



LAST ORDINANCE NO. 09--04  
LAST RESOLUTION NO. 09-55  
LAST RESOLUTION RRA NO. 09-03

**CITY OF RIDGECREST**

**CITY COUNCIL  
RIDGECREST REDEVELOPMENT AGENCY**

**AGENDA**

Special Council/Agency Meeting  
September 10, 2009

**CITY COUNCIL CHAMBERS CITY HALL**

100 West California Avenue  
Ridgecrest, CA 93555

**Special Session – 8:00 a.m.**

This meeting room is wheelchair accessible. Accommodations and access to City meetings for people with other disabilities may be requested of the City Clerk (499-5002) five working days in advance of the meeting.

In compliance with SB 343. City Council/Ridgecrest Redevelopment Agency Agenda and corresponding writings of open session items are available for public inspection at the following locations:

1. City of Ridgecrest City Hall, 100 W. California Ave., Ridgecrest, CA 93555
2. Kern County Library – Ridgecrest Branch, 131 E. Las Flores Avenue, Ridgecrest, CA 93555
3. City of Ridgecrest official website at <http://ci.ridgecrest.ca.us>

**CALL TO ORDER**

**ROLL CALL**

**APPROVAL OF AGENDA**

**PLEDGE OF ALLEGIANCE**

1. **Resolution No. 09-56, A Resolution Of The Ridgecrest City Council Establishing And Amending A Fee Schedule For Universal Solid Waste And On-Site Recycling And Cardboard For Commercial, Multi-Family, And Institutional Fee For Service For All Parcels**

**AGENDA - CITY COUNCIL / REDEVELOPMENT AGENCY - REGULAR**

**September 10, 2009**

**Page 2**

Discussion and adjustment of fee schedule for Universal Solid Waste and Onsite Recycling and cardboard for commercial, multi-family and institutional fee for service for all parcels. Staff recommends adoption of the resolution.

2. **Resolution No. 09-57, A Resolution Of The Ridgecrest City Council Approving An Exclusive Recycling Franchise Agreement With Benz Sanitation**

Discussion and action on Franchise Recycling Agreement. Staff recommends approval of the agreement and adoption of the resolution.

**ADJOURNMENT**

**RESOLUTION NO. 09-56**

**A RESOLUTION OF THE RIDGECREST CITY COUNCIL ESTABLISHING AND AMENDING A FEE SCHEDULE FOR UNIVERSAL SOLID WASTE AND ON-SITE RECYCLING AND CARDBOARD FOR COMMERCIAL, MULTI-FAMILY, AND INSTITUTIONAL FEE FOR SERVICE FOR ALL PARCELS.**

**BE IT RESOLVED BY THE RIDGECREST CITY COUNCIL as follows;**

**Section 1. Purpose**

Under the Franchise Agreement with Benz Sanitation the City Council must approve Commercial Rates charged by the trash collection franchisee.

**Section 2. Commercial Rates**

- a. Effective 10<sup>th</sup> September, 2009 Benz Sanitation may charge not more than the monthly rates, fees and charges for universal solid waste and onsite recycling for commercial, multi-family and institutional for service within the City as shown on Exhibit A attached hereto and made a part of this Resolution.
- b. Benz Sanitation may charge other than the amounts shown in specific cases only with the written approval or conditional approval of the City Manager. The City Manager shall report to the Council when different amounts are charged. The City Manager may revoke permission to charge different rates on the giving of thirty days prior written notice.
- c. All other City resolutions that refer to the establishment of Commercial Trash Collection Rates are hereby rescinded.

**APPROVED AND ADOPTED**, this 10<sup>th</sup> day of September 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Steven P. Morgan, Mayor

ATTEST:

\_\_\_\_\_  
Rita Gable  
City Clerk

**EXHIBIT A**  
**COMMERCIAL, MULTI-FAMILY AND INSTITUTIONAL**  
**RATE SCHEDULE**  
**RIDGECREST, CA 2009**

**BINS:**

<b>DESCRIPTION</b>	<b>RATE</b>
<b>3YD 1XWEEK</b>	<b>176.17</b>
<b>3YD 2XWEEK</b>	<b>282.88</b>
<b>3YD 3XWEEK</b>	<b>389.75</b>
<b>3YD 4XWEEK</b>	<b>496.31</b>
<b>3YD 5XWEEK</b>	<b>603.21</b>
<b>3YD 6XWEEK</b>	<b>710.09</b>

**THESE RATES INCLUDE WASTE COLLECTION AND THE RECYCLING PROGRAM WHICH CONSISTS OF A 3 YARD BIN FOR RECYCABLES OR A 96 GALLON CART FOR RECYCLABLES.**

**CARTS:**

<b>1 CART 1XWEEK</b>	<b>40.00</b>
<b>2ND CART 1XWEEK</b>	<b>50.47</b>

**THESE RATES INCLUDE WASTE COLLECTION AND THE RECYCLING PROGRAM WHICH CONSISTS OF A 96 GALLON CART FOR RECYCLABLES.**

**RESOLUTION NO. 09-57**

**A RESOLUTION OF THE RIDGECREST CITY COUNCIL  
APPROVING AN EXCLUSIVE RECYCLING FRANCHISE  
AGREEMENT WITH BENZ SANITATION.**

**WHEREAS**, the Compliance Order IWMA BR07-07 of the California Integrated Waste Management Board and Local Assistance Plan adopted pursuant to the order mandates implementation of specified recycling programs by January 4, 2010:-

**WHEREAS**, the City intends to comply with the order by agreement with Benz Sanitation Inc./Tehachapi Recycling Inc., the franchisee rubbish hauler of the City for 30 years.

**WHEREAS**, the City did negotiate with Benz Sanitation and came to an agreement for Benz to provide recycling services along with its waste collection franchise.

**NOW THEREFORE, BE IT RESOLVED**, the City Council of the City of Ridgecrest does hereby approve the exclusive franchise recycling agreement, Attachment "A", with Benz Sanitation, Inc. and authorizes the Mayor to sign said agreement.

**APPROVED AND ADOPTED**, this 10<sup>th</sup> day of September 2009 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Steven P. Morgan, Mayor

ATTEST:

---

Rita Gable  
City Clerk

## Attachment "A"

### EXCLUSIVE RECYCLING FRANCHISE AGREEMENT

As of \_\_\_\_\_, 2009, the City of Ridgecrest and Benz Sanitation and Tehachapi Recycling, Inc., agree as follows:

#### **Section 1. Purpose.**

This agreement sets for the terms under which Contractor will provide for the collection of recyclable materials from properties within the city.

#### **Section 2. Definitions.**

The following terms are defined for the purposes of this agreement unless otherwise apparent from context:

**City** means the City of Ridgecrest or any governmental entity which may hereinafter assume waste management obligations of the City, including any joint exercise of powers authority or other similar public entity with which the City participates or contracts with, established to provide solid waste management services.

**Contractor** means Tehachapi Recycling, Inc. and parent company Benz Sanitation, Inc., both California Corporations.

**MRF** means Material Recovery Facility.

**Hazardous Waste** is a type of Unpermitted Waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, excluding Recyclable Household Hazardous Wastes.

**Process** (or **Processing**, or any other variation thereof) means baling, crushing, shredding, chipping, grinding, extracting, hand picking and any other method of processing Recovered Materials by Contractor after Recovery and before Marketing thereof.

**Reasonable Business Efforts** means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy; provided that such Person and/or any enterprise by which such Person is employed would not incur a financial loss (other than time expended or unless otherwise compensated for such efforts herein) by reason of having expended or expending such efforts.

**Recovered Materials** means Recyclable Materials Recovered from Commingled Recyclable carts and bins.

## Attachment "A"

**Recovery** (or **Recover** or **Recovered**, or other variations thereof) means the picking, pulling, sorting, separating, classifying and recovery of Recovered Materials from Permitted Waste, whether by manual or mechanical means, by the Contractor at a Facility, after Delivery and before Processing and Marketing thereof.

**Recyclable Household Hazardous Waste** means automobile batteries, motor oils, anti-freeze, oil filters and water-based paint.

**Recyclable Materials** means the following listed materials which are Uncontaminated and of a size commonly recovered in materials recovery facilities in California:

polyethylene terephthalate containers ("PET") marked "1" as of the date hereof  
high density polyethylene containers ("HDPE") marked "2" as of the date hereof  
low density polyethylene containers ("LDPE") marked "4" as of the date hereof  
California redemption containers  
unbroken glass containers  
ferrous metals  
non-ferrous metals  
newspaper  
corrugated cardboard  
white paper  
mixed paper

**Residual** means Permitted Waste remaining after Recovery and Processing thereof.

**Source Separated Recyclable Materials** is a type of Permitted Waste, including Permitted Waste generated by residences, which is delivered in a load which contains at least 85% Recyclable Materials. Examples of Source Separated Recyclable Materials include materials Delivered to a Processing Facility from curbside collection programs.

**Ton (or Tonnage)** means a short ton of 2,000 pounds avoirdupois.

**Uncontaminated** means materials are sufficiently free of oil, grease, chemicals, solvent, excessive food, water or other materials to enable such Recyclable Materials to be marketed; do not contain any foreign liquids or solid not originally packaged in such Recyclable Material; are not connected, nailed, glued, welded, crushed or otherwise joined with other materials such that it takes over twenty pounds of pull strength or the use of tools or instruments to separate; and are free of protruding nails or foreign objects which could result in the risk of injury to Contractor's employees.

**Unpermitted Waste** means wastes that a Processing Facility may not receive under its Permits, including:

- (1) **agricultural wastes** comprised of animal manures;
- (2) **asbestos**, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos;

## Attachment "A"

- (3) **ash** residue from the incineration of solid wastes, including municipal waste, infectious waste described in item (8) below, wood waste, sludge, and agricultural wastes described in item (1) above;
- (4) **auto shredder** "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances which remains after the shredding of automobiles;
- (5) **large dead animals**;
- (6) **Hazardous Wastes**, explosives, ordnance, highly flammable substances and noxious materials;
- (7) **Industrial** solid or semi-solid wastes resulting from industrial processes and manufacturing operations, including cement kiln dust, ore process residues and grit or screenings removed from waste water treatment facility;
- (8) **Infectious wastes** which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;
- (9) **Liquid wastes** which are not spadeable, usually containing less than fifty percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blow down water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes;
- (10) **Radioactive wastes** under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation;
- (11) **Sewage sludge** comprised of human (not industrial) residue, excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semidry form;
- (12) **Special wastes** designated from time to time under the California Integrated Waste Management Act, including contaminated soil;
- (13) **Bulky items** which cannot fit within standard roll-off containers or municipal refuse collection vehicles

### Section 3. Representations and Warranties

a. The Contractor represents and warrants as follows:

Contractor is a corporation duly organized, validly existing, and in good standing under the laws of the State and is qualified to do business in the State.

The Contractor has full legal right, power, and authority to execute and deliver this Agreement and perform its obligations hereunder.

This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid, and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

b. The City represents and warrants as follows:

## **Attachment "A"**

The City is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.

The City has full legal right, power and authority to execute, deliver, and perform its obligations hereunder.

This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

### **Section 4. Term.**

This Agreement shall become effective on the date first above written and remain active and run currently with the Contractor's parent company waste hauling agreement. Provided, representations and warranties and indemnifications provided for herein, and other rights and obligations expressly stated to survive the termination of this Agreement, shall survive such termination, including: payment of amounts due and owing by either Party at the time of final termination.

### **Section 5. Mandatory Residential Curbside Recycling: Residential.**

Contractor shall:

- a. Institute a singular 96-gallon blue cart recycling program for each residential household within the City. The frequency of said collection shall be bi-weekly or weekly whatever is deemed necessary by the City.
- b. Market and recycle materials which are hauled by Benz Sanitation, Inc. as part of the blue cart program.
- c. Provide an interim transfer program through parent company Benz Sanitation, Inc. whereby blue cart commingled recyclables will be directly transported to the Tehachapi Recycling, Inc. Material Recovery Facility in Tehachapi, California, or other adequate processing facility at Benz Sanitation, Inc. discretion, for final processing, marketing, and disposal of residual waste.
- d. Assist the City from time to time in providing samples of residential public outreach materials. Contractor further agrees to distribute City-provided flyers to all residential customers up to four times a year.
- e. Assist the City in monitoring mandatory collection dynamics associated with the curbside residential recycling program, including quarterly written notifications of those residences that are routinely contaminating recyclables with solid waste.
- f. Provide electronically transmitted/quarterly diversion reports to the City applicable with Kern County reporting standards.
- g. Maintain all bins, trucks and other equipment, and all facilities operated under the control of Benz Sanitation, Inc., in a clean wholesome and legal environment.

City shall:

- a. Provide Contractor with customer billing information from sewer billing and/or tax roll billing information.
- b. Remit payment to Contractor within thirty (30) days of receiving notification of customers sixty (60) days overdue payments.
- c. Aggressively enforce mandatory curbside recycling with notifications to those residences who routinely contaminate commingled recyclables.

## **Attachment "A"**

- d. Aggressively discourage the theft of CRV recyclables in curbside recycling carts through the enforcement of anti-dumpster diving regulation.
- e. Develop and provide initial set out flyers coupled with implementation and routine maintenance of an ongoing public education program for curbside recycling and waste diversion.
- f. Use best efforts to negotiate and obtain approval from the Kern County Waste Management Director to change the designated disposal facility for Ridgecrest residential curbside recycling residual waste to the Tehachapi Landfill.

### **Section 6. Mandatory Commercial Curbside Recycling: Commercial .**

Contractor shall:

- a. Institute separate and distinct recycling bins of 3 cubic yard or 96 gallon size for each commercial account within the City that will contribute to alternate/maximum waste diversion efforts on or before December 1, 2009. Options on sizes of bins and frequency of collection will be negotiated with each business customer.
- b. Market and recycle materials which are hauled by Benz Sanitation, Inc. as part of the commercial curbside recycling program.
- c. Provide an interim transfer program through parent company Benz Sanitation, Inc. whereby blue cart commingled recyclables will be directly transported to the Tehachapi Recycling, Inc. Material Recovery Facility in Tehachapi, California, or other adequate processing facility at Benz Sanitation, Inc. discretion, for final processing, marketing, and disposal of residual waste.
- d. Assist the City from time to time in providing samples of commercial public outreach materials. Contractor further agrees to distribute City-provided flyers to all commercial customers up to four times a year.
- e. Assist the City in monitoring mandatory collection dynamics associated with the curbside commercial recycling program, including quarterly written notifications of those businesses that are routinely contaminating recyclables with solid waste.
- f. Provide electronically transmitted/quarterly diversion reports to the City consistent with applicable Kern County reporting standards.
- g. Maintain all bins, trucks and other equipment, and all facilities operated under the control of Benz Sanitation, Inc., in a clean wholesome and legal environment.

City shall:

- a. Aggressively enforce mandatory curbside commercial recycling with notifications to those businesses that routinely contaminate commingled recyclables.
- b. Aggressively discourage the theft of curbside commercial recyclables through the enforcement of anti-dumpster diving regulation.
- c. Develop and provide initial set out flyers coupled with implementation and routine maintenance of an ongoing public education program for curbside recycling and waste diversion.
- d. Use best efforts to negotiate and obtain approval from the Kern County Waste Management Director to change the designated disposal facility for Ridgecrest residential curbside recycling residual waste to the Tehachapi Landfill.

## Attachment "A"

### Section 7. Rates, Fees and Charges

- a. Contractor shall pay the City a Franchise fee of five percent (5%) of the actual monies collected on residential billings commencing March 2010.
- b. Contractor shall submit a bi-monthly bill to each property owner for the approved initial rate of \$30.52 on each developed parcel within the boundaries of the City. After 20 days of non-payment, contractor shall make a minimum of two attempts to collect monies due up to sixty (60) days from billing date, after which delinquent accounts will be turned over to the City for payment. Contractor shall offer a ten percent (10%) discounted rate for those individuals that pay one year in advance or a ten percent (10%) discount for those income qualified individuals as outlined by the Public Utilities Commission, *California Alternate Rate for Energy Program (CARE)* and the *Low Income Energy Efficiency Program (LIEE)*. These discounts only apply to those individuals that are the owner of record to the property where the discount is being awarded and only one type of discount per service address. Contractor may offer other discounts with the approval of the city manager. As to commercial accounts, the initial recycling bin rates and other services shall be set by resolution. Contractor may annually adjust the monthly rate charged for residential and commercial curbside service by not more than the change in the CPI-U/ Los Angeles-Riverside-Orange County, CA (CMSA).
- c. Profit derived from the sale or reuse of recycled materials belongs solely to Contractor, which is understood to cover the cost of processing the recyclable materials.

### Section 8. Insurance

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons, death, or damages to property which may arise from or in connection with the performance of the work hereunder by Benz, its agent, representatives, employees, or subcontractors

#### Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 00 01)
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1
3. Workers Compensation Insurance as required by the State of California and Employer's Liability Insurance

#### Minimum Limits of Insurance

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

## **Attachment "A"**

2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: As required by the State of California
4. Employers Liability: \$1,000,000 per accident for bodily injury or disease.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

### Other Insurance Provisions

The general liability and automobile liability policies are to contain, or to be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an additional insured endorsement to the Contractor's insurance, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respect the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

### Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. Complete certified copies of all required insurance policies shall be provided to the City.

### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII unless otherwise acceptable to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

### Waiver of Subrogation

## Attachment "A"

Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

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

### Subcontractors

Contractors shall require all its subcontractors to maintain insurance under separate policies and shall furnish separate certificates, and endorsements and policies for each subcontractor. All coverage for subcontractor shall be subject to all of the requirements stated herein.

### **Section 9. Events of Default.**

- a. Each of the following shall constitute an event of default by contractor ("Contractor Default"):
  - Contractor fails to perform any of its obligations hereunder and fails to cure such breach (i) within thirty days of receiving written notification from City specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty days to cure, Contractor shall not be in default so long as Contractor promptly commences to cure such breach and diligently proceeds to complete such cure within sixty days; or (ii) immediately, if the breach is such that the health, welfare or safety of the public is endangered thereby and City can provide acceptable and substitute performance.
  - Equipment owned by Contractor in the furtherance of this Agreement is seized, attached or levied upon. (*equipment means all blue carts, bins used for recycles, collection vehicles, and other related equipment used for the collection of recyclables within the corporate boundaries of Ridgecrest*)
  - Contractor fails to Collect, Process and Market economically viable recycling materials in accordance with this curbside Recycling Agreement.
  - Contractor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.
  - A court having jurisdiction enters a decree or order for relief with respect to the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the Contractor or for any applicable part of the Contractor's operating equipment or assets, or orders the winding up or liquidation of the affairs of the Contractor.
  - Making a warranty untrue as of the Agreement date.

## Attachment "A"

- b. Each of the following shall constitute an event of default by city ("City Default"):
- Failure to remit payment within 30 days of billings for residential curbside collection services which are over 60 days delinquent.
  - Failure to perform any of its obligations hereunder and fails to cure such breach (i) within thirty days of receiving written notice from Contractor specifying the breach, provided that if the nature of the breach is such that it will reasonably require more than thirty days to cure, City shall not be in default so long as City promptly commences to cure such breach and diligently proceeds to complete such cure within sixty days.
  - Filing a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or similar official) of City for any part of City's operating assets or any substantial part of City's property, or shall make any general assignment for the benefit of City's creditors, or shall fail generally to pay City's debts as they become due or shall take any action in furtherance of any of the foregoing.
  - A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or City consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of the City or for any part of the City's operating equipment or assets, or orders the winding up or liquidation of the affairs of the City.
  - Making a warranty untrue as of the Agreement date.

### Section 10. Remedies Upon Default.

- a. Upon occurrence of a Contractor Default, City shall have the following rights:
- To terminate this Agreement or any portion thereof and, at the City's option, perform Contractor's obligations stated herein.
  - To suspend this Agreement and, at the City's option, perform Contractor's obligations stated herein.
  - To exercise remedies available at law or in equity, including specific performance; provided, prior to instituting a court proceeding, the City may request mediation by an Independent Arbitrator.
- b. Upon occurrence of a City Default, Contractor shall have the following rights:
- To exercise available remedies at law; provided, prior to instituting any court proceeding, the Contractor may request mediation by an Independent Arbitrator.
- c. The Parties agree proper venue for actions or proceedings to enforce this agreement is Kern County Superior Court. The prevailing party in an action or proceeding shall recover reasonable costs, attorney's fees and expenses, including investigation fees and expert witness fees, from the other party.

## **Attachment "A"**

### **Section 11. Miscellaneous**

- a.** Contractor shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City.
- b.** Compliance with IRCA:
  - (1) Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. In addition, Contractor agrees to indemnify, defend and hold harmless the City, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Contractor's employees, or the employees of any subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's subcontractor(s).
- c.** This Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.
- d.** Each Party agrees to execute and deliver instruments and to perform acts necessary or reasonably requested by the other to give full effect to this Agreement.
- e.** An act, event or condition, which affects either party beyond the reasonable control of such party and not the result of willful or negligent action or inaction of such party (other than the contesting in good faith or the failure in good faith to contest such action or inaction), which materially and adversely affects the ability of either party to perform any obligation hereunder, including:
  - (1) any act of God, landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area), explosion, sabotage, acts of a public enemy, war, blockade or insurrection, riot or civil disturbance;
  - (2) the failure of any appropriate federal, State, City, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Development or Facility Operation.
- f.** The Parties may change, modify, supplement or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.
- g.** The City by its duly authorized agent, may inspect, at all reasonable times, Benz Sanitation and Tehachapi Recycling, Inc. books and records of account concerning all work Benz is to perform pursuant to the terms of this Agreement.
- h.** Demands, directions, selections, option exercises, orders, requests, proposals, comments, acknowledgements, approvals, consents, certifications and other communications made hereunder can be addressed to:

**Attachment "A"**

If to City: City Manager (or his/ her designee)  
100 West California Avenue  
Ridgecrest, California 93555-4054

If to Contractor: Benz Sanitation, Inc.  
1401 Goodrick Dr.  
Tehachapi, California 93561

- i. The City may be subject to statutory fines for failure to achieve mandated diversion levels and that waste management is a public health and safety concern. Parties shall exercise due diligence in the performance of this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the latter of the date written below.

THE CITY OF RIDGECREST

BENZ SANITATION, INC.

\_\_\_\_\_  
Steven Morgan, Mayor  
Dated:

\_\_\_\_\_  
By: Paul M. Benz, President  
Dated:

**ATTEST:**

\_\_\_\_\_  
Rita Gable, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Wayne K. Lemieux, City Attorney