Grants and Used Motor Oil Opportunity Grants, CITY shall use Grant funds to reimburse COLLECTOR for all reasonable costs associated with providing used motor oil collection services as agreed to by CITY.

Such grant funded collection shall continue at a minimum through June 30, 2002. In the event that no further grant funding is received to continue the program past that date, CITY shall notify COLLECTOR a minimum of ninety (90) days prior to the expiration of grant funding to discuss alternative funding of the program, including, but not limited to, a potential charge on the refuse collection fees, and/or termination of the curbside oil collection program.

8. Twice per year, COLLECTOR shall provide five (5) bins for the collection of telephone books for recycling, at CITY'S request. The number, placement, and size of the bins shall be as determined by CITY. COLLECTOR shall also accept telephone books at its transfer stations, and shall make a concerted effort to separate telephone books from the commingled garbage/recyclables waste stream. COLLECTOR shall assist CITY in promoting telephone book recycling.
 9. COLLECTOR shall provide the equivalent of 800 cubic yards of detachable container/drop box collection and transportation service, including all disposal fees for community and special events, each calendar year as directed by CITY, upon prior consultation with COLLECTOR.
 10. COLLECTOR will make available to CITY its facilities for the purpose of conducting waste sorts and will assist CITY in and provide requested waste type/volume information to CITY for the purpose of conducting/preparing waste characterization studies for CITY solid waste planning. COLLECTOR shall not be responsible to indemnify or insure the CITY or any CITY employee, contract employee, and/or volunteer while at COLLECTOR'S facility during waste characterization activity.
 11. COLLECTOR shall provide on-call, twice a year bulky item collection services to each single family residence in the City, at CITY'S direction.
- z. COLLECTOR shall file with the CITY Clerk and maintain during the term of this Service Agreement a corporate surety bond or other form of security satisfactory to the CITY Attorney. The initial amount of this security shall be in the sum of Two Hundred Thousand and no/100ths (\$200,000.00) Dollars to secure said performance. The amount of said security shall be reviewed annually by CITY on the anniversary date of this Agreement, and shall be increased by Sixty Thousand and no/100ths (\$60,000.00) Dollars for each additional One Thousand (1,000) increase in COLLECTOR'S customer base. Subject to the above requirements for increases in the bond amounts due to increases in the customer base, the performance bond requirements may be met by a bond which is effective for a minimum of three years

if three months prior to the expiration of that bond, the CITY receives from the surety a letter of commitment that another performance bond will be issued to become effective immediately upon expiration of the prior performance bond. Provision of such bond is a material covenant of this Agreement. The cost of a surety bond or other form of security required under this provision may be an allowable expense in COLLECTOR's rates in accordance with existing CITY cost accounting practices.

- aa. COLLECTOR agrees, in connection with the performance of all operations under or pursuant to this Service Agreement, to be an Equal Opportunity Employer and to refrain from discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or handicap.
 - 1. COLLECTOR agrees that it will undertake a program to ensure that no person shall on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any employment activities or opportunities. COLLECTOR shall ensure that seniority practices, job classifications, work assignments, and other personnel practices, including employment reduction actions, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the equal employment opportunity actions required by this Service Agreement are being carried out.
 - 2. COLLECTOR agrees to ensure and maintain a working environment free of harassment, intimidation, and coercion at all job locations and in all facilities where COLLECTOR's employees are assigned to work. shall specifically ensure that all foremen and forewomen, superintendents, and other on-site supervisory personnel are aware of and carry out the COLLECTOR's obligation to maintain such a working environment.
 - 3. In the event of breach of any of the above nondiscrimination, equal opportunity, or similar covenants, the Council of the CITY of Modesto shall have the right to revoke this Service Agreement in accordance with the provisions of Section 5-5.33 of the Modesto Municipal Code.
- ab. COLLECTOR and CITY shall cooperate, on such terms as shall be agreed upon, to support, develop, publicize, expand, and promote the concept and benefits of recycling and composting by any reasonable and effective methods. COLLECTOR shall reimburse CITY for its reasonable expenses and mailing costs whenever CITY determines, after consultation with COLLECTOR, that it is in the best interest of the recycling/yard waste collection programs to distribute information and promotional materials to COLLECTOR's customers.

Promotional assistance shall also include, but not be limited to, allowing access for

tours of facilities by the public/elected officials, supplying "props" and locations for filming of public educational pieces, and other assistance as determined by the CITY.

Tours and/or access shall be limited to areas of operations that are non-proprietary as determined by COLLECTOR. COLLECTOR shall not be responsible to indemnify or insure the CITY or any CITY employee, contract employee, and/or volunteer while at COLLECTOR'S facility during these activities.

- ac. COLLECTOR shall comply with the Indemnification/Insurance requirements set forth in Exhibit B, and shall reimburse each of the City's other two service providers for an amount equal to the interest on the difference between the one-half (1/2) of the Two Hundred Twenty Four Thousand Dollar (\$224,000) premium for the three year Hazardous Substances Insurance policy required by the CITY that was actually paid by each of the other two service providers, said one-half (1/2) being One Hundred and Twelve Thousand Dollars (\$112,000), and what each collector would have paid for one-third (1/3) of the said policy, said one-third (1/3) being Seventy Four Thousand Six Hundred and Sixty Six Dollars (\$74,666). COLLECTOR agrees to reimburse said interest amounts of Two Thousand Dollars (\$2,000) to Gilton Solid Waste Management, and Two Thousand Dollars (\$2,000) to Waste Management/Modesto Disposal by no later than September 30, 2001. Going forward, COLLECTOR will reimburse CITY per Exhibit B for one-third (1/3) of such Hazardous Substances Insurance policies as required by Exhibit B.
- ad. AB 939 Compliance. The scope of this Service Agreement results in the CITY relying on COLLECTOR to implement programs that enable the CITY to meet State mandated diversion goals. COLLECTOR agrees to protect, defend, with counsel approved by CITY, and indemnify CITY against all fines or penalties imposed by the California Integrated Waste Management Board in the event the disposal reduction and diversion mandates or any other requirement of the Integrated Waste Management Act of 1989 as amended, are not met by CITY with respect to the waste stream collected in respective service areas under this Service Agreement, and such failure to meet said mandates has been occasioned by the material failure of COLLECTOR to perform as required and directed by this Service Agreement. Material failure by the COLLECTOR to provide services required by this Service Agreement that enable the CITY to meet its diversion mandates shall be a breach of this Service Agreement and grounds for termination of the COLLECTOR's agreement by Council. If civil penalties are imposed on the CITY under AB 939, Public Resources Code Section 41850 due to COLLECTOR's failure to perform, all penalties shall be paid by the COLLECTOR. COLLECTOR and CITY acknowledge that this provision was not amended or restated, but dates to the original execution of this Agreement.

Federal, State, or local laws enacted after the effective date of this Service Agreement that impact the COLLECTOR's ability to achieve AB 939 goals, shall be taken into

consideration by the City Council in the event any goals addressed herein, are not achieved. The indemnification and defense provisions contained herein shall not apply if CITY fails to carry out its statutory duties imposed by AB 939 (Public Resources Code Section 40000 et. seq.), as it may, from time to time, be amended.

- ae. The terms used in this agreement shall be as defined in Section 5-5.03 of the Modesto Municipal Code.

- af.
 - 1. No official, officer, or employee of the CITY during his or her tenure or one year thereafter shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

 - 2. COLLECTOR acknowledges that its obligations to provide services under the Agreement are personal in nature, and that the identification of key personnel responsible for assuring complete and timely performance of COLLECTOR's services was a significant factor in the CITY's consent to a third Service Agreement and execution of this Service Agreement with COLLECTOR. Key positions include the COLLECTOR's general manager and Integrated Waste Management Act coordinator, and the local corporate representatives of Bertolotti Disposal. The COLLECTOR promptly shall notify the CITY of any replacement of such key personnel prior to affecting such replacement. On or before the expiration of six months after the date of such notification, the CITY reasonably may request a substitute or substitutes, which request shall be honored by the COLLECTOR within a reasonable period of time after such request, but in no event later than six months after such request.

 - 3. COLLECTOR shall immediately notify CITY if any of the following have a criminal conviction, criminal restraining order, or fine from a court, public entity, municipality or regulatory agency of competent jurisdiction with respect to the events listed in Section af, Subsection 4, below, or make an admission of guilt with respect thereto:
 - (a) COLLECTOR;
 - (b) Any of COLLECTOR's officers, directors or administrative or management employees;
 - (c) Any corporation having an ownership interest in COLLECTOR, including regional holding company, or any of its officers, directors, or administrative or management employees directly or indirectly responsible for administration and management of COLLECTOR;
 - (d) Bertolotti Disposal Services, Inc. or any of its administrative or

management employees directly or indirectly responsible for administration and management of COLLECTOR;

4. Events requiring COLLECTOR to notify CITY pursuant to Section af, Subsection 3, above shall include the following:
 - (a) Fraud or a criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement, including this Service Agreement; or
 - (b) Bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director's or COLLECTOR's employee's official capacity; or
 - (c) Embezzlement, extortion, racketeering, false claims, false statements, forgery, falsification or destruction of records, obstruction of justice, receiving stolen property, theft, or misprision (failure to disclose) of a felony; or
 - (d) Unlawful (criminal) disposal of hazardous or designated waste by COLLECTOR; or
 - (e) Violation of antitrust laws or unfair trade practices, or conspiracy to eliminate competition or to inflate waste collection, hauling or disposal fees.

Upon the occurrence of such events or circumstances with respect to COLLECTOR, CITY, in its sole discretion, may terminate this Service Agreement upon thirty days written notice to COLLECTOR, or may impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Upon occurrence of such events or circumstances with respect to any corporation having an ownership interest in COLLECTOR or with respect to Bertolotti Disposal Services, Inc. and those persons described in Section af, Subsections 3 (c) and (d) above, the CITY may terminate this Service Agreement following thirty days written notice to COLLECTOR if COLLECTOR does not take action to remove the applicable officer, director or employee from his or her office or employment, and other office or employment, as the case may be with Related Parties, as described in Section af, Subsections 3 (b) and (c) above, and any position of influence and responsibility within such thirty day period.

ag. COLLECTOR hereby agrees and understands that the provisions of MMC Section

5-5.32 are incorporated as though set forth here in full, and that in addition to all of the proscriptions and requirements of that Ordinance, it shall be for a good and sufficient reason and in the public interest for the City Council to deny any assignment or other transfer of this agreement to any person or entity of any type having any financial interest in or legal or practical control over collector.

- ah. The provisions of this Service Agreement shall be binding upon and inure to the benefit of the parties and to each party's respective heirs, legal representatives, successors and assigns, including without limitation any acquiring parent company or subsidiary of such parent company or COLLECTOR.
- ai. Each party warrants and represents that in executing this Service Agreement, it has received independent legal advice from its attorneys or the opportunity to seek such advice.
- aj. Headings or captions to the provisions of this Service Agreement are solely for the convenience of the parties, are not part of this Service Agreement, and shall not be used to interpret or determine the validity of this Service Agreement. Any ambiguity in this Service Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given a reasonable interpretation as if both parties had in fact drafted this Service Agreement.
- ak. Any and all notices required to be given under the provisions of this Agreement shall be given in writing and delivered personally or by deposit in the United States mail, postage paid and addressed as follows:

TO CITY

Director of Engineering and Transportation
CITY of Modesto
P.O. Box 642
801 Eleventh Street
Modesto, California 95353

TO COLLECTOR

Bertolotti Disposal, Inc.
Post Office Box 127
Ceres, California 95307

or at such other addresses as the parties may file with each other for such purposes. Notices, invoices and other correspondence hereunder shall be deemed received on the day following mailing by certified mail.

- al. This agreement shall go into effect and be in full force and operation on September 18, 2001.

IN WITNESS WHEREOF, the parties have signed this

Agreement

this 18th day of September 2001.

Res. 2001-465

CITY OF MODESTO, a municipal corporation

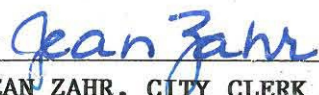
By 
JACK CRIST, CITY MANAGER

COLLECTOR*

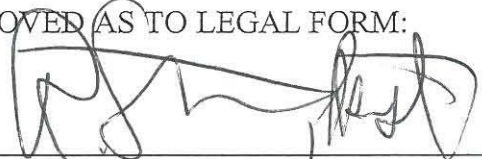
By 

By 

ATTEST:

By 
JEAN ZAHR, CITY CLERK
(SEAL)

APPROVED AS TO LEGAL FORM:

By 
MICHAEL D. MILICH, CITY ATTORNEY

APPROVED AS TO RISK MANAGEMENT FORM:

By 
DONALD N. NORRIS, RISK MANAGER

*Corporations - signature of two (2) officers required or one (1) officer plus corporate seal.
Partnership - signature of a partner required
Sole Proprietorship - signature of proprietor required

EXHIBIT A - CITY FACILITIES

1. City Hall - Modesto Disposal
2. Police Department - Modesto Disposal
3. Legion Hall - Gilton Solid Waste
4. Airport Administration Building - Gilton Solid Waste
5. City Corporation Yard - Bertolotti Disposal
6. Wastewater Treatment Plants (Primary and Secondary, including Compost Facility) - Bertolotti Disposal

EXHIBIT B - INDEMNIFICATION/INSURANCE PROVISIONS

A. HOLD HARMLESS AND INDEMNIFICATION.

(1). Indemnification of CITY. COLLECTOR agrees that it shall protect, defend with counsel approved by CITY, indemnify, and hold harmless CITY, its officials, officers, employees, representatives, volunteers, and agents from and against any and all losses, liabilities, fines, penalties, claims, damages of whatsoever nature, or judgments, including attorneys fees, arising out of or resulting from the CITY's grant of this Service Agreement to COLLECTOR or from COLLECTOR's exercise of this Service Agreement or omissions of COLLECTOR, its agents, employees, and subcontractors and employees thereof in connection with the performance or nonperformance of this Service Agreement. Subject to the scope of this indemnification and upon demand of the CITY, made by and through the City Attorney, the COLLECTOR shall appear in and defend the CITY and its officers, employees, and agents in any claims or actions, whether judicial, administrative, or otherwise arising out of the exercise of this Service Agreement. The COLLECTOR shall thoroughly investigate any and all claims and indemnify the CITY and do whatever is necessary to protect the CITY, its officers, employees, agents, and representatives as to any such claims, lawsuits, liabilities, expenses, or damages.

(2). Indemnification of COLLECTOR. The CITY shall indemnify, defend and hold the COLLECTOR, its affiliates and their respective officers, directors, employees, and shareholders harmless from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs, and expenses (including reasonable attorney's fees) arising from or in any manner related to the sole negligence or willful acts of the CITY, its officers, employees, agents, or contractors.

B. INSURANCE REQUIREMENTS

(1). Minimum Coverages - The COLLECTOR shall provide, at its own expense, and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to CITY as may be required by the City Clerk of the CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the CITY by certified mail, return receipt requested, for all of the following state insurance policies.

(a). Workers' Compensation - In compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$500,000.

EXHIBIT B - INDEMNIFICATION/INSURANCE PROVISIONS

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(2). Indemnification of COLLECTOR. The CITY shall indemnify, defend and hold the COLLECTOR, its affiliates and their respective officers, directors, employees, and shareholders harmless from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs, and expenses (including reasonable attorney's fees) arising from or in any manner related to the sole negligence or willful acts of the CITY, its officers, employees, agents, or contractors.

B. INSURANCE REQUIREMENTS

(1). Minimum Coverages - The COLLECTOR shall provide, at its own expense, and maintain at all times the following insurance with insurance companies licensed in the State of California and shall provide evidence of such insurance to CITY as may be required by the City Clerk of the CITY. The policies or certificates thereof shall provide that, thirty (30) days prior to cancellation or material change in the policy, notices of same shall be given to the Risk Manager of the CITY by certified mail, return receipt requested, for all of the following state insurance policies.

(a). Workers' Compensation - In compliance with the statutes of the State of California, plus employer's liability with a minimum limit of liability of \$500,000.

Collector agrees to reimburse City for such insurance as may be provided by insurance company suitable to the City's Risk Manager within thirty (30) days after acquisition of such insurance by City.

(2) Other Provisions - If at any time any of said policies required by subsections B (1) (a), (b), or (c), above, shall be unsatisfactory to the CITY, as to form or substance or if a company issuing such policy shall be unsatisfactory to the CITY, the COLLECTOR shall promptly obtain a new policy, submit the same to Risk Manager for approval, such approval not to be unreasonably withheld, and submit a certificate thereof as herein above provided. Upon failure of the COLLECTOR to furnish, deliver or maintain such insurance and certificates as above provided, this Agreement, at the election of the CITY, may be forthwith declared suspended, or terminated. Failure of the COLLECTOR to obtain and/or maintain any required insurance shall not relieve the COLLECTOR from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations of the COLLECTOR concerning indemnification. The CITY, its agents, officers, employees, and volunteers shall be named as an additional insured on all insurance policies required herein, except Workers' Compensation. The Workers' Compensation insurer shall agree to waive all rights of subrogation against the CITY, its agents, officers, employees, and volunteers for losses arising from work performed by COLLECTOR for the CITY. The COLLECTOR's insurance policy(ies) shall include a provision that the coverage is primary as respects the CITY; shall include no special limitations to coverage provided to additional insured; and, shall be placed with insurer(s) with acceptable Best's rating of A:VII or with approval of the Risk Manager.

COLLECTOR shall either require any subcontractor to procure and to maintain during the term of the subcontract all insurance in the amounts specified above, or shall insure the activities of subcontractors in the policy specified above. The limits of liability required may vary, depending on the type of permit or contract.