

1171

AGREEMENT

THIS AGREEMENT is made and entered into this 10th day of April, 1990, by and between the CITY OF SAN MARCOS, a municipal corporation ("City") and MASHBURN SANITATION COMPANY ("Contractor").

1. RECITALS: This Agreement is predicated upon the following facts:

1.1 Intent of Parties: The parties desire to enter into this Agreement to provide for an exclusive right to collect, process and/or dispose of garbage, rubbish, other refuse materials and recyclables within the City.

1.2 Code Authorization: City is authorized, pursuant to San Marcos Municipal Code Sections 8.68.250 and 8.68.270, to enter into agreements for the removal, transportation, processing and/or disposal of refuse and recyclables within the City with those persons deemed best qualified to perform such service.

2. DEFINITIONS: In this Agreement, unless the context requires otherwise:

2.1 Combustible Rubbish: means paper, rags, discarded household bedding, packing materials, cartons, boxes, containers, grass, plants, shrubs, trees, vines and the prunings thereof, shavings, sawdust, chips, lumber scraps or other articles from lumberyards, mills or factories and other articles which will burn upon contact with flames of ordinary temperature. Combustible rubbish shall not include those materials listed under "Construction and Demolition Debris", below.

2.2 Construction and Demolition Debris: means dirt, sweepings, bricks, mortar, plaster and other building and construction materials, whether combustible or noncombustible, resulting from the repair, remodeling, demolition or construction of buildings or other structures.

2.3 Garbage: includes, but is not limited to, every accumulation of animal, vegetable, fruit or other biodegradable materials:

1. resulting from the preparation, selling, serving or consumption of edible foodstuffs, including the cans, containers or wrappers wasted along with such materials; or
2. resulting from the dealing in, handling, processing, storage or decay of meats, fish, fowl, fruits, vegetables or grains; or
3. the excrement, carcasses or residue of animals, fish or fowl; or
4. other industrial commercial or domestic organic solid wastes.

2.4 Householder: means a person owning, renting or otherwise holding or occupying a place used for residential purposes.

2.5 Material: means any and all types of recyclables, garbage and debris as defined herein.

2.6 Miscellaneous and Bulky Debris: means all garbage, rubbish and other discarded materials not otherwise provided for in the foregoing or following definitions including appliances, furniture, large auto parts, trees, branches, stumps, or amounts of garbage or rubbish collected at each collection in excess of the maximum amounts permitted by Section 6.2 hereof, and other wastes the size, weight, or volume of which precludes or complicates their handling by normal collection methods.

2.7 Noncombustible Rubbish: means, among other things ashes, bottles, broken glass, crockery, earthenware, metal cans, metalware, wire products, other articles of discarded metal or stone of less than twenty (20) pounds in weight each, automobile tires, inner tubes, batteries and metal kegs, barrels or casks.

Noncombustible rubbish shall not include those materials listed under "Construction and Demolition Debris", above.

2.8 Recyclables: means any material having an economic value in the secondary materials market.

2.9 Refuse: means any and all types of rubbish, garbage and other debris as defined herein.

3. GENERAL PROVISIONS:

3.1 Duration of Agreement: The term of this Agreement shall be five (5) years, commencing upon the date of its execution.

3.2 Annual Performance Review: City shall annually conduct a contract year-end review to evaluate the level and quality of Contractor's service in general, and determine compliance, by Contractor, with the specific terms of this Agreement. Said review shall be conducted administratively and the findings thereof shall be transmitted to Contractor in writing.

3.3 Options to Extend Agreement: City shall, at its sole discretion, have the option to extend this Agreement, in increments of one (1) year each, beyond the initial term specified in Section 3.1 hereof. Such extension shall be granted only upon the successful conclusion of the year-end review specified in Section 3.1, pursuant to a written finding by City that Contractor has, throughout the preceding year:

1. maintained a satisfactorily high quality/level of service and responsiveness to community needs; and
2. complied in full with the terms of this Agreement.

All such extensions shall be effected as administrative amendments to this Agreement not requiring action by the San Marcos City Council. The parties agree that it is the intent of this Section to afford the possibility of a continuous five (5) year contract term providing greater financial certainty to Contractor in exchange for exemplary performance.

3.4 Amendment of Agreement: This Agreement may be amended from time-to-time in the same manner as its approval by resolution of the San Marcos City Council and execution by the parties hereto. The term "Agreement" herein shall include any such amendment properly approved and executed.

3.5 Cancellation of Agreement: Should the Contractor fail or refuse to comply with the conditions of this Agreement and the Contractor has been given written notice of non-compliance by the City Manager and the Contractor has further been given Ninety (90) days to correct such deficiencies, the City Council may, at its option and after a hearing, of which said Contractor shall have ten (10) days written notice, terminate the contract and let the contract to another person deemed more capable of carrying out its terms.

3.6 Hold Harmless: Contractor agrees to and shall hold City, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury, including death and claims for property damage which may arise from the direct or indirect operations of Contractor or those of its subcontractors, agents, employees or other persons acting on its behalf which relate to this Agreement. Contractor agrees to and shall defend City and its officers, agents, employees and representatives from actions for damages caused or alleged to have been caused by reason of Property Owner's activities in connection with this Agreement.

Contractor further agrees to indemnify, hold harmless, pay all costs and provide a defense for City in any action by a third party challenging the validity of this Agreement.

3.7 Insurance Coverage: Contractor shall, at its own expense, carry comprehensive general liability insurance in an amount of not less than one million dollars (\$1,000,000) per occurrence and excess liability coverage in an amount not less than five million dollars (\$5,000,000).

Said policies shall, at a minimum, be continued for a period of five (5) years following the termination of this Agreement and any extensions thereof. Contractor shall cause to have the City named as an additional insured by endorsement under said policies, and evidence thereof, approved by the City Manager, shall be placed on file with the City Clerk. Contractor shall further carry Workman's Compensation Insurance in accordance with California State law and shall deposit a copy of such coverage with the City Clerk.

3.8 Assignment or Transfer of Rights: No assignment or transfer of any right conferred by this Agreement shall be made in whole or in part by the Contractor without the express written consent of the City. Should any assignment or transfer be authorized by the City, the assignee shall assume the liability and such other obligations of the Contractor as may be related to the service performed.

3.9 Effect on Previous Agreements: This Agreement constitutes the entire understanding and agreement of the parties and supersedes all negotiation or previous agreements between the parties with respect to all or any part of the subject matter hereof.

4. SOLE AND EXCLUSIVE FRANCHISE:

Contractor shall have the sole and exclusive right and franchise, in accordance with the terms and conditions of this Agreement, to pick up, gather and remove garbage, rubbish, construction/demolition debris and other refuse materials, including recyclables, within the corporate limits of the City as the same now exist or may exist, which is generated by residences and businesses, for the full term of this Agreement. City agrees not to let any contract to, or enter into any contract with any other person, firm, or organization for the performance of the services required to be performed by contractor, except, that in the event Contractor fails, refuses or neglects for any reason, to collect and dispose of garbage, rubbish and miscellaneous debris set out or placed for

collection, as provided herein, at the time and in the manner herein required, the City may collect and dispose of the same or cause the same to be collected and disposed of, and contractor shall be liable for the reasonable expense incurred. This right of the City shall be cumulative, and in addition to any and all other remedies it may have in the event of such failure, refusal or neglect of the Contractor. The exclusive right and franchise referred to herein shall not extend to those activities and/or materials specified in San Marcos Municipal Code Section 12.11 (1) through (6).

5. OBLIGATIONS OF CONTRACTOR:

5.1 In General: For the consideration herein mentioned, Contractor undertakes and agrees in accordance with the terms and conditions herein contained, to furnish the necessary labor, vehicles and equipment to collect, transport and dispose of all garbage, combustible and non-combustible rubbish, and miscellaneous debris, as herein defined, from within the corporate limits of the City as the same now exist or may exist during the term hereof.

5.2 Frequency and Scheduling of Collection: All refuse created, produced or accumulated in or about a residential unit or place of business shall be collected and disposed of by Contractor at least once each week. The City Manager may, at his/her discretion, or upon recommendation of the County Health Officer, require more frequent pick-ups should the nature of a particular business so require. The Contractor shall arrange collection routes so that pick-ups will be made on the same day of each succeeding week, with the following exception: no collection will occur on Thanksgiving, Christmas and New Year's Days, contingent upon advance notice to all those affected, in a manner satisfactory to the City Manager.

5.3 Special Pickup Service: In addition to the regularly scheduled monthly service, contractor shall, upon request from a householder provide a special pick-up service to collect and dispose of accumulated rubbish,

other than that covered by the normally scheduled monthly service. Charges for such special service shall be in addition to those levied for regular monthly service.

5.4 Refuse Collection - Spillage and Cleanup: The Contractor shall exercise all reasonable care and diligence in collecting refuse to prevent spilling, scattering or dropping of refuse, and shall at the time of occurrence clean up any spillage.

5.5 Refuse Disposal: The Contractor shall dispose of collected refuse, at Contractor's expense, at a County authorized solid waste facility in a manner satisfactory to the City and in accord with all state and local laws and regulations.

5.6 Collection from Public Parks and Government Buildings: The Contractor shall without charge, collect refuse from City controlled public parks, playgrounds and City government buildings from the receptacles in which the same is confined, on a service frequency and day(s) of collection to be determined by the City Manager.

5.7 Contractor Participation in Special Clean-Up Activities: The Contractor shall participate with the City in any annual clean-up activity upon request of the City Manager as may be necessary to supplement the City's available manpower and equipment resources, and shall otherwise cooperate with the City Manager in resolving special disposal-related problems.

5.8 Compliance With Motor Vehicle Code: The Contractor's trucks and other mobile equipment shall comply with applicable provisions of the California Vehicle Code, all other applicable California codes, and all provisions of Chapter 12 of the San Marcos Municipal Code.

5.9 Compliance With Local And California Laws And Regulations: The Contractor shall operate in such a manner as to comply with all applicable

local and state laws and regulations pertaining to the collection, storage, transportation and disposal of refuse. The Contractor shall also comply with all other ordinances and regulations of the City and applicable laws and regulations of the County of San Diego and State of California, and shall obtain and keep in force all required permits and business licenses.

5.10 Service Required in Event of Nonpayment: In the event of nonpayment for collection service rendered to any person, the Contractor shall continue to provide such service, subject to reimbursement as provided in Section 12.41 (e) of the San Marcos Municipal Code. This requirement shall not apply to special pick-up services.

5.11 Handling/Replacement/Repair of Refuse Containers: Contractor shall use reasonable care in the handling of all privately owned garbage and rubbish containers. In the event of damage or destruction of any such container, by reason of negligence or carelessness on the part of contractor or its employees, said contractor, upon demand, shall repair or replace said container or containers or shall pay to the owner or owners thereof the reasonable amount of such damage. All containers, after emptying, shall be set down adjacent to the premises from which removed and the lid or cover shall be placed adjacent to said container.

5.12 Customer Service Requirements: Contractor shall provide and maintain toll free telephone service between 8:00 a.m. to 5:00 p.m. on regular collection days, except Saturday, when the hours shall be 8:00 a.m. to 4:00 p.m. (Sundays and legal holidays excepted). Contractor shall promptly respond to all calls and act upon all reasonable requests and complaints pertaining to the collection of garbage, rubbish, and miscellaneous debris.

5.13 Recycling Services: Contractor shall provide curbside recycling services for City residents, collecting such materials as are mutually agreed upon by Contractor and City. Contractor shall be responsible for

locating resale markets and transportation of recyclable materials to said markets.

Contractor further agrees to study the feasibility and subsequent implementation of recycling programs for multi-family residential dwellings, commercial establishments, yard waste or other recycling programs as may be identified by the City and/or contractor and mutually agreed between the two parties.

5.14 Payments to City: In consideration of the granting of the exclusive franchise to Contractor as herein provided, Contractor agrees to pay to the City of San Marcos, during the term of this Agreement, the following sum. A sum equivalent to five (5) percent of gross monies collected pursuant to this Agreement within the corporate limits of the City, provided, however, Contractor shall pay to the City a minimum of \$100.00 (one hundred dollars) per annum. The aforementioned sum shall be paid quarterly, by the tenth of the month following the quarterly billing. Monies collected through the recycling surcharge for the recycling program shall be exempt from franchise fees until such time as the recycling program becomes profitable. Contractor shall further provide the City within thirty (30) days after the end of the calendar year a verified statement showing the gross monies collected for services for both refuse collection and recycling programs within the corporate limits of the City. City shall have reasonable rights to inspect Contractor's books of account at reasonable times and hours at Contractor's place of business. Contractor shall further provide the City within three (3) months after the end of the calendar year a verified statement showing the gross monies collected for services within the corporate limits of the City. City shall have the right to inspect Contractor's books of account at reasonable times and hours.

5.15 Service Charges: Contractor agrees, during the term of this Agreement to abide by the schedule of charges for regular, continuous collection service, special pickup services and recycling services established by resolution of the City Council, as such schedule may be amended from time to time in accordance with Sections 5.16 and 5.17 hereof.

5.16 Consumer Price Index Adjustments: The parties hereto recognize that due to conditions generally prevailing, general rises in the cost of living are reasonably foreseeable and it is therefore agreed that the schedule of charges as established pursuant to Section 5.15 of this Agreement shall be subject to an adjustment either up or down, as follows:

1. For the purpose of such adjustment the "index" referred to shall mean the most recent Consumer's Price Index for the San Diego area, as prepared and released by the United States Department of Labor, Bureau of Labor Statistics. The average index for the twelve (12) months prior to the date of this Agreement shall be accepted as the base index.
2. If, during the term of this Agreement, the cost of living as determined by said index shall increase or decrease, the Contractor may adjust the schedule of charges as set forth in Section 5.15 hereof in accordance with the following method:

In order to effect such adjustment, the percentage by which such index, so determined, exceeds or is less than the base index shall be determined, and the schedule of charges to be paid thereafter shall be established by applying the percentage of increase or decrease to the service rates in effect at the time the adjustment is calculated.

3. Adjustments for each subsequent increase or decrease of the index shall be computed in like manner.
4. The schedule of charges shall not be subject to adjustment until there has been a cumulative increase or decrease of seven (7) points or more from the base index, or from the index for the month for which the prior increase or decrease in the schedule of charges was adjusted.

5. If neither party shall, within 30 days after said index is available for the month for which an adjustment in the schedule of charges would be in order, make demand in writing for the determination of the adjustment for the following period, the schedule of charges shall continue at the same prices as for the preceding month. Failure to make such demand at any time by either party shall not prejudice the right of such party to an adjustment upon proper demand at the subsequent time.

5.17 Disposal Fee Offset Adjustment: Nothing herein shall be construed as preventing Contractor from seeking an adjustment in rates as compensation for increased operating costs associated with an increase in disposal site tipping fees charged to them. Such request for adjustment may be considered by the City Council in addition to those allowances for adjustment specified in Section 5.16 hereof.

5.18 Billing and Special Assessments: Contractor shall bill all accounts direct for services rendered and shall be eligible for reimbursement from City in the event of non-payment after written notice has been provided to the account holder in accord with Section 8.68.410 of the San Marcos Municipal Code. To recover its costs, the City shall initiate proceedings to make delinquent collection service fees and charge a special assessment against the properties involved, in the manner specified in Municipal Code Section 8.68.420.

5.19 Recycling Services: Contractor shall provide curbside recycling services for City residents on a non-profit basis until such time as the recycling program becomes profitable. At that time, the City and Contractor shall negotiate the distribution of any profits. The cost of the recycling program shall include the cost of collecting, processing and marketing recyclable materials, and all reasonable on-going promotional costs. All on-going promotional costs shall be presumed reasonable unless the City makes a specific request for an unusually expensive publicity campaign. In the event of such a request, the City and Contractor shall meet to determine the amounts to be paid by each party. The cost of the

recycling program shall not include costs for the Program Manager, Operations Supervisor, or other management or administrative expenses, such as clerical costs, or officers or directors salaries, expenses or overhead. Contractor further agrees to assume all pilot program costs and all one-time only promotional costs associated with expansion of the curbside recycling program.

Contractor further agrees to absorb the costs related to the pilot curbside recycling program and any promotional expenses resulting from the expansion of curbside recycling program.

Until such time as the recycling program becomes profitable, City and Contractor shall establish low end, or "floor" values for the resale of all recyclable materials collected. Contractor shall pay the City an amount equivalent to the net resale value, minus the "floor" price, times the volume collected. For the purposes of this agreement, the net resale value shall be the actual resale value minus transportation costs. If the resale value falls below the "floor" price, City and Contractor shall re-negotiate the distribution of revenues.

If outside funds are obtained or become available to reduce the recycling program costs, the program costs shall be reduced accordingly and the City shall be credited with the value thereof.

In the event the Contractor utilized its processing facility for programs other than the curbside recycling programs for San Marcos, Vista and Escondido, the City shall receive a reduction in the San Marcos curbside program expenses directly related to the reduction in the overall percentage of the facility used to process recyclables from San Marcos.

6. DUTIES OF OCCUPANT

6.1 Refuse Containers - Type and Construction: It shall be the duty of all occupants to provide containers for the accumulation and disposal of garbage and other refuse as follows:

1. Residential occupancies: containers used for the accumulation or disposal of garbage shall be water tight, of suitable strength and durability, tight seamed and provided with handles and a tight fitting lid or cover which shall remain affixed to the container. Noncombustible and similar refuse other than garbage shall be deposited in containers of suitable strength and durability, including plastic bags when securely sealed against spillage. Paper bags and cardboard containers shall not be used for the accumulation of refuse of any kind set out for regular collection.
2. Business occupancies and residential occupancies involving use of common receptacles: all containers used for the accumulation or disposal of garbage and other refuse shall be:
 - a. Approved by the Contractor as being of suitable strength and durability and compatible with collection techniques employed; and
 - b. Approved by the San Marcos Fire Protection District as providing adequate protection against fire hazard; and
 - c. Lined with a material suitable to prevent leakage of contents.

6.2 Volume/Weight Limitations on Refuse and Refuse Containers Placed for Collection: The following volume/weight restrictions shall apply to refuse and refuse containers placed by occupant for collection by the Contractor:

1. Residential Occupancies:
 - a. Volume and weight of refuse generated from within a residential unit: no limit
 - b. Volume of refuse generated outside a residential unit: one (1) cubic yard

- c. Maximum total weight of refuse generated outside a residential unit: two-hundred (200) pounds
- d. Maximum loaded weight of individual containers: fifty (50) pounds
- e. Maximum volume of individual containers: forty (40) gallons

- 2. Business Occupancies and Residential Occupancies Involving Use of Common Receptacles: refuse set out, and containers used by all such occupancies shall conform to the maximum volume/weight limitations established by the Contractor.

6.3 Placement of Containers for Collection: It shall be the duty of all occupants to set out containers for the collection of garbage, combustible and noncombustible rubbish, and/or other refuse as follows:

- 1. Location:

Residential occupancies: all refuse containers shall be placed at the curb on the nearest public street fronting the premises occupied by the person depositing the same, there to be collected by the Contractor; provided that the Contractor may designate some other location for the placement of containers when such placement will expedite collection.

Business occupancies: all refuse containers shall be placed within a permanently constructed trash enclosure, when available on premises. Should such enclosure not exist, the contractor shall designate some other freely accessible location to expedite collection; provided that placement of containers at such alternative location shall not result in a hindrance to vehicle movement nor constitute a visual nuisance.

- 2. Restrictions on Time of Placement: It shall be unlawful to place or permit to remain any refuse containers on the

curbings, parkways or sidewalks of any public street before 6:00 p.m. on the day prior to collection, or after 6:00 p.m. on the day of collection, after materials have been removed or collected.

3. Generally: All occupants shall maintain supervision and surveillance over refuse containers on their premises and shall maintain the same in a sanitary manner. Should containers be placed for collection as required above and not be emptied on the date scheduled by the Contractor, the occupant should immediately notify the Contractor, whose duty it shall be to arrange for the collection and disposal of such refuse forthwith.

IN WITNESS WHEREOF, the parties hereto have set their hands on the day and year first hereinabove written.

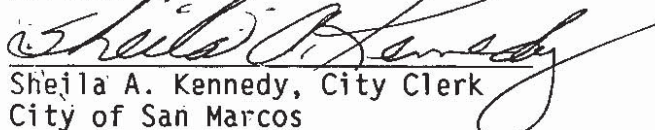
SOLID WASTES SERVICES INC.
DBA MASHBURN SANITATION

By

CITY OF SAN MARCOS

By

ATTEST:


Sheila A. Kennedy, City Clerk
City of San Marcos

APPROVED AS TO FORM:


Daniel S. Hentschke, City Attorney
City of San Marcos

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