

**CITY OF GARDEN GROVE  
and  
GARDEN GROVE SANITARY DISTRICT**

**INTER-DEPARTMENT MEMORANDUM**

To:	Matthew J. Fertal	From:	Kingsley Okereke
Dept.:	General Manager/City Manager	Dept.:	Finance Director
Subject:	APPROVAL OF AMENDMENT NO. 2 TO THE AGREEMENT AMONG THE CITY OF GARDEN GROVE, GARDEN GROVE SANITARY DISTRICT AND REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC DBA GARDEN GROVE DISPOSAL FOR SOLID WASTE HANDLING SERVICES		
		Date:	August 13, 2013

OBJECTIVE

To have the Garden Grove Sanitary District Board of Directors and City Council approve Amendment No. 2 to the Agreement for Solid Waste Handling Services ("2010 Agreement") with Republic Waste Services of Southern California, LLC dba Garden Grove Disposal.

BACKGROUND

Effective July 1, 2010, the City of Garden Grove, Garden Grove Sanitary District and Republic Services of Southern California, LLC dba Garden Grove Disposal entered into an Agreement for Solid Waste Handling Services ("2010 Agreement"). Amendment No. 1 to the 2010 Agreement dealing with signage on the collection vehicles was entered into on October 11, 2011. The parties now desire to further modify the provisions of the 2010 Agreement relating to Residential Bulky Item Collection Services, submittal of reports, and billing processes.

DISCUSSION

The changes contemplated in Amendment No. 2 to the 2010 Agreement include the following:

- Clarification of Section 8.2.9 (Residential Bulky Item Services) of the 2010 Agreement. Specifically, in any calendar year, the first three (3) residential calls for bulky item collection services will be without additional charges, with each such collection limited to a maximum of ten (10) bulky items. Additional Residential Bulky Item Collections in the same calendar year are subject to service charges as specified in the 2010 Agreement.

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- Authorizes the City Manager, upon request by Republic, to modify, on an interim basis, the billing and collection procedures for Solid Waste Handling Services in order to assist Republic in efficiently accomplishing these activities. During the period of any such modification the franchise fee will be adjusted from 7.25% to 7.75%; and
- Provides for the electronic submittal of reports to the City by Republic.

FINANCIAL IMPACT

Potential increase of the franchise fee from 7.25% to 7.75% in the event that Republic requests and the City Manager authorizes modification of the billing and collection processes.

RECOMMENDATION

It is recommended that the Garden Grove Sanitary District Board of Directors and the City Council:

- Approve Amendment No. 2 to the 2010 Agreement with Republic Waste Services of Southern California, LLC dba Garden Grove Disposal; and,
- Authorize the General Manager/City Manager to execute the Amendment No. 2 and make minor modifications as appropriate thereto.

  
KINGSLEY OKEREKE  
Finance Director

  
By: Monica Neely  
Revenue Manager

Attachment: Amendment No. 2 to the 2010 Agreement

**Recommended for Approval**

  
Matthew Fertil  
General Manager

**AMENDMENT NO. 2 TO AGREEMENT AMONG CITY OF GARDEN GROVE,  
GARDEN GROVE SANITARY DISTRICT AND REPUBLIC WASTE SERVICES OF  
SOUTHERN CALIFORNIA, LLC dba GARDEN GROVE DISPOSAL  
FOR SOLID WASTE HANDLING SERVICES**

This Amendment to Agreement ("Amendment") is entered into to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, by and among the City of Garden Grove ("City"), Garden Grove Sanitary District ("District"), a subsidiary special district formed and existing pursuant to the Sanitary District Act of 1923, California Health and Safety Code Section 6400 et seq. and Republic Waste Services of Southern California, LLC ("Republic"), a Delaware Limited Liability Company dba Garden Grove Disposal (collectively, the "Parties").

**R E C I T A L S:**

A. Effective July 1, 2010, the Parties hereto entered into the Agreement between City of Garden Grove, Garden Grove Sanitary District and Republic Services of Southern California, LLC dba Garden Grove Disposal for Solid Waste Handling Services ("Agreement").

B. Pursuant to Recital E of the Agreement, the Parties intend that Republic, and not City or District, shall be solely responsible for establishing and collecting all charges for Solid Waste Handling Services provided by Republic pursuant to the Agreement.

C. Although the Parties intent, as set forth in Recital E of the Agreement, remains the same, Republic has informed City and District that it has experienced periodic difficulties in transitioning to sole responsibility for collecting all charges for Solid Waste Handling Services. Republic further anticipates that such periodic difficulties may continue in the future.

D. City and District are committed to working with Republic in order that Republic may complete the transition to fully collect all charges for Solid Waste Handling Services and thereby meet its obligations pursuant to the Agreement.

E. In order to assist in this process, City and District are willing to provide the City Manager with flexibility to assist Republic with respect to certain aspects of Republic's obligations for collection of charges for Solid Waste Handling Services.

F. The Parties hereto further desire to modify the provisions of the Agreement relating to Residential Bulky Item Collection services, submittal of reports and the Franchise Fee.

**C O V E N A N T S:**

**NOW, THEREFORE**, for and in consideration of the terms and conditions of this Amendment, City, District and Republic hereby agree as follows:

1. Section 8.2.9 (Residential Bulky Item Services) shall be amended in its entirety to read as follows:

“8.2.9 Residential Bulky Item Service

Republic shall provide Bulky Item Collection services, on an on-call basis, to residents living at all Single Family Dwellings and Multi-Family Dwellings in City receiving automated Collection service via Carts. The first three (3) such collections in any calendar year shall be provided by Republic without additional charge to the Customer. Each such collection shall be limited to a maximum of ten (10) Bulky Items. Republic may charge rates for additional Bulky Item Collection services which shall not exceed the maximum rates set forth in Exhibit A attached to the Agreement. The Bulky Item Collection service set forth in this Section shall only apply with respect to Bulky Items generated at the Dwelling Unit at which the Customer calling for service resides. In order to receive such service, residents shall provide Republic with notice by phone of the number and type of Bulky Items to be collected. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer’s call for service and Republic shall Collect and dispose of all Bulky Items placed for Collection pursuant to the terms hereof. Republic shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Single Family and Multi-Family Dwellings in City. Should a property manager, or the owner, of a Multi-Family Dwelling contact Republic for Bulky Item Collection in connection with Bulky Items not generated at the Dwelling Unit at which such person actually resides, Republic shall provide Bulky Item Collection Service in the same manner as to other Commercial Premises as set forth in Section 8.3.3 below.”

2. Section 11.3 (Franchise Fee) shall be amended as follows:

The first paragraph of Section 11.3 shall be amended in its entirety to read as follows:

“Republic shall pay to City, a franchise fee equal to Seven and 25/100ths percent (7.25%) of Republic’s annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the “Franchise Fee”). The Franchise Fee shall be paid to City monthly on or before the twentieth (20th) day of each month. Should any such due date fall on a weekend or holiday in which the City’s business offices are closed, payment shall be due on the first day thereafter in which the City’s business offices are open. The amount of each payment shall be equal to Seven and 25/100ths percent (7.25%) of Republic’s Gross Receipts received in the calendar

month preceding the date payment is due. Notwithstanding the foregoing, if the City Manager, acting pursuant to Section 13.1, either (i) authorizes, for any period of time, Customer bills for the ID-1 area to be collected on the tax rolls instead of through direct Customer billing and collection performed by Republic, or (ii) authorizes, upon request by Republic, another modification to the billing and collection procedures, Republic shall pay to City a franchise fee equal to Seven and 75/100ths percent (7.75%) of Republic's District-wide Gross Receipts for the time period for which such authorization is effective."

All other provisions of Section 11.3 shall remain unchanged.

3. Section 13.1 (Direct Billing) shall be amended in its entirety to read as follows:

"Except as otherwise set forth in Section 13 herein, Republic shall, at its own expense, be solely responsible for the billing to and collection from every Customer for all of its Solid Waste Handling Services and shall provide itemized bills to each Customer distinctly showing charges for all classifications of services, including charges for late payments. Republic acknowledges that it, and not Customers, is to pay a Franchise Fee to City as consideration for this Agreement. Accordingly, Republic's bills shall not include separate itemization of a "franchise fee" or other similar designation. Billings shall be made monthly for Commercial Customers and may occur bi-monthly or quarterly for Residential Customers. Customers may be billed in advance of, or subsequent to services being provided at the option of Republic. Customers ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

Upon request by Republic, the City Manager, in the exercise of his reasonable discretion, may modify, on an interim basis, the procedures set forth in Sections 13.1 – 13.6 regarding Republic's obligations for billing and collection for Solid Waste Handling Services in order to assist Republic in efficiently accomplishing such billing and collection activities. Such modification may include, but is not limited to, authorization for the collection of Customer bills for the ID-1 area on the tax rolls for a specified period of time, instead of through direct Customer billing and collection by Republic. No authorization for modification of the procedures shall be valid unless issued in writing by the City Manager and only to the extent authorized by law. Such authorization shall automatically expire at the end of the time period specified in writing by the City Manager unless renewed in writing by the City Manager."

4. The first paragraph of Section 23 shall be amended in its entirety to read as follows:

"The parties acknowledge that City will require reporting by Republic at various intervals by which information important to City can be compiled and analyzed. Throughout the Term the parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Republic. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports called out below may be changed by agreement of the parties, provided any such change is approved by the City Manager in writing. Records related to performance of this Agreement shall be maintained by Republic in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. Republic agrees to submit all reports in an electronic format compatible with City's software/computers at no charge to City. Monthly reports shall be submitted within twenty (20) calendar days after the end of the report month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter."

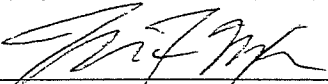
All other provisions of Section 23 (Subsections 23.1 – 23.6) shall remain unchanged.

6. Except as expressly set forth herein, nothing in this Amendment shall affect or modify any of the provisions of the Agreement.

CITY OF GARDEN GROVE

By: \_\_\_\_\_  
Matthew J. Fertal, City Manager

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Thomas F. Nixon  
City Attorney

GARDEN GROVE SANITARY DISTRICT

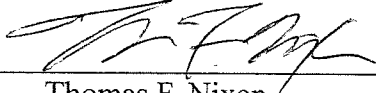
By: \_\_\_\_\_  
Matthew J. Fertal, General Manager

(Signatures Continued on Following Page)

ATTEST:

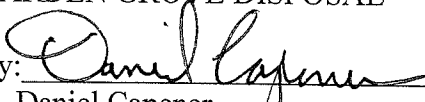
By: \_\_\_\_\_,  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

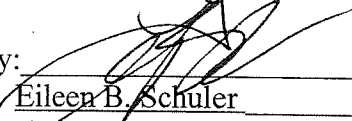
By:   
Thomas F. Nixon  
Attorney for District



REPUBLIC WASTE SERVICES OF  
SOUTHERN CALIFORNIA, LLC dba  
GARDEN GROVE DISPOSAL

By:   
Daniel Capener  
Printed Name

Its: Authorized Agent

By:   
Eileen B. Schuler  
Printed Name

Its: Secretary

## CERTIFICATE

The undersigned certifies that (i) she is the duly elected, qualified and acting Secretary of **REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC**, a Delaware limited liability company (the "Company"); (ii) attached hereto as Schedule A is a true and correct copy of resolutions duly adopted by **REPUBLIC SERVICES, INC.**, a Delaware corporation, the sole member of the Company (the "Member") by written consent of the Member; and (iii) such resolutions have not been amended, rescinded, modified or revoked, and are in full force and effect on the date hereof.

Dated: July 23, 2013.

  
\_\_\_\_\_  
Eileen B. Schuler, Secretary



## SCHEDULE A

**RESOLVED**, that the Company is hereby authorized execute Amendment No. 2 to Agreement for Solid Waste Handling Services (the "**Amendment**") with the City of Garden Grove (the "**City**") and Garden Grove Sanitary District (the "**District**") with regard to initial Agreement effective July 1, 2010 between the City, the District and the Company to provide Solid Waste Handling Services (the "**Agreement**"); with such changes as may be approved by the officers or such other persons authorized to execute same and such actions are hereby approved, adopted, ratified and confirmed;

**FURTHER RESOLVED**, the Company believes it to be in the best interest of the Company to enter into the Amendment;

**FURTHER RESOLVED**, that **DANIEL CAPENER**, as an authorized agent for the Company, or any officer of the Company is hereby authorized and directed to execute and to deliver the Amendment and to execute any and all other documents on behalf of the Company required in connection with the Amendment, and in connection with the performance of the Company's obligations and agreements set forth therein; and

**FURTHER RESOLVED**, that the Secretary, or any other officer of the Company, is hereby authorized to certify to the adoption of the foregoing resolutions as may be required.