

Table of Contents

ARTICLE 1 DEFINITIONS	2
ARTICLE 2 REPRESENTATIONS AND WARRANTIES OF FRANCHISEE	5
2.1. Corporate Status	5
2.2. Franchisee Authorization	5
2.3. Compliance With Laws and Regulations	5
2.4. Financial Representation	5
2.5. Serve Without Interruption.....	5
2.6. Permits and Licenses	5
2.7. Preservation of District Property	5
2.8. Accuracy of Representations.....	5
2.9. Absence of Litigation	5
ARTICLE 3 TERM OF AGREEMENT	6
3.1. Effective Date	6
3.2. Term of Agreement	6
3.3. Option to Extend	6
3.4. Conditions to Effectiveness of Agreement.....	6
3.5. Furnishing of Insurance.....	6
3.6. Effectiveness of District Board Action.	6
ARTICLE 4 SCOPE OF AGREEMENT	6
4.1. Grant and Acceptance of Agreement	6
4.2. Scope of Agreement.....	7
4.3. Limitations to Scope	7
4.4. Administration of Agreement.....	8
4.5. Franchisee as Arranger.....	8
4.6. Use of District Streets	8
4.7. District Request to Direct Changes	8
4.8. Ownership of Garbage and Recyclable Materials	9
4.9. District’s Right To Perform Service; Tagging of Improper Set-Outs	9
4.10. Annexation	9
ARTICLE 5 DIRECT SERVICES	10
5.1. General	10
5.2. Single Family Residential Solid Waste Collection Service.....	10
5.3. Other Solid Waste Collection Service.....	10
5.4. Missed Pickups	11
5.5. Bulky Waste Collection	11
5.6. Clean-Up Event.....	11
ARTICLE 6 COLLECTION SERVICE STANDARDS	11
6.1. Operations	11
6.2. Disposal Requirements.....	15
6.3. IWMA Solid Waste Management Fee	15
6.4. Cleaning Commercial Bins	15
6.5. Material Processing.....	15
ARTICLE 7 OTHER SERVICES	16
7.1. Billing and Collection of Charges	17
7.2. Delinquent Solid Waste Customers.....	17
7.3. Accounting	17

7.4.	Liaison With District	17
7.5.	Complaints	17
7.6.	Office	17
ARTICLE 8 PAYMENTS TO DISTRICT		18
8.1.	Franchise Fee	18
8.2.	Business License Tax	18
8.3.	Other Fees	18
8.4.	Adjustment of Fees	18
8.5.	Review of Fee Payments	18
ARTICLE 9 FRANCHISEE'S COMPENSATION AND RATES		19
9.1.	General	19
9.2.	Collection Rates	19
9.3.	CPI Adjustment	19
9.4.	Extraordinary Rate Adjustments	19
9.5.	Allowable Profit	20
9.6.	Publication of Rates	20
ARTICLE 10 RECORDS, REPORTS AND INFORMATION, STUDIES AND HEARING REQUIREMENTS		20
10.1.	Records	20
10.2.	Waste Generation/Characterization Studies	21
10.3.	Report Format and Schedule	21
10.4.	Annual Reports	22
10.5.	Other Report Requirements	22
10.6.	Annual Financial Statement	22
10.7.	Maintenance of Accounting Records	23
10.8.	Right to Audit Records	23
10.9.	Inspection by District	23
10.10.	Customer Information	23
10.11.	Regulatory Reporting	24
10.12.	Records Retention	24
ARTICLE 11 INDEMNIFICATION AND INSURANCE		24
11.1.	Indemnification	24
11.2.	CERCLA	25
11.3.	Challenge to Service Rates	25
11.4.	Insurance	25
11.5.	Bonds and Other Security	27
ARTICLE 12 DISTRICT'S RIGHT TO PERFORM SERVICE		28
12.1.	General	28
12.2.	Temporary Possession of Franchisee's Property	29
12.3.	Billing and Compensation to District During District's Possession	29
12.4.	District's Right to Relinquish Possession	29
12.5.	Duration of District's Possession	29
ARTICLE 13 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES		29
13.1.	Events of Default	29
13.2.	Right to Terminate Upon Default	31
13.3.	Liquidated Damages	31
13.4.	Collection Reliability and Quality	32
13.5.	Timeliness of Submissions to District	32
13.6.	Notice, Hearing and Appeal	33
13.7.	Excuse from Performance	33
13.8.	Financial Material Errors, Omissions or Irregularities	34

ARTICLE 14 OTHER AGREEMENTS OF THE PARTIES	34
14.1. Relationship of Parties	34
14.2. Compliance with Law	34
14.3. Governing Law.....	34
14.4. Jurisdiction	34
14.5. Assignment.....	34
14.6. Subcontracting	36
14.7. Binding on Assigns	36
14.8. Transition to Next Franchisee	37
14.9. Parties in Interest.....	36
14.10. Waiver.....	36
14.11. Franchisee's Investigation	36
14.12. Notices	36
14.13. Representatives of the Parties	37
14.14. District Free to Negotiate with Third Parties	37
14.15. Compliance with District Code of Ordinances.....	37
14.16. Privacy	37
 ARTICLE 15 MISCELLANEOUS AGREEMENTS	 38
15.1. Entire Agreement	38
15.2. Article Headings.....	38
15.3. References to Laws and Other Agreements	38
15.4. Interpretation.....	38
15.5. Agreement.....	38
15.6. Severability	38
15.7. Exhibits	38
 EXHIBIT A	 39
EXHIBIT B	40
EXHIBIT C	41

SOLID WASTE COLLECTION FRANCHISE AGREEMENT

This Solid Waste Collection Franchise Agreement (“Agreement”) is entered into on the 1st day of January, 2015 by and between the **Ground Squirrel Hollow Community Services District**, a political subdivision of the State of California (“District”) and **Paso Robles Country Disposal Inc.**, a California corporation (“Franchisee”) for Franchisee to provide garbage, recycling and greenwaste services within the service boundaries of District.

RECITALS

WHEREAS the District became the solid waste authority for property within its boundaries as a result of activation of its latent solid waste powers through approval by the San Luis Obispo County Local Agency Formation Commission (LAFCO) adoption of Resolution dated March 20, 2014, with an effective date of solid waste service of May 16, 2014; and

WHEREAS the LAFCO Resolution 2014-02 required the District to abide by all the conditions of the existing Solid Waste Franchise Agreement (the “Prior Agreement”) between the Franchisee and the County of San Luis Obispo until the remaining term of said agreement expires unless otherwise agreed to by both parties; and

WHEREAS the Prior Agreement between the Franchisee and the County of San Luis Obispo expires on January 31, 2015; and

WHEREAS the District now desires to create a new Solid Waste Agreement for the collection and disposal of solid waste in Ground Squirrel Hollow; and

WHEREAS the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) Division 30 of the California Public Resources Code, commencing with §40000, has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions. The law, AB 939, required a 50% reduction in the amount of waste which is landfilled; and

WHEREAS the District has authority to grant a franchise collection, diversion, and disposal of solid waste within the Ground Squirrel Hollow Community Services District area; and

WHEREAS the District Board 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 capacity; and to develop and maintain effective resource management programs; and

WHEREAS the District has determined that an exclusive franchise agreement granted to a private company for the collection, processing and marketing of commercial and residential recyclable materials is the most effective and efficient way to collect and divert commercial and residential recyclable materials within the District; and

WHEREAS the District has deemed that the Franchisee can provide needed solid waste services, based in part, upon the Franchisee’s demonstrated ability to provide efficient, cost-effective services to District residents and maintain reasonable rates and high quality service for garbage service and the collection, processing, and marketing of recyclable materials; and

WHEREAS the Franchisee is responsible for arranging for commercial and residential recyclable materials collection, processing and marketing services; and

WHEREAS this Agreement has been developed by and is satisfactory to the parties; and

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, the adequacy of which his hereby acknowledged, it is hereby agreed by and between the District and Franchisee as follows:

ARTICLE 1. DEFINITIONS

- 1.1. **"Agreement"** means this Solid Waste Collection Franchise Agreement (including all exhibits and attachments, and any amendments thereto) between District and Franchisee.
- 1.2. **"Applicable Law"** means all federal, state and local laws, ordinances, and regulations adopted by a duly constituted governing body of any public agency including but not limited to the United States of America, the State of California, the District, joint powers authorities, regulatory agencies and districts, which are applicable to the terms of this Agreement.
- 1.3. **"Billings"** means any and all statements of charges for services rendered by Franchisee pursuant to this Agreement.
- 1.4. **"Bin"** means any portable container from one (1) to eight (8) cubic yards capacity for mechanical handling by the collection trucks.
- 1.5. **"Bulky Waste"** means discarded, large household appliances, furniture, tires, carpets, mattresses, and similar items which requires special handling due to their size, but which can be collected without assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned vehicles.
- 1.6. **"California Integrated Waste Management Act of 1989"** means Public Resources Code, §40000 et seq.
- 1.7. **"CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.
- 1.8. **"Collect" or "Collection"** means to take physical possession, transport, and remove garbage and recyclable materials within and from the District.
- 1.9. **"Commercially Generated Recyclable Materials"** means recyclable materials generated at commercial, governmental and/or industrial property and separated by the waste generator for collection.
- 1.10. **"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 does not include residential properties where businesses are conducted which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.11. **"Construction Debris"** means used or discarded construction materials removed from a premises during the construction, repairs or renovation of a structure.
- 1.12. **"Container"** means any waste wheeler can or bin used for collection and storing of garbage

or recyclable materials before removal.

- 1.13. **"Developed Properties"** means any real property within the District that is developed with a building or structure, that when used is capable of generating solid waste. Developed properties include but are not limited to residential properties, multi-family properties and commercial properties.
- 1.14. **"Disposal"** means the ultimate disposing of solid waste collected by Franchisee at a landfill in full regulatory compliance or other fully permitted disposal site.
- 1.15. **"Disposal Site(s)"** means any properly licensed and permitted solid waste facility or facilities selected by Franchisee after consultation with District for the ultimate disposal of solid waste collected by Franchisee.
- 1.16. **"District"** means the Ground Squirrel Hollow Community Services District, a California special district and all the territory lying within the service boundaries of the District as presently existing or as such boundaries may be modified during the term of this agreement.
- 1.17. **"Franchise"** means the special rights granted by the Ground Squirrel Hollow Community Services District to operate a solid waste collection company providing such services within the District.
- 1.18. **"Franchisee"** means, Paso Robles Country Disposal, Inc. and its officers, directors, employees, agents, companies and sub Franchisees where applicable.
- 1.19. **"Environmental Laws"** means all federal and state statutes, county, local and District ordinances and regulations concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC 6901 et seq.; the Federal Clean Water Act, 33 USC 1251 et seq.; the Toxic Substances Control Act, 15 USC 2601 et seq.; the Occupational Safety and Health Act, 29 USC 651 et seq.; the California Hazardous Waste Control Law, California Health and Safety Code §25100 et seq.; the California Hazardous Substances Account Act, California Health and Safety Code §25300 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; currently in force and as hereinafter amended, and all rules and regulations promulgated there under.
- 1.20. **"Facility"** means any plant or site, owned or leased and maintained and/or operated or used by Franchisee for the purposes of performing the duties to fulfill this Agreement.
- 1.21. **"Fiscal Year"** means the period commencing July 1 and concluding June 30.
- 1.22. **"Greenwaste"** means tree trimmings, grass cuttings, dead plants, leaves, braches and dead trees (no more than six (6) inches in diameter) and similar material generated at the premises.
- 1.23. **"Gross Revenues"** means the sum of the cash receipts derived by Franchisee from all customers billings for solid waste collection services provided in the District.
- 1.24. **"Hazardous Waste"** means any discarded material or mixture of materials, which is toxic, corrosive, flammable, radioactive or which, because of its quantity, concentration, physical, chemical or infectious characteristics may do harm to either humans, animals or the environment, or as defined in Section 2, Chapter 6.5 §25117 of the Health and Safety Code and Public Resources Code §40141.

- 1.25. **"Materials Recovery Facility"** means a permitted facility where solid waste or recyclable materials are sorted, processed, transferred or separated for the purposes of recycling or reuse.
- 1.26. **"Multifamily 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.
- 1.27. **"Occupied Developed Premises"** means any structure in the District that is occupied for any length of time by any person.
- 1.28. **"Owner"** means the person holding the legal title to the real property constituting the premises to which solid waste collection service is to be provided under this Agreement.
- 1.29. **"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, cities and special purpose districts.
- 1.30. **"Premises"** means any land or building in the District where solid waste is generated or accumulated.
- 1.31. **"Recyclable Materials"** means by-products or discards set aside, handled, packaged or offered for Collection from residential, commercial, governmental or industrial customers in a manner different from solid waste. Including, but not limited to, aluminum, newspaper, clear and colored glass, tin and bi-metal, all plastic containers, cardboard, chipboard, magazines, mixed paper (including magazines, phone books and junk mail). Greenwaste material is included in this definition, but is collected separately from other recyclable materials, and includes grass clippings, leaves, weeds, brush, wood, Christmas Trees and branches.
- 1.32. **"Recycling"** means the process of separating for collection, collecting, treating and/or reconstituting recyclable materials which would otherwise be discarded without receiving compensation or returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The collection, transfer, transportation or disposal of recyclable materials not intended for, or capable of, reuse is not recycling.
- 1.33. **"Related Party Entity"** means any affiliate of Franchisee that provides services under this Agreement.
- 1.34. **"Residential Recyclable Materials"** means recyclable materials generated at single family dwelling units and separated by the waste generator for collection.
- 1.35. **"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 services.
- 1.36. **"Solid Waste"** means all putrescible and non-putrescible refuse, garbage, rubbish, and recyclable materials, and as otherwise defined in Public Resources Code §40191.
- 1.37. **"Term"** means the term of this Agreement, as provided for in Article 3.
- 1.38. **"Transfer Station"** includes those facilities used to receive solid wastes, temporarily store,

separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport and those facilities used for transformations.

- 1.39. **"Waste Generator"** means any person as defined by the Public Resources Code, whose act or process produces 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 FRANCHISEE

2.1. **Corporate Status**

Franchisee is a corporation dully 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 corporate power to own its properties and to carry on its business now owned and operated as is required by the Agreement. Franchisee shall be an independent Franchisee and not an agent or employee of the District.

2.2. **Franchisee Authorization**

Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors and Franchisee (or the shareholders, if necessary) have taken all actions required by Applicable 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 the authority to do so.

2.3. **Compliance With Laws and Regulations**

Franchisee shall comply with all existing and future Applicable Law, including all Environmental Laws.

2.4. **Financial Representation**

Franchisee represents that is has the financial ability to fully perform its obligation as set forth in this Agreement.

2.5. **Serve Without Interruption**

Franchisee shall perform all duties throughout the term of this Agreement without interruption.

2.6. **Permits and Licenses**

Franchisee shall procure, and keep in full force and affect, all permits and licenses, pay all charges and fees, and give all notices as necessary.

2.7. **Preservation of District Property**

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

2.8. **Accuracy of Representations**

The representations and warranties made by Franchisee throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.

2.9. **Absence of Litigation**

There is no litigation pending in any court challenging the award of this Agreement to Franchisee or the execution of this Agreement or seeking to restrain or enjoin its performance.

ARTICLE 3 TERM OF AGREEMENT

3.1. **Effective Date**

The effective date of this Agreement shall be February 1, 2015 (the “Effective Date”).

3.2. **Term of Agreement**

The term of this Agreement shall be fifteen (15) years commencing on the Effective Date and expiring on February 1, 2030, unless extended by the parties as provided in Article 3.3 (Option to Extend).

In the event of a change of Applicable Law which would render the collection and disposal services to be implemented under this Agreement illegal, the District reserves the right to terminate this Agreement upon the giving of a six (6) month prior written notice of District’s election to so terminate this Agreement. Prior to the termination of this Agreement under these circumstances, the parties to this Agreement agree to work together, in good faith, to amend this Agreement to remove or revise the language which renders this Agreement illegal.

3.3. **Option to Extend**

The District shall have the sole option to extend this Agreement up to twenty four (24) months in periods of at least twelve (12) months each. If District elects to exercise this option, it shall give written notice not later than one hundred eighty (180) days prior to the initial termination date, or, if one extension has been exercised, one hundred eighty (180) days prior to the extended termination date. The terms and conditions of this Agreement shall be applicable during said extension option unless the parties mutually agree upon any changes.

3.4. **Conditions to Effectiveness of Agreement**

The obligation of District 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 District.

3.5. **Furnishing of Insurance**

At least 30 (thirty) calendar days before the effective date of the Agreement, the Franchisee shall provide proof of insurance in the form, coverages, and amounts specified in Article 11 of this Agreement.

3.6. **Effectiveness of District Board Action.**

The District’s Resolution No. 2015-01 approving this Agreement, shall become effective pursuant to California law on or prior to the effective date of this Agreement.

ARTICLE 4 SCOPE OF AGREEMENT

4.1. **Grant and Acceptance of Agreement**

Subject of Article 3.4 (Conditions of the Effectiveness of Agreement), District hereby grants to Franchisee the exclusive right and privilege to collect and dispose all solid wastes (including, but not limited to bulky waste, construction and demolition debris) generated and/or accumulated within District.

District also hereby grants to Franchisee the exclusive right and privilege to collect recyclable materials including greenwaste generated and/or accumulated at single family and

multi-family dwelling units in the District and commercially generated recyclable materials including greenwaste that are offered for collection to Franchisee in accordance with this Agreement. Franchisee shall have the right to process and market recyclable materials under this agreement.

Franchisee shall perform all duties required under this Agreement in accordance with all Applicable Law at rates established by District pursuant to the procedures set forth herein.

Franchisee hereby accepts the Agreement on the terms and conditions set forth in this Agreement.

4.2. **Scope of Agreement**

Subject to Article 4.3 (Limitations to Scope), the Agreement granted to Franchisee shall be exclusive for solid waste, recyclable materials, and greenwaste, except where otherwise precluded by Applicable Law.

4.3. **Limitations to Scope**

The Agreement for the collection, processing and marketing of recyclable materials granted to Franchisee shall be exclusive except as to the following categories of recyclable materials listed in this Article. The granting of this Agreement shall not preclude the categories of recyclable materials listed below from being delivered to and collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any person from obtaining any authorization from District that is otherwise required by law:

- A. 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 for such recycling or related services.
- B. Recyclable materials donated to a charitable, or other non-profit organization.
- C. Recyclable materials which are separated at any premises and which are transported by the owner or occupant of such premises (or by his/her full-time employee) to a recycling center.
- D. Greenwaste material removed from a premises by a gardening, landscaping or tree trimming company as an incidental part of the landscaping services offered by that company rather than as a hauling service.
- E. Containers delivered for recyclers under the California Beverage Container Recycling Litter Reduction Act. California Public Resources Code Section 14500 et. seq.
- F. By-products of on-site sewage systems, including sludge, sludge ash, grit and screening.
- G. Hazardous waste, liquid waste and medical waste.
- H. Other governmental agencies within the District which can contract for separate solid waste and recycling services.

This Agreement to collect, transport, process, and market recyclable materials shall be interpreted to be consistent with Applicable Law, now and during the term of the Agreement, and the scope of this Agreement shall be limited by current state and federal laws with regard to recyclable materials handling, recyclable materials flow control, and related doctrines. In the event that changes in Applicable Law limit the ability of the District to lawfully provide

for the scope of services as specifically set forth herein, Franchisee and District agree to work in good faith to amend the scope of the Agreement so as to comply with such changes in Applicable Law, and the District shall not be responsible for any lost profits and/or damages claimed by the Franchisee as a result of changes in law.

4.4. **Administration of Agreement**

The District Manager shall administer this Agreement and shall supervise Franchisee compliance with the Agreement terms and conditions.

4.5. **Franchisee as Arranger**

The District and Franchisee mutually agree that the District's granting of this franchise shall not be construed as the District "arranging for" the collection and disposal of solid waste or recycling within the meaning of CERCLA. The parties further mutually agree that the granting of the franchise by District 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 the Franchisee and Franchisee expressly agrees to be solely responsible for all such actions.

4.6. **Use of District Streets**

Franchisee shall have the right and privilege to operate collection vehicles and equipment on any and all streets, public ways, rights-of-way, or easements in the boundaries of District. Nothing in this section applies to or limits Franchisee's potential liability to the County of San Luis Obispo for County maintained roads, District maintained roads, or to any road rights-of-way, or easements maintained by residents of the District. District assumes no obligation to indemnify Franchisee for any such claims that may be asserted by County or residents.

4.7. **District Request to Direct Changes**

4.7.1. **General**

District may request Franchisee to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services that may entail new collection methods, different kinds of services and/or new requirements for waste generators are included among the kinds of changes that District may request. Franchisee shall present, within 30 days of a request to do so by District, a proposal to provide additional or expanded diversion services pursuant to the terms of Article 4.7.2. Franchisee shall be entitled to an adjustment in its compensation in accordance with Article 9.4 (Extraordinary Adjustments), for providing such additional or modified services.

4.7.2. **New Diversion Programs**

Franchisee shall present, within 30 days of a request to do so by District, a proposal to provide additional or expanded diversion or other 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.
- Materials recovery facility to be utilized for diversion and/or recovery of materials.
- 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.

4.7.3. District's Right to Acquire Services

If pursuant to Article 4.7.2 (New Diversion Programs), Franchisee and District cannot agree on terms and conditions of such new services in ninety (90) days from the date when District provides its final response to any proposal from Franchisee to perform such services, Franchisee acknowledges and agrees that District may permit persons other than Franchisee to provide such services.

4.8. Ownership of Garbage and Recyclable Materials

All solid waste collected, removed, and transported by Franchisee from the premises where produced, generated, and/or accumulated pursuant to this Agreement shall be the property and responsibility of Franchisee. Notwithstanding the foregoing, Franchisee shall have no duty or obligation to collect any hazardous waste or other material that does not meet the definition of solid waste, and ownership of all such non-conforming materials shall remain with the waste generator.

Once recyclable materials are placed in containers and properly presented for collection, ownership and the right to possession shall transfer directly from the generator to Franchisee by operation of this Agreement. Franchisee is hereby granted the right to retain, recycle, process, reuse, and otherwise use such recyclable materials or any part thereof, in any lawful fashion or for any lawful purpose consistent with the hierarchy and goals of AB 939. Subject to the provisions of this Agreement, Franchisee shall have the right to retain any benefit resulting from its right to retain, recycle, process or reuse the recyclable materials that it collects. Recyclable materials or any part thereof, which are delivered to a facility (processing facility, transformation facility, transfer station, or material recovery facility) shall become the property of the owner or operator of the facility(ies) once deposited there by Franchisee.

4.9. District's Right To Perform Service; Tagging of Improper Set-Outs

In the event Franchisee fails to collect, remove, and dispose of garbage or recyclable material on a customer's regularly scheduled collection day, within twenty-four (24) hours of a request from District or a customer to do so, District may collect said materials and Franchisee shall be liable for all related expenses incurred by District. Such expenses include but are not limited to disposal, administrative, and legal costs. Franchisee shall reimburse District for such expenses as required.

In the event Franchisee does not collect any item or container of solid waste, recyclable materials or greenwaste material due to a customer's non-compliance with rules and regulations for proper set-out, if possible Franchisee shall attach a tag securely to the item or container not collected specifying the reasons for non-collection, or, franchise shall internally document the issues so they can be communicated to the Customer upon Customer's inquiry.

4.10. Annexation

The Franchisee shall automatically extend all services herein described to any area annexed to the District, except as may be limited by Applicable Law.

ARTICLE 5 DIRECT SERVICES

5.1. **General**

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

The work to be done by Franchisee pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents and businesses within the District are provided reliable, courteous and high-quality garbage and recycling collection services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Franchisee of the duty of accomplishing all other aspects in the manner provided in this Article, whether such aspects are enumerated elsewhere in the Agreement or not.

The District 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 District's laws and regulations and Franchisee agrees to comply with any such laws and regulations as if incorporated into this 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 per week. 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 sixty (60) days of execution of this Agreement, of this collection option. To be eligible for this collection option, residents must present proof to the Franchisee that (a) they are physically incapable of placing containers at the curb, and (b) there is no one present at the residence that is physically capable of placing containers at the curb.

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 District, not less than once per week, using containers of a size and shape permitted pursuant to District approval, which approval shall not be unreasonably withheld. 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 District.

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 District, using containers of a size and shape permitted pursuant to District approval, 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 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 District.

Additionally, if in the District's opinion, the location of an existing collection location for particular multi-family dwelling unit or commercial, industrial or institutional property is inappropriate, the District 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 improperly located containers.

5.4. Missed Pickups

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

5.5. 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 District and updated by resolution when the District adjusts rates. Any single item is not to exceed 200 pounds.

5.6. Clean-Up Event

Each year throughout the term of this Agreement, Franchisee shall conduct a Clean-Up Event, during which it shall collect up to two cubic yards of additional solid waste generated by each of Franchisee's customers within the District, pursuant to the rules set forth in Exhibit C attached hereto or as otherwise established by both parties. This service shall be provided at no additional charge to customers or District, as it has been in the past. Franchisee shall notify its customers of this event.

ARTICLE 6 COLLECTION SERVICE STANDARDS

6.1. Operations

6.1.1 Schedules

To preserve peace and quiet, no garbage or recyclable materials including greenwaste shall be collected from or within two-hundred (200) feet of residential premises between 5:00 P.M. and 6:00 A.M. on any day. Residential garbage, recyclable materials including greenwaste shall be collected, Monday through Friday on the same day. Commercial business garbage shall be collected within the same hours as residential garbage with the

inclusion of Saturday collection. During weeks which include a holiday as designated by Franchisee, collection will be delayed one day for services following on or after the holiday. In the event the Franchisee misses the collection of properly set out garbage, recyclables, or greenwaste the Franchisee shall collect the missed pickups within one (1) business day of notification.

6.1.2 Vehicles

- A. **General.** Franchisee shall provide a fleet of collection vehicles sufficient in number and capacity to perform the work required by this Agreement and in strict accordance with its terms. Franchisee shall have available on collection days sufficient back-up vehicles in order to respond to complaints and emergencies.
- B. **Specifications.** All vehicles used by Franchisee in providing garbage, recyclable materials, and greenwaste collection services under this Agreement 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 be designed to prevent spillage or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations. The Franchisee will, to the extent practical, buy vehicles that minimize air emissions.
- 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 District 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.
 - 4. Franchisee shall arrange all vehicles and other equipment in safe and secure location(s) in accordance with all applicable zoning regulations.
- D. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all Applicable Law. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

6.1.3 Containers

- A. **Residential Garbage, Recycling and Greenwaste Containers.** Franchisee shall

supply each single family dwelling unit with a 32, 64 or 96 gallon container for garbage. The monthly service fee for each size container is shown in Exhibit B. In addition each single family dwelling unit will receive from Franchisee a 64 gallon container for all commingled recyclable materials except greenwaste and a 64 gallon container for greenwaste. If requested by customer, Franchisee shall provide to the customer either a 32 or 96 gallon greenwaste container instead of a 64 gallon container at no additional cost. All garbage containers shall be black or grey, all recyclable materials containers shall be blue and all greenwaste containers shall be green. Franchisee agrees to provide additional containers, as requested, by all persons at the rental rate as shown on Exhibit B.

District and Franchisee acknowledge that from time to time, a customer may damage or destroy a container. District and Franchisee also acknowledge that while container is in customer's possession, customer is responsible for its care. Stolen containers or containers damaged or destroyed by customer shall be replaced at customer's cost; containers needing repair or replacement due to normal wear and tear or due to damage caused by Franchisee will be replaced at no cost to customer.

- B. **Non-Residential Garbage, Recycling and Greenwaste Containers.** Franchisee shall supply each multi-family complex, commercial and industrial properties, governmental agencies, and other non-residential premises with appropriately sized containers for garbage, recyclables and greenwaste. 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 non-residential customers shall be as determined mutually by the customers 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 uniformed painted surfaces and shall prominently display the name and telephone number of Franchisee. Bins shall be clearly marked and identified as belonging to Franchisee. Franchisee shall not be obligated to provide customers with compaction units, but will be obligated to charge rates set forth by the District for collection of compacted solid waste. Each customer shall be responsible for excess damage to any such containers not caused by Franchisee.

6.1.4 **Litter Abatement**

Franchisee shall use due care to prevent Garbage or Recyclable Materials from being spilled or scattered during the Collection or transportation process. If any Garbage or Recyclable Materials are spilled during Collection, Franchisee shall promptly take all reasonable efforts to clean up all spilled materials. Each collection vehicle shall carry a broom, shovel and oil spill kit at all times for this purpose.

6.1.5 **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 provisions of such additional personnel.

- B. **Identification.** Franchisee shall ensure that while on duty each collection worker wears a clean uniform that displays the Franchisee's company name.

- C. **Fees & Gratuities.** Franchisee shall not, nor shall it permit any agent, employee, or sub franchisees employed by it to request, solicit, or demand, either directly or indirectly any compensation or gratuity for any services performed under this Agreement except as provided in Article 9 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 District has notified Franchisee of a complaint related to 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. **Disposal Requirements**

Franchisee shall dispose of all solid waste and recyclable materials collected under this Agreement at Franchisee's own expense and in accordance with Applicable Law. Franchisee shall be responsible for securing an appropriate location for disposal of all solid waste and processing of all recyclable materials collected by Franchisee pursuant to this Agreement.

The parties understand and agree that District intends to participate in waste diversion and resource recovery programs pursuant to regional and/or local implementation of AB 939, or such other programs as may be established by District.

Franchisee shall deliver all garbage to any landfill which collects the San Luis Obispo County AB 939 Tipping Fee Surcharge and Waste Management Program Fund Fee, pursuant to County Resolution No. 90-383 and such other resolutions, tipping fee agreements or other actions adopted by the County, the IWMA and other local entities. If the Franchisee delivers garbage to a landfill which does not collect the County Tipping Fee Surcharge and Waste Management Program Fund Fee, the Franchisee will make, on a monthly basis, the equivalent payment directly to the County's Waste Management Tipping Fee - AB 939 Trust Fund #0159 and Waste Management Tipping Fee Trust - Site Fund # 0160.

Payment of the equivalent fees shall be made to County within thirty (30) days after the end of each calendar month, or prorated portion thereof, in which the Franchisee delivers waste to an alternate facility. In the event that payment is not received by County within thirty (30) days after the date specified, then Franchisee shall pay a penalty of ten (10) percent on the outstanding balance, and Franchisee shall also pay to County interest on the outstanding balance at a rate of ten percent (10%) per annum, or the maximum legal rate of interest, whichever is greater, from the date of Franchisee's failure to pay.

As of December 1, 2014 the Tipping Fee Surcharge for Fund # 0159 is \$3.00 per ton and the Waste Management Program Fund Fee for Fund # 0160 is \$0.40 per ton. Payments made by the Franchisee shall be sent to the County Franchise Coordinator along with an itemized statement regarding how the payment was calculated. Payments shall be adjusted to reflect any future changes in the amount of these fees.

In the event Franchisee's costs decrease or increase as a result of District designating a different manner of processing solid waste than existing as of the Effective Date of this Agreement, either Franchisee or District may request an adjustment in collection rates which adjustment shall be effective at the time the designated manner of processing begins. District will not unreasonably deny any such adjustment. In the event Franchisee receives any additional compensation for the value, if any, of the garbage or recyclables processed in such a manner, such compensation shall be considered in connection with future rate adjustments.

6.3. **IWMA Solid Waste Management Fee**

As of January 1, 2008, the IWMA adopted Resolution 07-03 providing for a solid waste management fee to fund the IWMA costs in the preparation, maintenance, adoption and implementation of the Countywide Integrated Waste Management Plan. This solid waste management fee is calculated as 2% of the gross revenue collected from all commercial customers excluding the franchise fee and \$0.30 per month per residential accounts which are charged less than \$50.00 per month. For residential accounts that pay more than \$50.00 per month the solid waste management fee shall be 2% of gross revenue collected excluding the franchise fee. The IWMA solid waste management fee may be amended from time to time and Franchisee shall abide by all provisions and conditions of this fee. Franchisee shall send to the County IWMA all fees as outlined in this Section

The IWMA solid waste management fee is a pass through expense for purposes of this Agreement. The solid waste management fee shall be included in the rates charged by Franchisee and shall not be separately itemized on bills to Franchisee's customers.

6.4. **Cleaning Commercial Bins**

Franchisee shall steam clean all commercial bins at Franchisee's own expense up to once per year upon customer request. Customers desiring more frequent cleaning may arrange additional cleaning with Franchisee at a rate established by District, including pick-up, cleaning, and replacement of bins.

6.5. **Material Processing**

6.5.1 **Receipt of Recyclable Material Including Greenwaste**

The Franchisee shall have in place or have made arrangements for a Materials Recovery Facility or Facilities to receive and accept all deliveries of recyclable materials and greenwaste generated in the District.

6.5.2 **Status of Materials Recovery Facility**

Any Materials Recovery Facility used by Franchisee must be operated in accordance with all Applicable Law (e.g., CEQA, California Code of Regulations, etc.). The Materials Recovery Facility must have all permits from federal, state, regional, county and District agencies necessary for it to operate as a Material Recovery Facility and must be in full regulatory compliance with all such permits.

The selected Materials Recovery Facility must be authorized to accept, under its existing permit, and have sufficient uncommitted capacity to accept, all recyclable materials and/or greenwaste delivered to it by, or on behalf of, Franchisee. Franchisee shall immediately

notify District of any notice of breach or default received from Materials Recovery Facility.

6.5.3 Alternative Processing Facility

If Franchisee becomes unable to deliver the District's recyclable materials to the Materials Recovery Facility that it is utilizing on the Effective Date of this Agreement, due to causes within its control and which could have been avoided by the exercise of due care, the Franchisee shall arrange for it to be accepted at another Materials Recovery Facility, in which case Franchisee shall pay for any increased transportation costs, any differences in the fees charged at such Materials Recovery Facility and the fees then in effect under this Agreement. If Franchisee's inability to deliver the District's recyclable materials to the Materials Recovery Facility is not due to causes within its control or which could have been avoided by the exercise of due care, then Franchisee shall propose alternative Material Recovery Facilities including all related costs and District shall have the right to advise Franchisee of any concerns that it might have regarding the alternative to be used, which concerns must be considered by the Franchisee. The District shall adjust solid waste rates to pay for the increased cost of using an alternative facility.

6.5.4 Disposition of Unauthorized Waste

It is understood that the Franchisee is not authorized and is not required hereunder to collect and transport hazardous waste or restricted or other waste that is not acceptable or permitted for disposal at a transfer station, Material Recovery Facility, or disposal site. In addition, Franchisee shall not be required to collect containers that are not set out or filled in accordance with, or do not meet Franchisee's collection requirements. Regardless of the reason, when any solid waste, recyclable material or other material is not collected by Franchisee, Franchisee shall notify the customer of the reasons for Franchisee's refusal to collect the same. Adequate records of said notifications shall be maintained by Franchisee and shall be available to the District for inspection upon reasonable notice during business hours. If Franchisee observes any substances which it or its employees reasonably believe or suspect to contain hazardous waste unlawfully disposed of or released in reportable quantities in the District, including on, in, under or about District property, including streets, easements, rights of way and District waste containers, Franchisee shall immediately notify the District of the same. If Franchisee discovers hazardous waste, or other material that may not be legally accepted, among materials that it has accepted, it shall dispose of such waste at its own expense. Franchisee may pursue all legal rights and remedies it may have against the waste generator(s) of such hazardous waste, if the waste generator(s) can be identified.

6.5.5 Disposal

Franchisee shall ensure that the residual from the recyclable materials delivered to the Materials Recovery Facility by the Franchisee are disposed of at a permitted disposal site in full regulatory compliance. Monthly residue shall not exceed ten (10) percent of the monthly recyclable materials delivered to the Materials Recovery Facility.

ARTICLE 7 OTHER SERVICES

7.1. Billing and Collection of Charges

Franchisee shall be responsible for directly billing and collecting charges due from all residential and commercial customers at rates established by the Agreement. Franchisee shall bill residential customers monthly in advance and commercial customers monthly in arrears. The District shall approve the format of the bills sent to customers, which approval shall not be unreasonably withheld.

Franchisee shall be solely responsible for collecting all delinquent charges pursuant to a collection method in compliance with Applicable Law. District shall not be responsible for paying Franchisee for said delinquent charges, provided, however, District may, at its sole discretion, establish a method for District to collect said delinquent charges as allowed by Applicable Law.

7.2. **Delinquent Solid Waste Customers**

Bills shall be considered delinquent if not paid within thirty (30) days of the date due. Delinquent bills shall be subject to a late fee.

7.3. **Accounting**

Franchisee shall keep a system of books and accounts relating to Franchisee's performance of services under this Agreement in accordance with generally accepted accounting principles and shall keep all records for a period of at least three (3) years after the termination of this Agreement.

District and its auditors shall have the right to examine all records and accounts Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m., upon two business days advance written notice. Upon request, Franchisee agrees to provide the District with any audited financial statements prepared in connection with Franchisee's Contract with the County of San Luis Obispo that can provide the District with sufficient financial data to determine allowable profits margin and/or operating ratios pursuant to section 9.5.

District reserves the right to perform an audit of Franchisee's financial records relating to Franchisee's performance of services under this Agreement, at District's expense. In the event there is a discrepancy of five (5) percent or more between the District's audit and Franchisee's financial records using generally accepted accounting principles, Franchisee shall reimburse District for the cost of said audit.

7.4. **Liaison With District**

Franchisee shall maintain on-going liaison with District regarding all solid waste management activities and any matters relating to the performance of this Agreement, including complaints. Such liaison includes but is not limited to Franchisee's attendance at District Board meetings and any special meetings thereof as requested by the District.

7.5. **Complaints**

Franchisee shall maintain a record of all written and verbal complaints received, which shall be provided to District upon request. Said record shall contain at minimum information as follows, subject to cooperation from the public:

- Name, address, and telephone number of complaining party;
- Name, service address, and telephone number if different than above;
- Description of problem/complaint and related date and time if applicable;
- Date received; and
- Date and description of Franchisee's response and action taken.

Complaints received from customers or District shall be acted upon immediately and Franchisee shall make every reasonable effort to resolve said complaints within twenty-four (24) hours of receipt.

7.6. **Office**

Franchisee shall maintain an office in San Luis Obispo County, or such other area as may be mutually agreed by the parties, at a fixed location where customers may arrange for service and file complaints. Telephone numbers shall either be a local or a toll free call to residents

and businesses of the District. Franchisee shall at all times between 9:00 a.m. and 4:00 p.m., Monday through Friday, except holidays, have qualified personnel with whom District and members of the public may communicate. Franchisee shall provide to District an emergency telephone number and contact person accessible twenty-four (24) hours per day. Franchisee's office and telephone shall be open to the public during normal business hours. Franchisee shall have a representative, answering or message providing/receiving (voice-mail) service available at said after hours telephone number.

ARTICLE 8 PAYMENTS TO DISTRICT

8.1. Franchise Fee

In consideration of the exclusive franchise provided for in Article 4 of this Agreement, Franchisee shall pay to District ten percent (10%) of Franchisee's gross revenues for collection and disposal of solid waste within the District. This franchise fee shall be set by District and collected by Franchisee for services performed under this Agreement, payable monthly on or before the last business day of the following month. Franchisee shall provide to District with each monthly franchise fee payment a statement of gross revenues received by Franchisee during the previous month.

Franchisee shall pay a late charge of five (5) percent per month on all franchise fees that are not paid within thirty (30) days of the date due. The parties agree that such late charges represent a fair estimate of the District's added administrative expenses caused by such delinquent payments.

The franchise fee is a pass through expense for purposes of this Agreement, and as such, if the District changes the franchise fee, the Franchisee's rates under this Agreement shall be adjusted accordingly at the same time that the change in the franchise fee occurs. The franchise fee shall be included in the rates charged by Franchisee and shall not be separately itemized on bills to Franchisee's customers. The District reserves the right to increase or decrease the Franchise Fee, as the District deems necessary.

8.2. Business License Tax

Franchisee shall pay each annual business license tax that is applicable to its operations under this Agreement.

8.3. Other Fees

The District shall reserve the right to set "Other" Fees, as it deems necessary. These expenses will be determined and a fee designed to reimburse the District. Such fees shall be set annually by District resolution and may be considered a pass through cost for purposes of rate setting, and as such if the District adopts or changes these fees, the Franchisee's rates shall be adjusted accordingly, at the same time that the District adopts or changes these fees.

8.4. Adjustment of Fees

The District may adjust the amount of fees annually. Such adjustment shall be reflected in the rates that the Franchisee is allowed to charge and collect from customers.

8.5. Review of Fee Payments

The District, or its agent, reserves the right to annually perform an independent review of fee payments at its own expense, to verify that fees are being paid in accordance with Agreement.

ARTICLE 9 FRANCHISEE'S COMPENSATION AND RATES

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, overhead, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed.

The Franchisee does not look to the District for payment of any sums under this Agreement. Franchisee will perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from customers for services rendered and established under this Agreement, as may be adjusted from time-to-time. The District 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.

9.2. **Collection Rates**

Franchisee shall provide the collection, recycling, transportation and disposal services required under this Agreement for the rates set forth in the Service Rate Schedule attached hereto and incorporated herein as Exhibit B, as the same may be adjusted in accordance with this Section.

9.3. **CPI Adjustment**

Commencing on January 1, 2016, and on the same date thereafter for the years 2017 and 2018 (the “Initial Adjustment Date”), the rates set forth in this Agreement, as adjusted hereunder, shall be automatically adjusted by a percentage equal to 75% of the annual percent change in the Consumer Price Index (“CPI”) for All Urban Consumers - for the Los Angeles – Riverside – Orange County metropolitan area (1982-84 = 100) as published by the Bureau of Labor Statistics for the 12-month period ending September. Commencing on January 1, 2019, and on the same date thereafter for the remaining term of this Agreement (the “Concluding Adjustment Date”), the rates set forth in this Agreement, as adjusted hereunder, shall be automatically adjusted by a percentage equal to 50% of the annual percent change in the Consumer Price Index (“CPI”) for All Urban Consumers - for the Los Angeles – Riverside – Orange County metropolitan area (1982-84 = 100) as published by the Bureau of Labor Statistics for the 12-month period ending September.

At least sixty (60) days prior to the Adjustment Date, Franchisee shall notify District of the CPI adjustment to take effect on the Adjustment Date and shall provide District with its computations thereafter. The CPI adjustment may be denied by the District if Franchisee’s operating profits are found to be in excess of the allowable profit as described in Section 9.5 below.

After January 1, 2018, but no more than once every three years, the Franchisee may request a base year rate review. Franchisee will use the guidelines and approach outlined in the “*City of San Luis Obispo's Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates.*” Rates shall be based upon an operating ratio of 92 percent.

9.4. **Extraordinary Rate Adjustments**

The rates set by this Agreement are calculated to pay certain expenses and costs that are of a contingent and uncertain nature. Therefore, in addition to the rate adjustment provided by Section 9.3, the rates under this Agreement shall, upon written request of Franchisee or

District, be further adjusted on an interim basis for increased or decreased expenses associated with performance of the services hereunder due to any one or more of the following causes:

- material changes in Franchisee's costs resulting from a Force Majeure event;
- changes to Franchisee's operations or the Franchise Fee or other fees required or initiated by District;
- Franchisee desires to provide additional new services or the District requests the Franchisee to provide any additional new services, or Franchisee desires or the District requests the Franchisee to change the method of providing, or the technology used to provide, existing services under this Agreement;
- any increase or decrease in disposal fees or in fees for the processing of recyclable materials if such recyclables materials are being processed at a third party facility.
- any change in the cost of compliance with Applicable Law.

9.5. **Allowable Profit**

When performing the services desired in this Agreement, the allowable profit on expenses shall be calculated using target operating ratios of ninety-two percent (92%), with a range of ninety percent (90%) to ninety-four percent (94%), applied to Franchisee's reasonable and necessary allowable costs, incurred in the performance of its obligations under this Agreement.

9.6. **Publication of Rates**

Franchisee shall provide its customers written notice a minimum of thirty (30) days prior to any rate change. The notice will include information about all rates and services available to the customer. The form and content of the notice shall be approved by the District. It shall include a brief explanation for the rate change and ways each customer can determine which level of service will meet the customer's needs.

ARTICLE 10 RECORDS, REPORTS AND INFORMATION, STUDIES AND HEARING REQUIREMENTS

10.1. **Records**

Franchisee shall maintain records required to conduct its operations, to support requests it may make to District, and to respond to requests from the District. 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:

- Customer services and billing;
- Weight of solid waste, especially as related to reducing and diverting solid waste;
- 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 and green waste;
- Complaints; and
- Missed pick-ups.

Franchisee shall maintain records of transfer, diversion and disposal of all solid waste collected in the district 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 District, Franchisee shall provide all records of diversion and disposal of all solid waste collected within the District to District 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, task and milestones; and,
- Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed and numbers of participants and responses.

10.2. **Waste Generation/Characterization Studies**

Franchisee acknowledges that the District may be required to perform solid waste generation and disposal characterization studies periodically to comply with AB 939 requirements. Franchisee agrees to participate and cooperate with the District and its agents, at no cost to the District, 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.

10.3. **Report Format 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 efficiency of operations;
- Evaluate past and expected progress towards achieving goals and objectives;
- Determine needs for adjustments to programs; and
- Evaluate customer service and complaints.

District may, at no cost to itself, request that Franchisee provide such additional information in the reports set forth below as the District 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 District.

Reports shall be submitted within ten (10) calendar days after the end of the period in which the report is due.

All reports shall be submitted to:

District Manager
Ground Squirrel Hollow Community Services District
5915 Silverado Place
Paso Robles, CA 93446

10.4.

Annual Reports

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

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

10.5.

Other Report Requirements

In the event that more frequent reporting is necessary to comply with any Applicable Law, and subject to an adjustment of rates charged and collected by the Franchisee, the Franchisee agrees to provide such reports, which may include summaries of 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.
- 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 the Agreement. Provide recommendations and plans to improve, highlighting significant accomplishments, problems and proposed solutions.

10.6.

Annual Financial Statement

Franchisee shall submit to the District copies of any annual financial statements prepared at Franchisee's expense for Franchisee's County Franchise Agreement, prepared by an independent Certified Public Accountant (CPA) not later than 180 days following the expiration of the Franchisee's fiscal year. At the time a rate application request is submitted to District, the financial forms contained in the rate application must be reconciled to the financial statements to provide assurance that all of the company's activities are accounted for.

District 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 District 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 District retains the right to have an independent third party or agent of the District's choosing, such as a CPA, participate in the records inspection. The cost of such inspection or review will be borne by the District unless the District determines that there are material errors, omissions or irregularities in accordance with Section 13.8 in which case the Franchisee shall pay all cost of the independent third party review.

The Franchisee shall provide to the District a copy of Chicago Grade Landfill's or the City of Paso Robles Landfill request for an increase in tipping fees, as soon as Franchisee becomes aware that a tipping fee increase is being contemplated or has been approved whichever occur first, and shall provide any information at its disposal to the District concerning any prospective increases in any fees charged to Franchisee by any disposal facility utilized by Franchisee. Additionally, Franchisee shall notify the District of the action taken by the San Luis Obispo County Board of Supervisors or the City of Paso Robles regarding said request within five (5) days of notification by agencies to Franchisee of said action.

If during the term of this Agreement, the City of Paso Robles or the County of San Luis Obispo approves an adjustment in the tipping fee at the solid waste disposal facility that Franchisee uses, collection rates for Franchisee's customers shall be adjusted correspondingly. The District agrees to make a reasonable effort to adjust Franchisee's collection rate at the same time as the facility rate adjustment.

10.7. **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 estimates of revenues and expenses which generally pertain to the District's franchise operations. Cost and revenue estimates for the District shall be segregated from other geographical areas served by Franchisee. Insofar as it is practical to do so, cost and revenue estimates information for the District, shall be segregated from other business activities of the Franchisee. Separate detailed estimates 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.

10.8. **Right to Audit Records**

In addition to other reporting requirements in this Agreement, the District may review, test and audit the books and records of the Franchisee or may engage a CPA for this purpose. The cost of such inspection or review will be borne by the District unless the District determines that there are material errors, omissions and irregularities pursuant to Section 13.8.

10.9. **Inspection by District**

The designated representatives of the District shall have the right to observe and review Franchisee operations and enter Franchisee's premises for the purpose of such observation and review during business hours with reasonable notice.

10.10. **Customer Information**

Franchisee shall prepare and keep current a flier acceptable to the District 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 provide 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.

10.11. **Regulatory Reporting**

Franchisee shall promptly provide the District copies of each adverse report from, and each regulatory action from local, state or federal regulatory agencies, specifically including notices of violation, cease and desist orders, citations, and other enforcement actions related to the performance of services under this Agreement. In addition, Franchisee shall send copies to District of any reports that Franchisee submits to regulatory agencies with respect to performance of this Agreement, including responses to notices of violation, cease and desist orders and other enforcement actions.

Franchisee shall provide District 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 District.

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

10.12. **Records Retention**

Franchisee shall maintain the above records, reports and data set forth in this Article for a three year period, or as such time as District and Franchisee mutually agree upon. Franchisee agrees to make all such records, reports and data available for inspection by District or District's authorized representatives, upon reasonable written notice by District.

ARTICLE 11 INDEMNIFICATION, AND INSURANCE

11.1. **Indemnification**

Franchisee shall indemnify and hold harmless District, its officers, Directors, employees, and agents from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Franchisee, its officers, employees agents and/or sub Franchisees in performing services under this Agreement; (2) the failure of Franchisee, its officers, employees, agents and/or sub Franchisees to comply in all respects with the provisions of this Agreement, Applicable Law (including, without limitation, the Environmental Laws) and regulations, and/or applicable permits and licenses; (3) the acts of Franchisee, its officers, employees, agents and/or sub Franchisees in performing services under this Agreement for which strict liability is imposed by Applicable Law (including, without limitation, the Environmental Laws). Franchisee further agrees to and shall, upon demand of District, at Franchisee's sole cost and expense, defend (with attorneys acceptable to District) the District, its officers, directors, employees, and agents against any claims, actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any events described in the immediately preceding paragraph.

Franchisee's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

11.2. **CERCLA**

Consistent with the general indemnification obligations set forth above, Franchisee agrees to indemnify and hold harmless District, Board members, employees, and agents from 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 and hold District, Board members, agents, officers and employees harmless, from any and all legal actions against District on the basis of the assertion that the District is an arranger of solid waste services as a result of this Agreement.

11.3. **Challenge to Service Rates**

Consistent with the general indemnification obligations set forth above, Franchisee agrees to indemnify and hold harmless District, its officers, Directors, employees, and agents from and against all liability, loss, damages, expenses, cost (including without limitations attorney fees and court costs) of every nature and kind in the event of a challenge, based on Applicable Law, to the solid waste collection, diversion and disposal rates (as described in Article 9 hereof) authorized by District.

11.4. **Insurance**

During the term of this Agreement, Franchisee shall carry insurance in accordance with this Article and such other insurance as required by Applicable Law. Lack of insurance does not negate the Franchisee's obligation under this Agreement. Franchisee agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Franchisee shall look solely to its insurance for recovery, except where caused by the active negligence, sole negligence, or willful misconduct of the District. Franchisee hereby grants to the District, on behalf of any insurer providing insurance to either Franchisee or District with respect to the services (occupancy of premises) of Franchisee herein, a waiver of any right to subrogation which any such insurer of said Franchisee may acquire against the District by virtue of the payment of any loss under such insurance.

Insurance shall be secured and approved by District's General Manager prior to commencement of work according to this Agreement.

Maintenance of proper insurance coverage is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage and/or renewal may be treated by the District as a material breach of Agreement. Franchisee shall forward the District's insurance specifications as outlined below to Franchisee's insurance agent for compliance.

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.

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

1. Insurance Services Office Commercial Liability coverage (occurrence form CG 00 01).
2. Insurance Services Office form number CA 00 01 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.

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

1. **Commercial or Comprehensive General Liability:** Four Million Dollars (\$4,000,000) 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:** Four Million Dollars (\$4,000,000) 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 One Million Dollars (\$1,000,000) per accident for bodily injury or disease.
4. **Pollution Liabilities:** Fifty Thousand Dollars (\$50,000) each loss/One Hundred Thousand Dollars (\$100,000) annual aggregate all losses.

D. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the District.

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

1. The District, Board members, its officers, officials, employees, agents and volunteers are to be covered as insureds 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 District, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Franchisee's insurance coverage shall be primary insurance as respects the District, Board members, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the District, 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 District, Board members, its officers, officials, employees, agents or volunteers.
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 District.

6. 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 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 a minimum of two years after completion of contract.
 - d. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

F. 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.

G. Verification of Coverage. Franchisee shall furnish the District with copies of required insurance certificates 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.

H. Subcontractors. Franchisee shall include all subcontractors as insurers under its policies or shall furnish copies of required insurance policies and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

I. Occurrence Based Coverage. All policies secured by Franchisee shall be occurrence and not claims based unless District so consents in writing.

11.5. Bond and other Security

Simultaneously with the execution of this Agreement, Franchisee shall file with the District a bond, payable to District, securing Franchisee's faithful performance of its obligations under this Agreement. The principle sum of the bond shall be Twenty Five Thousand Dollars (\$25,000.00). 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 District. The bond shall be in a form approved by the District. 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 District shall be entitled to proceed as hereinafter provided.

In the alternative, Franchisee may submit either an irrevocable letter of credit for \$25,000.00 from a financial institution acceptable to the District Manager and District Counsel for the full term of the Agreement, or a Certificate of Deposit payable to the District evidencing a cash deposit for the full amount of the security, both unilaterally payable to the District, subject to the prior approval of the District Manager and District Counsel. In the event, of a cash certificate of deposit, the interest earned on the deposit shall inure to be added to the principle amount of the deposit for the benefit of Franchisee as long as the funds are secured.

ARTICLE 12

DISTRICT'S RIGHT TO PERFORM SERVICE

12.1.

General

In the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport, process or market any or all garbage or recyclable materials which it is required by this Agreement to collect, process and market, 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, garbage or recyclable materials should accumulate in the District to such an extent, in such a manner, or for such a time that the District Manager or his/her designee should find that such accumulation endangers or menaces the public health, safety or welfare, then District 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 District Manager or his/her designee, (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 temporary possession of any or all of Franchisee's equipment and other property to collect, transport, process, market and/or dispose any garbage or recyclable materials generated within the District which Franchisee would otherwise be obligated to collect, transport, process or market pursuant to this Agreement. In the event the District takes possession of the Franchisee's equipment and other property, the District shall be entitled to have another Franchisee operate such equipment and property under District direction. Additionally, in the event the District takes possession of the Franchisee's equipment and other property, the District does not guarantee repair of existing problems with equipment and facilities.

Notice of Franchisee's failure, refusal or neglect to collect, transport, process, market and/or dispose garbage or recyclable materials 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 District to affect the transfer of possession of property and equipment to District for District's use.
- It will, if District so requests, keep in good repair and condition all of such property and equipment, 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.
- District may immediately engage all or any personnel necessary or useful for the collection, transportation, processing marketing and/or disposing of garbage or recyclable materials, including, if District so desires, employees previously or then employed by Franchisee, Franchisee further agrees, if District so requests, to furnish District the services of any or all management or office personnel employed by Franchisee whose services are necessary or useful for garbage or recyclable materials collection, transportation, processing and marketing operations and for the billing and collection of fees for these services.

District agrees that it assumes complete responsibility and liability 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 Article 13.7 (Excuse From Performance), District shall pay to Franchisee the reasonable rental value of the equipment and facilities, possession of which is taken by District, for the period of District'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, District's exercise of its rights under this Article 12 (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 District to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of Article 11, Indemnification and Insurance, which are meant to extend to circumstances arising under this Article, provided that Franchisee is not required to indemnify District against claims and damages arising from the negligence of District officers, employees and agents in the operation of Collection vehicles or performance of services during the time District has taken possession of such equipment.

12.2. **Temporary Possession of Franchisee's Property**

If the District suffers an interruption or discontinuance of service as described in Article 12.1 (including interruptions and discontinuance due to events described in Article 13.7, Excuse from Performance), District may take temporary possession of and use all of Franchisee's property described above until other suitable arrangements can be made for the provision of such services. The same notice requirements of Article 12.1 are applicable.

12.3. **Billing and Compensation to District During District's Possession**

During such time that District 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 District for any and all costs and expenses incurred by the District 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 District to Franchisee of each statement listing such costs and expenses, but in no event late than five (5) working days from and after each such submission. The District shall have the right, at its sole discretion, to take over billing and payment of collection activities. The District shall then pay any net revenues to the Franchisee, after deducting all expenses, including District-incurred expenses.

12.4. **District's Right to Relinquish Possession**

It is further mutually agreed that District 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 services as provided in this Agreement, whereupon Franchisee shall be bound to resume the same.

12.5. **Duration of District's Possession**

District's right pursuant to this Article to retain temporary possession of Franchisee's facilities and equipment, and to render collection services, shall terminate when District determines that such services can be resumed by Franchisee, or when District no longer reasonably requires such facilities or equipment. In any case, District 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 13 DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

13.1. **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 District.

- 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 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 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 garbage, recycling or greenwaste 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 District 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 of the violation or, if Franchisee cannot reasonably correct or remedy the breach within the time set forth in such notice, if Franchisee should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.
- H. **False or Misleading Statements.** Any representation or disclosure made to District 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 District Manager or his/her designee shall provide written notice to Franchisee of the violation. The District Manager or his/her designee shall include in the notice, a demand that the Franchisee correct the violation. The Franchisee shall thereafter have thirty (30) days to cure the violation, or if the violation cannot be cured

within such timeframe, the Franchisee shall have commenced to cure said violation in a manner that is acceptable to the District, in its reasonable discretion. For purposes of this Agreement and any notice required thereunder, the term "days" shall mean calendar days.

13.2. **Right to Terminate Upon Default**

Upon a default by Franchisee, and Franchisee's failure to cure, the District shall have the right to terminate this Agreement upon one (1) day notice if the public health or safety is threatened, or otherwise twenty (20) days notice, following a hearing by the District Board. This right of termination is in addition to any other rights of District upon a failure of Franchisee to perform its obligations under this Agreement

District's right to terminate this Agreement and to take possession of Franchisee's equipment and facilities are not exclusive, and District's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies that District 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 District to Franchisee, the remedy of damages for a breach hereof by Franchisee is inadequate and District shall be entitled to injunctive relief.

13.3. **Liquidated Damages**

- A. **General.** District 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 District as a result of a breach by Franchisee of its obligations under this Agreement.
- B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties acknowledge that consistent, reliable garbage, recycling and greenwaste service is of utmost importance to District and that District has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Agreement to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Franchisee fails to achieve the performance standards, comply with complaint resolution criteria, or fails to submit required documents in a timely manner, District 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 that District will suffer. Therefore, without prejudice to District's right to treat such non-performance as an event of default under this Article 13, 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 District that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient. Recognizing the importance of resolving any failure to meet the service performance standard, the District shall contact Franchisee within two (2) days of any failing reported directly to the District.

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

13.4. **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 twenty-four (24) annually to collect garbage, recyclables or greenwaste, which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within 24 hours after notice of missed pick-up: \$150.00
- For each failure to collect garbage, recyclables or greenwaste, 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 garbage, recyclables or greenwaste, spilled from containers: \$150.00
- For each occurrence over five (5) annually of collecting garbage, recyclables or greenwaste, during unauthorized hours: \$250.00
- For each failure to respond to a customer complaint within twenty-four (24) working hours: \$100.00
- For each occurrence over five (5) annually of failure to properly return containers to avoid pedestrians or vehicle traffic or as required by designated part-time or handicapped residents: \$100.00
- For each occurrence of excessive noise above the limits specified in this Agreement: \$100.00

13.5. **Timeliness of Submissions to District**

A. **Reports.** Any report shall be considered late until such time as District receives a correct and complete report. For each calendar day a report is late, the daily assessment shall be:

Annual Reports:	For each infraction	\$50 per day
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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). District 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, District 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 District relating to incident(s)/non-performance. Franchisee may, within ten (10) days after receiving the notice, request a meeting with District. If a meeting is requested, it shall be held by the District 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 District 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 District Manager or designee shall be final.

- B. **Amount.** The District Manager or his/her designee may assess liquidated damages for each calendar day or event, as appropriate, that Franchisee is determined to be liable in accordance with this Agreement.
- C. **Timing of Payment.** Franchisee shall pay any liquidated damages assessed by District within thirty (30) days after they are assessed. If they are not paid within the thirty (30) day period, District may proceed against the security fund required by this Agreement or order the termination of this Agreement, or both.

13.6. **Notice, Hearing and Appeal**

Should the Franchisee contend that the District is in breach of the Agreement, Franchisee shall file a written request with the District Manager for consultation regarding the allegations. Such consultation shall be held within thirty (30) calendar days of the receipt of Franchisee's request. Franchisee shall present its opposition and all relevant facts to the District Manager. Franchisee shall be notified of the District Manager's decision within ten (10) calendar days of the consultation.

If the Franchisee is not in agreement with the decision issued by the District Manager, it shall have the right to appeal the decision to the District Board. This appeal shall be made in writing to the District no later than fourteen (14) days after notification is mailed by the District Board of the judgment. Then District shall notify Franchisee of the time and date of the review of allegation within thirty (30) calendar days of the request. Franchisee shall present its positions and all relevant facts to the District Board. Franchisee shall be notified in writing within fourteen calendar days of the District Board's ruling, which shall be final.

13.7. **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.

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 Article.

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 Article for a period of thirty (30) days or more, District shall have the right to review the circumstances under which the excuse from performance was granted. After such review, if the District determines the excuse from service is no longer valid, the District 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 District 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 12, District's Right to Perform Services, and this Article 13 shall apply.

13.8. **Financial Material Errors, Omissions or Irregularities**

The District may review, test and audit the books and records of the Franchisee related to the services provided hereunder 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 District. In the case of errors, materiality shall be deemed to be a mistake of five percent (5%) or greater of the gross revenue of the Franchisee from activities performed under this agreement. Recovery of any over payment will be negotiated on a case-by-case basis, either immediately or through the next rate setting evaluation.

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

14.2. Compliance with Law

In providing the services required under this Agreement, Franchisee shall at all times, at its sole cost, comply with all Applicable Law, now in force and as they may be enacted, issued or amended during the Term.

14.3. Governing Law

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

14.4. Jurisdiction

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

14.5. Assignment

Except as may be provided for in Article 12 (District's Right to Perform Service), and rolloff services, which are provided by Franchisee through its affiliate, Paso Robles Roll-Off, Inc., neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The Franchisee shall consent to any assignment to a joint powers authority, or any similar public entity assignee of the District.

For purposes of this Article when used in reference to Franchisee, "assignment" shall include, but not be limited to (1) a sale, exchange or other transfer of at least fifty-one percent (51%) all of Franchisee's assets dedicated to service under this Agreement to a third party; (2) a sale, exchange or other transfer of outstanding common stock of Franchisee to a

third party not presently a shareholder of Franchisee, provided said sale, exchange or transfer may result in a change of control of Franchisee; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Franchisee; (4) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Franchisee's property, or transfer occurring in the event of a probate proceeding; and 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 District's residents and businesses, and that District 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 District under this Agreement. District 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 District's consideration of and consent to an assignment, District may deny or approve such request at its complete discretion. The District 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 District 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 District unless and until Franchisee has met the following requirements:

- A. Franchisee shall undertake to pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
- B. Franchisee shall furnish District with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- C. Franchisee shall furnish District with satisfactory proof: 1) that the proposed assignee has at least five (5) years of recyclable material 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 has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its solid waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided District 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 Applicable Law regulating the collection, transportation, processing, marketing and disposal of solid waste including hazardous wastes; and, 5) of any other information required by District to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely safe

and effective manner.

14.6. **Subcontracting**

Except as undertaken by Paso Robles Roll-Off, Inc., or as approved in writing by the District, Franchisee shall not enter into an agreement to have another person perform Franchisee's duties of this Agreement. Franchisee shall undertake to pay District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed subfranchisee, and to review and finalize any documentation required as a condition for approving any such subcontracting agreement consistent with the requirements set forth in Section 14.5

14.7. **Binding on Assigns**

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

14.8. **Transition to Next Franchisee**

If the transition of services to another Franchisee occurs through expiration of term, default and termination, or otherwise, Franchisee will cooperate with District and subsequent Franchisee(s) to assist in an orderly transition which will include Franchisee providing customer lists and billing information. Franchisee will not be obliged to sell collection vehicles or containers to the next Franchisee. Depending on Franchisee's circumstances at the point of transition, Franchisee at its option may enter into negotiations with the next Franchisee to sell (in part or all) collection vehicles and/or containers.

14.9. **Parties in Interest**

Nothing in the 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.

14.10. **Waiver**

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any monies that 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.

14.11. **Franchisee's Investigation**

Franchisee has relied on its own investigations, and not on any representations of the District or its agents of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

14.12. **Notices**

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

If to District: Ground Squirrel Hollow Community Services District
5915 Silverado Place
Paso Robles, CA 93446
Attn. District Manager

If to Franchisee: Paso Robles Country Disposal and Recycling.
2951 Wallace Drive
Paso Robles, CA 93451
Attn. General Manager

With a concurrent copy to:

P. Terence Schubert, Esq.
1254 Marsh Street
San Luis Obispo, California 93401

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Article. The notice, if mailed, is deemed served three (3) days after the mailing.

14.13. **Representatives of the Parties**

References in this Agreement to the "District" shall mean the District Board of the District Manager and all actions to be taken by District shall be taken by the District Board except as provided below. The District Board may delegate, in writing, authority to the District Manager or his/her designee, District Counsel, and/or to other District employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. 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 District in writing of such designation and of any limitations upon his or her authority to bind Franchisee. District 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 District.

14.14. **District Free to Negotiate with Third Parties**

District may investigate all options for the collection, processing and marketing of recyclable materials after the expiration of the Term. Without limiting generality of the foregoing, District may solicit proposals from Franchisee and from third parties for the provision of garbage and recycling services, and any combination thereof, and may negotiate and execute Agreements for such services that will take effect upon the expiration or earlier termination under Article 13.1 (Events of Default) of this Agreement.

14.15. **Compliance with District Code of Ordinances**

Franchisee shall comply with all provisions of the District Code of Ordinances and with any and all amendments to these provisions during the Term of this Agreement.

14.16. **Privacy**

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

ARTICLE 15 MISCELLANEOUS AGREEMENTS

- 15.1. **Entire Agreement**
This Agreement, including the exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein.
- 15.2. **Article Headings**
The article headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.
- 15.3. **References to Laws and Other Agreements**
All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided.
- 15.4. **Interpretation**
This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.
- 15.5. **Agreement**
This Agreement may not be modified or amended in any respect except by a writing signed by the parties.
- 15.6. **Severability**
If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement that shall be enforced as if such invalid or unenforceable provision had not been contained herein.
- 15.7. **Exhibits**
Each of exhibits is attached hereto and incorporated herein and made a part hereof by this reference.

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

Ground Squirrel Hollow Community Services District

Paso Robles Country Disposal, Inc.

By: _____
District Board President

By: _____
Title:

By: _____
District Manager

By: _____
Title:

Approved as to Form:

District Counsel

Exhibit A

Description of Services

1. Residential curbside service:
 - A. Each residential customer shall receive weekly collection of solid waste including recycling and greenwaste.
 - B. Each residential customer shall receive waste wheeler containers for solid waste collection. Each customer shall have the option to receive three waste wheelers. The minimum waste wheeler sizes available shall be as follows:
 - i. One 32 gallon container for garbage.
 - ii. One 64 gallon container for recyclables.
 - iii. One 64 gallon container for greenwaste.
 - C. Each residential customer shall receive a 96 gallon commingled recycling waste wheeler container and a 96 gallon greenwaste waste wheeler container.
2. Commercial service:
 - A. Each multi-family complex, commercial and industrial properties, governmental agencies, and other non-residential customer shall receive at a minimum weekly collection of solid waste including recycling and greenwaste.
 - B. Each multi-family complex, commercial and industrial properties, governmental agencies, and other non-residential customer shall receive at a minimum a container or a combination of containers of sufficient size to contain one (1) week of customer's typical quantity of garbage, a 64 gallon container for greenwaste and a 64 gallon container for recyclables.
3. Roll off containers:
 - A. Each construction site or other commercial/residential site under demolition or cleanup may request temporary roll off service.
4. Bulky Waste:
 - A. The Franchisee shall collect and dispose of bulky waste upon request by customers for pick up.

Exhibit B
Rate Schedule
February 1, 2015

Exhibit C

Annual Clean-up Day Schedule

February 1, 2015