

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM**  
12.1  
(ID # 4771)

**MEETING DATE:**

Tuesday, October 3, 2017

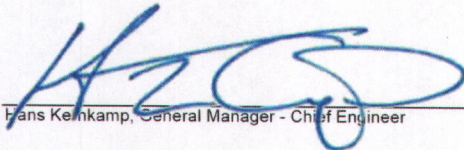
**FROM :** DEPARTMENT OF WASTE RESOURCES:

**SUBJECT:** DEPARTMENT OF WASTE RESOURCES: Approval of the Connect Service Agreement between County of Riverside and BigBelly Solar Inc. for 15 BigBelly + SmartBelly Double Stations for a term of five (5) years [All Districts]; [Total Cost \$182,667 - State Grant Funds]

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Connect Services Agreement between the County of Riverside and BigBelly Solar, Inc. for 15 High Capacity Solar Trash Compactors for \$43,311.27 first year cost and \$34,618.27 reoccurring annually thereafter for four (4) years, and authorize the Chairman of the Board of Supervisors to execute said Agreement; and
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to: sign amendments that do not change the substantive terms of the Agreement; and sign amendments to the compensation provisions that do not exceed 10% annually.

**ACTION:** Policy

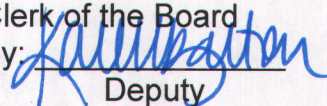
  
Hans Kemkamp, General Manager - Chief Engineer 7/7/2017

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**MINUTES OF THE BOARD OF SUPERVISORS**

On motion of Supervisor Tavaglione, seconded by Supervisor Ashley and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington, Perez and Ashley  
Nays: None  
Absent: None  
Date: October 3, 2017  
xc: Waste

Kecia Harper-Ihem  
Clerk of the Board  
By:   
Deputy

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<b>FINANCIAL DATA</b>	<b>Current Fiscal Year:</b>	<b>Next Fiscal Year:</b>	<b>Total Cost:</b>	<b>Ongoing Cost</b>
<b>COST</b>	\$ 44,194.26	\$ 34,612.32	\$ 182,643.54	\$ 34,618.27
<b>NET COUNTY COST</b>	\$ 0	\$ 0	\$ 0	\$ 0
<b>SOURCE OF FUNDS:</b> State Grant Funds			<b>Budget Adjustment:</b> No	
			<b>For Fiscal Year:</b> 17/18-21/22	

**C.E.O. RECOMMENDATION:** Approve

**BACKGROUND:**

**Summary**

The County of Riverside, on behalf of the Department of Waste Resources, receives an annual award through the CalRecycle City/County Payment Program to promote beverage container recycling. This Connect Service Agreement (“Agreement”) provides sustainable outdoor waste and recycling receptacles that qualify as an eligible expense of the City/County Payment Program. The waste container has separate trash and recycling receptacles. It includes a solar powered trash compactor feature that will notify staff when the container is near capacity via an electronic message, thereby reducing staff maintenance of the containers. The containers will have a wrap design with an educational message and an opportunity for replaceable educational or promotional panel messages on the sides and back of each unit. The Agreement includes annual maintenance and system upgrades to the units as they become available.

**Impact on Residents and Businesses**

The solar waste compaction, software program, and graphic outreach panel features will enhance the opportunity to educate public about recycling while incorporating a unique eye catching functional waste/recycling device. Outreach panels will promote local community events and programs related to solid waste and recycling.

**Additional Fiscal Information**

The funding for this acquisition is provided by the CalRecycle City/County Payment Program, which the county applied for on May 23, 2016 and was approved for on September 8, 2016. No matching funds are required in this program. The department will continue to apply for future City/County Payment Program funding of this program. The contract can be terminated by the county for lack of available funding. Annual cost for years 2-5 of the contract are estimated to be \$34K per year and will be budgeted accordingly.

**Contract History and Price Reasonableness**

Big Belly Solar Inc. of Needham, MA was the sole respondent to RFP WMARC-17115 and is the sole manufacturer of solar-powered public space compactors in the United States.

Each compactor can hold up to 150 gallons of refuse and has an expected life of 10 years; however, the equipment is expected to last longer with proper care, which will be provided by Big Belly Solar Inc. The provided trash compactors get 100% of its energy from the sun,

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the unit compresses its contents until it has reached fullness, thereby gaining capacity so the compactors do not have to be emptied as often. The unit works in every weather condition and its enclosed design eliminates all animal access and trash strewn by wind or the overflow of regular trash receptacles. All compactors are provided with a defective part and repair warranty which will cover replacement parts due to manufacturers' defects or workmanship errors at no cost to the county. The replacement of batteries under normal wear and tear conditions is covered as well as a service under this Agreement.

Each compactor is also equipped with the CLEAN Management software console that provides wireless data connectivity between the waste and recycling stations and the Big Belly CLEAN servers to relay real-time data on such elements as collection activity, efficiency reporting, fullness frequency, and collection response times. The system also allows for over-the-air software updates and a historical view of collections to improve efficiency in various collection seasons and identify and assign groups of units for collection optimization. Alerts when the compactors are full, require maintenance or need immediate attention are available via and email and text message notification system.

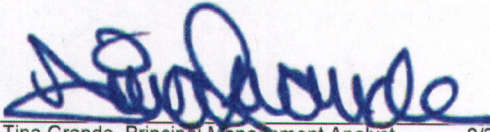
Using information gathered from other cities and counties within the United States of America that have implemented these Big Belly Solar receptacles, the Department of Waste Resources has deemed the cost of \$43,311.27 for the first year and \$34,618.27 reoccurring annually thereafter to be fair and reasonable. Other benefits that are achieved, but not quantified in the cost, are the environmental benefits of the system that reduces recyclable materials entering landfills, the cleanliness of the area around the units and the reduction of emissions from the normal daily collections with a truck to a near on-demand collection averaging once per week.

Due to the success other cities and counties have had with these solar powered trash compactors and the Riverside County Department of Waste Resources continued interest to provide recycling and clean waste opportunities to the county, it is being recommended that the following products from Big Belly Solar Inc. be considered by the Board of Supervisors for a 60 month Agreement:

- Fifteen (15) Big Belly + Smartbelly Double Stations, configured with additional accessories (\$44,194.25 first year cost, \$34,618.27 reoccurring annually thereafter). Stations will be placed at the Riverside County Fairgrounds (10), County Administration Center (3), RCDWR Headquarters (1) and RCDWR Education Center (1).
- Shipping and Installation on 15 BigBelly + SmartBelly Double Stations (\$8,693.00 one-time cost in first year)
- 10 Cases of Bigbelly Bags - \$335.00
- 10 Cases of Smartbelly Bags - \$490.00


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- Total 5 year agreement cost - \$182,643.54



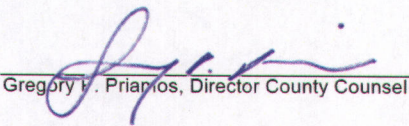
Tina Grande, Principal Management Analyst

9/26/2017



Lisa Brandl

7/13/2017



Gregory V. Priamos, Director County Counsel

9/21/2017



# CONNECT SERVICES AGREEMENT

Agreement No. 10072

Riverside County Agreement Number WMARC-04575-001-09/22

CUSTOMER	Full Legal Name: County of Riverside		Legal Contact:	Hans W. Kernkamp	
	Billing Address: 14310 Frederick St, Moreno Valley, CA 92533		Billing Contact:	Alfonso Cardona	
			Billing Phone:	(951) 486-3326	
			Billing Email:	<a href="mailto:WasteAccountsPayable@rivco.org">WasteAccountsPayable@rivco.org</a>	
	Sales Tax Status:	<input type="checkbox"/> Exempt (Attach Certificate)	TIN or FEIN:	95-6000930	
		<input checked="" type="checkbox"/> Non-Exempt			
	Insurance:	<input checked="" type="checkbox"/> Self-Insured			
		<input type="checkbox"/> Insurance Certificate Attached			
	Shipping Address:		Shipping Contact:	Janet Moreland	
			Shipping Phone:	(951) 486-3287	
<ol style="list-style-type: none"> <li>1. Riverside County Fairground 82-503 Hwy 111 Indio, CA 92201</li> <li>2. Riverside County Administration Center 4080 Lemon Street Riverside, CA 92501</li> <li>3. Riverside County Department of Waste Resources 14310 Frederick Street Moreno Valley, CA 92553</li> <li>4. Riverside County Department of Waste Resources Lamb Canyon Sanitary Landfill 16411 Lamb Canyon Road Beaumont, CA 92223</li> </ol>		Shipping Email:	jmorelan@rivco.org		

## Connect Service Schedule

<p><b>System Software</b></p> <ul style="list-style-type: none"> <li>CLEAN Management Console Licenses for Full Term</li> <li>CLEAN Mobile Software Licenses for Full Term</li> </ul>	<p><b>Automated System Monitoring</b></p> <ul style="list-style-type: none"> <li>Automated System Diagnostics and Alerts</li> </ul>
<p><b>Equipment/Hardware</b></p> <ul style="list-style-type: none"> <li>Custom Configuration as Detailed Below</li> </ul>	<p><b>Cleaning and Inspection</b></p> <ul style="list-style-type: none"> <li>Annual Comprehensive Station Cleaning</li> <li>Annual 21-Point Station Inspection</li> </ul>
<p><b>Station Installation</b></p> <ul style="list-style-type: none"> <li>On-Site Installation for Stations</li> </ul>	<p><b>Warranty</b></p> <ul style="list-style-type: none"> <li>Hardware Parts Warranty for Full Term (includes battery)</li> </ul>
<p><b>Setup and Training</b></p> <ul style="list-style-type: none"> <li>CLEAN Management Console Software Account Setup</li> <li>System Training &amp; Onboarding</li> </ul>	<p><b>Customer Support</b></p> <ul style="list-style-type: none"> <li>Customer Support Hotline and Trained Field Service Professionals</li> </ul>
<p><b>Equipment/Hardware Configuration</b></p>	

14	Bigbelly + Smartbelly Double Stations with Side Message Panels, Rear Message Panels, Custom Wraps, & Foot Pedals	
1	Bigbelly+Smartbelly Double Station [Indoor] with Side Message Panels, Front Door Wrap and a Foot Pedal	
<b>Service Fee: Total Monthly System Cost</b>		<b>\$2,671.01</b>
<b>10 Cases of Bigbelly Bags</b>		<b>\$335.00</b>
<b>10 Cases of Smartbelly Bags</b>		<b>\$490.00</b>
<b>Shipping: One Time Fee (to 1. Riverside County Fairground location)</b>		<b>\$6,615.00</b>
<b>Shipping: One Time Fee (to 2. Riverside County Administration Center location)</b>		<b>\$1,029.00</b>
<b>Shipping: One Time Fee (to 3. Riverside County Dept. of Waste Resources location)</b>		<b>\$522.00</b>
<b>Shipping: One Time Fee (to 4. Lamb Canyon Sanitary Landfill location)</b>		<b>\$527.00</b>
<b>*Taxes not included.</b>		

This Connect Service Agreement (the "Agreement"), made and entered into as of 9/15/17 (the "Effective Date"), by and between the Customer identified above ("Customer") and Big Belly Solar, Inc. ("Bigbelly", "Vendor") a Delaware corporation located at 150 A Street, Suite 103, Needham, MA 02494, and incorporates herein by reference the attached Terms and Conditions. Vendor and Customer shall each be referred to herein as a "Party." The initial term of this agreement shall be 60 Months (the "Initial Term"). The payment terms of this Agreement are monthly in arrears ("Payment Terms"). This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one instrument. Intending to be legally bound, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth above.

CUSTOMER: RIVERSIDE COUNTY  
DEPARTMENT OF WASTE RESOURCES  
14310 Frederick Street  
Moreno Valley, CA 92553

BIG BELLY SOLAR, INC  
150 A Street, Suite 103  
Needham, MA 02494

By: [Signature]  
Hans W. Kernkamp  
General Manager - Chief Engineer

By: [Signature]  
Printed Name: JEFF WAKELY  
Title: CFO  
Date: SEPT. 15, 2017

COUNTY OF RIVERSIDE  
By: [Signature]  
Chairman, Board of Supervisors  
**JOHN TAVAGLIONE**

ATTEST:  
By: \_\_\_\_\_  
Kecia Harper-Ihem, Clerk of the Board

By: [Signature]  
Deputy  
(Seal)

FORM APPROVED COUNTY COUNSEL  
BY: Synthia M. Gunzel 9-21-17  
SYNTHIA M. GUNZEL DATE

ATTACHMENT A  
CONNECT SERVICE TERMS AND CONDITIONS

For purposes of this Attachment A, the 'Agreement' shall mean the Connect Service Agreement signed by the parties. The meaning of capitalized and undefined terms appearing in these Terms and Conditions shall be as set forth in the Agreement unless otherwise indicated herein.

1.0 Definitions

- 1.1 Service. The term "Service" means Connect by Bigbelly, including software, equipment, equipment delivery, installation, customer service and equipment maintenance, warranty for defective part replacement and repair, set up and training and any other features, products or services provided as part of and included under the terms of this Agreement.
- 1.2 Equipment. The term "Equipment" means station hardware and accessories provided by Bigbelly to Customer for use with the Service.
- 1.3 Software. The term "Software" refers to CLEAN cloud-based software for use with mobile or desktop devices intended for use by Customer with the Service.

2.0 Term of Agreement

- 2.1 Term. The Term of this Agreement will commence on the date that all Equipment ordered pursuant to this Agreement has been delivered to the Customer and received at Customer's receiving location. This agreement shall be expired at the end of the Initial Term and shall only be renewed if the Customer elects to renew by written order according to section 2.2, unless terminated according to Section 6.7 below. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year term. As used herein, "Term" shall mean the Initial Term and any applicable Renewal Terms. Except to the extent otherwise provided herein, the Term is non-cancelable.
- 2.2 Renewal. If Customer elects to renew, Customer must provide written notice to Bigbelly at least three (3) months prior to the expiration of the current Term. Renewal of this Agreement shall require it to be in writing and approval by the Customer's Board of Supervisors.

3.0 Fees Payable by Customer

- 3.1 Fees. In compensation for the Service and Equipment provided as described in this Agreement, Customer agrees to pay the Service Fee specified in the Service Schedule and any fees payable for additional customization and/or services. Fees shall become payable on the date by which all the Equipment ordered pursuant to this Agreement has been delivered to the Customer and accepted. Bigbelly shall submit invoices to Customer during the Term of this Agreement per the Payment Terms outlined in the Service Schedule and Customer shall pay each invoice on the date due. All payments shall be made by check or, at Customer's option, may be automatically deposited to the account of Bigbelly as authorized by Customer by means of Customer submitting a signed Pre-authorization Payment Form ("PAF") identical to the PAF attached hereto as Attachment B. Whenever any sum due hereunder is not paid within ten (10) days of date due, Customer agrees to pay to Bigbelly, on the next due date, a late charge equal to five percent (5%) of the amount of such late payment (but not less than \$10.00), but only to the extent permitted by law. Late payments shall be subject to interest at the rate of eighteen percent (18%) per annum. Customer's payments obligations under this Agreement are absolute, unconditional, irrevocable, non-cancelable (except as expressly set forth herein) and not subject to any right of set off, counterclaim, deduction, or defense.
- 3.2 Service Fee Prices. Service Fee Prices are guaranteed for the first twenty-four (24) months of Service. Thereafter, Service Fee Prices shall not increase over the amounts charged for the immediately preceding Term by more than the rate of inflation as reflected by the Consumer Price Index – Urban for all US Cities, unadjusted ("CPI-U"). Bigbelly will provide Customer at least 120 days prior notice of a price change. Thereafter, Customer's continued use of the Service constitutes acceptance of the price change.

4.0 Obligations of the Parties

4.1 Bigbelly's Obligations

- (A) Equipment. Bigbelly will supply the Equipment identified in the Service Schedule on a rental basis to Customer for the Term of the Agreement. The Equipment will be either new and/or Bigbelly refurbished equipment.
- (B) System Software. The CLEAN Software License Agreement includes communication services and access to the CLEAN Management Console and CLEAN Mobile. Customer's use of the Software is subject to the CLEAN™ Software License Agreement.

- (C) Equipment Delivery. Bigbelly will deliver the Equipment at Customer's expense to Customer's receiving dock or to a location mutually agreed upon by the parties before the shipment. Bigbelly hereby warrants that its Equipment is:
  - (a) good and merchantable, (b) free from defects and malfunctions, (c) free of liens, security interests or other encumbrances, (d) complies with all applicable laws, rules, regulations, and orders, and (e) is fit for the purpose for which the Equipment is intended.
- (D) Station Installation. Bigbelly Equipment will be installed at mutually agreed upon locations, including semi-permanent attachment to the ground. Installation will be in accordance with the delivery and installation schedule agreed to by the parties.
- (E) Setup and Training. Bigbelly shall, at its expense, provide Customer Equipment and Software setup and training. The parties shall agree upon the location and method of training.
- (F) Warranty - Defective Part Replacement and Repair. Replacement parts required due to manufacturer defects or workmanship will be provided by Bigbelly at no cost to Customer. Replacement parts provided by Bigbelly may be new, refurbished or certified used. All other repairs and part replacements, including but not limited to, repairs or replacements required as a result of external trauma or damage (including but not limited to vehicle strikes or vandalism) are specifically excluded and must be repaired or replaced at Customer's expense. Custom add-ons including vinyl wraps purchased by Customer are not covered by this warranty and repair and replacement shall be at Customer's expense, unless the damage is caused by Bigbelly or its employees, subcontractors or representatives, in which case any repair or replacement will be at Bigbelly's expense.
- (G) Customer Support and Equipment Maintenance. Except for losses described in Section 5.2 below, Bigbelly will support the Customer in the maintenance of the Equipment at its sole discretion and expense in order to optimize up time. Technical Customer Support is available Monday through Friday, 7am to 6 pm EST to guide Customer in troubleshooting, repair and replacement efforts and to assist with parts ordering. In addition, Bigbelly maintains a network of trained Field Service professionals available for dispatch upon Customer request to investigate and resolve issues in the field.
 

Equipment batteries will be provided at no cost to Customer during the Term of the Agreement at Bigbelly's discretion, but no less frequently than necessary for the normal operation of the Equipment. If station operating conditions change such that insufficient sunlight is available for normal station operations (for example, Customer moves station into storage and fails to switch off station or places station under awning), and as a result the equipment battery fails prematurely, battery will be replaced at Customer expense.
- (H) Removal. Upon termination, Bigbelly will de-install and remove the Equipment at Customer's expense. Equipment so removed shall be in operational condition and free of any damage for which Customer is responsible pursuant to Section 5.2 below.
- (I) Subcontractor Services. Bigbelly may contract with third parties to provide the Service.

#### 4.2 Customer's Obligations

- (A) Customer Information & Access. Customer agrees that Bigbelly's ability to perform the Service under the Agreement in a timely manner is dependent upon access to Customer's installation information and locations. Deadlines imposed by this Agreement shall be extended in the event that Customer fails to provide such information and/or access in a timely manner.
- (B) Shipping. Customer agrees to pay for shipping expenses and to provide an appropriate facility that can receive, inspect and stage all Bigbelly Equipment until the Equipment is installed.
- (C) Site Preparation. Customer agrees to provide a poured concrete pad if the intended installation surface does not meet Bigbelly specifications. If Customer's installation surface does not meet such specifications, any additional cost associated with Bigbelly's efforts to properly prepare the surface will be at Customer's expense. It is the Customer's responsibility to remove, at Customer's expense, existing bins or any other items from the locations where Bigbelly stations will be installed.
- (D) Operational Safety. Customer agrees to provide immediate notice to Bigbelly with respect to any damage or other event which causes the Equipment to pose a public safety issue or create unsafe operating conditions and Customer shall take prompt action if necessary, to eliminate such public or operator safety issues. Customer will promptly service or replace any Equipment that Customer has identified as causing a public safety issue or creating unsafe operating conditions. If after applying best effort, Customer cannot resolve the issue, Customer will contact Bigbelly Customer Service and Bigbelly will resolve the issue at Bigbelly's expense, unless unsafe operating condition is due to losses described in Section 5.2.



- (E) Automated System Monitoring & Customer Support Escalation - Customer will respond to routine maintenance and repair issues they observe or are notified of via automated CLEAN alerts. Customer will use best efforts to promptly resolve issues and may contact Bigbelly Customer Service to receive troubleshooting assistance and instructions for proper repair. If a replacement part is needed to resolve the issue, Customer will contact Bigbelly Customer Service to request a part(s). If Customer best efforts do not resolve the issue, Customer should contact Bigbelly Customer Service.

If Bigbelly Field Service is dispatched and Bigbelly determines the issue is due to failure of Customer to provide best effort, to Customer error, or to damage as described in Section 5.2 below, Bigbelly reserves the right to bill Customer for incurred expense. Furthermore, if a replacement part is provided and Bigbelly determines that the original part failed due to misuse or abuse, Customer is responsible for replacement cost per Section 5.2 below.

- (F) Cleaning & Inspection – Up to five (5) cleaning and inspection visits from Bigbelly are included during the Term of this Agreement. One cleaning and inspection visit per every 12-month period shall be made available upon request at no cost to Customer. Customer will use best efforts to maintain general cleanliness of Equipment throughout the contract Term. If, after applying best effort to maintain Equipment cleanliness, Customer finds equipment needs an additional cleaning and inspection visit, Customer may contact Bigbelly Customer Support to request a cleaning and inspection visit. Additional cleaning and inspection visits that are not included in the terms of this Agreement will be at Customer's expense.
- (G) Insurance. During the Term of this Agreement, Customer will keep the Equipment insured against all risks of loss or damage in an amount not less than the replacement cost thereof, with deductible not to exceed \$15,000.00 and without co-insurance. Customer will also maintain for the Term of this Agreement, commercial general liability insurance covering both bodily injury and property damage of at least \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Bigbelly and its assigns will be named as loss payee on the Property insurance. Customer will pay all premiums for such insurance and must deliver proof of insurance coverage satisfactory to Bigbelly. If Customer does not provide such insurance, it agrees that Bigbelly has the right, but not the obligation, to obtain insurance against theft and physical damage and add an insurance fee to the amount due from Customer, upon which Bigbelly may make a profit.
- (H) Equipment Relocation. Within five (5) business days following relocation of any Equipment, Customer shall notify Bigbelly in writing of the specific location of such Equipment.

## 5.0 Equipment Rental Terms and Conditions

### 5.1 Title To and Use of Equipment

- (A) Title. As further set forth in Section 6.4 below, Bigbelly is and will at all times be the sole owner of the Equipment. Customer shall not acquire any title or interest, legal or equitable, in the Equipment, other than the use rights set forth in this Agreement. In the event this Agreement is deemed to be disguised sale, Customer hereby grants to Bigbelly a security interest in the Equipment (and all accessions thereto and substitutions therefore) and the proceeds thereof.
- (B) Use of Equipment. Customer shall not use the Equipment for other than intended purposes. Customer shall ensure safe operation of the Equipment by trained personnel. Customer shall comply with all Bigbelly and governmental guidelines, laws, rules, regulations and ordinances applicable to the use and operation of the Equipment.
- (C) No Pledge. Customer shall not pledge, lend, create a security interest in or permit any lien to attach to the Equipment or any part thereof or attempt in any other manner to dispose the Equipment.
- (D) No Attachments. Customer represents and warrants that the Equipment is, and shall at all times remain, fully removable personal property notwithstanding any affixation or attachment to real property or improvements. Customer shall give Bigbelly immediate notice of any such attachment or other judicial process affecting the Equipment and shall immediately take all action necessary to remove such attachment and terminate the effect of such judicial process on the Equipment.
- (E) Equipment Inspection Rights. Bigbelly and its agents shall have the right to enter any premises where Equipment is located to inspect such Equipment at any time with reasonable advance written notice to Customer.

- 5.2 Risk of Loss. From the time of delivery of Equipment by Bigbelly to Customer until the Equipment is removed by Bigbelly, Customer will bear the entire risk of whole or partial loss, theft, destruction or damage to the Equipment resulting from any causes other than Bigbelly's or its employees' or contractors' agents' actions or omissions with respect to the Equipment, or requisition of the Equipment by any governmental entity, or expropriation or the taking of the Equipment by eminent domain or otherwise (collectively, 'Loss'). Customer will give Bigbelly written notice within 10 days of any Loss ('Loss Notice'). If any Equipment is damaged but can be economically repaired, Customer

will immediately have the Equipment restored to good working order and condition by Bigbelly at Customer's expense and Customer agrees to immediately pay, on demand, all costs and expenses incurred in connection therewith. Upon the occurrence of any other kind of Loss or if the Equipment is not economically repairable, Customer will, upon Bigbelly's demand, pay Bigbelly the replacement cost of the Equipment as solely determined by Bigbelly

## 6.0 General Terms and Conditions

- 6.1 Taxes and Other Charges. Customer is responsible for all taxes (including sales, use and personal property tax), fees, and assessments (collectively, "Taxes") that may be imposed by any governmental entity or taxing authority in connection with this Agreement or the Equipment or any amount due hereunder. Customer will reimburse Bigbelly (or pay directly to the applicable taxing authority if instructed in writing by Bigbelly) for all such Taxes except to the extent Customer is tax-exempt and has delivered to Bigbelly a valid and current tax exemption certificate as reasonably determined by Bigbelly.
- 6.2 Service. Customer agrees that during the Term of the Agreement, it shall keep in effect the Service as defined in the Agreement. Unless otherwise agreed in a written amendment to this Agreement, Bigbelly or its subcontractors shall be the sole and exclusive suppliers of the Service.
- 6.3 Additions and Modifications of Equipment. Unless otherwise expressly agreed by an officer of Bigbelly in writing, Customer shall not make any additions, alterations or modifications to the Equipment. Customer shall not remove, cover or damage any Bigbelly logos or other identification markings on the Equipment.
- 6.4 Ownership Rights. The Equipment and Software contain intellectual property including but not limited to patented and unpatented inventions, trade secrets, know-how, and copyrights all of which is owned and will continue to be owned exclusively by Bigbelly and/or its licensors and Customer will obtain no rights thereto other than the limited rights of use under this Agreement. Customer acknowledges and agrees that all technology, materials, hardware, software, content and data of which the Equipment and Software is comprised or which is otherwise contained within or attached to, generated, collected or processed by the Equipment and/or Software is the sole and exclusive property of Bigbelly. Bigbelly hereby grants Customer a royalty-free, non-exclusive, fully paid up right and license to use the Equipment, the Software, and any intellectual property rights therein as necessary for Customer and its contractors to use the Equipment and Bigbelly Service consistent with the terms and conditions of the Agreement and these Terms and Conditions. Bigbelly reserves the right, at its sole cost and expense and subject to applicable governmental guidelines, laws, rules, regulations and ordinances, at any time upon notice to Customer, to enhance or otherwise modify the Equipment and/or Software made available to Customer under this Agreement, including but not limited to enhancements or modifications for the purpose of implementing Wi-Fi network capability to the Equipment, instituting mechanisms for data collection, processing and analysis. Bigbelly retains all media rights associated with signage, and Customer agrees not to post signage and/or advertisements on the Equipment without written approval by Bigbelly. For avoidance of doubt, this does not prohibit customer from displaying messages solely on behalf of customer such as public service messages.
- 6.5 Termination
- (A) Effect of Termination. Except as provided for in Section 6.7 below, any termination of the Agreement by Customer, with or without cause, shall not relieve Customer of its obligations to make any and all payments which obligations are absolute, unconditional, irrevocable, non-cancelable and subject to no right of set off, counterclaim, deduction, or defense, except as otherwise provided herein.
- (B) Post Termination Duties / Surrender of Equipment. Upon the expiration or earlier termination or cancellation of the Agreement, Bigbelly shall remove the Equipment as described in Section 4.1 (H) above.
- 6.6 Indemnifications by the Parties
- (A) Indemnity by Bigbelly. Bigbelly shall indemnify, defend, and hold Customer and its directors, officers and employees, harmless and defend Customer and its representatives if it requests, as to all claims, liabilities, losses, damages and expenses (including reasonable attorneys' fees and other legal expenses and amounts paid in settlements) brought against Customer or its representatives because of (a) any breach or alleged breach by Bigbelly of any of its warranties to, or agreements with, Customer, (b) any claim that any of the product or services infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (c) any death, injury or damage to any person or property caused by Bigbelly's negligent performance of the Service. In no event will Bigbelly be liable for or indemnify Customer against any damage, claim or injury arising out of Customer's or any third party's actions, including but not limited to accidental or intentional tampering with the Equipment. Notwithstanding the foregoing however, Bigbelly's maximum liability with respect to subsection (b) herein shall be limited to twice the amount of fees paid by Customer with respect to the infringing product or services.
- (B) Indemnity by Customer. Customer shall indemnify and hold Bigbelly and each of their directors, officers and employees, harmless, and defend Bigbelly and its representatives if it requests, as to all claims, liabilities, losses, damages and expenses (including without limitation, reasonable attorneys' fees and other legal

expenses and amounts paid in settlements) brought against Bigbelly and/or its representatives because of (a) any breach or alleged breach by Customer of any of its representations, warranties, or agreements with Bigbelly, (b) any claim that any of the information provided by Customer to Bigbelly infringes any patent, trademark, copyright or other intellectual property right, anywhere in the world, or (c) any death, injury or damage to any person or property caused by or resulting from Customer's negligence in operating or securing the Equipment.

- (C) Survival of Indemnity. The rights and obligations of Customer and Bigbelly under this Section 6.6 survive the termination, cancellation or expiration of this Agreement.

6.7 Default; Dispute Settlement; Governing Law

- (A) Definition of Default. The term "Default" means any of the following events: (i) Customer fails to make any payment required under this Agreement within ten days after the same shall have become due; (ii) Customer or Bigbelly fails to perform any other obligation under this Agreement and such non-performance is not cured within thirty (30) days following notice or Customer fails to provide insurance as required under this Agreement; (iii) Customer defaults under any other Agreement with Bigbelly (iv) Customer or Bigbelly becomes insolvent or makes an assignment for the benefit of its creditors; (v) a receiver, trustee, conservator or liquidator of Customer or Bigbelly of all or a substantial part of such party's assets is appointed with or without the application or consent of such party; (vi) a petition is filed by or against Customer or Bigbelly under any bankruptcy, insolvency or similar law; (vii) Customer or Bigbelly violates or fails to perform any provision of either this Agreement; (viii) any warranty or representation made by either party herein proves to have been false or misleading when made; or, (ix) there is a material adverse change in Customer's financial condition.
- (B) Default by Customer. Upon the occurrence of an uncured Default by Customer, Bigbelly may do one or more of the following as Bigbelly in its sole discretion shall elect: (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance by Customer of the Agreement or to recover damages for the breach thereof; (ii) cause Customer, at its expense, to promptly return the Equipment to Bigbelly at such place as Bigbelly designates in writing; (iii) by notice in writing to Customer, cancel or terminate the Agreement, without prejudice to any other remedies hereunder; (iv) enter upon, or instruct its agents or assigns to enter upon, the premises of Customer or other premises where any Equipment may be located and take possession of and remove all or any portion of such Equipment without liability to Customer by reason of such entry or taking possession; (v) require Customer to pay to Bigbelly immediately upon demand, in addition to all amounts then due under this Agreement, liquidated damages in the amount of the greater of (A) eighty percent (80%) of the remaining Service fees to become due during the Initial Term or (B) one year of Service fees, which amount, owing to the acknowledged difficulty in establishing a value for the unexpired Initial Term, the parties agree represents an agreed upon reasonable measure of damages and is not to be deemed a forfeiture or penalty; (vi) charge Customer interest on all monies due Bigbelly at the rate of eighteen percent (18%) per year from the date of default until paid, but in no event more than the maximum rate permitted by law; (vii) collect from Customer all expenses incurred by Bigbelly in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys' fees; and (viii) exercise any other right or remedy available to Bigbelly under applicable law.
- (C) Default by Bigbelly. Upon the occurrence of an uncured Bigbelly Default, Customer may do one or more of the following as Customer in its sole discretion shall elect; (i) initiate Dispute Settlement procedures pursuant to subsection (D) herein to enforce performance of the Agreement or recover damages for the breach thereof; (ii) cause Bigbelly, at its expense, to promptly collect the Equipment; (iii) by notice in writing to Bigbelly, cancel or terminate the Agreement, without prejudice to any other remedies hereunder; (iv) collect from Bigbelly all expenses incurred by Customer in connection with the enforcement of any remedies, including all expenses of repossessing, storing, shipping, repairing and selling the Equipment and reasonable attorneys' fees; and (v) exercise any other right or remedy available to Customer under applicable law.
- (D) Dispute Settlement. In the event of any dispute arising due to a Default or with respect to the terms of the Agreement or obligations of the parties, the parties agree to discuss the dispute in an attempt to amicably resolve such dispute within 30 days of the date of a written notice of such dispute by one party to the other. Failing any such resolution, either party will be free to seek remedy through a court of competent jurisdiction.
- (E) Continuation of Obligations. The occurrence of a dispute under or relating to the Agreement shall not relieve Bigbelly of, or change in any way, Bigbelly's obligation to provide the Service in accordance with the terms of the Agreement nor shall the occurrence of a dispute under or relating to the Agreement relieve Customer of its obligations to make any and all payments described in the Agreement, including the Attachments, which obligations are absolute, unconditional, irrevocable, non-cancelable and subject to no right of set off, counterclaim, or deduction.

- (F) Governing Law. The Agreement including the Attachments shall be interpreted under the laws of the courts of the State of California, without regard to principles of conflicts of law or the United Nations Convention on the International Sale of Goods. Each party consents to the personal jurisdiction of federal and state courts located in Riverside, California. Customer agrees that service of process in any action or proceeding may be duly affected upon Customer by mailing such process via certified mail, return receipt requested or as otherwise provided under applicable. EXCEPT WHERE PROHIBITED BY LAW, EACH PARTY HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THIS AGREEMENT OR THE EQUIPMENT.
- 6.8 Assignment. Customer may not assign this Agreement or any rights hereunder, or sublease or lend any Equipment without the prior written consent of Bigbelly. No assignment or sublease shall relieve Customer of its obligations hereunder and Customer shall remain primarily liable for such obligations. Any sale, assignment, transfer, encumbrance, delegation, or sublease by Customer not consented to by Bigbelly shall be void ab initio. Bigbelly may at any time assign to any person (an "Assignee") any interest in this Agreement in part or in whole or grant security interests in the Equipment and/or the Bigbelly's rights hereunder. In such event, all the provisions of this Agreement for the benefit of Bigbelly shall inure to the benefit of and be exercised by or on behalf of such Assignee, but the Assignee shall not be liable for or be required to perform any of Bigbelly's obligations to Customer and Bigbelly shall retain such obligations. Customer acknowledges that Assignee is providing financing for the Equipment only and agrees that (a) as between Customer and Assignee, all of Customer's payment obligations shall be absolute, unconditional and not subject to set-off, counterclaim, reduction, recoupment or other defense, except as otherwise provided herein (b) it will not assert any defenses, set-offs, counterclaims or claims against any Assignee that Customer may have against Bigbelly at any time; and (c) any such assignment shall not materially change Customer's duties or obligations hereunder. Subject to the foregoing, the Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the parties hereto.
- 6.9 Relationship of Parties. Bigbelly and Customer are each independent entities and the relationship between Bigbelly and Customer under the Agreement is not a joint venture, partnership, principal-agent, broker, sales representative or franchise relationship. Bigbelly has no authority to make any promise, commitment or agreement on Customer's behalf, and Bigbelly will not represent to anyone that it does have such authority.
- 6.10 Notices. Each notice provided for in the Agreement shall be given in writing and become effective when:
- (A) served by personal delivery to the recipient's Legal Department or Contract Administrator;
- |                                         |                       |
|-----------------------------------------|-----------------------|
| Customer: Riverside County_             | BIGBELLY SOLAR, INC.: |
| Department of Waste Resources           |                       |
| Name: Hans Kernkamp                     | Brian Phillips        |
| Title: General Manager – Chief Engineer | President/CEO         |
| Address: 14310 Frederick St             | 150 A Street, #103    |
| Moreno Valley, Ca 92553                 | Needham, MA 02494     |
- (B) deposited, postage prepaid in the United States registered or certified mails addressed to the recipient's Legal Department or Contract Administrator;
- (C) dispatched to the recipient's Legal Department or Contract Administrator via overnight mail using UPS, Federal Express or similar carrier; or,
- (D) sent to recipient's Legal Department or Contract Administrator: via facsimile or other electronic means if delivery does not require a signature or other confirmation of delivery.
- 6.11 Force Majeure. Any delay or failure of either party to perform its obligations (other than payment obligations) shall be excused if it is caused by an extraordinary event or occurrence beyond the control of the nonperforming party and without the nonperforming party's fault or negligence, such as acts of God, fires, floods, windstorms, explosions, natural disasters, wars and sabotage. Raw material or labor shortages are not force majeure events. Each party shall promptly notify the other of the reason for the delay and use its best efforts in curing such cause and shall take all action practicable to minimize the adverse impact of the delay on the other party.
- 6.12 No Warranties. Customer hereby acknowledges that it has not entered into the Agreement including the Attachments in reliance upon any warranty or representation by any person or entity except for the warranties or representations specifically set forth therein.
- 6.13 Use of Trade Names and Trademarks. Neither party may use the trade name, service mark, logo or trademark of the other party for any purpose without previous permission in writing from the other party.
- 6.14 Damages. Unless otherwise provided in the Agreement, in no event shall Bigbelly, or its affiliates, shareholders, officers, directors, employees, agents, or representatives, or assigns be liable for lost revenue, lost profits, incidental, indirect or consequential damages, resulting from any aspect of the Service provided in connection with this

Agreement. Bigbelly's maximum aggregate liability to Customer in relation to or in connection with the Agreement will be limited to the total amount paid by Customer to Bigbelly under the Agreement.

- 6.15 Injunctive Relief. If there is a breach or threat of a breach of the terms of the Agreement, the parties agree that compensation alone would not be an adequate remedy for the harm suffered by the non-breaching party, which harm would be immediate and irreparable. Therefore, if there is a breach or threatened breach, then the non-breaching party shall be entitled to seek injunctive relief to stop the breach or threatened breach. The rights and obligations of the parties under this provision survive the termination, cancellation, or expiration of the Agreement.
- 6.16 Representations. This Section 6.16 is not applicable if Customer is a governmental entity, agency or authority. Customer hereby represents, warrants and covenants to Bigbelly that: (a) Customer is organized and validly existing under the laws of the jurisdiction of its organization, with adequate power and capacity to enter into the Agreement and any other documents, instrument or agreement related to this Agreement; (b) The Agreement has been duly authorized, executed and delivered by Customer and constitutes a valid, legal and binding agreement, enforceable in accordance with its terms, except to the extent that the enforcement of remedies therein provided may be limited under applicable bankruptcy and insolvency laws; (c) no approval, consent or withholding of objections is required from any governmental authority or instrumentality with respect to the entry into or performance by Customer of the Agreement, except such as have already been obtained; (d) there are no suits or proceedings pending or threatened in court or before any regulatory commission, board or other administrative governmental agency against or affecting Customer, which will have a material adverse effect on the ability of Customer to fulfill its obligations and liabilities under the Agreement.
- 6.17 Fiscal Funding. This Section 6.17 is effective only if Customer is a governmental entity, agency or authority. Customer hereby represents and warrants to Bigbelly that: (a) Customer is a State, possession of the United States, the District of Columbia, or political subdivision thereof as defined in Section 103 of the Internal Revenue Code and Treasury Regulations and Rulings related thereto (the "Code"); (b) If Customer is incorporated, it is duly organized and existing under the Constitution and laws of its jurisdiction of incorporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect; (c) Customer has been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Bigbelly, is attached hereto), to execute and deliver the Agreement and to carry out its obligations hereunder; (d) All legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of the Agreement; (e) The Equipment will be used by Customer only for essential governmental or proprietary functions of Customer consistent with the scope of Customer's authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use. Customer's need for the Equipment is not expected to diminish during the term of the Agreement; (f) Customer has funds available to pay contracted Payments until the end of its current appropriation period, and it intends to request funds to make contracted Payments in each appropriation period, from now until the end of the term of the Agreement; and (g) The Customer shall comply at all times with all applicable requirements of the Code. If sufficient funds are not appropriated to make contracted payments under the Agreement ("Payments"), the Agreement shall terminate and Customer shall not be obligated to make contracted Payments under the Agreement beyond the then-current fiscal year for which funds have been appropriated. Upon such an event, Customer shall, no later than the end of the fiscal year for which contracted Payments have been appropriated, deliver possession of the Equipment to Bigbelly. If Customer fails to deliver possession of the Equipment to Bigbelly, the termination shall nevertheless be effective but Customer shall be responsible for the payment of damages in an amount equal to the portion of contracted Payments thereafter coming due that is attributable to the number of days after the termination during which the Customer fails to deliver possession and for any other loss suffered by Bigbelly as a result of Customer's failure to deliver possession as required. Customer shall notify Bigbelly in writing within seven (7) days after the failure of the Customer to appropriate funds sufficient for the payment of the contracted Payments, but failure to provide such notice shall not operate to extend the Agreement term or result in any liability to Customer.
- 6.18 Entire Agreement. The Agreement including the Attachments constitute the entire agreement between the parties regarding its subject matter and supersede all prior agreements, oral and written, negotiations, commitments and writings, and may not be released, discharged, abandoned, changed or modified in any manner, orally or otherwise, except by an instrument in writing signed by a duly authorized representative of each party. Any purchase order or other ordering document issued by Customer is for administrative purposes only and does not form part of this Agreement. If there is an inconsistency between or among the documents listed below, then the following order of precedence shall govern:
- (a) Attachment A
  - (b) Attachment B
  - (c) The Agreement
- 6.19 Amendment; Modification; Waiver. No modification, amendment, waiver or release of any provision of the Agreement or any right, obligation, claim or cause of action arising under the Agreement shall be valid or binding unless in writing and duly executed by the party against whom enforcement is sought. No waiver by either party of

any breach, or the failure of either party to enforce any of the terms and conditions of the Agreement, shall affect, limit or waive that party's right to enforce and compel compliance with all terms and conditions of the Agreement or to terminate the Agreement as permitted by its terms. Any provision of this Agreement which for any reason may be held unenforceable in any one jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions of this Agreement, and any such unenforceability in any one jurisdiction shall not render such provision unenforceable in any other jurisdiction. This Agreement may be executed in any number of counterparts and by different parties hereto or thereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together consist of but one and the same instrument.

**7.0 Non-Discrimination**

Bigbelly shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. S1210 et seq.) and all other applicable laws or regulations.

End of Attachment A.

