

AGREEMENT
BETWEEN
CITY OF IMPERIAL BEACH
AND
EDCO Disposal Corporation
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

* * *

August 4, 1999

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3. Public Education Plan
4. Initial Rates
5. Rate Adjustment Formula
6. Corporate Guarantee
7. Faithful Performance Bond
8. Notary Certification
9. Street Sweeping Agreement

August 4, 1999

RECITALS

This Franchise Agreement (Agreement) is entered into this 4th day of August, 1999, by and between the City of Imperial Beach (The City) and EDCO Disposal Corporation (Company), for the collection, transportation, recycling, processing, and disposal of solid waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act, and for street sweeping services.

Recitals

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City of Imperial Beach has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services related to meeting the requirements of the California Integrated Waste Management Act; and,

WHEREAS, the City declares its intention of maintaining reasonable rates and quality service related to the collection, transportation, recycling, processing, and disposal of solid waste and other services; and,

WHEREAS, the City requires the services of a firm to provide street sweeping services in the City in coordination with its solid waste service provider; and

WHEREAS, upon execution of this Agreement, the Company shall enter into a Subcontract with California Street Maintenance (Subcontractor) for the provision of street sweeping services in the City.

WHEREAS, the current solid waste franchise agreement will expire on December 31, 1999; and,

WHEREAS, the current street sweeping agreement will expire on December 31, 1999; and,

WHEREAS, in response to a Request for Proposals dated March 5, 1999, the Company has submitted a proposal to the City dated April 12, 1999, (included as Exhibit 1) and the City has selected the Company on the competitive advantages of that proposal over other proposals received by the City; and

WHEREAS, the City and the Company (Parties) hereto desire to enter into said Agreement; and,

WHEREAS, the Company agrees to and acknowledges that it shall arrange for the proper disposal of all solid waste collected in the City and the City is not instructing the Company how to collect, process and dispose of solid waste.

WHEREAS, pursuant to the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000, et seq.), the City is required to implement its Source Reduction and Recycling Element (SRRE) in order to divert 50 percent of its solid waste from landfill disposal by the year 2000,

NOW, THEREFORE, in consideration of the premise above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 8.36.030 of the Imperial Beach Municipal Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

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

1.1 AB 939

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

1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in the Company and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in the Company. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than

ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.3 Agreement

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

1.4 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to persons responsible for arranging for solid waste removal.

1.5 Bin

"Bin" means a metal container with hinged lids and wheels serviced by a front-end-loading truck with a capacity of 1.5 to 8 cubic yards.

1.6 California Integrated Waste Management Act

"California Integrated Waste Management Act" means Public Resources Code, Section 40000 et seq.

1.7 Cart

"Cart" means a plastic container with a hinged lid and wheels serviced by an automated or semi-automated side-loading truck with a capacity of no less than 35 and no greater than 101 gallons.

1.8 City

"City" means the City of Imperial Beach, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.9 Collect/Collection

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

1.10 Commercial and Industrial Property

"Commercial and Industrial Property" means property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.11 Commercially Generated Recyclable Materials

"Commercially Generated Recyclable Materials" means Recyclable materials generated at Commercial and/or Industrial Property and separated by the Customer for Collection in a manner different from Garbage or Refuse.

1.12 Company

"Company" means EDCO Disposal Corporation, a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and Subcontractors.

1.13 Company's Proposal

"Company's Proposal" means the proposal submitted by the Company to the City on April 26, 1999 in response to a Request for Proposals dated March 5, 1999. The Company's Proposal was selected by the City based on its competitive advantages over other proposals received. The Company's Proposal is attached as Exhibit 1 and incorporated into this Agreement by reference.

1.14 Company Compensation

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

1.15 Construction Waste

"Construction Waste" means used or discarded construction materials removed from a Premises during the construction of a structure.

1.16 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Bins, Rolloff Boxes, and receptacles provided by customers.

1.17 Customer

"Customer" means the Person having the care and control of any premises in the City who receives refuse collection service from the Company.

1.18 Disposal

"Disposal" means the ultimate disposition of Solid Waste collected by the Company at a landfill in full regulatory compliance.

1.19 Disposal Site(s)

"Disposal Site(s)" mean the Solid Waste handling facility or facilities utilized for the ultimate Disposal of Solid Waste Collected by the Company.

1.20 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and the City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code

§25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.21 Facility

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

1.22 Franchise

"Franchise" means the special right granted by the City to operate a public utility for Solid Waste services within the City.

1.23 Franchise Fee

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

1.24 Garbage

"Garbage" means all kitchen and table waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of foodstuffs.

1.25 Gross Receipts

"Gross Receipts" means any and all revenues, receipts, or compensation in any form received by the Company or its subsidiaries, parent companies or other Affiliates of the Company, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles (GAAP), including, but not limited to, monthly customer fees for Collection of Solid Waste, without subtracting Franchise Fees or any other cost of doing business. Sales revenue from the sale of Recyclable Material is excluded from gross receipts for purposes of calculating Franchise Fees.

1.26 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or

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

1.27 Hazardous Waste

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

1.28 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at residential Premises.

1.29 Materials Recovery Facility (MRF)

"Materials Recovery Facility" means a permitted Solid Waste facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

1.30 Multi-Family Dwelling Unit

"Multi-Family Dwelling Unit" means any Premises consisting of four (4) or more units per parcel (not including hotels or motels), irrespective of whether residence therein is transient, temporary or permanent.

1.31 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.32 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Diego, towns, cities, and special purpose districts.

1.33 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.34 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.35 Rate Year

"Rate Year" means the period January 1 to December 31, for each year of the Agreement.

1.36 Recycling

"Recycling" means any process by which material which would otherwise become Solid Waste are collected (source-separated, co-mingled, or as "mixed waste"), separated

and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.37 Recyclable Materials

"Recyclable Materials" means residential, commercial or industrial Source Separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.38 Refuse

"Refuse" means putrescible and non-putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.39 Residential Property

"Residential Property" means property used for residential purposes including Single-family and Multi-family Dwelling Units, irrespective of whether such dwelling units are rental units or are owner-occupied.

1.40 Rolloff Box

"Rolloff Box" means an open-top metal container serviced by a rolloff truck with a capacity of 10 to 50 cubic yards

1.41 Single Family Dwelling Unit

"Single Family Dwelling Unit" means each Premises used for or designated as a single family residential dwelling, including each unit of a condominium project, duplex, triplex, townhouse, apartment building, or mobile home park in which each premises receives individual Solid Waste Collection service using cans or carts and consists of three (3) units or less per legal parcel.

1.42 Solid Waste

"Solid Waste" means all putrescible and non-putrescible residential Refuse, Recyclable Material, and Yard Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.43 Source Separation

"Source Separation" means the segregation into separate Containers by the Customer of individual components of material which otherwise would become Refuse or Garbage, such as glass bottles, metal cans, newspapers, plastic containers, etc., for the sole purpose of Recycling, to be picked up by the Company.

1.44 State

"State" means the State of California.

1.45 Yard Waste

"Yard Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (not more than six (6) inches in diameter or 72 inches in length) and similar materials generated at the Premises.

1.46 Yardwaste Processing Facility

"Yardwaste Processing Facility" means a permitted Facility where Yard Waste is sorted, mulched or separated for the purposes of Recycling, reuse or composting. If a Disposal Site accepts and uses Yardwaste for alternative daily cover material, the Disposal Site may also be considered a Yardwaste Processing Facility

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to Section 2.6, the City hereby grants to the Company the exclusive Franchise, right and privilege to Collect, transfer, transport, Recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.8 below, or as may otherwise be provided by federal or state law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances, and by reasonable enforcement of those ordinances. Should the City be required to take administrative, law enforcement, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, law enforcement, or other legal costs related to any such action.

2.3 Effective Date

The effective date of this Agreement shall be January 1, 2000 ("effective date").

2.4 Term of Agreement

The term of this Agreement shall be seven (7) years commencing at midnight January 1, 2000, and expiring at midnight December 31, 2006, subject to extension as provided in Section 2.5.

2.5 Option to Extend Term

The City shall have the sole option to extend this Agreement two (2) times up to twenty-four (24) months in periods of at least twelve (12) months each. If the City elects to exercise this option, it shall give written notice not later than one hundred eighty (180) days prior to the initial termination date, or, if an extension has been exercised, one hundred twenty (120) days prior to the extended termination date.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 9.
- d) Effectiveness of the City Council Action. The City's Resolution No. 99-5108 approving this Agreement, shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the City Manager's office, and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager.

2.8 Limitations to Scope

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

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) Solid Waste, including Recyclable Materials and Yard Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer of such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- c) Recyclable Materials and Yard Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- d) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- e) Yard Waste removed from a Premises by a gardening, landscaping, or tree trimming the Company utilizing its own equipment as an incidental part of a total service offered by the Company rather than as a hauling service;
- f) Construction Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment;
- g) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;

- h) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- i) Hazardous Waste, and radioactive waste regardless of its source; and,
- j) The casual or emergency collection, removal, disposal or diversion of Solid Waste by the City through the City officers or employees in the normal course of their employment.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.8, including Recyclable Materials, without seeking or obtaining approval of the Company under this Agreement.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with state and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing state and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.9 City's Right to Direct Changes

2.9.1 General

The City may direct the Company to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and/or new requirements for

Customers, and alternative rate structures are included among the kinds of changes which the City may direct. The Company shall be entitled to an adjustment in its Company Compensation in accordance with Section 6.5 for providing such additional or modified services.

2.9.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the City, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type of materials containers to be utilized.
- Provision for program publicity/education/marketing.
- Five-year projection of the financial results of the program's operations in a balance sheet and operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

2.9.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.9.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services. In the event that City exercises its right to permit third party Persons to provide such services, and if such a decision reduces or eliminates Company's collection services as contemplated under Company's Proposal and Article 4 of this Agreement, Company agrees to reduce its Billings proportionately.

2.9.4 City's Right to Approve Disposal Site

So long as company is not in material breach of this Agreement, Company shall only process and dispose of the Solid Waste at Company's own Facilities or Facilities or Disposal Sites approved in writing by the City. The initial designation of Company's Facilities as the Solid Waste Facility for the process of the Solid Waste, and the following disposal sites are hereby approved by City:

| Site | Location | Owner |
|----------------------------|-------------------------|-------------------|
| Copper Mountain Landfill | Welton, Arizona | Waste Management |
| Frank L. Bowerman Landfill | Irvine, California | County of Orange |
| Prima Desheca Landfill | San Juan Capistrano, CA | County of Orange |
| Miramar Landfill | San Diego, California | City of San Diego |
| Sycamore Canyon Landfill | San Diego, California | Allied Waste Ind. |
| Otay Landfill | San Diego, California | Allied Waste Ind. |

Should Company be in default following a material breach of this Agreement, City may, upon sixty (60) days written notice, direct Company to process and dispose of Solid Waste at a Facility or Facilities, or at a Disposal Site or Disposal Sites, of its own selection.

2.10 Ownership of Solid Waste

Once Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the Source Reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the

right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or reuse the Solid Waste, Yard Waste, and Recyclable Materials which it collects. Solid Waste, Yard Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or sites (whether landfill, transformation Facility, Transfer Station, Processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. Notwithstanding Company's right to ownership of the Solid Waste as described herein, the City may obtain ownership or possession of Solid Waste placed for Collection as follows: If, following a material breach of this Agreement where City has notified Company of right to direct Company to process and dispose of Solid Waste at a Facility or Facilities, or at a Disposal Site or Disposal Sites, of its own selection, as provided in Section 2.9.4. herein, Company continues to remain in default of the Agreement, City (upon sixty (60) days written notice of its intent to do so, and so long as Company has not cured the material breach identified in City's notices and remains in default of this Agreement) shall have the right, but not the obligation to ownership of Solid Waste collected in Imperial Beach and shall have the right to retain recycle, process, dispose of, and otherwise use such Solid Waste or any part thereof, in any lawful fashion or for any lawful purpose desired by City. However, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless the written notice required by Section 2.9.4 and this Section have been given to the Company.

If the City exercises its right to obtain ownership or possession of solid waste placed for collection, the City waves the CPI restraint specified in section 6.4.2.

2.11 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.12 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws

or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of the Company have authority to do so.

2.13 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement except to the extent that collection by the Company within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.14 Mandatory Service

At all times during the term of this Agreement, the City shall require the Owner of each occupied Premises where Solid Waste is generated to subscribe to the collection service provided for in this Agreement, according to Chapter 8.36 of the Imperial Beach Municipal Code.

Owners of occupied Premises where Solid Waste is generated may apply to the Company for an exemption from the mandatory service requirement. To qualify for such an exemption, an Owner must provide weight tickets from an authorized Disposal Site showing that the Owner utilized the Disposal Site on a weekly basis for the recently preceding thirteen (13) weeks. Upon the Owner providing such evidence, the Company shall refund any service fees paid by the Owner during the time the Owner utilized the disposal site. Any dispute as to such exemptions shall be resolved by the City Manager, whose decision shall be final.

Owners of Premises which are vacant and upon which no Solid Waste is being generated or accumulated may suspend service to vacant units, however, the Customer must resume service upon the Premises being reoccupied. A Premises is considered vacant when: 1) the Customer permanently departs the Premises or no longer occupies it and it is not immediately reoccupied, or 2) the Customer is to be absent from the Premises for a period of 4 weeks or more or purposes of hospitalization, vacation, convalescence or other similar reason.

ARTICLE 3

FRANCHISE FEE, RECYCLING SURCHARGE, & ADMINISTRATIVE FEE

3.1 Franchise and Administrative Fee

3.1.1 Franchise Fee Amount

In consideration of the exclusive Franchise provided in Section 2.1 of this Agreement, the Company shall pay to the City a Franchise Fee equal to 10% of the Company's Gross Receipts from its operations in the City. The annual Franchise Fee paid to the City shall not be less than the sum of a base amount of \$160,000 plus 10% of Gross Receipts for the Company's Rolloff Box service in the City. The base amount of \$160,000 and the Franchise Fee, shall be adjusted as described in Section 3.1.4.

3.1.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to sixty-five thousand dollars (\$65,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding the franchise.

3.1.3 Time and Method of Payment

On or before the twentieth (20th) day following the end of each calendar quarter, during the term of this Agreement, the Company shall remit to the City the Franchise Fee, as provided in Section 3.1.1. If the Franchise Fee is not paid on or before the twentieth (20th) day following the end of the calendar quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this Section 3.1.3 reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees which, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs), and in

accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

3.1.4 Adjustment to Franchise Fee

The base amount of \$160,000 described in Section 3.1.1, on which the minimum amount of Franchise Fees is determined, shall be adjusted annually each January 1st beginning January 1, 2002, based on the change in the Producer Price Index. The percentage change in the PPI that is applied to the Franchise Fee shall be equal to the percent change in PPI that is used to adjust the Company's rates as described in Section 6.4.

The City may make additional adjustments to the amount of the Franchise Fee. Such additional adjustments shall be reflected in the rates that the Company is allowed to charge and collect from customers in accordance with Article 6, such that the Company may receive the calculated Company Compensation including the amount of Franchise Fees payable to the City.

3.2 Business License

The Company, the Street Sweeping Subcontractor, and any other subcontractors, shall annually obtain a City of Imperial Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

3.3 Community Grant Funding

The company will pay to the City \$5,000 starting January 1, 2000 and annually thereafter at the anniversary of the agreement. The annual grant will be used by the City Council for funding a community grant program. This fund will be dispensed at the discretion of City Council.

3.4 Other Fees

The City shall reserve the right to set other fees, as it deems necessary. The amount, time and method of payment and adjustment process will be set similar to Section 3.1 above.

ARTICLE 4

DIRECT SERVICES

4.1 Refuse Collection Services

4.1.1 General

The work to be done by the Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve the Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

4.1.2 Single Family Dwelling Unit Refuse Collection

The Company shall Collect Refuse delivered for Collection by Single Family Dwelling Unit Customers at the curbside from Company-provided Carts, not less than once per week, or from the Company-provided Bins at a suitable location. Standard Collection service shall be automated Collection unless another method is approved by the City. The Company shall provide Refuse Collection services in accordance with the Company's Proposal (Exhibit 1).

Residents requiring special assistance, including, but not limited to, those with disabilities, the aged, or the infirm, shall have the option of placing their Cart(s) near their dwelling, visible from curbside on the day of Collection, and the Company will pick up Refuse at this location or other arrangement suitable to this category of Customer and return their Cart(s) to the same location. Authorization for residents to participate in this optional program shall come from the City and information on this option shall be provided by the Company upon request. The Company will notify all residents annually, beginning within thirty (30) days of effectiveness of this Agreement,

of this Collection option and submit, for approval, a draft notification to the City prior to distribution to customers. New customers shall be notified of this option upon requesting service.

4.1.3 Commercial and Industrial Property, and Multi-Family Dwelling Unit Refuse Collection

The Company shall collect and remove all Refuse that is placed in Carts or Bins from all Commercial and Industrial Property, and from Multi-Family Dwelling Units within the City at least once every week or more frequently if required to handle the Solid Waste stream of the Premises where the Carts or Bins are located. The Company shall provide a Container suitable to each Commercial and Industrial Property, and Multi-Family Customer for the Collection of Solid Waste. Special consideration shall be given when determining the pick up area for Commercial and Industrial Property, and/or Multi-family Customers to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated Collection location, if disputed by the customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location.

4.1.4 Temporary Bins and Rolloff Box Service

The Company shall offer Temporary Bin service and Rolloff Box service to Single and Multi-Family Dwelling Units, and Commercial and Industrial Property for the Collection of Refuse or Construction Waste. The Company shall deliver and Collect Bins and Rolloff Boxes at the direction of the customer. Temporary Bins and Rolloff Boxes shall be free of graffiti and in good repair, and must be clearly marked and identifiable as belonging to the Company. Special consideration shall be given when determining the Collection location for Bins and Rolloff Box service Customers to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated Collection location, if disputed by the customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the location of an existing Collection location is inappropriate, the City may require the customer and/or Company to relocate the Collection location.

4.1.5 Alley Sweeps

The Company shall provide alley cleanup service for all alleys within the City on an as-needed basis. This cleanup will include Collection of all illegally disposed Refuse accumulated in the alley including, but not limited to, tree branches, old furniture and appliances, and other bulky items with the exception of Hazardous Waste and Construction Waste.

The City shall determine which alleys are to receive cleanup service and notify the Company each Tuesday via fax. If a holiday falls on a Tuesday, the City will notify the Company on the following work day. The Company shall clean the designated alleys within 48 hours of receiving notice from the City.

4.1.6 City Facilities' Collection

The Company shall Collect and dispose of all Solid Waste generated at Premises owned and/or operated by the City at no additional charge to the City including non-sheltered bus stops, which are not serviced by the City's transit operator, currently MTDB. The Company shall make Collections from Containers Monday through Friday or on Saturdays following non-working holidays. Collections shall be scheduled at a time mutually agreed upon by the Company and the City. The current location of these public collections are described in Exhibit 2.

4.1.7 On-call Bulky Item Pickup

The Company shall provide bulky item pickup service to single family residential customers. Bulky items include things such as appliances and household furniture, and do not include such things as car bodies, landscape material, and construction debris. Customers will be entitled two pickups per calendar year, with a maximum of three items per pickup, for no additional charge. The Company may charge a nominal charge for bulky item pickups that exceed two pickup allowance. Customers will provide the Franchisee with 48 hours notice and the items will be collected on the customer's regular collection day.

4.1.8 Annual City-wide Cleanup Event

The Company shall provide Containers to Collect Solid Waste at one City-wide Cleanup Event per year. The City shall designate up to three centrally located sites within the City. The Company shall Collect and Dispose of the Solid Waste brought to the designated sites at no additional charge to the City or its residents. The Solid Waste collected at this event will include residential construction waste, and scrap metal waste, as well as materials defined in Article 1, Section 1.42 "Solid Waste."

4.1.9 Household Hazardous Waste

The Company shall reimburse the City for the City's actual annual cost of collection, transportation, and disposal of Household Hazardous Waste, or the City's proportionate share of the annual cost of a regional Household Hazardous Waste facility. The City shall submit to the Company on May 1st of each year an invoice supporting the City's cost or proportionate share of Household Hazardous Waste Collection. The Company shall reimburse the Company for the amount of the invoice by the following June 30.

The Company agrees that its initially proposed rates are based on the Company reimbursing the City an amount equal to \$12,000 per year. If the City's actual annual cost or annual proportionate share of Household Hazardous Waste collection exceeds or falls below the \$12,000 amount on which its initial rates are based, the City shall include the amount of any excess or shortfall in the next annual rate adjustment to reimburse the Company for any excess or reimburse the ratepayers for any shortfall.

4.1.10 City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events per year (e.g., Symphony on the Sand, etc.) as described in its Proposal. This shall include providing Containers to Collect and Dispose of all Solid Waste, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors.

4.2 Recycling Services

The minimum amount that shall be diverted through Recycling, as described in the City's SRRE, is 27% of the total waste stream by the year 2000. The goal is a minimum and it is expected that achievements in existing programs will increase as a result of the plans and programs required by the Agreement and described in the Company's Proposal. The Company agrees to make reasonable efforts to provide equipment necessary to meet the Recycling diversion goal, and that the City shall not be required to expend any funds whatsoever in regard thereto.

Not later than April 1, 2000, Company shall construct and operate a floor sorting transfer station. Company agrees to process mixed waste received at its transfer station in amounts sufficient to recover at least 5% of the refuse received, in addition to amounts from other recycling programs described in this section. The floor sorting transfer station must be operational by April 1, 2000.

4.2.1 Single Family Dwelling Unit Recycling

The Company shall Collect and remove all Recyclable Materials placed in Recycling Carts at the curbside for Single Family Dwelling Units. Recyclable Material Collection from Residential Property within the City shall be a minimum of once each week. At a minimum, Recyclable Material Collected from Residential Property shall include, but not be limited to: glass, tin, aluminum, PET, HDPE, narrow neck plastics, newspaper, mixed paper (including junk mail, phone books, and magazines), and cardboard. Recyclable Materials are to be commingled in a single type of Recycling Cart. Residential Recyclable Materials Collection shall be on the same day of the week as Refuse Collection service.

4.2.2 Commercial Recycling

The Company agrees to provide Commercial Recycling Collection service to all Commercial and Industrial Property Customers requesting it from the Company, regardless of the amount of revenue generated through charges to customers or received from the sale of Recyclable Materials. Commercial Recycling Collection programs shall be made available at a minimum for: mixed office paper; cardboard; newspaper; scrap metal including cans; glass; PET plastic; HDPE plastic; all narrow neck plastics; and scrap lumber. The Company also agrees to make programs available for all other materials for which it has established markets. The Company shall notify

all its Commercial and Industrial Property Customers each year of the availability of Commercial Recycling Collection programs. Commercial Recycling Collection shall be performed using a container type (i.e., carts, bins) mutually agreed upon by the Company and the Customer or Owner of the property. Commercial Recycling Collection shall be provided at a rate not to exceed 50% of the refuse rate for the same size of container and frequency of service.

4.2.3 Multi-Family Dwelling Unit Recycling

The Company agrees to provide Multi-Family Recycling Collection service to all Multi-Family customers requesting it from the Company, regardless of the amount of revenue generated through charges to customers or received from the sale of Recyclable Materials. The Company agrees to provide recycling carts in sufficient quantities to meet the Recycling needs of each Multi-Family complex. At a minimum, the Company shall provide at least one 90-gallon automated Cart to all Multi-Family complexes, regardless of whether they participate in Multi-Family Recycling Collection. Multi-Family Dwelling Units shall be offered Recyclables Collection of the same Recyclable Materials as Single-Family Dwelling Units. The Company also agrees to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all its Multi-Family customers each year of the availability of Multi-Family Recycling Collection programs. Multi-Family Recycling Collection may be performed using Bins if mutually agreed upon by the Company and the Customer or Owner of the property. Multi-Family Recycling Collection shall be provided at no additional charge.

4.2.4 Construction Waste Recycling

The Company shall make reasonable efforts to prevent Construction Waste that is suitable for Recycling from being taken to the landfill by transporting it to an alternate Facility where it will be processed for reuse.

4.2.5 Warning Notice

The Company shall warn customers who have non-recyclables in their recycling container. If after two sequential written warnings the container continues to be contaminated, the Company may assign a separation charge or remove the Container for Customers who fail to sort properly and segregate Recyclable

Materials. The Company shall report monthly to the City any warning notices issued. The separation charge shall be an amount agreed upon between the City and the Company.

4.2.6 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement.

4.2.7 Used Motor Oil Collection

The Company shall collect up to one (1) gallon of uncontaminated used motor oil per Single-Family Dwelling Unit per month upon receiving 48 hours notice from the Customer. Used motor oil must be placed at the curb on the same day of the week as usual Solid Waste Collection in a resealable plastic container and be clearly identified as used and/or used motor oil. The Company shall collect used motor oil in containers that have been placed at curbside at no additional charge to service recipients. The Company shall exercise all reasonable care and diligence in collecting waste motor oil so as to prevent spillage and shall, at the Company's sole expense, clean-up any such spillage within four (4) hours of notification by City.

The Company shall have the right to test used oil for contamination, and to reject contaminated used oil. If the Company rejects contaminated used oil set out for collection, it must provide the Customer with a notice explaining its reason(s) for rejecting the oil, and provide the Customer with information about the City's household hazardous waste collection program.

4.3 Yard Waste Program

4.3.1 Single Family Dwelling Unit Yardwaste Collection

The Company shall provide weekly curbside Collection of Yard Waste on the same day as Refuse Collection from the City's Single Family Dwelling Units placed in Carts. Yard Waste services shall be provided as described in the Company's Proposal.

4.3.2 Commercial & Industrial and Multi-Family Dwelling Unit Yardwaste Collection

The Company shall offer Yardwaste Collection to commercial and industrial, and multi-family customers. The Company shall notify all of its commercial and industrial, and multi-family refuse customers of the availability of Yardwaste Collection service at least once each year. For those commercial and industrial, and multi-family customers who choose to participate, the Company shall provide Yardwaste Collection using, at the customers option, either Carts or Bins. For this service, the Company shall charge the customer a monthly rate no more than 75% of the monthly rate for refuse service for the same size of container and frequency of service.

4.3.3 Christmas Tree Collection Program

The Company shall operate an annual Christmas Tree Collection program. The program shall include curbside and drop-off (if necessary) Collection and target all Single Family and Multi-Family Dwelling Units in the City. The Company shall reasonably cooperate with the City in the scheduling and operation of the Christmas tree collection program.

4.3.4 End Uses for Yard Waste

The Company shall divert Yard Waste materials Collected through curbside Collection, and Christmas tree Collection from Disposal. The Company must provide end uses for Yard Waste that maximize diversion credits for the City according to regulations established by the California Integrated Waste Management Board.

4.4 Operations

4.4.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between 5:00 P.M. and 7:00 A.M. on any day. Such Solid Waste shall be Collected, Monday through Saturday. If the regularly scheduled Collection day falls on New Year's Day, Thanksgiving Day, or Christmas Day, alternate collection shall be performed on the next Collection day. All other Collection days falling on legal holiday shall remain as scheduled.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Yard Waste within one (1) business day.

4.4.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms as described in the Company's Proposal. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement, above the number included in the Company's Proposal shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. All vehicles used by the Company in providing Refuse, Recycling, and Yard Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- 2) Vehicles used in the Collection of Refuse, Recyclable Materials, and Yard Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the San Diego County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle which the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Refuse, Recyclable Materials and Yard Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. If an item of repair is covered by a warranty, the Company shall obtain warranty performance. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation. Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dba when measured at a distance of 25 feet from the vehicle, five feet from the ground. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.

Subject to Section 9.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces, whether or not paved; associated curbs, gutters and traffic control devices; and other public improvements.

F. City Inspection Per Code. The City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including, but not limited to, California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service shall be returned to service until it conforms with, and its return to service has been approved by the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified annually according to state law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be filed with the City within thirty (30)

days after each such certification. Failure to submit the required certification shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the City Manager shall have the right to cause the Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, which decision shall be final.

4.4.3 Containers

4.4.3.1 Single Family Refuse Carts

Carts for Refuse Collection for Single-Family Dwelling Units shall be provided and distributed by the Company. The Company will offer residents a choice of three different sizes of Carts of approximately 35, 64, and 96-gallons. Residents' rates will vary depending upon the size and number of Carts they select as set forth in Section 6.2. Carts shall be specially made of rigid construction. The Company shall be responsible for Cart repair and maintenance, graffiti removal, and for replacing lost, stolen or damaged Carts within 24 hours at no additional charge to the customer or to the City.

Single-Family Dwelling Unit Customers will be allowed to change cart sizes (e.g., from a 64 gallon refuse cart to a 90 gallon refuse cart) at no charge once per calendar year. The franchisee may charge residents \$4.00 per exchange to exchange carts more than once per calendar year

4.4.3.2 Recycling and Yard Waste Containers

The Company shall provide and distribute one automated Recycling Cart as described in the Company's Proposal (Exhibit 1) and one automated 64-gallon Yard Waste Cart specially made of rigid construction at no additional cost to each Single-Family Dwelling Unit in the City. Carts shall be identified for Yard Waste or Recyclables only. Customers may request additional Recycling or Yardwaste Carts and the Company shall provide them at no additional charge. As programs continue and/or expand, the Company shall provide additional, appropriate Carts as required. The Company shall be responsible for cart repair and maintenance, graffiti removal, and replacing lost,

stolen or damaged Carts within 24 hours at no additional charge to the customer or to the City.

4.4.3.3 Commercial and Industrial Containers

The Company shall provide commercial, industrial, and multi-family dwelling unit customers with Containers for Collection of Solid Waste. The Company shall maintain its Containers in a clean, sound condition free from putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances which were designed for movement, loading, or unloading of the Container shall be maintained in good repair. The Company shall clean or replace Commercial and Industrial Containers which are used to Collect Garbage or Putrescible Waste quarterly, or more frequently if necessary, to prevent a nuisance caused by odors or vector harborage. The Company shall clean or replace all other Commercial and Industrial Containers annually, or more frequently if necessary. Graffiti shall be removed from any Container within 24 hours of request by customers. Each Container placed in the City by the Company shall have the name of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the container is placed for use.

The Company shall identify the Containers that are assigned to each commercial, industrial, and multi-family customer using a method that is acceptable to the City.

4.4.4 Litter Abatement

A. Minimization of Spills. The Company shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, the Company shall promptly clean up all such materials. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

C. Covering of Loads. The Company shall properly cover all open Rolloff Boxes during transport to the Disposal Site.

4.4.5 Personnel

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

The Company also agrees to establish and vigorously enforce an educational program which will train the Company's employees in the identification of Hazardous Waste. The Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the processing facility or Disposal Site.

The Company shall train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. The Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

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

4.4.6 Identification Required

The Company shall provide its employees, companies and Subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and Subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through the San Diego County Sheriffs Department upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

4.4.7 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or Subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for temporary bin/roll off services or the Collection, transportation, Recycling, processing, and Disposal of Solid Waste, otherwise required under this Agreement.

4.4.8 Non-Discrimination

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

4.4.9 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Single Family Dwelling Unit Customers not later than thirty (30) days prior to, any change in Single Family Dwelling Unit Collection operations which results in a change in the day on which Solid Waste Collection occurs. The Company will not permit any customer to go

more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Single Family Dwelling Unit Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or collection schedule shall require the prior approval of the City. The City may require changes in the route map or collection schedule, to improve service, to resolve complaints or for other reasons.

4.4.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note (1) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (2) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of City's Solid Waste Ordinance.

4.5 Contingency Plan

The Company shall submit to the City on or before the effective date of the Agreement, a written contingency plan demonstrating the Company's arrangements to provide vehicles and personnel and to maintain uninterrupted service during breakdowns, and in case of natural disaster or other emergency (not including a labor dispute), including the events described in Section 11.4.

4.6 Transportation of Solid Waste

The Company shall transport all Refuse collected under Section 4.1 to the Transfer Station or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.10, the Transfer Station/ shall be the ER&T Transfer Station as designated by the Company, which may change upon written notification by the Company. The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the Transfer Station or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

4.7 Processing of Solid Waste

The City, upon prior written notice to the Company, reserves the right, prior to Disposal, to direct portions of the Solid Waste stream collected under this Franchise to a Material Recovery Facility ("MRF") or Yardwaste Processing Facility for separation, reuse, and recycling of any recyclable materials contained therein. The Company agrees to assist the City by identifying loads suitable for processing in the MRF. If the City exercises this right, the City agrees to pass through any incremental change in the Company's cost by adjusting the monthly rate.

4.8 Disposal of Solid Waste

The Company shall dispose of all Solid Waste collected under Section 4.1 at the Disposal Site. Unless and until the City otherwise obtains ownership of the Solid Waste stream under Section 2.10, the disposal site the Company has designated, shall be as provided in EDCO proposal and section 2.9.4, herein.

4.9 Status of Disposal Site

Any Disposal Site utilized by the Company, shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such landfill must have been issued all permits from federal, state, regional, county and the City agencies necessary for it to operate as a Class III Sanitary Landfill and is in full regulatory compliance with all such permits.

The Disposal Site is currently authorized to accept, under its existing permit, and has sufficient uncommitted capacity to accept, all Solid Waste delivered to it by, or on behalf of, the City for the term of this Agreement plus any extensions thereto.

4.10 Annual Route Audit

At least once annually, the Company shall conduct an audit of its collection routes in the City. The annual route audit shall include the truck identity, number of accounts serviced, number and size of containers, frequency of pick-ups, as well as the weight of the refuse delivered to the Transfer Station or Disposal Site. Results of the annual route audit shall be available for review by the City or its representative.

4.11 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made, through the use of a "tag" or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to collect Hazardous Waste put out with Solid Waste. The Company shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within the City. In addition to other required notifications, if the Company observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, the Company will immediately notify the City Manager or the City Manager's designee.

C. Hazardous Waste Diversion Records. The Company shall maintain records showing the types and quantities, if any, of Hazardous Waste found in Solid Waste and which was inadvertently Collected from Customers within the City, but diverted from landfilling.

ARTICLE 5

OTHER SERVICES

5.1 Services and Customer Billing

5.1.1 Service Description

The Company shall periodically (not less than once per calendar year) prepare and distribute, subject to the direction of the City, a notice to each Customer served under this Agreement a listing of the Company's collection rates, rates for other services, annual holiday schedule, recycling programs offered, and a general summary of services required to be provided hereunder and optional service which may be furnished by the Company. Such notice shall be in a form subject to the City's approval prior to its distribution. Such notice may be included with Billings made by the Company and may also be included as part of the Company's public education plan described below in Section 5.3.1.

5.1.2 Billing

Single Family Residential Customers. In regard to the billing of Single Family customers and the collection of those bills:

The Company shall invoice Single Family Dwelling Unit Customers quarterly in advance with payment due within 60 days from the invoice date (i.e., the beginning of the quarter or the inception of service). If the invoice remains unpaid after 75 days from the invoice date, the Company shall notify the Customer at that time that the invoice is overdue and that non-payment may result in further collection action including a lien being placed on the Premises. If the invoice remains unpaid after 105 days from the invoice date, the Company shall again notify the Customer at that time that the invoice is overdue and that non-payment may result in further collection action including a lien being placed on the Premises. If the invoice remains unpaid after 120 days, the Company shall provide written notice to the Owner of the Premises that the invoice is unpaid and, unless the invoice is paid in the next 30 days, a lien may be placed on the Premises, and that the amount of the lien will include the unpaid amount plus an administrative fee.

During the period of delinquency, the Company shall make reasonable efforts to collect overdue amounts as mutually agreed between the Company and the City. Once these reasonable efforts have been made, and provided that adequate payment arrangements have not been made between the Company and the Owner of the Premises within 150 days of the invoice date, the Company may submit the total amount of the invoice to the City Manager for collection. The assignment shall include all pertinent information including the service address and assessor's parcel number, the Customer's name, the billing address (if different than the service address, the Owner's name and address, the period of time service was provided, the amount due, and certification that the billing and collection procedures described above have been fulfilled.

Upon receiving the assignment of the unpaid account, the City Manager will take action as required to secure payment from the owner including filing a lien on the Premises as approved by the City Council on those Owners that do not make full payment by the first City Council meeting of the next fiscal year (i.e., year ending June 30). When the City collects the originally invoiced amounts, it shall remit one half (1/2) of those amounts to the Company on a quarterly basis. One hundred percent (100%) of any fee, interest, penalty, administrative or lien charges shall be retained by the City.

The Company shall not discontinue providing service to any Single Family Dwelling Unit Customer due to non-payment. In the event of non-payment for refuse collection service provided to any Single Family Dwelling Unit, the Company shall continue to provide such service, subject to reimbursement as provided above.

Multi-Family and Commercial Bin Customers. In regard to the billing of Multi-Family Residential and Commercial Bin customers and the collection of those bills:

The Company shall invoice its Multi-family Dwelling Unit and Commercial and Industrial Property Bin Customers monthly in arrears with payment due within 30 days from the invoice date (i.e., the beginning of the month or the inception of service). If the invoice remains unpaid after 45 days from the invoice date, the Company shall notify the customer at that time that the invoice is overdue and that non-payment may result in further collection action including suspension of service and notification to the City Manager or his designee for appropriate action. If the invoice remains unpaid after 60 days from the invoice date, the Company shall again notify the customer at that time that the invoice is overdue and that non-payment may result in further collection action

including suspension of service and notification to the City Manager or his designee for appropriate action. If the invoice remains unpaid after 75 days, the Company shall provide written notice to the Owner of the Premises that the invoice is unpaid and, unless the invoice is paid in the next 15 days, service will be suspended and the City Manager or his designee will undertake appropriate action against the delinquent customer.

Provided that adequate payment arrangements have not been made between the Company and the Owner of the Premises within 90 days of the invoice date, the Company may suspend service to the customer upon approval of the City Manager or his designee. The City agrees to reasonably enforce Chapter 8.36 of the Imperial Beach Municipal Code. The Company shall reimburse the City for 50% of the City's legal costs for solid waste code enforcement violations reported by the Company.

Rolloff Box Customers. In regard to the billing of Rolloff Box customers and the collection of those bills:

For Single Family Dwelling Unit Customers who request Rolloff Box service, the Company shall accept major credit cards for payment. Single Family Dwelling Unit Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer with five business days of the termination of service.

For all other Rolloff Box Customers, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 or 30 days from the invoice date (i.e., the beginning of the month or the inception of service). The Company may grant credit to and take reasonable collection action towards its Rolloff Box Customers as it deems appropriate. If the Company suspends service for a Rolloff Box Customer due to non-payment, the Company shall notify the City Manager or his designee. The City agrees to reasonably enforce Chapter 8.36 of the Imperial Beach Municipal Code.

5.1.3 Review of Billings

The Company shall review its Billings to customers under Section 5.1.2. The purpose of the review is to determine that the amount which the Company is billing each customer is correct in terms of the level of service being provided to such customer by the

Company. The Company shall review customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company 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, and may be produced in a form and manner sufficient to establish the existence of customer obligations in a court of competent jurisdiction.

5.2 Customer Service

5.2.1 Office Hours

Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, exclusive of holidays. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the local office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number.

5.2.2 Complaint Documentation

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

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint.

All customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy the complaint.

All customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular the Company business hours, have access to the Company's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

5.2.3 Resolution of Customer Complaints

Disputes between the Company and its customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding. The Company shall pay the City \$100 for each City intervention in a dispute between the Company and a customer if the City reasonably deems intervention is required and the customer's dispute is valid.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this Section is intended to effect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this Section shall apply.

5.2.4 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve customer complaints.

5.3 Education and Public Awareness

5.3.1 General

The Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, the Company agrees to implement a public education plan to expand public and customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with the City in this regard. The Company

shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 3 into this Agreement.

The Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs with its bills. All public education materials shall be approved in advance by the City. The City may request the Company to perform mailing services and if so able, provide not less than thirty (30) days notice to the Company prior to the mailing date of any proposed mailing to permit the Company to make appropriate arrangements for inclusion of the City's materials. The City will provide the Company the mailers at least fifteen (15) days prior to the mailing date. The City shall normally bear the expense of reproduction and distribution of such additional information only to the extent it is clearly in excess of the Company's normal billing costs.

5.3.2 Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost, Collection and educational and publicity information promoting the goals of the City's Solid Waste program.

5.4 Waste Generation/Characterization Studies

The Company acknowledges that the City may be required to perform Solid Waste generation and Disposal characterization studies periodically to comply with AB 939 or other waste diversion requirements. The Company agrees to participate and cooperate with the City and its agents and to accomplish such studies at no additional cost the City.

5.5 Street Sweeping Services

5.5.1 Term of Agreement

The Company shall be responsible for street sweeping services throughout the term of this Agreement. References in this Agreement to "Company" shall apply equally to and include any sub-contractor of the Company.

5.5.2 Compensation

For all of the service costs which the Company is obligated to perform under the terms of this agreement, shall be included in the rate structure of the solid waste services for Single-Family Dwelling Unit, Multi-Family Dwelling Units, and Commercial and Industrial Property customers. Streets constructed after the effective date of this agreement will be added at the rate of \$15.00 per curb mile (as measured in each direction of sweeping along the curb, berm, or shoulder). New street curb miles will be added to the future rate adjustments. Additional special work of extraordinary nature including but not limited to disaster, spillage and parades will be charged at the rate of \$65.00 per hour when requested by the Public Works Director or his designee. These special work fees will be billed directly to the city and not be included in the solid waste fee structure.

5.5.3 Agreement Documents

All the documents and specifications contained or referenced herein constitute the complete scope of services for the street sweeping component and shall be included in the agreement between the parties.

5.5.4 Duty of Street Sweeping Contractor

During the term of this Agreement, the Company shall sweep public streets, parking lots and paved alleys in the City in accordance with the approved schedule. Where inclement weather, as determined by the Public Works Director, prevents adherence to the regular sweeping schedule, the sweeping areas so affected by the inclement weather shall be swept within the following one week period from the date of the scheduled sweeping without interruption of the regular sweeping schedule. The Company shall perform all extra work required by such inclement weather without additional charge.

When a holiday (as specified in the Government code of the State of California) occurs on a regularly scheduled sweeping day, said sweeping area shall be swept within two days from the regularly scheduled sweeping day without interruption in the regular sweeping schedule. Restricted Parking-Street Sweeping provisions will not be in force on official holidays whenever such holidays coincide with designated restricted parking days (1st and 3rd or 2nd and 4th Monday).

In the event the Company is prevented from completing the sweeping as provided in the schedule because of reasons other than inclement weather, it shall be required to complete the sweeping services so deferred prior to the regularly schedule date, or give the City credit for the work not so performed at the rate per curb mile specified in paragraph 5.5.2. The Company may be required to submit reports as requested by the Public Works Director concerning sweeping schedules and other related matters. This may include a list of all streets being swept with an accurate breakdown of the number of miles per street.

5.5.5 Equipment and Labor

The Company shall use and furnish at its own expense, all labor, equipment and materials necessary for the satisfactory performance of the work set forth in this Agreement. The Company shall use standard heavy street sweeping equipment as is necessary to clean the streets, parking lots and paved alleys of the City of paper, dirt, sand, rocks, and debris. The machinery and equipment used by the Company in the furtherance of this agreement shall be modern, clean and maintained in proper working condition at all times consistent with the current standards of the industry and in accordance with the specifications approved by the Public Works Director.

The Company shall supply the City with an up-to-date list of the equipment being used for the sweeping operation, including make, model, year and any other pertinent information. Nothing herein shall preclude the Company from substituting other equivalent equipment due to maintenance or other factors upon prior notice to the City. All equipment shall be available for inspection by the City upon 24 hour notification to the Company. Equipment used by the Company for work to be done under this Agreement shall not exceed four years in age, unless certification is presented by Company and approved by the Public Works Director that the equipment has been completely overhauled and/or rebuilt.

5.5.6 Schedule and Frequency

The sweeping schedule which the Company shall follow shall be in conformance with the frequency as outlined herein by the City and shall be approved by the Public Works Director. Subject to the limitations hereinafter set forth, the hours during which the sweeping shall be performed shall be at the discretion of the Company with the approval of the Public Works Director. The Company may be required to do early

morning sweeping on certain major streets and beachfront street-ends. The Company shall be responsible to notify residents of the sweeping schedule and any changes in the schedule, including holidays. No sweeping in residential areas shall be started prior to 7:00 a.m. Posted streets shall be swept during the designated days and hours.

- 1) All commercial areas including open striped and raised curb medians to be swept one (1) time per week. (19.2 curb miles) (Includes Ocean Lane).

The commercial area also includes four parking areas:

- ✓ Civic Center
- ✓ Elkwood and Seacoast (Elkwood Parking Lot)
- ✓ Seacoast and Elm (Lindley Parking Lot)
- ✓ Dunes Park

- 2) Beachfront area (posted) is to be swept two (2) times per month with sweeping conducted on alternate sides, alternate Mondays between 9:00 – 11:00 a.m. (9.6 curb miles)
- 3) Residential areas, including open striped and raised curb medians, to be swept one (1) time per month. (80.5 curb miles)
- 4) All paved (concrete or asphalt) alleys shall be swept one (1) time per month. (18.6 curb miles)

5.5.7 Disposal of Sweepings

The Company shall dispose of all refuse collected by hauling the same to legally established disposal areas. Transfer points for storage of sweepings must be approved by the Public Works Director and shall in no case be stored in the City in excess of 72 hours.

5.5.8 Water

The Company shall make all necessary arrangements through California-American Water Company to obtain and pay for water necessary for the operation of street sweeping services.

5.5.9 Additional Work

In the event the City desires to extend the sweeping program to include curbs and gutters, other streets, alleys, or parking lots constructed after the effective date of this Agreement, or in the event special sweeping is required by the City, the Company shall be paid for at the applicable curb mile rate, as specified in Paragraph 5.5.2.

5.5.10 Signs

The Company shall place signs approved by the Public Works Director on the street sweeping equipment used in the performance on the work, which signs shall be visible from both sides of the vehicles and shall read "Under Contract with the City of Imperial Beach."

5.5.11 Future Adjustments to Contract Prices and Work Quantity

Rate adjustments will be coincident with the adjustments outlined in Article 6.3.

5.5.12 Cancellation Clause

In the event that the Company refuses or fails to prosecute the scope of street sweeping services, the City shall have the right to terminate this Agreement in accordance with Article 11 herein.

ARTICLE 6

COMPANY COMPENSATION AND RATES

6.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time. The City and the Company agree that the Company will retain any proceeds from the sale of recyclable materials.

6.2 Initial Rates

The rates for the two Rate Years ending December 31, 2001 shall not exceed those set forth in Exhibit 4, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 4 are adjusted, the Company will provide the services required by this Agreement, charging no more than the maximum rates authorized by Exhibit 4, except as provided herein and in Section 6.3.

6.3 Schedule of Future Adjustments

Beginning with Rate Year 3 (January 1, 2002 to December 31, 2002) and for all subsequent Rate Years, the Company may request an annual adjustment to the maximum rates shown in Exhibit 4. The Company shall submit its request in writing, to be received by the City in person or via certified mail, by October 1 of the same year based on the method of adjustment described in Section 6.4. Failure to submit a written request by October 1, shall result in the Company waiving the right to request such an increase for the subsequent year.

6.4 Method of Adjustments

6.4.1 General

Pursuant to Section 6.3, the Company may request an annual adjustment to the maximum rates according to the method described below and the formulas shown in Exhibits 5A, 5B, and 5C, subject to review and approval of the City. All future adjustments are to be effective January 1, and shall be based on the rates in Exhibit 4.

If the Company owns or operates the Disposal Site, or the Disposal Site is owned or operated by an Affiliate of the Company, the adjustment to the disposal component of the rates shall be limited to the change in the PPI with the exception of changes in tipping fees resulting from changes in fees, taxes, or surcharges levied by governmental or regulatory agencies.

6.4.2 Single Family Dwelling Unit and Commercial and Industrial Property Customers

Maximum rates for Single Family Dwelling Unit and Commercial and Industrial Property Customers shall be adjusted according to the following procedures and the example calculations shown in Exhibits 5A and 5B.

Step One - Determine the rate revenue net of Franchise Fees by deducting the Franchise Fee portion from actual gross rate revenues for the twelve month period ending on the most recent June 30th.

Step Two - Determine the proportionate share of the disposal component and the service component of the rate revenue net of franchise fees.

Step Three - Calculate the percentage change in the Producer Price Index (PPI), and the percent change in the refuse disposal tipping fee per ton. The change in the PPI shall be for the twelve month period ending on the most recent June 30. The change in the refuse disposal tipping fee shall be based on the change between the most recent tipping fee on which rates are based and the new tipping fee; provided, however that the cumulative change in the tip fee over the term shall not exceed the change in the national Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area). This Company guarantee excludes any unforeseen government mandated fees or extraordinary cost elements over the life of this Agreement.

Step Four - Calculate the weighted percent change in maximum rates by:

- 1) Multiplying the refuse disposal component as a percent of rate revenue net of franchise fees by the percent change in the refuse disposal tipping fee;
- 2) Multiplying the service component as a percent of rate revenue net of franchise fees by the percent change in the PPI; and,
- 3) Adding the results of 1), and 2) above to determine the weighted percent change in rates.

Step Five - Multiply one plus the weighted percent change in maximum rates by the then existing maximum rates to derive the newly adjusted maximum rates.

In the event that the current percentage change in the PPI is negative, the existing rates shall not be then adjusted downward as a result. Instead, the rate adjustment shall be held in abeyance until the PPI increases in the future to the extent that the cumulative change in the PPI since the last periodic rate adjustment is positive. At that time, the service component of the rates shall be adjusted based on the cumulative percentage change in the PPI since the last periodic rate adjustment

6.4.3 Rolloff

Maximum load charges, delivery charges, and overweight charges for rolloff customers shall be adjusted according to the following procedures and the example calculations shown in Exhibit 5C.

Step One - Calculate the percent change in the PPI for the twelve month period for the most recent twelve months ending on the most recent June 30.

Step Two - Multiply one plus the percent change in PPI by the then existing maximum rates to derive the newly adjusted rolloff rates.

In the event that the current percentage change in the PPI is negative, the existing rates shall not be then adjusted downward as a result. Instead, the rate adjustment shall be held in abeyance until the PPI increases in the future to the extent that the cumulative change in the PPI since the last periodic rate adjustment is positive. At that time, the service component of the rates shall be adjusted based on the cumulative percentage change in the PPI since the last periodic rate adjustment.

6.5 Extraordinary Adjustments

The Company or the City may request an adjustment to rates at reasonable times other than that required in Section 6.3 for unusual changes in the cost of providing service under this Agreement. Such changes may include changes in components of the Gate Rate, changes in the Disposal Site requested by the City, and changes in State or local government solid waste fees and charges. Such changes shall not include changes in the market value of Recyclables from the values assumed in the Company's proposal, or inaccurate estimates by the Company of its proposed cost of operations. For each such request, the Company shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to the City with support for assumptions made by the Company in preparing the estimate. The City shall review the Company's request and, in the City's sole judgment, make the final determination on the appropriate amount of the adjustment if any.

6.6 Supporting Information

In the event that Company requests a rate adjustment on the basis of unusual changes or extraordinary increases or costs of doing business, the Company shall make its financial records available for review and inspection by those of City's employees and designated auditors or accountants necessary to analyze Company's request for the rate adjustment as described herein. Any such inspection of records shall be at company's offices, in the presence of Company's representatives, and at reasonable times. Copies of all records reviewed and inspected shall be made, at company's expense, and shall be sealed in appropriate containers for storage and safe keeping. At the time of sealing of the container a City employee and not less than one of City's auditors or accountants, shall mark the container in such a manner to assure that the contents thereof are not tampered with without the knowledge of the City or its representatives. The sealed documents shall then be secured and maintained by Company, at its sole cost and expense, for a period of not less than three (3) years following the termination of this Agreement, or any extensions thereof. City may access these records only in any of the following events: (1) with Company's consent; (2) as part of discovery in litigation involving City and/or Company (but only with an agreed upon protective order); or (3) upon court order. Any evaluation of records reviewed or inspected by City or its authorized auditors or accountants shall be in accordance with Section 8.3.4, herein, except that City shall be responsible for the cost of

hereof, City agrees that it shall use its best efforts to maintain the confidential nature of any and all records, reports or other writings prepared by or for EDCO, and provided to City, its employees or its authorized auditors or accountants, and shall consider such records, reports or writings to be records exempt from disclosure under the provisions of the California Public Records Act (California Government Code Sections 6250 et seq.) (the Public Records Act”), including but not limited to subdivision (k) of Section 6254 of the Public Records Act. Further, it is the intent of the parties to protect Company’s proprietary, confidential information and/or trade secrets by not disclosing to the general public the specifics of such information and/or trade secrets in any records, reports or other writings prepared by City, its employees or its authorized auditors for review by the City Council necessary for the review and effectuation of this Section and/or the Agreement. City agrees that the first page of any records, reports or other writings prepared by City, its employees or its authorized auditors or accountants which includes the specifics of such information and/or trade secrets, shall be clearly marked with the following legend: “Confidential, Proprietary - Notify EDCO of any public records requests for this document.” Nothing herein shall require the City to waive any right to act in a manner it feels reasonably necessary to avoid an award of attorneys’ fees and costs under 6259 of the Public Records Act.

6.7 Grants

From time to time, Federal, State, or local agencies including the City may provide to the Company grants to assist in financing qualified programs provided by the Company. The Company agrees that the Company Compensation, calculated as described in Sections 6.2 through 6.5, shall be reduced by the amount of any such grant. The City Council shall determine whether the reduction in the Company Compensation shall be: (1) passed through to those Customers designated by the City as a reduction to their rates; (2) as an offset to a rate increase calculated in accordance with Sections 6.2 through 6.5; (3) paid to the City for use as the City directs; or, (4) applied in any combination of (1) through (3).

6.8 Senior Citizen Discount

The Company shall provide a twenty percent (20%) rate discount to Single Family Dwelling Unit Customers who are: 1) 62 years of age or over, 2) considered "head of household" for income tax purposes, and, 3) have a total family annual income of under \$14,450. The discount shall be provided regardless of cart size. The Company shall include a description of the senior citizen discount rate in its annual notice to customers described in Section 5.1.1. The Company shall be responsible for administering the senior citizen discount rate program and for determining whether a Customer qualifies for the senior citizen discount rate. In the event that a Customer disputes the Company's determination, the City Manager or his designee will decide whether the Customer qualifies for the senior citizen discount, and his decision will be final.

ARTICLE 7

REVIEW OF SERVICES AND PERFORMANCE

7.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Changes recommended and/or new services to improve the City's ability to meet the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.

The reports required by this Agreement regarding customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints and the Company performance. The

City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

ARTICLE 8

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

8.1 General

The Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, the Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

8.2 Records

8.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five (5) years after the expiration of this Agreement.

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

8.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

8.2.3 Solid Waste Records

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

- a) Customer services and billing;
- b) Character, weight and volume of Solid Waste, especially as related to reducing and diverting Solid Waste.
- c) Special annual cleanup event results;
- d) Routes;
- e) Facilities, equipment and personnel used;
- f) Facilities and equipment operations, maintenance and repair;
- g) Processing and Disposal of Solid Waste;
- h) Complaints; and,
- i) Missed pick ups.

8.2.4 CERCLA Defense Records

The City views the ability to defend against CERCLA and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 8.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

8.2.5 Recycling and Yard Waste Service Records

Records shall be maintained for the City that relate to:

- a) Records described in 8.2.3, above;
- b) Recycling and Yard Waste participation - especially as related to determining participation rates and implementing programs to increase existing participation and to expand diversion (names, addresses, contacts made, etc.);
- c) Weight of each material by type of program; and,
- d) Sales - quantity sold (in tons) and sales value.

8.2.6 Disposal Records

The Company shall maintain records of Disposal of all Solid Waste Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event the Company discontinues providing Solid Waste services to the City, the Company shall provide all records of Disposal or processing of all Solid Waste Collected in the City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

8.2.7 Other Programs' Records

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

8.2.8 Cost of Audit

Should an audit by the City disclose that franchise or other fees, if any, payable by the Company were underpaid by two percent (2%) or more, or that two percent (2%) or more of the residential or commercial customers were billed incorrectly, for the period under review, the Company shall, in addition to any other remedy City might have, pay for the full cost of the City's audit.

8.2.9 Payments and Refunds

Should an audit by the City disclose that the franchise fees or other fees, if any, payable by the Company were underpaid or that customers were overcharged for the period under review, the Company shall pay to the City any underpayment of franchise fees and/or refund to the Company's customers any overcharges. Should an audit disclose that Franchise Fees were overpaid, the City shall promptly refund to the Company the amount of the overpayment. Any refunds to be made by either party shall be due and payable (30) days following the date of the audit.

8.3 Reports

8.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

- a) Determine and set rates and evaluate the efficiency of operations;
- b) Evaluate past and expected progress towards achieving AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City. The Company agrees to submit all reports on computer discs or by modem in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 8.3.2 (b) below, shall be sent to the City Manager within 5 days of request. Annual reports shall be submitted before January 31st following the reporting year.

All reports shall be submitted to:

City Manager (or designated representative)
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

8.3.2 Quarterly Reports

The information listed shall be the minimum reported for each service:

Regular Services

- a) Solid Waste Collected by the Company for each month, sorted by kind of Customer and the Disposal Site or Transfer Station used, in tons, including the tonnage diverted from floor sorting or refuse received at the transfer station.
- b) Complaint summary, for the quarter and cumulative for report year, as above. Summarized by nature of complaints on a compatible computer disc.
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Description of promotional and public education materials.
- e) CERCLA Defense records required under Section 8.2.4.
- f) Other information or reports that the City may reasonably request or require.
- g) A list of commercial customers whose bins were cleaned or replaced pursuant to Section 4.4.3.3 of this Agreement.

Recycling and Yard Waste Services

- a) Same as Regular Service, but for Recycling (by material type) and Yard Waste, including the percentage diverted by material type.
- b) Number of accounts by category shown for each month of reporting year and previous years, as above.
- c) Participation rates in same format as number of accounts.

- d) Container Distribution. Information on the number of Recycling and Yardwaste Containers distributed, including why Containers have been distributed (i.e., new Recycling customer, broken, lost, stolen, other).
- e) Materials Sales. Sales statement showing: kinds of material, quantity sold (in tons), and materials rejected for sale and an explanation for the rejection.

8.3.3 Annual Report

The Annual Report is to be essentially in the form and content of the quarterly reports, but shall also include a complete inventory of equipment used to provide all services and a list of the Company's officers and members of its board of directors.

8.3.4 Financial Report

The City may, at the City's option, request an independent accounting firm of the City's choice working at the Company's facilities to review the Company's annual audited financial reports/statements for the most recently completed fiscal year. Copies of the records reviewed by the accounting firm shall be preserved and stored in the manner described in section 6.6, herein.

Financial statements shall include a supplemental combining schedule showing the Company's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by the Company as a direct cost of service. In addition, the Company shall provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City. Copies of the records reviewed by the accounting firm shall be preserved and stored in the manner described in section 6.6, herein.

In accordance with Section 12.22 hereof, City agrees that it shall use its best efforts to maintain the confidential nature of any and all records, reports or other writings prepared by or for EDCO, and provided to City, its employees or its authorized auditors or accountants, and shall consider such records, reports or writings to be records exempt from disclosure under the provisions of the California Public Records Act (California Government Code Sections 6250 et seq.) (the Public Records Act"), including but not limited to subdivision (k) of Section 6254 of the Public Records Act. Further, it is the intent of the parties to protect Company's proprietary, confidential information and/or trade secrets by not disclosing to the general public the specifics of such information and/or trade secrets in any records, reports or other writings prepared by City, its employees or its authorized auditors for review by the City Council necessary for the review and effectuation of this Section and/or the Agreement. City agrees that the first page of any records, reports or other writings prepared by City, its employees or its authorized auditors or accountants which includes the specifics of such information and/or trade secrets, shall be clearly marked with the following legend: "Confidential, Proprietary - Notify EDCO of any public records requests for this document." Nothing herein shall require the City to waive any right to act in a manner it feels reasonably necessary to avoid an award of attorneys' fees and costs under 6259 of the Public Records Act.

8.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission or any other

federal, state or local agency, including any federal or state court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

8.5 Right to Inspect Records

The City shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement.

8.6 Costs of Review of Records and Reports

Except as otherwise provided herein, City shall be responsible for the costs and expenses of the independent accounting firm incurred in the review of Company's records and reports as provided in this Article 8. Notwithstanding the foregoing, in the event that the independent accounting firm makes findings that Company has included material false or misleading statements or representations in the report or records City, in addition to any other remedy it might have under this Agreement or by law, shall be entitled to recover the costs and expenses incurred in the hiring of the independent accounting firm for the review of the records or reports.

ARTICLE 9

INDEMNIFICATION, INSURANCE AND BOND

9.1 Indemnification

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

The Company, upon demand of the City, made by and through the City Attorney, shall protect the City and appear in and defend the Indemnitees, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

9.2 Hazardous Substances Indemnification

The Company shall indemnify, defend with counsel reasonably acceptable to the City, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any 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, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The foregoing applies only to facilities owned or operated by the Company or its Affiliates or any facility that the Company selects for Disposal of Solid Waste Collected pursuant to this Agreement.

With respect to Solid Waste collected by the Company pursuant to this Agreement which has been Disposed of at places not owned or operated by the Company, (1) the Company may cause the Owner or operator of the alternate Facility to deliver a Hazardous Substances Indemnification in a form satisfactory to the City or (2) the Company may provide Hazardous Substances indemnification, as provided above, or any combination of indemnification by the alternate Facility and a Company indemnification. Upon delivery and during the effective period of the Hazardous Substances Indemnification by an alternate Facility, such Facility shall be considered an "Indemnifying Alternative Facility."

9.3 AB 939 Indemnification

The Company agrees to indemnify and hold harmless the City from and against all fines and/or penalties imposed by the California Integrated Waste Management Board in the event the source reduction and Recycling goals or any other requirement of AB 939 are not met by the City with respect to the waste stream Collected under this Agreement. The Company's indemnification of the City shall be subject to all of the following restrictions:

- (1) The Company's obligation to indemnify the City shall not be enforceable if the Board imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to section 41000 et. seq., of the Public Resources Code.
- (2) Any Board imposed penalty based upon the City's failure to meet the solid waste diversion requirements imposed by Section 41780 et. seq., of the Public Resources Code resulting in whole or in part from the Company's breach of contract or noncompliance with any other authorization, shall be apportioned in accordance with the percentage of fault of the City and the Company. Further, the Company

shall not be liable for the indemnity obligation to the extent that the Company's breach or noncompliance resulted from the action or failure to act of the City.

- (3) No payment required or imposed pursuant to the Company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was caused by the Company's breach or noncompliance of an express obligation or requirement.

9.4 Insurance

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

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office form number GL 0002 covering Comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. The most recent editions of Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, Personal injury and property damage.
2. Automobile Liability: Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.

3. **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. **General Liability and Automobile Liability Coverages**
 - a) The Indemnitees are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. **Workers' Compensation and Employers Liability Coverage** - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.

3. **All Coverages** - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

G. Companies and Subcontractors. The Company shall include all Companies and Subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each the Company and Subcontractor. All coverages for Companies and Subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail, return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

2. The Public Liability policy shall contain endorsements in substantially the following form:

- a) "Thirty (30) days prior written notice shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

- b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."
- c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Delivery of Proof of Coverage. Simultaneously with the execution of this Agreement, the Company shall furnish the City certificates of each policy of insurance required hereunder, in form and substance satisfactory to the City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of

policies and shall have all required endorsements. If the City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to the City.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

J. Other Insurance Requirements

1. In the event any services are delegated to a Company or Subcontractor, the Company shall require such the Company or Subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the Company or Subcontractor's employees engaged in the work in accordance with this Section 9.4. The liability insurance required by this Section 9.4 shall cover all the Company or Subcontractors or the Company or Subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.4.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against the Company or any Company or Subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

9.5 Faithful Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer, in the amount of Five Hundred Thousand Dollars (\$500,000), similar to the form provided in Exhibit 7, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond

shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

9.6 Forfeiture of Performance Bond

9.6.1 Partial Forfeiture

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, the City may declare a portion of the performance bond which is necessary to recompense and make whole the City, forfeited to the City. Upon partial forfeiture of the performance bond, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration.

9.6.2 Full Forfeiture

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, and the City determines to terminate this Agreement, as provided for, the full amount of the performance bond established pursuant to Section 9.5 shall forfeit to the City.

ARTICLE 10

CITY'S RIGHT TO PERFORM SERVICE

10.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste which it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.4, the City shall pay to the Company the reasonable rental value of the equipment and facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

10.2 Temporary Possession of the Company's Property

If the City suffers an interruption or discontinuance of service (including interruptions and discontinuance due to events described in Section 11.4), the City may take possession of and use all of the Company's property described above until other suitable arrangements can be made for the provision of Solid Waste Services which may include the grant of a Franchise to another waste hauling company.

10.3 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the Company shall bill and Collect payment from all users of the above-mentioned services as described in Section 5.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the Terms of this Agreement. Such

reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

10.4 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

10.5 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article 10 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this Section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

10.6 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 11

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

11.1 Events of Default

All provisions of the Franchise and this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

A. Fraud or Deceit. If the Company practices, or attempts to practice, any fraud or deceit upon the City.

B. Insolvency or Bankruptcy. If the Company becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of the Company in a bankruptcy proceeding.

C. Failure to Maintain Coverage. If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

D. Violations of Regulation. If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company relative to this Agreement, provided that the Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred.

E. Failure to Perform. If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of the Company, including labor disputes.

F. Failure to Pay. If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand therefor, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office facilities, or any part thereof.

J. Suspension or Termination of Service. There is any termination or suspension of the transaction of business by the Company, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) consecutive days.

K. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 11.6.

The Company shall be given forty-eight (48) hours from notification by the City to cure any default arising under subsections E, F, I, J and K provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a twenty-four month period.

11.2 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Franchise and this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

11.3 Liquidated Damages

A. General. The City finds, and the Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by the City as a result of a breach by the Company of its obligations under this Agreement. The 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) that Franchised 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.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company
Initial Here 

City
Initial Here 

The Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. **Collection Reliability**

- a) For each failure to commence service to a new customer account within seven (7) days after order, which exceed five (5) such failures annually:
\$150.00
- b) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established customer account, or accounts, on the scheduled Collection day and not Collected within the period described in

this Agreement which exceeds ten (10) such failures annually:
\$150.00

- c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same customer on two (2) consecutive scheduled pickup days:
\$150.00
- d) For each failure to prepare for or properly conduct Annual Cleanups including advertising and press releases:
\$250.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually:
\$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with lids secured (in areas where customers own their containers, if applicable) which exceeds ten (10) such occurrences annually:
\$150.00
- c) For each occurrence of excessive noise or discourteous behavior: \$250.00
- d) For each failure to clean up Solid Waste spilled from Solid Waste Containers which exceeds ten (10) such failures annually:
\$150.00
- e) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually:
\$250.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a customer complaint within one (1) business day:
\$100.00
- b) For each failure to process customer complaints to the City as required by Article 5 herein:
\$500.00
- c) For each failure to carry out responsibilities for establishing service:
\$500.00

- d) For each failure to remove graffiti from containers, or to replace with containers bearing no graffiti, within 24 hours of request from City or Customers: \$150.00

4. **Timeliness of Submissions to the City**

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

- a) Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing**

- a) Each customer invoice that is not prepared in accordance with the City's approved rate schedule: \$250.00
- b) Each occurrence in which a service address is "double billed" with multiple invoices sent to different billing addresses (for examples, both a tenant and an off-site property owner are billed for service at the same location): \$250.00

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Landfill diversion at Recovery & Transfer Station**

- a) Each calendar year that the company fails to divert at least five percent (5%) from municipal solid waste received at the transfer stations will result in a penalty of \$2,000 for each one percent (1%) that falls below that five percent 5%. \$2,000 per percentage point

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

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

Prior to assessing liquidated damages, the City shall give the Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. The Company may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide the Company with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his designee shall be final.

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may proceed against the performance bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

11.4 Excuse from Performance

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

directed at the Company is not an excuse from performance and the Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

The party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

11.5 Arbitration

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies having no monetary value, or are in an amount or amounts, if combined, not exceeding \$25,000, shall be first mediated between the parties. The party making demand for mediation shall select a panel of three (3) mediators from those mediators listed and approved by the San Diego Superior Court, South Bay Judicial Branch, and the party not selecting the panel shall choose one (1) of the listed mediators who shall serve in that capacity. The parties shall share equally in the cost and expense of the mediation.

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies, having a monetary value in an amount or amounts, if combined, not exceeding \$25,000, which dispute was not resolved by mediation as required herein, shall be decided by arbitration in accordance with the rules of the American Arbitration Association then pertaining, unless the parties agree otherwise and consent, in writing, to a different method of dispute resolution, including mediation or judicial arbitration.

Any dispute arising out of or relating to this Agreement, which dispute involves claims or controversies in an amount or amounts, if combined, exceeding \$25,000, shall not

involve arbitration, or any other method of dispute resolution, unless the parties agree otherwise and consent, in writing, but shall instead be brought in a court of competent jurisdiction in the County of San Diego, State of California.

Venue for any action, including those actions subject to arbitration, shall be San Diego County. Company hereby expressly waives any right to remove any such action to a County other than San Diego County otherwise provided by California Code of Civil Code of Civil Procedure Section 394.

Notice of the demand for arbitration is to be filed in writing with the other party to this Agreement and with the American Arbitration Association. The demand is to be made within a reasonable period of time after the claim, dispute, or other matter in controversy has arisen. In no event, however, is the demand for arbitration to be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in controversy would be barred by the applicable statute of limitations.

Any award rendered by the arbitrator shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

11.6 Assurance of Performance

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

ARTICLE 12

OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

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

12.2 Compliance with Law

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

12.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

12.4 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in San Diego County.

12.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of the Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) The Company shall undertake to pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- b) The Company shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- c) The Company shall furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by

the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

12.6 Affiliated Companies

The Company's accounting records shall be maintained on a basis showing the results of the Company's operations under this Agreement separately from operations in other locations, as if the Company were an independent entity providing service only to the City. The costs and revenues associated with providing service to the City shall not be combined, consolidated or in any other way incorporated with those of other operations conducted by the Company in other locations, or with those of an Affiliate.

If the Company enters into any financial transactions with a Related Party Entity for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship shall be disclosed to the City, and in the financial reports submitted to the City. In such event, the City's rights to inspect records, and obtain financial data shall extend to such Related Party Entity or entities.

Any application for a change of ownership or a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by a resolution of the City Council, to cover the reasonable costs of all direct and indirect administrative expenses of the City, including, without limitation, consultants and attorneys, necessary to analyze the application and to reimburse the City for all its direct and indirect expenses. The applicant shall pay such invoices prior to any authorized change of ownership or franchise transfer becoming effective.

12.7 Contracting or Subcontracting

The Company shall not engage any Companies or Subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. The Company may engage a Subcontractor to perform Street Sweeping Service with prior approval by the City of both the Subcontractor and the scope of the Street Sweeping Services.

12.8 Binding on Assigns

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

12.9 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing route lists and billing information.

12.10 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

12.11 Waiver

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

12.12 The Company's Investigation

The Company has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

12.13 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

12.14 Notice

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

If to the City:

City Manager
City of Imperial Beach
825 Imperial Beach Boulevard
Imperial Beach, CA 91932

If to the Company:

Chief Operating Officer
EDCO Disposal Corporation
6670 Federal Boulevard
Lemon Grove, California 91945

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this Section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

12.15 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement

and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

12.16 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of Collection services, Disposal services, Recycling services, Yard Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.1 (Events of Default) of this Agreement.

12.17 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. The Company and any subcontractors must maintain a current City business license during the term of this Agreement.

12.18 Lease of Equipment and Facilities

The Company agrees not to enter into leases or the purchase of significant new vehicles and new facilities that materially affect the calculation of the Company Compensation without the advance, written approval of the City.

12.19 Privacy

The Company shall strictly observe and protect the rights of privacy of customers. Information identifying individual customers or the composition or contents of a customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the customer. This provision shall not be construed to preclude the Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939.

This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with customer identification or confidential information in accordance with this Section 12.19, in which case this Section 12.19 shall apply to City in the same manner to which it applies to Company.

12.20 Cooperation Following Termination

At the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, the Company covenants to cooperate fully with the City and any subsequent company to assure a smooth transition of solid waste management services. The Company's cooperation shall include, but not be limited to, providing operating records needed to service all properties covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

12.21 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

12.22 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. As is more specifically described in Sections 6.6 and 8.3.4, herein, the City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 12.19 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

12.23 Guarantee of Contractor's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit 6, EDCO Disposal Corporation, a corporation which owns all of the issued and outstanding common stock of EDCO Disposal Corporation, has agreed to guarantee the Company's

performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

12.24 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 13

MISCELLANEOUS AGREEMENTS

13.1 Entire Agreement

This Agreement, including the Exhibits, (except for Section III of Exhibit 1) represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company or its Street Sweeping Subcontractor to any additional payment whatsoever under the terms of this contract.

13.2 Section Headings

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

13.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

13.4 Interpretation

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting. If there is any conflict between any of the Exhibits and the body of this Agreement (that is, the Recitals and Articles 1 through 13, inclusive), the conflict shall be interpreted so that the terms and conditions contained in the body of the Agreement shall prevail over the conflicting terms and conditions of the Exhibit.

13.5 Agreement

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

13.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.7 Exhibits

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

13.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

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

CITY OF IMPERIAL BEACH

("City")

Signature on file

ATTEST:

CITY CLERK

Signature on file

By

MAYOR, CITY OF IMPERIAL BEACH

APPROVED AS TO FORM:

Signature on file

City Attorney

("COMPANY")

Signature on file

By:

Name:

Title: Signature on file

By:

Name:

Title: V/P CFO

EXHIBIT 1

COMPANY'S PROPOSAL

EXHIBIT 2

CITY BIN/CAN INFORMATION

City and Public Refuse Containers

| LOCATION | SERVICE |
|--|--|
| Public Works Department 495 Tenth Street | 2 ea. 3 yard refuse bins once per week |
| | 1 ea. 3 yard mixed paper bin once per week |
| | 1 ea. 40 yard rolloff refuse box once per week |
| | 1 ea. 40 yard rolloff yardwaste every 2 weeks |
| | 1 ea. 20 yard rolloff scrap metal on call |
| City Hall, 825 Imperial Beach Blvd. | 1 ea. 3 yard refuse bin three times per week |
| | 1 ea. 3 yard mixed paper bin once per week |
| Sports Park | 3 ea. 3 yard refuse bins three times per week |
| Veterans Park | 3 ea. 3 yard refuse bins three times per week |
| Street Containers (Refuse; serviced weekly) | |
| Palm Ave. & 12th St. | 1 ea. can |
| Palm Ave. & 3rd St. | 1 ea. can |
| Seacoast Drive & Palm Ave. | 2 ea. can |
| Seacoast Drive @ Pacific Sands Motel | 1 ea. can |
| Seacoast Drive & Elm Ave. | 1 ea. can |
| Seacoast Drive & Evergreen Ave. | 2 ea. can |
| Seacoast Drive north of Pier Plaza | 1 ea. can |
| Seacoast Drive @ Pier Plaza fountain | 1 ea. can |
| Seacoast Drive & Elder Ave. | 1 ea. can |
| Seacoast Drive & Elkwood Ave. | 1 ea. can |
| Seacoast Drive & Imperial Beach Blvd. | 1 ea. can |
| Imperial Beach Blvd. street end | 3 ea. can |
| Imperial Beach Blvd. & 3rd St. | 1 ea. can |
| Admiralty Way street end | 1 ea. metal can, 1 ea. concrete |
| Admiralty Way & Seacoast Drive | 1 ea. can (east side) |
| Beach Ave. street end | 1 ea. can |
| Cortez Ave. street end | 1 ea. can |
| Descanso Ave. street end | 1 ea. metal can, 1 ea. concrete |
| Seacoast Drive & Descanso Ave. | 1 ea. can |
| Seacoast Drive east of 1508 | 1 ea. can |
| Seacoast Drive east of 1560 | 1 ea. can |
| Seacoast Drive east of 1590 | 1 ea. can |
| Seacoast Drive east of 1630 | 1 ea. can |
| Seacoast Drive east of 1650 | 1 ea. can |
| Seacoast Drive east of 1690 | 1 ea. can |
| Imperial Beach Blvd. and Georgia St. | 1 ea. can |

EXHIBIT 3

**PUBLIC EDUCATION PLAN
(to be prepared by Company)**

EDCO Disposal Corporation

Public Education Implementation Plan for the City of Imperial Beach

Month Activity

June/July City of Imperial Beach chooses EDCO as franchised waste collection and recycling service provider – agreement executed.

July Begin development of Web page information for EDCO's Internet site.

Propose monthly meeting between City staff and key EDCO personnel to discuss progress of implementation schedule and to review drafts of public education pieces.

Propose installing an early link from City of Imperial Beach Web site to a new page within EDCO's site. Linked page would include:

- Welcome to Imperial Beach residents and businesses visiting EDCO's Web site.
- Overview of services to be provided.
- Implementation dates.
- Residential collection schedules.
- Guidelines for automated waste collection and yard waste recycling.
- Single-stream recycling guidelines and anti-scavenging techniques.
- Description of used oil recycling program, as well as pertinent HHW information.
- Links to waste reduction and waste prevention information.

Mid-July Begin drafting printed public education material (introduction letters, flyers, brochures) produced for commercial businesses; submit for review.

Discuss content of letter to be signed by Imperial Beach City Manager (or designee) for inclusion with initial general information flyer prepared for direct mail to commercial businesses. Information packet will include details about service transition, reference EDCO's Field Representative name and phone number and request confirmation of billing information.

Submit drafts of direct mailer and general information brochure for commercial business waste collection and recycling services.

Prepare mailing lists for direct mail information packets.

August Review drafts of commercial service direct mailer and general information brochures at monthly meeting between City staff and EDCO representatives.

Revise publications based on comments, print and distribute.

EDCO's designated Field Representative to begin meeting with commercial customers.

Mid-Aug. Activate Internet page on EDCO's Web site and, if approved, place link within City of Imperial Beach site.

Begin meeting with interested community organizations (Chamber of Commerce, Rotary, Lion's Club, etc.) to initiate community awareness about transition.

Discuss content of letter to be signed by Imperial Beach City Manager (or designee) for inclusion with initial general information flyer prepared for direct mail to multi-family property owners/managers.

Submit drafts of direct mailer and general information brochure for multi-family waste collection and recycling services.

September Review drafts of multi-family property direct mailer and general information brochures at monthly meeting between City staff and EDCO representatives.

Revise publications based on comments, print and distribute.

EDCO's designated Field Representative to begin meeting with multi-family property owners and managers.

Mid-Sept. Discuss content of letter to be signed by Imperial Beach City Manager (or designee) for inclusion with initial general information flyer prepared for direct mail to single-family residents.

Submit drafts of direct mailer and general information brochures for residential services: automated waste collection (include description of variable container

size options and senior discount program), automated yard waste, single-stream recycling, bulky item service and curbside used oil collection.

October Review drafts of residential direct mailer and general information brochures at monthly meeting between City staff and EDCO representatives.

Revise publications based on comments and print.

Prepare displays of automated collection carts with laminated service information placards. Set up at approved public facility locations: community center, outside City offices, etc.

Submit press release about upcoming service transition.

Conduct public workshops to inform residents, commercial businesses and multi-family communities about service transition and services offered.

Submit draft of residential information brochure to be included in the point of automated cart delivery packets. Includes confirmation flyer of resident's collection day.

Submit draft of driver "notice" tag covering service issues.

Submit revised text for EDCO Web site, incorporating commonly asked questions and concerns received from residents, businesses and multi-family property owners and managers through personal contact, phone inquiries and community meetings. Include color-coded map of city detailing residential service days.

November Review all general information residential, commercial/industrial and multi-family brochures and flyers produced to date, as well as residential point-of-delivery packets and driver "notice" tags, at monthly meeting between City staff and EDCO representatives.

Revise flyers and brochures – if necessary – based on comments. Print all materials for direct mailing to residents, businesses and property owners/managers.

Prepare and submit advertisement in the Imperial Beach Eagle & Times, along with a second press release, about upcoming service transition.

Mail general information brochures to area residents, businesses and multi-family property owners and managers.

Activate amendments to EDCO Web site.

December Discuss second mailing of general information brochures to residents, commercial businesses and multi-family property owners/managers at monthly meeting between City staff and EDCO representatives.

Mail general information brochures to area residents, businesses and multi-family property owners and managers.

Add information to EDCO Web site about Christmas tree recycling after January transition, as well as holiday waste prevention and reduction tips.

Mid. Dec. Submit draft of EDCO newsletter edition #34. Newsletter will include single-stream recycling program information, used oil collection information and other pertinent waste diversion articles.

Re-submit newspaper advertisement in the Imperial Beach Eagle & Times, along with a third press release, about upcoming service transition and continuation of Christmas tree recycling collection.

Jan. 2000 Discuss waste collection and recycling conversion at monthly meeting between City staff and EDCO representatives. Review need for any additional public education. Also discuss implementation of "Recycling Superstars" program.

Revise newsletter based on comments and print.

Include newsletter in first residential billing, along with an introductory letter prepared by EDCO, mailed late-January.

Ongoing Education - General

Update EDCO Web site with seasonal waste reduction and diversion tips, community events (community clean-ups, etc.) and links to pertinent information sites.

Quarterly distribution of EDCO's newsletter, *The Environmental Times*, included with customer billing statements. Each newsletter will identify a new "recycling superstar."

Continuing involvement with community organizations and schools for public presentations and tours of recycling facilities on request.

Periodic billing inserts and direct mailers covering recycling updates, used oil curbside collection, HHW programs, etc.

Free distribution of mulch made from recycled yard waste, provided on a self-load / self-haul basis, at community clean-up events.

Involvement with community organizations and events.

Involvement in, and promotion of, City's "Eco-Tourism" program.

On-Going Public Education - Details

EDCO Disposal Corporation has long recognized the importance of continual public education in support of community waste collection and recycling programs. EDCO's commitment to ensuring compliance with mandated diversion goals is demonstrated by the determined education campaign directed by the company which promotes recycling participation, educates against unlawful disposal of household toxic materials to protect the environment, and forms residents and businesses about ways to reduce and prevent waste. Much of this information is available, or can be produced, in bilingual form.

Residents and commercial businesses in each of the communities served by EDCO are informed about waste collection services, disposal regulations and recycling programs, community and environmental events (Community Clean-Ups, Earth Day, etc.) in a variety of ways:

- New customer information packets
- EDCO's community oriented Web Site
- Flyers distributed in curbside recycling bins
- School presentations & facility tours
- Attendance at community events
- EDCO's environmental newsletter
- Seasonal Web Site pages/banner scroll
- Billing inserts
- Presentations to service organizations
- Periodic recycling workshops

When introducing new collection services and/or programs within a community, EDCO Disposal Corporation develops an extensive public education program in cooperation with City staff. This public outreach is promoted in a variety of ways.

Introductory Brochure: (see examples: City of Signal Hill automated collection/single-stream recycling brochure and City of La Mesa automated waste collection and yard waste recycling brochure.)

An informative brochure (printed on recycled paper...naturally!) is produced for direct mailing to residents and businesses in order to introduce EDCO as a new service provider and/or to inform customers about amendments to existing collection services.

Press Releases: Local newspapers and community newsletters are provided with a complete description of any new services.

Community Workshops: Workshops are scheduled at community centers, such as the City of Imperial Beach Community Center (825 Imperial Beach Blvd.) and the Senior Citizens Center (1075 8th Ave.), in order to introduce and detail new services. When implementing a new program, such as single-stream recycling, a series of workshop events – 3 as requested by the City – will inform attending members of the public about all aspects of the program. Community service organizations (local chapters of the Kiwanis, Lions Club, etc.), in addition to schools, are contracted to schedule presentations.

Quarterly Newsletter: EDCO presently distributes a quarterly newsletter, the *Environmental Times*, to all residential customers in each community served by the company. Commercial businesses receive a bi-annual newsletter, the *Business Edition Environmental Times*. These publications, which are printed on recycled paper, provide regular program updates, motivate customers to participate in recycling programs, encourage waste reduction and waste prevention, promote bulky item collection programs, advertise household toxic materials collection programs such as the used oil recycling program, inform customers about less-toxic alternatives to common household products and recognize exemplary recycling participation through a “Recycling Superstars” incentive program.

EDCO’s “Local Web Site: EDCO Disposal Corporation has developed a Web Site to supplement all other public education programs. The Web Site offers 24-hour access to information important to waste collection and recycling services, community and environmental events and holiday collection schedules. Links to other environmental sites, such as the *California Integrated Waste Management Board*, the *Use Less Stuff* waste reduction Internet Site and the *America Recycles Day* home page, are posted as a resource for teachers, or for Web Surfers interested in more detailed information. Customers can also e-mail requests for information about EDCO services and programs by using the “Contact Us” page.

Rather than being a showcase of the company’s corporate/industry status, EDCO’s Web Site seeks to inform and educate customers about topics that are locally important.

Other public education programs provided to EDCO customers include:

“How-To” Brochure: EDCO produces brochures to explain participation parameters to customers. All brochures are printed on recycled paper and offer an easy to follow explanation about weekly collection programs including: household waste collection, curbside recycling, yard waste recycling, multi-family community recycling, commercial business office paper recycling, waste reduction and prevention, etc.

Service Updates: Residents and businesses are informed about changes to collection programs through a variety of methods that have been previously discussed. EDCO collection drivers also carry “reminder tags” which are placed on disposal or recycling collection containers when customers fail to follow set-out rules or place materials in an incorrect container.

Throughout the year, informational flyers are produced to promote community events, such as bulky item collection programs, regional household toxic materials and local used oil recycling programs, Christmas tree recycling information and holiday service reminders. Flyers are produced in bilingual form and are all printed on recycled paper. Informational flyers are distributed in curbside recycling containers after collection and/or are mailed to customers as a billing insert.

Public Tours of Recycling Centers: Interested members of the community – schools, community service organizations, Scout troops, etc. – can arrange to tour EDCO recycling facilities by contacting the company’s Director of Public Affairs. Tours are arranged on a flexible schedule and serve to promote recycling education and participation.

“Recycling Superstars” Program: Residential customers who are exemplary recyclers will be recognized in EDCO’s quarterly newsletter as a “Recycling Superstar” (see examples of newsletter articles, provided, recognizing EDCO’s “Recyclers of the Quarter.”)

Incentive prizes will be offered to encourage residents to participate each collection week.

Used Oil Recycling Education: EDCO distributes informational flyers on a regular basis in order to inform residents about used oil recycling programs in each community. Flyers are printed on recycled paper and are distributed in curbside recycling bins or as billing inserts. Regular articles in EDCO’s newsletter, the *Environmental Times*, promote local used oil recycling programs and encourage the use of re-refined oil.

EDOC-distributed flyers and newsletter articles have historically been a prominent source of education for past County-run household hazardous waste and used oil collection events. Data compiled by San Diego County Staff after each collection event showed that the events were will attended by residents living in cities served by EDCO, and that the

main source of notification about the event for these residents was information distributed by EDCO.

EXHIBIT 4

INITIAL RATES

City of Imperial Beach

PROPOSED SINGLE FAMILY
RESIDENTIAL RATES

| Service Type | Proposed Monthly Rate |
|---------------------------|--------------------------|
| 1 ea. 35 gallon cart | \$14.00 |
| 1 ea. 64 gallon cart | \$14.45 |
| 1 ea. 90 gallon cart | \$14.95 |
| Additional 64 gallon cart | \$3.51 |
| Additional 90 gallon cart | \$3.75 |

Note: Each customer can exchange cart size one time annually. Additional charges will be at a rate of \$4.00 per exchange.

PROPOSED COMMERCIAL CART
RATES

| Service Type | Monthly Rate |
|---------------------------------|--------------|
| 1 ea. 90 gallon commercial cart | \$14.96 |

City of Imperial Beach

PROPOSED COMMERCIAL AND
MULTI-FAMILY REFUSE BIN
RATES

| Bin Size | Bin Pickups per Week | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|----------|-------------------------|----------|----------|----------|----------|----------|----------|----------|
| 2 yard | \$69.96 | \$127.96 | \$185.96 | \$243.96 | \$301.96 | \$359.96 | \$417.96 | \$475.96 |
| 3 yard | \$79.96 | \$145.96 | \$211.96 | \$277.96 | \$343.96 | \$409.96 | \$475.96 | \$541.96 |
| 4 yard | \$99.96 | \$183.96 | \$267.96 | \$351.96 | \$435.96 | \$519.96 | \$603.96 | \$691.96 |

City of Imperial Beach

RECYCLING BIN RATES

| Bin Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|----------|---------|---------|----------|----------|----------|----------|----------|
| 2 yard | \$34.03 | \$58.45 | \$82.86 | \$107.27 | \$131.68 | \$156.10 | \$180.51 |
| 3 yard | \$38.89 | \$66.67 | \$94.44 | \$122.22 | \$150.00 | \$177.78 | \$205.56 |
| 4 yard | \$48.62 | \$84.02 | \$119.40 | \$154.76 | \$190.12 | \$225.48 | \$260.84 |

City of Imperial Beach

YARDWASTE BIN RATES

| Bin Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|----------|---------|----------|----------|----------|----------|----------|----------|
| 2 yard | \$52.47 | \$95.97 | \$139.47 | \$182.97 | \$226.47 | \$269.97 | \$313.47 |
| 3 yard | \$59.97 | \$109.47 | \$158.97 | \$208.47 | \$257.97 | \$307.47 | \$356.97 |
| 4 yard | \$74.97 | \$137.97 | \$200.97 | \$263.97 | \$326.97 | \$389.97 | \$452.97 |

Roll off rate

| | |
|--------------------------------|----------|
| Standard roll off charge | \$122.22 |
| Delivery or relocation charges | \$35.00 |
| Disposal Fee per ton | \$40.00 |

EXHIBIT 5

RATE ADJUSTMENT FORMULA

EXHIBIT 5A
Example Rate Adjustment - Single Family Residential Rates

Step One: Deduct franchise fees from gross rate revenue

| Revenue Component (including Franchise Fees) | Annual Amount (a) | Percent of Gross Revenue Including Franchise Fees |
|---|-------------------|---|
| Actual Gross Single Family Rate Revenue | \$ 5,000,000 | 100.0% |
| Actual Single Family Franchise Fees | <u>500,000</u> | <u>10.0%</u> |
| Actual Single Family Rate Revenue Net of Franchise Fees | \$ 4,500,000 | 90.0% |

Step Two: Determine disposal expense and service revenue as a percent of actual rate revenue net of Franchise Fees

| Revenue Component (net of Franchise Fees) | Annual Amount (a) | Percent of Rate Revenue Net of Franchise Fees |
|---|-------------------|---|
| Actual Single Family Rate Revenue Net of Franchise Fees (b) | \$ 4,500,000 | 100.0% |
| Less: Actual Single Family Refuse Disposal Expense | <u>1,300,000</u> | <u>28.9%</u> |
| Actual Single Family Service Revenue | \$ 3,200,000 | 71.1% |

Step Three: Calculate percentage change in adjustment factors

| Adjustment Factor | Old | New | Percent Change |
|------------------------------|---------|---------|----------------|
| Disposal Tipping Fee per Ton | \$24.00 | \$28.00 | 16.7% |
| Producer Price Index | 130.0 | 135.0 | 3.9% |

Step Four: Calculate weighted percentage change in single family rates

| Components of Actual Revenue | Component Weight (c) | Percent Change (d) | Weighted Rate Adjustment |
|------------------------------|----------------------|--------------------|--------------------------|
| Refuse Disposal | 28.9% | 16.7% (g) | 4.8% |
| Service | <u>71.1%</u> | <u>3.9%</u> | <u>2.8%</u> |
| Total | 100.0% | N/A | 7.6% |

Step Five: Apply weighted percentage change to single family rates

| Service | Current Monthly Rate (e) | Weighted Rate Adjustment (f) | Adjusted Monthly Rate |
|----------------------------------|--------------------------|------------------------------|-----------------------|
| 35 gallon cart | \$ 10.00 | 7.6% | \$ 10.76 |
| 64 gallon cart | 13.00 | 7.6% | 13.99 |
| 90 gallon cart | 16.00 | 7.6% | 17.22 |
| Additional 64 gallon refuse cart | 6.00 | 7.6% | 6.46 |
| Additional 90 gallon refuse cart | \$ 9.00 | 7.6% | \$ 9.68 |

- (a) For the twelve months ending on the date six months prior to the effective date of the rate adjustment. For example, for a rate adjustment effective January 1, 2002, the revenue used should be for the twelve months ending June 30, 2001
- (b) From Step One above. Note that basis for determining percent of revenue is different from that in Step One
- (c) From percent of revenue net of franchise fees in Step Two
- (d) From percent change in Step Three
- (e) The weighted rate adjustment should be applied to the total rate, including franchise fee portion of the rate
- (f) From weighted rate adjustment in Step Four
- (g) The total allowed change in the refuse disposal component shall not exceed the cumulative change in the Consumer Price Index (All Urban Consumers for Los Angeles-Anaheim-Riverside area) from contract inception at any time during the term and shall be separately tracked.

EXHIBIT 5B

Example Rate Adjustment – Commercial and MFR Bin Rates

Step One: Deduct franchise fees from gross rate revenue

| Revenue Component (including Franchise Fees) | Annual Amount (a) | Percent of Gross Revenue Including Franchise Fees |
|--|-------------------|---|
| Actual Gross Commercial and MFR Rate Revenue | \$ 4,000,000 | 100.0% |
| Actual Commercial and MFR Franchise Fees | <u>400,000</u> | <u>10.0%</u> |
| Actual Commercial and MFR Rate Revenue Net of Franchise Fees | \$ 3,600,000 | 90.0% |

Step Two: Determine disposal expense and service revenue as a percent of total actual rate revenue

| Revenue Component (net of Franchise Fees) | Annual Amount (a) | Percent of Rate Revenue Net of Franchise Fees |
|---|-------------------|---|
| Actual Commercial and MFR Bin Revenue Net of Franchise Fees (b) | \$ 3,600,000 | 100.0% |
| Less: Actual Commercial and MFR Bin Refuse | <u>1,000,000</u> | <u>27.8%</u> |
| Actual Commercial and MFR Bin Service Revenue | \$ 2,600,000 | 72.2% |

Step Three: Calculate percentage change in adjustment factors

| Adjustment Factor | Old | New | Percent Change |
|------------------------------|----------|----------|----------------|
| Disposal Tipping Fee per Ton | \$ 24.00 | \$ 28.00 | 16.7% |
| Producer Price Index | 130.0 | 135.0 | 3.9% |

Step Four: Calculate weighted percentage change in commercial and MFR bin rates

| Components of Actual Revenue | Component Weight (c) | Percent Change (d) | Weighted Rate Adjustment |
|------------------------------|----------------------|--------------------|--------------------------|
| Refuse Disposal | 27.8% | 16.7% (g) | 4.6% |
| Service | <u>72.2%</u> | <u>3.9%</u> | <u>2.8%</u> |
| Total | 100.0% | N/A | 7.4% |

Step Five: Apply weighted percentage change to commercial and MFR bin rates

| Service | Current Monthly Rate (e) | Weighted Rate Adjustment (f) | Adjusted Monthly Rate |
|--------------------------------------|--------------------------|------------------------------|-----------------------|
| 1 ea 3 yard bin once per week | \$ 75.00 | 7.4% | \$ 80.55 |
| 1 ea 3 yard bin twice per week | 135.00 | 7.4% | 144.99 |
| 1 ea 3 yard bin three times per week | 195.00 | 7.4% | 209.43 |
| 1 ea 3 yard bin four times per week | 255.00 | 7.4% | 273.87 |
| 1 ea 3 yard bin five times per week | 315.00 | 7.4% | 338.31 |
| 1 ea 3 yard bin six times per week | \$ 375.00 | 7.4% | \$ 402.75 |

- (a) For the twelve months ending on the date six months prior to the effective date of the rate adjustment. For example, for a rate adjustment effective January 1, 2002, the revenue used should be for the twelve months ending June 30, 2001
- (b) From Step One above. Note that basis for determining percent of revenue is different from that in Step One
- (c) From percent of revenue net of franchise fees in Step Two
- (d) From percent change in Step Three
- (e) The weighted rate adjustment should be applied to the total rate, including franchise fee portion of the rate
- (f) From weighted rate adjustment in Step Four
- (g) The total allowed change in the refuse disposal component shall not exceed the cumulative change in the Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside area) from contract inception at any time during the term and shall be separately tracked.

EXHIBIT 5C

Example Rate Adjustment - Rolloff Rates

Step One: Calculate percentage change in Producer Price Index

| Adjustment Factor | Old | New | Percent Change |
|----------------------|-------|-------|----------------|
| Producer Price Index | 130.0 | 135.0 | 3.9% |

Step Two: Apply percentage change in Producer Price Index to rolloff rates

| Service | Current Monthly Rate | Rate Adjustment (a) | Adjusted Rate |
|---|----------------------|---------------------|---------------|
| Standard rolloff charge per load | \$ 100.00 | 3.9% | \$ 103.90 |
| Compactor charge per load | 150.00 | 3.9% | 155.85 |
| Delivery or relocation charge | 50.00 | 3.9% | 51.95 |
| Charge per ton for each ton over weight limit | \$ 25.00 | 3.9% | \$ 25.98 |

(a) Percent change in

EXHIBIT 6

CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 1999.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. _____, hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by _____, which is owned by _____ (Guarantor). Guarantor owns all of the issued and outstanding stock of _____.
- B. Owner and the CITY have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice the Guarantor, performance or compliance herewith is waived; (b) any other of any provision of its Agreement indemnification with respect to Owner's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; or (c) any assignment of the Agreement is effected which does not require the City's approval.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No

notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agents for service of process in California:

With a copy by certified mail to:

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have not effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

EXHIBIT 7

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of _____ (\$_____) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 1999

a California Corporation

SURETY

By: _____

(PRINCIPAL)

(SEAL)

By: _____

(ATTORNEY IN FACT)

(SEAL)

NOTARY CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____
_____, known to me to be the _____
_____ of the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

Notary Public

My Commission Expires:

EXHIBIT 9

STREET SWEEPING AGREEMENT

AGREEMENT FOR STREET SWEEPING SERVICES

This Agreement, made and entered into this _____ day of _____, in the year 1999 by and between EDCO Disposal Corporation, a California corporation, hereinafter designated as "EDCO", and California Street Maintenance, Inc., a California corporation, hereinafter designated as "Contractor".

RECITALS

A. EDCO and the City of Imperial Beach are entering into an Agreement for Integrated Solid Waste Management Services, including street sweeping services. Accordingly, EDCO has agreed to provide street sweeping services for the City of Imperial Beach through the use of its own forces or a subcontractor acceptable to the City.

B. Based upon its past performance, Contractor has demonstrated to EDCO that it is an appropriate entity to provide such street sweeping services in the City of Imperial Beach.

NOW therefore, in consideration of the performance by the parties of the covenants and conditions to be performed by each of the parties as herein provided, EDCO and Contractor do agree as follows:

1. Documents The complete Contract between the parties shall consist of, and include the following documents all of which are hereby incorporated herein by reference and made a part hereof as though fully set out herein:

- a. This Agreement;
- b. The Agreement between City of Imperial Beach and EDCO - Exhibit A
- c. The Proposal made by Contractor to EDCO, dated March 17, 1999 - Exhibit B

2. General Provisions Regarding Removal of Debris from Streets The Contractor agrees to furnish all tools, equipment, apparatus, facilities, expertise, labor and materials, and perform all work necessary to sweep in a good and workmanlike manner, the entire City of Imperial Beach Street System as defined in the Agreement between the City of Imperial Beach and EDCO with the provisions and frequency set forth therein. It is understood by the parties that all said labor, expertise, services, materials and equipment shall be furnished, and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of EDCO and/or inspectors or representatives from the City of Imperial Beach.

3. Term The initial term of Agreement shall be January 1, 2000 to December 31, 2006, unless sooner terminated or extended pursuant to the provisions of this Agreement. EDCO may, at its sole discretion, elect to extend the contract under the same terms and conditions of the Agreement for up to twenty four (24) months in periods of at least twelve (12) months each.

4. Compensation As payment for said labor, expertise, services, materials and equipment, in accordance with all the provisions of this Agreement, Contractor shall be entitled to receive and shall be paid by EDCO, and Contractor agrees to accept in full satisfaction thereof the amounts due for services rendered based on the provisions this Agreement and Exhibit B relating to price and payment. The Contractor shall submit an invoice to EDCO by the tenth (10th) business day of each month for the street sweeping services rendered in the preceding month. EDCO shall make payment to Contractor by the tenth (10th) day of the succeeding month. Annual payment shall be divided into twelve (12) equal payments. Invoices shall be delivered to:

Chief Operating Officer
EDCO Disposal Corporation
6670 Federal Blvd.
Lemon Grove, CA 91945

5. Insurance Coverage Contractor is required to maintain the insurance coverage identified in the Agreement between the City of Imperial Beach and EDCO for Integrated Solid Waste Management Services. In addition, EDCO, its Officers, shareholders and agents are to be named as additional insured by endorsement to these insurance policies.

6. Subcontractors Subcontractors shall not be permitted in conjunction with this Agreement.

7. Heirs and Successors The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators, and assigns of the Contractor.

8. Assignment This Agreement shall not be transferred, sold, hypothecated, sublet, or assigned by Contractor, nor shall Contractor allow or cause any of the rights and privileges herein to be hypothecated, leased, assigned, sold, sublet, or transferred, either in whole or in part, or cause or allow title hereto, either legal or equitable, or any right, interest, or property herein, to pass or vest in any person or entity, except Contractor, either by action or inaction of Contractor or by operation of law, without the prior written consent of EDCO. Any attempt by Contractor to transfer or in any manner otherwise assign this Agreement, or any interest herein, without the consent of EDCO shall be null and void and shall give rise to EDCO's right, but not obligation to terminate this Agreement.

9. Termination In addition to the termination provisions outlined in the Agreement between the City of Imperial Beach and EDCO for Integrated Solid Waste Management Services, in the event that EDCO is no longer contracted by the City of Imperial Beach to provide street sweeping services, EDCO will have the sole and absolute right to immediately terminate this Agreement.

10. Notices No modification or change in this Agreement will be recognized unless accomplished by a written supplement hereto. Notices required to be given shall be addressed as follows:

CONTRACTOR: Mr. Rick Anderson
 Manager of Operations
 California Street Maintenance, Inc.
 1918 W. 169th Street
 Gardena, CA 90247

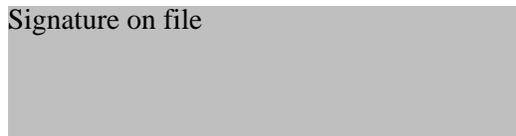
EDCO: Mr. Edward Burr
 President
 EDCO Disposal Corporation
 6670 Federal Blvd.
 Lemon Grove, CA 91945

CITY, if required: Public Works Director
 City of Imperial Beach
 825 Imperial Beach Blvd.
 Imperial Beach, CA 91932

11. Corporate Resolution Concurrent with the execution of this Agreement, Contractor shall provide EDCO with a corporate resolution of its Board of Directors demonstrating the authority for the undersigned to enter and lawfully bind it to this Agreement.

Entered into by and between,

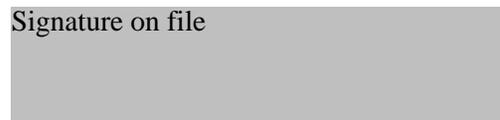
Signature on file



Mr. Rick Anderson
 Manager of Operations
 California Street Maintenance, Inc.

Dated 10-14-99

Signature on file



Mr. Edward Burr
 President
 EDCO Disposal Corporation

Dated 10-15-99

AGREEMENT FOR STREET SWEEPING SERVICES

This Agreement made and entered into this ____ day of _____, in the year 1999 by and between EDCO Disposal Corporation, a California corporation, hereinafter designated as "EDCO", and California Street Maintenance, Inc., a California corporation, hereinafter designated as "Contractor".

RECITALS

A. EDCO and the City of Imperial Beach are entering into an Agreement for Integrated Solid Waste Management Services, including street sweeping services. Accordingly, EDCO has agreed to provide street sweeping services for the City of Imperial Beach through the use of its own forces or a subcontractor acceptable to the City.

B. Based upon its past performance, Contractor has demonstrated to EDCO that it is an appropriate entity to provide such street sweeping services in the City of Imperial Beach.

NOW therefore, in consideration of the performance by the parties of the covenants and conditions to be performed by each of the parties as herein provided, EDCO and Contractor do agree as follows:

1. Documents. The complete Contract between the parties shall consist of, and include the following documents all of which are hereby incorporated herein by reference and made a part hereof as though fully set out herein:
 - a. This Agreement;
 - b. The Agreement between City of Imperial Beach and EDCO - Exhibit A
 - c. The Proposal made by Contractor to EDCO, dated May 17, 1999 - Exhibit B
2. General Provisions Regarding Removal of Debris from Streets. The Contractor agrees to furnish all tools, equipment, apparatus, facilities, expertise, labor and materials, and perform all work necessary to sweep in a good and workmanlike manner, the entire City of Imperial Beach System as defined in the Agreement between the City of Imperial Beach and EDCO with the provisions and frequency set forth therein. It is understood by the parties that all said labor, expertise, services, materials, and equipment shall be furnished, and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of EDCO and/or inspectors or representatives from the City of Imperial Beach.

3. Term. The initial term of Agreement shall be January 1, 2000 to December 31, 2000, unless sooner terminated or extended pursuant to the provisions of this Agreement. EDCO may, at its sole discretion, elect to extend the contract under the same terms and conditions of the Agreement for up to twenty-four (24) months in periods of at least twelve (12) months each.

4. Compensation. As payment for said labor, expertise, services, materials and equipment, in accordance with all the provisions of this Agreement. Contractor shall be entitled to receive and shall be paid by EDCO, and Contractor agrees to accept in full satisfaction thereof the amounts due for services rendered based on the provisions this Agreement and Exhibit B relating to price and payment. The Contractor shall submit an invoice to EDCO by the tenth (10th) business day of each month for the street sweeping services rendered in the preceding month. EDCO shall make payment to Contractor by the tenth (10th) day of the succeeding month. Annual payment shall be divided into twelve (12) equal payments. Invoices shall be delivered to:

Chief Operating Officer
EDCO Disposal Corporation
6670 Federal Blvd.
Lemon Grove, CA 91945

5. Insurance Coverage. Contractor is required to maintain the insurance coverage identified in the Agreement between the City of Imperial Beach and EDCO for Integrated Solid Waste Management Services. In addition, EDCO, its Officers, shareholders and agents are to be named as additional insured by endorsement to these insurance policies.

6. Subcontractors. Subcontractors shall not be permitted in conjunction with this Agreement.

7. Heirs and Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators, and assigns of the Contractor.

8. Agreement. This Agreement shall not be transferred, sold, hypothecated, sublet, or assigned by Contractor, nor shall Contractor allow or cause any of the rights and privileges herein to be hypothecated, leased, assigned, sold, sublet, or transferred, either in whole or in part, or cause or allow title hereto, either legal or equitable, or any right, interest, or property herein, to pass or vest in any person or entity, except Contractor, either by action or inaction of Contractor or by operation of law, without the prior written consent of EDCO. Any attempt by Contractor to transfer or in any manner otherwise assign this Agreement, or any interest herein, without the consent of

EDCO shall be null and void and shall give rise to EDCO's right, but not obligation to terminate this Agreement.

9. Termination. In addition to the termination provisions outlined in the Agreement between the City of Imperial Beach and EDCO for Integrated Solid Waste Management Services, in the event that EDCO is no longer contracted by the City of Imperial Beach to provide street sweeping services, EDCO will have the sole and absolute right to immediately terminate this Agreement.
10. Notices. No modification or change in this Agreement will be recognized unless accomplished by a written supplement hereto. Notices required to be given shall be addressed as follows:

CONTRACTOR: Mr. Rich Anderson
Manager of Operations
California Street Maintenance, Inc.
1918 W. 169th Street
Gardena, CA 90247

EDCO: Mr. Edward Burr
President
EDCO Disposal Corporation
6670 Federal Blvd.
Lemon Grove, CA 91945

CITY, if required: Public Works Director
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

11. Corporate Resolution. Concurrent with the execution of this Agreement, Contractor shall provide EDCO with a corporate resolution of its Board of Directors demonstrating the authority for the undersigned to enter and lawfully bind it to this Agreement.

Entered into by and between,

Mr. Rick Anderson
Manager of Operations
California Street Maintenance, Inc.
Dated _____

Mr. Edward Burr
President
EDCO Disposal Corporation
Dated _____

AGREEMENT FOR STREET SWEEPING SERVICES

This Agreement made and entered into this ____ day of _____, in the year 1999 by and between EDCO Disposal Corporation, a California corporation, hereinafter designated as "EDCO", and California Street Maintenance, Inc., a California corporation, hereinafter designated as "Contractor".

RECITALS

A. EDCO and the City of Imperial Beach are entering into an Agreement for Integrated Solid Waste Management Services, including street sweeping services. Accordingly, EDCO has agreed to provide street sweeping services for the City of Imperial Beach through the use of its own forces or a subcontractor acceptable to the City.

B. Based upon its past performance, Contractor has demonstrated to EDCO that it is an appropriate entity to provide such street sweeping services in the City of Imperial Beach.

NOW therefore, in consideration of the performance by the parties of the covenants and conditions to be performed by each of the parties as herein provided, EDCO and Contractor do agree as follows:

1. Documents. The complete Contract between the parties shall consist of, and include the following documents all of which are hereby incorporated herein by reference and made a part hereof as though fully set out herein:
 - a. This Agreement;
 - b. The Agreement between City of Imperial Beach and EDCO - Exhibit A
 - c. The Proposal made by Contractor to EDCO, dated May 17, 1999 - Exhibit B
2. General Provisions Regarding Removal of Debris from Streets. The Contractor agrees to furnish all tools, equipment, apparatus, facilities, expertise, labor and materials, and perform all work necessary to sweep in a good and workmanlike manner, the entire City of Imperial Beach System as defined in the Agreement between the City of Imperial Beach and EDCO with the provisions and frequency set forth therein. It is understood by the parties that all said labor, expertise, services, materials, and equipment shall be furnished, and said work performed and completed by the Contractor as an independent contractor, subject to the inspection and approval of EDCO and/or inspectors or representatives from the City of Imperial Beach.

3. Term. The initial term of Agreement shall be January 1, 2000 to December 31, 2000, unless sooner terminated or extended pursuant to the provisions of this Agreement. EDCO may, at its sole discretion, elect to extend the contract under the same terms and conditions of the Agreement for up to twenty-four (24) months in periods of at least twelve (12) months each.

4. Compensation. As payment for said labor, expertise, services, materials and equipment, in accordance with all the provisions of this Agreement. Contractor shall be entitled to receive and shall be paid by EDCO, and Contractor agrees to accept in full satisfaction thereof the amounts due for services rendered based on the provisions this Agreement and Exhibit B relating to price and payment. The Contractor shall submit an invoice to EDCO by the tenth (10th) business day of each month for the street sweeping services rendered in the preceding month. EDCO shall make payment to Contractor by the tenth (10th) day of the succeeding month. Annual payment shall be divided into twelve (12) equal payments. Invoices shall be delivered to:

Chief Operating Officer
EDCO Disposal Corporation
6670 Federal Blvd.
Lemon Grove, CA 91945

5. Insurance Coverage. Contractor is required to maintain the insurance coverage identified in the Agreement between the City of Imperial Beach and EDCO for Integrated Solid Waste Management Services. In addition, EDCO, its Officers, shareholders and agents are to be named as additional insured by endorsement to these insurance policies.

6. Subcontractors. Subcontractors shall not be permitted in conjunction with this Agreement.

7. Heirs and Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators, and assigns of the Contractor.

8. Agreement. This Agreement shall not be transferred, sold, hypothecated, sublet, or assigned by Contractor, nor shall Contractor allow or cause any of the rights and privileges herein to be hypothecated, leased, assigned, sold, sublet, or transferred, either in whole or in part, or cause or allow title hereto, either legal or equitable, or any right, interest, or property herein, to pass or vest in any person or entity, except Contractor, either by action or inaction of Contractor or by operation of law, without the prior written consent of EDCO. Any attempt by Contractor to transfer or in any manner otherwise assign this Agreement, or any interest herein, without the consent of

EDCO shall be null and void and shall give rise to EDCO's right, but not obligation to terminate this Agreement.

9. Termination. In addition to the termination provisions outlined in the Agreement between the City of Imperial Beach and EDCO for Integrated Solid Waste Management Services, in the event that EDCO is no longer contracted by the City of Imperial Beach to provide street sweeping services, EDCO will have the sole and absolute right to immediately terminate this Agreement.
10. Notices. No modification or change in this Agreement will be recognized unless accomplished by a written supplement hereto. Notices required to be given shall be addressed as follows:

CONTRACTOR: Mr. Rich Anderson
Manager of Operations
California Street Maintenance, Inc.
1918 W. 169th Street
Gardena, CA 90247

EDCO: Mr. Edward Burr
President
EDCO Disposal Corporation
6670 Federal Blvd.
Lemon Grove, CA 91945

CITY, if required: Public Works Director
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932

11. Corporate Resolution. Concurrent with the execution of this Agreement, Contractor shall provide EDCO with a corporate resolution of its Board of Directors demonstrating the authority for the undersigned to enter and lawfully bind it to this Agreement.

Entered into by and between,

Mr. Rick Anderson
Manager of Operations
California Street Maintenance, Inc.
Dated _____

Mr. Edward Burr
President
EDCO Disposal Corporation
Dated _____



City of Imperial Beach

AMENDMENT TO INTEGRATED SOLID WASTE MANAGEMENT SERVICES AGREEMENT WITH EDCO DISPOSAL CORPORATION

This agreement is entered into and effective the 20th day of November, 2002, by the City of Imperial Beach ("the City") and EDCO Disposal Corporation ("EDCO").

Section 1. RECITALS.

On August 4, 1999, the City adopted Resolution No. 99-5180, approving an agreement with EDCO for integrated solid waste management services ("the Agreement"). This amendment is executed in accordance with Section 13.5 of the agreement.

Section 2. TERM OF AGREEMENT.

A. Section 2.4 of the agreement is amended to read as follows:

"The term of this Agreement shall commence on January 1, 2003, and expire December 31, 2007; provided, however, that commencing January 1, 2004, and every year thereafter, automatic one-year extensions shall be applied to said Agreement, so that the term of the Agreement shall remain between four (4) and five (5) years.

"Should either party desire that said automatic one-year renewal and extension provision be terminated, such party may give the other written notice of such termination within thirty (30) days prior to January 1 of any year of the Agreement. Such notice will terminate the automatic one-year renewal and extension provision, and the Agreement shall remain in effect for the balance of the term then outstanding."

B. Section 2.5 of the agreement is repealed.

Section 3. DEFERMENT OF FEE ADJUSTMENT.

The requirement in Section 3.1.4 of the agreement, that the franchise fee be adjusted annually on January 1 of each year, does not apply to January 1, 2003. The unforeseen state-mandated tipping fee imposed by the California Integrated Waste Management Board and applicable changes in the Producer Price Index will be incorporated into a planned fee adjustment, which will become effective January 1, 2004.

Section 4. ENTIRE AGREEMENT.

This document sets forth the entire understanding of the parties regarding the term of the agreement and the deferment of the fee adjustment for January 1, 2003. All other agreements and understandings are superseded and do not affect this document in any way.

APPROVED AS TO CONTENT:

CITY OF IMPERIAL BEACH

Signature on file

Matt Rodriguez, City Manager

APPROVED AS TO FORM:

Signature on file

City Attorney

EDCO DISPOSAL CORPORATION

Signature on file

Edward Burr, President

Signature on file

Sandra Burr, Vice-President

**AMENDMENT NO. 2 TO INTEGRATED SOLID WASTE MANAGEMENT
SERVICES AGREEMENT WITH
EDCO DISPOSAL CORPORATION**

This Amendment No. 2 is entered into by the City of Imperial Beach ("City") and EDCO Disposal Corporation ("EDCO") (collectively "Parties") and effective the ~~26th~~ day of March, 2008.

RECITALS

A. The City entered into a franchise agreement with EDCO for integrated solid waste management services ("the Agreement") on August 4, 1999.

B. Amendment No. 1 to the Agreement effective the 20th day of November 2002 modified the term of the Agreement as authorized in Resolution 2002-5713.

C. The Parties are executing this Amendment No. 2 to the Agreement in accordance with Resolution 2007-6544, which authorized a change in the Rate Year period from calendar year (January 1 to December 31) to fiscal year (July 1 to June 30).

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

Section 1. The definition of "Rate Year" in Section 1.35 of the Agreement is amended to read as follows:

After January 1, 2008, "Rate Year" means the period July 1 to June 30.

Section 2. Article 6, Company Compensation and Rates, Section 6.3, Schedule of Future Adjustments, of the Agreement is amended to add the following text after the existing paragraph:

Notwithstanding the foregoing paragraph, beginning with Rate Year 9 (July 1, 2008 to June 30, 2009) and for all subsequent Rate Years the Company may request an annual adjustment to the maximum rates shown in Exhibit 4 based on the State Fiscal Year time periods. The Company shall submit its request in writing, to be received by the City in person or via certified mail, by March 1, of the same year based on the method of adjustment described in Section 6.4. Failure to submit a written request by the March 1 of the current Rate Year, shall result in the Company waiving the right to request such an increase for the subsequent Rate Year.

If City determines that a public hearing is required, the Company shall, at its sole expense, provide written notices by mail of the proposed rate increase to all affected property owners (typically Customers). The notice of the proposed rate increase shall specify the amount of the proposed fee or charge, the basis upon

which it is calculated, the reason for the increase, and the date, time, and location of the public hearing on the proposed rate increase. The Company may include the costs for providing the required notices in its rate adjustment request, based on the method of adjustment in Section 6.4.

Section 3. The first paragraph of Section 6.4.1, General, of the Agreement is amended to read as follows, with deletions shown in strikeout and additions shown in underlined text:

Pursuant to Section 6.3, the Company may request an annual adjustment to the maximum rates according to the method described below and the formulas shown in Exhibits 5A, 5B, and 5C, ~~subject to review and approval of the City.~~ Adjustment to the maximum rates is subject to review by the City and contingent upon the absence of majority protest by affected property owners at the public hearing held in accordance with Section 6.3. All future adjustments are to be effective January 1, ~~except after January 1, 2008, all adjustments are to be effective July 1,~~ and shall be based on the rates in Exhibit 4.

Section 4. Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended as follows:

A. Add the underlined text to Step One: “Determine the rate revenue net of Franchise Fees by deducting the Franchise Fee portion from actual gross rate revenues for the twelve month period ending on the most recent June 30th, except after January 1, 2008 the gross rate revenues will be based on the twelve month period ending the most recent December 31.”

B. Add the underlined text to the second sentence in Step Three: “The change in PPI shall be for the twelve month period ending on the most recent June 30, except after January 1, 2008 the twelve month period will be ending on the most recent December 31.”

Section 5. Section 6.4.3, Rolloff, of the Agreement is amended as follows:

A. Add the underlined text to Step One: “Calculate the percent change in the PPI for the twelve month period for the most recent twelve months ending on the most recent June 30, except after January 1, 2008 the gross rate revenues will be based on the twelve month period ending the most recent December 31.”

Section 6. Article 6 is amended by adding Section 6.4.4, Noticing Costs, as follows:

The Company may recover its costs incurred in providing public notices pursuant to Section 6.3. The request to recover noticing costs shall be made as a part of

the Company's request for annual adjustment of the maximum rate. Noticing costs shall be apportioned equally among all Customers and shall be recovered within a single Rate Year; at the end of the Rate Year, the maximum rate shall be reduced by the amount of the noticing costs.

As part of its request, the Company shall prepare a schedule documenting the noticing costs and provide supporting information. The City shall review the request and, in its sole judgment, make the final determination on the appropriate amount of the adjustment.

Section 7. ENTIRE AGREEMENT.

This document sets forth the entire understanding of the Parties regarding Company Compensation and Rates and all prior negotiations and agreement are merged herein. This Amendment No. 2 affects only those sections of the Agreement referred to, and all other terms and conditions of the Agreement remain in full force and effect.

CITY OF IMPERIAL BEACH

Signature on file

Gary Brown, City Manager

APPROVED AS TO FORM:

Signature on file

James P. Lough, City Attorney

EDCO DISPOSAL COPORATION

Signature on file

Edward Burr, Chairman

Signature on file

Sandra Burr, Vice Chair

**AMENDMENT NO. 3 TO INTEGRATED SOLID WASTE MANAGEMENT
SERVICES AGREEMENT WITH
EDCO DISPOSAL CORPORATION**

This Amendment No. 3 is entered into by the City of Imperial Beach ("City") and EDCO Disposal Corporation ("EDCO") (collectively "Parties") and effective the 10th day of June, 2009.

RECITALS

- A. The City entered into a franchise agreement with EDCO for integrated solid waste management services ("the Agreement") on August 4, 1999.
- B. Amendment No. 1 to the Agreement effective the 20th day of November, 2002 modified the term of the Agreement as authorized in Resolution 2002-5713.
- C. Amendment No. 2 to the Agreement effective the 26th day of March, 2008 modified the Rate Year of the Agreement as authorized in Resolution 2007-6544.
- D. The Parties are executing this Amendment No. 3 to the Agreement in accordance with Resolution 2009-6749, which authorized a change in the Franchise Fee amount and adjustment.

NOW, THEREFORE, the Parties hereto mutually covenant and agree with each other as follows:

Section 1. Section 3.1.1, Franchise Fee Amount, of the Agreement is amended in its entirety to read as follows:

"In consideration of the exclusive Franchise provided in Section 2.1 of this Agreement, the Company shall pay to the City a Franchise Fee equal to 10% of the Company's Gross Receipts from its operations in the City. The annual Franchise Fee paid to the City shall not be less than the sum of a base amount of \$160,000 plus 10% of Gross Receipts for the Company's Rolloff Box service in the City. The base amount of \$160,000 and the Franchise fee, shall be adjusted as described in Section 3.1.4.

Notwithstanding the foregoing paragraph, the annual Franchise Fee paid to the City for Rate Year 10 (July 1, 2009 through June 30, 2010), shall be equal to 30% of the Company's Gross Receipts from its operations in the City, but in no event less than the sum of a base amount of \$160,000 plus 30% of Gross Receipts for the Company's Rolloff Box service in the City. The annual Franchise Fee paid to the City for Rate Year 11 (July 1, 2010 through June 30, 2011), shall be upto 36% of the Company's Gross Receipts from its operations in the City, but in no event less than the sum of a base amount of \$160,000 plus 30% of Gross Receipts for the Company's Rolloff Box service in the City. The

annual Franchise Fee paid to the City for Rate Year 12 (July 1, 2011 through June 30, 2012), and all subsequent years, shall be upto 42% of the Company's Gross Receipts from its operations in the City, but in no event less than the sum of a base amount of \$160,000 plus 30% of Gross Receipts for the Company's Rolloff Box service in the City."

Section 2. The first paragraph of Section 3.1.4, Adjustment to Franchise Fee, of the Agreement is amended in its entirety to read as follow:

"The base amount of \$160,000 described in Section 3.1.1, on which the minimum amount of Franchise Fees is determined, shall be adjusted annually each January 1st beginning January 1, 2002, based on the change in the Producer Price Index. The percentage change in the PPI that is applied to the Franchise Fee shall be equal to the percentage change in PPI that is used to adjust the Company's rates as described in Section 6.4. Notwithstanding the foregoing, beginning July 1, 2009, and all subsequent years, the base amount of \$160,000 described in Section 3.1.1, on which the minimum amount of Franchise Fees is determined, shall be adjusted annually each July 1st, based on the change in the Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area) ('CPI'). The percentage change in the CPI that is applied to the Franchise Fee shall be equal to the percentage change in CPI that is used to adjust the Company's rates as described in Section 6.4"

Section 3. Adjustment of Franchise Fee.

Company and City agree that for any Rate Year that requires a Franchise Fee adjustment pursuant to Section 3.1.4, Section 6.4.2 shall require an Interim Step Six and Section 6.4.3 shall require an Interim Step Three for calculation of the maximum rates in accordance with the example calculation shown on Exhibit 5D, attached hereto.

Section 4. Section 6.4.1, General, of the Agreement is amended in its entirety to read as follows:

"Pursuant to Section 6.3, the Company may request an annual adjustment to the maximum rates according to the method described below and the formulas shown in Exhibits 5A, 5B, and 5C. Adjustment to the maximum rates is subject to review by the City and contingent upon the absence of majority protest, if applicable, by affected property owners at the public hearing held in accordance with Section 6.3. All future adjustments are to be effective January 1, except after January 1, 2008, all adjustments are to be effective July 1, and shall be based on the rates in Exhibit 4.

If the Company owns or operates the Disposal Site, or the Disposal Site is owned or operated by an Affiliate of the company, the adjustment to the disposal component of the rates shall be limited to the change in the following: (1) PPI prior June 30, 2009, or (2) the CPI beginning on July 1, 2010, and all subsequent

years. This limitation shall not apply to changes in tipping fees resulting from changes in fees, taxes, or surcharges levied by governmental or regulatory agencies."

Section 5. Deferment of Annual Adjustment to Refuse Disposal Tipping Fee and Maximum Rates.

Company agrees that the maximum rates for the refuse disposal tipping fee, Single-family Dwelling units, Commercial and Industrial Property, and the maximum load charges, delivery charges, and overweight charges for rolloff customers shall not be adjusted as required in Section 6.4, Method of Adjustments, of the Agreement for Rate Year 10 (July 1, 2009 through June 30, 2010).

Section 6. Step Three of Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended in its entirety to read as follows:

"Step Three

- 1) Calculate the percentage change in the Producer Price Index (PPI), and the percentage change in the refuse disposal tipping fee per ton. The change in PPI shall be for the twelve month period ending on the most recent June 30, except after January 1, 2008 the twelve month period will be ending on the most recent December 31. Beginning with Rate Year 11 (July 1, 2010 through June 30, 2011) and for all subsequent Rate Years, calculate the percentage change in the national Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area) ('CPI'), and the percentage change in the refuse disposal tipping fee per ton. The change in CPI shall be for the twelve-month period ending on the most recent December 31.
- 2) The change in the refuse disposal tipping fee shall be based on the change between the most recent tipping fee on which rates are based and the new tipping fee; provided, however that the cumulative change in the tip fee over the term shall not exceed the change in the CPI. Notwithstanding the foregoing, the change in the refuse disposal tipping fee for Rate Year 11 (July 1, 2010 through June 30, 2011), and only for Rate Year 11, shall be based on the change for the most recent tip fee for Rate Year 10 plus the most recent tip fee for Rate Year 11.
- 3) This Company guarantee excludes any unforeseen government mandated fees or extraordinary cost elements over the life of this Agreement."

Section 7. Step Four of Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended in its entirety to read as follows:

“Step Four – Calculate the weighted percent change in maximum rates by:

- 1) Multiplying the refuse disposal component as a percent of rate revenue net of franchise fees by the percent change in the refuse disposal tipping fee;
- 2) Multiplying the service component as a percent of rate revenue net of franchise fees by the percent change in the CPI; and
- 3) Adding the results of 1) and 2) above to determine the weighted percent change in rates.”

Section 8. The last paragraph of Section 6.4.2, Single Family Dwelling Unit and Commercial and Industrial Property Customers, of the Agreement is amended in its entirety to read as follows:

“Step Five – Multiply one plus the weighted percent change in maximum rates by the then existing maximum rates to derive the newly adjusted maximum rates.

In the event that the current percentage change in the CPI is negative, the existing rates shall not be then adjusted downward as a result. Instead, the rate adjustment shall be held in abeyance until the CPI increases in the future to the extent that the cumulative change in the CPI since the last periodic rate adjustment is positive. At that time, the service component of the rates shall be adjusted based on the cumulative percentage change in the CPI since the last periodic rate adjustment.”

Section 9. Step One of Section 6.4.3, Rolloff, of the Agreement is amended in its entirety to read as follows:

“Step One -- Calculate the percent change in the PPI for the twelve month period for the most recent twelve months ending on the most recent June 30, except after January 1, 2008 the gross rate revenues will be based on the twelve month period ending the most recent December 31. Beginning with Rate Year 11 (July 1, 2010 through June 30, 2011) and for all subsequent Rate Years, calculate the percent change in the CPI for the twelve month period for the most recent twelve months ending on the most recent December 31.”

Section 10. Step Two of Section 6.4.3, Rolloff, of the Agreement is amended in its entirety to read as follows:

“Step Two – Multiply one plus the percent change in CPI by the then existing maximum rates to derive the newly adjusted rolloff rates.”

Section 11. The last paragraph of Section 6.4.3, Rolloff, of the Agreement is amended in its entirety to read as follows:

“In the event that the current percentage change in the CPI is negative, the existing rates shall not be then adjusted downward as a result. Instead, the rate adjustment shall be held in abeyance until the CPI increases in the future to the extent that the

cumulative change in the CPI since the last periodic rate adjustment is positive. At that time, the service component of the rates shall be adjusted based on the cumulative percentage change in the CPI since the last periodic rate adjustment.”

Section 12. Exhibit 5A, Example Rate Adjustment – Single Family Residential Rates, is amended, effective July 1, 2009, such that all references to “Producer Price Index” shall be deemed to refer to “Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area),” and all references to “PPI” shall be deemed to refer to “CPI.”

Section 13. Exhibit 5B, Example Rate Adjustment – Commercial and MFR Bin Rates, is amended, effective July 1, 2009, such that all references to “Producer Price Index” shall be deemed to refer to “Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area),” and all references to “PPI” shall be deemed to refer to “CPI.”

Section 14. Exhibit 5C, Example Rate Adjustment – Rolloff Rates, is amended, effective July 1, 2009, such that all references to “Producer Price Index” shall be deemed to refer to “Consumer Price Index (All Urban Consumers for the Los Angeles-Anaheim-Riverside Area),” and all references to “PPI” shall be deemed to refer to “CPI.”

Section 15. ENTIRE AGREEMENT.

This document sets forth the entire understanding of the Parties regarding Company Compensation and Rates and all prior negotiations and agreement are merged herein. This Amendment No. 3 affects only those sections of the Agreement referred to, and all other terms and conditions of the Agreement remain in full force and effect.

*****SIGNATURES ON FOLLOWING PAGE*****

CITY OF IMPERIAL BEACH

Signature on file

Gary Brown, City Manager

APPROVED AS TO FORM:

Signature on file

James P. Lough, City Attorney

EDCO DISPOSAL CORPORATION

Signature on file

Edward Burr, Chairman

Signature on file

Sandra Burr, Vice Chair

EXHIBIT 5D

Single Family Residential Rates

Step One: Deduct franchise fees from gross rate revenue

| Revenue Component (including Franchise Fees) PRIOR YEAR (2008) | Annual Amount | Percent of Gross Revenue Including Franchise Fees |
|---|---------------|--|
| Actual Gross Single Family Rate Revenue (no storm water) | \$ 1,178,097 | 100.0% |
| Actual Single Family Franchise Fees | \$ 117,810 | 10.0% |
| Actual Single Family Rate Revenue Net of Franchise Fees | \$ 1,060,287 | 90.0% |

Step Two: Determine disposal expense and service revenue as a percent of actual rate revenue net of Franchise Fees

| Revenue Component (net of Franchise Fees) PRIOR YEAR (2008) | Annual Amount | Percent of Gross Revenue Net of Franchise Fees |
|--|---------------|---|
| Actual Single Family Rate Revenue Net of Franchise Fees | \$ 1,060,287 | 100.0% |
| Less: Actual Single Family Refuse Disposal Expense | \$ 235,207 | 22.2% |
| Actual Single Family Service Revenue | \$ 825,080 | 77.8% |

Step Three: Calculate percentage change in adjustment factors

| Adjustment Factor | Old | New | Percent Change |
|------------------------------|----------|----------|----------------|
| Disposal Tipping Fee per Ton | \$ 45.63 | \$ 45.63 | 0.00% |
| Producer Price Index | 166.6 | 177.2 | 0.00% |

Step Four: Calculate weighted percentage change in single family rates

| Components of Actual Revenue | Component Weight | Percent Change | Weighted Rate Adjustment |
|------------------------------|------------------|----------------|--------------------------|
| Refuse Disposal | 22.2% | 0.00% | 0.00% |
| Service | 77.8% | 0.00% | 0.00% |
| Total | 100.0% | N/A | 0.00% |

Step Five: Apply weighted percentage change to single family rates Includes .03 for Printing and Mailing cost

| Service | Current Rate no storm | Weighted Rate Adjustment | Adjusted Monthly Rate |
|----------------------------------|-----------------------|--------------------------|-----------------------|
| 35 gallon cart | \$ 17.59 | 0.00% | \$ 17.59 |
| 64 gallon cart | \$ 18.13 | 0.00% | \$ 18.13 |
| 90 gallon cart | \$ 18.75 | 0.00% | \$ 18.75 |
| Additional 64 gallon refuse cart | \$ 4.43 | 0.00% | \$ 4.43 |
| Additional 90 gallon refuse cart | \$ 4.73 | 0.00% | \$ 4.73 |

Step Six: Franchise Fee Adjustment

| Service | Less Storm Water Fee | Add: Franchise Fee Incremental | Final Rate |
|----------------------------------|----------------------|--------------------------------|------------|
| 35 gallon cart | \$ 5.03 | \$ 5.03 | \$ 22.62 |
| 64 gallon cart | \$ 5.19 | \$ 5.19 | \$ 23.32 |
| 90 gallon cart | \$ 5.36 | \$ 5.36 | \$ 24.11 |
| Additional 64 gallon refuse cart | \$ - | \$ 1.27 | \$ 5.70 |
| Additional 90 gallon refuse cart | \$ - | \$ 1.35 | \$ 6.08 |

Commercial and MFR Bin Rates

Step One: Deduct franchise fees from gross rate revenue

| Revenue Component (including Franchise Fees) PRIOR YEAR (2008) | Annual Amount | Percent of Gross Revenue Including Franchise Fees |
|---|---------------|--|
| Actual Gross Commercial and MFR Rate Revenue | \$ 1,125,633 | 100.0% |
| Actual Commercial and MFR Franchise Fees | \$ 112,563 | 10.0% |
| Actual Commercial MFR Rate Revenue Net of Franchise Fees | \$ 1,013,070 | 90.0% |

Step Two: Determine disposal expense and service revenue as a percent of actual rate revenue

EXHIBIT 5D

| Revenue Component (net of Franchise Fees) PRIOR YEAR (2008) | Annual Amount | Percent of Gross Revenue Net of Franchise Fees |
|--|---------------|---|
| Actual Commercial and MFR Rate Revenue Net of Franchise Fees | \$ 1,013,070 | 100.0% |
| Less: Actual Commercial and MFR Refuse Disposal Expense | \$ 301,182 | 29.7% |
| Actual Commercial and MFR Service Revenue | \$ 711,888 | 70.3% |

Step Three: Calculate percentage change in adjustment factors

| Adjustment Factor | Old | New | Percent Change |
|------------------------------|----------|----------|----------------|
| Disposal Tipping Fee per Ton | \$ 45.63 | \$ 45.63 | 0.00% |
| Producer Price Index | 166.59 | 177.15 | 0.00% |

Step Four: Calculate weighted percentage change in commercial and MFR rates

| Components of Actual Revenue | Component Weight | Percent Change | Weighted Rate Adjustment |
|------------------------------|------------------|----------------|--------------------------|
| Refuse Disposal | 29.7% | 0.00% | 0.00% |
| Service | 70.3% | 0.00% | 0.00% |
| Total | 100.0% | N/A | 0.00% |

Step Five: Apply weighted percentage change to commercial and MFR rates (Includes .03 for mailing notices)

| Service | Current Rate no storm | Weighted Rate Adjustment | Adjusted Monthly Rate |
|--------------------------------------|-----------------------|--------------------------|-----------------------|
| 1 ea 3 yard bin once per week | \$ 100.28 | 0.00% | \$ 100.28 |
| 1 ea 3 yard bin twice per week | \$ 183.02 | 0.00% | \$ 183.02 |
| 1 ea 3 yard bin three times per week | \$ 265.75 | 0.00% | \$ 265.75 |
| 1 ea 3 yard bin four times per week | \$ 348.50 | 0.00% | \$ 348.50 |
| 1 ea 3 yard bin five times per week | \$ 431.24 | 0.00% | \$ 431.24 |
| 1 ea 3 yard bin six times per week | \$ 513.98 | 0.00% | \$ 513.98 |

Step Six: Franchise Fee Adjustment

| Service | Less Storm Water Fee | Add: Franchise Fee Incremental | Final Rate |
|--------------------------------------|----------------------|--------------------------------|------------|
| 1 ea 3 yard bin once per week | \$ 28.68 | \$ 28.68 | \$ 128.96 |
| 1 ea 3 yard bin twice per week | \$ 52.34 | \$ 52.34 | \$ 235.36 |
| 1 ea 3 yard bin three times per week | \$ 76.00 | \$ 76.00 | \$ 341.75 |
| 1 ea 3 yard bin four times per week | \$ 99.67 | \$ 99.67 | \$ 448.17 |
| 1 ea 3 yard bin five times per week | \$ 123.33 | \$ 123.33 | \$ 554.57 |
| 1 ea 3 yard bin six times per week | \$ 147.00 | \$ 147.00 | \$ 660.98 |

Rolloff Rates

Step One: Calculate percentage change in Producer Price Index

| Adjustment Factor | Old | New | Percent Change |
|----------------------|--------|--------|----------------|
| Producer Price Index | 166.59 | 177.15 | 0.00% |

Step Two: Apply percentage change in Producer Price Index to rolloff rates

| Service | Current Rate no storm | Rate Adjustment | Adjusted Rate |
|---|-----------------------|-----------------|---------------|
| Standard rolloff charge per load | \$ 152.19 | 0.00% | \$ 152.19 |
| Compactor charge per load | \$ 228.29 | 0.00% | \$ 228.29 |
| Delivery or relocation charge | \$ 43.58 | 0.00% | \$ 43.58 |
| Charge per ton for each ton over weight limit | \$ 50.77 | 0.00% | \$ 50.77 |

Step Three: Franchise Fee Adjustment

| Service | Less Storm Water Fee | Add: Franchise Fee Incremental | Final Rate |
|---|----------------------|--------------------------------|------------|
| Standard rolloff charge per load | \$ 43.53 | \$ 43.53 | \$ 195.72 |
| Compactor charge per load | \$ 43.53 | \$ 65.29 | \$ 293.58 |
| Delivery or relocation charge | \$ 12.46 | \$ 12.46 | \$ 56.04 |
| Charge per ton for each ton over weight limit | \$ 14.52 | \$ 14.52 | \$ 65.29 |