

ORIGINAL

CAMBRIA COMMUNITY SERVICES DISTRICT

AND

MISSION COUNTRY DISPOSAL, INC.

**FRANCHISE AGREEMENT FOR INTEGRATED
SOLID WASTE MANAGEMENT SERVICES**

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**FRANCHISE AGREEMENT BETWEEN
THE CAMBRIA COMMUNITY SERVICES DISTRICT
AND MISSION COUNTRY DISPOSAL, INC.**

*For Collection, Processing, Diversion, and Disposal of Solid Waste, Green Waste
and Recyclable Materials From Properties Subject to the Jurisdiction of the
Cambria Community Services District*

This Agreement is made and entered into as of the 27th day of July, 2001 in the State of California by and between the Cambria Community Services District, a political subdivision of the State of California (hereinafter " District") and Mission Country Disposal, Inc., a California corporation (hereinafter " Franchisee").

RECITALS

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

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

2. The District has authority to grant an exclusive franchise for collection, diversion, and disposal of solid waste, green waste and recyclable materials from the properties subject to the jurisdiction of the District; and

3. The Board of Directors of the District ("the Board") has determined that solid waste, green waste and recyclable materials, including discards from residential and non-residential properties, must be regulated to protect public health, safety and welfare; to conserve landfill disposal capacity; and to develop and maintain effective resource management programs; and

4. The Board has determined that all developed properties in the District must participate in the District's integrated waste collection and disposal service; and

5. The Board has determined that an exclusive franchise granted to a private company is the most effective and efficient way to collect and remove solid waste, green waste and recyclable materials within the District; and

6. The Board has determined that Franchisee can provide needed integrated solid waste management services; and

7. Franchisee is responsible for arranging for solid waste collection and disposal service, and arranging for an appropriate landfill destination for collected solid waste; and

8. This Agreement has been developed by and is satisfactory to the parties.

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

ARTICLE 1. DEFINITIONS

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

- 1.1 **"AB 939"** means the California Integrated Waste Management Act of 1989, as it may be amended from time to time.
- 1.2 **"Affiliate"** means all businesses (including corporations, limited and general partnerships, and sole proprietorships) which are directly or indirectly related to Franchisee by virtue of a common ownership interest or common management shall be deemed to be "Affiliated with" Franchisee and included within the term "Affiliate" as used herein. An Affiliate shall include a business in which Franchisee owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Franchisee and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Franchisee.- For purposes of determining whether an indirect ownership exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof, and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this section and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.
- 1.3 **"Agreement"** means this Agreement between the District and Franchisee for arranging for the collection, diversion, and disposal of solid waste, green waste and recyclable materials, and any future amendments hereto.
- 1.4 **"Arranger"** means any person that arranges for the collection, diversion, transfer, burning, disposal or processing of any solid waste, green waste and/or recyclable materials.

- 1.5 **"Bulky Waste"** means discarded, large household appliances, furniture, tires, carpets, mattresses, and similar large items which require special handling due to their size, but can be collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles.
- 1.6 **"CERCLA"** means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C Section 9601, et seq.
- 1.7 **"District"** means the Cambria Community Services District, a subdivision of the State of California, and all the territory lying within the jurisdictional boundaries of the District as presently existing or as such boundaries may be modified during the term of this Agreement.
- 1.8 **"Collect"** or **"Collection"** means to take physical possession of, transport, and remove solid waste, green waste and/or recyclable materials within and from the District.
- 1.9 **"Commercial and Industrial Property"** means property upon which business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon residential properties which are permitted under applicable zoning regulations and are not the primary use of the property.
- 1.10 **"Construction Debris"** means used or discarded construction materials removed from a premises during the construction, repair or renovation of a structure.
- 1.11 **"Container"** means any bin, vessel, can or receptacle used for collecting and storing solid waste, green waste or recyclable materials before removal.
- 1.12 **"Demolition Debris"** means used construction materials removed from a premises during the razing or renovation of a structure.
- 1.13 **"Designated Collection Location"** means the place where customers within the District are authorized to place their solid waste, green waste and recyclable materials for collection by Franchisee.
- 1.14 **"Disposal Site(s)"** means any properly licensed and permitted solid waste facility or facilities arranged by Franchisee after consultation with the District for the ultimate disposal of solid waste collected by Franchisee.
- 1.15 **"Designated Processing Facility"** means any properly licensed and permitted plant or site used for the purpose of sorting, cleansing, treating, reconstituting and processing recyclable materials.

- 1.16 "Disposal" means the ultimate disposition of solid waste collected by Franchisee at a landfill in full regulatory compliance or other fully permitted disposal site.
- 1.17 "Facility" means any plant or site, owned or leased and maintained and/or operated or used by Franchisee for purposes of performing under this Agreement.
- 1.18 "Franchise" means the special right granted by the District to operate a solid waste and green waste collection and recycling services company providing such services within the District.
- 1.19 "Franchisee" means Mission Country Disposal, Inc., a corporation organized and operating under the laws of the State of California, and its officers, directors, employees, and agents.
- 1.20 "Full Regulatory Compliance" means compliance with all applicable permits for a facility and with other applicable regulations such that Franchisee will at all times maintain the ability to fully comply with its obligations under this Agreement.
- 1.21 "Green Waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (no more than six (6) inches in diameter) and similar materials generated at the premises.
- 1.22 "Gross Revenues" means the sum of the cash receipts derived by Franchisee from customer billings for solid waste collection services provided in the District.
- 1.23 "Hazardous Waste" is as defined in Article 2, Chapter 6.5, Section 25117 of the Health and Safety Code and Public Resources Code Section 40141. For the purposes of this Agreement, however, hazardous waste shall not include Household Hazardous Waste which may be contained in solid waste.
- 1.24 "Household Hazardous Waste" means hazardous waste generated at residential premises.
- 1.25 "Interruption of Service" means (a) any period during which Franchisee's operations are diminished or discontinued by circumstances beyond its control, or (b) any period during which operations are diminished or discontinued as a result of any breach of the Agreement by Franchisee or (c) any period after the District has terminated the Franchise and until the District can reasonably acquire other suitable service and/or enter into a new Franchise Agreement.
- 1.26 "Materials Recovery Facility" means a permitted Facility where solid wastes are sorted or separated for the purposes of recycling or reuse.

- 1.27 **"Medical Waste"** means biohazardous waste, sharp wastes, waste which is generated or produced as a result of the diagnosis, treatment or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biological products, pursuant to California Health and Safety Code Section 25023.2.
- 1.28 **"Multi-Family Dwelling Unit"** means any premises, other than a single family dwelling unit, used for residential purposes, irrespective of whether residence therein is transient, temporary or permanent.
- 1.29 **"Person"** means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the Cambria Community Services District, local agencies and special purpose districts.
- 1.30 **"Premises"** means any land or building where solid waste, green waste and/or recyclable materials is generated or accumulated.
- 1.31 **"Recyclable Materials"** means residential and non-residential by-products or discards of economic value which include, but are not limited to, aluminum, glass, paper, plastic, metal, and green or woody debris.
- 1.32 **"Related Party Entity"** means any affiliated entity which has financial transactions with Franchisee.
- 1.33 **"Residential Property"** means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied, and includes both single family and multi-family dwelling units.
- 1.34 **"Rubbish"** means all waste wood, wood products, printed materials, paper, paste board, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass and other materials not included in the definition of Hazardous Waste or Recyclable Materials.
- 1.35 **"Single Family Dwelling Unit"** means each premise used for or designated as a single family residential dwelling, including each unit of a duplex or triplex in all cases in which there is separate or individual solid waste collection service.
- 1.36 **"Solid Waste"** means all putrescible and non-putrescible residential refuse, commercial solid waste, institutional solid waste, garbage, recyclable materials, green waste, and rubbish, and as otherwise defined in Public Resources Code Section 40191. Solid waste which is not required to be collected includes:

- (a) Demolition and construction debris which are not offered by persons performing the work and which may be legally collected and disposed of by some alternate means;
- (b) Recyclable materials separated from solid waste by the waste generator which the waste generator sells or is otherwise compensated for by a collector in a manner resulting in a net payment to the waste generator;
- (c) Recyclable materials separated from solid waste by the waste generator and which the waste generator donates to a charitable organization such as the Boy Scouts; or
- (d) Materials removed by householders or occupants and transported by them to disposal facilities or recycling centers.

1.37 "Term" means the term of the Agreement, as provided for in Article 3.

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

ARTICLE 2. REPRESENTATIONS AND WARRANTIES OF FRANCHISEE

2.1 Corporate Status

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

2.2 Corporate Authorization

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

2.3 Compliance with Laws and Regulations

Franchisee shall comply with all existing and future District, County, other local agencies, state, and federal laws and regulations.

2.4 Financial Representation

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

2.5 Absence of Litigation

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

ARTICLE 3. TERM OF AGREEMENT

3.1 Effective Date

The effective date of this Agreement shall be August 1, 2001 ("Effective Date").

3.2 Term

The term of this Agreement shall be ten (10) years, commencing at 12:01 a.m., September 1, 2001, and expiring at midnight, September 1, 2011, subject to extension as provided in Section 3.3 (Option to Extend).

The Board may elect to renew this Agreement at any time prior to the end of the term of the Agreement.

3.3 Option to Extend

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

3.4 Conditions to Effectiveness of Agreement

The obligation of the 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 the District, in its sole direction.

(1) **Accuracy of Representations.** The representations and warranties made by Franchisee in Article 2 of this Agreement are true and correct on and as of the effective date.

(2) **Effectiveness of Board Action.** The District's actions in approving this Agreement shall become effective pursuant to California law on or prior to the effective date.

ARTICLE 4. SCOPE OF AGREEMENT

4.1 Grant and Acceptance of Exclusive Franchise

Subject to Sections 3.4 (Conditions to Effectiveness of Agreement) and 4.2 (Limitations to Scope), this Agreement grants Franchisee the exclusive right to arrange for the collection, processing, diversion and disposal of solid waste, green waste and recyclable materials from residential and non-residential properties placed in the designated collection location for regular or scheduled collection in accordance with the District's ordinances, rules and regulations, except where otherwise precluded by law. Franchisee hereby accepts the terms and conditions of the Franchise as set forth in this Agreement.

Franchisee and the District acknowledge that a ninety (90) day to one hundred and twenty (120) day period of transition is necessary for Franchisee's full implementation and compliance with Sections 6.1.3 (Containers) and 7.1 (Billing) of this Agreement. Both parties shall use good faith efforts to ensure timely, efficient transition, including but not limited to, Franchisee's acquisition and furnishing of the appropriate containers for collection of solid waste, green waste and recyclable materials, and the District's transfer of customer billing account information to Franchisee.

4.2 Limitations to Scope

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

- (1) Animal waste and remains from slaughterhouses or butcher shops.
- (2) By-products of sewage treatment, including sludge, sludge ash, grit and screening.
- (3) Hazardous waste, liquid waste and medical waste.
- (4) Construction and demolition debris.

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

This grant to Franchisee of an exclusive right and privilege to collect, transfer, process, divert and dispose of solid waste, green waste and recyclable materials shall be interpreted to be consistent with state and federal laws, now and during the term of this Agreement, and the scope of this exclusive right shall be limited

by current and developing state and federal laws with regard to solid waste handling, exclusive franchise, solid waste flow control, and related doctrines.

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

4.3 Administration of Franchise

The District's General Manager shall administer the District's solid waste contract and shall supervise Franchisee's compliance with the Agreement's terms and conditions.

4.4 Serve Without Interruption

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

4.5 Permits and Licenses

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

4.6 Preservation of 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.

4.7 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 recyclables within the meaning of CERCLA. The parties further mutually agree that the granting of the Franchise by the District shall be construed as an action whereby Franchisee is granted, and accepts the rights, responsibilities, benefits and liabilities of collection and disposal of solid waste. Commencing on the effective date of this Agreement and, to the extent that Franchisee's performance under this Agreement requires the collection and disposal of solid waste, and may be construed as "arranging for" collection and disposal of solid waste within the meaning of CERCLA, such actions shall be the sole responsibility of Franchisee and Franchisee expressly agrees to be solely responsible for all such actions.

4.8 Annexation

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

4.9 Ownership of Solid Waste

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

Subject to this Agreement, Franchisee shall have the right to retain any benefit resulting from its right to retain, process, divert, dispose of, or use the solid waste which it collects. Any cost savings resulting from decreased disposal shall offset Franchisee's operating expenses.

Solid waste, or any part thereof, which is disposed of at a disposal site or facility (whether landfill, transformation facility, transfer station, or materials recovery facility) shall become the property of the owner or operator of the disposal site(s) or facility once deposited there by Franchisee. Nothing in this Agreement shall be construed as giving rise to any inference that the District has any ownership or possession of solid waste.

4.10 Ownership of Recyclable Materials

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 Franchise. 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 this Franchise. Subject to the provisions of this Franchise, Franchisee shall have the right to retain any benefit resulting from its right to retain, recycle, process or reuse the recyclable materials which 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.

ARTICLE 5. DIRECT SERVICES

5.1 General

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

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

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

5.2 Single Family Residential Solid Waste Collection Service

For residential customers, Franchisee shall collect solid waste at the curbside at a minimum of once a week. 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 Franchisee will collect their containers at this location and return container to same location. Franchisee will notify residents annually, beginning within thirty (30) days of execution of this Agreement, of this collection option. To be eligible for this collection option, residents must present proof of their physical incapacity to Franchisee.

5.3 Other Solid Waste Collection Service

5.3.1 Multi-Family Solid Waste Collection Service

Franchisee shall collect solid waste from all multi-family dwelling units within the District, using containers of a size and shape permitted by the District, not less than once per week. 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 by the District, not less than once per week.

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 a 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 Public Facilities Collection

Franchisee shall collect and dispose of all solid waste generated at premises owned and/or operated by the District at no charge. Franchisee shall make collections from the District's solid waste containers, not less than once per week. Collections shall be scheduled at a time mutually agreed upon by Franchisee and the District.

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

- (1) Collection of solid waste from up to twenty-five (25) sidewalk litter containers located in Cambria, with collection from additional containers to be mutually agreed upon by Franchisee and the District;
- (2) Collection of solid waste from containers in District parks as mutually agreed upon by Franchisee and the District; and
- (3) Review of plans for land use or property developments with regard to solid waste service issues.

5.5 Recycling Services

5.5.1 Scope of Services

Franchisee shall provide green waste collection and curbside recycling services for the residents and businesses located within the District, subject to the terms and conditions herein set forth. Franchisee shall collect and remove all recyclable materials placed in containers at the designated collection locations for single family dwelling units, multi-family dwelling units, and commercial and industrial properties in

the District. Handicapped residents shall have the option of placing their containers near their dwelling, visible from the curb, and Franchisee will collect their containers at this location and return container to same location.

Curbside recyclable material and green waste collection shall be a minimum of once each week on the same day of the week as solid waste collection service.

Franchisee shall determine the method, details and means of performing the above-reference services. Franchisee may, at Franchisee's own expense, employ such persons Franchisee deems necessary to perform the services required of Franchisee by this Agreement. District may not control, direct or supervise Franchisee's personnel in performance of those services.

5.5.2 Type of Service

Pursuant to this Agreement, Franchisee shall provide such service to all residents and commercial and industrial properties within the District. Except as provided herein, the type of service to be performed shall be as set forth in Exhibit A, a copy of which is attached hereto, and incorporated herein by reference as though here fully set forth.

5.5.3 Sale of Recyclable Materials

Franchisee shall be responsible for diligently pursuing the sale of all recyclable materials collected pursuant to this Agreement. Revenues from the sales of these materials shall be applied to the cost of service under the Agreement to reduce Franchisee's overall costs. For those recyclable items where a competitive market exists, Franchisee shall sell all recyclable materials collected pursuant to this Agreement at not less than fair market value. Revenues from the sale of these recyclable materials shall be Franchisee's and shall be included in the calculation of allowable profit as required by Section 9.5.

5.6 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.

5.7 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.

5.8 Semi-Annual Clean-up Weeks

Franchisee shall provide, in addition to regularly scheduled service, clean-up events two weeks per year pursuant to guidelines established by Franchisee and approved by the District, for solid waste, green waste and recyclable materials

placed at the curb by single family dwelling units. The dates of each event shall be coordinated with the District prior to September 1st of each year.

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

5.9 District's Right to Request Changes

5.9.1 General

The District may request Franchisee to perform additional services (including new diversion programs, billing services, etc.) or modify the manner in which it performs existing services. Pilot programs and innovative services which may entail new collection methods, different kinds of services and/or new requirements for waste generators are included among the kinds of changes which the District may request. Franchisee shall present, within thirty (30) days of a request to do so by the District, a proposal to provide additional or expanded diversion services pursuant to the terms of Section 5.9.2. Franchisee shall be entitled to an adjustment in its compensation in accordance with Section 9.3, for providing such additional or modified services.

5.9.2 New Programs

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

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

5.9.3 District's Right to Acquire Services

Franchisee acknowledges and agrees that the District may permit other persons besides Franchisee to provide additional services not otherwise contemplated under Section 5.9.1. If pursuant to Section 5.9.2, Franchisee and the District cannot agree on terms and conditions of such services in ninety (90) days from the date when the District first requests a proposal from Franchisee to perform such services, Franchisee acknowledges and agrees that the District may permit persons other than Franchisee to provide such services.

5.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

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

5.11 District Directed Removal of Solid Waste

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

5.12 Designated Disposal Facility

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

If Franchisee receives notice from the landfill operator or otherwise expects, during the term of this Agreement, to be prevented from delivering solid waste to the designated disposal site, Franchisee shall immediately notify in writing the District, stating the reason(s) Franchisee is prevented, or expects to be prevented, from disposing of solid waste in the designated disposal facility. Franchisee shall in good faith expeditiously identify and evaluate alternative disposal sites within thirty (30) days of learning that the designated disposal site will be unavailable. An alternative designated disposal site or sites shall be arranged for and secured by Franchisee, after consultation with the District. Franchisee shall provide the District with adequate written notice prior to contracting for any alternate disposal site. The District reserves the right to direct the waste stream to other disposal sites selected by Franchisee.

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

5.13 Hazardous Waste Handling and Disposal

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

If the waste generator cannot be reached immediately, Franchisee shall, prior to leaving the premises, leave a tag at least two inches by six inches (2" x 6") indicating the reason for refusing to collect the solid waste, in which case, a copy of the tag, along with the address of the premises (and the name of the waste generator, if known) shall be delivered to the District on the following business day.

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

ARTICLE 6. COLLECTION SERVICE STANDARDS

6.1 Operations

6.1.1 Schedules

To preserve peace and quiet, solid waste, green waste and recyclable materials shall not be collected from residential premises between 8:00 p.m. and 8:00 a.m. on any day, and between 8:00 p.m and 6:30 a.m. on any day in commercial business areas of Cambria. When the regularly scheduled collection day falls on a holiday, collection shall take place on the following regularly scheduled collection day. Franchisee will promptly resolve any complaints of noise to the satisfaction of the District's General Manager or the District's General Manager's designee.

6.1.2 Vehicles

A. General. Franchisee shall keep a fleet of collection trucks sufficient in number and capacity to efficiently perform the work required in the Agreement in strict accordance with the terms of this Agreement. Franchisee shall provide a detailed description concerning the number and type of

vehicles necessary for performance. Franchisee shall have available on collection days sufficient back-up vehicles for each type of collection vehicle (i.e., rear loader, front loader, and roll-off) used to respond to complaints and emergencies. The fleet shall be maintained in a good and safe condition. The description of the number and type of vehicles shall be updated prior to consideration of any rate review under this Agreement.

B. Specifications. All vehicles used by Franchisee in providing solid waste collection services shall comply with all federal, state, and local requirements for such vehicles as they now exist or may be amended in the future, and be registered with the California Department of Motor Vehicles. All such vehicles shall have water-tight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall comply with U.S. Environmental Protection Agency noise emission regulations and other applicable noise control regulations.

C. Condition.

(1) Franchisee shall maintain all of its properties, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean and operable condition at all times.

(2) Franchisee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles which are not operating properly and represent a safety hazard shall be taken out of service until they are repaired and 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 the District upon request.

(3) Franchisee shall immediately repair, or arrange for the repair, of all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Franchisee shall maintain accurate records of repair, which shall include the date/mileage, nature of repair and the signature of a maintenance supervisor that the repair has been properly performed.

D. Vehicle Identification. Each truck shall display in a prominent place a sign which shall include Franchisee's name and an identification number.

- E. **Operation.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable federal, state and local laws. Franchisee shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local vehicle weight restrictions.

6.1.3 Containers

- A. **Single Family Residential Containers.** Franchisee shall furnish appropriate containers to collect solid waste, green waste and recyclable materials from all Single Family Residential waste generators.
- B. **Non-Residential and Multi-Family Dwelling Unit Containers.** Franchisee shall furnish to all customers appropriate containers to collect solid waste, green waste, and recyclable materials at commercial and industrial properties and multi-family dwelling units, and other premises upon customer request consistent with the District approved solid waste collection program. Containers with a capacity of one cubic yard or more shall be available in standard sizes. 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. Additionally, one cubic yard or more containers in public right-of-ways shall have reflectorized markings. Franchisee shall not be obligated to provide customers with compactor units, but will be obligated to charge the rates set by the District for the collection of compacted solid waste.
- C. **Variable Rates and General Specifications.** The kind, size and number of containers furnished to particular customers shall be as determined mutually by the customer and Franchisee. The rates chargeable to each customer shall be based upon the size, number, and frequency of pick-up (if applicable) of containers furnished to each customer, as set forth in Exhibit B, a copy of which is attached hereto, and incorporated herein by reference as though here fully set forth. All containers shall be maintained in good repair with neatly and uniformly painted surfaces and shall prominently display the name and telephone number of Franchisee. Containers shall be clearly marked and identified as belonging to Franchisee. Each customer shall be responsible for excess damage to any such containers not caused by Franchisee, excluding normal wear and tear.

6.1.4 Personnel

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

If Franchisee needs to provide additional personnel, Franchisee shall be responsible for all costs related to provision of such additional personnel. Franchisee may only reduce the number and type of personnel required

with prior approval of the District. If quality of service declines following such reduction in type and number of personnel, the District at its discretion, may require the Franchisee to increase the number and type of personnel utilized, at no additional cost to the District.

- B. Identification.** Franchisee shall ensure that while on duty each collection worker wears a clean uniform with conspicuous insignia displaying Franchisee's company name and the worker's name or identification number.
- C. Gratuities.** Franchisee shall not, nor shall it permit any agent, employee, or subcontractors employed by it to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for any services performed under this Agreement, except as provided in Article 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 the 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 Service Complaints

Franchisee shall maintain and provide copies of all written service complaints and summaries of all oral service complaints and Franchisee's response to those complaints for the term of one year. Copies of written service complaints, summaries of oral service complaints and Franchisee's responses shall be submitted to the District with quarterly reports as specified in Section 7.5 of this Agreement. Additionally, District officials shall be given access to inspect these records during the required office staffing hours after the District has requested such inspection with reasonable notice.

6.3 Periodic Performance Audit

The District shall have the right to periodically request a performance audit or billing audit be completed by Franchisee, the District or an independent third party. The District shall be entitled to select the type of consultant that it deems qualified to conduct said audit. The cost of such audits will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

6.4 Performance Hearing

The District maintains the right to hold a public hearing at which Franchisee shall be present and shall participate whenever there are reasonable grounds to review Franchisee's services and performance. The purpose of the hearing shall be, in part, to provide for a discussion and review of technological, economic and regulatory changes and quality of service provided to date. The goal of the performance hearing is to strive for an ever-advancing solid waste management system, and to ensure services are provided with adequate quality, efficiency and economy.

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

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

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

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

Not later than sixty (60) days after the conclusion of each performance review hearing, the District may issue a report. As a result of the review, the District may request Franchisee to provide expanded or new services. Franchisee shall present, within thirty (30) days of a request to do so by the District, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the items described in Section 5.9.2.

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

7.1 Billing

By resolution or other action of the Board, the District shall establish rates for the services provided by Franchisee. Franchisee shall bill and collect these rates.

Franchisee shall maintain copies of said billings and receipts, each in chronological order, for a period of three (3) years after the date of service for inspection by the District. Franchisee may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records cannot be altered, and can be preserved and retrieved for inspection and verification in a timely manner. Franchisee shall, in addition, provide an adequate backup system for billing records, regardless of the form in which the records are maintained.

7.2 Collection of Bills from Delinquent 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. Franchisee shall be solely responsible for collection of delinquent accounts

Franchisee shall make all reasonable efforts to establish bill payment services at Cambria Pharmacy or another similarly situated facility if permission is not granted by Cambria Pharmacy.

7.3 Records

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

The following records shall be maintained for the District in form and detail satisfactory to the District:

- Customer services;
- Weight of 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;
- 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 the District, Franchisee shall provide all records of diversion and disposal of all solid waste collected within the District to the District within ten (10) days of discontinuing service. Records shall be in chronological order, and organized in a form readily and easily interpreted.

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

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

7.4 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.

7.5 Report Formats and Schedule

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

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

The 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.

Monthly reports shall be submitted within thirty (30) calendar days after the end of the report month. Quarterly reports shall be submitted within thirty (30) calendar days after the end of the quarter. Quarters end on March 31, June 30, September 30, and December 31.

All reports shall be submitted to:

General Manager
Cambria Community Services District
1316 Tamson Drive, Suite 201
P.O. Box 65
Cambria, CA 93428-0065

7.6 Monthly Reports

The information listed below shall be the minimum reported for each service (i.e. solid waste, recycling, green waste):

- Materials collected, transferred, diverted and disposed of, by sector (commercial, industrial, residential) of waste generator and collected by Franchisee, in tons, by month.
- Complaint summary, for month and cumulative for 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.

7.7 Quarterly Report

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

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

7.8 Annual Financial Audit

Franchisee shall submit to the District annual audited financial statements prepared at Franchisee's expense by an independent Certified Public Accountant ("CPA") not later than 180 days following the expiration of Franchisee's fiscal year. At the time of a request for adjustment to compensation under Section 9.3, the financial forms contained in the request must be reconciled to the audited financial statements to provide assurance that all of Franchisee's activities are accounted for.

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

The 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 the 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 an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

Franchisee shall provide to the District a copy of a request for an increase in tipping fees for its disposal site no later than five (5) days following submittal of said request to the County of San Luis Obispo. Additionally, Franchisee shall notify the District of the action taken by the Board of Supervisors regarding said request within five (5) days following said action, including copies of any resolutions adopted by the Board of Supervisors, if they are available. 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 review. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

7.9 Maintenance of Accounting Records

Franchisee shall maintain accounting records in accordance with generally accepted standards and principles of accounting. In its accounting records, Franchisee shall discreetly maintain and clearly identify all items of revenue and expense pertaining to its operations. Cost and revenue information for the District shall be segregated from other geographical areas served by Franchisee.

Cost and revenue information for the District, in addition, shall be segregated from other business activities of Franchisee. Separate detailed records shall be

maintained by Franchisee with respect to all transactions with affiliated entities that affect the cost and revenue of Franchisee in providing the franchise collection services.

7.10 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 Franchisee or may engage a CPA for this purpose. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

7.11 Inspection by the District

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

7.12 Office

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

7.13. Customer Information

Franchisee shall prepare and keep current a brochure 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 have copies of this brochure available at all times in Franchisee's office, distribute copies to all new customers, annually mail copies to all of its current customers, and mail updated copies to all customers as notification of changes in service or rates, prior to such changes. The brochure shall also include the information set forth in Section 7.14 below.

7.14 Public Education and Outreach

Franchisee acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, Franchisee agrees to allocate not less than \$5,000 per year to public education and outreach activities.

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

All public education materials shall be approved in advance by the District's General Manager.

The brochure required under Section 7.13 above shall also include the reasons for recycling, information from the District explaining the rate structure, local landfill alternatives and instruction on how to participate in the program.

7.15 Regulatory Reporting

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

Franchisee shall provide the 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 the District.

Franchisee shall promptly provide the 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.

7.16 Records Retention

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

ARTICLE 8. PAYMENTS TO DISTRICT

8.1 Franchise Fee Payments

In consideration of the exclusive franchise provided for in Article 4 of this Agreement, Franchisee shall pay the District six percent (6%) of Franchisee's gross revenues for collection and disposal of solid waste within the District. Such franchise fee shall be a "pass-through" expense for purposes of administering the Agreement, including, but not limited to, rate review and setting. Each monthly remittance of fees to District shall be accompanied by a statement detailing gross revenues for the period covered from all operations conducted or permitted pursuant to Article 5 of this Agreement.

8.2 Schedule of Payment

Franchise fees described in Section 8.1 are due on the thirtieth (30th) day of each month for receipts from the previous month. The remittance will be accompanied by a report setting forth the basis and calculations used for computing the amount due.

8.3 AB 939 Fee Amount

In consideration of the exclusive franchise provided for in Article 4 of the Agreement, the District reserves the right to impose and collect an AB 939 fee. Franchisee shall pay when directed by the District, a percentage of Franchisee's gross revenues for an AB 939 fee (i.e., the cost that the District incurs in managing and addressing AB 939 issues regarding diversion, recyclable materials, source reduction, etc.), on a monthly installment basis, based on cash receipts from customers provided residential and non-residential services during the prior month. All AB 939 fees paid to the District shall be considered a pass-through cost for purposes of rate setting under Article 9. The monthly AB 939 fee is due on the thirtieth (30th) day of each month for receipts from the previous month.

8.4 Other Fees

The District shall reserve the right to set such other fees, as the District deems necessary. The amount, time and method of payment shall be similar to Section 8.2.

8.5 Time and Method of Payment

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

8.6 Review of Fee Payments

The District, or its agent, reserves the right to annually perform an independent review of fee payments to verify that fees are being paid in accordance with this Agreement. The cost of such inspection or review will be an allowable cost under the rate setting methodology unless there are findings pursuant to Section 12.8.

8.7 Business License Tax

Franchisee shall pay each year any required permit fees and annual business license taxes required by law.

ARTICLE 9. SERVICE RATES AND REVIEW

9.1 General

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

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

9.2 Service Rates

Service rates are those established by Resolution or other formal action adopted by the Board. Franchisee shall provide the services required by this Agreement and charge no more than the rates authorized by District Resolution or other formal action.

9.3 Rate Review

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

9.4 Special Interim Rate Review

The District or Franchisee may request an extraordinary or consequential adjustment outside of the base year and interim year adjustment schedules, as set forth in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated*

Solid Waste Management Rates," dated June 1994. To be extraordinary and consequential, cost changes must be significant enough to require a greater than five percent (5%) decrease or increase in monthly rates for basic residential service.

9.5 Allowable Profit

When performing the procedures described in the "*City of San Luis Obispo Rate Setting Process and Methodology Manual for Integrated Solid Waste Management Rates*," dated June 1994, the allowable profit on expenses shall be calculated using targeted operating ratio of ninety-two percent (92%), with a range of ninety percent (90%) to ninety-four percent (94%), applied to Franchisee's reasonable and necessary allowable costs, as these costs are defined in the rate setting manual, incurred in the performance of its obligations under this Agreement.

9.6 Publication of Rates

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

ARTICLE 10. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

10.1 Indemnification

10.1.1 General

Franchisee agrees to defend, indemnify, protect and hold the District and its directors, agents, officers and employees harmless from and against (1) any legal challenges to this Agreement related to the California Environmental Quality Act and to solid waste collection, diversion and disposal rates (as described in Article 9 hereof) authorized by the District, and (2) any and all claims asserted or liability established for damages or injuries to any person or property, including, but not limited to, injury to Franchisee's employees, agents or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omission of Franchisee, and its agents, officers, directors or employees, in performing the services herein, and all expenses of investigating and defending against same; provided, however, that Franchisee's duty to indemnify and hold harmless shall not include any claims or liability caused by the established sole negligence or willful misconduct of the District, its agents, officers or employees.

10.1.2 CERCLA

Franchisee agrees to defend and indemnify the District, its directors, officers, employees and agents for all actions of Franchisee associated with 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. Franchisee shall further defend and indemnify the District from any and all legal actions against the District on the basis of the assertion that the District is an arranger of solid waste services as a result of this Agreement.

10.1.3 Integrated Waste Management Act

Franchisee agrees to defend and indemnify the District, its directors, officers, employees and agents for any fines and/or penalties imposed by the California Integrated Waste Management Board or its agents or other governmental entity in the event that said fines or penalties are related to Franchisee's failure to meet its obligation under this Agreement or to Franchisee's delays in providing information or reports required pursuant to this Agreement.

10.1.4 Legal Defense

The District may, in its sole discretion, select independent legal counsel to defend the District against any and all claims, suits and actions covered by Section 10.1. Franchisee shall reimburse the District for all costs and fees incurred in providing this defense.

10.2 Insurance

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

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

- (1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001 [Ed. 11/88]).
- (2) Insurance Services Office form number CA 0001 (Ed. 12/90) covering Automobile Liability, code I (any auto).
- (3) Workers' Compensation insurance as required by the State of California and Employer's Liability insurance.
- (4) Pollution Legal Liability.

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

- (1) **Commercial or Comprehensive General Liability:** Five Million Dollars (\$5,000,000) combined single limit per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
- (2) **Automobile Liability:** Five Million Dollars (\$5,000,000) combined single limit per accident for bodily injury and property damage.

(3) **Workers' Compensation and Employers Liability:** Workers' compensation limits as required by the Labor Code of the State of California and employers liability with limits of One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(4) **Pollution Liabilities:** One Hundred Thousand Dollars (\$100,000) each loss/Two Hundred Thousand Dollars (\$200,000) annual aggregate all losses. Additionally, the Designated Disposal Facility, as described in Section 5.12, shall provide proof of pollution liability coverage of not less than Two Million Dollars (\$2,000,000) and shall name District as an additional insured by endorsement.

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

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

(1) The District, Board members, its officers, officials, employees, agents and volunteers are to be described as additional insureds by endorsement as respects: liability arising out of activities performed by or on behalf of Franchisee; products and completed operations of Franchisee; premises owned, occupied or used by Franchisee; or automobiles owned, leased, hired or borrowed by 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 Agreement, 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 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) 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) The Automobile Liability Policy shall be endorsed to delete the Pollution exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.
- (7) Pollution, if on a Claims Made form:
 - a. The "Retro Date" must be shown, and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
 - c. If coverage is canceled or non-renewed, and not replaced with another claims made policy form with a "Retro Date" prior to the contract effective date, Franchisee must purchase "extended reporting" coverage for a minimum of two (2) years after completion of contract.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than VI. Insurers selected by Franchisee shall be admitted to issue insurance in the State of California.

F. Verification of Coverage. Franchisee shall furnish the District with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the District and are to be received and approved by the District before performance under this Agreement commences. The District reserves the right to require complete certified copies of all required policies at any time, and Franchisee shall provide said copies upon request.

- G. **Subcontractors.** Franchisee shall include all subcontractors as insurers under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- H. **Occurrence Based Coverage.** All policies secured by Franchisee shall be occurrence and not claims based unless the District so consents in writing.

10.3 Performance Bond

Simultaneously with the execution of this Agreement, Franchisee shall file with the District a bond, payable to the District, securing Franchisee's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be Five Hundred Thousand Dollars (\$500,000). The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the 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.

ARTICLE 11. DISTRICT'S RIGHT TO PERFORM SERVICE

11.1 General

- A. In the event that that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or process any or all solid waste materials which it is required by this Agreement to collect and process, at the time and in the manner provided in this Agreement, for a period of more than two (2) calendar days, then the District shall have the right, but not the obligation, upon twenty-four (24) hours prior written notice to Franchisee to perform, or cause to be performed, such services itself with its own or other personnel without liability to Franchisee.
- B. In the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or process any or all solid waste materials which it is required by this Agreement to collect and process, at the time and in the manner provided in this Agreement, for a period of more than seven (7) calendar days, then the District shall have the right, but not the obligation, upon twenty-four (24) hours prior written notice to take possession of any or all of Franchisee's land, equipment and other property to collect, transport or process any solid waste generated within the 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 Franchisee's equipment and other property, the District shall be entitled to have another franchisee operate such equipment and property under the District's direction and at Franchisee's

expense with allowance as provided in subsection F below. Additionally, in the event the District takes possession of Franchisee's equipment and other property, the District does not guarantee repair of existing problems with equipment and facilities.

- C. Notice of Franchisee's failure, refusal or neglect to collect, transport or process solid waste may be given orally by telephone to Franchisee 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.
- D. Franchisee further agrees that in such event:
- It will take direction from the District to effect the transfer of possession of property to the District for the District's use.
 - It will, if the District so requests, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.
 - The District may immediately engage all or any personnel necessary or useful for the collection, transportation and processing of solid waste, including, if the District so desires, employees previously or then employed by Franchisee. Franchisee further agrees, if the District so requests, to furnish the District with the services of any or all management or office personnel employed by Franchisee whose services are necessary or useful for solid waste collection, transportation and processing operations and for the billing and collection of fees for these services.
- E. District agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.
- F. If the interruption or discontinuance in service is caused by any of the reasons listed in Section 12.5 (Excuse From Performance), the District shall pay to Franchisee the reasonable rental value of the equipment and facilities, possession of which is taken by the District, for the period of the District's possession, if any, which extends beyond the period of time for which Franchisee has rendered bills in advance of service.
- G. Except as otherwise expressly provided in the previous paragraph, the District's exercise of its rights under this Article 11: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the District to Franchisee; and (3) does not exempt Franchisee from the indemnity provisions of Article 10 (Indemnification, Insurance and Performance Bond), which are meant to extend to circumstances arising under this Section, provided that

Franchisee is not required to indemnify the District against claims and damages arising from the sole negligence of the District's officers, employees and agents in the operation of collection vehicles during the time the District has taken possession of such vehicles.

11.2 Temporary Possession of Franchisee's Property

If the District suffers an interruption or discontinuance of service as described in Section 11.1 (including interruptions and discontinuance due to events described in Section 12.5, Excuse from Performance), the District may take possession of and use all of Franchisee's property described above until other suitable arrangements can be made for the provision of solid waste collection and disposal services which may include the grant of a contract to another company. The same notice requirements of Section 11.1 are applicable.

11.3 Billing and Compensation to the District During the District's Possession

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

11.4 District's Right to Relinquish Possession

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

11.5 Duration of the District's Possession

The 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 the District determines that such services can be resumed by Franchisee, or when the District no longer reasonably requires such facilities or equipment. In any case, the 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 12. DEFAULT AND REMEDIES

12.1 Events of Default

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

- A. **Fraud or Deceit.** If Franchisee practices, or attempts to practice, any fraud or deceit upon the 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. Franchisee is also in default if there is an assignment of this Agreement for the benefit of its creditors.
- C. **Failure to Maintain Coverage.** If Franchisee fails to provide or maintain in full force and effect the Workers' Compensation, liability, indemnification coverage or any insurance coverage or bond required under this Agreement.
- D. **Violations of Regulation.** If Franchisee's facilities fall out of full regulatory compliance or if Franchisee violates any orders or filings of any regulatory body having jurisdiction over Franchisee relative to this Agreement, provided that Franchisee may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Agreement shall be deemed to have occurred.
- E. **Failure to Perform.** If Franchisee ceases to provide solid waste services as required under this Agreement for a period of two (2) days or more, for any reason within the control of Franchisee.
- F. **Failure to Pay/Report.** If Franchisee fails to make any timely payments, including liquidated damages and penalties, required under this Agreement and/or fails to provide the 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, AB 939, 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 forth 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 the 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, sick-out, picketing, or other concerted job action lasting more than two (2) days.

Upon default by Franchisee, the District's General Manager shall provide written notice to Franchisee of the violation. The District's General Manager shall include in the notice, a demand that Franchisee correct the violation within ten (10) days following the delivery of said notice. If the violation is not corrected within the ten (10) days, the District shall have the right to terminate the Agreement per the provisions provided in Section 12.2. For purposes of this Agreement and any notice required thereunder, the term "days" shall mean calendar days. This ten (10) day notice period does not affect the District's right to perform service under Article 11 of this Agreement.

12.2 Right to Terminate Upon Default

Upon a default by Franchisee, the District shall have the right to terminate this Agreement upon ten (10) days notice if the public health or safety is threatened, or otherwise thirty (30) days notice, but without the need for any hearing, suit or legal action. This right of termination is in addition to any other rights of the District upon a failure of Franchisee to perform its obligations under this Agreement. The ten (10) day and thirty (30) day notice periods do not affect the District's right to perform service under Article 11 of this Agreement.

12.3 Possession of Property and Billing Records and Systems Upon Termination

In the event of termination for default, the District shall have the right, subject to the obligations contained in Article 11 hereof, to take possession of any and all of Franchisee's land, equipment, and other property used or useful in the collection, diversion and/or disposal of solid waste and to conduct all activities concerning billing and collection of fees for these services and to use such property. The District shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of solid waste collection services, which

may include the award of an agreement or franchise to another waste hauling company. If the District retains possession thereof after the period of time for which Franchisee has already been paid by means of bills issued in advance of providing service for the class of service involved, Franchisee shall be entitled to the reasonable rental value of such property (which shall be offset against any damages due the District for Franchisee's default).

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

12.4 District's Remedies Cumulative; Specific Performance

The District's right to terminate the Agreement under Section 12.2 and to take possession of Franchisee's properties under Section 12.3 are not exclusive, and the 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 which the 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 the District to Franchisee, the remedy of damages for a breach hereof by Franchisee is inadequate and the District shall be entitled to injunctive relief and/or specific performance if it so desires.

12.5 Excuse from Performance

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

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

The interruption or discontinuance of Franchisee's services caused by one or more of the events excused shall not constitute a default by Franchisee under this Agreement.

Notwithstanding the foregoing, however, if Franchisee is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of seven (7) days or more, the 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 Franchisee in writing, to resume service within two (2) days from the receipt of such notification. If 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 11 (District's Right to Perform Services), and this Article 12 shall apply.

12.6 Liquidated Damages

The 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 the District as a result of a breach by Franchisee of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that:

- Substantial damage results to members of the public who are denied services or denied quality or reliable service;
- Such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms;
- That services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and
- The termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches. However, substantial breaches may result in the termination of this Agreement as described in Section 12.2.

The parties further acknowledge that consistent, reliable solid waste collection service is of utmost importance to the District and that the District has considered and relied on Franchisee's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that if Franchisee fails to achieve the performance standards, or fails to submit required documents in a timely manner, the 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 which the District will suffer. Therefore, without prejudice to the District's

right to treat such non-performance as an event of default under this Article 12, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the District that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

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

Collection Reliability and Quality

- For each failure over five (5) annually to commence service to a new customer account within seven (7) days after order: \$150.00 per account
- For each failure over ten (10) annually to collect solid waste, which has been properly set out for collection, from an established customer account on the scheduled collection day: \$150.00 per account
- For each failure to collect solid waste which has been properly set out for collection from the same customer on two (2) consecutive scheduled pickup days: \$150.00 per account
- For each occurrence over five (5) annually of damage to private property: \$250.00 for each property damaged
- For each occurrence of discourteous behavior: \$250.00 per incident
- For each failure over ten (10) annually to clean up solid waste spilled from bins: \$150.00 per bin
- For each occurrence over five (5) annually of collecting solid waste during unauthorized hours: \$250.00 per account collected
- For each failure to respond to a customer complaint within twenty-four (24) working hours: \$100.00 per complaint
- For each failure to prepare for or properly conduct twice annual clean-ups including advertising and press releases: \$250.00 per event
- For each failure to perform and submit billing reviews: \$250.00 per review
- For each occurrence over ten (10) annually of failure to properly return containers to avoid pedestrian or vehicular traffic impediments or to place cans upright with lid secured: \$150.00 per container
- For each occurrence of excessive noise above the limits specified in this Agreement: \$250.00 per day

Customer Responsiveness

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

Timeliness of Submissions to the District

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

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

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

Prior to assessing liquidated damages, the 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) of all information in the possession of the District relating to incident(s)/non-performance. Franchisee may, within ten (10) days after receiving the notice, request a meeting with the District. If a meeting is requested, it shall be held by the District's General 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's General Manager or designee will provide Franchisee with a written explanation of his or her determination on each incident(s)/nonperformance prior to authorizing the assessment of liquidated damages. The decision of the District's General Manager or designee shall be final.

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

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

12.7 Notice, Hearing and Appeal

Should Franchisee contend that the District is in breach of the Agreement, Franchisee shall file a written request with the District's General Manager for a 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 position and all relevant facts to the District's General Manager. Franchisee shall be notified of the General Manager's decision within ten (10) calendar days of the consultation.

If Franchisee is not in agreement with the ruling issued by the District's General 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 the notification is mailed by the District's General Manager of the decision reached by the District's General Manager. The Board shall notify Franchisee of the time and date of the review of allegation, which shall be held at a mutually convenient time within thirty (30) calendar days of the request. Franchisee shall present its position and all relevant facts to the Board. Franchisee shall be notified in writing within fourteen (14) calendar days of the Board's ruling.

12.8 Financial Material Errors, Omissions or Irregularities

The District may review, test and audit the books and records of Franchisee for the purpose of determining whether 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 Franchisee to the District. In the case of financial errors, materiality shall be deemed to be two percent (2%) or greater of the gross revenues of Franchisee from activities performed under this Agreement. Recovery of any overpayment will be negotiated on a case by case basis, either immediately or through the next rate setting evaluation.

ARTICLE 13. ASSIGNMENT

13.1 Assignment

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

this Agreement. The District may, however, assign its rights and delegate its obligations under this Agreement to a joint powers authority without the prior written consent of Franchisee.

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

- (1) a sale, exchange or other transfer to a third party of at least fifty-one percent (51%) of Franchisee's assets dedicated to service under this Agreement;
- (2) a sale, exchange or other transfer to a third party, including other shareholders, of outstanding common stock of Franchisee which may result in a change of control of Franchisee;
- (3) any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction in which Franchisee or any of its shareholders is a party and which results in a change of ownership or control of Franchisee;
- (4) any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver, taking possession of Franchisee's property, or transfer occurring in the probate proceeding; and
- (5) any combination of the foregoing (whether or not in related or contemporaneous transactions), which has the effect of any such transfer or change of ownership, or change of control of Franchisee.

Franchisee acknowledges that this Agreement involves rendering a vital service to the District's residents and businesses, and that the 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 the District under this Agreement. The 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 the District's consideration of and consent to an assignment, the District may deny or approve such request in its sole and absolute 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 the District unless and until Franchisee has met the following requirements:

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

- e. any other information required by the District to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

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

ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES

14.1 Relationship of Parties

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

14.2 Governing Law

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

14.3 Jurisdiction

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

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

14.4 Subcontracting

Except as approved in writing by the District, which approval may be withheld in the District's sole and absolute discretion, Franchisee shall not enter into an agreement to have another person perform Franchisee's duties of this Agreement. Franchisee shall undertake to pay the District its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed

subcontractor, and to review and finalize any documentation required as a condition for approving any such subcontracting agreement.

14.5 Interests of Franchisee

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

14.6 Binding on Successors

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

14.7 Transition of Next Franchise

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

14.8 Parties in Interest

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

14.9 Waiver

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

14.10 Condemnation

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

14.11 District Free to Negotiate with Third Parties

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

14.12 Immigration Act of 1986

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

14.13 Non-Discrimination

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

14.14 Public and Employee Safety

Whenever Franchisee's operations create a condition hazardous to the public or the District employees, it shall, at its expense and without cost to the District, furnish, erect and maintain such fences, temporary railings, barricades, lights, signs and other devices, and take such other protective measures as are necessary to prevent accidents or damage or injury to the public and employees.

14.15 Recycled Products

The District encourages Franchisee's use of recycled products.

14.16 Notices

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

If to the District: General Manager
 Cambria Community Services District
 1316 Tamson Drive, Suite 201
 P.O. Box 65
 Cambria, CA 93428-0065
 Telephone No. (805) 927-6223

If to Franchisee: Mission Country Disposal, Inc.
970 Monterey Street
San Luis Obispo, CA 93401
Telephone No. (805) 543-0875

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

Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

14.17 Representatives of the Parties

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

Franchisee designates Tom Martin as a responsible corporate representative who shall serve as the representative of Franchisee in all matters related to the Agreement. The 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 by Franchisee as communicated to the District.

14.18 Entire Agreement

This Agreement represents the full and entire Agreement between the parties with respect to the matters covered herein.

14.19 Section Headings

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

14.20 References to Laws

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

14.21 Interpretation

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

14.22 Amendment

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

14.23 Severability

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

14.24 Counterparts

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

14.25 Use of "Will"

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

14.26 Surviving Provisions

Sections 7.8, 7.14, 10.1, 10.2, and other provisions of this Agreement so providing, shall survive termination of this Agreement.

14.27 Investigation

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

14.28 Termination of Existing Agreements

Upon execution of this Agreement, the existing agreement for refuse disposal service between the Cambria Community Services District and Mission Country Disposal, Inc., dated November 1, 1991 and extended thereto, and the interim agreement for the collection, processing, diversion and marketing of green waste and recyclable materials between the Cambria Community Services District and Mission Country Disposal, Inc., dated May 7, 2001 and extended thereto, are hereby terminated.

14.29 Compensation During Interim Period

During the period from the execution of this Agreement until the Franchisee assumes responsibility for billing customers for the services provided under this Agreement, the District shall pay Franchisee the sum of \$14,999.50 per month for green waste and recycling services, and shall continue to pay Franchisee for solid waste collection services at the rates in effect as of July 1, 2001. Payments shall be prorated on a per diem basis with respect to services provided over a fractional calendar month period.

EXHIBIT A

SCOPE OF SERVICES For Collection, Processing and Diversion of Green Waste and Recyclable Materials Within the Community of Cambria

I. Curbside Recycling Services

A. Materials to be Collected

The following materials, at a minimum, shall be collected:

- Aluminum cans
- Aluminum foil
- Aluminum food trays
- Glass bottles and jars
- Tin and steel cans
- Bi-metal cans
- Plastic products and containers #1-5 and 7
- Kraft paper bags
- Corrugated and mixed cardboard
- Egg cartons (non-styrofoam)
- Newspapers
- White or color paper
- Computer printout paper
- Phone books
- Magazines
- Junk Mail
- Waste Motor Oil

B. Recycling Containers

All single family residences, multi-family residences and commercial businesses shall use designated curbside collection containers to be provided by Franchisee. Commercial collection shall be subject to collection procedures as agreed to by the District's General Manager and Franchisee. Franchisee shall advise in writing all customers of the availability of collection containers. In the event any container is damaged, it shall be recycled by Franchisee. Stolen or damaged containers shall be replaced at no charge to customers or the District. Franchisee, upon approval of the District's General Manager, may limit replacement of containers, or charge a fee for the container, if a customer abuses the free replacement policy. Recycling containers shall have a highly visible label that provides Franchisee's name and phone number, a space for the resident's address, as well as a large recycling logo for easy identification. A separate designated container for used motor oil shall be provided to residents upon request. Customers shall only use containers provided by Franchisee.

C. Curbside Collection Procedures

1. Collection shall take place once a week on regular solid waste collection days. All materials shall be collected, co-mingled. Residential customers shall be required to have their containers set out by 7:30 a.m. on their designated days.
2. Franchisee shall agree to service all residential accounts within the District boundaries currently receiving residential solid waste collection and all publicly owned or operated facilities. Commercial collection shall be in accordance with the program approved by District's General Manager and Franchisee.

D. Commercial Collection

Franchisee shall maintain existing service to all commercial customers currently enrolled in the District's modified commercial curbside collection program.

E. Waste Motor Oil Collection

Those customers requiring waste motor oil collection shall be required to use only those containers supplied by Franchisee. Waste motor oil collection shall be limited to two and one-half (2½) gallons per month per customer. Contractor shall seek grant funding during the term of this Franchise to establish a community waste oil collection site in cooperation with a local service station or other appropriate business.

II. Green Waste

A. Collection Procedures

1. Franchisee shall provide weekly residential pick-up of green waste. Materials to be picked up at the curbside shall include: tree trimmings, brush, plant and grass trimmings and other wood and plant fibers.
2. Franchisee shall agree to service all accounts within the District boundaries currently receiving residential refuse collection.
3. Franchisee shall furnish appropriate green waste containers. Plastic bags are not acceptable containers and may not be used for green waste collection.
4. All green waste must be placed in containers provided by Franchisee.

B. Diversion of Green Waste

Green waste collected under this recycling contract shall not be transported to, recycled or disposed at any facility outside of San Luis Obispo County.

CAMBRIA COMMUNITY SERVICES DISTRICT

**SINGLE FAMILY and MULTI-UNIT RESIDENTIAL (4 units or less)
VOLUME-BASED RATES**

ECONOMY RATE

\$13.24 per month for one 32 gallon wastewheeler container collected once each week

STANDARD RATE

\$26.48 per month for one 64 gallon wastewheeler container collected once each week

PREMIUM RATE

\$39.72 per month for one 96 gallon wastewheeler container collected once each week

SERVICE AWAY FROM THE STREET CURB

\$6.00 per month in addition to above service level

EXTRA CHARGES

\$6.62	EXTRA GARBAGE	additional charge per 33 gallon can or equivalent volume per collection (minimum 1 can
\$6.62	OVERFILLED WASTE WHEELER	LID MUST BE FLAT
\$3.31	EXTRA RECYCLING	additional charge per 33 gallon can or equivalent volume per collection (minimum 1 can
\$3.31	EXTRA GREENWASTE	additional charge per 33 gallon can or equivalent volume per collection (minimum 1 can
\$20.00	SWITCH WASTE WHEELER SIZES MORE THAN ONCE PER 12 MONTHS	

\$35.00	per white good, couch, or hide-a-bed (once a month)
\$10.00	per mattress, boxspring, or small chair, TV, microwave

Rate Schedule for Integrated Solid Waste Services effective September 1, 2001

CAMBRIA COMMUNITY SERVICES DISTRICT

**19.85% AVERAGE ACROSS THE BOARD INCREASE-COMMERCIAL
FOR INTEGRATED SOLID WASTE ACTIVITIES
EFFECTIVE SEPTEMBER 1, 2001**

COMMERCIAL GARBAGE CANS (PER MONTH)

# of cans	COLLECTIONS PER WEEK				
	1	2	3	4	5
2 CAN	\$14.38	\$23.91	\$33.92	\$49.01	\$64.10
3 CAN	\$18.43	\$27.98	\$37.96	\$55.00	\$70.00
4 CAN	\$22.47	\$32.03	\$42.01	\$61.00	\$76.00
5 CAN	\$26.52	\$36.00	\$46.05	\$68.00	\$82.00
6 CAN	\$30.56	\$40.12	\$50.10	\$74.00	\$88.00

Additional charge per can per collection:

COMMERCIAL DUMPSTER CONTAINERS (PER MONTH)

Size of container (cubic yards)	COLLECTIONS PER WEEK				
	1	2	3	4	5
1	\$44.46	\$66.37	\$90.22	\$113.22	\$136.09
1.5	\$56.41	\$92.25	\$115.66	\$153.66	\$191.94
2	\$64.39	\$112.18	\$158.02	\$204.02	\$246.94
3	\$82.75	\$155.39	\$227.80	\$303.80	\$389.80

The rates shown above include the monthly container rental fee and are the same for bins and garwoods, when volume is identical.

UNSCHEDULED EXTRA COLLECTIONS FOR COMMERCIAL CUSTOMERS

\$14.00	1 cubic yard (minimum charge)
\$21.00	1.5 cubic yards
\$28.00	2 cubic yards
\$42.00	3 cubic yards

Rate Schedule for Integrated Solid Waste Services effective September 1, 2001

LATE FEE IS \$5 PER MONTH OR 18% PER ANNUM WHICHEVER IS GREATER

CAMBRIA COMMUNITY SERVICES DISTRICT

**RATE SCHEDULE
FOR COMMERCIAL RECYCLING ACTIVITIES**

**COMMINGLED RECYCLING & CARDBOARD COLLECTION
COMMERCIAL DUMPSTER CONTAINERS (PER MONTH)**

Size of container (cubic yards)	COLLECTIONS PER WEEK				
	1	2	3	4	5
1	INCLUDED	\$16.59	\$22.56	\$28.31	\$34.02
1.5	INCLUDED	\$23.06	\$28.92	\$38.42	\$47.99
2	INCLUDED	\$28.05	\$39.51	\$51.01	\$61.74

The rates shown above include the monthly container rental fee and are the same for bins and garwoods, when volume is identical.

WHITE OFFICE PAPER COLLECTION

White office paper can be commingled with other recycling in your blue waste wheeler.

STYROFOAM COLLECTION

Styrofoam is no longer collected for recycling. It should be thrown away as trash.

Rate Schedule for Integrated Solid Waste Services effective September 1, 2001

LATE FEE IS \$5 PER MONTH OR 18% PER ANNUM WHICHEVER IS GREATER