

**FRANCHISE AGREEMENT
BETWEEN
THE CITY OF SAN LUIS OBISPO
AND
SAN LUIS GARBAGE COMPANY**

For Collection, Diversion, and Disposal of Solid Waste
Within the City of San Luis Obispo

This Agreement is made and entered into as of the 20th day of August, 2010 in the State of California by and between the City of San Luis Obispo, a Charter Municipal Corporation of the State of California, (hereinafter the "City") and San Luis Garbage Company, Inc., a California corporation (hereafter referred to as the "Franchisee").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

1. The Legislature of the State of California, by enactment of California Integrated Waste Management Act of 1989, Division 30 of the California Public Resources Code, commencing with Section 40000 (CIWMA), declares that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions. The law, AB 939 requires a 50 percent reduction in the amount of waste which is landfilled by 2000; and
2. The City has authority to grant a franchise for collection, diversion, and disposal of solid waste within the City of San Luis Obispo pursuant to City Charter Article X and Chapter 8.04 of the San Luis Obispo Municipal Code; and
3. The City Council has determined that solid waste, including discards from residential and non-residential properties, must be regulated to protect public health, safety and welfare; to conserve landfill disposal capacity; and to develop and maintain effective resource management programs; and
4. The City Council has determined that all occupied developed properties in the City must participate in the City's solid waste collection and disposal service; and
5. The City Council has determined that an exclusive franchise granted to a private company is the most effective and efficient way to collect and remove solid waste within the City; and
6. The City Council has determined that the Franchisee can provide needed solid waste services; and
7. Franchisee is responsible for arranging for solid waste collection and disposal service, and an appropriate landfill destination for collected solid waste; and
8. Upon passage by the City Council, Ordinance 1551, pursuant to the authority granted by City Charter Article X and Chapter 8.04 of the San Luis Obispo Municipal Code; and
9. This Agreement has been developed by and is satisfactory to the parties.

Franchise Agreement - Solid Waste

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, it is hereby agreed by and between the City and Franchisee as follows:

ARTICLE 1. DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following terms shall have the following meanings:

- 1.1 "AB 939" means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- 1.2 "Affiliate" means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of a common ownership interest or common management shall be deemed to be "Affiliated with" Franchisee and included within the term "Affiliate" as used herein. An Affiliate shall include a business in which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Franchisee and /or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee. For purposes of determining whether an indirect ownership exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect the date of this Agreement, Shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- 1.3 "Agreement" means this agreement the between the City and Franchisee for arranging for the collection, diversion, and disposal of solid waste, and collection and any future amendments hereto.
- 1.4 "Arranger" means any person that arranges for the collection, diversion, transfer, burning, disposal or processing of any solid waste.
- 1.5 "Bulky Waste" means discarded, large household appliances, furniture, tires, carpets, mattresses, and similar large items which require special handling due to their size, but can be collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles.
- 1.6 "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C Section 9601, et seq.
- 1.7 "City" means the City of San Luis Obispo, a Charter municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the term of this Agreement.
- 1.8 "Collect" or "Collection" means to take physical possession of, transport, and remove Solid Waste within and from the City.

- 1.9 **"Commercial and Industrial Property"** means property upon which business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon residential properties which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.10 **"Construction Debris"** means used or discarded construction materials removed from a premises during the construction, repair or renovation of a structure.
- 1.11 **"Container"** means any bin, vessel, can or receptacle used for collecting and storing solid waste before removal.
- 1.12 **"Demolition Debris"** means used construction materials removed from a premises during the razing or renovation of a structure.
- 1.13 **"Designated Collection Location"** means the place where an authorized recycling agent or a solid waste collector has contracted with either the City or a private entity to collect solid waste.
- 1.14 **"Disposal Site(s)"** means any properly licensed and permitted solid waste facility or facilities arranged by Franchisee after consultation with City for the ultimate disposal of solid waste collected by Franchisee.
- 1.15 **"Designated Processing Facility"** means any properly licensed and permitted plant or site used for the purpose of sorting, cleansing, treating, reconstituting, processing and marketing recyclable materials, which has been arranged by Franchisee after consultation with City.
- 1.16 **"Disposal"** means the ultimate disposition of solid waste collected by Franchisee at a landfill in full regulatory compliance or other fully permitted disposal site.
- 1.17 **"Facility"** means any plant or site, owned or leased and maintained and/or operated or used by Franchisee for purposes of performing under this Agreement.
- 1.18 **"Franchise"** means the special right granted by the City of San Luis Obispo to operate a solid waste collection company providing such services within the City.
- 1.19 **"Franchisee"** means San Luis Garbage Company, a corporation organized and operating under the laws of the State of California, and its officers, directors, employees, agents, companies.
- 1.20 **"Full Regulatory Compliance"** means compliance with all applicable permits for a facility and with other applicable regulations such that the Franchisee will at all times maintain the ability to fully comply with its obligations under this Agreement.
- 1.21 **"Green Waste"** means tree trimmings, grass cuttings, dead plants, leaves, branches and dead

trees (no more than six (6) inches in diameter) and similar materials generated at the premises.

- 1.22 **"Gross Revenues"** means the sum of the cash receipts derived by Franchisee from customer billings for solid waste collection services and orange bag sales provided in the City.
- 1.23 **"Hazardous Waste"** is as defined in Article 2, Chapter 6.5, Section 25117 of the Health and Safety Code and Public Resource Code Section 40141. For the purposes of this Agreement, however, hazardous waste shall not include Household Hazardous Waste which may be contained in solid waste.
- 1.24 **"Household Hazardous Waste"** means hazardous waste generated at residential premises.
- 1.25 **"Interruption of Service"** means (a) any period during which Franchisee's operations are diminished or discontinued by circumstances beyond its control, or (b) any period during which operations are diminished or discontinued as a result of any breach of the Agreement by Franchisee or (c) any period after the City has terminated the franchise and until the City can reasonably acquire other suitable service and/or enter into a new franchise agreement.
- 1.26 **"Materials Recovery Facility"** means a permitted Facility where solid wastes are sorted or separated for the purposes of recycling or reuse.
- 1.27 **"Medical Waste"** means biohazardous waste, sharp wastes, waste which is generated or produced as a result of the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biological products, pursuant to California Health and Safety Code, Section 25023.2.
- 1.28 **"Multi-Family Dwelling Unit"** means any premises, other than a single family dwelling unit, used for residential purposes, irrespective of whether residence therein is transient, temporary or permanent.
- 1.29 **"Occupied"** means when a person or persons has taken or is/are holding possession of a premises for temporary or permanent use. For the purpose of determining whether a premises was occupied during periods when solid waste collection service was available to such premises, the premises shall be presumed to have been so occupied unless evidence is presented that no gas, electric, telephone or water utility services were consumed on such premises during such periods or such other evidence is presented to the satisfaction of the City Manager.
- 1.30 **"Owner"** means the person or persons record title to the property constituting the premises to which solid waste collection service is to be provided under this Agreement or the person holding legal title to a facility used by Franchisee under this Agreement.
- 1.31 **"Person"** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Luis Obispo, local agencies and special purpose districts.

- 1.32 **"Premises"** means any land, or building where solid waste is generated or accumulated.
- 1.33 **"Recyclable Materials"** means residential and non-residential by-products or discards of economic value which include, but are not limited to, aluminum, glass, paper, plastic, metal, and green or woody debris.
- 1.34 **"Related Party Entity"** means any affiliated entity which has financial transactions with the Franchisee.
- 1.35 **"Residential Property"** means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied, and includes both single family and multi-family dwelling units.
- 1.36 **"Rubbish"** means all waste wood, wood products, printed materials, paper, paste board, rages, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Garbage, Hazardous Substance, or Recyclable Materials.
- 1.37 **"Single Family Dwelling Unit"** means each premises used for or designated as a single family residential dwelling, including each unit of a duplex or triplex in all cases in which there is separate or individual solid waste collection service.
- 1.38 **"Solid Waste"** means all putrescible and non-putrescible residential refuse, commercial solid waste, institutional solid waste, garbage, recyclable material, yard waste, and rubbish, and as otherwise defined in Public Resources Code §40191. Solid waste which is not required to be collected includes:
- (a) Demolition and construction debris which are not offered by persons performing the work and which may be legally collected and disposed of by some alternate means;
 - (b) Recyclable materials separated from solid waste by the waste generator and for which waste generator sells or is otherwise compensated by a collector in a manner resulting in a net payment to the Waste generator;
 - (c) Recyclable materials separated from solid waste by the waste generator and which the waste generator donates to a charitable organization such as the Boy Scouts;
 - (d) Materials removed by householders or occupants and transported by them to disposal facilities or recycling centers;
 - (e) Residential recyclable materials source separated by the waste generator for the purposes of scheduled collection with the recyclable materials collection Franchisee.
- 1.39 **"Term"** means the term of the Agreement, as provided for in Article 3.

- 1.40 **"Waste Generator"** means any person as defined by the Public Resources Code, whose act or process produced solid waste as defined in the Public Resources Code, or whose act first causes solid waste to become subject to regulation.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF THE FRANCHISEE

2.1 Corporate Status

Franchisee is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

2.2 Corporate Authorization

Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (or shareholders if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Franchisee have authority to do so.

2.3 Compliance with Laws and Regulations

Franchisee shall comply with all existing and future City, County, other local agencies, State, and Federal laws and regulations with particular note of Article X of the City Charter and Chapter 8.04 of the City Municipal Code.

2.4 Financial Representation

Franchisee represents that it has the financial ability to full perform its obligations as set forth in this Agreement.

2.5 Absence of Litigation

Franchisee represents that there are no suits or threatened suits which would impair the financial or legal ability of Franchisee to perform its obligations under this Agreement and that the entering into this Agreement by Franchisee will not in any way constitute a breach of any other agreement entered into by Franchisee with other parties, or constitute a violation of any law.

ARTICLE 3. TERM OF AGREEMENT

3.1 Effective Date

The effective date of this Agreement shall be August 20, 2010 ("Effective Date").

3.2 Term

The term of this Agreement shall be fifteen years, commencing at 12:01 a.m., August 20, 2010, and expiring at midnight, August 20, 2025, subject to extension as provided in paragraph 3.3 (Option to Extend).

The City Council may elect to renew this franchise at any time during the three year period prior to the end of the franchise.

3.3 Option to Extend

The City shall have the sole option to extend this Agreement up to 36 months in periods of at least twelve (12) months each. If City elects to exercise this option, it shall give written notice not later than ninety (90) days prior to the initial termination date, or, if one extension has been exercised, ninety (90) days prior to the extended termination date.

3.4 Conditions to Effectiveness of Amendment

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

- (1) **Accuracy of Representations.** The representations and warranties made by Franchisee in Article 2 of this Agreement are true and correct on and as of the effective date.
- (2) **Effectiveness of City Council Action.** The City's Ordinance No. 1551, approving this Agreement, shall have become effective pursuant to California law on or prior to the effective date.

ARTICLE 4. SCOPE OF AGREEMENT

4.1 Grant and Acceptance of Exclusive Franchise for Solid Waste Collection and Disposal

Subject to paragraphs 3.4 (Conditions to Effectiveness of Agreement) and 4.2 (Limitations to Scope), this Agreement grants the Franchisee the exclusive right to arrange for the collection, processing, diversion and disposal of Solid Waste from residential and non-residential properties placed in the designated collection location for regular or scheduled collection in accordance with the City's Municipal Code and Ordinances, except where otherwise precluded by law. Franchisee accepts the grant of the Franchise under the terms and conditions as set forth in this Agreement. Franchisee agrees to perform and be bound by each of the conditions proposed in the grant and by procedural ordinance and the requirements of Acceptance on file with the City Clerk's office (Article X of the City Charter, Section 1006, Duties of Grantee).

4.2 Limitations to Scope

This Agreement for the collection, processing, diversion and disposal of Solid Waste from residential and non-residential properties shall be exclusive except as to the following categories of solid waste, which the Franchisee may, but shall not be obligated to collect, transfer, process, divert or dispose of:

- A. To the extent allowable by law, all residential recyclable materials whether
 1. source separated by the waste generator for the purpose of placing for scheduled collection with the recycling collection franchisee, or
 2. separated from solid waste by the waste generator and which the waste generator either donates to a charitable organization, or sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator; or
 3. separated at any premises and transported by the owner or occupant of such premises (or by his or her full-time employees) to a processing facility.
- B. All green waste material whether
 1. source separated by the waste generator for the purpose of placing for scheduled collection with the green waste collection franchisee, or
 2. separated from solid waste by the waste generator and which the waste generator either donates to a charitable organization, or sells or is otherwise compensated by a collector in a manner resulting in a net payment to the waste generator; or
 3. separated at any premises and transported by the owner or occupant of such premises (or by his or her full-time employees) to a processing facility.
 4. Green waste removed from a premises by a gardening, landscaping, or tree trimming company as an incidental part of a total service offered by that company rather than as a hauling service;
- C. Animal waste and remains from slaughterhouse or butcher shops;
- D. By-products of sewage treatment, including sludge, sludge ash, grit and screening;

E. Hazardous waste, liquid waste and medical waste.

Franchisee acknowledges and agrees that City may permit other persons besides Franchisee to collect any or all types of the solid waste listed in paragraph 4.2 without seeking or obtaining approval of Franchisee under this Agreement.

This grant to Franchisee of an exclusive Franchise, right and privilege to collect, transfer, process, divert and dispose of Solid Waste shall be interpreted to be consistent with state and federal laws, now and during the term of this Franchise, and the scope of this exclusive franchise shall be limited by current and developing state and federal laws with regard to solid waste handling, exclusive franchise, solid waste flow control, and related doctrines.

In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, Franchisee agrees that the scope of the Franchise will be limited to those services which may be lawfully provided for under this Agreement. Further, the Franchisee agrees that the City shall not be responsible for any lost profits or damages claimed by the Franchisee to arise out of further limitations of the scope of the Agreement set forth herein. It shall be the responsibility of Franchisee to minimize the financial impact to other services being provided.

4.3 Administration of Franchise

The City Manager shall administer the City's solid waste franchise and the City's Utility Director shall supervise Franchisee's compliance with the Agreement's terms and conditions.

4.4 Serve Without Interruption

Franchisee shall continue to collect and dispose of solid waste throughout the term of its franchise without interruption.

4.5 Permits and Licenses

Franchisee shall procure all permits and licenses, pay all charges and fees, and give all notices as necessary.

4.6 Preservation of City Property

Franchisee shall pay to the City, on demand, the cost of all repairs to public property made necessary by any of the operations of Franchisee under this Agreement.

4.7 Franchisee as Arranger

The City and Franchisee mutually agree that the City's granting of this franchise shall not be construed as the City "arranging for" the collection and disposal of solid waste or recyclables within the meaning of CERCLA. The parties further mutually agree that the granting of the Franchise by City shall be construed as an action whereby the Franchisee is granted, and accepts the rights, responsibilities, benefits and liabilities of collection and disposal of solid waste. Commencing on the effective date of this Agreement and, to the extent that Franchisee's performance under this Agreement requires the collection and disposal of solid

waste, and may be construed as "arranging for" collection and disposal of solid waste within the meaning of CERCLA, such actions shall be the sole responsibility of Franchisee and Franchisee expressly agrees to be solely responsible for all such actions.

4.8 Use of City Streets

Such grant of franchise shall give Franchisee the right and privilege to operate solid waste collection vehicles and equipment on such streets, public ways, rights-of-way, or easements of the City.

4.9 Annexation

The Franchisee shall automatically extend all services herein described to any area annexed to the City, except that the City may permit a firm franchised by the County of San Luis Obispo before the annexation to continue serving the area for a period not to exceed five (5) years.

4.10 Ownership of Solid Waste

Once solid waste is placed in containers and properly presented for collection, ownership and the right to possession shall transfer directly from the waste generator to Franchisee by operation of this Agreement. Franchisee is hereby granted the right to retain, process, divert, dispose of, and otherwise use such solid waste, or any part thereof, in any lawful fashion or for any lawful purposed desired by franchisee.

Subject to this Agreement, Franchisee shall have the right to retain any benefit resulting from its right to retain, process, divert, dispose of, or use the solid waste which it collects. Any cost savings resulting from decreased disposal shall off-set Franchisee's operating expenses in accordance with the *"City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates"*.

Solid waste, or any part thereof, which is disposed of at a disposal site or facility (whether landfill, transformation facility, transfer station, or materials recovery facility) shall become the property of the Owner or operator of the disposal site(s) or facility once deposited there by Franchisee.

The City may obtain ownership or possession of solid waste placed for collection upon written notice of its intent to do so. However, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to Franchisee.

ARTICLE 5. DIRECT SERVICES

5.1 General

The work to be done by the Franchisee pursuant to this Agreement shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items and tasks necessary to perform the services required.

It is mandatory that the work to be done by Franchisee pursuant to this Agreement shall be accomplished in a thorough and professional manner so that all occupied developed properties within the City are provided reliable, courteous, prompt and high-quality services for collection of solid waste. All collection activities shall be conducted in such a manner that public and private property will not be damaged. Franchisee shall replace containers and covers in designated collection locations and shall not place them in the street or on adjoining property.

The City reserves the right to revise its laws and regulations pertaining to solid waste collection and disposal in order to protect public health, safety and welfare. The Franchise Agreement is subject to any such future revisions of the City's laws and regulations, and Franchisee agrees to comply with any such changes in said laws and regulations as if incorporated into the Agreement.

5.2 Single Family Residential Solid Waste Collection Service

For residential customers, Franchisee shall collect solid waste at the curbside at a minimum of once a week, Monday through Friday, except as specified below. The Franchisee will notify solid waste customers of holiday collection schedules.

Handicapped residents shall have the option of placing their containers near their dwelling, visible from the curb, and the Franchisee will collect their containers at this location and return container to same location. Franchisee will notify residents annually, beginning within thirty (30) days of execution of this Agreement, of this collection option. To be eligible for this collection option, residents must present proof of their physical incapacity to the Franchisee.

5.3 Other Solid Waste Collection Service

5.3.1 Multi-family Solid Waste Collection Service

Franchisee shall collect Solid Waste from all Multi-Family dwelling units within the City, using containers of a size and shape acceptable to Franchisee, not less than once per week. The Franchisee and each customer shall agree on the designated collection location. Special consideration shall be given when determining the designated collection location for multi-family accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated collection location, if disputed by customer or Franchisee, shall be determined by the City.

5.3.2 Commercial, Industrial and Institutional Solid Waste Collection Services

Franchisee shall collect Solid Waste from all commercial, industrial and institutional properties within the City, using containers of a size and shape acceptable to Franchisee, not

less than once per week. To the extent allowable by law, Franchisee shall collect from all occupied commercial, industrial and institutional properties in the City recyclable materials, arranged for Collection by the Franchisee with the Waste Generator, that have been placed in recycling containers provided by the Franchisee and placed in the designated collection location for regular collection by Franchisee. To the extent allowable by law, nothing in this Agreement shall preclude any organization from collecting recyclable materials from commercial and/or industrial customers within the City.

The Franchisee and each customer shall agree on the designated collection location. Special consideration shall be given when determining the designated collection location for commercial and/or industrial accounts to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated collection location, if disputed by customer or Franchisee, shall be determined by the City.

Additionally, if in the City's opinion, the location of an existing collection location for particular multi-family dwelling unit or commercial, industrial or institutional property is inappropriate, the City may direct the customer or Franchisee to relocate the collection location. If a customer refuses to comply with said directive, Franchisee shall decline to collect solid waste from said mis-located containers.

5.4 Public Facilities Collection

When requested by the City, the Franchisee shall collect and dispose of all Solid Waste generated at premises owned and/or operated by the City. Franchisee shall make collections from City solid waste containers, not less than once per week, Monday through Friday or on Saturdays following non-working holidays. Collections shall be scheduled at a time mutually agreed upon by Franchisee and the Waste Generator.

Franchisee shall provide, at City's direction, additional solid waste collection and disposal and consulting services including:

- (1) Collection of solid waste from all sidewalk litter containers;
- (2) Collection of solid waste from City-sponsored special events as specified by the City;
- (3) Collection of solid waste from containers in City parks as mutually agreed upon by the Franchisee and the City;
- (4) Review of plans for land use or property developments with regard to solid waste service issues; and
- (5) Residual solid waste remaining from temporary household hazardous waste collection events.

5.5 Missed Pickups

Upon notification, Franchisee shall collect any missed pickup which had been properly and timely placed for collection within 24 hours of said notice.

5.6 Bulky Waste Collection

Franchisee shall make special collection arrangements with Waste Generators within seven (7) days after waste generators' written or verbal request for the collection of bulky waste for

a fee established by the City and updated by resolution when the City adjusts rates. Any single item is not to exceed 200 pounds.

5.7 Semi-Annual Clean-up Weeks

At least twice per year throughout the term of this Agreement, Franchisee shall provide, in addition to regularly scheduled service, two clean-up events pursuant to guidelines established by the Franchisee and approved by the City, for solid waste placed at the curb by single family dwelling units and at pre arranged locations for multi-family residential properties in addition to each customer's normal collection service. The dates for each event shall be proposed by Franchisee and approved by the City prior to September 1st of each year.

Franchisee shall record by class and weight (in tons) the solid waste, white goods, etc., collected during the clean-up events. Franchisee shall record the kinds and weights (in tons) of solid waste diverted during these clean-ups from the landfill through recycling, reuse, transformation or other means of diversion.

5.8 City Right to Request Changes

5.8.1 General

City may request Franchisee to perform additional services (including new diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new Collection methods, different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may request. Franchisee shall present, within 30 days of a request to do so by City, a proposal to provide additional or expanded diversion services pursuant to the terms of Section 5.8.2. Franchisee shall be entitled to an adjustment in its compensation in accordance with Section 9.4, for providing such additional or modified services.

5.8.2 New Programs

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

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

5.8.3 City's Right to Acquire Services

Franchisee acknowledges and agrees that City may permit other Persons besides Franchisee to provide additional services not otherwise contemplated under Section 5.8 (City's Right to

Request Changes). If pursuant to Section 5.8.2 (New Programs), Franchisee and City cannot agree on terms and conditions of such services in ninety (90) days from the date when City first requests a proposal from franchisee to perform such services, Franchisee acknowledges and agrees that City may permit Persons other than Franchisee to provide such services.

5.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

Franchisee shall direct its drivers to note the addresses of any premises at which they observe that solid waste is accumulating and is not being delivered for collection; and the address, or other location description, at which solid waste has been dumped in an unauthorized manner. Franchisee shall report the address or description to the City within twenty-four (24) hours of such observation.

5.10 City Directed Removal of Solid Waste

Franchisee shall arrange for the removal of all accumulated solid waste and recyclables on any developed or vacant property in the City as directed by the City Utilities Director. The Franchisee shall make a good faith effort to recover the cost of disposal from the waste generator, and the costs of this effort, as well as the cost of disposal shall be chargeable to the waste generator. The Franchisee shall be entitled to include the costs incurred and not collected under this Section as an operating expense for purposes of rate setting.

5.11 Processing of Solid Waste

The City reserves the right, prior to disposal, to direct portions of the waste stream collected under this franchise, to a designated processing facility for separation and recycling of any recyclable materials contained therein. City shall provide Franchisee with reasonable prior written notice concerning any change of service location.

5.12 Designated Disposal Facility

Franchisee shall arrange with the operator of a disposal site situated outside the city limits for disposal of solid waste collected within the City. All solid waste collected within the City and not separated for recycling shall be delivered to the designated disposal site and disposed of according to the regulations of the designated disposal site.

Franchisee shall secure within 90 days of the effective date of this Agreement, sufficient disposal site capacity commitment including landfill disposal site capacity commitment, to adequately serve the reasonably anticipated solid waste disposal needs of the City and its customers during the term of this Agreement, including any extensions provided for herein. City reserves the right to review said disposal capacity commitments. Prior to entering into any capacity commitment, Franchisee shall give prior written notice to the City concerning negotiations. The disposal site capacity commitment contract for the designated disposal facility shall be incorporated into this Agreement as Appendix I.

If Franchisee receives notice from the landfill operator or otherwise expects, during the term of this Agreement, to be prevented from delivering solid waste to the designated disposal site, Franchisee shall immediately notify in writing the City's Utilities Director, stating the reason(s) Franchisee is prevented, or expects to be prevented, from disposing of solid waste in the designated disposal facility. Franchisee shall in good faith expeditiously identify and

evaluate alternative disposal sites. An alternative designated disposal site or sites shall be arranged for and secured by Franchisee, after consultation with the City's Utilities Director. Franchisee shall provide City with adequate written notice prior to contracting for any alternate disposal site. City reserves the right to direct the waste stream to other disposal site selected by Franchisee.

City in addition, reserves the right to direct the waste stream to any disposal facility or site. Absent such direction by the City, nothing contained herein shall be construed to mean that the City has arranged for site selection or waste disposal.

Section 12.5, "Excuse From Performance", does not relieve Franchisee from the good faith obligation to find and secure alternate disposal sites. Absent a Section 12.5 event, Franchisee shall be responsible for any increased costs, including transportation, with respect to the alternate disposal site.

5.13 Hazardous Waste Handling and Disposal

If the Franchisee determines that solid waste placed in any container for collection is a Hazardous Waste or Medical Waste, or other solid waste that may not be legally disposed of at the designated disposal site or presents a hazard to the Franchisee's employees, the Franchisee shall have the right to refuse to accept such solid waste. The Franchisee will contact the waste generator and request that the waste generator arrange for proper disposal.

If the Waste Generator cannot be reached immediately, the Franchisee shall, prior to leaving the premises, leave a tag at least two inches by six inches indicating the reason for refusing to collect the solid waste, in which case, a copy of the tag, along with the address of the premises (and the name of the waste generator, if known) shall be delivered to the City on the following business day.

If the Hazardous waste or medical waste or other unauthorized waste is collected before its presence is detected by Franchisee, and if the waste generator cannot be identified or fails to remove the solid waste after being requested to do so, the Franchisee shall arrange for its legal disposal. The Franchisee shall make a good faith effort to recover the cost of disposal of such waste from the waste generator, and the costs of this effort, as well as the cost of disposal shall be chargeable to the waste generator. Provided the failure to detect the hazardous waste, medical wastes or other unauthorized wastes prior to collection and/or their delivery to the designated disposal site is not due to the negligence of the Franchisee or its employees or due to failure of the Franchisee to have an adequate in place inspection program, the Franchisee shall be entitled to include the costs incurred under this paragraph as an operating expense for purposes of rate setting.

ARTICLE 6. COLLECTION SERVICE STANDARDS

6.1 Operations

6.1.1 Schedules

To preserve peace and quiet, solid waste shall not be collected within two-hundred (200) feet of residential premises between 6:30 p.m. and 6:30 a.m. on any day, Monday through Friday.

When the regularly scheduled collection day falls on a holiday, collection shall take place on the following regularly scheduled collection day. Franchisee will promptly resolve any complaints of noise to the satisfaction of the City Manager or the City Manager's designee.

6.1.2 Vehicles

- A. General.** Franchisee shall keep a fleet of collection trucks sufficient in number and capacity to efficiently perform the work required in the Agreement in strict accordance with the terms of this Agreement. Franchisee shall provide a detailed description concerning the number and type of vehicles necessary for performance. Franchisee shall have available on collection days sufficient back-up vehicles for each type of collection vehicle (i.e., rear loader, front loader, and roll-off) used to respond to complaints and emergencies. The fleet shall be maintained according to the requirements of Municipal Code 8.04.030.
- B. Specifications.** All vehicles used by Franchisee in providing solid waste collection services shall comply with all federal, state, and local requirements for such vehicles as they now exist or may be amended in the future, and be registered with the California Department of Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations.
- C. Condition.**
- 1) Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.
 - 2) Franchisee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly and represent a safety hazard shall be taken out of service until they are repaired and do operate properly and safely. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Franchisee shall keep accurate records of all vehicle maintenance, recorded according to date and mileage, and shall make such records available to City upon request.
 - 3) Franchisee shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Franchisee shall maintain accurate records of repair, which shall

include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

- D. Vehicle Identification.** Each truck shall display in a prominent place a sign as required in Municipal Code 8.04.090.
- E. Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local vehicle weight restrictions.

6.1.3 Containers

- A. Residential Solid Waste Containers.** When requested, Franchisee shall supply each Single Family Dwelling Unit with a waste wheeler in size consistent with the City approved Solid Waste collection program. Franchisee shall supply each multi-family complex with the appropriate type of container to adequately service the needs of the complex per the solid waste handling location. Franchisee agrees to provide additional appropriate Containers, as required.

City and Franchisee acknowledge that from time to time, a customer may damage or destroy a Container. City and Franchisee also acknowledge that from time to time Containers may be stolen from the curb or damaged due to normal use. When notified of such occurrence, Franchisee shall replace the Container, at no charge to the customer pursuant to the guidelines established by the Franchisee and approved by the City. The container replacement guidelines are presented in Appendix II of this Agreement.

- B. Non-Residential and Multi-Family Dwelling Unit Solid Waste Containers.** Franchisee shall furnish to all customers appropriate containers to collect solid waste at multi-family dwelling units, commercial and industrial properties, and other premises upon customer request. Containers with a capacity of one cubic yard or more shall be available in standard sizes. The kind, size and number of containers furnished to particular customers shall be as determined mutually by the customer and Franchisee. Containers which are front loading bins shall have lids. All containers with a capacity of one cubic yard or more shall meet applicable regulations for Solid Waste bin safety and shall be maintained in good repair with neatly and uniformly painted surfaces and shall prominently display the name and telephone number of Franchisee. Additionally, one cubic yard or more bins in public right-a-ways shall have reflectorized markings. Bins shall be clearly marked and identified as belonging to Franchisee. Franchisee shall not be obligated to provide customers with compactor units, but will be obligated to charge the rates set by the City for the collection of compacted solid waste.

Each customer shall be responsible for excess damage to any such containers not caused by Franchisee.

6.1.4 Personnel

- A. General.** Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical, and other personnel as may be necessary to provide services required by this Agreement in a safe and efficient manner.

If Franchisee needs to provide additional personnel, Franchisee shall be responsible for all costs related to provision of such additional personnel. Franchisee may only reduce the number and type of personnel required with prior approval of City. If quality of service declines following such reduction in type and number of personnel, the City at its discretion, may require the Franchisee to increase the number and type of personnel utilized, at no additional cost to the City.

- B. Identification.** Franchisee shall ensure that while on duty each collection worker wears a clean uniform with conspicuous insignia displaying Franchisees company name and the worker's name or identification number.
- C. Fees & Gratuities.** Franchisee shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for any services performed under this Agreement, except as provided in Article 8 of this Agreement.
- D. Training.** All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license of the appropriate class, issued by the California Department of Motor Vehicles.

Franchisee shall provide adequate operations, health and safety training, and Hazardous Waste identification and handling training for all of its employees who use or operate equipment or who are otherwise directly involved in collection or other related operations.

- E. Customer Courtesy.** Franchisee shall train its employees in customer courtesy; shall prohibit the use of loud or profane language; and shall instruct collection crews to perform the work quietly. Franchisee shall use its best efforts to ensure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all necessary corrective measures. If City has notified Franchisee of a complaint related to a discourteous or improper behavior, Franchisee will reassign the employee to duties not entailing contact with the public while Franchisee is pursuing its investigation and corrective action process.

6.2 Service Complaints

Franchisee shall maintain and provide copies of all written service complaints and summaries of all oral service complaints and the Franchisee's response to those complaints for the term of one year and shall allow City officials to inspect these records during the required office staffing hours after the City has requested such inspection with reasonable notice.

If a disagreement arises between Franchisee and a customer, the customer may request an administrative hearing. The City's Utilities Director shall conduct an investigation, and give notice of that decision. The customer may elect to appeal this decision to the City Integrated Waste Management Appeals Committee made up of representatives from the Utilities Department, the Finance Department and the Administrative Office.

6.3 Periodic Performance Audit

The City shall have the right to periodically, not less than annually, request a performance audit or billing audit be completed by the Franchisee, the City or an independent third party. The City shall be entitled to select the type of consultant that it deems qualified to conduct said audits. The cost of such audits will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

6.4 Performance Hearing

The City maintains the right to hold a public hearing at any time, not more than once each year, at which the Franchisee shall be present and shall participate, to review Franchisees services and performance. The purpose of the hearing shall be, in part, to provide for a discussion and review of technological, economic and regulatory changes and quality of service provided to date. The goal of the performance hearing is to strive for an ever-advancing solid waste management system, and to ensure services are provided with adequate quality, efficiency and economy.

Sixty (60) days after receiving notice from City of a performance review hearing, Franchisee shall, at a minimum, submit a report to City indicating the following:

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

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

Topics for discussion and review at the performance review hearing shall include, but shall not be limited to, quality and adequacy of services provided, feasibility of providing new services, application of new technologies, customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints and Franchisee performance. City and Franchisee may each select additional topics for discussion at any performance review hearing.

Not later than sixty (60) days after the conclusion of each performance review hearing, City may issue a report. As a result of the review, City may request Franchisee to provide expanded or new services. Franchisee shall present, within 30 days of a request to do so by

City, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the following:

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

ARTICLE 7. OTHER SERVICES: BILLING, REPORTING, RECORD-KEEPING AND PUBLIC EDUCATION

7.1 Billing

By resolution of the City Council, the City shall establish rates for the services provided by the Franchisee. Franchisee shall bill and collect these rates. Franchisee billing format and billing frequency shall be subject to approval of the City and City shall have the right to revise the billing format to itemize certain charges.

The City may also direct Franchisee to insert mailers relating to Franchisee provided service with the billings at no additional cost to the City. The mailers must fit in standard envelopes and not increase the required postage. The City will provide not less than thirty (30) days notice to Franchisee prior to the mailing date of any proposed mailing to permit Franchisee to make appropriate arrangements for inclusion of City materials.

Franchisee shall maintain copies of said billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by the City, or for such longer term as the City directs. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records cannot be altered, and can be preserved and retrieved for inspection and verification in a timely manner.

Franchisee shall, in addition, provide an adequate backup system for billing records, regardless of the form in which the records are maintained. Any such backup system shall be subject to approval by the City.

7.2 Owner Responsible for Payment

The owner of occupied developed property shall be responsible and liable for paying the solid waste collection and disposal fees for that property.

7.3 Collection of Bills from Delinquent Solid Waste Customers.

Bills shall be considered delinquent if not paid within 30 days of the date due. Once each year, prior to a date established by the City, Franchisee may take actions pursuant to Chapter 8.04 of the Municipal Code to collect delinquent solid waste collection and disposal accounts.

7.4 Records

Franchisee shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests of the City. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data and records shall be protected and an adequate backup system shall be provided for such data and records. The protection and backup systems shall be subject to approval by the City.

The following records shall be maintained for the City in form and detail satisfactory to the City, relating to:

Customer services and billing;

- Weight of solid waste, especially as related to reducing and diverting solid waste. Information is to be separated by kind of account (including multi-family dwelling units with residential);
- Special annual clean-up event results;
- Routes;
- Facilities, equipment and personnel used;
- Facilities and equipment operations, maintenance and repair;
- Processing and disposal of solid waste;
- Complaints; and
- Missed pick-ups.

Franchisee shall maintain records of transfer, diversion and disposal of all solid waste collected in the city for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event Franchisee discontinues providing solid waste services to City, Franchisee shall provide all records of diversion and disposal of all solid waste collected within the City to City within thirty (30) days of discontinuing service. Records shall be in chronological order, and organized in a form readily and easily interpreted.

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

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

7.5 Waste Generation/Characterization Studies

Franchisee acknowledges that the City must perform solid waste generation and disposal characterization studies periodically to comply with AB 939 requirements. Franchisee agrees to participate and cooperate with the City and its agents, at no cost to the City, to accomplish studies and data collection, and prepare reports, as needed, to determine weights and volumes of solid waste and characterize solid waste generated, diverted, disposed, transformed, or otherwise handled or processed to satisfy AB 939 requirements.

7.6 Report Formats and Schedule

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

- Determine and set rates, and evaluate the financial efficacy of operations; and
- Evaluate past and expected progress towards achieving goals and objectives; and
- Determine needs for adjustment to programs; and
- Evaluate customer service and complaints.

The City may at no cost to itself request that Franchisee provide such additional information in the reports set forth below as the City deems necessary or appropriate to meet its needs, including provision of AB 939 report information.

Franchisee may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be subject to approval by the City.

Monthly reports shall be submitted within ten (10) calendar days after the end of the report month. Quarterly reports shall be submitted within fifteen (15) calendar days after the end of the quarter. Quarters end on November 30, February 28, May 31, and August 31.

All reports shall be submitted to:

Utilities Director
City of San Luis Obispo
879 Morro Street
San Luis Obispo, CA 93401

7.7 Monthly Reports

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

- Solid Waste, collected, transferred, diverted and disposed of, by sector (commercial, industrial, residential) of waste generator--collected by Franchisee, in tons, by month.
- Complaint summary, for month and cumulative for report year, as above.
Summarized by nature of complaints.
- Narrative summary of problems encountered and actions taken with recommendations for the City, as appropriate.

7.8 Quarterly Report

Quarterly reports shall be quarterly summaries of the monthly information in addition to the following:

- Status report on applications for renewals of existing permits or any new permits which may be required to continue operations at the designated disposal site within existing permitted areas.
- Solid Waste, collected, diverted and disposed of, in tons, during the semi-annual residential clean-up weeks, if applicable.
- For each new program, provide activity related and narrative reports on goals and milestone and accomplishments. Describe problems encountered, actions taken and any recommendations to facilitate progress.
- Provide a summary assessment of the overall solid waste program from Franchisee's perspective relative to financial and physical status of program. The physical status is to relate to how well the program is operating for efficiency, economy and effectiveness relative to meeting all the goals and objectives of this Agreement. Provide recommendations and plans to improve. Highlight significant accomplishments, problems and proposed solutions.

7.9 Annual Financial Audit

Franchisee shall submit to the City annual audited financial statements prepared at Franchisee's expense by an independent Certified Public Accountant not later than 180 days following the expiration of the Franchisee's fiscal year. Pursuant to the "*Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*", dated June 1994, at the time a rate application request is submitted to City, the financial forms contained in the rate application must be reconciled to the audited financial statements to

provide assurance that all of the company's activities are accounted for.

The annual report shall separate out information with respect to revenues and expenses in relation to performance of this Agreement, including detailed information concerning overhead claimed by Franchisee. Operations by Franchisee concerning activities not related to performance of this Agreement shall be maintained in a separate portion of the annual financial statement.

City shall have the right to inspect or review the payroll tax reports, specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Franchisee that City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Franchisee's performance provided for in this Agreement. The City retains the right to have an independent third party or agent of the City's choosing, such as a CPA, participate in the records inspection. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

The Franchisee shall provide to the City a copy of Cold Canyon Landfill's request for an increase in tipping fees no later than five (5) days following submittal of said request to the County of San Luis Obispo. Additionally, the Franchisee shall notify the City of the action taken by the Board of Supervisors regarding said request within five (5) days following said action, including letter to the Board of Supervisors and related executed resolution. The City retains the right to have an independent third party or agent of the City's choosing, such as a CPA, participate in the review. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

7.10 Maintenance of Accounting Records

Franchisee shall maintain accounting records in accordance with generally accepted standards and principles of accounting. In its accounting records, Franchisee shall discreetly maintain and clearly identify all items of revenue and expense pertaining to the City's franchised operations. Cost and revenue information for the City shall be segregated from other geographical areas served by Franchisee. Cost and revenue information for the City, in addition, shall be segregated from other business activities of the Franchisee. Separate detailed records shall be maintained by Franchisee with respect to all transactions with affiliated entities that affect the cost and revenue of Franchisee in providing the franchise collection services.

7.11 Right to Audit Records

In addition to other reporting requirements in this Agreement, the City may review, test and audit the books and records of the Franchisee or may engage a Certified Public Accountant for this purpose. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

7.12 Inspection by City

The designated representatives of the City shall have the right to observe and review Franchisee operations and enter Franchisee's premises for the purpose of such observation

and review at all reasonable hours with reasonable notice.

7.13 Office

Franchisee shall maintain an office with telephone within the City limits where customers may apply for service, pay bills, and register complaints. At a minimum, Franchisee shall staff this office from 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays observed by the City. A representative of Franchisee shall be available during office hours to communicate with the public in person and directly by telephone.

7.14. Customer Information

Franchisee shall prepare and keep current a flier acceptable to the City which summarizes solid waste regulations, all services provided by Franchisee, solid waste collection and disposal rates, telephone numbers, special collection events, collection schedules, complaint procedures, and other pertinent information. Franchisee shall have copies of this flier available at all times in Franchisee's office; shall distribute copies to all new customers; shall annually mail copies to all of its current customers; and shall mail updated copies to all customers as notification of changes in service or rates, prior to such changes.

7.15 Regulatory Reporting

Franchisee shall promptly provide the City copies of each adverse report from, and each regulatory action from local, state or federal regulatory agencies. In addition, Franchisee shall send copies to City of any reports that Franchisee submits to regulatory agencies with respect to performance of this Agreement.

Franchisee shall provide City promptly with copies of any notices and correspondence from other facilities, including disposal sites, utilized by Franchisee in performance of this Agreement, concerning any breach of agreement with such facility or violation of regulations, including delivery of unauthorized wastes. Franchisee shall direct such facilities to at all times simultaneously send copies of such notices and correspondence to City.

Franchisee shall promptly provide City with copies of any reports and correspondence concerning the status of permits with respect to Franchisee and such disposal sites and facilities referenced above.

7.16 Public Education

Franchisee acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, Franchisee agrees to take direction from City to exploit opportunities to expand public and customer knowledge concerning needs and methods to reduce, reuse and recycle solid waste and to cooperate fully with City in this regard.

Franchisee shall maintain its own program of providing information relevant to billing and solid waste services, issues and needs with its bills. Franchisee shall also include in customer bills additional information, including information on recycling programs, as directed by the City. Franchisee shall bear all labor costs with respect to inserting public education materials with the billings. City shall bear any additional postage expense resulting from the City's

inserts and shall bear other expenses related to the inserts to the extent said expenses are clearly in excess of the Franchisee's normal billing costs. All public education materials shall be approved in advance by the City.

At the direction of the City, Franchisee shall participate in and promote AB 939 activities and other solid waste management techniques at community events and local activities. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of the City's solid waste program.

7.17 Records Retention

Franchisee shall maintain the above records, reports and data set forth in this Article for such time as City may direct. Franchisee agrees to make all such records, reports and data available for inspection by City or City's authorized representatives, upon reasonable notice by City.

ARTICLE 8. PAYMENTS TO CITY

8.1 Franchise Fee Payments

In consideration of the exclusive franchise provided for in Article 4 of this Agreement, Franchisee shall pay the City ten percent (10%) of Franchisee's gross revenues for collection and disposal of solid waste within the City; provided, however, that such franchise fee shall not exceed the costs incurred by the City to deliver service to properties. Such franchise fee shall be a "pass-through" expense for purposes of rate review and setting. Each monthly remittance of fees to City shall be accompanied by a statement detailing gross revenues for the period covered from all operations conducted or permitted pursuant to this Agreement.

8.2 Schedule of Payment

Franchise fees described in Section 8.1 are due on the 15th day of each month for receipts from the previous month. The remittance will be accompanied by a report setting forth the basis, and calculations used for computing the amount due.

8.3 AB 939 Fee Amount

In consideration of the exclusive franchise provided for in Article 4 of the Agreement, Franchisee shall pay when directed by the City, a percentage of Franchisee's gross revenue for an AB 939 fee (i.e. the cost that the City incurs in managing and addressing AB 939 issues regarding diversion, recyclable materials, source reduction, etc.), on a monthly installment basis, based on cash receipts from customers provided residential and non-residential services during the prior month. All AB 939 fees paid to the City shall be considered a pass through cost for purposes of rate setting under Article 9. The monthly AB 939 fee is due on the 15th day of each month for receipts from the previous month.

8.4 Other Fees

The City shall reserve the right to set such other fees, as the City deems necessary. These fees will be treated as a pass-through expense. The amount, time and method of payment shall be similar to section 8.2.

8.5 Time and Method of Payment

If Franchisee is directed to pay an AB 939, Franchise Fee or "Other" Fee, it shall do so on or before the fifteenth (15th) day of each month during the Term. Franchisee shall remit to City a sum of money equal to the designated percentage of the gross revenue or a flat monthly fee as determined by the City. If any fees are not paid on or before the fifteenth (15th) day of any month, Franchisee shall pay to City a late payment penalty in an amount equal to one percent (1%) of the amount owing for that month. Franchisee shall pay an additional late payment penalty of one percent (1%) owing on any unpaid balance for each following thirty (30) day period the fee remains unpaid. Late payment penalty amounts shall not be included in any revenue requirement.

8.6 Review of Fee Payments

The City, or its agent, reserves the right to annually perform an independent review of fee payments to verify that fees are being paid in accordance with this Agreement. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless

there are findings pursuant to Section 12.8.

8.7 Business License Tax

Franchisee shall pay each year the annual business license tax.

ARTICLE 9. SERVICE RATES AND REVIEW

9.1 General

Franchisee's compensation provided for in this Article shall be the full, entire and complete compensation due to Franchisee pursuant to this Agreement for all labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, transfer and transport, processing, division, disposal, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed, Franchisee will not be entitled to any further rate adjustments as a result of customer delinquencies and other bad debt issues.

Franchisee does not look to the City for payment of any sums, except for solid waste collection services provided to the City and presented in Appendix III, under this Agreement in consideration of the right to charge and collect from customers for services rendered at rates fixed by the City from time-to-time. The City shall have the right to structure those rates as it deems appropriate so long as the revenues forecasted to be received by Franchisee from charging such rates can reasonably be expected to generate sufficient revenues to provide for Franchisee's compensation as calculated in accordance with the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*".

9.2 Service Rates

Service rates are those established by Resolution adopted by City Council. Franchisee shall provide the services required by this Agreement and charge no more than the rates authorized by City Resolution.

9.3 Rate Review

Franchisee shall submit to the City an application for rate review annually, in accordance with the procedures described in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*," dated June 1994, except as that may be modified by the City from time to time. In addition to the procedures contained in the above referenced manual, Franchisee shall submit any and all data requested by and in the format prescribed by the City. In the event Franchisee shall fail to meet the schedule set forth in the above referenced manual, a revision of rates for the following year shall not be authorized until the 1st day of the first calendar month following a 120 day period from the date that the complete application is submitted and such revision shall contain no consideration for Franchisee's failure to submit the application in accordance with the schedule set forth in the above-referenced manual.

9.4 Special Interim Rate Review

The City or franchisee may request an extraordinary or consequential adjustment outside of the base year and interim year adjustment schedules, as set forth in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*," dated June 1994. To be extraordinary and consequential, cost changes must be significant enough to require a greater than five percent (5%) decrease or increase in monthly rates for basic residential service.

9.5 Allowable Profit

When performing the procedures described in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*," dated June 1994, the allowable profit on expenses shall be calculated using targeted operating ratio of ninety-three percent (93%), with a range of ninety-one percent (91%) to ninety-five percent (95%), applied to Franchisee's reasonable and necessary allowable costs, as these costs are defined in the rate setting manual, incurred in the performance of its obligations under this Agreement.

9.6 Publication of Rates

Franchisee shall provide written notice to subscribers of all rate changes, prior to implementation. If appropriate, this notice should include reasons and background for the rate change.

ARTICLE 10. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

10.1 Indemnification

10.1.1 General. Franchisee agrees to defend, indemnify, protect and hold the City and its Council members, agents, officers and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including, but not limited to, damages arising from or related to alleged or actual violations of Proposition 218 and/or its implementing legislation, injury to the Franchisee's employees, agents or officers to the extent arising from or connected with or are caused or claimed to be caused by the acts or omission of the Franchisee, and its agents, officers, directors or employees, in performing the services herein, and all expenses of investigating and defending against same; provided, however, that the Franchisee's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the City, its agents, officers or employees.

10.1.2 CERCLA. Franchisee agrees to defend and indemnify the City, Council members, officers, employees and agents for all actions of the Franchisee associated with the Franchisee's role as the arranger of solid waste service, or as a "potentially responsible party" within the meaning of CERCLA in performing solid waste service under any Federal, State or local laws, rules or regulations. The Franchisee shall further defend and indemnify City from any and all legal actions against City on the basis of the assertion that the City is an arranger of solid waste services as a result of this Agreement.

10.1.3 Integrated Waste Management Act. Franchisee agrees to defend and indemnify the City, Council members, officers, employees and agents for any fines or penalties imposed by the California Integrated Waste Management Board or its agents in the event and to the extent that Franchisee's delays in providing information or reports required pursuant to this Agreement prevent the City from submitting reports or attaining goals in a timely manner as required by the Integrated Waste Management Act.

10.2 Insurance

Franchisee shall procure and maintain for the duration of the franchise insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services hereunder by the Franchisee, its agents, representatives, employees or subcontractors.

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

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
- (2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
- (4) Pollution Legal Liability

B. Minimum Limits of Insurance. Franchisee shall maintain limits no less than:

- (1) **Commercial or Comprehensive General Liability:** Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (2) **Automobile Liability:** Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.
- (3) **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and employers liability with limits of \$1,000,000 per accident for bodily injury or disease.
- (4) **Pollution Liabilities:** One million Dollars (\$1,000,000) each loss/Two Million Dollars (\$2,000,000) annual aggregate all losses.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, Council members, its officers, officials, employees, and agents; or the Franchisee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Any insurance policies providing for self insured retentions shall further provide that legal costs and costs of investigation, including consultant fees, with respect to any claim or suit, shall apply to the self insured retention amount.

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

- (1) The City, Council members, its officers, officials, employees, and agents are to be covered as insurers as respects: liability arising out of activities performed by or on behalf of the Franchisee; products and completed operations of the Franchisee; premises owned, occupied or used by the Franchisee; or automobiles owned, leased, hired or borrowed by the Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or agents.
- (2) For any claims related to this project, the Franchisee's insurance coverage shall be primary insurance as respects the City, Council members, its officers, officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it.

- (3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, Council members, its officers, officials, employees, or agents.
 - (4) The Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.
 - (5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt required, has been given to the City.
 - (6) The Automobile Liability Policy shall be endorsed to delete the Pollution exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.
 - (7) Pollution, if on a Claims Made form:
 - a. The "Retro Date" must be shown, and must be before the date of the contract or the beginning contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, the Franchisee must purchase "extended reporting" coverage for minimum of two years after completion of contract.
- E. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Insurers selected by Franchisee shall be admitted to issue insurance in the State of California.
- F. Verification of Coverage.** Franchisee shall furnish the City with Certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before performance under this Agreement commences. The City reserves the right to require complete certified copies of all required policies at any time, and Franchisee shall provide said copies upon request.
- G. Subcontractors.** Franchisee shall include all subcontractors as insurers under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated

herein..

- H. Occurrence Based Coverage.** All policies secured by Franchisee shall be occurrence and not claims based unless City so Consents in writing.

10.3 Performance Bond

Simultaneously with the execution of this Agreement, Franchisee shall file with the City a bond, payable to City, securing Franchisee's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be One Half Million Dollars (\$500,000). The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to City. The bond shall be in a form approved by the City. If such bond at any time ceases to be effective for any reason, this shall be deemed a breach of this Agreement by Franchisee and the City shall be entitled to proceed as hereinafter provided.

ARTICLE 11. CITY'S RIGHT TO PERFORM SERVICE

11.1 General

In the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to Collect, transport or process any or all Solid waste materials which it is required by this Agreement to Collect and process, at the time and in the manner provided in this Agreement, for a period of more than seven (7) calendar days, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, upon twenty-four (24) hour prior written notice to Franchisee during the period of such emergency as determined by the City Manager, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Franchisee, and/or (2) to take possession of any or all of Franchisee's land, equipment and other property to Collect, transport or process any Solid Waste generated within the City which Franchisee would otherwise be obligated to Collect, transport, process or market pursuant to this Agreement. In the event the City takes possession of the Franchisee's equipment and other property, the City shall be entitled to have another Franchisee operate such equipment and property under City direction. Additionally, in the event the City takes possession of the Franchisee's equipment and other property, the City does not guarantee repair of existing problems with equipment and facilities.

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

Franchisee further agrees that in such event:

- It will take direction from City to effect the transfer of possession of property to City for City's use.
- It will, if City so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
- City may immediately engage all or any personnel necessary or useful for the Collection, transportation and processing Solid Waste, including, if City so desires, employees previously or then employed by Franchisee, Franchisee further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Franchisee whose services are necessary or useful for Solid Waste Collection, Transportation and processing operations and for the billing and collection of fees for these services.

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

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 12.4 (Excuse From Performance), City shall pay to Franchisee the reasonable rental

value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Franchisee has rendered bills in advance of service.

Except as otherwise expressly provided in the previous paragraph, City's exercise of its rights under this Article 11 (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of Article 10, Indemnification, Insurance and Bond, which are meant to extend to circumstances arising under this Section, provided that Franchisee is not required to indemnify City against claims and damages arising from the sole negligence of City officers, employees and agents in the operation of Collection vehicles during the time City has taken possession of such vehicles.

11.2 Temporary Possession of Franchisee's Property

If the City suffers an interruption or discontinuance of service as described in Section 11.1 (including interruptions and discontinuance due to events described in Section 12.4, Excuse from Performance), City may take possession of and use all of Franchisee's property described above until other suitable arrangements can be made for the provision of Solid Waste Services which may include the grant of a Contract to another company. The same notice requirements of Section 11.1 are applicable.

11.3 Billing and Compensation to City During City's Possession

During such time that city is providing Solid Waste services, as above provided, Franchisee shall continue to bill and collect payment from all users of the above-mentioned services. Franchisee further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City in taking over possession of the above-mentioned property for Solid Waste service in such manner and to an extent as would otherwise be required of Franchisee under the Terms of this Agreement. Such reimbursement shall be made from time to time after submission By City to Franchisee of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission. The City shall have the right, at its sole discretion, to take over billing and payment collection activities. The City shall then pay any net revenues to the Franchisee, after deducting all expenses, including City-incurred expenses.

11.4 City's Right to Relinquish Possession

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

11.5 Duration of City's Possession

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

sole discretion, relinquish possession to Franchisee.

ARTICLE 12. DEFAULT AND REMEDIES

12.1 Events of Default

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

A. Fraud or Deceit. If Franchisee practices, or attempts to practice, any fraud or deceit upon city.

B. Insolvency or Bankruptcy. If Franchisee becomes insolvent, unable, or unwilling to pay its debts when due, or upon listing of an order for relief in favor of Franchisee in a bankruptcy proceeding. The Franchisee is also in default if there is an assignment of this contract for the benefit of its creditors.

C. Failure to Maintain Coverage. If Franchisee fails to provide or maintain in full force and effect the Workers' Compensation, liability, indemnification coverage or any insurance coverage or bond required under this Agreement.

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

E. Failure to Perform. If Franchisee ceases to provide Solid Waste services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Franchisee.

F. Failure to Pay/Report. If Franchisee fails to make any timely payments, including liquidated damages and penalties, required under this Agreement and/or fails to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by Franchisee which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice 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.

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

representation or disclosure appears as part of this Agreement.

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

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

Upon default by the Franchisee, the City Manager shall provide written notice to Franchisee of the violation. The City Manager shall include in the notice, a demand that the Franchisee correct the violation within 10 days following the delivery of said notice. If the violation is not corrected within the 10 days, the City shall have the right to terminate the Agreement per the provisions provided in Section 12.2. For purposes of this Agreement and any notice required thereunder, the term "days" shall mean calendar days.

12.2 Right to Terminate Upon Default

Upon a default by Franchisee, City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action. This right of termination is in addition to any other rights of City upon a failure of Franchisee to perform its obligations under this Agreement.

12.3 Possession of Property and Billing Records and Systems Upon Termination

In the event of termination for default, the City shall have the right, subject to the obligations contained in Article 12 hereof, to take possession of any and all of Franchisee's land, equipment, and other property used or useful in the collection, diversion and/or disposal of solid waste and to conduct all activities concerning billing and collection of fees for these services and to use such property. The City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of solid waste collection services, which may include the award of an agreement or franchise to another waste hauling company. If the City retains possession thereof after the period of time for which Franchisee has already been paid by means of bills issued in advance of providing service for the class of service involved, Franchisee shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the City for the Franchisee's default).

Franchisee shall provide the City immediate access to all of its business records and billing system related to its billing of accounts for services and shall take direction from the City regarding the billing of customers during the period between the City's termination of the Agreement for default until other suitable arrangements can be made for the billing of solid waste collection services. The provisions of this Section 12.3 shall survive the termination of this Agreement.

12.4 City's Remedies Cumulative; Specific Performance

The City's right to terminate the Agreement under Section 12.1 and to take possession of the Franchisee's properties under Section 12.3 are not exclusive, and the City's termination of the Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous and high quality service, the lead time required to effect alternative service, and the rights granted by the City to Franchisee, the remedy of damages for a breach hereof by Franchisee is inadequate and the City shall be entitled to injunctive relief and/or specific performance if it so desires.

12.5 Excuse from Performance

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other "acts of God", war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Franchisee's employees or directed at Franchisee or its selected facilities is not an excuse from performance and Franchisee shall be obligated to continue to provide service notwithstanding the occurrence of any or all such events.

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

The interruption or discontinuance of Franchisee's services caused by one or more of the events excused shall not constitute a default by Franchisee under this Agreement. Notwithstanding the foregoing, however, if Franchisee is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, City shall have the right to review the circumstances under which the excuse from performance was granted. After such review, if the City determines the excuse from service is no longer valid, the City shall notify the Franchisee in writing to resume service within two (2) days from the receipt of such notification. If the Franchisee fails to resume service within the two (2) days, the City shall have the right to terminate this Agreement by giving ten (10) days notice, in which case the provisions relative to taking possession of Franchisee's land, equipment and other property and engaging Franchisee's personnel in Article 11, City's Right to Perform Services, and this Article 12 shall apply.

12.6 Liquidated Damages

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

The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that:

- substantial damage results to members of the public who are denied services or

- denied quality or reliable service;
- such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;
- that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and
- the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches. However, substantial breaches may result in the termination of this Agreement as described in Section 12.1.

The parties further acknowledge that consistent, reliable solid waste collection service is of utmost importance to City and that City has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that if Franchisee fails to achieve the performance standards, or fail to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 12, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

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

Collection Reliability and Quality

- For each failure over five (5) annually to commence service to a new customer account within seven (7) days after order: \$150.00
- For each failure over ten (10) annually to Collect Solid Waste, which as been properly set out for Collection, from an established customer account on the scheduled Collection day: \$150.00
- For each failure to Collect Solid Waste which have been properly set out for Collection, from the same customer on two (2) consecutive scheduled pickup days: \$150.00
- For each occurrence over five (5) annually of damage to private property: \$250.00
- For each occurrence of discourteous behavior: \$250.00
- For each failure over ten (10) annually to clean up Solid Waste spilled from Bins: \$150.00
- For each occurrence over five (5) annually of Collecting Solid Waste during unauthorized hours: \$250.00
- For each failure to respond to a customer complaint within

twenty-four (24) working hours:	\$100.00
• For each failure to prepare for or properly conduct twice annual clean-ups including advertising and press releases;	\$250.00
• For each failure to perform and submit billing reviews:	\$250.00
• For each occurrence over ten (10) annually of failure to properly return containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with lid secured:	\$150.00
• For each occurrence of excessive noise above the limits specified in this Agreement:	\$250.00

Customer Responsiveness

- For each failure to respond to a customer complaint within sixteen (16) working hours: \$100.00
- For each failure to process customer complaints to City: \$500.00
- For each failure to carry out responsibilities for establishing service: \$500.00

Timeliness of Submissions to City

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

Monthly Reports:	For each infraction	\$100 per day
Quarterly Reports	For each infraction	\$250 per day
Annual Reports:	For each infraction	\$500 per day

Liquidated damages will only be assessed after Franchisee has been given the opportunity but failed to rectify the damages, as described in this Agreement (e.g., twenty-four (24) working hours to respond to a complaint). City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of customer complaints.

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

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

D. Timing of Payment. Franchisee shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by this Agreement or order the termination of this Agreement, or both pursuant to the terms of this Agreement.

12.7 Notice, Hearing and Appeal

Should the Franchisee contend that the City is in breach of the Agreement, Franchisee shall file a written request with the Utilities Director for a consultation regarding the allegations. Such consultation shall be held within thirty calendar days of the receipt of Franchisee's request. Franchisee shall present its position and all relevant facts to the Utilities Director. Franchisee shall be notified of the Utilities Director judgment within ten calendar days of the consultation.

If the Franchisee is not in agreement with the ruling issued by the Utilities Director, it shall have the right to appeal the decision to the City Manager. This appeal shall be made in writing to the City no later than fourteen days after the notification is mailed by Utilities Director of the judgment. The City Manager shall notify Franchisee of the time and date of the review of allegation within thirty calendar days of the request. Franchisee shall present its position and all relevant facts to the City Manager. Franchisee shall be notified in writing within fourteen calendar days of the City Manager's ruling. The decision of the City Manager can be appealed to City Council per Municipal Code Section 1.20.020.

12.8 Financial Material Errors, Omissions or Irregularities

The City may review, test and audit the books and records of the Franchisee for the purpose of determining whether the Franchisee is complying with the terms of the Agreement. In the event that material errors or omissions or irregularities are identified, then the cost associated with the audit, test or review shall be paid by the Franchisee to the City. In the case of financial errors, materiality shall be deemed to be two percent (2%) or greater of the gross revenues of the Franchisee from activities performed under this agreement. Recovery of any overpayment will be negotiated on a case by case basis, either immediately or through the next rate setting evaluation.

ARTICLE 13. ASSIGNMENT

13.1 Assignment

Except as provided in Article 11, "City's Right to Perform Service", neither party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The City may, however, assign its rights and delegate its obligations under this Agreement to a joint powers authority without the prior written consent of Franchisee.

For purposes of this section, "assignment" shall include, but not be limited to

- (1) a sale, exchange or other transfer to a third party of at least fifty-one percent of Franchisee's assets dedicated to service under this Agreement;
- (2) a sale, exchange or other transfer to a third party, including other shareholders, of outstanding common stock of Franchisee which may result in a change of control of Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which Franchisee or any of its shareholders is a party which results in a change of ownership or control of Franchisee; and
- (4) any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Franchisee's property, or transfer occurring in the probate proceeding; and
- (5) any combination of the foregoing (whether or not in related or contemporaneous transactions, which has the effect of any such transfer or change of ownership, or change of control of Franchisee.

Franchisee acknowledges that this Agreement involves rendering a vital service to City residents and businesses, and that City has selected Franchisee to perform the services specified herein based on:

1. Franchisee's experience, skill and reputation for conducting its solid waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best waste management practices, and
2. Franchisee's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Franchisee to perform the services to be rendered by Franchisee under this Agreement.

If Franchisee requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. The City is concerned about the possibility that assignment could result in significant rate increases, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that assignment will result in continued quality service. In addition, the City reserves the right to solicit competitive bids for these services if the assignment results in a request by the assignee for rate increases that are higher than the inflationary index and do not reflect value changes in service standards. At a minimum, no request by Franchisee for consent to an assignment need be considered by City unless and until Franchisee has met the following requirements:

- A. Franchisee shall undertake to pay City its reasonable expenses for attorney's fees and investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B. Franchisee shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- C. Franchisee shall furnish City with satisfactory proof:
 - 1. that the proposed assignee has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee under this Agreement;
 - 2. that in the last five (5) years, the proposed assignee or affiliates has not suffered any significant citations or other censure from any federal, state or local agency having jurisdictions over its waste management operations due to any significant failure to comply with state, federal or local environmental laws and that the assignee has provided City with a complete list of such citations and censures;
 - 3. that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion;
 - 4. that the proposed assignee conducts its solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of solid waste, including hazardous wastes; and,
 - 5. of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES

14.1 Relationship of Parties

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

14.2 Governing Law

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

14.3 Jurisdiction

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

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

14.4 Subcontracting

Except as approved in writing by the City, Franchisee shall not enter into an agreement to have another Person perform Franchisee's duties of this Agreement. Franchisee shall undertake to pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed subcontractor, and to review and finalize any documentation required as a condition for approving any such subcontracting agreement.

14.5 Interests of Franchisee

Franchisee covenants that it presently has no interest, and shall not acquire any interest direct or indirect or otherwise, which would conflict in any manner or degree with the performance of the work hereunder. The Franchisee further covenants that, in the performance of this work, no subcontractor of any person having such an interest shall be employed. The Franchisee certifies that no one who has or will have any financial interest in performing this work is an officer or employee of the City.

14.6 Binding on Successors

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

14.7 Transition of Next Franchise

At the point of transition to a new franchise, Franchisee will cooperate with the City and subsequent franchisee(s) to assist in an orderly transition which will include Franchisee providing route lists and billing information. Franchisee will not be obliged to sell collection vehicles, bins, and containers to the next franchise. The Franchisee, at its option, may enter into negotiations with the next franchisee to sell (in part or all) collection vehicles, bins and containers.

14.8 Parties in Interest

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

14.9 Waiver

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

14.10 Condemnation

The City fully reserves whatever rights it may have to acquire Franchisee's property utilized in the performance of this Agreement, by negotiated purchase or failing that, through the exercise of the right of eminent domain.

14.11 City Free to Negotiate with Third Parties

The City may investigate, during the term and thereafter, all options for the collection, diversion, and disposal of solid waste after the expiration of the term. Without limiting the foregoing, the City may solicit proposals from Franchisee and from third parties for the provision of collection services, disposal services, recycling services, Solid waste collection and composting, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination under Section 11.1 of this Agreement.

14.12 Immigration Act of 1986

The Franchisee warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of this work.

14.13 Non-Discrimination

In the performance of this work, the Franchisee agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, physical disability, mental condition or religion of such persons.

14.14 Public and Employee Safety

Whenever the Franchisee's operations create a condition hazardous to the public or City employees, it shall, at its expense and without cost to the City, furnish, erect and maintain such fences,

temporary railings, barricades, lights, signs and other devices, and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

14.15 Recycled Products

The City encourages the Franchisee's use of recycled products.

14.16 Notice

All notices, demands, requests, proposals, approvals, consent, and other communications which this Agreement requires, authorizes or contemplates, except as provided in Section 12.1, shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City: Utilities Director
City of San Luis Obispo
879 Morro Street
San Luis Obispo, CA 93401

If to Franchisee: San Luis Garbage Company
2945 McMillan #136
San Luis Obispo, CA 93401

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

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

14.17 Representatives of the Parties

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

Franchisee shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of Franchisee in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind Franchisee. The City may rely upon action taken by such designated representative as actions of Franchisee unless they are outside the scope of the authority delegated to him/her by Franchisee as communicated to the City.

14.18 Entire Agreement

This Agreement represents the full and entire Agreement between the parties with respect to the

matters covered herein.

14.19 Section Headings

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

14.20 References to Laws

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

14.21 Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

14.22 Amendment

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

14.23 Severability

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

14.24 Counterparts

This Agreement may be executed in counterparts each of which shall be considered an original.

14.25 Use of "Will"

The use of the word "will" shall be construed as interchangeable with the word "shall."

14.26 Surviving Provisions

Paragraphs 7.11, 7.16, 8.5, 10.2, and other provisions of this Agreement so providing, shall survive termination of this Agreement.

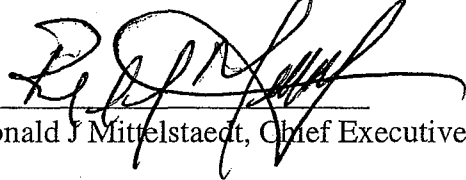
14.27 Investigation

Franchisee has relied on its own investigations in deciding to enter into this Agreement and has not relied upon any representations of the City, its Council members, officers, directors, employees or agents.

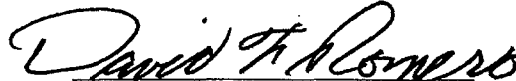
Franchise Agreement - Solid Waste

By: SAN LUIS GARBAGE CO.

By: CITY OF SAN LUIS OBISPO



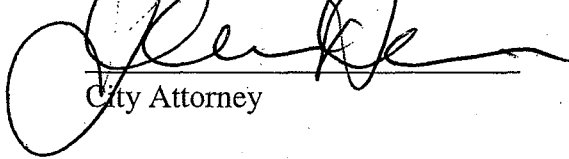
Ronald J Mittelstaedt, Chief Executive Officer




Mayor

APPROVED AS TO FORM:

ATTEST:



City Attorney



City Clerk