

ORDINANCE NO. 2460

AN ORDINANCE OF THE CITY OF CHULA VISTA GRANTING TO BAY CITIES SERVICES, INC., ITS SUCCESSORS AND ASSIGNS, A FRANCHISE TO COLLECT AND DISPOSE OF REFUSE FROM CHULA VISTA ELEMENTARY SCHOOL FACILITIES AND TO USE THE PUBLIC STREETS AND PLACES WITHIN THE CITY OF CHULA VISTA FOR SAID PURPOSE.

The City Council of the City of Chula Vista does ordain as follows:

SECTION I. Definitions.

Whenever in this ordinance the words or phrases hereinafter in this section defined are used, they shall have the respective meaning assigned to them in the following definitions (unless in the given instance, the context wherein they are used shall clearly import a different meaning):

- (a) "Grantee" shall mean the Bay Cities Services, Inc. and its lawful successors or assigns.
- (b) "City" shall mean the City of Chula Vista, a municipal corporation of the State of California in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form
- (c) "Streets" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said city, including state highways now or hereafter established within said city.
- (d) "Gross Receipts" shall mean all gross operating revenues received by Grantee from the collection and disposal of refuse within the City of Chula Vista pursuant to its contract with Chula Vista Elementary School District for collection and disposal of refuse of District facilities only.

SECTION II. Purpose.

The franchise to collect and dispose of refuse from Chula Vista Elementary School District facilities within the City of Chula Vista and to use for such purposes the public streets, ways and places within said City is hereby granted to Bay Cities Services, Inc., its successors and assigns.

SECTION III. Term.

Said franchise shall be for the term of three (3) years from and after June 1, 1991 or the term of Grantee's contract with Chula Vista Elementary School District, or until the state or some municipal or public corporation duly authorized by law shall purchase by voluntary agreement all property actually

used and useful in the exercise of said franchise, or until said franchise shall be forfeited for noncompliance with its terms as provided herein, whichever is shorter. During such term Grantee shall have the exclusive right to collect and dispose of all refuse created, accumulated or produced at Chula Vista Elementary School District facilities within the City of Chula Vista.

To the extent that this franchise is terminated according to the provisions hereof sooner than the time within which Grantee may otherwise be entitled by law to notice of termination, Grantee hereby waives any right to said notice or any claim to damages for failure to receive said notice. In the event that said waiver may be found to be invalid by a court of law, notice to Grantee is hereby given that this franchise is terminated on April 30, 1994, or at the end of such later period of time as the law may require notice to be given as measured from the effective date of this Ordinance.

SECTION IV. Consideration.

The Grantee of said franchise shall during the term thereof pay to the City 7 percent (7%) of the gross annual receipts of said Grantee. City is authorized to increase said fee up to a maximum amount of ten percent (10%). Beginning April 1, 1992, the franchise fee shall be increased by one-half percent (1/2%) and one-half percent (1/2%) each year thereafter until it reaches the maximum of ten percent (10%).

SECTION V. Reports, Dates of Payment and City Audit.

The Grantee shall file with the Director of Finance of said City on a monthly basis commencing on June 1, 1991, and monthly thereafter, a duly verified statement showing in detail the total gross receipts of such Grantee during the preceding month or fractional month from the collection and disposal of refuse within said City. Grantee shall pay to said City within fifteen (15) days after the time of filing of such statement, in lawful money of the United States, the aforesaid percentage of its gross receipts for such month, or such fractional month, covered by such statement. Any neglect, omission or refusal by Grantee to file such verified statement or to pay such percentage at the time and in the manner specified shall be grounds for the declaration of a forfeiture of this franchise and all rights of Grantee hereunder. Attorneys fees shall be awarded to the prevailing party in any litigation brought to enforce any provision of this section.

SECTION VI. Compliance with Laws.

Grantee shall comply with all laws and regulations of the State of California and the City of Chula Vista. Further, Chapter 8.24 of the Chula Vista Municipal Code is expressly made a part of this franchise and incorporated it herein by reference as if set forth in full. Grantee and City agree to be bound by all applicable provisions of such ordinance, or any amendments thereto, or

other ordinances that might affect the collection or disposal of refuse in the City. It is understood that said ordinances are intended to be minimum standards and that higher standards and regulations may be required under the franchise.

SECTION VII. Obligations of Grantee.

Grantee undertakes and agrees, for the consideration hereinafter mentioned, to furnish: all labor, equipment, and vehicles (including adequate equipment and vehicles in a standby capacity to provide the service herein required in the event of a breakdown of equipment); insurance and bonds necessary to insure the efficient and timely picking up, collecting, removing and disposing of refuse; and to collect, pick up, remove and dispose of, all refuse which is generated or accumulated by or upon all property of Chula Vista Elementary School District within the City during the time that this franchise is in effect, except as herein otherwise provided and subject to and in accordance with the terms and provisions hereof.

The collection and removal of said refuse by Grantee shall be, at all times during the term of this franchise performed to the satisfaction of the City Manager or his delegate who shall have the right to issue orders, directions and instructions to Grantee from time to time with respect to the collection, transportation, and removal of refuse, the performance of Grantee's services hereunder, and the Grantee's compliance with the provisions of the ordinances of the City of Chula Vista as they now exist or may from time to time be amended, and Grantee agrees to comply therewith. Such collection and removal of refuse shall be done in a prompt, thorough, lawful and workmanlike manner.

Grantee shall provide collection vehicles and equipment in amounts adequate to perform in accordance with its contract with Chula Vista Elementary School District. Collection vehicles, containers, and other contractor furnished equipment must comply with the standards set forth in the Chula Vista Municipal Code.

All refuse collected by Grantee shall become the property of Grantee immediately upon the collection thereof, and shall be forthwith removed and transported by Grantee to an approved place of disposal, which shall be provided, arranged for or furnished by Grantee.

In the event, Grantee fails, refuses, or neglects to collect and dispose of refuse set out or placed for collection at the time and in the manner herein required, City may collect and dispose of the same or cause the same to be collected and disposed of and Grantee shall be liable for all expenses incurred in connection therewith. Such remedy of 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 Grantee. The collection and disposal of refuse by City or by

others as aforesaid shall not be deemed an election of remedies which shall preclude City from availing itself of additional remedies for Grantee's breach of contract.

SECTION VIII. Rates for Collection.

City and Grantee mutually agree that the rates to be paid by Chula Vista Elementary School District shall be those established by the competitively bid contract awarded to Grantee by said District.

SECTION IX. Insurance.

Grantee agrees, at Grantee's own expense, to carry comprehensive public liability and automobile liability insurance coverage during the full term of this franchise, with City also named as an additional insured thereunder, covering liability for bodily injuries, death and property damage, arising out of or in connection with the operations of Grantee, under this franchise in an amount not less than \$1,000,000 for injuries including death to any one person and in an amount not less than \$5,000,000 for any one accident or occurrence, and property damage in an amount not less than \$200,000. Grantee further agrees to carry, at Grantee's own expense, workers' compensation insurance in accordance with the laws of the State of California. All of said insurance policies, or certificates thereof, shall be deposited by Grantee with the City Manager together with endorsements or statements from the insuring companies providing that such policies will not be subject to cancellation, modification or reduction of the limits of the policy until ninety (90) days after written notice to the City by registered or certified mail. Such policies shall guarantee payment of any final judgment rendered against Grantee or the City within the coverage provided, irrespective of the financial condition of, or any acts or omissions of, said Grantee. All of said policies shall be subject to the approval of the City Attorney.

In the event of the termination or cancellation of the insurance required hereunder or the failure of Grantee to provide such other insurance as hereinabove provided, prior to the effective date of such cancellation or termination, this franchise may be suspended or terminated forthwith by City, by written notice thereof to Grantee. Any such suspension shall be for such period or periods as the City Manager from time to time may determine. No liability or obligation shall be incurred by City in favor of Grantee by virtue of any such

notice or notices or from any such suspension or termination. In the event of such suspension or termination by City upon the failure of Grantee to secure and maintain on file said insurance during the full term of this franchise, Grantee shall be liable for any and all damages suffered by City arising out of such suspension or termination.

SECTION X. Hold Harmless.

Grantee of the franchise granted hereby shall indemnify, save and hold harmless, City and any officers and employees thereof against and from all damages, judgments, decrees, costs and expenditures which City, or such officer or employee, may suffer, or which may be recovered from, or obtainable against City, or such officers or employee, for, or by reason of, or growing out of or resulting from the exercising by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee or its servants or agents in exercising the franchise granted hereby, and Grantee shall defend any suit that may be instituted against City, or any officer or employee thereof, by reason of or growing out of or resulting from the exercise by Grantee of any or all of the rights or privileges granted hereby, or by reason of any act or acts of Grantee, or its servants or agents, in exercising the franchise granted hereby.

SECTION XI. Possessory Interest Tax.

To the extent that anything herein contained may require Grantee to pay a possessory interest tax, the obligation to pay and to provide sufficient resources to pay said tax shall be solely the obligation of Grantee, and Grantee shall hold the City harmless with regard thereto.

SECTION XII. Obligations of City.

Grantee hereby expressly acknowledges the authority of the City to exclusively franchise solid waste removal and disposition for all refuse generated on all other land uses within the City, including but not limited to residential, commercial, and industrial, other than that covered by this agreement.

SECTION XIII. Miscellaneous.

The failure of either party at any time to require performance by the other of a provision hereof, shall in no way affect the right of such party entitled to performance to enforce the same thereafter. Nor shall the waiver of either party of any breach of any provisions hereof be construed to be a waiver of such provisions or of any succeeding breach thereof.

Any notice that may be given to Grantee under or with respect of this franchise shall be deemed to have been given when delivered to Grantee or to an officer of Grantee, personally or when sent to Grantee by registered or certified mail, postage prepaid, addressed to Grantee at:

Bay Cities Services, Inc.
P.O. Box 13707
San Diego, CA 92170

City reserves the right to determine, in the exercise of its powers to provide for the public health and welfare, whether technological or other changes materially affect the necessity of or level of the service provided for hereunder, and, in such case, the level of service hereunder shall be adjusted by City, and this franchise shall be reviewed and revised accordingly.

SECTION XIV. Forfeiture.

This franchise is granted upon each and every condition herein contained, and shall ever be strictly construed against Grantee. Nothing shall pass by the franchise granted hereby to Grantee unless it be granted in plain and unambiguous terms. Each of said conditions is a material and essential condition to the granting of the franchise. If Grantee shall fail, neglect or refuse to comply with any of the conditions of the franchise granted hereby, and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Manager for compliance therewith, then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and franchise granted in and by this ordinance, and all the rights, privileges and the franchise of Grantee granted hereby shall thereupon be at an end. Thereupon and immediately, Grantee shall surrender all rights and privileges in and to the franchise granted hereby. No provision herein made for the purpose of securing the enforcement of the terms and conditions of the franchise granted hereby shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

SECTION XV. Authority for Grant.

Notwithstanding any other provision herein contained, this franchise is granted solely and exclusively under Sections 1200, 1201, 1202, 1203, 1204, 1205 and 1206 of Article XII of the Charter of the City of Chula Vista and no other authority.

SECTION XVI. Effective Date.

This ordinance shall become effective thirty days after its final passage unless suspended by a referendum petition filed as provided by law.

SECTION XVII. Operative Date.

The operative date of this ordinance shall be June 27, 1991.

SECTION XVIII. Publication Costs.

The Grantee of said franchise shall pay to the City a sum of money sufficient to reimburse it for all publication expenses incurred by it in

connection with the granting thereof; such payment to be made within thirty (30) days after the City shall have furnished such Grantee with a written statement of such expense.

SECTION XIX. Written Acceptance.

Notwithstanding the aforereferenced effective date, the franchise granted hereby shall not become effective until written acceptance thereof shall have been filed by the Grantee with the City Clerk.

SECTION XX. Publication.

The City Clerk shall cause this ordinance to be published once within fifteen (15) days after its passage in the Chula Vista Star News, a newspaper of general circulation published and circulated in said City.

Presented by and Approved as to form by

Bruce M. Boogaard
City Attorney