

**RESTATED AND AMENDED AGREEMENT**  
**BETWEEN**  
**THE**  
**CITY OF BREA**  
**AND**  
**TAORMINA INDUSTRIES, LLC,**  
**A WHOLLY OWNED SUBSIDIARY OF REPUBLIC SERVICES INC.,**  
**DBA BREA DISPOSAL (BDI)**

**FOR THE COLLECTION, TRANSPORTATION,**  
**RECYCLING, COMPOSTING AND DISPOSAL**  
**OF SOLID WASTE, RECYCLABLE**  
**AND COMPOSTABLE MATERIALS**

**ORIGINAL**  
RETURN TO OFFICE OF  
THE CITY CLERK

**Dated:** September 3, 2002

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**EXHIBITS**

- A. SPECIAL WASTE**
- B. SCHEDULE OF BILLING RATES**
- C. RECYCLING/GREENWASTE PROGRAMS**
- D. CITY FACILITIES**
- E. CUSTOMER SERVICE PERFORMANCE STANDARDS**

**AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF BREA  
AND TAORMINA INDUSTRIES INCORPORATED  
FOR THE COLLECTION, TRANSPORTATION, RECYCLING, COMPOSTING  
AND DISPOSAL OF SOLID WASTE, RECYCLABLE  
AND COMPOSTABLE MATERIALS**

This Amended and Restated Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between the CITY OF BREA, a municipal corporation ("CITY" sometimes hereinafter) and TAORMINA INDUSTRIES, LLC, a wholly owned subsidiary of Republic Services, Inc., DBA Brea Disposal ("FRANCHISEE" sometimes hereinafter), for the collection, transportation, recycling, composting and disposal of solid waste, recyclable and compostable materials.

**A. Recitals.**

(i) The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions.

(ii) Pursuant to California Public Resources Code § 40059(a)(1), the City Council of the City of Brea has determined that the public health, safety and well-being require that permits or franchises be granted to qualified solid waste contractors for solid waste collection, recycling, composting and disposal services in residential, commercial, construction and industrial areas within the City of Brea.

(iii) The City Council has heretofore enacted Chapter 8.28 of Title 8 of the Brea Municipal Code which establishes standards for the collection and disposal of refuse, trash, rubbish and other forms of solid waste and, pursuant to said Chapter, the City Council has determined that the disposal and/or collection of refuse, trash, rubbish or other solid waste is a service to be performed in the City in accordance with the provisions of said Ordinance.

(iv) Pursuant to said Chapter, the City Council may from time to time issue franchises to those parties meeting the criteria set forth in Chapter 8.28 Title 8 of the Brea Municipal Code and such standards as may be established by the City Council regarding the collection of refuse, rubbish and other forms of solid waste, and, so long as

any such permits remain in force, the collection of material provided for therein may be made only in accordance with the terms and conditions thereof.

(v) CITY and FRANCHISEE are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA").

(vi) CITY and FRANCHISEE desire to leave no doubts as to their respective roles and that by entering into this agreement CITY is not thereby becoming a "generator" or an "arranger" as those terms are used in CERCLA § 107(a)(3), and that it is FRANCHISEE, not CITY, which is "arranging for" the collection, transportation and disposal of municipal solid wastes which may contain hazardous substances.

(vii) The City Council of the City of Brea declares its intention to maintain reasonable rates for the collection, transportation, recycling, composting and disposal of solid waste, recyclables and compostables generated within the City limits.

(viii) FRANCHISEE acknowledges that CITY, by and through its City Council, intends to amend the provisions of Chapter 8.28 of Title 8 of the Brea Municipal Code as the same pertains to solid waste collection and the salvage of recyclable materials. FRANCHISEE further acknowledges and agrees that any and all references herein to said Chapter 8.28 of Title 8 of the Brea Municipal Code shall mean and include any amendment thereto from time to time enacted.

(ix) On July 16, 1996, the parties entered into a solid waste disposal agreement which was amended once on March 4, 1997.

(x) Subsequent to said amendment, FRANCHISEE changed its business structure from corporate to that of an LLC so that its name now is Taormina Industries, LLC, a wholly owned subsidiary of Republic Services, Inc.

(xi) The purpose of this Agreement is to supersede and restate the contractual obligations of the parties hereto.

(xii) All legal prerequisites to the making of this Agreement have occurred.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**SECTION 1. GRANT OF FRANCHISE FOR RESIDENTIAL,  
COMMERCIAL, CONSTRUCTION, INDUSTRIAL,  
AND TEMPORARY BIN SERVICES.**

A. **Exclusive Franchise.** This Agreement grants an exclusive solid waste collection franchise (hereinafter "Franchise") as defined in § 2, below, to TAORMINA INDUSTRIES, LLC, a wholly owned subsidiary of Republic Services, Inc., DBA Brea Disposal, pursuant to Chapter 8.28 of Title 8 of the Brea Municipal Code and California Public Resources Code § 40059(a)(1) for the collection, transportation, recycling, composting, and disposal of solid waste and construction debris and for providing temporary bin/roll-off services in residential, commercial, construction, and industrial areas within the City of Brea. In the event that state or federal laws or regulations or judicial findings enacted after this Franchise has been executed, prevent or preclude compliance with one or more provisions of this Franchise, such provisions of this Franchise shall be modified or suspended by order of the City Council as may be necessary to comply with such state or federal laws or regulations or judicial findings.

B. **Exclusive Franchise; Scope; Exceptions.** The parties hereto agree that, insofar as it can legally be done, or as otherwise provided by CITY ordinance, the provisions of this Agreement shall constitute an exclusive franchise under which FRANCHISEE shall have the exclusive right and obligation of collecting, transporting and disposing of all municipal solid waste, recyclables, green waste and construction debris as defined herein and in said Chapter 8.28, as the same may be amended from time to time, in the Franchise Area, as defined hereinbelow. All other contractors, persons, corporations or entities shall be prohibited from collecting such municipal solid waste, recyclables, green waste and construction debris from such commercial, industrial, or residential premises, except as otherwise specified in said Chapter 8.28. Notwithstanding the foregoing, FRANCHISEE and CITY agree that FRANCHISEE is neither authorized nor required by the terms and provisions hereof to collect and/or dispose of hazardous waste.

C. **Prior Agreements.** Notwithstanding any other term or provision hereof, FRANCHISEE and CITY agree that that certain existing Agreement between

FRANCHISEE and CITY pertaining to the collection and disposal of refuse, rubbish, garbage and waste materials dated December 19, 1989, as amended (the "1989 Agreement" hereinafter), shall be of no further force or effect as of the effective date of this Agreement; provided, however, that the novation thereof as contemplated herein, shall not apply to or excuse any prior breach of said 1989 Agreement nor shall any obligations of performance, not yet completed thereunder as of the effective date hereof, be abrogated hereby. The parties further acknowledge and agree that each and every indemnity and insurance requirement of the 1989 Agreement shall survive the effective date hereof and, to the extent not superseded hereby, shall remain in full force and effect.

**SECTION 2. DEFINITIONS.**

Whenever any term used in this Agreement has been defined by Chapter 12 or Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in said Chapter 12 or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement.

A. "*AB 939*" means the California Integrated Waste Management Act of 1989, as it may be amended from time to time, and as implemented by the regulations of the California Integrated Waste Management Board.

B. "*AB 939 Administrative Fee*" means the fee or assessment set by the CITY which is intended to offset the CITY's expenses in administering this Agreement and to compensate CITY for the costs associated with compliance with the California Integrated Waste Management Act of 1989 (AB 939). Any fees or assessments imposed under this Agreement shall be those which the City Council may from time to time hereafter approve by resolution.

C. "*Bin*" means those receptacles provided by FRANCHISEE for commercial, industrial, and construction premises uses. Bins shall include receptacles which are picked up by refuse trucks by means of front-loading apparatus as well as "roll-off boxes" and other, similar receptacles.

D. "*Bulky Goods*" means discarded furniture, furnishings or appliances, including white goods; rock or brick in reusable form; carpets; mattresses; large branches; trunks; stumps or limbs of trees exceeding eighteen (18) inches in diameter or four (4)

feet in length and other items the size or weight of which precludes or complicates their handling by normal collection, processing or disposal methods.

E. "*City Limits*" means the boundaries of the CITY together with all amendments and changes thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the Office of the City Clerk.

F. "*City Manager*" shall mean the City Manager of CITY, or his or her designee.

G. "*Commercial Wastes*" include all types of solid wastes generated by stores, offices, governmental institutions, industries, multi-family residences and other commercial sources, excluding residential solid waste.

H. "*Commercial Subscriber*" means a customer of FRANCHISEE for solid waste collection and disposal and recycling and/or green waste services which occupies any non-residential, commercial or industrial premises, any mobile home park, any hotel or motel, or any building in which a combination of residential, commercial and/or industrial uses exist.

I. "*Compostable Materials*" or "*Green Waste*" means leaves, grass clippings, brush, branches and other forms of organic waste generated from landscapes or gardens, separated from other solid waste. "*Compostable Materials*" does not include stumps or branches in bundles exceeding eighteen (18) inches in diameter or four (4) feet in length.

J. "*Construction and Demolition Waste*" means the waste building materials, packaging, plaster, drywall, cement and rubble resulting from construction, remodeling, repair and demolition operations on pavements, buildings and other structures, (except asbestos-containing materials and reusable rock or brick).

K. "*Container(s)*" means those receptacles provided by FRANCHISEE for residential premises use as approved by CITY.

L. "*Director*" means the CITY's Director of Maintenance Services, or his or her designee.

M. "*Franchise*" means this Agreement and the written authority by CITY evidenced by this Agreement granting FRANCHISEE the exclusive right and privilege to: (1) arrange for the collection of, and to collect refuse, rubbish and other forms of solid

waste, (2) transport the same to landfill or other licensed disposal facilities as provided hereunder, and (3) recycle from collected refuse, compostables and recyclables, all solid waste, green waste and recyclables kept, generated and/or accumulated within the CITY from any source or sources whatsoever.

N. "*Franchisee*" means TAORMINA INDUSTRIES, LLC, a wholly owned subsidiary of Republic Services, Inc., DBA Brea Disposal, the entity authorized by the City Council hereunder pursuant to Chapter 8.28 of Title 8 of the Brea Municipal Code and the terms and conditions imposed upon the FRANCHISEE by this Agreement.

O. "*Garbage*" or "*Solid Waste*" means putrescible and non-putrescible material including every accumulation of animal waste, vegetable or other matter which results from the processing, consumption, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter normally resulting from domestic, institutional, commercial, industrial, agricultural, and other community activities, including, but not by way of limitation, used nonrecyclable food containers, and other waste likely to attract flies or rodents, but excluding materials set out for Recycling, Composting, and/or any Hazardous Waste.

P. "*Hazardous Waste*" means any waste material(s) or mixture of waste(s) defined as such pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, or the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, and all future amendments to either of them, or as defined by the Environmental Protection Agency or the California Integrated Waste Management Board, or either of them, and shall include household hazardous waste and medical waste. Where there is a conflict in the definitions employed by two (2) or more agencies having jurisdiction over hazardous or solid waste, the term "*Hazardous Waste*" shall be construed to have the broader, more encompassing definition.

Q. "*Municipal Solid Waste*" means all Solid Waste generated within the CITY which is designated for collection under this Agreement.

R. "*Putrescible Waste*" means material capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases or other offensive conditions, and include materials such as food wastes, and offal.

S. "*Recyclable Material*" means material which has been source separated or commingled with other similar material and can be reused or processed into a form suitable for reuse through reprocessing or remanufacture and includes paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET and other plastics, beverage containers, compostable materials, and such other materials designated as recyclables by the California Integrated Waste Management Board, or other agency with jurisdiction, and which are collected by FRANCHISEE pursuant to this Agreement.

T. "*Special Waste*" shall mean all items and materials which are set forth in Exhibit "A," "Special Waste."

**SECTION 3. ACCEPTANCE; WAIVER.**

FRANCHISEE agrees to be bound by and comply with all the requirements of Chapter 8.28, as the same may be amended from time to time, and this Agreement. FRANCHISEE waives FRANCHISEE's right to challenge the terms of this Agreement and Chapter 8.28, as the same may be amended from time to time, under federal, state or local law, or administrative regulation, as such laws and regulations exist as of the date of execution of this Agreement.

**SECTION 4. FRANCHISE AREA DEFINED.**

The Franchise Area granted by this Agreement shall include all areas within the CITY limits as defined in § 2.E, above.

**SECTION 5. TERM OF AGREEMENT.**

A. The term of this Agreement shall be for a period of twenty (20) years commencing August 1, 1996 through and including December 31, 2016. On January 1 of each year beginning with the year 1997, the term of this Agreement shall be automatically extended one (1) additional year unless either party has determined not to grant such an extension for any reason, in either party's sole discretion, and has notified

the other party in writing of such determination prior to July 1 of a given year at which time the Agreement shall remain in effect for the remainder of the then unexpired term.

B. Notwithstanding the provisions of § 5.A., above, in the event that the principal office of FRANCHISEE is not maintained in the County of Orange, State of California, then, and in that event, CITY may terminate this franchise upon the giving of three hundred sixty-five (365) days' notice to FRANCHISEE in accordance with the provisions of § 26.J., hereof. FRANCHISEE specifically agrees that CITY's decision to terminate the franchise in accordance with the provisions of this § 5.B. shall be at the sole discretion of CITY, and the discretion vested in CITY hereunder shall not be constrained in any manner or for any reason whatsoever.

**SECTION 6. SERVICES TO BE PROVIDED BY FRANCHISEE.**

A. **General.** FRANCHISEE shall provide for the collection, transportation, and disposal of all municipal solid waste and recycling and green waste services within the Franchise Area in accordance with the terms of this Agreement and Chapter 8.28. In consideration of the payments hereinafter agreed to be made to FRANCHISEE by CITY, the rates and charges permitted to be levied by FRANCHISEE hereby, and under penalty of the bonds conditioned as set forth hereinafter, FRANCHISEE hereby agrees to perform all the work set forth and described herein, including the furnishing of all labor, material and equipment necessary for compliance with the terms and provisions hereof and those set forth in Chapter 8.28, as the same may be amended from time to time.

B. **Residential Premises.** FRANCHISEE shall collect and remove all solid waste, that has been placed in approved containers, from all residential premises within the CITY at least once every week. The collection and removal of recyclable material and green waste shall occur weekly, or as otherwise specified in writing by the City Manager. FRANCHISEE shall provide and maintain approved containers suitable to each residential premises for the collection thereof. Containers that are damaged by FRANCHISEE's activities will be replaced by FRANCHISEE, at FRANCHISEE's sole expense, upon request of the customer. If a container is damaged without any fault of FRANCHISEE, the FRANCHISEE may charge the customer for a replacement container.

The FRANCHISEE shall replace all containers damaged due to normal wear and tear within one (1) week after notification.

1. **Hours or Collection.** FRANCHISEE agrees that, in order to protect the peace and quiet of residents, its collection of solid waste, recyclables and compostables in residential areas shall not start before 7:00 a.m. or continue after 8:00 p.m., Monday through Saturday, unless otherwise provided for in Chapter 8.28.

2. **Collection/Exemptions.** When making collections for standard service -- curbside collection, FRANCHISEE shall be required to collect all material as specified in the City Code except for the following:

- a. Containers not meeting specifications approved by the Director.
- b. Containers not in proper location for collection.
- c. Containers over level full.
- d. Containers which are not accessible.
- e. Unless otherwise directed by the Director, FRANCHISEE shall make all collections hereunder from the curb along the street in front of each dwelling, place of business, or human habitation, except where paved alleys exist in the rear of such properties, then from such properties, collections shall be made by FRANCHISEE from alleys; provided, however, that this requirement shall not apply to a blind alley. FRANCHISEE shall not be under any obligation to enter private property, excepting private streets, to make collections under this Agreement, except in business establishments where bins are kept in a paved service yard and where the same shall be picked up from such service yard when deposited there for collection.

3. **Return of Containers.** FRANCHISEE shall return all containers, in an upright condition, to the location where the same were placed for collection by the resident, provided, however, that if the same are found obstructing a public street, the same shall be placed on the nearest curb, sidewalk, driveway or parkway and out of said street.

C. **Commercial Subscriber Premises.** FRANCHISEE shall collect and remove all solid waste, recyclables and green waste that have been placed in

FRANCHISEE's bins, from all commercial subscribers' premises within the CITY at least once every week or more frequently if required to handle the waste stream of the premises where the bins are located, except as may otherwise be specified in writing by the Director. FRANCHISEE shall provide and maintain a bin or bins suitable to each commercial subscriber's premises for the collection thereof. Bins that are damaged by FRANCHISEE's activities will be replaced by FRANCHISEE, at FRANCHISEE's sole expense, upon request of the customer. If a bin is damaged without any fault of FRANCHISEE, the FRANCHISEE may charge the customer for a replacement bin. The FRANCHISEE shall replace all bins damaged due to normal wear and tear within one (1) week after notification.

1. **Hours of Collection.** FRANCHISEE agrees that, in order to protect the peace and quiet of residents, its collection of solid waste and recyclables in commercial areas, adjacent to residential areas, shall not start before 7:00 a.m. or continue after 8:00 p.m., Monday through Saturday, unless otherwise provided for in Chapter 8.28. Collection in commercial areas otherwise may commence not earlier than 5:00 a.m.

2. **Collection Requirements.** When making collections for standard services -- bin collection, FRANCHISEE shall be required to collect all material as specified hereunder except for the following:

- a. Bins whose contents weigh more than 450 pounds.
- b. Bins which are inaccessible.
- c. Bins which are filled more than level full.
- d. Bins which must be rolled by FRANCHISEE more than twenty (20) feet or in areas requiring backing maneuvers for distance greater than twenty (20) feet.

3. **Return of Bins.** FRANCHISEE shall return all bins, utilized for commercial premises hereunder, to the enclosure(s) provided therefor on the property. In the event that a commercial premises fails to utilize such enclosures, or if said enclosures are rendered unusable due to the placement therein of items (such as storage of materials) not to be removed, FRANCHISEE shall request the owner or manager thereof to make

the enclosure usable for bins. If the commercial premises fails or refuses to correct the situation, FRANCHISEE shall notify the Director .

D. **Construction and Temporary Bin/Roll-off Services.** FRANCHISEE shall provide construction and temporary bin/roll-off services in accordance with the Schedule of Billing Rates as set forth in Exhibit "B," as may be modified from time to time pursuant to § 8.E.

E. **Collection on Holidays.** If the day of collection on any given route falls on a holiday observed by the CITY or lawful disposal site to which solid waste collected within the Franchise Area is taken for disposal, or recycling or green waste facilities to which the same are taken, FRANCHISEE shall provide collection service for such route on the next workday following such holiday unless otherwise provided for in Chapter 12. The following holidays will be observed:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

F. **Recycling Program.** FRANCHISEE shall provide recycling services in the Franchise Area in accordance with the recycling program set forth in Exhibit "C," and in accordance with the Schedule of Billing Rates as set forth in Exhibit "B," subject to amendment pursuant to § 8.E.

G. **Green Waste Collection.** FRANCHISEE shall provide green waste collection services in the Franchise Area in accordance with the terms set forth in Exhibit "C," at the rates established in Exhibit "B," subject to amendment pursuant to § 8.E.

H. **Special Wastes.** FRANCHISEE shall provide such collection, transportation and disposal services for Special Wastes as set forth in Exhibit "A."

I. **Bulky Goods Collection.** FRANCHISEE shall collect and dispose of bulky goods, as set forth in Exhibit "A." All such collections shall occur within seven (7) days after receipt of a request for such collection.

J. **City Facilities.** FRANCHISEE shall provide refuse collection, recycling and green waste services, including collection of street sweeping waste, at no additional charge to CITY, at all CITY facilities and CITY sponsored special events designated by

the Director. FRANCHISEE shall also furnish containers or bins for such designated locations at no cost to CITY. FRANCHISEE shall also be required to pay all solid waste disposal fees for the services specified in this § 6.J for CITY. A list of CITY facilities and CITY sponsored special events for which this service is to be provided is attached hereto as Exhibit "D." FRANCHISEE shall separately contract for refuse services with Brea-Olinda Unified School District.

K. **Collection of Illegally Dumped Bulky Goods.** FRANCHISEE agrees, at no additional charge, to provide on-demand collection of illegally-dumped bulky goods within two (2) working days of CITY's request. The residential bulky-item collection vehicle may be used to make collection and the tonnage collected may be co-mingled with residential tonnage and charged to CITY at CITY's approved residential tonnage rate.

L. **Clean-Up of Waste Enclosures or Bin or Container Locations.** FRANCHISEE shall exercise all reasonable care and diligence in collecting solid waste, recyclables and green waste, and shall, at FRANCHISEE's sole expense, pick up and properly dispose of all such material spilled by FRANCHISEE's employees during collection thereof.

M. **Improperly Placed Material.** FRANCHISEE may decline to collect any material that has been compacted or otherwise placed, kept or accumulated in a container or bin in such a manner that the container's or bin's contents will not, of their own weight, fall out of the container or bin when it is turned upside down, or in a container or bin that does not meet the requirements for approved containers or bins or if container or bin is of such weight that it cannot be lifted or moved without causing injury or damage to property or equipment.

N. **Failure to Collect.** Should FRANCHISEE fail to collect and dispose of any material set out or placed for collection, as herein provided, at times required, after notification by CITY and within a reasonable time, CITY may collect and dispose of same and FRANCHISEE shall be liable for the expense incurred by City, including

CITY's reasonable overhead costs of thirty percent (30%), and shall be liable for the penalties established in Exhibit "E."

O. **Non-collection Notice.** Whenever any material set out for collection is not collected by FRANCHISEE, FRANCHISEE shall affix or attach to the container or bin a tag provided at FRANCHISEE's expense specifically stating therein the reason for non-collection. FRANCHISEE shall keep a copy thereof and make the same available to the Director upon request.

P. **Maintenance of Schedules.** Presently existing routes, schedules and times for collection of solid waste, recyclables and green waste shall be maintained but may be changed by authorization of CITY's Director of Maintenance Services and after at least one (1) week's advance notice as specified by the Director to occupants of the premises in areas where changes are to be made.

#### **SECTION 7. AB 939 ADMINISTRATIVE FEES.**

Pursuant to California Public Resources Code § 41902, the CITY may directly assess a fee or may, by agreement, arrange for the fee to be collected by the FRANCHISEE under this Agreement. FRANCHISEE agrees to pay or collect, as the case may be, an AB 939 Administrative Fee as may be established by separate resolution of the City Council and from time to time amended hereafter. Following thirty (30) days prior written notice by CITY to FRANCHISEE, any fee established pursuant to this Section shall be payable by FRANCHISEE to CITY concurrent with its payment of franchise fees.

#### **SECTION 8. COMPENSATION FOR SERVICES.**

A. **Residential Services.** FRANCHISEE agrees to accept as full compensation from CITY for the complete collection of residential solid waste, green waste and recyclables the amount specified in Exhibit "B." CITY agrees to bill each such residential account thereof. Said compensation for residential services shall be based on the number of residential customers in each residential category reflected on Exhibit "B" hereto. The number of residential customers shall be established by CITY as of the effective date of this Agreement and shall be reviewed by FRANCHISEE and CITY representatives annually. In the event such a review results in an increase or decrease in

the number of residential customers, the subsequent payments to FRANCHISEE shall be adjusted accordingly. Compensation to FRANCHISEE hereunder shall be payable by CITY in accordance with provisions of Exhibit "B" hereto.

**B. Commercial Subscriber Services.** Commercial subscriber accounts shall be directly billed by FRANCHISEE on a monthly basis, except as may be otherwise specified, in writing, by the Director. FRANCHISEE shall be permitted hereby to charge the rates specified in Exhibit "B" for commercial/industrial services provided hereunder, as said rates may be amended from time to time pursuant to the provisions of § 8.E and any AB 939 fees imposed by CITY.

**C. Franchise Fees.** Throughout the term of this Agreement, FRANCHISEE shall pay CITY an amount equal to ten percent (10%) of all revenue received for franchised services directly billed by FRANCHISEE as specified in Exhibit "B." The payment of a franchise fee by an end user shall not be considered payment for franchised services. Said franchise fee shall be paid monthly to the CITY and shall be based on the actual income received by FRANCHISEE from all CITY franchised services so directly billed by FRANCHISEE. FRANCHISEE shall remit said franchise fees to CITY pursuant to the provisions of Exhibit "B," and without invoice from CITY. FRANCHISEE shall, in addition, remit payments to CITY in such amounts as specified in Exhibit "B" pertaining to recycling revenues.

**D. City Records Available.** The records of CITY's Financial Services Department shall be available at reasonable times for the inspection of FRANCHISEE for the purpose of determining the calculation of the compensation paid by CITY to FRANCHISEE for the collection of CITY billed residential services.

**E. Formula for Changes in Compensation.** The compensation paid to FRANCHISEE shall be adjusted annually, effective July 1<sup>st</sup> of each calendar year hereafter during the term hereof, pursuant to the "Adjustment Formula" set forth below. In the event that circumstances beyond the control of FRANCHISEE impose or generate excessive costs in the performance of this Agreement, FRANCHISEE may petition CITY's City Council to determine if an adjustment in compensation is warranted to avoid undue financial hardship on FRANCHISEE or material impairment of FRANCHISEE's

ability to provide the level and quality of service herein specified. FRANCHISEE agrees to furnish all such accounts and records as are needed in the judgment of CITY to substantiate any requests for increased payments from CITY or increased rates to customers. The decision of CITY shall be final. The Director shall have the authority to approve written requests for rate adjustments beyond the annual adjustment provided by the Adjustment Formula attributable solely to an increase or decrease in the disposal fees actually paid by FRANCHISEE.

F. **Economies of Scale/Service Cost Savings** "FRANCHISEE agrees that any economies of scale resulting from the merger of TAORMINA INDUSTRIES INCORPORATED and REPUBLIC INDUSTRIES, INC. may effect the cost of providing services pursuant to the Franchise granted hereunder. If cost reductions are realized as a consequence thereof, FRANCHISEE agrees to pass such savings through to the rate payers in a form determined by CITY's City Council."

#### **Rate Adjustment Formula**

Formula for Adjustment in Schedule of Billing Rates Exhibit "B" will be determined as follows, and shall be adjusted annually to take effect on July 1<sup>st</sup> of each year. FRANCHISEE and CITY shall exchange information prior to May 1<sup>st</sup> each year in order to calculate the formula. It is understood that the overall residential and commercial rates are determined by five (5) areas, "Net to Hauler" for collection and recycle processing as required by CITY, "Disposal Portion," "Yard Waste Processing" as required by CITY, "Recycling Credits" from recycling income as required by CITY, and "CITY Fees." All portions of the rates are subject to the annual rate adjustment formula. FRANCHISEE agrees that the CITY bills residential customers on a monthly billing cycle which is based on the dates that water meters are read. While the rate adjustment becomes effective July 1, the July 31 City utility bill (covering the period from mid-June to mid-July) will be prorated, and the refuse rate adjustment will be reflected in whole on the August 31 bill.

Step One: Determine the current "Net to Hauler" for each rate as stated in the Schedule of Billing Rates Exhibit "B."

Step Two: Determine the percentage change in the Consumer Price Index for all Urban Consumers for the Los Angeles, Riverside, Anaheim Metropolitan Area (CPI-U) for the most recent twelve (12) months ending on December 31<sup>st</sup> prior to the July 1<sup>st</sup> Rate Adjustment based on data available from the United States Bureau of Labor Statistics.

Step Three: Determine the Brea Discounted Consumer Price Index by multiplying the CPI-U by 90%. The resulting percentage amount shall be the Brea Discounted CPI-U.

Step Four: Determine the change in the current "Net to Hauler" to be effective as part of the July 1<sup>st</sup> Rate Adjustment by multiplying current "Net to Hauler" by the Brea Discounted CPI-U amount. Add this change to the current "Net to Hauler" to determine the adjusted "Net to Hauler."

#### **Determination of Disposal Portion**

Formula for Adjustment in "Disposal Portion" of rates will be determined as follows, and shall be adjusted as often as necessary commensurate with changes in the actual tipping fee charged by the County of Orange for waste disposal at County operated landfills. Rate adjustments beyond disposal increases by the County of Orange will be limited to the percentage change in the Brea Discounted CPI-U for the transfer rate charged to CITY and may be adjusted once annually as part of the July 1<sup>st</sup> Rate Adjustment.

Step One: Residential "Disposal Portion." Determine the "Average Tonnage per Residential Unit" billed by the CITY by dividing the total billable residential tonnage collected in the prior twelve-month period from March to February by total number of units billed by the CITY for the same time period. The unit total shall also include the number of additional residential "trash containers" billed for the same period. This information is available via the records of billing and disposal kept by FRANCHISEE.

Step Two: Residential "Disposal Portion." Determine the "Disposal Portion" by multiplying the "Average Tonnage per Residential Unit" by the "Disposal Fee per Ton." The "Disposal Fee per Ton" shall be determined by the Director based on the actual tipping fee charged by the disposal site(s) added to the adjusted transfer fees to the disposal site(s).

Step Three: FRANCHISEE billed "Disposal Portion." Determine the adjusted "Disposal Fee per Ton" for all FRANCHISEE billed services as listed in Schedule of Billing Rates Exhibit "B." The FRANCHISEE billed "Disposal Portion" shall be increased or decreased based on the percentage change in the "Disposal Portion."

#### **Determination of Franchise Portion**

All CITY services within this Agreement as listed in Schedule of Billing Rates Exhibit "B" shall be subject to a ten percent (10%) "Franchise Portion." The "Franchise Portion" shall be adjusted as follows whenever any rate listed in Exhibit "B" is changed.

Step One: Add the "Net to Hauler," "Disposal Portion," "Yard Waste Processing," if applicable, and any "Recycling" or other "Credits" within the rate structure.

Step Two: Multiply the sum of the rate components in "Step One" by the "Franchise Fee" amount of ten percent (10%). The resulting amount is CITY's "Franchise Fee."

Step Three: Add the sum from "Step One" with the resulting amount from "Step Two" to determine the "Adjusted Rates." The annual "Rate Adjustment" for categories of service specified in Exhibit "B" pursuant to the "Adjustment Formula" set forth above, shall become effective administratively each July 1<sup>st</sup> with approval by the Manager. With the exception of an adjustment solely in the actual tipping fees paid by the FRANCHISEE, any "Rate Adjustment" beyond the annual adjustment provided by the "Adjustment Formula" shall require City Council approval. Any such change shall become effective the first day of the month following City Council approval. All rates, as specified in Exhibit "B," shall be subject to an annual adjustment in accordance with the provisions of this § 8 commencing July 1, 2003.

**SECTION 9. FRANCHISE TRANSFERABLE: CITY CONSENT REQUIRED.**

A. **Transfer; Consent.** This Franchise shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except the FRANCHISEE, either by act of the FRANCHISEE or by operation of law, without the prior written consent of the CITY expressed by resolution of the City Council. Any attempt by FRANCHISEE to assign this Franchise without said consent of CITY shall be void.

B. **Violation; Termination.** Any attempt by the FRANCHISEE to transfer this Franchise prior to obtaining CITY consent shall be considered a material breach of this Agreement and grounds for the immediate termination of the Franchise as set forth in § 11.E, below.

C. **Discretion to Consent.** FRANCHISEE specifically agrees that CITY's consent hereunder to a transfer of the Franchise hereunder shall be at the sole discretion of CITY. FRANCHISEE further acknowledges that the discretion vested in CITY hereunder shall not be constrained, in any manner or for any reason whatsoever, and is the result of FRANCHISEE's offer thereof in the first instance. In the event CITY, in the exercise of its discretion hereunder, consents to a transfer, the CITY may impose conditions of approval on a Franchise transfer, including, but not limited to conditions requiring acceptance of amendments to Chapter 8.28 and this Agreement, the payment of a transfer fee to CITY, and any other conditions imposed by CITY.

D. **Change in Control.** CITY consent, exercised pursuant to § 9.C, above, is required for any changes in control of FRANCHISEE. "Change in control" shall mean any sale, transfer or acquisition of FRANCHISEE. Any change in control of the FRANCHISEE occurring without prior CITY approval shall constitute a material breach of this Agreement. FRANCHISEE represents and warrants that, as of the date of

execution hereof, Taormina Industries, LLC, FRANCHISEE, is a wholly owned subsidiary of Republic Services, Inc., a publicly traded corporation.

**SECTION 10. FRANCHISE TRANSFER: FEES.**

A. **Application for Transfer.** Any application for a Franchise transfer shall be made in a manner prescribed by CITY's City Manager. The application shall include a transfer fee in an amount to be set by CITY, by Resolution of the City Council, to cover the cost of all direct and indirect administrative expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse CITY for all direct and indirect expenses. In addition, FRANCHISEE shall reimburse CITY for all costs incurred by CITY not covered by the transfer fee. Bills shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

B. **Fees.** Any transfer fees assessed by this Section are in addition to any other fees specified in this Agreement.

**SECTION 11. REMEDIES FOR BREACH OF FRANCHISE.**

A. **Default; Breach; Notice.** If CITY's City Manager determines that FRANCHISEE's performance pursuant to this Agreement has not been in conformity with reasonable industry standards which obtain in similar cities in Southern California, the provisions of this Agreement, the requirements of Chapter 8.28, as the same may be amended from time to time, the requirements of the California Integrated Waste Management Board, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, the City Manager may notify FRANCHISEE in writing of such deficiencies. The City Manager may, in such written notice, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be thirty (30) days from the receipt by the FRANCHISEE of such written notice. The City Manager shall review the FRANCHISEE's response and refer the matter to the City Council or decide the matter and notify the FRANCHISEE of the decision, in writing. A decision or order of the City Manager shall be final and binding on FRANCHISEE if FRANCHISEE fails to file a

"Notice of Appeal" with the City Manager within ten (10) days of receipt of the City Manager's decision. Within ten (10) working days of receipt of a timely Notice of Appeal, the City Manager shall refer the appeal to the City Council for proceedings in accordance with §§ 11.B and 11.C, below.

B. **Hearing.** The City Council, in such case, may set the matter for hearing. The City Council shall give FRANCHISEE, and any other person requesting the same, at least ten (10) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the FRANCHISEE, or its representatives and any other interested person, a reasonable opportunity to be heard.

C. **Findings.** Based upon a preponderance of the evidence presented at the public hearing, the City Council shall make appropriate findings of fact before determining whether the Franchise should be terminated. If, based upon the record, the City Council determines that FRANCHISEE is in breach of any material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its sole discretion, may terminate this Agreement forthwith. The decision of the City Council shall be final and conclusive. FRANCHISEE's performance under its Franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

D. **Remedies Cumulative.** This right of termination is in addition to any other rights or remedies of CITY upon a failure of FRANCHISEE to perform its obligations under this Agreement.

E. **Immediate Termination.** CITY further reserves the right to immediately terminate FRANCHISEE's Franchise in the event of any of the following:

1. If FRANCHISEE practices, or attempts to practice, any fraud or deceit upon the CITY.
2. If FRANCHISEE becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of FRANCHISEE in a bankruptcy proceeding.

3. If FRANCHISEE fails to provide or maintain in full force and effect, the workers' compensation, or the liability insurance or indemnification coverages as required by this Agreement.

4. If FRANCHISEE willfully violates any orders or rulings of any regulatory body having jurisdiction over FRANCHISEE relative to this Agreement; provided, however, that FRANCHISEE may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred until a final disposition of any such proceeding.

5. If FRANCHISEE ceases to provide collection service as required under this Agreement over all or a substantial portion of its Franchise Area for a period of five (5) working days or more, for any reason within the control of FRANCHISEE.

6. If the FRANCHISEE willfully fails to make any payments required under the terms of this Agreement and/or refuses to provide CITY with required information, reports and/or test results in a timely manner as provided in this Agreement.

7. Any other act or omission by FRANCHISEE which materially violates the terms, conditions or requirements of this Agreement, Chapter 8.28, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any 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 FRANCHISEE cannot reasonably correct or remedy the breach within the time set forth in such notice, if FRANCHISEE 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.

8. Any transfer or change in control of FRANCHISEE without consent by CITY as described in § 8., above.

F. **Temporary Default by Franchisee.** In addition to any other remedies provided in this Agreement, where FRANCHISEE, for any reason, abandons or ceases to perform collection and disposal services for a period in excess of three (3) working days, and the City Manager determines that it is necessary for solid waste collection and

disposal to be temporarily undertaken by other entities engaged by CITY, CITY shall:

1. Notify FRANCHISEE by certified mail that FRANCHISEE has failed to perform solid waste collection and disposal services in accordance with the terms of this Agreement for a period in excess of three (3) working days, and of CITY's intent to temporarily provide such services at FRANCHISEE's expense and with the use of FRANCHISEE equipment;
2. Be entitled to assign collection and disposal obligations to other entities engaged by CITY;
3. Have access to FRANCHISEE's records for the purposes of billing, and shall have the right to retain or assign all payments and funds received for the period during which entities engaged by CITY provide services; and
4. Charge FRANCHISEE for the actual costs of such services, as determined by CITY's standard accounting practices, for each calendar day during which entities engaged by CITY perform such service, including CITY's reasonable overhead expense of thirty percent (30%).

If FRANCHISEE is in default under this Section for a period of more than fourteen (14) calendar days for any reason not within the control of FRANCHISEE, CITY shall have the right to terminate this Agreement as provided herein.

#### **SECTION 12. CITY'S ADDITIONAL REMEDIES.**

In addition to the remedies set forth in § 11, above, CITY shall have the following rights:

A. **License to Others.** The right to license others to perform the services otherwise to be performed by FRANCHISEE hereunder, or to perform such services itself; and

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

**SECTION 13. RIGHTS OF CITY TO PERFORM DURING EMERGENCY.**

A. **Failure to Perform.** Should FRANCHISEE, for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in § 26.A, "Force Majeure", below, refuse or be unable to collect, transport and dispose of any or all of the solid waste, compostables and recyclables which it is obligated under this Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof, refuse, compostables and recyclables should accumulate in CITY to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event CITY shall have the right, upon twenty-four (24) hours prior written notice to FRANCHISEE, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of FRANCHISEE previously used in the collection, transportation and disposal of refuse, compostables and recyclables under this Agreement, and to use, or direct FRANCHISEE to use, such equipment and facilities to collect and transport any or all refuse, compostables and recyclables which FRANCHISEE would otherwise be obligated to collect and transport pursuant to this Agreement. FRANCHISEE agrees that in such event it will fully cooperate with CITY to effect such a transfer of possession for CITY's use.

B. **Temporary Possession of Equipment and Facilities.** FRANCHISEE agrees that, in such event, CITY may take temporary possession of and use all of said equipment and facilities without paying FRANCHISEE any rental or other charge, provided that CITY agrees that, in such event, it assumes complete responsibility for the proper and normal use of such equipment and facilities. CITY agrees that it shall immediately relinquish possession of all of the above-mentioned property to FRANCHISEE upon receipt of written notice from FRANCHISEE to the effect that it is able to resume its normal responsibilities under this Agreement.

C. **Labor Dispute.** FRANCHISEE agrees to advise CITY in writing at the time any negotiations are undertaken between FRANCHISEE and its employees relating to wages and benefits and FRANCHISEE shall regularly report the status of said negotiations from time to time including any pending strike, lock out, walk out, boycott

or other labor dispute to CITY. FRANCHISEE agrees that in the event service is disrupted due to a labor dispute, FRANCHISEE shall place a minimum of five (5) roll-off boxes at points designated by the Director to serve as collection points for the residents within five (5) days of said service interruption. FRANCHISEE also agrees in the event of a work stoppage to distribute plastic bags for use by residents at times and locations specified by CITY.

**SECTION 14.           PRIVACY.**

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

B.     **Mailing Lists.** FRANCHISEE shall not market or distribute outside the normal course of its business, mailing lists with the names and addresses of customers.

C.     **Rights Cumulative.** The rights accorded customers pursuant to this Section shall be in addition to any other privacy right accorded customers pursuant to federal or state law.

**SECTION 15.           REPORTS AND ADVERSE INFORMATION.**

A.     **Annual Reports.** FRANCHISEE shall submit an annual report, in such form and utilizing such media as approved or required by the Director, within sixty (60) days after the close of each calendar year. This report shall include, but is not limited to, the following information:

1.     A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class of service;

2. A report, in a form satisfactory to the CITY, on the CITY's progress in meeting and maintaining its ability to meet its goals under AB 939 as applied to the Franchise Area, along with any recommended changes.

3. A revenue statement, setting forth quarterly AB 939 Administrative Fees, if any, and the basis for the calculation thereof, certified for accuracy by an officer of FRANCHISEE.

4. A list of FRANCHISEE's officers and members of its board of directors.

5. A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in the FRANCHISEE and any subsidiaries.

**B. Monthly Reports.** FRANCHISEE shall prepare monthly program reports, in such form and utilizing such media as approved by the CITY, for the length of the Franchise commencing upon final approval of this Agreement. Monthly reports shall be submitted to the CITY on a quarterly basis, within twenty (20) days of the last day of each quarter. The reports shall include:

1. Summaries of tonnage collected and disposed of by commercial/industrial generators, disposal facility used and disposal fees paid;
2. Summaries of tonnage of recycled material collected, by material, by route;
3. Summaries of tonnages of non-recyclables/ contaminants disposed;
4. Summaries of tonnages, using an approved sampling methodology, of each material sold or otherwise exchanged for processing, by material type;
5. Average market prices for each material sold, and processing charges or acceptance fees for green waste or other applicable materials;
6. Description of progress in meeting the implementation schedule, including the problems encountered and how they were resolved;
7. Summaries of the number of service complaints by route, including the date, nature of complaint, and how it was resolved.
8. Number of FRANCHISEE's commercial accounts within the Franchise Area.

C. **Ad Hoc Reports.** FRANCHISEE shall provide up to six (6) reports of varying detail and format, as specifically requested by the CITY, to meet unforeseeable information queries of the California Integrated Waste Management Board, Orange County Integrated Waste Management Task Force, or other public agencies, including CITY.

D. **Adverse Information.** FRANCHISEE shall provide CITY two copies of all reports, or other material adversely affecting this Agreement, submitted by FRANCHISEE to the Environmental Protection Agency, the California Integrated Waste Management Board or any other federal or state agency. Copies shall be submitted to CITY simultaneously with FRANCHISEE's filing of such matters with said agencies. FRANCHISEE's routine correspondence to said agencies need not be automatically submitted to CITY, but shall be made available to CITY upon written request, as provided in § 25.A, , below.

1. FRANCHISEE shall submit to CITY copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the FRANCHISEE to, as well as copies of all decisions, correspondence and actions by, any Federal, State and local courts, regulatory agencies and other government bodies relating specifically to FRANCHISEE's performance of services pursuant to this Agreement. Any confidential data exempt from public disclosure shall be retained in confidence by the CITY and its authorized agents and shall not be made available for public inspection.

2. FRANCHISEE shall submit to the CITY such other information or reports in such forms and at such times as the CITY may reasonably request or require.

3. All reports and records required under this or any other Section shall be furnished at the sole expense of FRANCHISEE.

4. A copy of each of FRANCHISEE's annual and other periodic internal financial reports and those of its parent corporation or other business entity as the CITY requests, shall be submitted to the CITY within thirty (30) days after receipt of a request.

E. **Failure to Report.** The refusal, failure, or neglect of FRANCHISEE to file any of the reports required within thirty (30) days after a written request by CITY, or

the inclusion of any materially false or misleading statement or representation made knowingly by FRANCHISEE in such report shall be deemed a material breach of this Agreement, and shall subject FRANCHISEE to all remedies, legal or equitable, which are available to the CITY under this Agreement or otherwise.

**SECTION 16. PUBLIC INFORMATION AND EDUCATION.**

Upon CITY's request, FRANCHISEE shall design and implement, in conjunction with the CITY, a public information and education program.

**SECTION 17. ANNUAL REVIEW OF PERFORMANCE AND QUALITY OF SERVICE.**

A. **Public Hearing.** At CITY's sole option, City Manager may hold a public hearing each year at which FRANCHISEE shall be present and shall participate, to review FRANCHISEE's performance and quality of service. The reports required by this Agreement regarding customer complaints shall be utilized as the basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

B. **CITY Report.** Within thirty (30) days after the conclusion of the public hearing, CITY shall issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with this Agreement is found, CITY may direct FRANCHISEE to correct the inadequacies in accordance with § 11.A, above.

**SECTION 18. SYSTEM AND SERVICES REVIEW.**

To provide for technological, economic, and regulatory changes in refuse collection, composting and recycling, to facilitate renewal procedures, to promote competition in the refuse, composting and recycling industry, and to achieve a continuing, advanced refuse collection, composting and recycling system, the following system and services review procedures are hereby established:

A. **Hearing.** At CITY's sole option, City Manager may hold an administrative hearing each year at which FRANCHISEE shall be present and shall participate, to review the refuse collection and recycling system and services. It is CITY's intent to conduct any system and services review concurrently with any Annual Review of Performance and Quality of Service as provided for in § 17, above.

B. **FRANCHISEE Report.** Sixty (60) days after receiving notice from the CITY, FRANCHISEE shall submit a report to CITY indicating the following:

1. Applicable refuse collection, composting and recycling services as may be reported in refuse collection, composting and recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in California with comparable populations, that are not otherwise provided to CITY;

2. Changes recommended to improve the CITY's ability to meet the goals of AB 939; and

3. Any specific plans for provision of such new services by the FRANCHISEE, or a justification indicating why FRANCHISEE believes that such services are not feasible for the Franchise Area.

C. **Review; Scope.** Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, customer complaints, rights of privacy, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals and regulatory constraints.

D. **Additional Topics.** CITY and FRANCHISEE may each select additional topics for discussion at any systems and services review hearing.

E. **CITY Report.** Not later than sixty (60) days after the conclusion of each system and service review hearing, CITY shall issue a report. The report shall include a listing of any refuse collection, composting and recycling services not then being provided to CITY that are considered technically and economically feasible by CITY. CITY may require FRANCHISEE to provide such services within a reasonable time, for reasonable rates and compensation.

#### **SECTION 19. DELINQUENT ACCOUNTS.**

A. **Customer Standards.** As a matter of information, but without warranty as to effect, enforcement or continuity, CITY has heretofore adopted requirements and standards relating to the collection of refuse. CITY does not warrant property owner compliance with said standards and regulations, and FRANCHISEE assumes the risk

thereof and shall not claim hardship, extra payment, excuse or frustration on account thereof; except that FRANCHISEE and CITY mutually agree to improve the timeliness of customer payments and to reduce the number of delinquent accounts through a program of cooperative abatement. In the event a collection bill remains unpaid for a period in excess of two (2) months, FRANCHISEE shall provide written notice of such default to the property owner, if the property owner is not the defaulting customer.

B. **Service Discontinuance.** FRANCHISEE may discontinue service and remove bins from commercial subscribers for nonpayment. Commercial subscribers that have not remitted required payments within thirty (30) days after the date of billing shall be notified, on forms approved by the CITY, that services may be discontinued fifteen (15) days from the date of notice. If payment is not received, FRANCHISEE may discontinue services and remove all bins. Upon payment of the delinquent fees, FRANCHISEE may charge a redelivery fee, as set forth in Exhibit "B," and resume collection services on the next regularly scheduled collection day.

#### **SECTION 20. COLLECTION EQUIPMENT.**

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

A. **Vehicles.** All vehicles used by FRANCHISEE under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, shall be of size, weight, nature and type to be minimally intrusive on the community with respect to noise, emissions, maneuverability, safety, fuel efficiency, and other factors necessary to minimize the impacts of FRANCHISEE's services.

B. **Maintenance of Vehicles and Equipment.** FRANCHISEE shall maintain all trucks and equipment used within CITY in good and lawful mechanical condition and the same shall be clean and uniformly painted and numbered. All trucks and equipment shall have painted thereon, or affixed thereto, in letters and numerals at least six (6) inches in height, the name and telephone number of FRANCHISEE, which name and telephone shall be clearly visible at all times. Each vehicle utilized by FRANCHISEE shall be identified by numerals at least six (6) inches in height in a

location or locations on such vehicles to be specified by CITY. A list showing each vehicle so identified shall be supplied to CITY and maintained in a current posture. All trucks and equipment used in the performance of the Agreement shall be subject to inspection by CITY, and, upon notice given by CITY, FRANCHISEE shall make the equipment available for inspection. If CITY finds that any truck or equipment being used by FRANCHISEE is not in satisfactory condition, then the truck or equipment requiring correction of defects shall not be used by FRANCHISEE in the performance of the Agreement until corrected to the reasonable satisfaction of CITY.

C. **Condition of Truck Bodies.** All truck bodies used by FRANCHISEE shall be constructed of metal and shall be reasonably watertight and leak-proof. Each piece of equipment used by FRANCHISEE shall carry at all times a broom and shovel to be used for the immediate removal of any spilled material.

D. **Covers.** The body of each truck of FRANCHISEE shall have a metal cover covering at least fifty percent of the truck body at all times and the remaining fifty percent (50%) shall be covered by a tight fitting, waterproof tarpaulin, which shall be securely tied in order to cover refuse when the vehicle is being used to transport its contents to the place of disposal or otherwise of a design and construction approved by the City Manager.

E. **Name of FRANCHISEE.** FRANCHISEE has agreed to provide all of the services pursuant to this Agreement under the name "BREA DISPOSAL." This name shall be used for all correspondence, billing statements, directory listings, references, signs, vehicle identification, *etc.* FRANCHISEE may include such additional information as may be approved by the Director.

F. **Washing of Vehicles.** Solid waste collection vehicles shall be washed at least once every seven (7) days.

G. **Decals.** All vehicles, high visibility bins, roll-offs, and earthquake/ catastrophe preparedness containers shall display a decal as specified by the Director.

#### **SECTION 21. PUBLIC ACCESS TO FRANCHISEE.**

A. **Office Hours.** FRANCHISEE's office hours shall be, at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday and 8:00 a.m. to 12:00 noon, Saturday, on

all collection days. A representative of FRANCHISEE shall be available during office hours for communication with the public at FRANCHISEE's principal office. Normal office hours' telephone numbers will either be a local or toll-free call. FRANCHISEE shall also maintain a local or toll-free after-hours telephone number for use during other than normal business hours. FRANCHISEE shall have a message system available at said after-hours telephone number during all hours other than normal office hours and shall provide the Director with an emergency telephone number list.

**B. Service Complaints.**

1. All customer complaints shall be directed to FRANCHISEE. FRANCHISEE shall record all complaints received by mail, by telephone or in person (including date, name, address of complainant and nature of complaint). FRANCHISEE agrees to use its best efforts to resolve all complaints by close of business of the second business (collection) day following the date on which such complaint is received. Service complaints may be investigated by the Director. Unless a settlement satisfactory to complainant, FRANCHISEE, and CITY is reached, the complainant may refer the matter to the City Manager for review.

2. FRANCHISEE will maintain records listing the date of consumer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by FRANCHISEE to resolve the complaint. All such records shall be maintained for a period of five (5) years, and shall be available for inspection by CITY. FRANCHISEE shall prepare monthly summaries of customer complaints. The summaries shall be available and delivered monthly to the Director.

**C. Government Liaison Person.** The FRANCHISEE shall designate a "government liaison person" who shall be responsible for working with the Director to resolve consumer complaints. The Director shall be made aware of the name, position, and telephone number of this individual, and in the event the "government liaison person" is changed for whatever reason, FRANCHISEE shall notify the Director within forty-eight (48) hours of the change. The Director of Maintenance Services may request that FRANCHISEE change its "government liaison person" at any time by notifying FRANCHISEE in writing, stating the reasons for such request.

D. **Customer Service Performance Standards.** Set forth as Exhibit "E" are the Customer Service Performance Standards pertaining to FRANCHISEE's activities hereunder. FRANCHISEE agrees to adhere to said standards as set forth in Exhibit "E."

**SECTION 22. RESOLUTION OF DISPUTED CUSTOMER COMPLAINTS.**

A. **Notice.** FRANCHISEE shall notify customers of this complaint resolution procedure at the time customers apply for service, and subsequently, annually.

B. **Time for Review.** A customer dissatisfied with FRANCHISEE's decision regarding a complaint may ask the CITY to review the complaint. To obtain such review, the customer must request CITY review within thirty (30) days of receipt of FRANCHISEE's response to the Complaint, or within forty-five (45) days of submitting the complaint to FRANCHISEE, if FRANCHISEE has failed to respond to the complaint. The CITY may extend the time to request its review for good cause.

C. **Reference to FRANCHISEE.** Before reviewing the complaint, the City Manager shall refer it to FRANCHISEE. If FRANCHISEE fails to cure the complaint within fifteen (15) days, the City Manager shall review the customer's complaint and determine if further action is warranted. The City Manager may request written statements from FRANCHISEE and customer, and/or oral presentations.

D. **Determination of Complaint.** The City Manager shall determine if the customer's complaint is justified, and if so, what remedy, if any, shall be imposed. The remedy under this Section shall be limited to a rebate of customer charges related to the period of breach of any of the terms of this Agreement or a penalty of up to \$100 for any single event or series of related events, or any actual damages.

E. **Decision of City Manager.** The decision of the City Manager shall be final on any matter under Five Hundred Dollars (\$500.00). The City Manager shall make a recommendation to the parties with regard to any dispute in excess of Five Hundred Dollars (\$500.00).

**SECTION 23. OWNERSHIP OF SOLID WASTE,  
COMPOSTABLES AND RECYCLABLES.**

A. **Ownership of Material.** Once solid waste, compostables and recyclables are placed in containers or bins for collection or at curbside, ownership thereof shall

transfer to FRANCHISEE. Subject to FRANCHISEE's duty to meet the source reduction and recycling goals which apply to CITY, FRANCHISEE is hereby granted the right to retain, recycle, compost, dispose of and otherwise use such solid waste, compostables and recyclables, or any part thereof, in any lawful fashion or for any lawful purpose desired by FRANCHISEE.

**B. Ownership Upon Disposition.** All solid waste, compostables, recyclables, street and construction debris, or any part thereof, which is disposed of at a disposal site or sites (whether landfill, transformation facility, transfer station or material recovery facility) shall become the property of the owner or operator of the disposal site or sites once deposited there by FRANCHISEE.

**C. Direction of Facilities.** To the extent permitted by law, CITY, at its sole discretion, shall retain the right to direct which solid waste disposal facility, transformation facility, transfer station, or material recovery facility shall be used by FRANCHISEE to retain, recycle, compost, process, and to dispose of solid waste and construction debris generated within the Franchise Area.

#### **SECTION 24. INDEMNIFICATION AND INSURANCE.**

**A. Indemnification of CITY.** FRANCHISEE agrees that it shall protect, defend with counsel approved by CITY, indemnify and hold harmless CITY, its elected officials, officers, employees and agents from and against any and all losses, liabilities, fines, penalties, claims, damages, liabilities or judgments, including attorneys' fees, costs and expenses thereof, arising out of or resulting in any way from FRANCHISEE's exercise of its responsibilities under this Agreement, unless such claim is due to the sole negligence or willful acts of the CITY, its officers, employees, agents or contractors. Subject to the scope of this indemnification and upon demand of the CITY, made by and through the City Attorney, FRANCHISEE shall appear and defend the CITY and its officers, employees and agents in any claim or action, whether judicial, administrative or otherwise, arising out of the exercise of this Agreement. FRANCHISEE shall promptly pay any final judgment rendered against FRANCHISEE or CITY with regard to any such claim, damage, penalty, obligation and/or liability arising out of or in connection with this Agreement. In the event CITY is made a party to any action or proceeding filed or

prosecuted against FRANCHISEE for damages or other claims arising out of or in connection with FRANCHISEE's operations hereunder, FRANCHISEE agrees to pay to CITY any and all costs and expenses incurred by CITY in such action or proceeding together with CITY's reasonable attorney's fees.

B. **AB 939 Indemnification.** FRANCHISEE agrees to protect, defend (with counsel approved by CITY) and indemnify CITY as to one hundred percent (100%) of the costs of all legal actions brought by, or fines or penalties (including any attorneys' fees and costs incurred) 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 CITY as a result of FRANCHISEE's actions or inaction in its performance of this Agreement. Where more than one CITY franchisee or permittee contributes to the imposition of a fine or penalty or the incurrence of legal fees by CITY, all such franchisees and permittees shall indemnify the CITY, as required herein, on a *pro-rata* basis, based upon total tonnage of solid waste, recyclables and compostables collected during the immediately preceding calendar year.

C. **Hazardous Waste Indemnity.** FRANCHISEE agrees to indemnify, defend with counsel approved by CITY and hold harmless CITY from and against any and all claims, losses, liabilities, damages, demands, actions, judgments, causes of action, assessments, penalties, costs and expenses (including without limitation, the reasonable fees and disbursements of legal counsel, expert witnesses and accountants) and all foreseeable and unforeseeable consequential damages which might arise or be asserted against CITY as a result of a claimed violation ("costs and expenses" hereinafter) of any and all present and future federal, state and local laws (whether under common law, statute, rule, regulation or otherwise), including, but not limited to, CERCLA, Transportation of Hazardous Materials and Wastes (HMTA), 49 U.S.C. App. §§ 1801 through 1813, inclusive; RCRA; the California Hazardous Substance Account Act (HSAA), California Health and Safety Code §§ 25300 through 25395, inclusive; the California Hazardous Waste Control Act (HWCA), California Health and Safety Code §§ 25100 through 25249, inclusive, and the Porter-Cologne Water Quality Control Act, California Water Code §§ 13000 through 13999.16, inclusive, all as the same may be

amended from time to time, relating to the environment or to any hazardous substance, activity or material connected with the operations hereunder of FRANCHISEE.

Where more than one (1) franchisee or permittee of CITY contributes, or is alleged to have contributed, to any such claimed violation, CITY shall retain counsel to represent CITY's interests and FRANCHISEE shall contribute its *pro-rata* share of costs and expenses incurred by CITY, FRANCHISEE's share to be determined by the respective tonnage of all such franchisees or permittees contributing or allegedly contributing to such violation collected during the period of the alleged violation(s).

D. **Survival of Indemnities.** Each and every indemnity set forth herein shall survive the expiration of the term hereof, or sooner termination as provided herein, as the same may pertain to any act or omission accruing or arising during the term hereof.

E. **Workers' Compensation Insurance.** Before beginning work, FRANCHISEE shall furnish to the CITY an insurance endorsement as proof that it has taken out full compensation insurance for all persons whom FRANCHISEE may employ directly or through authorized subcontractors in carrying out the work specified herein, in accordance with the laws of the State of California. Such insurance shall be maintained in full force and effect during the period covered by this Agreement. Alternatively, FRANCHISEE may comply with this Subsection E by providing evidence, satisfactory to CITY, of approval by the State of California for FRANCHISEE to be permissibly uninsured.

In accordance with the provisions of § 3700 of the California Labor Code, every contractor shall secure the payment of compensation to his employees. FRANCHISEE, prior to commencing work, shall sign and file with the CITY a certification as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this contract."

The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to CITY. The policy shall also be amended to waive all rights of subrogation against the CITY, its elected or appointed officials, employees, or agents.

F. **Public Liability Insurance.** FRANCHISEE shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Commercial General Liability (occurrence) policy of insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000.00) and Twenty Million Dollars (\$20,000,000.00) annual general aggregate, and a comprehensive Automobile Liability (occurrence) policy of insurance with a combined single limit of not less than Ten Million Dollars (\$10,000,000.00) per occurrence for bodily injury, death and property damage arising out of the ownership, maintenance or use of any FRANCHISEE owned, hired or non-owned vehicles. Said insurance policies shall protect FRANCHISEE and CITY from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Agreement, whether such operations be by FRANCHISEE itself, or by its agents, employees and/or subgrantees. Copies of the policies or endorsements evidencing the above-required insurance coverage shall be filed with the City Clerk prior to commencement of performance.

G. **General Insurance Requirements.** All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California with a rating classification of "B" or better and a financial size category rating of "VII" or better according to the latest edition of the A.M. Best Company Key Rating Guide. All policies required hereunder shall name as additional insureds CITY, its elected officials, officers, employees, agents and representatives. The policies required hereunder shall contain language to the effect that: (1) the insurer waives the right of subrogation against all additional insureds; (2) the policies are primary and noncontributing with an insurance that may be carried by CITY; (3) such policies 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; and (4) they cannot be canceled or materially changed except after thirty (30) days' prior notice by the insurer to CITY by certified mail, return receipt requested. FRANCHISEE shall furnish CITY, annually, copies of all such policies promptly upon receipt of them, or endorsements evidencing the insurance. FRANCHISEE may effect for its own account insurance not required under this Agreement.

H. **Limits.** The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time and match the coverage provided by the CITY's own liability insurance policy.

I. **Modification.** The insurance requirements provided herein may be modified or waived in writing by the City Council upon the request of FRANCHISEE, provided the City Council determines such modification or waiver is in the best interests of CITY considering all relevant factors, including the fact that the parent of FRANCHISEE may be self-insured up to a certain acceptable amount.

**SECTION 25. FRANCHISEE'S BOOKS AND RECORDS: AUDITS.**

A. **Maintenance of Records.** FRANCHISEE shall maintain all records relating to the services provided hereunder, including, but not limited to, customer lists, billing records, maps, AB 939 compliance records, and customer complaints, for a period of not less than five (5) years, or any longer period required by law. The CITY shall have the right, upon five (5) working days advance notice, to inspect all maps, AB 939 compliance records, customer complaints, complete financial statements and other materials of the FRANCHISEE which reasonably relate to FRANCHISEE's compliance with the provisions of this Agreement. Such records shall be made available to CITY at FRANCHISEE's regular place of business, but in no event outside the County of Orange.

B. **Financial Report.** Not later than four (4) months following the end of each of the FRANCHISEE's fiscal years that occur during the term of this Agreement, or any extension thereof, FRANCHISEE shall provide to CITY, upon request, a financial statement prepared in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants pertaining to FRANCHISEE's operations in CITY to include, but not be limited to, FRANCHISEE's

statements of income, number of accounts, and related expenses and such other information as may be required by CITY's City Manager.

C. **Audit.** Should any examination or audit of FRANCHISEE's records reveal an underpayment of any fee required under this Agreement, the amount of such underpayment shall become due and payable to CITY not later than fifteen (15) days after written notice of such underpayment is sent to FRANCHISEE by CITY. Should an underpayment of more than three percent (3%) be discovered, FRANCHISEE shall bear the entire cost of the audit and shall pay a penalty equal to ten percent (10%) of such under-payment, plus interest on the under-payment at twelve percent (12%) per year. FRANCHISEE shall pay such cost, penalty and interest within thirty (30) days of CITY's mailing an invoice to FRANCHISEE reflecting the same.

D. **Confidentiality of Financial Data.** CITY shall maintain all financial data and information submitted by FRANCHISEE as confidential material to the extent permitted by law. In the event a third party requests such material deemed confidential hereunder, CITY shall promptly advise FRANCHISEE of each such request and FRANCHISEE may, in writing, authorize release thereof. In the event FRANCHISEE does not consent to such release, FRANCHISEE shall defend, indemnify and save CITY and its elected officials, officers, employees and agents free and harmless from any litigation generated thereby all in accordance with the provisions of § 24.A., above.

E. **Nonconfidential Material.** Notwithstanding any other term or provision hereof, CITY shall not be required to maintain as confidential any material required to be presented to CITY with regard to rate adjustments or increases requested by FRANCHISEE.

#### **SECTION 26. GENERAL PROVISIONS.**

A. **Force Majeure.** FRANCHISEE shall not be in default under this Agreement in the event that the collection, transportation and/or disposal services of FRANCHISEE are temporarily interrupted or discontinued for any of the following reasons: riots; wars; sabotage; civil disturbances; insurrections; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes; lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control

of FRANCHISEE. Other catastrophic events do not include the financial inability of the FRANCHISEE to perform or failure of the FRANCHISEE to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the FRANCHISEE. In the event a labor disturbance interrupts collection, transportation and/or disposal of refuse by FRANCHISEE as required under this Agreement, CITY may elect to exercise its rights under § 13 of this Agreement.

**B. Independent Contractor.** FRANCHISEE is an independent contractor and not an officer, agent, servant or employee of CITY. FRANCHISEE is solely responsible for the acts and omissions of its officers, agents, employees, grantees and subgrantees, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between CITY and FRANCHISEE. Neither FRANCHISEE nor its officers, employees, agents or subgrantees shall obtain any rights to retirement or other benefits which accrue to CITY employees.

**C. Property Damage.** Any physical damage caused by the negligent or willful acts or omissions of employees, grantees or subgrantees of FRANCHISEE to private or public property shall be repaired or replaced.

**D. Right of Entry.** FRANCHISEE shall have the right, until receipt of written notice revoking permission to pass is delivered to FRANCHISEE, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting refuse pursuant to this Agreement.

**E. Law to Govern, Venue.** The laws of the State of California shall govern the rights, duties and obligations of the parties to this Agreement, including, but not limited to, the provisions of Public Resources Code § 49520. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Orange. In the event of litigation in a U. S. District Court, exclusive venue shall lie in the Central District of California, Santa Ana.

F. **Fees and Gratuities.** FRANCHISEE shall not, nor shall it permit any agent, employee or subgrantees employed by it to request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of refuse otherwise required to be collected under this Agreement.

G. **Amendment of Agreement.** This Agreement is intended to carry out CITY's obligations to comply with the provisions of AB 939, as it from time to time may be amended, and as implemented by regulations of the California Integrated Waste Management Board ("Regulations"), as they from time to time may be amended. In the event that AB 939 or other state or federal laws or Regulations enacted after this Agreement has been executed, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement may be modified or suspended as may be necessary to comply with such state or federal laws or Regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the parties.

H. **Compliance with Laws.** FRANCHISEE shall comply with all applicable laws, regulations and orders, including, but not limited to those provisions of the City Council which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. Further, and with the exception of a CITY business license, FRANCHISEE shall obtain and maintain throughout the term of the Agreement, any and all other permits and licenses required by law, at FRANCHISEE's sole expense.

I. **Hours of Work.** Eight (8) hours of labor shall constitute a legal days work for all workmen employed in the execution of this contract and FRANCHISEE and any subcontractors under FRANCHISEE shall comply with and be governed by the laws of the State of California having to do with working hours as set forth in the Labor Code of the State of California, as the same may be amended from time to time.

J. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City: City of Brea  
1 Civic Center Circle  
Brea, California 92821  
Attention: Director of Maintenance Services  
Telecopier: (714) 671-1493

Copy to: Richards, Watson & Gershon  
1 Civic Center Circle  
Post Office Box 1059  
Brea, California 92822-1059  
Attention: James L. Markman, City Attorney  
Telecopier: (714) 990-6230

To Franchisee: Brea Disposal  
1131 North Blue Gum Avenue  
Anaheim, California 92806  
Attention:  
Telecopier: (714) 238-3305

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally served or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

**K. Identification Required.**

1. FRANCHISEE shall provide its employees and officers with identification for all individuals who may make personal contact with the public.
2. FRANCHISEE shall provide a list of current employees and officers to the CITY upon request.

**L. Non-Discrimination.**

1. FRANCHISEE shall not discriminate against any employee or applicant for employment because of age, race, religion, creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any mental or physical handicap, unless based upon a *bona fide* occupational qualification. FRANCHISEE shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any mental or physical handicap. Such action shall include, but not be

limited to the following: employment upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and, selection for training.

2. FRANCHISEE understands and agrees that if it violates this non-discrimination provision, this Agreement may be terminated by CITY, as provided for in § 11, and further that FRANCHISEE shall be barred from performing any services for CITY now or in the future, unless a showing is made satisfactorily to CITY that discriminatory practices have been terminated and that a recurrence of such action is unlikely.

M. **Bonds.** FRANCHISEE shall, upon execution of this Agreement, execute and file with CITY's City Clerk, a corporate surety bond in favor of CITY in the penal sum of One Hundred Thousand Dollars (\$100,000.00), conditional upon the faithful performance of this Agreement by FRANCHISEE, which said bond shall be kept in full force and effect, subject to adjustment not more frequently than once every five (5) years by order of the City Manager, for the entire term of this Agreement and any extension(s) thereof. In the event of default by FRANCHISEE hereunder, the entire amount of said bond shall thereupon be liquidated and paid over to CITY as liquidated damages.

N. **Waiver by Performance or Payment.** Neither the acceptance by CITY of, nor any order by CITY for, the payment of money, nor any payment for, or acceptance of, the whole or any part of the work by CITY herein contemplated to be performed by FRANCHISEE shall operate or be construed to be a waiver of any portion of this Agreement or of any power herein reserved to CITY or any damages herein provided. Moreover, no waiver by CITY of any omission of performance or breach hereof by FRANCHISEE be deemed or construed, in any fashion whatsoever, to be a waiver of any other or subsequent such omission or break.

O. **Letter of Guarantee to County of Orange.** CITY guarantees to provide a Letter of Guarantee on behalf of FRANCHISEE to the County of Orange for payment of disposal fees. CITY will pay the County of Orange any disposal fee due pursuant to the deferred charge agreement if, for any reason, FRANCHISEE has not paid in accordance with the terms of the agreement. Payment by CITY will be made from funds collected by

CITY on behalf of FRANCHISEE for refuse collected in CITY. Funds to pay the County will be deducted from funds owed to FRANCHISEE before disbursement thereof to FRANCHISEE.

P. **Attorneys' Fees.** In the event any legal proceeding is instituted to enforce any term or provision of the Agreement, the prevailing party in said legal proceeding shall be entitled to recover attorneys' fees and costs from the opposing party in an amount determined by the court to be reasonable.

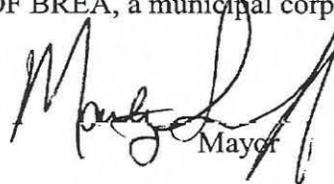
Q. **Savings Clause.** If any non-material provision of this Agreement shall for any reason be held to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

R. **Exhibits Incorporated.** Exhibits "A" through "E" are attached to and incorporated in this Agreement by reference.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF BREA, a municipal corporation

By:

  
Mayor

ATTEST:

By:

  
City Clerk

APPROVED AS TO FORM:

By:

  
City Attorney



## EXHIBIT "A"

### "BULKY GOODS COLLECTION"

Franchisee shall collect and dispose of Bulky Goods from all residential premises if requested by the residence up to three (3) times per year at no extra cost to the residence. Costs for Bulky Goods collection will be part of the basic rate to be charged as specified in Exhibit "B". Subsequent collection of Bulky Goods over three (3) in any year shall be charged at the rate specified in Exhibit "B".

Bulky Goods shall be placed by the resident and collected by Franchisee at curbside. Bulky Goods means large and small household appliances, furniture, carpets, mattresses and similar large or small items of Solid Waste which cannot be contained within a residential Container. Bulky Goods must be of a weight that can be reasonably lifted and collected by the Franchisee collection crew and equipment. The allowable amount of Bulky Goods which shall be collected by the Franchisee as part of this service, and not considered Special Waste, shall be determined by the Director.

Construction debris, dirt, rock, sod and similar types of Solid Waste from residential premises shall be considered Special Wastes and not be considered Bulky Goods.

Bulky Goods Collection shall be made within seven days after receipt of a request for such collection by the residence to the Franchisee.

### "SPECIAL WASTE COLLECTION"

Special Waste shall mean Solid Waste generated in the City which does not fit the collection criteria and specifications as described in the Franchise Agreement. Special Waste shall be collected and disposed of by the Franchisee at rates specified in Exhibit "B" herein or at other rates established or approved by the Director from time to time. The City also acknowledges that the Franchise is granted only with respect to those services described in the Franchise Agreement and does not include the collection transportation, processing or disposal of Hazardous Waste, Medical Waste, or other Wastes. The Franchise does not, however, limit the right of the Franchisee to provide any such other services. If the Franchisee elects to provide any such other services, it shall not be governed by the terms of this Franchise, but shall be subject to Applicable Law.

## EXHIBIT B

### Schedule of Billing Rates

#### Monthly Residential Rates

Basic Residential Rate: One (1) refuse container,  
one (1) recycle container and one (1) yard waste container \$15.12

#### Additional Residential Automated Containers:

Each additional refuse container per month 6.00  
Each additional recycling container per month no charge  
Each additional yard waste container per month 4.50

Mobile Home Residential Rate 15.12

Temporary three (3) yard Residential Bin 60.00  
Three (3) days – one (1) empty

#### Commercial Bin Service

Commercial Barrel Rate \$15.24

#### Monthly Commercial Bin Rates – 1<sup>st</sup> Pick-up Monthly

1.5 yard Commercial Bin 62.46  
1.5 yard Manure Bin 70.46  
3.0 yard Commercial Bin 101.18  
3.0 yard Manure Bin 109.18  
3.0 yard Temp Construction Bin 130.00  
3.0 yard Compacted Bin 146.33

#### Each Additional Weekly Pick-up Frequency – Monthly Rate

1.5 yard Commercial Bin 45.08  
1.5 yard Manure Bin 53.08  
3.0 yard Commercial Bin 66.66  
3.0 yard Manure Bin 74.66  
3.0 yard Temp Construction Bin 70.00  
3.0 yard Compacted Bin 117.07

#### Non-Scheduled Additional Bin Pick-ups

1<sup>st</sup> Non-Scheduled Bin Pick-up  
1.5 yard Commercial Bin 50.00  
3.0 yard Commercial Bin 50.00  
3.0 yard Temp Construction Bin 50.00  
Each Additional Bin Pick-up of above at same time 27.50  
All Additional Manure Bin Pick-ups 57.50  
Add Additional Compacted Bin Pick-ups 79.50

### Commercial/Industrial Special Services

Permanent 30 yard Roll-Off	
Basic Rate – Minimum four (4) loads per month	\$1,304.00
Each Additional Load over the four (4) load minimum	326.00
Permanent 15 yard Demo Container	
Basic Rate – Minimum four (4) loads per month	1,446.00
Each Additional Load over the four (4) load minimum	361.50
Permanent 40 yard Packer Loads – Rate per load	427.75
Temporary 30 yard Roll-Off Container – Rate per load	341.25
Three (3) days – One (1) empty	
Temporary 15 yard Demo Container – Rate per load	382.00
Three (3) days – One (1) empty	
Surcharge for over Eight (8) Tons for any One (1) load – Per Ton	34.12
Container Relocation, up to thirty-five (35) miles	40.00
Over thirty-five (35) miles, per mile fee	1.00
Customer Requested Container Exchange	59.00
Bulky Item Collection, in excess of three (3) per year	By quote

### Payment Schedule

FRANCHISEE shall pay to City Franchisee Fees on all franchised services directly billed by FRANCHISEE as specified in Section 8.C., as well as fifty percent (50%) of the revenues from the sales of recovered CITY's residential recyclable materials revenues, together with supporting data, are due on or before the 20<sup>th</sup> of the month following the close of each month for the term of the franchisee. Separate checks for franchise fees and recyclable revenue shall be payable to the City of Brea and shall be mailed or otherwise delivered to CITY's Finance Department.

CITY shall pay FRANCHISEE for disposal charges on or before the 20<sup>th</sup> of the month following the close of each month. CITY shall pay FRANCHISEE for residential collection services on or before the 15<sup>th</sup> of the month following the close of each month. Separate checks for disposal charges and collection services shall be payable to Brea Disposal and shall be mailed or otherwise delivered to Accounting Manager, Post Office Box 309, 1131 North Blue Gum Street, Anaheim, CA 92805.

FRANCHISEE and CITY agree and understand that no special payments will be made if invoices do not meet the prescribed CITY-approved remittance schedule deadlines.

## EXHIBIT "C"

### "Recycle Brea"

"Recycle Brea" shall be an integral part of the services to be provided by the Franchisee to the City. The goals of "Recycle Brea" shall be to illustrate a commitment to waste reduction, reuse and recycling in order to meet California's recycling requirements as set forth in Assembly Bill 939. Specifications for "Recycle Brea" are as follows and may change from time to time as specified by the Director and the Franchisee:

A. Programs: shall include, but not limited to, residential curbside collection of commingled recyclable materials, residential curbside collection of greenwaste, commercial waste recycling by means of source separated recyclable collection and commingled solid waste processing at a Material Recovery Facility. Collection of materials will be at a minimum of one time per week for residential customers and on an as needed basis for Commercial Subscribers.

B. Containers and Bins: shall be supplied to Residents and Commercial Subscribers by the Franchisee and meet the specifications of the Director. Containers and Bins shall be supplied and maintained by the Franchisee during the term of this agreement. Containers and Bins which are broken or damaged due to normal wear and tear shall be replaced, if needed, one time per year, free of charge, Containers or Bins which are broken, damaged, lost or stolen due to customer neglect or require replacement more frequent than one time per year, will be replaced at a charge as specified in Exhibit "B" herein.

C. Additional Containers and Bins: for recyclables, green waste and solid waste shall be provided by the Franchisee as needed. All Residential customers will be supplied with three Containers as part of the basic rates to be charged as specified in Exhibit "B". Additional Containers shall be provided at rates specified in Exhibit "B" herein. All Commercial Subscribers will be supplied with an appropriate number of Bins as part of the basic rates to be charged as specified in Exhibit "B". Additional Bins shall be provided at rates specified in Exhibit "B" herein.

D. Cost of Program: The cost of the program will be prorated over the entire ratepayer base of both Residential and Commercial Subscribers. The Director shall determine the percentage of proration. Costs of the program shall include funding for containers, collection vehicles, collection equipment, processing facilities, processing equipment, public education, advertising, labor, principal and interest payments, recyclables and green waste marketing, regulatory, and other relevant costs.

E. Special Collections: During the holiday season of the year, Franchisee shall provide special collection at no extra cost, for Christmas trees which physically would not fit inside a container. Christmas trees shall be set at curbside by the resident for special collection. The period for special collection shall not exceed three (3) weeks after Christmas Day. Christmas trees collected after three (3) weeks from Christmas Day shall be considered Bulky Goods or Special Waste.

## EXHIBIT "C"

F. Public Education : The Franchisee shall provide an ongoing public education program to inform participants as to the proper use and placement of Containers, proper materials to be placed inside the various types of Containers and other program instructional information as may be necessary to insure successfully meeting the goals of the program. The Franchisee shall conduct public meetings, send mailings and otherwise provide information to the participants of the programs as to the actual program itself, and its long term environmental benefits. The Director shall approve of all materials that Franchisee plans to distribute to participants prior to distribution. The City shall provide assistance with public education, news media, advertising and other such press releases that will become necessary from time to time and provide information and advertising in City publications about the Recycle Brea program.

G. Marketing of Recyclable Materials: Franchisee shall be responsible for all marketing activities in the secondary materials market and secure to the best of its ability purchase commitments from recyclable product purchasers. Franchisee shall use its best efforts to investigate, research, develop and maintain markets for recyclables and greenwaste byproducts. Franchisee will take all reasonable steps to minimize downgrades and rejections of recovered materials.

H. Revenue from the Program Fifty percent (50%) of the net revenues from residential Recyclable Materials shall be paid to the City by the Franchisee on a monthly basis in arrears. Payments shall be made in accordance with the terms as specified in Exhibit "B".

K. Voluntary Program : The Recycle Brea program shall be voluntary, to the extent that participants who do not wish to take part in the recycling or green waste segment of the program will have the option to do so. Those choosing not to participate may request that the Franchisee remove the container(s) used for recycling and or greenwaste from their residence. However, all residences will be REQUIRED to utilize the Container that is designated for Solid Waste since this Container is the only City authorized Container to be used for Solid Waste disposal and collection and can only be collected via special robotics collection vehicles. Also, regardless if the residence participates or not in the recycling and or green waste segment(s) of the program, the rate charged shall be the base rate as specified in Exhibit "B" for residential premises.

**EXHIBIT "D"**

**LOCATION OF CITY FACILITIES**

**CITY FACILITIES**

Civic & Cultural Center

Brea Community Center

Brea Senior Center

Fire Station #1

Fire Station #2

Fire Station #3

Fire Station #4

City Yard

Tamarack Park

Junior High Park

Arovista Park

City Hall Park

Country Hills Park

**SPECIAL EVENTS**

Country Fair

Brea Fest

## EXHIBIT "E"

### CUSTOMER SERVICE PERFORMANCE STANDARDS

1. FRANCHISEE shall maintain a computerized customer account system that contains sufficient information to answer customer service inquiries.
2. The computer system shall have the capacity to maintain an account history of at least eighteen (18) months. Any older account information shall be maintained on microfiche or a comparable system for a minimum of four (4) years. CITY shall have access to such records during regular business hours.
3. FRANCHISEE shall provide a telephone line separate from customer service lines for use by CITY during regular business hours. Said line shall be answer promptly.
4. In all disputes that cannot be resolved between FRANCHISEE and customer within fifteen (15) days of the date such dispute is first made known to FRANCHISEE, the Director shall, within a reasonable time, hear the facts of the dispute and shall render a decision. Such decision shall be final.
5. All customer service records and logs kept by FRANCHISEE shall be available to CITY upon request and at no cost to CITY.
6. FRANCHISEE shall designate a representative to serve as liaison between FRANCHISEE and CITY.
7. CITY shall, at any time during regular business hours, have access to FRANCHISEE's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints. If deemed necessary by CITY, FRANCHISEE shall provide in its offices, a desk, chair, computer, terminal and telephone for use by CITY representatives.
8. FRANCHISEE shall install telephone equipment sufficient to handle the volume of calls typically experienced on the busiest days.
9. If during any thirty (30) day period CITY receives more than five (5) complaints that customers are unable to contact FRANCHISEE by telephone, such complaints will be investigated and FRANCHISEE may be required to increase the capacity of telephone equipment. CITY may from time to time conduct telephone surveys to confirm the adequacy of FRANCHISEE's telephone system.

10. Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to CITY upon request.

11. All written customer inquiries shall be responded to within five (5) working days of receipt. If necessary, written communication of the response of FRANCHISEE will be made to the customer within fifteen (15) working days of receipt of the inquiry.

12. In addition to the service quality surveys CITY may conduct pursuant to the terms of the Agreement, CITY may, at CITY's own expense, conduct surveys to determine customer satisfaction. If, as a result of any survey, CITY determines that adequate customer service quality is not being maintained, FRANCHISEE shall take whatever action is deemed necessary by CITY to bring such service to an acceptable level. The results of such surveys shall be made available to FRANCHISEE upon request.

13. FRANCHISEE shall maintain a routing system and make available to CITY upon request for inspection at FRANCHISEE's office at no cost to CITY documents containing at least the following information:

- A. Route number and day of collection.
- B. Streets serviced.
- C. For those accounts billed by FRANCHISEE, those addresses without active accounts and the date service terminated.
- D. Those addresses subscribing to one of the special service options and which option it is.
- E. Service information as determined by the Director (such as location of containers on a corner lot).

14. FRANCHISEE shall provide and maintain a current emergency list of responsible personnel to be contacted in the event of an emergency.

15. FRANCHISEE, within twenty-four (24) hours of its receipt of notice from the Director of a failure to provide refuse collection service to the Generator, as required by the terms of the Agreement, shall collect the refuse in collection. In the event FRANCHISEE fails to collect such refuse within twenty-four (24) hours of said notice, CITY may collect and transport the refuse and FRANCHISEE shall reimburse CITY for all costs so incurred by CITY, and/or may impose a charge upon FRANCHISEE as listed below. The Director may levy a charge in the same amounts listed below for FRANCHISEE failure to provide services as required by this Agreement provided, however, that no such charge may be levied until FRANCHISEE has been given written notice of the Director's intention to levy said charge and the FRANCHISEE

has been given reasonable a period of time, not to exceed fifteen (15) days, to correct or investigate said failure. The Director's decision to levy any such charge shall not be deemed a waiver of any default by FRANCHISEE under this Agreement.

- A. Failure to collect a missed service within twenty-four (24) hours of notice of said missed service: Fifty Dollars (\$50.00) per occurrence.
- B. Failure to clean, repair or replace any bin within fifteen (15) working days after notification of the necessity thereof: Fifty Dollars (\$50.00) per occurrence.

**Audit No. 21375**

**Audit Report  
of  
City of Brea's Contract with  
Taormina Industries, Inc.  
March 1, 2001 – February 28, 2002  
August 23, 2002**

**Internal Audit  
City of Anaheim**



CITY OF ANAHEIM, CALIFORNIA

Office of the City Manager  
Audit Division

August 23, 2002

TO: Tim O'Donnell, Brea City Manager  
FROM: Kristine Ridge, City of Anaheim Audit Manager  
SUBJECT: Taormina Industries, Inc. Contract Compliance Audit for the period March 1, 2001 – February 28, 2002

We have completed our audit of the franchise agreement with Taormina Industries, Inc. (the Franchisee) for the period March 1, 2001 through February 28, 2002. The audit was conducted to determine whether the proposed rates submitted for Council approval are calculated materially correct and in compliance with agreement terms, amounts paid by the City for services provided were accurate and in accordance with agreement terms, amounts received from the Franchisee were complete, accurate and in compliance with agreement terms, and that the proper insurance and bond coverages were maintained during the audit period.

The audit was performed in accordance with the standards set forth by the Institute of Internal Auditors and included a review of procedures used to bill for services provided and credit the City for recycling and franchise fee revenues, testing of proposed rates, testing tonnage and services billed, recycling credits issued, franchise fees remitted, examining insurance and bond coverages for propriety, and other procedures considered necessary in the circumstances.

Based on the results of the audit, procedures used for billing services were deemed adequate, proposed rates were calculated materially correct, supported and in compliance with agreement terms, payment and credit for services provided were accurate and in compliance with agreement terms, recycling credits and franchise fees remitted were complete, accurate and in compliance with agreement terms, and insurance and bond coverages were deemed appropriate except as noted in the detailed audit issues presented in the pertinent section of this report. The accompanying report describes, in detail, the results of our audit and our recommendations, which have thoroughly been discussed with City staff and the Franchisee both of whom have promptly taken action to address the issues and correct deficiencies.

We would like to thank the Franchisee and the management and staff of the City of Brea for their cooperation and assistance during the audit. This report is intended solely for the use of the City of Brea and should not be used for any other purpose.

Respectfully,

Kristine Ridge, Audit Manager, CPA, CGFM

KR/skgg

c: Lawrence D. Hurst, Financial Services Director  
Patrick McCarron, Director of Maintenance Services

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

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**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**ISSUES AND RECOMMENDATIONS**

**A. FRANCHISE FEES**

**1. Correction of Roll-off's and Related Franchise Fees**

Background

Other cities have franchise agreements with the Franchisee for the collection and disposal of solid waste and the option of auditing their respective franchise agreements. In some cases the other cities have similar requirements as the City of Brea in that the Franchisee remits franchise fees based on various commercial services provided.

Issue

As a result of one of these cities performing an audit it was determined that there were variances between the number of roll-off loads reported each month to that particular city and the number of roll-off loads recorded in the monthly Volume Summary Report. The dispatch billing system was erroneously programmed causing it to leave out the first four loads that were received at the scale house each month for this particular cities' permanent roll-off accounts. Since the Franchisee remits based on reports from the dispatch billing system, the franchise fees being paid were underremitted. In addition to correcting this particular cities' franchise fees as a result of that audit, the Franchisee determined the amount of errors for the City of Brea and self-corrected the errors as follows:

For the period prior to 1/99 the amount of the error was \$19,663.58 which the Franchisee credited the City of Brea in February 2002; the error totaled \$24,827.48 for the period 1/99 – 2/00 which was credited in January 2002; and for the audit period the error totaled \$13,002.90 which was credited in December 2001. The Franchisee has corrected the error going forward from December. It should be noted that the Franchisee self-corrected the error prior to the City of Brea's audit being conducted and the error was corrected not only for the audit period but back to the date that the error first occurred.

Recommendation

Based on our testing, it appears the City of Brea has been properly credited for franchise fees and therefore there are no further recommendations.

**2. Correction for Temporary Bins and Related Franchise Fees**

Background

Under the contract terms, the Franchisee may provide and bill for temporary three-yard residential bin services. These services are billed and collected directly by the Franchisee and includes both the service and the tonnage. As a result of another cities' audit that determined the Franchisee had erroneously not paid franchise fees on temporary bins, the Franchisee reviewed their compliance with Brea's contract and determined that they had not remitted franchise fees to the City of Brea for such services.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**2. Correction for Temporary Bins and Related Franchise Fees (concl'd)**

Issue

The Franchisee determined the amount of the credit due the City of Brea for the period 1/01 – 8/01 which was \$2,039.66 and credited the City of Brea for this amount in August 2001 as well as correcting for this error going forward.

Recommendation

Based on our testing, it appears the City of Brea has been properly credited for franchise fees and therefore there are no further recommendations.

**3. Other Commercial Billings and Related Franchise Fees**

Background

Per Contract Section 8 C. Franchise Fees. "Throughout the term of this Agreement, Franchisee shall pay City an amount equal to ten (10%) percent of Franchisee's commercial subscriber and special services collection gross receipts, which gross receipts shall be no less than ninety-five percent (95%) of Franchisee's gross billings. Franchisee shall remit said franchise fee to City pursuant to the provisions of Exhibit "B", and without invoice from City."

Issue

- a. The Franchisee bills commercial customers for an overweight surcharge as approved in Exhibit B; however, the rate does not include franchise fees therein the Franchisee does not remit franchise fees for any of the overweight surcharges billed. The City and the Franchisee agreed that the overweight surcharge was strictly intended to reimburse the Franchisee for the disposal fee and did not include the franchisee fee.
- b. The Franchisee also bills commercial customers for additional services, two of which were determined to be covered by the franchise agreement; however, the Franchisee erroneously did not remit franchise fees on these additional services billed. The Franchisee has credited the City for the period March 2001 through March 2002 for \$1,141.44 in April 2002 for extra pick-ups and will credit the City accordingly in future periods. The Franchisee also agrees with franchise fees due on "10-18 pick-ups" and will credit the City \$57.19 in June 2002 and will credit future periods as well.

Recommendation

The City and Franchisee should consider including the franchisee fee in the overweight surcharge. Based on the testing performed, it appears the City of Brea has been properly credited for franchise fees. In addition, the City should ensure that the Franchisee properly credits the City for 10-18 pick-ups in June 2002.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**B. SERVICES AND TONNAGE BILLED**

**1. Adjustment of Tons for Temporary Three-Yard Bins**

Background

As provided in contract Section 6. SERVICES TO BE PROVIDED and Section 8. COMPENSATION FOR SERVICES, the Franchisee is paid for residential services and allowed to direct bill certain other residential services, such as temporary three-yard bins. As noted above, the Franchisee now credits the City for franchise fees for the billing of temporary three-yard bins. In addition, the Franchisee also credits the City for tonnage of the three-yard bins since this tonnage is combined with the other residential tonnage, which has already been billed directly to the residential customer.

Issue

As a result of the audit, it was determined that during the audit period there were three months in which the Franchisee erroneously did not credit the City for the tonnage of temporary three-yard bins. The Franchisee credited the City \$1,725.26 for the tonnage of temporary three-yard bins in May 2002.

Recommendation

Based on our testing, it appears the City of Brea has been properly credited for franchise fees and therefore there are no further recommendations.

**2. Adjustments for Commercial Barrel Tonnage and Residential Tonnage**

Background

The Franchisee bills commercial customers directly for commercial services and tonnage as outlined in the franchise agreement and the City compensates the Franchisee for residential services and tonnage. Due to some commercial customers size or location, instead of using the large one-half or three-yard commercial bins, the smaller commercial barrels are used. As a result, these commercial customers' containers are picked-up by the residential trucks. In addition, due to the fact that some of Brea's residential trash customers are not serviced by the City of Brea's water facilities, these customers are billed directly by the Franchisee. As a result, the Franchisee credits the City for the tonnage collected for these customers.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**2. Adjustments for Commercial Barrel Tonnage and Residential Tonnage (concl'd)**

Issue

- a. It was determined that the Franchisee was billing the commercial customers directly for the services and tonnage of the smaller containers; however, the Franchisee was not crediting the City for the tonnage since it was commingled with other residential trash collected. However, the City was receiving fifty percent (50%) of any recycled income from these commercial customers, yet the contract only provides that the City receive 50% of residential recycling. Based on residential averages for tonnage and recycling, the Franchisee credited the City \$841.47 for the audit period as well as an additional \$66 for the month of March 2002 in April 2002. The Franchisee has also agreed to credit future periods for \$2.75 a barrel.
- b. The Franchisee has historically credited the City for tonnage of residential customers billed directly by them. It was determined that in September of 2001, the number of residential customer billed directly by the Franchisee was reduced; however, the Franchisee continued to credit the City for the historical number of residential customers. It was determined the City had been over credited by \$307.35. The Franchisee netted this adjustment against the credit due above and gave the City the net amount of the credit, \$600.12 in April 2002.

**Recommendation**

Based on our testing, it appears the City of Brea has been properly credited for tonnage and therefore there are no further recommendations.

**3. Variance in Calculation of the Number of Residential Customers**

**Background**

According to contract Section 8 A. Residential Services. ... "Said compensation for residential services shall be based upon the number of active residential water customers with water meters in service within the Franchise Area and shall be payable as specified in Exhibit "B"."

Issue

The City does not use the number of active residential water customers with water meters as stated in the contract to be the base for the Franchisee's compensation for residential services. Instead, the City divides the refuse billings for the respective categories by the specified billing rate to determine the number of residential customers that the Franchisee will be paid for.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**3. Variance in Calculation of the Number of Residential Customers (concl'd)**

Recommendation

Based on discussion with City staff, by using the above methodology the Franchisee is more fairly compensated for actual services provided, i.e. if residential customers are billed for a partial month then the Franchisee will be compensated accordingly, versus at one point in time determining how many active water meters there are. We agree with City staff that the methodology being used fairly compensates the Franchisee for services provided and the Franchisee does not object to the methodology being used. We therefore recommend that the City and Franchisee amend the franchise agreement to reflect the new practice.

**C. CITY SERVICES**

**1. Billing of City's Services and Tonnage**

Background

Contract Section 6 J. City Facilities states that "Franchisee shall provide refuse collection, recycling and green waste services, including collection of street sweeping waste, at no additional charge to City, at all City facilities and special events designated by the Director. Franchisee shall also furnish containers or bins for such designated locations at no cost to City. Franchisee shall not be required to pay disposal fees for the services specified in this Section 6 J. A list of current City facilities is attached hereto as Exhibit "D"."

Issue

Although, as noted above, the Franchisee is able to charge for disposal of the City's solid waste, the Franchisee has historically not done so. For the audit period, the amount that should have been billed was \$61,212.89.

Recommendation

The City should discuss the finding with the Franchisee and determine whether the Franchisee intends on billing the City for any past or future disposal fees. If the Franchisee bills the City for past disposal fees and/or intends on billing future fees, the City may wish to amend the proposed rates as well as offer amendments to the contract for this issue.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**2. Billing of City of Brea Schools**

**Background**

Contract Section 6 J. City Facilities states that "Franchisee shall provide refuse collection, recycling and green waste services, including collection of street sweeping waste, at no additional charge to City, at all City facilities and special events designated by the Director. Franchisee shall also furnish containers or bins for such designated locations at no cost to City. Franchisee shall not be required to pay disposal fees for the services specified in this Section 6 J. A list of current City facilities is attached hereto as Exhibit "D"." Included in Exhibit "D" is a listing of the various Brea school facilities.

Issue

It was determined that the Brea school facilities are billed tonnage as well as a portion of the service fees. Based on discussions with City staff and the Franchisee, apparently in July 1995 it was decided that the schools would pay the county disposal fees and the state mandated recycle processing fees. However, it was decided that the schools would continue to not be charged for collection and franchise fees. Since that time, the Franchisee has adjusted only the transfer portion of the disposal pass-through and the recycling by the Consumer Price Index (CPI).

**Recommendation**

Either follow the contract terms, i.e. free services to the schools or amend the contract to reflect both parties intent on the billing for Brea's school facilities.

**3. Charging for Illegally Dumped Bulky Tonnage**

**Background**

Contract Section 6 K. Collection of Illegally Dumped Bulky Goods states that the "Franchisee agrees, at no additional charge, to provide on-demand collection of illegally-dumped bulky goods within two (2) working days of City's request."

Issue

Although the language in the franchise agreement is unclear as to whether the disposal of the illegally dumped bulky goods is at "no charge", both parties agree that the Franchisee charging the City for the tonnage of illegally dumped bulky goods is the intent. In addition, according to the Franchisee and City staff, only a very minute portion of the total bulky items picked up is illegally dumped bulky goods so the amount billed to the City would be very small.

**Recommendation**

Amend the franchise agreement to clarify whether tonnage for illegally dumped bulky goods is billable or not.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**D. RATES**

**1. Commercial Franchise Fees Based on All Three Component Portions**

Background

Contract Section 8 E. Formula for Changes in Compensation under the heading Determination of Franchise Portion states that the "Formula Adjustment in Franchise Portion (FP) for commercial and industrial rates will be determined as follows and shall be adjusted whenever the GTF portion of the rate is adjusted or as determined by the Director...Step One: Multiply the Collection Portion (CP) amount of the rate by 10%. The resulting dollar amount shall be the FP."

Issue

The proposed commercial rates, and the prior commercial rates approved by Council, were determined based on calculating the franchise portion at 10% of all three categories, i.e. the collection portion, the recycle portion and the disposal portion not just the collection portion as worded in the franchise agreement. Based on discussions with both the Franchisee and City Staff it was the intent to charge the franchise fee on all three categories. It appears the franchise agreement may not have been updated to reflect the breakdown of the three categories being used.

Recommendation

Amend the contract to reflect the intent of calculating the franchise fees on all three categories, the collection, recycle and disposal portions.

**2. Late Implementation of Rates Paid to Contractor**

Background

Section 8 E. Formula for Changes in Compensation states "The compensation paid to Franchisee shall be adjusted annually, effective June 1 of each calendar year..."

Issue

The new rates approved by Council and paid to the Franchisee are not fully implemented until August versus June 1 as stated in the contract. The Franchisee is still paid the old rates for the month of June and an average of the new and old rates for the month of July. For the audit period, this resulted in the Franchisee being underpaid \$3,660.88. The new residential rates are not implement fully until August.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**2. Late Implementation of Rates Paid to Contractor (concl'd)**

Recommendation

Discuss with Franchisee the necessity for implementing the rates under the current methodology being used. Either implement new rates per contract requirements or amend the agreement to align it with a methodology that is agreeable with the Franchisee.

**3. Variance in the CPI Month-End Used and the Month of the CPI**

Background

Contract Section 8 E. Formula for Changes in Compensation under Rate Adjustment Formula ...Step Two: states that "Determine the percentage change in the Consumer Price Index for all Urban Consumers for the Los Angeles, Riverside, Anaheim Metropolitan Area (CPIU) for the most recent twelve months ending on March 30 based on data available from the United States Bureau of Labor Statistics during the month of May."

Issue

The proposed rates, and according to City staff and the Franchisee the prior year's approved rates, are calculated using the twelve months ending on February not March as stated in the contract. In addition, the CPI index to calculate the proposed rate was December 2001 which was released in January 2002 versus the requirements per the contract.

Recommendation

Per discussion with the Franchisee and City staff, the twelve months ended in February has been used for several years since it takes a significant amount of time to calculate, prepare and review the proposed rates. Although this may not significantly impact the calculation of the rates, the calculation of the rates should either follow the contract requirements or the contract should be changed to reflect the current twelve months and CPI index being used.

**4. Rates Charged Not Documented in Franchise Agreement**

Background

Section 8 B. Commercial Subscriber Service states that "Commercial subscriber accounts shall be directly billed by Franchisee on a monthly basis, except as may be otherwise specified, in writing, by the Director. Franchisee shall be permitted hereby to charge the rates specified in Exhibit "B" for commercial/industrial services provided hereunder, as said rates may be amended from time to time pursuant to the provisions of Section 8 E. and any AB 939 fees imposed by City." Exhibit "B" is the Schedule of Billing Rates which details out the various services and rates.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**4. Rates Charged Not Documented in Franchise Agreement (concl'd)**

Issue

There appear to be some rates charged by the Franchisee that are not covered or included in the detail list of Exhibit "B", such as: manure rates, reduced commercial barrel rates for various mobile home parks, and rates established for one particular account, the Brea Mall. In addition, the Brea Mall account is not charged franchise fees. Based on the audit, the Franchisee and City Staff amended the proposed rates to include and change the rates where necessary so that all franchised services are included in the rates approved by Council and all customers will be charged consistent with franchise agreement and the respective approved rates.

Recommendation

Based on the revisions to the proposed rates and changes to customer's fees, which includes imposing the franchise fee on billings to the Brea Mall, it appears that the rates have corrected where necessary. No further recommendations.

**5. Franchise Agreement Amendments**

Background

Section 6. SERVICES TO BE PROVIDED BY FRANCHISEE addresses the various services to be provided by the Franchisee and Section 8. COMPENSATION FOR SERVICES addresses the rates that the Franchisee will be paid for such services which are detailed in Exhibit "B". Section 8 E. Formula for Changes in Compensation states how rate increases will be determined and paid. In addition, Section 8 C. Franchise Fees states what the franchise fee rate is and how to apply to the rate to the Franchisee's commercial subscriber and special services collection receipts.

Issue

As noted throughout the report, there are conflicts between the contract terminology and the current methods for calculating rate increases and when they become effective. It also appears the various sections of the contract addressing rates and increases need updating and clarification. In addition, the section of the contract addressing franchise fees needs clarification to allow the contractor to continue to automatically deduct between one and five percent bad debt or use actual.

Recommendation

Meet with the Franchisee to review the entire agreement and determine which sections need updating, change, clarification or elimination if necessary.

**Taormina Industries, Inc.,  
Contract Compliance Audit  
August 23, 2002**

**E. BOND REQUIREMENTS**

Background

Section 26 M. Bonds states that the "Franchisee shall, upon execution of this Agreement, execute and file with City's City Clerk, a corporate surety bond in favor of City in the penal sum of One Hundred Thousand Dollars (\$100,000.00), conditional upon the faithful performance of this Agreement by Franchisee, which said bond shall be kept in full force and effect, subject to adjustment not more frequently than once every five (5) years by order of the City Manager, for the entire term of this Agreement and any extension(s) thereof. In the event of default by Franchisee hereunder, the entire amount of said bond shall thereupon be liquidated and paid to City as liquidated damages.

Issue

The Franchisee, nor the City, could find any evidence that the \$100,000 bond was ever executed and filed with the City. The Franchisee has since obtained the required bond coverage and is now in compliance.

Recommendation

Discuss with appropriate legal and financial counsel the necessity and amount of the bond requirement. Amend the franchise agreement accordingly if necessary.

