

**FIRST AMENDMENT TO AGREEMENT FOR SOLID WASTE HANDLING
SERVICES BETWEEN CITY OF SEAL BEACH AND CONSOLIDATED DISPOSAL
SERVICE, L.L.C., DBA REPUBLIC SERVICES**

This First Amendment (the "Amendment") to the Agreement for Solid Waste Handling Services between the City of Seal Beach (hereinafter "City") and Consolidated Disposal Service, L.L.C., a Delaware limited liability company dba Republic Services (hereinafter "Contractor") is made and entered so as to be effective as of September 28, 2020 .

1. RECITALS

A. City and Contractor's predecessor in interest have entered that certain Agreement for Solid Waste Collection Services dated as of March 24, 1997 (the "Agreement").

B. Contractor is a subsidiary of Republic Services, Inc., a Delaware corporation.

C. Prior to the Effective Date of the Agreement, in 2014, the State of California enacted Assembly Bill (AB) 1594. Among other things, AB 1594 amended Public Resources Code Section 41781.3, mandating that as of January 1, 2020, the use of green material as alternative daily cover (ADC) at landfills will no longer constitute diversion through recycling and will instead be considered disposal for purposes of measuring a jurisdiction's annual diversion rate.

D. Contractor delivers green waste collected from the City's customers to the Orange County Landfill System for use as ADC. The Orange County Landfill System has historically accepted the green waste for use as ADC at no charge to customers. Consequently, the City has determined that with the pending elimination of diversion credit for ADC, and the negative impact this will have on the City's diversion rate, an alternative final disposition for the City's green waste is necessary.

2. COVENANTS

SECTION 1. Contractor has determined, and the City hereby approves, that final disposition of the green waste collected within the City will occur at the Circle Green Inc. Land Application Operation ("Circle Green Operation") , located in the City of El Mirage, subsequent to pre-processing of the material at Republic Services' Rainbow Environmental Facility located in the City of Huntington Beach. The City will have the right, if so desired, to choose another location for the delivery of green waste. If the City directs that green waste be delivered to another location, the rate paid by the ratepayer will be reduced or increased accordingly if the transportation and processing costs of using such facility are lower or higher than the costs of using the Circle Green Operation.

Contractor guarantees the availability of green waste processing capacity for City green waste for the term of the Agreement, provided that on or before January 1, 2022 the Parties shall meet and confer regarding SB 1383 compliance requirements and use of alternative facilities and associated tip fee or diversion rates for the disposition of green waste. Until such time, the green waste material from the City will be directed to the Circle Green Operation.

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SECTION 2. This First Amendment will necessitate a one-time AB 1594 compliance rate adjustment of \$0.65 per residential and multi-family unit per month to the service component of the basic residential and multi-family rates, as shown in Attachment 1 "Detailed Calculations Related to AB 1594 Diversion Compliant Processing." The amount is based on the calculations as shown in Attachment 1. Attachment 1 is hereby incorporated for the sole purpose of providing historical reference to the means by which the calculations for the rate adjustment were arrived at.

SECTION 3. The total cost shown in Attachment 1 of \$73.53 per green waste ton includes a tip fee of \$11.00 per ton at the Circle Green Operation. Contractor warrants that the proposed tip fee per ton of \$11.00 at the Circle Green Operation is the actual cost paid to Circle Green Inc. upon delivery of green waste materials. Contractor will notify the City in connection with its regular annual rate adjustment effective July 1 of each year if it becomes aware of an overall lower green waste processing cost option that may be available for use by the City, to enable the Parties to review and determine whether a change in facility for the final disposition of green waste should be made in order to initiate a cost reduction to the City's customers.

SECTION 4. The proposed green waste land application use at the Circle Green Inc.- El Mirage Operation qualifies for diversion credit under applicable law as determined by the California Department of Resources Recycling and Recovery's requirements.

SECTION 5. The approved Contractor Rate Schedules, most recently amended by letter from the City Manager dated April 13, 2020 for the period commencing July 1, 2020, are hereby amended to include the updated basic residential service rate collection rates shown in Attachment 2, which rates shall become effective on September 28, 2020.

SECTION 7. Unaffected Provisions Remain in Full Force. All provisions of the Agreement, except those expressly amended by this First Amendment, shall remain unchanged and in full force and effect.

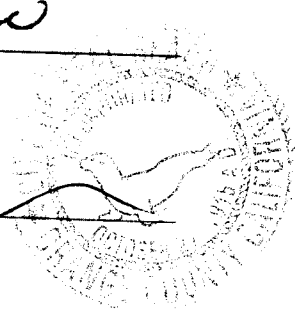
IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to be effective as of the date and year written above.

CITY OF SEAL BEACH

By: Schelly Sustarsic
Mayor

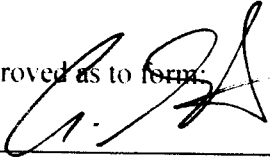
Attest:

By: [Signature]
City Clerk



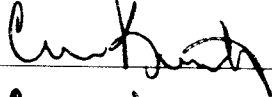
OC
9/24/20

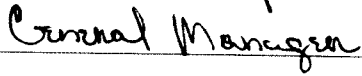
Approved as to form:

By: 

City Attorney

CONSOLIDATED DISPOSAL SERVICE, L.L.C.

By: 

Its: 

CITY OF SEAL BEACH
Detailed Calculations for AB 1594 Diversion Compliant Processing

Attachment 1

Row	Metric	Rate Buildup for AB 1594 Compliant Program	COMMENTS
Land Application Component			
1	Average Annual Green Waste Tons	1,637	Based on 3 year average of 2017, 2018, and 2019.
2	Percentage of Tonnage to Circle Green in El Mirage	97.0%	Upon removal of contamination at the H.B. Rainbow Facility.
3	Tons to be applied as Land Application	1,588	Calculation: R1 x R2
4	Total Transportation Cost/Ton for H.B. Rainbow to Circle Green in El Mirage.	\$ 25.00	Transport fee to Circle Green in El Mirage per Green Waste Supply Agreement with Circle Green Inc.
5	H.B. Rainbow Processing Cost/Ton (Cleaning/Loading)	\$ 30.54	Verified via Republic spreadsheet dated November 8, 2019.
6	Subtotal of Cost per Ton Excluding Land Application Cost	\$ 55.54	Calculation: R4 + R5
7	Margin	10%	
8	Total Margin Cost per Ton	\$ 5.55	Calculation: R6 X R7
9	Land Application Cost/Ton to Circle Green in El Mirage	\$ 11.00	Tip fee at Circle Green in El Mirage per Green Waste Supply Agreement with Circle Green Inc.
10	Subtotal of Rate with Margin	\$ 72.09	Calculation: R6 + R8 + R9
11	Host Fee Percentage Applied to Green Waste for City of Huntington Beach	2%	Per Republic 11/22/2019 proposal and verified during October 16, 2019 site visit.
12	Host Fee Per Ton	\$ 1.44	Calculation: R10 X R11
13	Total Cost per Ton for Land Application Component	\$ 73.53	Calculation: R10 + R12
14	Tons to be Applied as Land Application	1,588	From R3
15	Total Cost for Land Application Component	\$ 116,766	Calculation: R13 X R14
Residual Component			
16	Average Annual Green Waste Tons	1,637	Based on 3 year average of 2017, 2018, and 2019.
17	Residual Percentage Tonnage to Landfill	3.0%	Upon removal of contamination at the H.B. Rainbow Facility.
18	Residual tons to be Disposed at Landfill	49	Calculation: R16 x R17
19	H.B. Rainbow Processing Cost/Ton (Cleaning/Loading)	\$ 30.54	Verified via Republic spreadsheet dated June 5, 2020.
20	Cost/Ton for Municipal Solid Waste at OC Landfill for Transport	\$ 10.61	Per invoice #3182 from WDP Transportation Corp dated May 31, 2020.
21	Subtotal Cost per Ton to Dispose of Residual Excluding Disposal	\$ 41.15	Calculation: R19 + R20
22	Margin	10%	
23	Total Margin per Ton	\$ 4.12	Calculation: R21 X R22
24	Cost/Ton for Municipal Solid Waste at OC Landfill for Disposal	\$ 35.67	July 1, 2020 tip fee at OC Landfills.
25	Subtotal of Rate with Margin	\$ 80.94	Calculation: R21 + R23 + R24
26	Host Fee Percentage Applied to Green Waste for City of Huntington Beach	2%	Per Republic 11/22/2019 proposal and verified during October 16, 2019 site visit.
27	Host Fee Per Ton	\$ 1.62	Calculation: R25 X R26
28	Total Cost per Ton for Residual Component	\$ 82.56	Calculation: R24 + R26
29	Residual Tons to be Disposed at OC Landfill	49	From R18
30	Total Cost for Residual Component	\$ 4,045	Calculation: R28 X R29
31	Total Program Cost for Land Application	\$ 120,811	Calculation: R15 + R30
32	Current Cost Per Ton for Green Waste as ADC	\$ 47.65	Based on City of Seal Beach cost per ton to dispose green waste from 6/5/2020 spreadsheet.
33	Tons to be used as Land Application	1,637	Based on 3 year average of 2017, 2018, and 2019 from R1.
34	Current Cost for Green Waste as ADC	\$ 78,003	Calculation: R32 X R33
35	Annual Incremental Cost for Land Application	\$ 42,808	Calculation: R31 - R34
36	Total Residential Single and Multi-Family Cart Premises	5,912	Based on Utility Billing Report run by City on 12/17/2019.
37	Total Annual Cost to Single Family and Multi-Family Cart Premises	\$ 7.24	Calculation: R35 + R36
38	Months per Year	12	
39	Monthly Cost to Single Family and Multi-Family Cart Premises	\$ 0.60	Calculation: R37 ÷ R38
40	Franchise Fee Percentage	7.0%	Per Section 3.2 of the Franchise Agreement
41	Monthly Cost With Franchise Fee for Land Application	\$ 0.65	Calculation: R39 X (1+R40)
42	Eligible Portion of Residential Basic Service Rate	\$ 14.32	Per Republic's July 1, 2020 Rate Adjustment Calculations.
43	New Eligible Portion of Residential Rate for Basic Service	\$ 14.97	Calculation: R41 + R42
44	Ineligible Portion of Residential Rate for Basic Service	\$ 5.93	Per Republic's July 1, 2020 Rate Adjustment Calculations
45	New Basic Residential Rate	\$ 20.90	Calculation: R43 + R44
46	Eligible Portion of Multi-Family Residential Rate	\$ 13.77	Per Republic's July 1, 2020 Rate Adjustment Calculations.
47	Monthly Cost for Land Application	\$ 0.65	From R41
48	New Eligible Portion of Multi-Family Residential Rate for Basic Service	\$ 14.42	Calculation: R46 + R47
49	Ineligible Portion of Multi-Family Residential Rate for Basic Service	\$ 5.71	Per Republic's July 1, 2020 Rate Adjustment Calculations
50	New Basic Multi-Family Residential Rate	\$ 20.13	Calculation: R48 + R49

Effective TBD, 2020

Automated Cart System	Color	Monthly Rate to Customer
Trash 35 GAL Recycling	Brown/Gray	
	BLUE	
		\$20.90
Trash 64 GAL Recycling Yardwaste	Brown/Gray	
	BLUE	
	light Green	
		\$20.90
Trash 96 GAL Recycling	Brown/Gray	
	BLUE	
		\$20.90
Senior Citizen and Low Income Households		
Trash Recycling Yardwaste	Brown/Gray	
	BLUE	
	light Green	
		\$17.76
MUTLI UNIT SERVICE		
Trash Recycling Yardwaste	BLACK	
	BLUE	
	Light Green	
		\$20.13
Residential Monthly Billed for Extra Container		
Service	Color	Quote Monthly Rate to Customer
Trash	Brown/Gray	\$11.74
Additional Requests		
SERVICE	AMOUNT	
Bulk Pick Up	\$28.62	If after the first two free-of-charge items
Bulk Pick Up	\$57.24	3-5 Items
Bulk Pick Up	\$114.45	6-10 Items
Bulk Pick Up	\$239.17	11-15 Items



COMMERCIAL SOLID WASTE RATE SCHEDULE

Effective TBD, 2020

PICK UP/WEEK	2 YARD	PLUS PULL OUT 25 - 50FT	PLUS PULL OUT 200 FT	PLUS PULL OUT SUBTERRANEAN GARAGE
1	\$132.20	\$8.60	\$20.08	\$20.27
2	\$212.76	\$17.21	\$40.19	\$40.51
3	\$272.16	\$25.82	\$60.27	\$60.82
4	\$365.62	\$34.43	\$80.39	\$81.11
5	\$384.22	\$43.02	\$100.44	\$101.36
6	\$478.85	\$51.61	\$120.57	\$121.61
EXTRA PICK UP	\$85.65	N/A	N/A	N/A
LOCK LIDS	\$7.14	N/A	N/A	N/A
SCOUT/PUSH OUT	N/A	N/A	N/A	N/A

PICK UP/WEEK	3 YARD	PLUS PULL OUT 25 - 50FT	PLUS PULL OUT 200 FT	PLUS PULL OUT SUBTERRANEAN GARAGE
1	\$174.34	\$8.64	\$20.20	\$20.38
2	\$255.82	\$17.31	\$40.43	\$40.74
3	\$345.47	\$25.95	\$60.62	\$61.18
4	\$431.51	\$34.62	\$80.85	\$81.57
5	\$527.14	\$43.27	\$101.02	\$101.93
6	\$619.14	\$51.91	\$121.26	\$122.31
EXTRA PICK UP	\$86.14	N/A	N/A	N/A
LOCK LIDS	\$7.17	N/A	N/A	N/A
SCOUT/PUSH OUT	N/A	N/A	N/A	N/A

PICK UP/WEEK	4 YARD	PLUS PULL OUT 25 - 50FT	PLUS PULL OUT 200 FT	PLUS PULL OUT SUBTERRANEAN GARAGE
1	\$232.16	\$8.70	\$20.31	\$20.50
2	\$345.60	\$17.41	\$40.66	\$40.97
3	\$409.16	\$26.11	\$60.96	\$61.52
4	\$479.62	\$34.81	\$81.31	\$82.03
5	\$611.21	\$43.51	\$101.59	\$102.52
6	\$690.54	\$52.20	\$121.95	\$123.01
EXTRA PICK UP	\$86.64	N/A	N/A	N/A
LOCK LIDS	\$7.22	N/A	N/A	N/A
SCOUT/PUSH OUT	N/A	N/A	N/A	N/A

RECYCLE BIN SERVICE	3 YARD
PICKUP 1	\$61.22
PICKUP 2	\$91.07
PICKUP 3	\$123.87

TEMP. 3 YARD RENTAL	WEEKDAY	WEEKEND
DEL/REMOVAL	\$87.90	\$94.68
DAILY RENTAL	\$13.26	\$13.26
EXTRA DUMP	\$97.39	\$104.88

CALL IN REQUESTS	
SERVICE	AMOUNT
Extra Pick Up for Permanent Bin Service	\$ 85.66
Extra Pick Up for Temp Bins	\$ 97.39
Bin Exchange	\$ 85.65
Extra Pick up	\$ 83.12
Extra Yardage	\$ 16.76



INDUSTRIAL SOLID WASTE RATE SCHEDULE

Effective TBD, 2020

HAUL RATE -DEL/REMOVAL	\$643.39	\$572.76	\$337.36
OVER TONNAGE	\$56.89	\$56.89	\$56.89
TRIP CHARGE	\$91.46	\$91.46	\$91.46
DAILY RENTAL (AFTER 2 WEEKS)	\$19.60	\$19.60	N/A

CALL IN REQUESTS

SERVICE	AMOUNT
Haul & Return	Varies
Steam Clean	\$110.15
Replacement Delivery	\$183.59
Dead Run	\$91.99
Storage Box Rental	\$115.11
Storage Box Delivery/Removal	\$84.93



CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 2

DATE (MM/DD/YYYY)
06/30/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER CANNON COCHRAN MANAGEMENT SERVICES, INC. 17015 N. SCOTTSDALE RD SCOTTSDALE, AZ 85255	CONTACT NAME:		
	PHONE (A/C No.Ext):	FAX (A/C No.Ext):	
E-MAIL ADDRESS: certificateteam@ccmsi.com			
INSURED REPUBLIC SERVICES, INC. 18500 N. ALLIED WAY PHOENIX, AZ 85054	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: ACE American Insurance Co.		22667
	INSURER B: Indemnity Insurance Company of NA		43575
	INSURER C: ACE Fire Underwriters		20702
	INSURER D: Illinois Union Insurance Company		27960
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER: 1756007****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC ☐ OTHER:			HDO G71450892	06/30/2020	06/30/2021	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS -COMP/OP AGG \$ 5,000,000
A	AUTOMOBILE LIABILITY ☒ ANY AUTO ☒ OWNED AUTOS ☒ SCHEDULED ONLY ☒ HIRED AUTOS ☒ NON-OWNED ONLY ☐ AUTOS ONLY			ISA H25305425	06/30/2020	06/30/2021	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	☐ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☐ RETENTION \$						EACH OCCURRENCE AGGREGATE
B A C A D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☒ (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒	N/A	WLR C67458424 AOS WLR C67458382 AZ/CA/MA/OR SCF C67458461 - W WCU C67458503 - OH XS TNS C66948560 - TX NSXS	06/30/2020 06/30/2020 06/30/2020 06/30/2020 06/30/2020	06/30/2021 06/30/2021 06/30/2021 06/30/2021 06/30/2021	☒ PER STATUTE ☐ OTHER E.L. EACH ACCIDENT \$ 3,000,000 E.L. DISEASE -EA EMPLOYEE \$ 3,000,000 E.L. DISEASE -POLICY LIMIT \$ 3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Division Number: 3840 - Named Insured Includes: Consolidated Disposal Service, L.L.C. - Dba: Republic Services of Los Angeles//Republic Services
Division Number: 4605 - Named Insured Includes: RAINBOW DISPOSAL CO INC

CERTIFICATE HOLDER

CITY OF SEAL BEACH
211 EIGHTH STREET
SEAL BEACH, CA 90740
United States

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY		NAMED INSURED REPUBLIC SERVICES, INC. 18500 N. ALLIED WAY PHOENIX, AZ 85054
POLICY NUMBER See First Page		
CARRIER See First Page	NAIC CODE	
EFFECTIVE DATE:		

ADDITIONAL REMARKS

CERTIFICATE NUMBER: 1756007

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM.

FORM NUMBER: 25 FORM TITLE: CERTIFICATE OF LIABILITY INSURANCE

The following provisions apply when required by written contract. As used below, the term certificate holder also includes any person or organization that the insured has become obligated to include as a result of an executed contract or agreement.

GENERAL LIABILITY:

Certificate holder is Additional Insured including on-going and completed operations when required by written contract.

Coverage is primary and non-contributory when required by written contract.

Waiver of Subrogation in favor of the certificate holder is included when required by written contract.

AUTO LIABILITY:

Certificate holder is Additional Insured when required by written contract.

Coverage is primary and non-contributory when required by written contract.

Waiver of Subrogation in favor of the certificate holder is included when required by written contract.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY:

Waiver of Subrogation in favor of the certificate holder is included when required by written contract where allowed by state law.

Stop gap coverage for ND, WA and WY is covered under policy no. WLR C67458424 and stop gap coverage for OH is covered under policy no. WCU C67458503, as noted on page 1 of this certificate.

TEXAS EXCESS INDEMNITY AND EMPLOYERS LIABILITY:

Insured is a registered non-subscriber to the Texas Workers Compensation Act. Insured has filed an approved Indemnity Plan with the Texas Department of Insurance which offers an alternative in benefits to employees rather than the traditional Workers Compensation Insurance in Texas. The excess policy (#TNS C66948560) shown on this certificate provides excess Indemnity and Employers Liability coverage for the approved Indemnity Plan.

Contractual Liability is included in the General Liability and Automobile Liability coverage forms. The General Liability and Automobile Liability policies do not contain endorsements excluding Contractual Liability.

Separation of Insured (Cross Liability) coverage is provided to the Additional Insured, when required by written contract, per the Conditions of the Commercial General Liability Coverage form and the Automobile Liability Coverage form.



April 14, 2015

Mr. Patrick Gallegos
Assistant City Manager
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

Re: Annual CPI Adjustment

Dear Mr. Gallegos,

Pursuant to Section 4.3.3 Annual CPI Adjustment in the Agreement for Solid Waste Collection, Republic Services is formally requesting the Annual CPI Adjustment effective July 1st, 2015.

Please find enclosed the 2015 – 2016 Annual Rate Adjustment spreadsheet and calculations as per the agreement. Please let me know if you'd like to schedule an appointment to review any of the details and to discuss the procedures for customer notification.

If you have any questions, please feel free to contact me at (714) 238-3314.

Sincerely,

Mark McGee
Republic Services, Municipal Manager

C: Jill Ingram, City Manager
Matthew Niklas, Republic Services
Susanne Passantino, Republic Services
Patrick Gallegos, City of Seal Beach

**City of Seal Beach
Annual Rate Adjustment
2015 - 2016**

Consumer Price Index - All Urban Consumers	Feb-14	Feb-15	Change	Wgtd %	Subtotal	Limit	Total
Los Angeles - Anaheim Riverside Area	241.059	241.297	0.10%	70.0%	0.07%	80%	0.06%

Effective Comm Rate=	0.57%
Effective Resid Rate=	0.57%

Disposal rates	12-Jul	12-Jul	Incrs %				
	32.36	32.90	1.7%	30.0%	0.5%	100%	0.51%
Total				100.0%	0.58%		0.57%

0.24
0.10%

CALCULATION

Single Family Residential Rate

		\$ 18.12
Less portion ineligible for CPI adjustment	30.0%	5.44
Less portion eligible for Inordinate adjustment	0.0%	-
Portion of rate eligible for CPI adjustment	70.0%	\$ 12.68

CPI change		0.1%
Less	20%	0.0%
Eligible CPI Change	80%	0.1%

Eligible Rate Portion		\$ 12.68
Multiplied Times Eligible CPI Change		0.1%
Rate Adjustment for CPI portion		\$ 0.01

Current Rate		\$ 18.12
Plus Rate Adjustment (CPI Portion)		\$ 0.01
Plus Rate Adjustment (Inordinate Cost Portion)		\$ -
Plus Rate Adjustment (Disposal)		\$ 0.09
New Single Family Residential Rate		\$ 18.22

Multi Family Residential Rate

		\$ 17.44
Less portion ineligible for CPI adjustment	30.0%	5.23
Less portion eligible for Inordinate adjustment	0.0%	-
Portion of rate eligible for CPI adjustment	70.0%	\$ 12.21

CPI change		0.1%
Less	20%	0.0%
Eligible CPI Change	80%	0.1%

Eligible Rate Portion		\$ 12.21
Multiplied Times Eligible CPI Change		0.1%
Rate Adjustment		\$ 0.01

Current Rate		\$ 17.44
Plus Rate Adjustment (CPI Portion)		\$ 0.01
Plus Rate Adjustment (Inordinate Cost Portion)		\$ -
Plus Rate Adjustment (Disposal)		\$ 0.09
New Multi Family Residential Rate		\$ 17.54

Commercial Services

Old Rate

	1x	2x	3x	4x	5x	6x
2 Yard	118.37	190.50	243.69	327.36	344.02	428.75
3 Yard	156.10	229.06	309.32	386.36	471.98	554.35
4 Yard	207.86	309.44	366.35	429.44	547.26	618.29

New Rate Increase

	1x	2x	3x	4x	5x	6x
2 Yard	119.04	191.58	245.07	329.21	345.97	431.18
3 Yard	156.98	230.36	311.07	388.54	474.65	557.49
4 Yard	209.04	311.19	368.42	431.87	550.35	621.79

Roll Off Boxes

40 CubicYard	Old Rate	512.84	Per load with 6 Ton Limit*
	New Rate	515.74	Per load with 6 Ton Limit*

12 Cubic Yard	Old Rate	576.08	Per load with 10 Ton Limit*
	New Rate	579.34	Per load with 10 Ton Limit*

* Overload charged at \$50.65 per ton

Compactor

Old Rate	302.06	Plus dump fees
New Rate	303.77	Plus dump fees

Commercial barrel rate

142.43	per quarter Old Rate
143.24	New Rate

CONSOLIDATED DISPOSAL SERVICE

A Subsidiary of  **REPUBLIC SERVICES, INC.**

2495 E 68th Street, Long Beach, CA 90805

April 11, 2014

Ms. Jill Ingram
City Manager
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

RE: Application for Adjustment in Solid Waste Rates

As provided for under the terms and conditions of the current franchise agreement between Republic Services, Inc. and the City of Seal Beach, I respectfully submit this request for consideration regarding the annual adjustment to the residential and commercial solid waste collection service rates.

As set forth in the franchise agreement, the annual rate adjustment is partially based upon 80% of the increase in the Consumer Price Index (CPI) for All Urban Consumers in the Los Angeles-Anaheim-Riverside area. The twelve-month change in the CPI (0.50%) used for this computation is the February 2013 to February 2014 index, which is attributable to the cost of collection services. The overall base rate is comprised of 70% cost of collection and 30% cost of disposal where the disposal component is determined by the change in the dump gate rates at the orange County Landfill system (1.0%). Based on the CPI and disposal changes the effective change in the rate is therefore **0.58%**.

For your reference, you will find attached a worksheet that demonstrates the mathematical calculations for the single-family, multi-family and commercial rates as affected by this request.

Republic Services respectfully requests that City Council consider this rate adjustment application and, upon approval, set the new rates to become effective July 1, 2014.

Please contact me should you have any questions at (562) 259-2826.

Sincerely,



Sam Hall
Municipal Relationship Manager

**City of Seal Beach
Annual Rate Adjustment
2014 - 2015**

Consumer Price Index - All Urban Consumers	Feb-13	Feb-14	Change	Wghtd %	Subtotal	Limit	Total
Los Angeles - Anaheim Riverside Area	239.753	241.059	0.50%	70.0%	0.35%	80%	0.28%
Disposal rates	12-Jul	12-Jul	Incrs %				
	32.05	32.37	1.0%	30.0%	0.3%	100%	0.30%
Total				100.0%	0.65%		0.58%

Effective Comm Rate=	0.58%
Effective Resid Rate=	0.58%

CALCULATION

Single Family Residential Rate

Less portion ineligible for CPI adjustment	30.0%	\$ 18.02
Less portion eligible for Inordinate adjustment	0.0%	5.41
Portion of rate eligible for CPI adjustment	70.0%	-
		\$ 12.61
CPI change		0.5%
Less	20%	0.1%
Eligible CPI Change	80%	0.4%

Eligible Rate Portion	\$ 12.61
Multiplied Times Eligible CPI Change	0.4%
Rate Adjustment for CPI portion	\$ 0.05

Current Rate	\$ 18.02
Plus Rate Adjustment (CPI Portion)	\$ 0.05
Plus Rate Adjustment (Inordinate Cost Portion)	\$ -
Plus Rate Adjustment (Disposal)	\$ 0.05
New Single Family Residential Rate	\$ 18.12

Multi Family Residential Rate

Less portion ineligible for CPI adjustment	30.0%	\$ 17.34
Less portion eligible for Inordinate adjustment	0.0%	5.20
Portion of rate eligible for CPI adjustment	70.0%	-
		\$ 12.14
CPI change		0.5%
Less	20%	0.1%
Eligible CPI Change	80%	0.4%

Eligible Rate Portion	\$ 12.14
Multiplied Times Eligible CPI Change	0.4%
Rate Adjustment	\$ 0.05

Current Rate	\$ 17.34
Plus Rate Adjustment (CPI Portion)	\$ 0.05
Plus Rate Adjustment (Inordinate Cost Portion)	\$ -
Plus Rate Adjustment (Disposal)	\$ 0.05
New Multi Family Residential Rate	\$ 17.44

Commercial Services

Old Rate	1x	2x	3x	4x	5x	6x
2 Yard	117.69	189.40	242.29	325.47	342.04	426.28
3 Yard	155.20	227.74	307.53	384.13	469.26	551.16
4 Yard	206.67	307.65	364.23	426.97	544.10	614.72

New Rate Increase

	1x	2x	3x	4x	5x	6x
2 Yard	118.37	190.50	243.69	327.36	344.02	428.75
3 Yard	156.10	229.06	309.32	386.36	471.98	554.35
4 Yard	207.86	309.44	366.35	429.44	547.26	618.29

Roll Off Boxes

40 Cubic Yard	Old Rate	509.88 Per load with 6 Ton Limit*
	New Rate	512.84 Per load with 6 Ton Limit*
12 Cubic Yard	Old Rate	572.76 Per load with 10 Ton Limit*
	New Rate	576.08 Per load with 10 Ton Limit*

* Overload charged at \$50.65 per ton

Compactor	Old Rate	300.32 Plus dump fees
	New Rate	302.06 Plus dump fees

Commercial barrel rate	141.92 per quarter Old Rate
	142.74 New Rate

CONSOLIDATED DISPOSAL SERVICE

A Subsidiary of  **REPUBLIC SERVICES, INC.**

2495 E 68th Street, Long Beach, CA 90805

April 22, 2013

RECEIVED

MAY - 2 2013

City Manager's Office

Ms. Jill Ingram
City Manager
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

RE: Application for Adjustment in Solid Waste Rates

As provided for under the terms and conditions of the current franchise agreement between Republic Services, Inc. and the City of Seal Beach, I respectfully submit this request for consideration regarding the annual adjustment to the residential and commercial solid waste collection service rates.

As set forth in the franchise agreement, the annual rate adjustment is partially based upon 80% of the increase in the Consumer Price Index (CPI) for All Urban Consumers in the Los Angeles-Anaheim-Riverside area. The twelve-month change in the CPI (2.2%) used for this computation is the February 2012 to February 2013 index, which is attributable to the cost of collection services. The overall base rate is comprised of 70% cost of collection and 30% cost of disposal where the disposal component is determined by the change in the dump gate rates at the orange County Landfill system (2.2%). Based on the CPI and disposal changes the effective change in the rate is therefore 1.89%.

For your reference, you will find attached a worksheet that demonstrates the mathematical calculations for the single-family, multi-family and commercial rates as they are affected by this request.

Republic Services respectfully requests that City Council consider this rate adjustment application and, upon approval, set the new rates to become effective July 1, 2013.

Please contact me should you have any questions at (562) 347-4055.

Sincerely,



James Castro
General Manager

**City of Seal Beach
Annual Rate Adjustment
2013 - 2014**

Consumer Price Index - All Urban Consumers	Feb-12	Feb-13	Change	Wghtd %	Subtotal	Limit	Total
Los Angeles - Anaheim Riverside Area	234.537	239.753	2.2%	70.0%	1.54%	80%	1.23%

Effective Comm Rate=	1.89%
Effective Resid Rate=	1.89%

Disposal rates	12-Jul	12-Jul	Incrs %				
	31.37	32.05	2.2%	30.0%	0.7%	100%	0.66%
Total				100.0%	2.20%		1.89%

CALCULATION

Single Family Residential Rate

Less portion ineligible for CPI adjustment	30.0%
Less portion eligible for Inordinate adjustment	0.0%
Portion of rate eligible for CPI adjustment	70.0%

\$	17.69
	5.31
\$	12.38

CPI change		2.2%
Less	20%	0.4%
Eligible CPI Change	80%	1.8%

Eligible Rate Portion	\$	12.38
Multiplied Times Eligible CPI Change		1.8%
Rate Adjustment for CPI portion	\$	0.22

Current Rate	\$	17.69
Plus Rate Adjustment (CPI Portion)	\$	0.22
Plus Rate Adjustment (Inordinate Cost Portion)	\$	-
Plus Rate Adjustment (Disposal)	\$	0.12
New Single Family Residential Rate	\$	18.02

S
2 = 36.04

Multi Family Residential Rate	\$	17.02
Less portion ineligible for CPI adjustment	30.0%	5.11
Less portion eligible for Inordinate adjustment	0.0%	-
Portion of rate eligible for CPI adjustment	70.0%	\$ 11.91

CPI change		2.2%
Less	20%	0.4%
Eligible CPI Change	80%	1.8%

Eligible Rate Portion	\$	11.91
Multiplied Times Eligible CPI Change		1.8%
Rate Adjustment	\$	0.21

Current Rate	\$	17.02
Plus Rate Adjustment (CPI Portion)	\$	0.21
Plus Rate Adjustment (Inordinate Cost Portion)	\$	-
Plus Rate Adjustment (Disposal)	\$	0.11
New Multi Family Residential Rate	\$	17.34

M
2 = 34.68

Commercial Services

Old Rate	1x	2x	3x	4x	5x	6x
2 Yard	115.50	185.89	237.79	319.43	335.69	418.37
3 Yard	152.32	223.51	301.82	377.00	460.55	540.92
4 Yard	202.83	301.94	357.47	419.04	534.00	603.31

New Rate Increase	1x	2x	3x	4x	5x	6x
2 Yard	117.69	189.40	242.29	325.47	342.04	426.28
3 Yard	155.20	227.74	307.53	384.13	469.26	551.16
4 Yard	206.67	307.65	364.23	426.97	544.10	614.72

Roll Off Boxes

40 Cubic Yard	Old Rate	500.42	Per load with 6 Ton Limit*
	New Rate	509.88	Per load with 6 Ton Limit*
12 Cubic Yard	Old Rate	562.13	Per load with 10 Ton Limit*
	New Rate	572.76	Per load with 10 Ton Limit*

* Overload charged at \$50.65 per ton

Compactor

Old Rate	294.74	Plus dump fees
New Rate	300.32	Plus dump fees

Commercial barrel rate

139.28	per quarter Old Rate
141.92	New Rate

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Consumer Price Index - All Urban Consumers

Series Id: CUURA421SA0
Not Seasonally Adjusted
Area: Los Angeles-Riverside-Orange County, CA
Item: All items
Base Period: 1982-84=100

Download: .xls

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2003	185.2	186.5	188.2	187.6	186.4	186.3	186.3	186.9	188.2	187.8	187.1	187.0	187.0	186.7	187.2
2004	188.5	190.1	191.5	191.9	193.3	193.7	193.4	193.1	194.5	196.3	196.9	195.2	193.2	191.5	194.9
2005	195.4	197.4	199.2	201.1	201.5	200.7	201.4	203.1	205.8	206.9	205.6	203.9	201.8	199.2	204.5
2006	206.0	207.5	208.5	210.5	212.4	211.1	211.4	211.9	212.9	211.4	211.1	210.6	210.4	209.3	211.6
2007	212.584	214.760	216.500	217.845	218.596	217.273	217.454	217.330	217.697	218.696	219.943	219.373	217.338	216.260	218.416
2008	220.918	221.431	223.606	224.625	226.651	229.033	229.886	228.484	227.449	226.159	222.229	219.620	225.008	224.377	225.638
2009	220.719	221.439	221.376	221.693	222.522	223.906	224.010	224.507	225.226	225.264	224.317	223.643	223.219	221.943	224.495
2010	224.610	224.620	225.483	225.916	226.438	225.877	225.991	226.373	226.048	226.794	225.941	226.639	225.894	225.491	226.298
2011	228.652	229.729	232.241	233.319	233.367	232.328	231.303	231.833	233.022	233.049	232.731	231.567	231.928	231.606	232.251
2012	233.441	234.537	236.941	236.866	237.032	236.025	235.776	237.222	238.104	240.111	237.675	236.042	236.648	235.807	237.488
2013	238.015	239.753													

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AGREEMENT FOR
SOLID WASTE COLLECTION SERVICES

By and Between

CITY OF SEAL BEACH,
a municipal corporation,

and

BRIGGEMAN DISPOSAL SERVICES, INC.,
a California Corporation

AGREEMENT FOR
SOLID WASTE COLLECTION SERVICES

THIS AGREEMENT FOR SOLID WASTE HANDLING ("Agreement") is entered into as of the 24th day of March, 1997 by and between the CITY OF SEAL BEACH, a municipal corporation, organized and existing under the laws of the State of California ("City") and BRIGGEMAN DISPOSAL SERVICES, INC., a California Corporation ("Contractor"), as follows:

R E C I T A L S:

This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (Public Resources Code Section 49100, et seq.; hereinafter the "Act") established a solid waste management process which requires cities and other local jurisdictions to implement source reduction, reuse and recycling as integrated waste management practices; and

B. The Act authorizes and requires local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

C. Pursuant to Sections 49300 and 49500-49523 of the Public Resources Code, the City is authorized to enter into an exclusive agreement for the collection and disposal of solid waste.

D. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including the Act, the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. Sections 6901 et seq., and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sections 9601 et seq.; and

E. Pursuant to this Agreement, City desires to engage Contractor as an independent contractor to provide exclusive solid waste handling services within the City. Contractor shall furnish all personnel, equipment and supplies necessary to collect, pick up, or otherwise remove and dispose of all solid waste, as defined herein, generated or accumulated by all residential and commercial/industrial users or customers within the City, except as otherwise specifically provided herein.

F. City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator"

or an "arranger" as those terms are used in the context of CERCLA Section 107(a)(3), and that it is Contractor, not City, which is "arranging for" the collection of solid waste and recyclables from residential and commercial/industrial premises in the City of Seal Beach, the transport of same for disposal, the composting of green waste and the recycling of recyclables; and

G. There are no places within the City limits of the City of Seal Beach where landfills are located, or which are suitable for the siting of a landfill, and solid waste must, therefore, be exported from the City; and

H. Contractor has represented and warranted to City that it has the experience, responsibility, and qualifications to conduct recycling and composting programs, and to arrange with residents and other entities in the City of Seal Beach for the collection, safe transport and disposal of municipal solid wastes which may inadvertently contain hazardous substances; and

I. City and Contractor have previously entered into an exclusive franchise agreement for solid waste collection and disposal which is due to expire January 31, 1997.

ARTICLE I.
PARTIES; EXCLUSIVE RIGHTS

1.1. Parties to the Agreement. The parties to this Agreement are:

1.1.1. City: The City of Seal Beach, a municipal corporation, having its principal office at 211 Eighth Street, Seal Beach, California 90740.

1.1.2. Contractor: Briggeman Disposal Services, Inc., a California corporation, having its principal place of business at 10608 Los Alamitos Blvd., Los Alamitos, California 90720.

1.2. Representatives of the Parties and Service of Notices. The representatives of the parties who are primarily responsible for the administration of this Agreement, and to whom formal notices, demands and communications shall be given, are as follows:

1.2.1. The principal representative of City shall be:

City Manager
City Hall
City of Seal Beach
211 Eighth Street
Seal Beach, CA 90740

1.2.2. The principal representative of Contractor shall be:

George S. Briggeman Jr.
Briggeman Disposal Services, Inc.
10608 Los Alamitos Blvd.
Los Alamitos, CA 90720

1.2.3. Formal notices, demands and communications to be given hereunder by either party shall be made in writing and shall be effective upon the date of personal delivery or, in the case of mailing, on the date of delivery or attempted delivery as shown on the U.S. Postal Service certified mail return receipt.

1.2.4. If the name of the principal representative designated to receive the notices, demands or communications, or the address of such person, is changed, written notice shall be given within five (5) working days of the change.

1.3. Issuance of Exclusive Rights.

1.3.1. Subject to the terms and conditions of this Agreement, and applicable state laws, City hereby grants and issues to Contractor the exclusive authority, right and privilege to collect, pick-up, gather, remove and dispose of all solid waste generated or accumulated by all residential and commercial/ industrial users or customers within the Service Area, for the term of this Agreement, unless earlier terminated as provided herein.

1.3.2. Contractor's exclusive rights hereunder shall be further subject to the rights of state facilities to use a solid waste enterprise other than Contractor, and to the rights of any other solid waste enterprise granted a solid waste collection agreement by the City.

1.3.3. Contractor waives any right it may have to challenge the terms of this Agreement under federal, state or local law. Contractor waives any right or claim to provide solid waste handling services or recycling in the City of Seal Beach under any prior grant of franchise, contract, license or permit, including any right under Section 49520 of the Public Resources Code. The franchise agreement for collection and disposal of refuse entered into between City and Contractor on October 1, 1987 is hereby terminated.

1.4. Term. Term of this Agreement shall be for seven (7) years (the "Initial Term") from the date it is executed by an authorized representative of the City. On January 1, 1998, and each year thereafter the term of this Agreement shall be automatically extended one (1) additional year, so that the remaining term shall continue to be seven (7) years. In no event

shall the term, including any extension thereof, at any time exceed a total period of seven (7) years. Should either party desire that the automatic renewal and extension provision be terminated, such party shall give the other written notice of termination. Any such notice shall serve only to terminate the automatic one (1) year renewal and extension provision, and this Agreement shall remain in effect for the balance of the term then outstanding. Notwithstanding the foregoing, the unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in the Agreement shall give rise to the right, in favor of City, to terminate this Agreement for cause in accordance with the procedures elsewhere contained herein.

ARTICLE II. DEFINITIONS

2.1. The definitions set forth in Section 10-2.1 of Chapter 10 of the Code of the City of Seal Beach (the "Municipal Code") are incorporated herein by this reference. In addition, the following definitions are hereby incorporated into this Agreement:

2.1.1. "Control" shall mean, for purposes of Section 6.2 of this Agreement, the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a corporation, partnership, joint venture, or other association.

2.1.2. "Environmental Statutes" shall mean, for purposes of this Agreement, 42 United States Code Sections 9600, et seq., 42 U.S.C. Sections 6901 et seq., California Health and Safety Code Sections 25300, et seq., or successor statutes.

2.1.3. "Green waste" shall mean leaves, grass clippings, brush, branches and other forms of organic materials generated from landscapes or gardens, separated from other solid waste. "Green waste" does not include stumps or branches exceeding four (4) inches in diameter or four (4) feet in length.

2.1.4. "Household Hazardous Waste Element" or "HHWE" means the element required by Public Resources Code Section 41500. City adopted a Household Hazardous Waste Element on _____.

2.1.5. "Municipal Solid Waste" means all Solid Waste generated within the City of Seal Beach which is designated for collection under this Agreement.

2.1.6. "Service Area" shall mean all the area within the corporate boundaries of the City of Seal Beach, except the areas known as Leisure World, Sunset Aquatic Park and Surfside Colony, and the property site where Noel's Seafood is located.

Jack Surf

2.1.7. "Source Reduction and Recycling Element" or "SRRE" means the element required by Public Resources Code Section 41000, et seq. City adopted a Source Reduction and Recycling Element on _____.

2.1.8. "Tipping Fees" shall mean, for purposes of Section 4.3 of this Agreement, the cost charged by a landfill operator to dispose of one (1) ton of municipal solid waste from residential premises, not including any special wastes [including but not limited to rubber, concrete, Bulky Goods, etc.].

ARTICLE III. CONTRACTOR'S OBLIGATIONS

3.1. Governing Requirements. Contractor shall acquire and maintain all necessary permits and licenses, and shall comply with all provisions of this Agreement, the Municipal Code (including, but not limited to, Chapter 10, which is incorporated herein by this reference), and all other applicable laws, rules and implementing regulations, as they, from time to time, may be amended, specifically including, but not limited to the Act; CERCLA; RCRA, and the Americans With Disabilities Act (28 U.S.C. §§ 12001, et seq.).

3.2. Franchise Fee. Contractor shall pay to City a franchise fee as follows:

3.2.1. Seven percent (7%) of Contractor's gross receipts, plus the Act Implementation Fee required by Section 3.24.3. Provided, however, that if pursuant to Section 4.3.2, Contractor is unable to charge the maximum residential rates set forth in Exhibit B, and Contractor elects to continue to perform pursuant to this Agreement, the portion of the franchise fee applicable to Contractor's gross receipts from residential premises shall be four percent (4%) until a rate increase for residential premises becomes effective, at which time the portion of the franchise fee applicable to Contractor's gross receipts from residential premises shall be seven percent (7%).

3.2.2. The franchise fee shall be payable monthly, on or before the 15th day of the month following the end of each preceding calendar month. Each such payment shall be accompanied by an accounting, substantially in the form attached hereto as Exhibit A, which sets forth Contractor's gross receipts collected during the preceding calendar quarter.

3.2.3. The franchise fee shall be in lieu of all City business license and City business permit fees pertaining to the collection of solid waste.

3.3. Payment to City. No acceptance of any payment by City shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against

Contractor for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates a franchise fee underpayment, Contractor shall pay to City the amount of the underpayment within ten days of receipt of written notice from City that such is the case. If, after audit, such recomputation indicates a franchise fee underpayment of more than three percent (3%), Contractor shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recomputation, within ten days of receipt of written notice from City that such is the case. If, after audit, such recomputation indicates a franchise fee overpayment, City shall notify the Contractor in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recomputation. Contractor may offset the payment or payments (as appropriate) next due following receipt of such notice by the amount specified therein.

3.4. Performance Security. Concurrently with execution of this Agreement, Contractor shall deliver to City a non-refundable cash payment of \$50,000, as security for performance of its obligations hereunder.

3.5. Quantity. Contractor shall collect all non-hazardous solid waste generated and presented for collection at each residential or commercial/industrial premises in conformity with the provisions of this Agreement.

3.6. Care of Container. All solid waste containers shall be replaced upright, where found. Neither Contractor nor Contractor's agents and/or employees, shall in any way break, damage or roughly handle solid waste containers.

3.7. Collection From Residential Premises.

3.7.1. Mechanized Collection Of Solid Waste and Recyclables. The Contractor shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide mechanized collection of solid waste and recyclables from residential premises within the City.

3.7.2. Contractor to Provide Containers for Mechanized Collection. The Contractor shall provide the initial container and any replacement containers to residential premises to be served with mechanized collection, in addition to those required by Section 3.7.8. Contractor shall provide: a gray 90 gallon container for solid wastes and a blue 90 gallon container for commingled Recyclable Materials to each single family household; and one gray 60 gallon container for solid wastes and one blue 60 gallon container for recyclables to each multi-family residential household which is not receiving commercial bin service. Certain portions of the "Old Town" portion of the City will not receive automated containers due to inaccessibility.

Contractor will provide to the City a list of such areas on September 1 of each year.

Any residential service customer may request in writing to be excluded from the recycling program. Any residential service customer in Old Town may request in writing that Contractor remove any or all of the containers provided by Contractor. Any residential service customer may request in writing that Contractor provide: additional 60 or 90 gallon containers for solid waste at the rate of \$5.00 per month, per container; up to two (2) additional containers for Recyclable Material without additional charge; and/or containers of a smaller size than set forth herein.

Repairs to containers, including replacement of wheels, lids, hinges, axles and handles, shall be the responsibility of the Contractor.

3.7.3. Frequency of Collection - Residential Premises. Contractor shall collect all residential solid waste on a regular schedule which will specify the day during which collection will occur in City. All residential solid waste, recyclables and green waste shall be collected once each week, on the same day during each week, within two hours of the specified time, except as otherwise provided herein. Not later than November 30 of each year, commencing in 1997, Contractor shall submit to City Manager its proposed collection schedule for the ensuing calendar year. The schedule is subject to the City Manager's approval. The schedule shall indicate all regularly scheduled collection days which fall on a holiday and the collection day which is proposed to be substituted therefor so as to ensure that collection shall take place once each week. Contractor shall mail a written notice to all customers of such schedule not later than December 31 of each year.

3.7.4. Residential-Carryout Services. The Contractor shall provide carry-out services for those individuals who are unable to place their solid waste and recyclables for collection in the usual manner due to severe physical handicap. The Contractor shall not receive special payment for this service.

3.7.5. Residential-Bulky Goods Collection. Contractor shall provide for the curbside collection of bulky items such as couches, rugs, refrigerators, water heaters, up to four tied bundles of tree trimmings not to exceed 72" in length, 48" in diameter, or 60 lbs., and other items of solid waste not suitable for automated collection due to their size or weight, as follows:

Upon request, each resident shall be provided an on demand collection of a maximum of two (2) bulky items per year at no additional cost. Each resident/unit is limited to a maximum of one (1) bulky items per pick-up request. Requests by

residents for such collections shall be made directly to the Contractor, who shall provide satisfactory telephone message receiving, transmitting and response procedures, and who shall be responsible for maintaining a log of such large item collections. Requests for bulky item collection service shall be fulfilled within a reasonable time, but no more than five (5) working days after such request is received. Requests for more than two (2) on-demand collections per year shall be provided at a cost of twenty-five (\$25.00) per collection.

Bulky Goods collected by Contractor may not be landfilled or disposed of until the following hierarchy has been followed by Contractor:

1. Reuse as is (if energy efficient)
2. Disassemble for reuse or Recycling
3. Recycle
4. Disposal.

Contractor agrees to develop and carry out a community relations program approved by the City Manager for information related to Bulky Goods services.

3.7.6. Holiday Tree Recycling. Contractor shall collect, transport and recycle as green waste all Holiday trees which are placed for collection on regular collection days, from all residential premises within City during the period beginning on December 26 and ending 6:00 p.m. on the second Saturday in January.

3.7.7. Residential Curbside Recycling Education Program. City and Contractor shall cooperate in developing a public education and information program in order to maximize participation in the residential recycling effort. The public education and information program may include, without limitation, media advertising, contests, and community involvement programs directed towards residential householders and community organizations. The various elements of the public education and information program shall be reviewed and approved by the City Manager prior to their implementation, and not later than ninety (90) days after execution of this Agreement. The direct costs of implementing the program shall be borne by Contractor.

3.7.8. Residential Green Waste Program. Contractor shall provide a container for green waste to each residential premises served by Contractor, with the exception of residences located in the areas commonly known as Bridgeport, Riverbeach, Leisure World and Old Town. Notwithstanding the above exceptions, Contractor shall provide a container for green waste to each residential premises in the area southerly of Ocean Avenue, west of 8th Street.

The container shall have a minimum capacity of thirty-five (35) gallons with a five (5) year life expectancy

warranted by the manufacturer. The Contractor's company name and phone number should be permanently affixed to each container. All green waste shall be delivered to a legitimate composting or alternative fuel facility, such that the City receives credit towards achieving its obligation under the Act to divert the green waste from disposal in a landfill.

3.8. Collection From Commercial/Industrial Premises.

3.8.1. Collection Services. The Contractor shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide solid waste and recyclables collection for commercial/industrial premises within the City.

3.8.2. Contractor to Provide Bins/Frequency of Collection. Contractor shall make arrangements with each commercial/industrial customer concerning the size of solid waste disposal container and frequency of collection. Each such container or bin shall be a "standard commercial/industrial solid waste container," as defined by Municipal Code Section 10-2.1. Each such bin container or bin used on the Seal Beach pier shall use rubber wheels, not metal.

3.8.3. Commercial/Industrial Recycling Program.

(a) Contractor shall make available commercial/industrial recycling services. Contractor will provide all personnel, equipment, recycling bins, supplies and services required for the collection of recyclable materials at commercial/industrial premises in the City, and for the processing, transportation and marketing thereof, on such terms and conditions and for such consideration as may hereafter be agreed upon by commercial/industrial business owners and Contractor, subject to the City's prior approval.

(b) If Contractor and any commercial/industrial business owner are unable to agree upon the terms for such recycling services, the commercial/industrial business owner may contract with another duly licensed or permitted solid waste enterprise solely for the collection of source separated recyclable materials from the commercial/industrial premises.

(c) Nothing contained herein shall be deemed to affect the commercial/industrial exclusions set forth in Section 10-6.3 of Chapter 10 of the Municipal Code.

3.8.4. City Facilities. Contractor shall collect and dispose of all solid waste and recyclables from all City facilities and public parks. Contractor shall also collect and dispose of all street sweepings on an on-call basis, from a location designated by City. Both of these services shall be provided at Contractor's expense, with no charge to the City.

3.9. Special Events

Upon request, the Contractor shall provide solid waste and recyclables collection to special events conducted by the City, at Contractor's expense, with no charge to the City.

3.10. Solid Waste Disposal.

3.10.1. Contractor shall dispose of all collected solid waste at Contractor's expense and in accordance with all state, federal and local laws and regulations. In accordance with and subject to the provisions of Article IV hereof, the cost of disposal will be included in the rates charged by Contractor hereunder. City may require Contractor to dispose of all solid waste collected in City at a site designated by the City Council. If City exercises its right to require disposal at a designated site, rates will be subject to immediate adjustment pursuant to Article IV.

3.10.2. Contractor shall deposit all municipal solid waste collected in the City at landfills which have been properly permitted by the Regional Water Quality Control Board, which are classified as Class 3 landfills (landfills designated to receive only municipal solid waste), and which are not on or being considered for inclusion on a state or federal Superfund list. Alternatively, Contractor may deposit the municipal solid waste collected in the City at transfer stations, waste to energy facilities or resource recovery facilities which have been properly permitted and which are not on or being considered for inclusion on a state or federal Superfund list. Contractor shall have an affirmative duty to, annually or, if reasonably warranted, more frequently, obtain copies of permits issued for all disposal facilities at which it disposes of City's waste, inspect all such facilities, and check with regulatory agencies to ascertain the fitness of such facilities to accept waste, including whether such facility is on a state or federal Superfund list, or is being considered for inclusion on such a list. Failure to conduct such due diligence, or disposal of municipal solid waste collected in the City in violation of this Section 3.10.2, to the extent it causes liability or damage to City, shall trigger Contractor's obligation to indemnify City (pursuant to Section 3.15.2.), including for liability under the Environmental Statutes.

3.11. Records.

3.11.1. Contractor shall keep an auditable journal recording each instance that solid waste is not collected in compliance with the terms of this Agreement or applicable ordinance or regulation. Contractor shall inform the customer of the reason for noncollection by notice attached to the container or other non-collected item.

3.11.2. Contractor shall compile and keep the following information for each month during the quarter and shall deliver a written report thereon, signed by an officer of Contractor, to the City Manager on a quarterly basis within 30 days after the end of each quarter:

(a) total tons of solid waste collected pursuant to the Agreement;

(b) number of residences served pursuant to the Agreement;

(c) total tons of recyclables collected from residential and commercial/industrial providers, by type;

(d) number of commercial/industrial premises served;

(e) number of complaints received;

(f) number of missed collections reported to Contractor;

(g) the name, address and telephone number of each solid waste disposal facility used by Contractor during the reporting month;

(h) copies of waste disposal facility weight tickets/invoices which indicate the net amount of all waste disposed during the reporting month, typical fees paid, and where the waste was disposed of, by route;

(i) the complaint log described in Section 3.11.3.

3.11.3. Contractor shall keep a formal, auditable record of all complaints received, including the resolution accorded each complaint and upon request shall notify City of each complaint and it's final disposition.

3.11.4. The refusal or failure of Contractor to file any of the reports required, or to provide required information to City, or the inclusion of any false or misleading statement or representation by Contractor in such report shall be deemed a material breach of this Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

3.11.5. In order to verify reports of disposal amounts collected by Contractor from each designated route, the City shall be entitled to conduct an audit of any designated route upon demand. The audit demand will be made by the City by telephone 48 hours prior to the regularly scheduled collection

day of the designated route. Telephone notice shall be followed by written notice and facsimile transmission (Fax) to the Contractor. The audit demand shall entitle the City to conduct a physical route audit of any or all designated routes for the purposes of verifying customers served, disposal amounts collected, and any other information as may be deemed necessary and beneficial to the City. The standard route audit will include minimally: (1) verification that the collection vehicle is empty when beginning the route; (2) verification of the addresses which are served by the designated collection vehicle; (3) verification of the landfill to which the solid waste is taken; and (4) the quantity of solid waste in tons collected from the designated route.

3.12. Equipment.

3.12.1. Contractor warrants that it shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which it is responsible under this Agreement.

3.12.2. To protect peace and quiet in residential areas, the noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above ground level. Contractor shall submit to City, annually, a certificate of vehicle noise level testing of all vehicles by an independent testing entity.

3.12.3. All equipment used by Contractor to perform work under this Agreement shall conform to the highest industry standards and shall be maintained in a clean and efficient condition. All motor vehicles used in implementing this Agreement shall comply with applicable provisions of the Municipal Code. All certificates generated from California Highway Patrol inspections of each vehicle shall be submitted to the City Manager at the time of execution of this Agreement and by January 15th during each year of the Agreement term. All vehicles and bins used to perform this Agreement shall be kept clean, in good repair and will be uniformly painted to the satisfaction of the City Manager. All vehicles shall be cleaned, both inside and out, not less than once weekly. Any solid waste or miscellaneous debris dropped or spilled in collection, transfer or transportation shall be immediately cleaned up by Contractor. A broom and a shovel shall be carried at all times on each vehicle for this purpose.

3.12.4. Contractor shall not store any vehicle on any public street or other property in the City.

3.13. Independent Contractor.

3.13.1. Contractor and the agents and employees of Contractor in the performance of this Agreement shall act in an independent capacity and not as officers or employees or agents of City.

3.13.2. During the life of this Agreement, Contractor shall employ sufficient personnel qualified by reason of education, training and experience to discharge adequately the services agreed to be performed by Contractor pursuant to the terms of this Agreement. Contractor shall provide service of the highest quality at all times, and personnel retained to perform this Agreement will be temperate, competent, and otherwise fully qualified to fulfill the obligations of Contractor.

3.13.3. All employees of Contractor performing solid waste collection services under this Agreement shall be dressed in clean uniforms with suitable identification, and no portion of this uniform may be removed while working. Uniforms shall be approved by the City Manager.

3.13.4. Contractor shall not discriminate during the performance of this Agreement against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, age, disability, marital status, or sexual orientation.

3.14. Collection Impediments.

The Contractor shall provide regularly scheduled weekly solid waste and recyclables collection service to each resident in the Service Area. A number of collection impediments may require special effort to accomplish this level of service. If this special effort requires the distribution of containers, it shall be the responsibility of the Contractor to distribute them. When solid waste is not collected from any residential service recipient, Contractor shall notify the service recipient and City in writing, within twenty-four (24) hours, why the collection was not made.

3.14.1. Rain or Natural Disaster - Some streets become impassable during periods of heavy or prolonged rain, or due to a natural disaster. When the Contractor determines that collection vehicles can no longer provide service in the street, the following steps shall be taken:

(a) Notify City giving location of impassable street.

(b) Notify residents that collection service will be available temporarily at the entrance to street location.

(c) Notify the City when street is returned to service. Return containers if applicable.

(d) Notify the residents of the date that collection service will again be delivered in the street location.

3.14.2. Infrastructure Renovation -

Periodically major renovation is necessary to maintain the infrastructure of the City. This includes such activities as replacing gas, water, and sewer lines, surfacing or resurfacing streets, and replacing wiring for telephone, electricity, or cable T.V.

If the City is notified in advance of these activities, City will notify the Contractor. However, it is not uncommon for work to be initiated without prior notification. Alternate sanitation service must be provided by the Contractor during this period of disruption. Each circumstance must be evaluated individually to determine the appropriate alternative. The City shall be notified by the Contractor of the nature of the disruption, its location, and the alternative employed to provide service.

3.14.3. Street Blocked by Materials - When

material is placed in the street in such a way that the collection vehicle cannot proceed down the street, the Contractor may notify the City. The City will attempt to locate the individual responsible for the material and have them remove it. However, if the responsible party cannot be located, the Contractor shall remove the material blocking the alley or street and collect the solid waste and recyclables as scheduled. Contractor shall have no obligation to remove such material if it contains hazardous substances.

3.15. Insurance and Indemnification

3.15.1. Contractor shall carry public liability insurance for the term of this Agreement in an amount not less than Five Million Dollars (\$5,000,000) aggregate, Two Million Dollars (\$2,000,000) per occurrence, for each year within the term of this Agreement. Effective January 1, 2000, Contractor shall increase the coverage limits of the public liability insurance provided pursuant to this Section 3.15.1 to an amount not less than Seven Million Dollars (\$7,000,000) aggregate, Three Million Dollars (\$3,000,000) per occurrence. Commencing January 1, 2003, and every three years thereafter, Contractor shall increase the coverage limits of the public liability insurance provided pursuant to this Section 3.15.1 by twenty percent (20%).

Contractor additionally shall provide Workers' Compensation insurance for its employees or shall have been issued a certificate to self insure in accordance with California state law. All public liability insurance obtained by Contractor shall name as an additional insured the City of Seal Beach, its officers, agents and employees and shall require that ninety (90) days' written notice be given prior to the reduction or

modification of the limits or cancellation or expiration of the policy. Contractor shall provide City with a certificate or certificates showing that the required insurance will be in effect at least 30 days in advance of the first day Contractor will perform services under this Agreement. No work shall be done by Contractor during any period when Contractor is not covered by insurance as required by this Section 3.15.1. In the event Contractor does any work while not covered by the insurance, City may immediately terminate this Agreement without providing the 30 days' written notice required by Section 5.1.

3.15.2. Contractor shall indemnify, defend (with counsel selected by City) and hold harmless City, its officers, agents and employees from any and all claims and losses whatsoever occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, any and all claims, lawsuits or actions arising from the awarding or execution of this Agreement, and from any and all claims and losses occurring or resulting to any person, firm, corporation or property for damage, injury or death arising out of or connected with Contractor's performance of its obligations pursuant to this Agreement, or arising from or attributable to any alleged breach of warranty of merchantability or fitness of purpose or other laws relating to product liability for recyclables collected pursuant to this Agreement, or to the repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or hazardous wastes at any place where Contractor transfers, stores or disposes of municipal solid waste pursuant to this Agreement, or its activities pursuant to this Agreement result in a release of hazardous substances into the environment. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA," 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, defend, hold harmless and indemnify City. Contractor's obligation to indemnify, defend and save harmless City as stated hereinabove shall include, but not be limited to, paying all legal fees and costs incurred by legal counsel of City's choice in representing City in connection with any such claims, losses, lawsuits or actions. In connection with claims, liability, lawsuits or actions arising out of the Environmental Statutes, this clause shall not restrict any rights the City has against Contractor, including, but not limited to, the right of contribution, pursuant to the Environmental Statutes. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH COLLECTION SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

3.15.3. Contractor agrees to indemnify, protect, defend (with counsel selected by City) and hold harmless City, to compliance of the Act, against all fines or penalties imposed by

the California Integrated Waste Management Board in the event the diversion, source reduction and recycling goals of the Act are not met by the City with respect to the waste stream covered by this Agreement, or in the event Contractor's delays in providing information prevent City from submitting reports required by the Act in a timely manner. Contractor further agrees to reimburse City its pro rata share of all costs and expenses attributable to any administrative proceedings or litigation relating to compliance of the Act, including reasonable attorneys' fees. **THIS PROVISION SHALL SURVIVE THE EXPIRATION OF THE PERIOD DURING WHICH COLLECTION SERVICES ARE TO BE PROVIDED UNDER THIS AGREEMENT.**

3.16. Privacy.

3.16.1. Contractor shall strictly observe and protect the rights of privacy of residential service recipients. Information identifying individual residential service recipients, or the composition or contents of a customer's solid waste or recyclables shall not be revealed to any person, governmental unit, private agency or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by the Act.

3.16.2. Contractor shall not market or distribute mailing lists with the names and addresses of residential service recipients.

3.16.3. The rights accorded residential service recipients pursuant to this Section 3.16 shall be in addition to any other privacy rights accorded residential service recipients pursuant to federal or state law.

3.17. Hazardous Waste Notifications. Contractor has represented to City that Contractor will carry out its duties to notify all agencies with jurisdiction, including the California Department of Toxic Substances Control and Local Emergency Response Providers, and, if appropriate, the National Response Center, of reportable quantities of hazardous waste, found or observed by Contractor anywhere within City, including on, in, under or about City property, City easements, City rights of way and City waste containers. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on City property, streets in the City, storm drains, or public rights of way, Contractor also will immediately notify the City Manager and the Orange County Fire Authority. Notwithstanding the above, Contractor has no obligation to collect hazardous waste pursuant to this Agreement.

Contractor shall provide written information regarding household and other hazardous waste to all customers upon initially beginning service and on a yearly basis thereafter. This information shall specify what types of waste may and may not be disposed of through routine collection procedures, the availability of household hazardous waste collection programs, the tagging procedure if hazardous waste is found in the customer's deposited waste, and other pertinent information. Examples of household hazardous waste include, but are not limited to, used motor oil, oil-based paint, paint thinner, automotive products and aerosol containers.

Contractor shall conduct yearly training programs for its waste collection employees to instruct them in determining what is hazardous waste, to advise them to be aware of and locate, if possible, hazardous waste items when undertaking their collection wastes in the City, to follow proper procedures by tagging hazardous waste items as "hazardous - special handling required" and to advise customers of the various legal alternatives for disposal. Contractor shall keep a record of all customers who have received a tag for depositing hazardous waste items.

Contractor shall not be required to filter through and thoroughly inspect the solid waste disposed of in trash cans or trash bins by the City's residents and commercial establishments in order to ensure it does not contain any hazardous waste. Contractor, however, shall take all reasonable steps to avoid collecting hazardous waste and shall refuse to collect and dispose of any such waste of which it becomes aware.

3.18. Ownership of Solid Waste and Recyclables.

Ownership and the right to possession of solid waste, green waste and recyclables placed in containers or bundles for collection at the usual place of collection, transfer directly from the resident to Contractor, by Municipal Code Section 10-7.7 and by Public Resources Code Sections 41950 and 41951. Contractor shall notify all service recipients, in a manner acceptable to the City Manager, of the provisions of Public Resources Code Sections 41950(c) and 41951, as well as Municipal Code Section 10-7.7, to the effect that, subject to the right of the service recipient to claim lost property, title and the right to possession, and liability for all recyclables and all solid waste and green waste, whether or not recyclable, which is set out for collection on the regularly scheduled collection day shall pass to Contractor at the time it is set out. Subject to the provisions of this Agreement, Contractor shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the solid waste or recyclables which it collects. At no time does City obtain any right of ownership or possession of solid waste, green waste or recyclables placed for collection, and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights. City and Contractor agree that, for purposes of

the Uniform Commercial Code and all other laws imposing liability for defective products, it is Contractor, and not City which is to be considered the "merchant" of goods recycled pursuant to this Agreement.

3.19. Performance Monitoring. The City Manager shall have the right to observe and review Contractor's operations. City shall also have the right to enter Contractor's premises at all reasonable hours and with reasonable notice for the purposes of such observation and review. Contractor will allow a City representative to ride with Collection vehicles on any route or routes, upon receipt of a request thereto by 3 p.m. of the working day prior to the date(s) of route monitoring. All city representatives shall execute liability waivers prior to riding Contractor's vehicles.

3.20. Annual Review of Performance and Quality of Service.

3.20.1. At City's sole option, within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement, City may hold a public hearing at which Contractor shall be present and shall participate, to review Contractor's performance and quality of service. The reports required by this Agreement shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

3.20.2. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the Agreement is found, City may direct Contractor to correct the inadequacies in accordance with Section 5.1.

3.20.3. Nothing in this Section 3.20 shall limit the rights of City to enforce its rights pursuant to Article V, in the event of a default by Contractor.

3.21. System and Services Review. In addition to the Annual Review of Performance and Quality of Service pursuant to Section 3.20, City shall have the right to invoke the System and Services Review procedures set forth in this Section 3.21. This review is designed to provide for technological, economic and regulatory changes in solid waste collection and recycling, to promote competition in the industry and to achieve a continuing, advanced solid waste collection and recycling system.

3.21.1. At City's sole option, City may hold a public hearing on or about the first anniversary date of the Agreement, to review collection and recycling systems and services. Subsequent System and Services Review hearings may be

scheduled by City each year thereafter. It is City's intent to conduct any System and Services Review concurrently with any Annual Review of Performance and Quality of Service as provided for in Section 3.20.

3.21.2. Sixty (60) days after receiving notice from City that City is exercising its rights under this Section 3.21, Contractor shall submit a report to City indicating the following:

(a). Changes recommended to improve City's ability to meet the goals of the Act; and

(b) Any specific plans for provision of such new services by Contractor, or a justification indicating why Contractor believes that such services are not feasible for the City.

3.21.3. Topics for discussion and review at the System and Services Review hearing shall include, but shall not be limited to, services provided, customer complaints, rights of privacy, amendments to the Agreement, developments in the law, and new initiatives for meeting or exceeding the Act's goals and regulatory constraints.

3.21.4. City and Contractor may each select additional topics for discussion at any System and Services Review hearing.

3.21.5. Not later than sixty (60) days after the conclusion of each System and Services Review hearing, Contractor shall issue a report. The report shall address services not being provided to City that are considered technically and economically feasible by City. City may require Contractor to provide such services within a reasonable time, for reasonable compensation.

3.22. Mandated Operational Changes. City shall have the right to require changes in collection or disposal methods and Contractor shall comply therewith. If such changes result in increased or decreased costs to Contractor, either Contractor or City may request a rate review. Any changes in rates must be approved by City as provided by Article IV of this Agreement. The parties agree that the intent of this Section 3.22 is to authorize Contractor to amortize any additional costs associated with any required changes, and to allow customers to receive the savings resulting from any decreased costs associated with any required changes.

3.23. Complaints. Contractor shall investigate and remedy all service complaints within one business day of the time the complaint was received by Contractor.

3.24. Solid Waste Management Plan.

3.24.1. The parties acknowledge and agree that the Act requires City to develop and implement a solid waste management plan which includes, among other components, a Source Reduction and Recycling Element ("SRRE") and a Household Hazardous Waste Element ("HHWE"). City's SRRE and HHWE, as they now exist or may subsequently be amended, are incorporated herein by this reference. By executing this Agreement, Contractor acknowledges receipt of a copy of the SRRE and HHWE.

3.24.2. Contractor agrees to implement all provisions of City's SRRE and HHWE, including any recycling programs, as directed by City, and as set forth in this Agreement, such that City shall achieve a diversion rate of 50% by January 1, 2000, of solid waste in the Service Area. Contractor's obligations hereunder shall include, without limitation, the development, in cooperation with City, of public education and information programs relating to such policies and plans. The direct costs of implementing such programs shall be borne by Contractor.

3.24.3. Contractor shall cooperate with City, and with its consultants, in collecting and submitting such information and data as may be required for the further preparation and implementation of City's SRRE and HHWE, all at no cost or expense to City. The Contractor shall contract a qualified solid waste disposal consultant to maintain and monitor, on behalf of the City, the City's SRRE and HHWE. The Contractor will be responsible to prepare all reports that are required by the California Integrated Waste Management Board. This could include an annual waste sort of City waste required by the City's adopted Source Reduction and Recycling Element and Household Hazardous Waste Element. The consultant shall work under the supervision of the City, and the City may require selection of a new consultant, should the City determine, that SRRE and HHWE requirements are not being met. In order to further defray the costs to the City of implementing the Act, the Contractor shall pay to the City, as part of the Franchise Fee, the sum of \$10,000 per month (the "Act Implementation Fee"). The City may increase the amount of the Act Implementation Fee each year by the amount of any increase in the cost to the City of implementing the Act, not to exceed the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the Los Angeles-Anaheim-Riverside area, for the previous 12-month period.

3.24.4. City agrees to cooperate in good faith with Contractor to facilitate Contractor's compliance with these objectives. Such actions of City shall include but not be limited to the adoption and enforcement of required ordinances and local regulations, including such as may reasonably be recommended by Contractor, in order to ensure compliance by residential householders and by commercial/industrial owners with the policies and programs implemented by Contractor. City

further agrees to reasonably cooperate with Contractor in adopting and implementing local resource recovery and waste diversion programs, including those recommended by Contractor, in order to ensure compliance with all State mandates.

3.24.5. All press releases, reports, or other documents prepared by Contractor, and intended to be released to the public concerning City's SRRE or HHWE, shall be subject to the prior review and approval of City Manager.

ARTICLE IV. RATES, BILLING AND PAYMENT

4.1. Sale of Accessories. Except as expressly provided herein, Contractor shall not require customers to buy bags, cans, bins or other containers from Contractor as a pre-condition for collection of solid waste under the terms of this Agreement.

4.2. Rates. Contractor is authorized to charge reasonable rates in consideration of the services to be provided pursuant to this Agreement. Except as adjusted pursuant to the provisions of Section 4.3, the rates for solid waste and recyclables collection shall not exceed the amounts set forth in Exhibit B.

4.2.1. Senior Citizen Discount. Residential Householders that are both Senior Citizens and heads of lower income households, and who are so certified by the City, shall be granted a 15% discount off the residential rates. For purposes of this Section 4.2.1, "senior citizens" means heads of households that are 65 years of age or older, and "lower income households" means persons and families whose household income does not exceed the qualifying limits for lower income families as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937.

4.3. Rate Adjustment

4.3.1. Adjustment Procedure. Contractor may submit an application for rate review not more often than annually. A completed rate review application, in the format prescribed by the City Manager, shall be submitted not later than April 15 for the period starting the following July 1. City will take action on the request as soon as possible and will complete the process by June 20, provided all required information has been submitted. In addition to being annually adjusted as provided in Section 4.3.3., Contractor's rates shall also be subject to adjustments for inordinate cost increases as provided in 4.3.4., automatic rate adjustments for tipping fees as provided in 4.3.5., and rate adjustment for changes in service requirements as provided in 4.3.6., as provided herein.

4.3.2. Limitations on Rate Increases.

Notwithstanding any other provision of this Section 4.3: (a) there shall be no increase of any kind in residential rates that exceed the initial rate limitations set forth in Exhibit B until October 1, 1998; and (b) there shall be no increase in commercial/industrial rates that exceed the initial rate limitations set forth in Exhibit B until March 31, 2000, except for rate adjustments pursuant to Sections 4.3.4 or 4.3.5.

Further, the parties acknowledge that the initial rate limitations set forth in Exhibit B, and any rate increases pursuant to this Section 4.3, may be subject to the requirements of Section 6(a) of Article 13D of the California Constitution. The City reserves the right to comply with the requirements of Section 6(a) of Article 13D of the California Constitution if, in the sole discretion of the City, such compliance is appropriate. All rate increases, whether pursuant to Sections 4.3.3, 4.3.4, 4.3.5, or 4.3.6, are subject to the provisions of this Section 4.3.2. If rates are not increased as a result of compliance with the requirements of Section 6(a), the sole remedy of Contractor is to terminate its obligations after thirty (30) days written notice to City.

4.3.3. Annual CPI Adjustment. Commencing October 1, 1998, the Contractor may annually increase its rates by up to 80% of the percentage increase in the Consumer Price Index (CPI) for All Urban Consumers in the Los Angeles-Anaheim Riverside area, for the previous 12-month period for which information is received by the City from the U.S. Department of Labor. Any such increase in the CPI shall be applied only to that portion of the rates which **do not** comprise tipping fees. Adjustment pursuant to this Section 4.3.3 shall not exceed five percent (5%) per year. Adjustment pursuant to this Section 4.3.3 shall not require an application pursuant to Section 4.3.1; however, any such adjustment shall not be effective unless preceded by sixty (60) days written notification to the City Manager and the Residential Householders. For purposes of this Section 4.3.3, the parties agree that tipping fees constitute 30% of the rates. By way of example only, if the percentage increase in the CPI is 5%, 70% of the rates may be increased by up to 4% (80% of 5%), and 30% shall remain constant.

4.3.4. Inordinate Cost Increase Adjustment.

Pursuant to the procedure set forth in Section 4.3.1, Contractor may apply for an increase in excess of the cap set forth in Section 4.3.3, for inordinate cost increases for certain component costs of collection. If a collection cost component of Contractor's cost is 10% or more of the total cost of collection and Contractor shows the need for the requested inordinate cost rate increase by providing documentation that a component of Contractor's collection costs have increased by one hundred fifty percent (150%) or more than the percentage increase in the Consumer Price Index ("C.P.I.") for the previous year, then that portion of Contractor's rate which that cost component represents

may be increased by up to the percentage increase of the inordinate cost component. For example, as to this Section 4.3.4, if the fuel component is 15% of Contractor's cost of collection and the cost of fuel increases in a particular year by 9%, and the C.P.I. for that year increases by 4%, then the fuel cost component of the Contractor's rate may be increased by up to 9% and the remaining components (excluding tipping fees) of Contractor's rate may be increased by up to 80% of the 4% increase in the C.P.I. for that year.

Contractor shall submit any and all data requested by and in the format prescribed by the City Manager for any requested inordinate cost increase request. The Council shall consider the factors set forth above in determining whether to approve or deny the request. The decision of the City Council shall be final. The remedy of Contractor in the event of adverse decision is to terminate it's obligations after thirty (30) days written notice to City.

4.3.5. Automatic Rate Adjustment for Tipping Fees. Contractor may automatically adjust its rates upon an increase in tipping fees beginning in fiscal year 1997-98 upon giving 30 days written notice to the City and all commercial/industrial business owners and residential householders of such an increase. Any such rate adjustment for tipping fees shall be comprised of the percentage increase in the tipping fees, applied only to that portion of the rates which comprise tipping fees. Such rate adjustment for tipping fee increases shall not be requested if the overall effect of the increase in tipping fees is less than one percent (1%) of Contractor's rate for any year. For annual tipping fee increases of less than one percent (1%), Contractor will submit a request for a tipping fee increase as part of its Annual Adjustment application pursuant to Section 4.3.1. Contractor shall be entitled to one increase in tipping fees per fiscal year, and any other request for increase due to tipping fee increase must first be reviewed for approval by the City Council. For purposes of this Section 4.3.5, the parties agree that tipping fees constitute 30% of the rates. By way of example only, if the percentage increase in the tipping fees is 10%, 30% of the rates may be increased by up to 10%, and 70% shall remain constant.

4.3.6. Rate Adjustment From Changes in Service Requirements. Changes in Contractor's rates which result from changes in service requirements may be adjusted at the time that the service changes are implemented. Any rate adjustments resulting from changes in service requirements shall be submitted in the format prescribed by the City Manager and will be approved concurrently with the approval of the implementation of any such service changes by the City Council.

4.4. Billing.

4.4.1. In consideration of the services and promises of Contractor, City hereby delegates to Contractor the right and authority to collect from the persons served by Contractor the fees for such commercial/industrial service as is provided by this Agreement. The parties acknowledge that prior to this Agreement, the City was responsible for billing. All costs of billing, including any costs related to transition of the billing system from City to Contractor, shall be born by Contractor. City shall continue to be responsible for billing residential customers.

4.4.2. On behalf of Contractor, City shall bill all residential premises serviced by the Contractor on a monthly or bi-monthly basis at the rates prescribed by Contractor and authorized by the City Council pursuant to Sections 4.2 and 4.3. Each month, from the proceeds of those billings, the City shall be entitled to retain a sum equal to four percent (4%) of the proceeds collected to cover administrative costs (including costs of billings and collections). After deduction of the foregoing sums the City shall remit the remaining proceeds to the Contractor on a monthly basis no later than the 15th of each month.

4.4.3. Contractor agrees that it shall neither charge nor collect any sum or sums in excess of, or in addition to, the amounts specified in this Agreement for any solid waste or recyclables collection services made pursuant to this Agreement. Contractor agrees that City shall be under no obligation to collect or to enforce collection of any sums due to Contractor for services rendered under this Agreement except as specifically provided in this Agreement or in the Ordinances and Resolutions of City. Contractor hereby indemnifies, defends and holds harmless City from any and all liability for the payment of any sum or sums which may become due to Contractor for the collection or removal of solid waste under the terms of this Agreement.

4.4.4. Contractor shall bill commercial/ industrial customers on a monthly basis. Contractor shall have the right to bill and collect for its services in advance of the rendition of services hereunder, but shall refund any unused portion equal to one month or more of the amount collected in the event of disruption, revision, or termination of the services or when residential premises are vacant for at least a one month period and prior written notice of such vacancy has been given to Contractor. Customers may, on an individual basis, request annual payment schedules, and Contractor will work in good faith with individual customers to reasonably satisfy such requests.

Contractor shall maintain copies of the billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by City.

Contractor may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

The City Manager shall have the right to request changes to the billing format to itemize certain appropriate charges or to otherwise reasonably clarify the billing. Contractor will cooperate with City to revise its billing format as necessary to itemize appropriate charges from time to time.

4.4.5. Contractor shall insert with any mailings that employ envelopes, at Contractor's expense, messages related to solid waste management issues. These messages shall include but are not limited to route maps, pick-up times, collection rules, holidays, recycling updates, and similar information. The language of any such messages shall be reviewed and approved by the City Manager prior to their distribution. Contractor shall insert with any mailings that employ envelopes, at City's expense for the incremental cost, mailers describing activities of City not related to solid waste management issues. Contractor will provide, not less than sixty (60) days' notice to City Manager prior to the mailing date of any proposed mailing, an annual mailing schedule to permit City to make appropriate arrangement for inclusion of City's materials. City Manager will provide Contractor any City mail inserts at least five (5) working days prior to the mailing date.

4.5. Late Charges. Contractor shall be entitled to charge each customer late charges for the non-payment of any bill which is unpaid for a period of thirty (30) days from the last day of the month for which the services were rendered. Late charges cannot be charged for the period of time for which the services have not yet been rendered but may be assessed thirty (30) days following the rendering of such service, or thirty (30) days beyond the payment date of the billing, whichever is later.

Contractor may not impose late charges in excess of the maximum amount allowed by law on such billings, and may not in any event impose late charges in excess of \$10.00 per quarter for each residential premises nor more than ten percent for each period of delinquency on commercial/industrial premises.

4.6. Delinquent Accounts. Contractor shall make all reasonable efforts to diligently pursue and collect all fees and charges due Contractor for rendering such services. In the event of delinquency, Contractor shall have the right to terminate service. The Contractor shall also notify the owner of the property of the amount of the delinquency, that if the bill remains unpaid for an additional thirty days it will be turned over to the City, and of the possibility of tax lien collection.

ARTICLE V.
BREACH AND TERMINATION

5.1. Failure to Perform. All terms and specifications of this Agreement are material and binding, and failure to perform any portion of the work described herein shall be considered a breach of this Agreement. If the Contractor breaches the Agreement in any fashion, City may, at its option, terminate the Agreement not less than thirty (30) days after written notification to Contractor of the violation and failure by Contractor to remedy the violation within that time. In the event any breach does not result in termination, but does result in costs being incurred by City, Contractor will be held liable for all such costs.

The provisions of this Section 5.1 shall not be exclusive but shall be cumulative and in addition to any other remedies provided hereunder or pursuant to law.

5.2. Notice; Response; Resolution; Appeal.

5.2.1. Notice; Response. If the City Manager determines that Contractor's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the Act (including, but not limited to requirements for diversion, source reduction and recycling as to the waste stream subject to this Agreement), or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or disposal of solid and Hazardous Waste, the City Manager may advise Contractor in writing of such suspected deficiencies, specifying the deficiency in reasonable detail. The City Manager, in any written Notification of Deficiencies, shall set a reasonable time within which Contractor is to correct the deficiencies and respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall correct the deficiencies to the satisfaction of the City Manager and respond to the written Notification of Deficiencies within thirty (30) days from the effective date of the Notice pursuant to Section 1.2.3. Contractor may request additional time to correct deficiencies; City shall not unreasonably deny any such request.

5.2.2. Review by City Manager: Notice of Appeal.

(a) The City Manager shall review any written response from Contractor and decide the matter or refer the matter to the City Council for consideration pursuant to 5.2.3. If the City Manager's decision is adverse to Contractor, the City Manager may order remedial actions to cure any deficiencies, or invoke any other remedy in accordance with this Agreement and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. The City Manager

shall promptly inform Contractor of the City Manager's decision. In the event the decision is adverse to Contractor, the City Manager shall inform Contractor, in writing, of the specific facts found and evidence relied on, and legal basis in provisions of the Agreement or other laws for the City Manager's decision and any remedial action taken or ordered. An adverse decision by the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and City Attorney) within 30 days of receipt of the notification of the adverse decision by the City Manager.

(b) In any "Notice of Appeal" to the City Council, Contractor shall state all its actual contentions and include any relevant affidavits, documents, photographs and videotapes which Contractor may choose to submit. In addition, Contractor shall include all its legal contentions, citing provisions of the Agreement or other laws to support its contentions.

5.2.3. City Council Hearing. If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Contractor, the City Council will set the matter for a hearing and act on the matter, or refer the matter to a arbitrator as provided in Section 5.3. If the City Council elects to hear the matter, the City Clerk shall give Contractor thirty (30) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the administrative record, including the following:

(a) A Staff Report by the City Manager, summarizing the proceedings to date and outlining the City Council's options;

(b) The City Manager's written Notification of Deficiencies;

(c) Contractor's response to the Notification of Deficiencies;

(d) The City Manager's written notification to Contractor of adverse decision;

(e) Contractor's Notice of Appeal to the City Clerk.

No new legal issues may be raised, or new evidence submitted by Contractor at this or at any further point in the proceedings, absent a showing of good cause. Contractor's representatives and other interested persons shall have a reasonable opportunity to be heard.

5.2.4. City Council Determination. Based on the administrative record, the Council shall determine by resolution whether the decision or order of the City Manager should be upheld. A tie vote of the City Council shall be regarded as upholding the decision of the City Manager. If, based upon the administrative record, the City Council determines that the performance of Contractor is in breach of any term of this Agreement or any provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may not terminate the Agreement unless it determines that Contractor is in material breach of a material term of this Agreement (including but not limited to the provisions of Section 5.4.2), or any material provision of any applicable federal, state or local statute or regulation. The decision or order of the City Council shall be final and binding unless Contractor files a "Notice of Appeal to Arbitrator" with the City Clerk (and serves copies, by mail, on the City Manager and the City Attorney) within fifteen (15) business days of receipt of the decision or order of the City Council. The execution of City's right of termination shall be stayed until Contractor has exhausted its appeals under Section 5.3 of this Agreement.

5.2.5. Continued Performance by Contractor. Contractor's performance under this Agreement is not excused during the period of time prior to a final determination as to whether or not Contractor's performance is in material breach of this Agreement, or the time set by City for Contractor to discontinue a portion or all of its services pursuant to this Agreement.

5.3. Arbitration.

5.3.1. Applicability. Either party to this Agreement, at any time after exhaustion of administrative remedies, may refer a disputed matter for resolution pursuant to the provisions of this Section 5.3. Under no circumstances may the Contractor refer a disputed matter for resolution pursuant to the provisions of this Section 5.3 until after completion of the City Council hearing procedure set forth in Section 5.2. A decision of the City Manager to refer a matter to the City Council or, in the alternative, directly to an arbitrator may not be appealed. A decision of the City Council regarding rate adjustments is not subject to an appeal by Contractor to an arbitrator.

5.3.2. Submission of Dispute. Any dispute seeking damages and any dispute seeking equitable relief, such as but not limited to specific enforcement of any provision hereof, shall be heard and determined by an arbitrator pursuant to this Section 5.3. The venue of any proceeding hereunder shall be in Orange County, California.

5.3.3. Procedure for Appointment. The party seeking to resolve the dispute shall send a written demand for arbitration to the other party, by registered or certified mail. The demand shall set forth a statement of the nature of the dispute, the amount of damages involved and the remedy sought. No later than twenty (20) calendar days after the demand for arbitration is served, the parties shall apply to the Judicial Arbitration and Mediation Service ("JAMS") of Orange County to nominate a minimum of five prospective arbitrators. If the parties are unable to mutually agree upon an arbitrator from the JAMS panel within ten (10) business days after written request to do so by either of the parties, then the parties, starting with the City, shall alternate striking one prospective arbitrator at a time until only one arbitrator remains.

5.3.4. Ex Parte Communications Prohibited. Neither party may communicate separately with the arbitrator after the arbitrator has been selected. All communications between a party and an arbitrator shall be simultaneously delivered to the other party.

5.3.5. Conduct of Hearing. The hearing shall be conducted according to California Code of Civil Procedure, Sections 1280, et seq. The non-prevailing party in the arbitration shall be liable for payment of the arbitrator's fee. The hearing shall commence no later than sixty (60) days after selection of the arbitrator, unless the parties and the arbitrator otherwise agree. Either party to the hearing may petition the Superior Court in Orange County, California, to confirm, correct or vacate the award on the grounds stated in the General Arbitration Act. Any proceedings on an appeal shall be in accordance with Code of Civil Procedure, Sections 1294 and 1294.2.

5.3.6. Discovery. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if an agreement is not reached within twenty (20) days of that document request, then by disposition by order of the arbitrator. Any such document rights shall be subject to the proprietary rights and the rights and privileges of the parties, and the arbitrator shall adopt procedures to protect such rights. Unless specifically agreed otherwise by the parties, no other form of pre-trial discovery shall be available to the parties, provided that, if either party notifies the arbitrator that a material violation of this Agreement or rights in connection therewith is claimed by either, the provisions of Code of Civil Procedure, Section 1283.05 shall apply.

5.3.7. Evidence and Findings. The arbitrator shall consider the administrative record, including the Notice of Deficiencies, Contractor's response to the Notice of

Deficiencies, the decision of the City Manager, the Notice of Appeal to the City Council, and the decision of the City Council, in addition to other relevant evidence. Before issuing findings, the Arbitrator shall submit a proposed ruling setting forth proposed findings of fact and conclusions of law, to counsel for the Parties, for comment. When the arbitrator has decided the dispute, the arbitrator shall also cause the preparation of a judgment based on the decision.

5.3.8. Remedial Authority. A arbitrator to whom a matter is referred shall have the authority to affirm, reverse, or modify the decision of the City Council. In addition, the arbitrator may (i) order either party to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future, (ii) assess damages and/or levy a penalty consistent with the terms of this Agreement, or (iii) find there has or has not been a breach.

5.3.9. Stay Pending Entry of Final Judgment. Until final judgment is entered from the arbitrator proceeding under the forgoing provisions and the time for appeal or other postjudgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in this Agreement and related to subject matter of the hearing shall be stayed. The arbitrator may modify or cancel any proposed penalties or sanctions upon finding that the party subject thereto acted with substantial justification, or if the interests of justice so require.

5.3.10. Continued Performance by Contractor. Notwithstanding subsection 5.3.9, in no event shall any remedial action (other than termination of this Agreement or the imposition of any monetary penalties) ordered by the City Manager or City Council be stayed, or Contractor's performance under this Agreement be excused, during the period of time prior to entry of final judgment from the arbitrator proceeding.

5.3.11. Allocation of Arbitrator's Costs. The arbitrator's costs for the proceeding shall be apportioned by the arbitrator. The costs of the proceeding shall be borne equally by the parties to the dispute initially, but the prevailing party in such proceeding shall be entitled to recover reasonable costs of the arbitrator as apportioned by the arbitrator. If either party refuses to pay its share of the costs of the proceeding, at the time(s) required, the other party may do so, in which event that party will be entitled to recover (or offset) the amount advanced, with interest at the maximum rate permitted by law, even if that party is not the prevailing party. The arbitrator shall include such costs in the judgment or award.

5.3.12. Decision. The decision of the arbitrator may be excepted to in accordance with Code of Civil Procedure 645.

5.4. Remedies.

5.4.1. Cumulative Rights. City's rights to terminate this Agreement or to impose liquidated damages are in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

5.4.2. City reserves the right to terminate this Agreement or impose liquidated damages in the event of any of the following:

5.4.2.1. If Contractor practices, or attempts to practice, any fraud or deceit upon City, or practiced any fraud or deceit or made any misrepresentations in the negotiations which preceded the execution of this Agreement;

5.4.2.2. If Contractor fails to provide or maintain in full force and effect, the workers compensation or liability and indemnification coverages as required by this Agreement;

5.4.2.3. If Contractor violates any orders or rulings of any regulatory body having jurisdiction relative to this Agreement, provided that Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered;

5.4.2.4. If Contractor ceases to provide collection service as required under this Agreement over all or a substantial portion of its Service Area for a period of seven (7) days or more, for any reason within the control of Contractor;

5.4.2.5. If Contractor fails to make any payments required under this Agreement and/or refuses to provide City with required information, reports and/or test results in a timely manner as provided in this Agreement;

5.4.2.6. If Contractor fails to achieve a diversion rate of 50% in the Service Area by January 1, 2000.

5.4.2.7. Any other act or omission which violates the terms, conditions or requirements of this Agreement and which is not corrected or remedied within the time set in the written notice of the violation or, if the breach is such that it cannot be reasonably corrected or remedied within the time set forth in such notice, Contractor fails to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

5.4.3. Liquidated Damages.

5.4.3.1. City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by City as a result of a material breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) services might be available at substantially lower costs than alternative services, and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

5.4.3.2. Accordingly, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of Five Thousand Dollars (\$5,000.00) per day, for each calendar day that service is not provided by Contractor in accordance with this Agreement. In addition, the City Council may, in its discretion, assess liquidated damages not to exceed the sum of One Hundred Fifty Dollars (\$150.00) per incident, for each service complaint that is not investigated and remedied within the time set forth in Section 3.23. The amount of the liquidated damages shall be increased by the past year's annual percentage December-to-December change in the Consumer Price Index for all Urban Consumers in the Los Angeles--Anaheim-Riverside area, on each anniversary of this Agreement. In addition, the Council may order the termination of this Agreement.

5.4.3.3. City finds, and Contractor acknowledges and agrees, that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. These liquidated damages sums shall be applicable to each calendar day of delay during which Contractor has been found by the City Council to be in breach of this Agreement. Contractor shall pay any liquidated damages assessed by the City Council within ten (10) working days after they are assessed.

5.5. City's Additional Remedies. In addition to the remedies set forth above, City shall have the following rights:

5.5.1. To rent or lease equipment from Contractor for the purpose of collecting, transporting and disposing of solid waste which Contractor is obligated to collect, transport and dispose of pursuant to this Agreement, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to possess the equipment. Consistent with this provision, Contractor agrees to use its best efforts to obtain in the instruments pursuant to which Contractor possesses such equipment, provisions which authorize City to possess such equipment pursuant to this provision. If City exercises its rights under this Section 5.5.1, City shall pay to Contractor the reasonable rental value of the rental equipment so taken for the period of City's possession thereof;

5.5.2. The right to license or contract with others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

5.5.3. The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach thereof.

ARTICLE VI. ASSIGNMENT

6.1. Assignment of Agreement. Contractor shall not assign, sell, subcontract or otherwise delegate authority to perform any portion of this Agreement without the prior express written approval of City. In the event of any assignment duly authorized by City, the assignee shall assume the liability of Contractor.

6.2. Transfer of Stock or Interest. No sale, gift, or transfer of stock of Contractor which shall result in change in control of Contractor during the term of this Agreement shall be made without prior written approval of the City Council. Violation of this provision shall be a breach of this Agreement and grounds for termination by City without the 30 day notification requirement of Section 5.1.

6.3. Bankruptcy. If Contractor shall at any time during the term of this Agreement become insolvent, or if proceedings in bankruptcy shall be instituted by or against Contractor, or if Contractor shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property of Contractor shall be appointed in any suit or proceeding brought by or against Contractor, or if

Contractor shall make an assignment for the benefit of creditors, then and in each and every such case, this Agreement shall immediately cease, terminate, and be canceled upon written notice by City and without the necessity of suit or other proceeding.

6.4. Eligibility for Assignment or Transfer.

Contractor acknowledges that it was eligible to be awarded this Agreement because Contractor meets certain criteria. Contractor agrees and acknowledges that City will not approve an assignment or transfer of ownership to a company failing to meet the same criteria, which are listed below:

6.4.1. The firm must already be providing service within the surrounding geographical area. The firm must have an excellent record of performance within its service areas.

6.4.2. The firm shall be large enough and have sufficient resources and up-to-date equipment to handle the work and meet the requirements of City.

ARTICLE VII.
MISCELLANEOUS

7.1. Rights of City to Perform During Certain Circumstances.

If Contractor refuses or is unable for a period of more than seventy-two (72) hours, to collect, transport and dispose of any or all of the solid waste, green waste and recyclables which it is obligated under this Agreement to collect, transport and dispose of and if, as a result thereof, solid waste, green waste and recyclables accumulate in City to such an extent, in such a manner, or for such a time that the City Manager finds that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, upon twenty-four (24) hours prior written notice to Contractor, to temporarily take possession of any or all equipment and facilities of Contractor previously used in the collection, transportation or disposal of solid waste, compostables or recyclables under this Agreement, and to use such equipment and facilities to collect and transport the accumulated solid waste, compostables and recyclables. Contractor agrees that in such event it will fully cooperate with City to effect such a transfer of possession for City's use, and that City may take temporary possession of and use of the equipment and facilities without paying Contractor any rental or other charge. City agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment and facilities and that it shall immediately relinquish possession to Contractor upon receipt of written notice from Contractor to the effect that it is able to resume its normal responsibilities under this Agreement.

7.2. Construction. As used in this Agreement, and as the context may require, the singular includes the plural and vice versa and the masculine gender includes the feminine and neuter and vice versa.

7.3. Severability. If any part of this Agreement is invalid, the remaining terms and conditions shall not be affected unless their enforcement under the circumstances would be unreasonable, inequitable or otherwise frustrate the purposes of this Agreement.

7.4. Captions and References. The captions of the sections and subsections of this Agreement are solely for convenience of reference, and shall be disregarded in the construction and the interpretation of this Agreement. References herein to a section or subsection are to the sections and subsections of this Agreement.

7.5. Time of the Essence. Time is of the essence with respect to this Agreement and each and every term and condition hereof.

7.6. No Oral Modifications. This Agreement supersedes all prior proposals, agreements and understandings between the parties and may not be changed or terminated orally, and no change or termination of, or attempt to waive, any of the provisions hereof shall be binding unless in writing and signed by the parties against whom the same is sought to be enforced.

7.7. Force Majeure. Contractor shall not be in default under this Agreement in the event that the collection, transportation and/or disposal services are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting the City of Seal Beach; civil disturbance; explosion; natural disasters such as floods, earthquakes, landslides and fires; or other catastrophic events which are beyond the reasonable control of Contractor. "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public agency, even where such failure occurs despite the exercise of reasonable diligence by Contractor.

7.8. Property Damage. Normal wear and tear from general vehicular traffic excepted, Contractor shall be responsible for damage to streets, roads and ways in the City or any public property in the City, whether or not paved, resulting from the operation of Contractor's vehicles providing solid waste and recyclables collection services within City. Any physical damage caused by the negligent or willful acts or omissions of employees of Contractor to streets, roads and ways in the City or any public property in the City shall be repaired or replaced by Contractor, at Contractor's sole expense.

7.9. Law to Govern; Venue. The law of the State of California shall govern this Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court exclusive venue shall lie in the Central District of California.

7.10. Fees and Gratuities. Neither Contractor nor any of its officers, agents or employees, shall request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity other than as set forth in this Agreement for the collection of solid waste and recyclables otherwise required to be collected under this Agreement.

7.11. Attorney's Fees. In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including actual attorney's fees and costs, including costs of expert witnesses and consultants, discovery costs, and costs on appeal.

7.12. Amendments. This Agreement is part of City's efforts to comply with the provisions of the Act, as it from time to time may be amended; the regulations of the California Integrated Waste Management Board ("Regulations"), as they from time to time may be amended; and City's Source Reduction and Recycling and Household Hazardous Waste Elements, as they from time to time may be amended. In the event that the Act or other state or federal laws or regulations or court decisions enacted or issued after the execution of this Agreement prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise provided in this Agreement, no other amendment of this Agreement shall be valid unless in writing duly executed by the parties.

7.13. Joint Drafting. Each party has cooperated in the drafting and preparation of this Agreement with the aid of legal counsel. Hence, in any construction to be made in this Agreement, it shall not be construed against either party.

7.14. Execution in Counterparts. This Agreement may be executed in counterparts and, when each party has signed and delivered at least one such counterparts, each counterpart shall

be deemed an original and all counterparts taken together shall constitute one and the agreement.

Executed the date and year hereinabove stated.

BRIGGEMAN DISPOSAL SERVICES,
INC., a California Corporation

Date: APRIL 18, 1997

Henry A. Bruggen

Its: CHIEF EXECUTIVE OFFICER

Date: _____

Its: _____

Date: APRIL 10, 1997

CITY OF SEAL BEACH :

ATTEST:

Joanne M. Leo
City Clerk

Shirley L. Long
Mayor

EXHIBIT A
CITY OF SEAL BEACH
WASTE MANAGEMENT FRANCHISE FEE
MONTHLY STATEMENT

REPORTING PERIOD _____

BUSINESS
NAME _____

BUSINESS ADDRESS _____ CITY/STATE
ZIP CODE _____

MAILING ADDRESS _____ CITY/STATE
ZIP CODE _____

BUSINESS TELEPHONE (_____) CONTACT PERSON _____

FEE COMPUTATION

Based on Customers within City of Seal Beach

- | | | |
|----|--|----------|
| 1. | TOTAL NUMBER OF COMMERCIAL/INDUSTRIAL
PREMISES SERVICED THIS MONTH | \$ _____ |
| 2. | TOTAL RECEIPTS FROM COMMERCIAL/INDUSTRIAL
PREMISES THIS MONTH | \$ _____ |
| 3. | TOTAL NUMBER OF RESIDENTIAL
PREMISES SERVICED THIS MONTH | \$ _____ |
| 4. | TOTAL RECEIPTS FROM RESIDENTIAL
PREMISES THIS MONTH | \$ _____ |
| 5. | ACT IMPLEMENTATION FEE | \$ _____ |
| 6. | Franchise Fee (Seven percent of line 2, seven percent of
line 4, plus line 5) | \$ _____ |

READ CAREFULLY BEFORE SIGNING

I hereby certify under penalty of perjury that the above information is correct and the fee calculations are true to the best of my knowledge.

Signature _____ Title _____ Date _____

EXHIBIT B

**MAXIMUM INITIAL RATES
Residential**

Single Family Residential: \$12.75 per residential unit
Multiple Family Residential: \$12.25 per residential unit

Commercial Bin Service Schedule of Rates

Maximum Rate (April 1, 1997 - March 31, 1998)

Pick ups per wk	1	2	3	4	5	6
2 cub yrd	67.50	104.65	127.58	150.50	174.73	202.34
3 cub yrd	101.00	157.30	190.35	225.40	262.45	303.51
4 cub yrd	134.00	209.30	253.80	300.30	350.18	404.68

Maximum Rate (April 1, 1998 - March 31, 1999)

Pick ups per wk	1	2	3	4	5	6
2 cub yrd	75.88	120.12	150.51	191.51	209.79	253.75
3 cub yrd	106.05	160.17	205.25	250.19	299.19	349.04
4 cub yrd	141.23	214.77	257.28	302.98	369.84	422.37

Maximum Rate (April 1, 1999 - March 31, 2000)

Pick ups per wk	1	2	3	4	5	6
2 cub yrd	84.25	135.58	173.45	233.00	244.85	305.15
3 cub yrd	111.10	163.03	220.15	274.99	335.94	394.56
4 cub yrd	147.95	220.23	260.75	305.65	389.50	440.05

Pull-out Service Fees

Subterranean Garage \$15.00 per container per pick up

Long Distance Pull-out

25 - 50 feet \$ 1.50 per container per pick up

51 - 200 feet \$ 2.50 per container per pick up

over 200 feet \$ 3.50 per container per pick up

Roll-off Containers

40 cubic yrd roll-off container \$ 365.00 per load with 6 ton limit

12 cubic yrd low side roll-off (concrete & dirt) \$ 410.00 per load with 10 ton limit

* overload charged at \$35.00 per ton