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**RESOLUTION NO. 98-13**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SUISUN  
CITY APPROVING AN AMENDED LICENSE AGREEMENT FOR  
RECYCLING WITH SOLANO GARBAGE COMPANY**

**WHEREAS**, the City of Suisun City and Solano Garbage Company entered into a License Agreement for Recycling ("LICENSE AGREEMENT") dated June 25, 1991; and

**WHEREAS**, the City of Suisun City and Solano Garbage Company amended the agreement on the 6th day of July, 1993 establishing a recycling charge and annual computation; and

**WHEREAS**, both parties wish to amend that License Agreement.

**NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUISUN CITY:**

**Section 1.** The License Agreement as amended is approved and attached hereto as Attachment A.

**Section 2.** The Mayor or City Manager is hereby authorized to execute on behalf of the City of Suisun City the License Agreement as amended with Solano Garbage Company.

**Section 3.** The City Manager is hereby authorized to do all things necessary and proper to implement the above-mentioned License Agreement.

**PASSED AND ADOPTED** by the said City Council at a regular meeting thereof held on Tuesday, the 17th day of March, 1998, by the following vote:

AYES: COUNCILMEMBERS: Day, Rundlett, Sanchez, Segala, Spering

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

Witness my hand and the seal of said City this 17th day of March, 1998.

*Sharon Ventura*  
Sharon Ventura, Certified Municipal Clerk

Attachments: Attachment A- The License Agreement for Recycling as amended, including Exhibit A

**EXCLUSIVE  
LICENSE AGREEMENT FOR RECYCLING**

This Exclusive License Agreement for Recycling (the "Agreement" or "License Agreement") is entered into this 17th day of March, 1998, by and between the City of Suisun City, a California municipal corporation (the "CITY"), and Solano Garbage Company, a California corporation (the "LICENSEE") (collectively, the "Parties").

**RECITALS**

WHEREAS, the health, welfare and safety of the residents of the CITY are promoted by the regular and consistent collection and management of Recyclable Materials (as defined herein);

WHEREAS, California Public Resources Code Sections 40000 *et seq.* require the CITY to reduce the Solid Waste stream by substantial amounts by the year 2000, and the segregation and curbside collection of Recyclable Materials is one way for the CITY to partially comply with this requirement;

WHEREAS, the segregation, collection, and re-use of Recyclable Materials is a significant public concern because of the impact on the environment of continuing to dispose of Recyclable Materials;

WHEREAS, the segregation, collection, and re-use of Recyclable Materials will reduce the amount of Solid Waste presently generated, collected and disposed of, and thus reduce storage, collection, transportation, and disposal costs;

WHEREAS, AB 939, the California Integrated Waste Management Act of 1989, mandates that each City prepare a Source Reduction and Recycling Element and a Household Hazardous Waste Element and conduct waste diversion programs to reduce the amount of Solid Waste landfilled by each city;

WHEREAS, the CITY has an on-going obligation to implement and conduct the various waste diversion programs identified in the Elements and continues to incur costs as a result of such activity;

WHEREAS, a city may impose fees to pay for the costs incurred in preparing, adopting and implementing AB 939 diversion programs; and

WHEREAS, by Resolution 91-60, the Suisun City Council established an AB 939 fee on all Solid Waste handling customers in Suisun City to pay for these programs.

NOW, THEREFORE, in consideration of the recitals and mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CITY and LICENSEE hereby agree, stipulate and covenant as follows:

1. EXCLUSIVE AUTHORIZED RECYCLING AGENT: ACCOUNTABILITY TO CITY. CITY hereby designates LICENSEE as its Exclusive Authorized Recycling Agent to collect, transport, sort, cleanse, treat, and reconstitute discarded Recyclable Materials (as defined herein) within the geographic boundaries of the CITY. As Exclusive Authorized Recycling Agent, LICENSEE shall have the exclusive right to collect, transport, sort, cleanse, treat and reconstitute all discarded Recyclable Materials within the geographic boundaries of the CITY, as well as the exclusive right to sell all Recyclable Materials that have been recycled pursuant to this Agreement, except to the extent that the CITY is required by federal or state law to allow other persons to conduct recycling activities within the geographic boundaries of the CITY. Such collection, transportation, sorting, cleansing, treatment, and reconstitution shall be conducted in accordance with the terms of this Agreement and under the CITY's Recyclable Materials Collection Service Program established by Suisun City Code 8.10.040. The Recycling of Recyclable Materials directly affects the public health, welfare and safety. Therefore, LICENSEE shall be accountable to the CITY for its performance of recycling activities under the terms of this Agreement. LICENSEE shall obey all applicable federal, state, and local laws, ordinances and regulations and generally conduct its performance of this Agreement so as to recycle in a safe and efficacious manner.

2. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the following meanings:

- A. "City Manager" shall mean the City Manager of the CITY or his/her authorized designee.
- B. "Commencement Date," as used herein, means the date on which LICENSEE first begins providing Recycling services in conjunction with the new Solid Waste and Yard Waste services to residential customers within the geographic boundaries of the CITY. On the Commencement Date, CONTRACTOR shall send a written notice to CITY identifying the Commencement Date. For purposes of this Agreement, the Commencement Date stated in such notice shall be presumed to be the Commencement Date. If the CITY does not object in writing to the date identified in the notice within five (5) business days of receipt of said notice, the date set forth in said notice shall be conclusively presumed to be the Commencement Date.

- C. For the residential program, "Designated Collection Location" shall mean the curbside of a single or multifamily residence.
- D. "Garbage" includes all putrescible solid and semisolid waste, including, without limitation, all kitchen and table food waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking or handling of food stuffs.
- E. "Hazardous Waste" has the meaning set forth in Section 40141 of the California Public Resources Code as of the date of execution of this Agreement.
- F. "Landfill" means a disposal site employing a method of disposing of solid wastes on land without creating nuisances or hazards to public health or safety, by utilizing principles of engineering to confine the wastes to the smallest practical area, to reduce them to the smallest practical volume, and to cover them with a layer of suitable cover material at specific designated intervals.
- G. "Nonhazardous Solid Waste" includes all those wastes as defined by the State Water Resources Control Board in the California Administrative Code, Title 23, Chapter 3, Subchapter 15, Section 2523 as of the date of execution of this Agreement.
- H. "Recyclable Materials" means any one or more of the following categories of materials collected from within the geographic boundaries of the CITY as they now exist or as those geographic boundaries may hereafter be modified:
  - 1. Bundled or bagged newspapers
  - 2. Metal food and beverage containers
  - 3. Glass
  - 4. Plastic beverage containers and plastic wrapping and packaging materials
  - 5. Aluminum
  - 6. Corrugated cardboard
  - 7. Grocery store paper sacks

This list of Recyclable Materials may be modified, but only by mutual agreement of the CITY and LICENSEE.

- I. "Recycling" means the process of collecting, transporting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Solid Waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products

which meet the quality standards necessary to be used in the marketplace.

- J. "Recycling Receptacles" shall mean those containers provided by LICENSEE in accordance with paragraph 5 of this Agreement.
- K. "Refuse" includes both garbage and rubbish as defined herein.
- L. "Rubbish" includes all non-putrescible solid and semisolid wastes, including, without limitation, ashes, paper, cardboard, tin cans, other packaging, yard waste, wood, glass, bedding, crockery, plastics, rubber by-products and litter.
- M. "Solid Waste Management Facilities," as used herein, includes, without limitation, the Potrero Hills Landfill and the Solano Recycling Facility upon its completion.
- N. "Solid Waste or Wastes" has the meaning set forth in Section 40191 of the California Public Resources Code as of the date of execution of this Agreement.
- O. "Yard Waste" includes Solid Wastes generated from the maintenance of yards, lawns and gardens, such as grass clippings, leaves, and tree and brush trimmings and prunings.

### 3. COLLECTION OF RECYCLABLE MATERIALS

LICENSEE shall operate and manage the collection of Recyclable Materials as follows:

- A. Residential Program. LICENSEE shall collect and remove all Recyclable Materials which are segregated and placed in, or adjacent to, Recycling Receptacles at Designated Collection Locations.
- B. Commercial, Industrial and Institutional Program. With respect to all commercial, industrial and institutional establishments within the geographic boundaries of the CITY, LICENSEE shall collect and remove all Recyclable Materials which have been segregated and placed in Recycling Receptacles at the location where Solid Waste is normally collected from that commercial, industrial or institutional establishment. (For purposes of this Agreement, any customer which is not a "residential" customer, shall be deemed to be a "commercial, industrial or institutional" customer.)
- C. Residential Waste Oil Drop-Off. Upon execution of this Agreement, LICENSEE shall maintain and operate a residential waste motor oil drop-off

location within the Fairfield/Suisun City area. The purpose of this facility shall be to allow the residents of the CITY to dispose of waste motor oil in a lawful manner. The facility shall be staffed adequately to allow use of the facilities Monday through Saturday, a minimum of four hours each day. The facility shall meet all of the required planning approvals of the host jurisdiction(s).

- D. CITY Program. LICENSEE shall provide a sufficient number of Recycling Receptacles to the Suisun City Civic Center and to other CITY buildings, including those which exist on the date this Agreement is executed, and those which may be constructed in the future, to allow Recycling of Recyclable Materials discarded by the employees of these facilities. At a minimum, LICENSEE shall provide one container for each wing in the main building of the Suisun City Civic Center, and one container each for the Police Department, Fire Department, Recreation Center and Senior Center. LICENSEE shall provide additional Recycling Receptacles as the Recycling needs of the aforementioned facilities reasonably warrant. Notwithstanding the foregoing, LICENSEE shall not be required to provide any Recycling Receptacles or to collect Recyclable Materials from any CITY parks, athletic facilities or similar facilities.
- E. Buy-Back Center. LICENSEE shall operate a Buy-back Center conveniently located within its service area during the term of this Agreement for redemption of CRV aluminum, glass and PET containers. Upon redemption of each eight dollars (\$8.00) of Recyclable Materials, residents of the CITY shall receive one coupon which may be submitted to the LICENSEE in lieu of payment of one month's curbside Recycling charge. Each billing residence may only remit one such coupon per billing month (maximum twelve coupons per year).

4. TIME OF COLLECTION. For the residential program, LICENSEE shall collect the Recyclable Materials placed at the Designated Collection Location once each week, regardless of weather conditions. LICENSEE shall inform customers to place the containers out at curbside by 6:00 a.m. on collection day, and empty containers must be removed by the customer out of public view by 8:00 a.m. on the following day. Collection shall be the same day of the week as Solid Waste collection pursuant to LICENSEE's separate Exclusive Solid Waste Handling Franchise Agreement with the CITY. Collection shall continue through holidays, on their regular days, except Thanksgiving, Christmas and New Year's Day. The collections on the above holidays shall be made on the day following the holiday.

For the Commercial, Industrial and Institutional Program (paragraph 3(B) above) and CITY Program (paragraph 3(D) above), LICENSEE shall collect and remove Recyclable Materials as frequently as required to accommodate the amount of Recyclable Materials placed in the Recycling Receptacles and prevent unsightly overflow.

5. RECYCLING RECEPTACLES. LICENSEE shall provide Recycling Receptacles as follows:

- A. Each single-family residence shall be furnished with one Recycling Receptacle.
- B. Each multi-resident complex (as defined in Suisun City Code Section 8.10.010(h)) shall be furnished with a sufficient number of Recycling Receptacles to provide the same capacity for Recyclable Materials per residential unit in the complex as is provided to each single-family residence.
- C. Each commercial, industrial and institutional location shall be furnished with a reasonably sufficient number of Recycling Receptacles to accommodate the amount of Recyclable Materials being discarded at that location.
- D. The CITY shall be furnished with a minimum of seven (7) Recycling Receptacles of a size adequate to meet the standard established by paragraph 3(D) of this Agreement.

LICENSEE shall maintain title to, and ownership of, all Recycling Receptacles provided pursuant to this Agreement. LICENSEE shall replace any and all Recycling Receptacles that are missing and reported to the LICENSEE to be missing with the cost of such replacement being borne fully by the LICENSEE; however, under no circumstance shall LICENSEE be required to provide any customer with more than three (3) Recycling Receptacles at LICENSEE's cost.

6. RECYCLING OF RECYCLABLES.

- A. LICENSEE shall recycle, as defined by Section 8.10.010(j)(k) of the Suisun City Code and Section 40180 of the California Public Resources Code, all Recyclable Materials authorized for collection and Recycling by paragraph 2(H) of this Agreement. With respect to each category of Recyclable Materials identified in paragraph 2(H) above, in the event that the prevailing market price for such recycled material at any time drops to a level so low that the cost of Recycling the Recyclable Material equals or exceeds the prevailing market price for that recycled material, LICENSEE shall provide this information in the quarterly report submitted pursuant to paragraph 11(C) of this Agreement. LICENSEE shall present to the CITY with the submission of said report any reasonably available options for marketing any such unsalable Recyclable Materials, and the CITY, upon consultation with the LICENSEE, may select any reasonably available marketing option presented by LICENSEE for those Recyclable Materials that is in the best interests of the CITY and LICENSEE. In the event no such option is available, CITY shall decide within thirty (30) calendar days of receiving the report whether to authorize LICENSEE to dispose of said Recyclable Materials at a Landfill for a limited

period of time. The CITY shall not unreasonably withhold this authorization, and in making this decision, CITY shall consider the following:

- 1) the expenses incurred by LICENSEE to Recycle such Recyclable Materials;
- 2) the revenues anticipated from the sale of such Recyclable Materials; and
- 3) the progress of the CITY in meeting the Recycling goals described in paragraph 7 of this Agreement.

In the event the CITY authorizes LICENSEE to dispose of such Recyclable Materials at a Landfill, such authorization shall be for a finite period of time, but in no event for less than ninety (90) calendar days. At the end of the finite period of time, LICENSEE shall resume Recycling such types of Recyclable Materials as provided for in this Agreement. In the event CITY reasonably decides not to authorize LICENSEE to dispose of such Recyclable Materials at a Landfill, LICENSEE shall Recycle such Recyclable Materials as provided for in this Agreement. LICENSEE'S breach of this provision shall constitute grounds for termination of this Agreement as provided for in paragraph 16 of this Agreement.

- B. LICENSEE anticipates constructing and operating the Solano Recycling Facility for the purpose of sorting, cleansing, treating, reconstituting and otherwise preparing for market Recyclable Materials. LICENSEE anticipates that this facility will include a sorting line, lifting and transport equipment, and containers in which sorted recyclables may be stored. The Parties agree that once this Solano Recycling Facility commences operation, it shall be the sole service provider for all sorting, cleansing, treatment, reconstitution and other preparation for market of Recyclable Materials conducted pursuant to this Agreement. Further, it is agreed that in making any adjustments to the Recycling charge or any other adjustment affecting the compensation of LICENSEE under this Agreement, to the extent that the Solano Recycling Facility is processing Recyclable Materials collected within the geographic boundaries of the CITY, the CITY shall take into consideration, among other things, any and all costs reasonably incurred and reasonably to be incurred, directly or indirectly, by the LICENSEE for the design, permitting, and construction of the Solano Recycling Facility.

7. RECYCLING GOALS.

- A. The California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000, et seq.) (the "Act"), as it may be amended from time to time, requires the CITY to adopt a source reduction and Recycling element which shall identify how the CITY shall reduce Landfill disposal by source reduction, Recycling, and/or composting. CITY adopted this element in January, 1992. Upon request, CITY agrees to provide LICENSEE with a copy of said element and any amendments thereto, and LICENSEE agrees to comply with the terms of said element and implement the operational part of the Recycling plan contained in that element.
- B. Consistent with the terms of this Agreement, LICENSEE agrees to use its best efforts to meet or exceed the requirement of the Act that fifty percent (50%) of the Solid Waste flow generated within the geographic boundaries of the CITY, or the maximum amount feasible, be diverted from Landfill disposal by the year 2000.
- C. The quarterly report submitted by LICENSEE pursuant to Paragraph 11(C) of this Agreement shall allow the CITY to evaluate the costs of this Recycling program and its effectiveness in meeting the CITY's Recycling goals as outlined in the CITY's source reduction and Recycling element.
- D. The CITY shall cooperate in good faith with the LICENSEE with respect to LICENSEE's efforts to achieve the Recycling goals set forth in this Agreement, including, without limitation, the goals referenced in subparagraph 7(B) above.

8. PROVISION OF EQUIPMENT: MAINTENANCE OF OFFICE.

- A. LICENSEE shall provide and operate at its sole expense the vehicles and any other equipment necessary to fulfill its obligations under this Agreement. These vehicles and equipment shall include, but not be limited to, collection trucks, a loader, lift truck, fork truck, pick-up truck and market delivery truck.
- B. LICENSEE shall maintain an appropriate office and corporate yard for the management and control of the Recycling service. Said office shall be staffed to respond to a telephone maintained on the premises during all regular office hours of the CITY.

9. PUBLIC AWARENESS. LICENSEE and CITY acknowledge and agree that public awareness is needed to elicit high community participation in the CITY's Recycling program.

LICENSEE shall provide, in consultation with the City, an appropriate program for disseminating public information about the Recyclable Materials collection program established under this Agreement. Additionally, LICENSEE agrees to promote the Recycling program through presentations to private and public businesses, schools and community service groups such as the Chamber of Commerce, Kiwanis, Rotary, Lions and Active 20-30. Such expenditures and the associated promotional efforts shall be made equally within the cities in the service area, including the City of Fairfield, California and the CITY. LICENSEE shall submit with the annual report, pursuant to paragraph 11 of this Agreement, a proposal for such promotional expenditures. In each quarterly report thereafter, LICENSEE shall include a description of such promotional expenditures in accordance with the plan which was submitted.

10. ANNUAL ROUTE AUDIT. Annually, on or before February 15 of each year, LICENSEE shall submit to the City Manager the results of route audits for all LICENSEE routes within the geographic boundaries of the CITY completed during the peak-month of Solid Waste collection and the month with the lowest volume of Solid Waste collection in the preceding year. The route audits shall include, at a minimum, the following information:

- A. Number of Single-family dwelling units by route per day;
- B. Number of Multi-residential dwelling units by route per day;
- C. Number of Commercial customers by route per day;
- D. Number of Institutional customers by route per day;
- E. Weight of Recyclable Materials delivered to processing facility by route by day (with weight detail given by specified recycled material to the extent available); and
- F. Such other information as may be reasonably necessary to comply with the CITY's Source Reduction and Recycling Element.

11. FINANCIAL PROVISIONS.

- A. In each year of this Agreement, CITY shall impose a Recycling charge and an AB 939 fee on each single-family residence, each multi-family residential complex, and each commercial, industrial and institutional entity as set forth in subparagraphs 11(A)(1) and 11(A)(2) below. Such Recycling charge shall be billed, collected and retained by LICENSEE for services rendered pursuant to the recycling program. The Recycling charge shall be adjusted annually, on each anniversary of the Commencement Date, as described in Exhibit A to this

Agreement, entitled "Recycling Charge Annual Adjustment Computation," which is attached hereto and incorporated herein as if fully set forth herein.

1. Commencing on the Commencement Date, each tenant, lessee, owner or occupant of a residential unit which receives Solid Waste collection service shall pay a \$2.50 per month Recycling charge (by cash or authorized voucher).
2. Commencing on the Commencement Date, each commercial, industrial and institutional Solid Waste collection customer shall pay a Recycling fee of \$2.50 per cubic yard of service.

All billing for Recycling service shall be made by the LICENSEE. All charges shall become delinquent ninety (90) calendar days after the billing date. If the bill remains unpaid after the billing due date, the LICENSEE shall be entitled to a late charge as approved by resolution by the City Council. LICENSEE shall provide notice of the late charge on the subsequent bill. Any delinquent accounts may be subject to the lien process. If a bill becomes delinquent, LICENSEE may send a notice of delinquency to the owner. The form and content of the delinquency notice sent by the LICENSEE shall be approved by the CITY. The LICENSEE shall simultaneously file with the CITY a formal written notice stating that such delinquency notice has been sent to such recipient and owner and the date upon which notice was sent. Should the bill remain unpaid at the expiration of fifteen (15) calendar days following the delinquency notification, the LICENSEE may assign said bill to the CITY for lien proceedings. Once the bill is assigned to the CITY for lien proceedings, as part of the lien proceedings an administrative fee shall also be assessed. Upon the CITY's receipt of the assignment from the LICENSEE and at the convenience of the CITY (but at least once every six (6) calendar months), the CITY may initiate proceedings complying with Government Code Sections 38790.1 and 25831 to create a lien on the real property to which the Recycling service has been rendered. The lien shall be officially recorded in the County Recorder's office. The lien may carry such additional administrative charges as set forth by City Council resolution. The owner shall be notified by the CITY that the late charges and administrative charges are due the CITY and that such lien has been recorded.

B. BUSINESS TERMS.

LICENSEE shall be compensated for operating the Recycling program as follows:

- (i) LICENSEE shall receive ten percent (10%) of the gross revenue recovered from the sale of Recyclable Materials collected by LICENSEE within the geographic boundaries of the CITY as a part of the Residential Program described in paragraph 3(A) of this Agreement as the "Marketing Incentive Compensation."
  - (ii) LICENSEE's additional compensation (through the Recycling charges) shall be adjusted in accordance with the Recycling Charge Annual Adjustment Computation in Exhibit A to this Agreement.
  - (iii) LICENSEE is required to receive approval by CITY for any expense in addition to the budgeted amounts approved pursuant to Paragraph 11(D) in excess of twenty percent (20%) of any listed expenditure category or cumulative expenses in excess of ten percent (10%) of the amount budgeted in Recycling reserves. CITY's approval shall not be unreasonably withheld. LICENSEE shall request approval from City Manager and City Manager shall respond to such request within five (5) business days.
  - (iv) Any annual operating revenue shortfall shall be submitted in the next year's annual budget for approval by the CITY.
- C. Quarterly Report. Commencing on May 1, 1998, LICENSEE shall provide CITY with a quarterly report which includes an itemization of the following:
- (i) the revenues from the sale of Recyclable Materials by type (e.g. newspaper, cardboard, glass, aluminum, tin and plastic containers);
  - (ii) the weight of Recyclable Materials marketed during the past quarter by type (e.g., newspaper, cardboard, glass, aluminum, tin and plastic containers);
  - (iii) the weight of Recyclable Materials collected from residences and the weight of Recyclable Materials collected from commercial industrial and institutional entities (with weight detail given by specified recyclable material, to the extent available); and
  - (iv) the information required by Paragraph 6(A) of this Agreement.
- D. Each year, on or before the first day of June, LICENSEE shall furnish the City Manager a copy of LICENSEE's annual financial audit report. That report shall be prepared in accordance with generally accepted accounting

practices, by a certified public accountant and shall cover the preceding calendar year.

12. INSURANCE REQUIREMENTS. During the term of this Agreement, LICENSEE shall obtain and maintain in full force and effect at its own cost and expense the following insurance coverage:

A. Such Worker's Compensation insurance as is required under the Worker's Compensation Insurance and Safety Act shall be provided covering employees of LICENSEE in connection with the performance with this Agreement. Such insurance shall relieve CITY from all responsibility to provide any such insurance for any employee of LICENSEE.

B. Automobile liability insurance, including comprehensive form, in an amount of not less than THREE MILLION DOLLARS (\$3,000,000.00) per occurrence and in the aggregate.

C. General liability insurance, including comprehensive form, contractual, personal injury, products/completed operations, and broad form property damage coverage in an amount of not less than THREE MILLION DOLLARS (\$3,000,000.00) per occurrence and in the aggregate.

D. The insurance policy or policies to be provided under subparagraphs (A) and (C) of this paragraph 12, shall identify the CITY, its officers, agents and employees as additional insureds, and the policy or policies shall state that this insurance shall operate as primary insurance. If the coverage limits set forth in this paragraph 12 are not reasonably obtainable at commercially reasonable rates through the insurance markets, the City Manager shall meet and discuss with the LICENSEE its inability to obtain such coverage, and shall, to the extent necessary, temporarily adjust the coverage requirements to conform to industry standards taking into consideration LICENSEE's demonstration that it is responsibly conducting its business and that the coverage limits are not reasonably available at commercially reasonable rates. In no case, however, shall the insurance required in subparagraphs (B) and (C) of this paragraph 12 be any less than ONE MILLION DOLLARS (\$1,000,000.00) during the temporary period when the full coverage limits are not available at commercially reasonable rates.

13. INDEMNIFY AND HOLD HARMLESS. LICENSEE shall indemnify, hold harmless, and assume defense of, in any actions at law or in equity, the CITY, its officers, employees, agents, and elective and appointive boards from any liability for property damage and/or bodily injury (including death) arising from the operations of LICENSEE or its agents under this Agreement; but LICENSEE shall have no obligation to indemnify or defend the CITY with respect to liabilities resulting from the CITY's own acts or omissions, nor shall

LICENSEE have any obligation to indemnify the CITY for any award of punitive damages entered against the CITY.

Acceptance of insurance certificates required under this Agreement does not relieve LICENSEE from liability under this indemnification and hold harmless clause. This indemnity and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

It is agreed and acknowledged that this paragraph shall not apply to any action at law or in equity arising out of or otherwise relating to any contractual or regulatory dispute involving the CITY and LICENSEE, except to the extent such dispute has arisen in connection with an accident involving property damage or bodily injury.

14. INDEPENDENT CONTRACTOR. LICENSEE shall be considered as, and shall be, an independent contractor in performing its duties under this Agreement, and shall act under its own directions as to the manner of performing its work.

15. TERM. This Agreement shall become effective at such time as both LICENSEE and CITY have signed this Agreement, and shall remain in effect, unless terminated in accordance with the termination provisions of this Agreement, until and including December 31, 2008. The term of this Agreement may be extended for an additional ten-year period, until December 31, 2018, at the option of LICENSEE. To exercise this option, on or before December 31, 2007, LICENSEE shall provide written notice to the CITY of LICENSEE'S intention to exercise such option. Provision of such notice alone shall be sufficient to exercise this option. CITY shall acknowledge receipt of such notice in writing within thirty (30) calendar days of receipt thereof. The Parties hereto mutually agree that this Agreement may be revised at any time, but only upon the mutual agreement of the Parties.

16. CITY RIGHT TO AMEND CODE; LICENSEE RIGHT TO TERMINATE. It is understood that this Agreement shall not prevent the CITY from amending the Suisun City Code, or from adopting any lawful amendments, rules and regulations concerning the collection and disposal of Solid Waste within the CITY which are desirable from the standpoint of public health, safety, or welfare, and that such amendments, rules, and regulations from time-to-time may include, among other things, changes in the rates to be charged pursuant to said Code. If any such change in the law has a substantial adverse effect upon the operations of the LICENSEE, then at the sole and exclusive option of the LICENSEE, within six (6) months after such change becomes effective, and upon one (1) month's written notice to the CITY, the LICENSEE may terminate this Agreement; provided further, that in no event shall LICENSEE be entitled to any monetary damages resulting solely from the amendment of the Suisun City Code. It is understood and agreed, however, that no amendment of the City Code or other promulgation, enactment or issuance by the CITY of rules or regulations relating to Solid Waste shall impair the exclusive rights of the LICENSEE hereunder.

17. TERMINATION.

- A. TERMINATION FOR SUBSTANTIAL CESSATION OF OPERATIONS. In the event of any substantial cessation of collection of Recyclable Materials required by this Agreement for a period of two (2) collection days or more, then, at the sole and exclusive option of the City Manager of CITY, upon presentation to the LICENSEE of a written demand for performance and 48-hours advance written notice to LICENSEE of the CITY's intended action, the CITY may take whatever reasonable action within the scope of its police powers it deems necessary to protect the public health, safety, or welfare, and the LICENSEE shall not be entitled to any monetary damages resulting from such reasonable action.

In the event such substantial cessation of collection of Recyclable Materials required by this Agreement exceeds ten (10) collection days, then, at the option of the Suisun City Council, after presentation to the LICENSEE of a written demand for performance and 72-hours advance written notice of the CITY's intention to terminate this Agreement, all rights of the LICENSEE hereunder (except those expressly stated to survive termination of this Agreement) and this Agreement may be terminated, and the LICENSEE shall not be entitled to any monetary damages resulting from any such termination. This right of termination may not be exercised when such cessation is due to war, insurrection, riots, floods, earthquakes, fires, acts of God, acts of a public enemy, epidemics, quarantine restrictions, events referenced in paragraph 18 of this Agreement, or other events that are beyond the reasonable control of the LICENSEE.

- B. LICENSEE DEFAULT; LICENSE TERMINATION. In the event that the LICENSEE defaults in the payment of any monies owing hereunder, or in the performance of any of the other material provisions of this Agreement (other than a substantial cessation of operations as provided for in paragraph 17(A) of this Agreement), then the CITY may give the LICENSEE written notice of such default and such notice shall be deemed given if delivered to the LICENSEE at the LICENSEE's office as provided herein. If the LICENSEE has not cured such default within ten (10) calendar days after such notice is delivered to LICENSEE, then, at the option of CITY and without further notice or demand, all rights of the LICENSEE hereunder (except those expressly stated to survive termination of this Agreement) shall immediately cease and terminate. Also, if such default is of a recurring nature and the LICENSEE suffers, or permits a similar default to recur within one (1) year after said notice is given, then at the option of the CITY and, upon 48-hours written notice to LICENSEE, all rights of LICENSEE hereunder (except those

expressly stated to survive termination of this Agreement) shall immediately cease and terminate.

- C. TERMINATION: EFFECT ON LICENSEE OBLIGATIONS. It is understood and agreed that termination of this Agreement by the CITY, if accomplished in conformity with paragraph 17(A) or 17(B) of this Agreement, shall not affect any obligations of the LICENSEE to pay sums then owing to the CITY under this Agreement, either on account of monthly payments herein provided for or otherwise. It is also understood and agreed that termination of this Agreement by the LICENSEE shall not affect any obligations of the CITY or LICENSEE's customers within the CITY to pay any sums then owing to the LICENSEE.
- D. TERMINATION BY CITY; OPTION OF CONTINUATION OF SERVICE. Upon any termination of this Agreement by the CITY in conformity with the provisions of this Agreement, the CITY shall have the right to require the LICENSEE to continue its performance under this Agreement for a period of up to sixty (60) calendar days, and LICENSEE shall be paid for such services during that period of continued service at the rates in effect immediately preceding the termination, unless a proposed rate increase was pending at the time of termination. In that event, if the proposed rate increase is justified, that justified proposed rate submitted in the rate application shall be applied to determine LICENSEE's compensation during the period of continued service; it being further understood and agreed that the continuation of such services by the LICENSEE after a termination of this Agreement by the CITY for the aforesaid period of sixty (60) calendar days does not in any way waive the termination of this Agreement.
- E. CITY OPTION TO TERMINATE IF VIOLATION OF PLAN OR MANDATE. CITY shall have the option of terminating this Agreement should any regional, state, or federal agency action determine or define that this Agreement is in violation of any regional, state, or federal plan or legal mandate for Solid Waste management, such as any plan or legal mandate required by AB 939, the California Integrated Waste Management Act of 1989 and any amendments thereto. Said option to terminate shall be exercised only if LICENSEE is unwilling or unable to consent to appropriate amendments of this Agreement that would bring it into compliance with any such plan or legal mandate within a reasonable time. Should the CITY at any time determine that any such violation exists, the CITY shall promptly notify the LICENSEE in writing of its determination, providing specific information concerning the violation(s) at issue and specific proposals for any amendment(s) of this Agreement that the CITY believes would bring this Agreement into compliance. To the extent it is lawful to do so, the CITY shall allow

LICENSEE a reasonable time to respond to said notice and proposals and to negotiate with the CITY concerning such proposals; and, it is agreed that for this purpose a reasonable time would be not less than one (1) calendar year. Both the CITY and the LICENSEE agree to negotiate in good faith in an attempt to agree upon reasonable amendments that would bring this Agreement into compliance and agree to do all things reasonably necessary to facilitate and document any such amendments. Should the LICENSEE and the CITY be unable to come to an agreement upon reasonable amendments that would bring this Agreement into compliance, the LICENSEE shall have the option of treating the alleged lack of compliance as the equivalent of an amendment of the City Code which has a substantial adverse effect upon the operations of the LICENSEE and shall have all such rights relating to termination as are provided in paragraph 16 of this Agreement. If either party chooses to challenge the propriety or lawfulness of such agency action by any lawful means, the other party shall provide such lawful and reasonable cooperation as is reasonably necessary to allow such legal challenge to proceed; however, all costs, fees and expenses incurred in challenging the agency action shall be borne solely by the party undertaking said challenge.

- F. If this Agreement is terminated pursuant to this paragraph 17, the termination date may be made to coincide with the operative date of any subsequent Agreement for curbside Recycling, but in no event shall the specified termination date exceed sixty (60) calendar days from the date of the initial notice of termination. Termination of this Agreement by the CITY shall in no way impair or affect LICENSEE's exclusive Solid Waste handling rights and duties pursuant to the Exclusive Solid Waste Handling Franchise Agreement with Solano Garbage Company dated March 17, 1998, as authorized by Resolution 98-12, or any other then-existing contractual relationship between LICENSEE and the CITY.

18. YEAR 2000 PROBLEMS. The Parties are aware that there is a possibility that because of the change in year designations from numbers commencing with "19" to numbers commencing with "20" that shall take place in connection with the date change from 1999 A.D. to 2000 A.D., certain computer software, microprocessors and other instrumentalities may experience problems arising from an inability to recognize year designations beyond 1999 or to perform certain calculations, recordations or other operations involving dates beyond 1999. Such problems could potentially affect various systems and devices that the Parties shall be utilizing in their performance under this Agreement, or create other problems that could affect the Parties' abilities to perform their respective obligations under this Agreement. The Parties agree and acknowledge that neither has specialized expertise in this area and that, in their performance under this Agreement, they both must rely upon systems and devices supplied by third parties. The Parties agree that should any such problems arise in the course of this Agreement, they shall cooperate to minimize any damage or loss of any

kind caused by such problems. Among other things, the Parties agree to cooperate to reconstitute and/or confirm the accuracy and completeness of any billing, accounting or service records relating in any way to the services provided under this Agreement that have been lost or otherwise adversely affected by such a problem. The Parties also agree that any failure of timely performance that appears to have been caused by any such problem shall not constitute a breach of this Agreement giving rise to a right to terminate this Agreement, unless the party failing to perform for this reason also fails to take reasonable and timely action to remedy the problem once it has arisen and become manifest. To the extent that either of the Parties is damaged or suffers any loss relating to this Agreement as a result of such a problem, the Parties agree to cooperate to obtain compensation from any third party or parties who may be liable to either of the Parties for having caused such damage or loss, and to obtain any insurance benefits that may be available to either of the Parties for any such damage or loss.

19. CONTRACT EXTENSIONS OR RENEWALS. At least one (1) year before the anticipated expiration of this Agreement, the parties shall consult concerning the possibility of extending the duration of this Agreement (or otherwise renewing it) or entering into a new agreement concerning Recycling. In the course of such consultation, the CITY shall provide LICENSEE with information concerning any changes to this Agreement that would be desired by the CITY if the Agreement were to be extended or renewed. LICENSEE shall respond to such information, advising the CITY of the extent to which it would be agreeable to such changes and of any changes to the contractual relationship that the LICENSEE believes would be desirable.

20. TRANSITION TO NEXT LICENSEE. In the event LICENSEE is not awarded a license to continue to provide Recycling services or if this Agreement is terminated, then LICENSEE shall cooperate as reasonably necessary with CITY and any subsequent licensee to insure a smooth transition.

21. NOTICES. All notices to LICENSEE to be given hereunder shall be deemed delivered upon deposit, with proper postage prepaid, in the U.S. Mail to:

Solano Garbage Co., Inc.  
P.O. Box B  
2901 Industrial Court  
Fairfield, CA 94533

and

Philip A. O'Connell, Jr.  
Sonnenschein Nath & Rosenthal  
685 Market Street  
Suite 600  
San Francisco, CA 94105

Notice to the CITY to be given hereunder shall be deemed delivered upon deposit, with proper postage prepaid, in the U.S. Mail to:

City Manager  
City of Suisun City  
701 Civic Center Blvd.  
Suisun City, CA 94585

With respect to any notice that may be provided less than ten (10) business days in advance of any action or event referred to in this Agreement, in addition to providing written notice by U.S. Mail as described above, the party providing notice shall also provide such written notice by facsimile or hand delivery in a manner reasonably calculated to bring the notice to the prompt attention of the management of the other party.

22. ASSIGNMENT. The LICENSEE shall not assign or transfer this contract, or its rights, duties and obligations hereunder, or any portion thereof, unless the written consent of the City Manager is first obtained. Notwithstanding the foregoing, the CITY shall not unreasonably withhold its consent to any proposed assignment or transfer.

23. NO ORAL MODIFICATION. This Agreement may not be altered, amended, or modified in any respect, except by a writing duly executed by the Parties.

24. CALIFORNIA LAW APPLIES. CITY and LICENSEE understand and agree that this Agreement shall be construed under and interpreted in accordance with the laws of the State of California applicable to contracts between California domiciliaries which are to be performed wholly within the State of California.

25. HEADINGS. The headings in this Agreement are descriptive only, and do not constitute any portion of the terms of this Agreement.

26. OTHER NECESSARY ACTIONS. Each party hereby agrees to take such other action and to execute such further documentation as may be required to effectuate any of the agreements provided herein, or to carry out the obligations expressed herein, including without limitation, executing any documents reasonably necessary for such purpose.

27. SEVERABILITY. In the event that one or more of the provisions herein shall for any reason be held to be illegal or unenforceable, this Agreement shall be revised only to the extent necessary to make such provision(s) legal and enforceable; provided, however, that this Agreement as revised is consistent with the Parties' original intent.

28. SUPERSESION. This Agreement shall supersede that certain License Agreement For Recycling dated June 25, 1991, including all amendments thereto.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year indicated below.

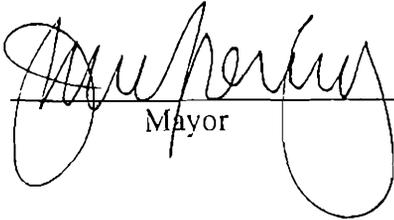
Dated: March 17, 1998

Dated: March \_\_, 1998

CITY OF SUISUN CITY  
a Municipal Corporation

SOLANO GARBAGE COMPANY.  
a California Corporation

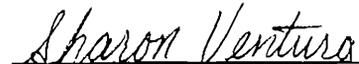
By:

  
\_\_\_\_\_  
Mayor

By:

  
\_\_\_\_\_  
"LICENSEE"

ATTEST:

  
\_\_\_\_\_  
City Clerk

*Attachments: Exhibit A: Recycling Charge Annual Adjustment Computation*

4130824 12F

## EXHIBIT A

### RECYCLING CHARGE ANNUAL ADJUSTMENT COMPUTATION

On the anniversary of the Commencement Date, Solano Garbage Company shall submit to the Director of Finance of the City of Suisun City the new monthly recycling charge adjusted by the following computations, in order:

- (1) Compute the percentage change in the San Francisco-Oakland Metropolitan Area Consumer Price Index for All Urban Consumers (CPI-U) for the preceding year for the most current published month from the anniversary date. (Consistently use the same month thereafter.)
- (2) Add 2% to this adjustment factor computed in subdivision (1) above.
- (3) Adjust the rate previously established according to this section by the adjustment factor calculated pursuant to subdivision (1) as further adjusted pursuant to subdivision (2), the rate to be rounded off to the nearest \$.05.

Rate increases in accordance with this formula shall be implemented effective on the anniversary of the Commencement Date in 1999, 2000, 2001, 2002 and 2003. With respect to annual rate adjustments that are to occur on each anniversary of the Commencement Date during the remaining term of this Agreement, commencing on the anniversary of the Commencement Date in 2004, such annual rate adjustments shall be made by making the same computations set forth above, but the two percent (2%) added in subdivision (2) above shall no longer be added with adjustments on the anniversaries of the Commencement Date in 2004, 2005, 2006, 2007, and 2008.

Subject to the requirements of paragraph 11 of the License Agreement, all sales of recycled materials under the License Agreement shall inure to the benefit of the recycling program. After review of the annual audit, both parties may open rate adjustment discussions if a significant change in revenue increases or decreases would affect the recycling rate.

Throughout the term of this Agreement, all fees and charges being collected by LICENSEE relating to governmental costs (e.g. AB939 fee) shall be adjusted separately based on the governmental costs at issue. It is understood and agreed that the LICENSEE is acting as an agent to ensure collection and payment of such fees and charges, and any changes in such fees and charges are not intended to alter the compensation to be received by LICENSEE for any services LICENSEE provides pursuant to this Agreement.

At the commencement of service pursuant to this Agreement, the City AB939 Fee to be charged by CONTRACTOR for residential recycling service provided within the geographic boundaries of the CITY shall be as follows:

\$0.25 per month