

FRANCHISE AGREEMENT
FOR
SOLID WASTE, RECYCLING AND
GREEN WASTE SERVICES

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**FRANCHISE AGREEMENT
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This **FRANCHISE AGREEMENT FOR SOLID WASTE, RECYCLING AND GREEN WASTE SERVICES** (this "Agreement") is made and entered into this first day of January, 2010 (the "Effective Date"), by and between the **TOWN OF SAN ANSELMO**, a municipal corporation, ("Town"), and **MARIN SANITARY SERVICE**, a California corporation, ("Company"). Town and Company may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

The following Recitals are a substantive part of this Agreement.

A. It is in the best interest of the public health, safety and welfare of the residents of the Town and it is necessary for the protection of public health, safety, and welfare, and property within said Town that Solid Waste, Recyclable Material and Green Waste collection, processing and disposal services be rendered to all business and residential properties within the Town.

B. The Parties entered into the Franchise Agreement for Solid Waste, Recycling, and Green Waste Services dated effective on February 1, 2004 (the "Original Agreement"), for a term of five (5) years and pursuant to which the Company currently renders Solid Waste, Recycling Material and Green Waste collection, processing and disposal services to businesses and residents in the Town.

C. The Parties entered into the First Amendment to the Original Agreement and thereby extended the term of the Original Agreement to December 31, 2009.

D. The Parties have been in ongoing discussions and negotiations regarding an expansion and/or modification of the services currently provided by Company and desire to enter into this Agreement to supersede and replace the Original Agreement and to clarify the services to be provided by Company under this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Definitions.** For the purpose of this Agreement, the following definitions will apply, unless the context hereof requires a different meaning:

A. "Green Waste" means a subset of organic Recyclable Materials, consisting of grass cuttings, weeds, leaves, prunings, branches, dead plants, brush,

tree trimmings, dead trees (not more than six (6) inches in diameter), and similar materials generated at residential and commercial properties within the Town, separated and set out for collection, processing and recycling. Green Waste does not include materials such as, but not limited to, palm fronds, brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil and wood or wood products. Diseased plants and trees are also excluded from Green Waste.

B. "Recycling" means the process of collection, sorting, cleansing, treating and/or reconstituting and selling Recyclable Materials which would otherwise be discarded and returning them to the economy in the form of raw materials for new, reused, repaired, refabricated, remanufactured or reconstituted products. The collection, transportation or disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

C. "Recyclable Materials" means separated residential, commercial or industrial by-products of some potential economic value, set aside, handled, packaged, or offered for collection in a manner different from refuse. Recyclable Materials include but are not limited to: newspaper, chipboard, corrugated cardboard, mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, craft bags and craft paper, paperboard, egg cartons, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, cereal and other similar food boxes), glass containers (including brown, clear, and green glass bottles and jars), aluminum (including beverage containers, foil, and food containers), steel or tin cans, small scrap metal, plastic containers #1 through #7 (Pete and HDPE), household batteries, and any other materials mutually agreed to by the Parties.

D. "Solid Waste" shall have the meaning set forth in California Public Resources Code Section 40191, as that section may be amended from time to time.

2. **Grant of Franchise, Terms.** Company shall have the exclusive right and privilege to collect all Solid Waste, Recyclable Materials and Green Waste within the territorial limits of the Town, for a period of ten (10) years commencing on the Effective Date and expiring at midnight on December 31, 2019 (the "Term").

Notwithstanding the exclusive grant of franchise, customers may:

A. Donate or sell Recyclable Materials to any party of their choice;

B. Have materials and/or debris removed from a premises and disposed of by a construction company, landscape company, gardening company or individual as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that company;

C. Contract for outside debris box services provided to customers for collection of construction and demolition debris or on a temporary basis.

3. **Meet and Confer.** The Town and Company agree to meet and consider appropriate revisions to this Agreement, on an “as-needed” basis, to reflect changes in law and regulation, including statutory recycling standards, technology, and/or local needs. In the event the parties agree that changes in applicable law require amendments to the Agreement, notwithstanding any other provision of this Agreement, the Company and Town agree to amend this Agreement to set forth any agreement to incorporate such changes herein in a timely manner.

4. **Scope of Services.** Company shall collect all Solid Waste, Recyclable Materials and Green Waste within the territorial limits of the Town during the Term in accordance with all applicable regulations, including without limitation applicable provisions of the Town Code, and in accordance with the Description of Services set forth in Exhibit A.

5. **Hours of Collection/Change in Collection.** Company shall limit collection to 6:00 am to 6:00 pm except in commercial areas and/or in selected residential areas between 700 and 1500 Sir Francis Drake Boulevard, Bridge Street, and the parking area of Creek Park where Company shall limit collection to 5:00 am and 6:00 pm. Town reserves the sole right to change the hours of collection. Town Manager may allow Company to begin collection in other areas of Town at 5:00 am for safety reasons; provided, however, that Town Manager may in his/her sole and absolute discretion submit such a request to the Town Council for consideration.

Company shall notify all affected residential customers at least fourteen (14) calendar days prior to any change in their scheduled Solid Waste, Recyclables and/or Green Waste collection. Company shall not permit any residential customer to go more than seven (7) days without service (with the exception of approved Intensive Recyclers). Company shall notify all commercial customers at least five (5) calendar days prior to any change in service. Except by prior arrangement with the commercial customer, no change in service shall temporarily reduce the weekly frequency of collection.

6. **Rate Setting and Rates.** The parties intend to create a rate structure which will provide reasonable compensation, including a reasonable profit, to Company from the services rendered within the Town, and the Parties intend at all times to maintain a rate structure, which upon review, will continue to provide reasonable compensation to Company. In this regard, the Parties agree that a review and any increase or decrease of said rate or charges, in the future, shall be based upon a rate setting methodology as set forth in Exhibit B. Exhibit C sets forth the current schedule of rates for services which may be amended by the Town Council from time to time in accordance with the rate setting methodology set forth in Exhibit B. Neither the Town nor any of its officers, employees, or appointive or elective officials shall be liable or in any way responsible for the payment of said charges to Company for performing said service to customers.

7. **Equipment.** The Company shall utilize modern semi-automated equipment, clean, painted, and in a state of good repair with the Company's name and telephone number clearly visible from the outside of the vehicle or equipment.

8. **Town Waste.** Company agrees to pick up and remove all Solid Waste, Recyclable Materials and Green Waste resulting from official operations and functions of Town, including all Town parks, and public trash containers in the public right-of-way, provided such Solid Waste, Recyclable Materials and Green Waste is deposited in containers furnished by Town.

This Agreement to provide the above service to the Town includes all waste materials except, in the event of an emergency, removal of a large volume of refuse, hazardous waste or dredging materials. In such an event, Town agrees to meet with Company to agree upon adequate compensation to Company.

9. **Insurance.** At all times during the term of this Agreement, Company will carry insurance meeting the following requirements:

A. Types of Insurance and Levels of Coverage:

1) Liability Insurance. Comprehensive general and automobile liability insurance which shall include, but not be limited to, protection against claims arising from any act or occurrence arising out of Company's operations in the performance of this Agreement, including without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$10,000,000.

The following endorsements must be attached to the policy:

a) If the insurance policy covers an "accident" basis, it must be changed to "occurrence."

b) The policy must cover personal injury as well as bodily injury.

c) Blanket contractual liability must be provided and the policy must contain a cross liability or severability of interest endorsement.

2) Workers Compensation Insurance. In accordance with the provisions of Section 3700 of the Labor Code, Company shall be required to be insured for workers' compensation or to undertake self-insurance. Company agrees to comply with such provision before commencing the performance of the work of this Agreement.

3) Unemployment and State Disability Insurance. During the term of this Agreement, Company shall provide unemployment and state disability insurance as required by the laws of the State of California.

4) Pollution and/or Environmental Impairment Liability and/or Errors and Omissions. \$1,000,000 each occurrence/\$1,000,000 policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Such coverage shall, if commercially available, without involvement of the Town, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants.

B. The following requirements apply to all insurance to be provided by the Company:

1) The Town, it's elected and appointed officials, officers, employees, volunteers and agents shall be named as additional insured under the policies, and the policies shall provide that the insurance will operate as primary insurance and that no other insurance maintained by the Town will be called upon to contribute to a loss hereunder.

2) A copy of each insurance policy (except Worker's Compensation) shall be furnished to the Town. A certificate of insurance shall be provided before commencement of this Agreement. Subsequent certificates of insurance shall be provided at least ten (10) days before the expiration of current policies.

3) Certificates and policies shall state that the policies shall not be cancelled or reduced in coverage or changed in any other material aspect unless thirty (30) days prior written notice is provided to Town.

4) Approval of the insurance by Town shall not relieve the Company from nor decrease the extent to which the Company may be held responsible for payment of damages resulting from Company's services or operations pursuant to this Agreement.

5) The policies shall include a waiver of subrogation against the Town.

C. If Company fails or refuses to procure or maintain the insurance required by this paragraph or fails or refuses to furnish Town with required proof that insurance has been procured and is in force and paid for, Town shall have the right, at Town's election, to terminate this Agreement in accordance with the provisions herein. If insurance coverage for certain items shall become unavailable on an industry basis, termination of this Agreement as above provided shall not apply. The parties shall meet and mutually agree upon appropriate revisions or amendments to such coverage requirements.

10. **Surety/Performance Security.** Company shall provide Town with ten (10) days after execution of this Agreement, cash or a surety bond in the amount of three hundred thousand dollars (\$300,000) provided by a Surety Company with a Best rating of "A" or better and licenses to do business in the State of California, conditioned upon the full faithful performance of all provisions of this Agreement and any extensions or amendments thereto. Said surety bond must be approved by Town prior to performance of any work under this Agreement. A certificate of deposit or an irrevocable letter of credit for the required amount from a bank acceptable to Town may be provided in lieu of said surety bond.

A. Subject to the notice and hearing procedures set forth herein, if Town determines that Company has substantially failed to keep and perform any provisions of this Agreement or any extension or amendment thereto, Town may require Surety to perform or may resort to any certificate of deposit or irrevocable letter of credit received in lieu of a bond. In that event, Town shall notify the Surety of Company's failure to perform any provision, as well as the amount of time necessary for performance as determined by Town. If the Surety fails to perform, Town may perform and assess the Surety on its bond for all costs associated with such performance. The costs of performance may include all labor, equipment, insurance, and any and all other reasonably necessary resources as determined by Town to perform the work required under this Agreement.

B. Notwithstanding any other provision of this Agreement, Town shall annually review the adequacy of the amount of the surety bond and Town shall notify Company in writing of any changes to the required bond amount not later than thirty (30) days after the completion of said review. Company shall renew said surety bond as necessary and file it with Town at least thirty (30) days prior to the expiration of the bond; provided, however, that Company shall not be required to increase or decrease the amount of the bond prior to six (6) months following any such bond adjustment required pursuant to this paragraph.

11. **Indemnification.** Company shall indemnify, defend with counsel acceptable to the Town, and hold harmless (to the full extent permitted by law) the Town and its Town Council, elected and appointed officials, officers, employees, volunteers, and agents (collectively, "Indemnitees") from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation) (collectively, "Damages") of every nature arising out of or in connection with Company's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the Town.

Company's duty to defend and indemnify herein shall include Damages arising from or attributable to any operations, repairs, clean-up or detoxification, or other

plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous waste collected in the Town.

Notwithstanding the foregoing, Company shall not be required to indemnify the Town for costs for any claims arising from the disposal of Solid Waste at the designated disposal location, including, but not limited to, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless such claim is a direct result of Company's actions or negligence. The foregoing is intended to operate to defend and indemnify and hold harmless Indemnitees to the full extent permitted for liability pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364.

In addition, Company's duty to defend and indemnify herein includes, without limitation:

A. All fines and/or penalties imposed by the California Integrated Waste Management Board, subject to the restrictions set forth in Public Resources Code Section 40059.1, if the requirements of the Act are not met by the Company with respect to the waste stream collected under this Agreement, and such failure is (i) due to the failure of Company to meet its obligations under this Agreement, or (ii) due to Company delays in providing information that prevents Company or Town from submitting reports required by the Act in a timely manner; and

B. Damages from the Town setting rates for service under this Agreement or in connection with the application of Article XIIC and Article XIID of the California Constitution (Proposition 218) to the imposition, payment, or collection of rates and fees for services provided by Company under this Agreement; and

C. Damages arising from or related to the Town's request to remove or reassign any employee. This provision will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by Town to contribution or indemnity from third-parties.

12. Periodic Reports. Company shall furnish the Town Manager with reports as may be reasonably required, not to exceed a quarterly basis, which shall include any reasonably required information, including any information requested to demonstrate the Company's compliance with regulations and guidelines as set by the California Integrated Waste Management Authority.

13. Breach and Termination

A. Events of Default

1) Definition. Each of the following shall constitute an Event of Default by Company ("Event of Default") hereunder:

a) Material Breach. Failure to perform any obligation under this Agreement which (i) constitutes a significant hazard to the public health safety or welfare or (ii) would impose civil or criminal liability on the Town.

b) Repeated Pattern of Breaches. - A pattern of breaches over time such that in combination, they constitute a significant failure by Company to perform its obligations hereunder.

c) Misrepresentation or False Warranty. Any representation, disclosure, assurance, or warranty made to Town by Company in connection with, or as an inducement to entering into or performing this Agreement or any future amendment to this Agreement, or that is a condition to the effectiveness of the Agreement, that proves to be false or misleading in any material respect as of the time the representation, disclosure, assurance, or warranty.

d) Seizure or Attachment of Equipment. There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession - of, the operating equipment of Company, including without limitation its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Company's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and holidays.

e) Contractor Debt. Company files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of, or taking of possession by, a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Company or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of Company or a part of Company's operating assets or any substantial part of Company's property, or shall make any general assignment for the benefit of Company's creditors, or shall become insolvent and unable to pay its debts generally as they become due.

f) Court Order or Decree. Any court having jurisdiction - enters a decree or order for relief in respect of Company, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Company shall consent to or shall fail to oppose any such proceeding, or any such court shall enter a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator (or similar official) of Company or for any part of Company's operating equipment or assets, or order the winding up or liquidation of the affairs of Company.

g) Failure to Provide Performance Assurances. Company fails to provide reasonable assurances of performance as required under Article 10.

h) Failure to Notify Town. Company fails to notify Town in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, Green Waste collection,

transportation, processing or disposal activities that might materially affect Company's ability to perform all of the services hereunder.

i) Lapse of Financial Requirement. Lapse of any insurance, letter of credit, bond or other financial instrument required under this Agreement.

j) Regulatory Violation. Company violates in any material respect any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the franchise and this Agreement shall be deemed to have occurred.

k) Cessation of Services. Company ceases to provide the services required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Company. In the event of a labor dispute, strike or slow down the period shall be seven (7) consecutive days.

l) Failure to Meet Payment or Reporting Requirements. Company fails to make any payment of any sum owed to Town required under this Agreement and/or refuses to provide Town with required information, reports, and/or records in a timely manner as provided for in the Agreement.

m) Unremedied Acts or Omissions. Any act or omission relative to this Agreement by Company which violates in any material respect the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

n) Criminal Activity of Company. Should Company or any of its officers or directors be "found guilty" of criminal conduct relating to its obligations hereunder, or other criminal conduct at any of Company's operations. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers or directors are guilty, and any admission of guilt by Company, or any of Company's officers or directors including, but not limited to, the pleas of "guilty," "nolo contendere," "no contest," or "guilty to a lesser crime" entered as part of any plea bargain. Such criminal conduct includes, but is not limited to: (i) price fixing, (ii) illegal transport or disposal of hazardous or toxic materials, (iii) bribery of public officials, (iv) fraud or tampering, or (v) other such conduct which involves moral turpitude. In the event of criminal conduct Town reserves the right to exercise one or more of the remedies specified below in Section 13D. Such action shall be taken after Company has been given notice and an opportunity to present evidence in mitigation.

o) Assignment. Company assigns this Agreement in violation of this Agreement.

2) Notice of Default. Company shall be in default from the date of receipt of a notice from Town identifying such default. The notice shall include a brief written description of the default. Company may review (and copy at its own expense) all information in the possession of Town relating to the Event(s) of Default. Company may, within three (3) Working Days after receiving the notice, request a meeting with Town Representative. Company may present evidence in writing and through testimony of its employees and others relevant to the Event(s) of Default. The decision of Town Representative regarding determination of an Event(s) of Default shall be final.

3) Cure of Default. Company shall begin cure of any event of default as soon as it becomes aware of the event of default, whether discovered by contractor or through notice from town. upon receiving notice of default, Company shall proceed to cure such breach as follows:

a) Immediately, if the default is such that in the sole determination of Town, the health, welfare or safety of the public is endangered thereby; or

b) Within ten (10) Working Days of receiving notice of default; provided that if the nature of the default is such that it will reasonably require more than ten (10) days to cure, Company shall have such additional time as is reasonably needed to expeditiously complete a cure, upon written agreement with Town will not unreasonably withhold it's consent in connection with any request from Company to extend time to complete cure of default. During any default cure period, Company shall provide Town weekly written status of progress in curing such default.

B. Town Determination of Cure of Breach or Default. An Event of breach or default shall be considered remedied and/or cured upon signature by both Parties of a written agreement specifying the event and stating that remedy and/or cure of such event has been completed.

C. Town's Right to Perform

1) General. In addition to any and all other legal or equitable remedies, in the event that Company, for any reason whatsoever, fails, refuses or is unable to provide any service hereunder for a period of more than seventy-two (72) hours, and if, as a result thereof, should Solid Waste accumulate in Town to such an extent, in such a manner, or for such a time that Town should find that such accumulation endangers or menaces the public health, safety or welfare, then Town shall have the right, but not the obligation, without payment to Company upon twenty-four (24) hours prior notice to Company during the period of such emergency as determined by Town: (i) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Company.

Notice of Company's failure, refusal or neglect to provide services hereunder may be given email or other form of written communication to Contractor and shall be effective immediately.

Company further agrees that in such event:

a) It will fully cooperate with Town to effect the transfer of possession of equipment to Town for Town's use.

b) It will, if Town so requests, and to the extent feasible, keep in good repair and condition all of such equipment, provide all motor vehicles with fuel, oil and other service, and provide such other service, and provide such other service as may be necessary to maintain said property in operational condition.

c) Company shall provide all scheduling, routing and billing information to the Town. Town shall determine how to bill, in what amounts, and the distribution of amounts received.

Town's exercise of its rights under this Article 13: (i) does not constitute a taking of private property for which compensation must be paid; (ii) will not create any contract, tort, or common count liability on the part of Town to Company; and (iii) does not exempt Contractor from the indemnity provisions of Article 11, which are meant to extend to circumstances arising under this Section, provided that Company is not required to indemnify Town against claims and damages arising from the active negligence or willful misconduct of Town officers, employees, agents, or volunteers acting under this section.

2) Duration of Town's Possession. Town has no obligation to maintain possession of Company's property and/or continue its use in providing any services for any period of time and may, at any time, in its sole discretion, relinquish possession to Company. Town's right to retain temporary possession of Company's property, and to provide one or more services, shall continue until Company can demonstrate to Town's satisfaction that it is ready, willing, and able to resume such services.

D. Town's Remedies for Contractor Default. Upon Company's failure to cure a default pursuant to Article 13 C, Town shall have the following rights:

- 1) **Waive Default.** To, at its sole discretion, waive the Company default.
- 2) **Termination.** Terminate the Agreement in accordance with Article 13 F.
- 3) **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article 13 and any other remedies at law and in equity, to which Town shall be entitled, according to proof.

- 4) Damages Survive. If Company owes any damages upon Town's termination of the Agreement, Company's liability under this Article 13 shall survive termination.

In the event Town does not exercise its right to terminate, Town shall have the right to: (i) seek performance by the surety under the performance bond, and (ii) make a claim on any insurance policy or policies.

E. Town Waiver of Breach or Default. A waiver by Town of any breach or default by Company shall not be deemed to be waiver of any other breach or default by Company, including ones with respect to the same obligations hereunder, and including new incidents of the same breach or default. The subsequent acceptance by Town of any damages or other money paid by Company hereunder shall not be deemed to be a waiver by Town of any preexisting or concurrent breach or default by Company.

F. Termination

1) Termination for Cause. Town shall have the unilateral right to terminate this Agreement for any of the reasons specified below. Company shall forfeit its performance bond to Town to the extent required to compensate Town for damages incurred as a result of -an uncured default. Termination may occur upon:

- a) Uncured Default. An uncured Event of Default by Company.
- b) Failure to Maintain SB 1016 Diversion Goal. Repeated or continued failure to maintain statutory diversion goal required pursuant to the California Integrated Waste Management Act, Public Resources Code Section 40000 *et seq.* as it currently exists or may hereinafter be amended.

2) Notice of Termination. Town shall have the right to terminate this agreement in the circumstances specified above, upon giving at least thirty (30) days advance written notice to Company, and providing Company with an opportunity to be heard and to correct any claimed default or failure to perform cited by Town. The decision as to whether or not Company has failed to perform or there exists a default under any of the provisions described herein shall be solely that of the San Anselmo Town Council. Such decision shall be based upon substantial evidence.

G. Possession of Property Upon Termination. In the event of termination for default, agrees to continue to provide services under the provisions of this Agreement. Company will continue to be entitled to compensation for these services at the then current Rates. Such services will be provided until the Town can make other suitable arrangements for the provision of services, which may include the award of an agreement to another contractor. Company will provide these services for up to 90-days from the date of termination or until the Town requests Company to cease providing such services, whichever is later. Company shall furnish Town with immediate access to all of its business records related to its route maps, schedules, and billing of accounts for services.

H. **Town's Remedies Cumulative.** All remedies provided for in this Agreement shall be in addition to any and all other legal and equitable rights and remedies which Town may have under law or as otherwise provided in this Agreement. By virtue of the nature of this Agreement, the urgency of timely, continuous and high-quality service, the lead time required to effect alternative service, and the rights granted by Town to Company, the remedy of damages for a default hereof by Company is inadequate, and Town may be entitled to injunctive/equitable relief.

I. **Excuse from Performance.**

1) Excuse from Performance. The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, moderate to severe earthquakes, tsunamis, other "acts of God," war, civil insurrection, riots, and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder. Labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by Company's employees or directed at Company, or a subcontractor, is not an excuse from performance, and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events. In the case of labor unrest or job action directed at a third party over whom Company has no control, the inability of Company to make collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Company's employees while making collections or to make reasonable accommodations with respect to container placement and point of delivery, time of collection, or other operating circumstances to minimize any confrontation with pickets or the number of persons necessary to make collections, shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in making collection at different times and in different locations.

2) Inexcuse from Performance. None of the following are to be considered an excuse from performance: (i) general economic conditions, interest or inflation rates, or currency fluctuation or changes in the cost or availability of fuel, commodities, supplies or equipment; (ii) changes in transport or disposal costs, disposal facility locations, and/or other related circumstances; (iii) changes in the financial condition of Company or any of its subcontractors affecting their ability to perform their obligations; (iv) the consequences of errors, neglect or omissions by Company, or any subcontractor; (v) any failure of any subcontractor or supplier to furnish labor, materials, service or equipment for any reason; (vi) equipment failure; or (vii) changes in market prices for, or the unavailability of markets for, the sale or purchase of Recyclable Materials.

3) Notice. The Party claiming excuse from performance shall, within two (2) days after such party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Article. Notwithstanding, Company, in the event of a declared disaster, shall comply with the emergency plans of Town and County.

4) Waiver of Damages. In the event that either Party validly exercises its rights under this Article, the Parties hereby waive any claim against each other for any damages sustained thereby.

5) Interruption or Discontinuance of Service. The partial or complete interruption or discontinuance of Company's services caused by one or more of the events described in this Article and constituting an excuse from performance shall not constitute an Event of Default by Company under this Agreement. Notwithstanding the foregoing, however, (i) the existence of an excuse from performance shall not affect Town's right to perform services under Article 13 and (ii) if Company is excused from performing its obligations hereunder for any of the causes listed in this Article 13 I for a period of thirty (30) days or more, other than as the result- of third-party labor disputes under which services cannot be provided for reasons described earlier in this Article, Town shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days notice, in which case the provisions of Article 13C shall apply.

J. **Right to Demand Assurances of Performance.** If Contractor is: (i) the subject of any labor unrest including work stoppage or slowdown, sickout, picketing or other concerted job action; (ii) appears in the reasonable judgment of Town to be unable to regularly pay its bills as they become due; or (iii) is the subject of a civil or criminal investigation, charge, or judgment or order entered by a federal, state, regional or local agency for violation of a law relating to performance under this Agreement, and Town believes in good faith that Company's ability to perform under the Agreement has thereby been placed in substantial jeopardy, Town may, at its option and in addition to all other remedies it may have, demand from Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as Town believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by Town, such failure or refusal shall be an Event of Default for purposes of Article 13.

14. **Assignments, Sub-Companies, and Change of Ownership**

A. No interest of Company in this Agreement may be assigned, sold, subcontracted or transferred, either in whole or in part, without the prior written consent of the Town. Town will not unreasonably withhold consent to any assignment, sale, subcontract or transfer. Company shall promptly notify the Town in writing in advance of any proposed assignment, sale subcontract or transfer. In the event that the Town Council approves of any assignment, sale, subcontract or transfer, said approval shall not relieve Company of any of its obligations or duties under this Agreement unless this Agreement is modified in writing to that effect. Company shall also notify the Town of any change in control and/or ownership of Company. For purposes of this Agreement, change of ownership or control is presumed to include, without limitation, the sale or transfer of at least 25 percent of Company's assets or at least 25 percent of Company's voting stock.

B. Neither party shall assign its rights nor delegate or otherwise transfer its

obligations under this Agreement to any other person without the prior written consent of the other party. Any such assignment made without consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The Town may, however, assign its rights and subrogate its obligations under this Agreement to a joint powers authority authorized by California Government Code subsection 6500 et. seq. without the prior written consent of Company.

C. For purposes of this section, "assignment" shall include, but not be limited to:

1) A sale, exchange or other transfer to a third party of at least twenty-five percent (25%) of Company's assets dedicated to service under this Agreement; and

2) A sale, exchange or other transfer to a third party, including other shareholders (but excluding any transfers between related family members of either the family of Joseph John and Sally Garbarino, and/or the family of Joseph and Angelina Garbarino, or between such family members (s) and a trust whose trustor, trustees, and beneficiaries are limited to members of either or both of these families) to which Company or any of its shareholders is a party which results in a change of ownership or control of Company; and

3) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow agreement, liquidation or other transaction (but excluding any transfers between related family members of either the family of Joseph John and Sally Garbarino, and/or the family of Joseph and Angelina Garbarino, or between such family member (s) and a trust whose trustor, trustees, and beneficiaries are limited to members of either or both of these families) to which Company or any of its shareholders is a party which results in a change of ownership or control of Company; and

4) Any assignment by operation of law, including insolvency or bankruptcy, assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the in the probate proceeding; and

5) Any combination of the foregoing (whether or not related or contemporaneous transactions), which has the effect of any such transfer or change of ownership or change of control of Company.

D. Company acknowledges that this Agreement involves rendering a vital service to Town residents and businesses; and that Town has selected Company to perform the services specified herein based on:

1) Company's experience, skill and reputation for conducting its solid waste management operations in a safe, effective and responsible fashion, at all times in keeping with applicable local, state and federal environmental laws, regulations and best waste management practices; and

2) Company's financial resources to maintain the required equipment and to support its indemnity obligations to Town under this Agreement. Town has relied on each of these factors, among others, in choosing Company to perform the services to be rendered by Company under this Agreement.

E. The Town is concerned about the possibility that assignment could result in significant rate increases, as well as a change in the quality of service. Accordingly, the following standards have been set to ensure that assignment will result in continued quality of service. In addition, Town reserves the right to solicit competitive bids for these services if the assignment results in a request by the assignee for rate increases that are higher than the then Consumer Price Index (CPI) for the San Francisco/Oakland Bay Area and do not reflect value changes in service standards. At a minimum, no request by Company for consent to an assignment need be considered by Town unless and until Company has met the following requirements:

1) Company shall undertake to pay Town its reasonable expenses for attorneys' fees and to investigate the suitability of any proposed assignee, and to review and finalize any documentation as required as a condition for approving any such assignment;

2) Company shall furnish Town with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) years;

3) Company shall furnish Town with satisfactory proof:

a) That the proposed assignee has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Company under this Agreement;

b) That in the last five (5) years, the proposed assignee or affiliates have not suffered significant major citations or other charges from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local environmental laws and that the assignee has provided Town with a complete list of such citations and charges;

c) That the proposed assignee has conducted its operations in a reasonably environmentally safe and conscientious fashion;

d) That the proposed assignee has conducted its solid waste management practices in good faith and substantial compliance with sound waste management practices, in good faith and substantial compliance with all federal, state, and local laws regulating the collection and disposal of solid waste including hazardous waste; and

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

Under no circumstances shall the Town be obliged to consider any proposed assignment by Company, if Company has not performed the Agreement or is in material breach of any provision at any time during the period of consideration. Town will provide Company with a reasonable opportunity to be heard before the Town Council and the opportunity to correct any such claimed failure of performance or material breach.

F. Assignment of Agreement; Requests for Rate Adjustments. In the case of any assignment, sale, lease, subcontract, or transfer of all or any part of Company's assets or stock, the acquiring party shall not be entitled to request any adjustment in rates based on the purchase price or any other consideration associated with said assignment, purchase, lease, subcontract, or transfer. In addition, any such acquiring party shall not be entitled to request any adjustment in rates under this Agreement for any cost which said acquiring party incurs prior to the assignment, sale, lease, subcontract or transfer of Company's assets or stocks.

15. **Notice.** Any notices required by this Agreement, or by the applicable municipal ordinance or ordinances shall be given in writing, personally delivered or by mail as follows:

To Company: Marin Sanitary Service, Inc.
c/o Patricia Garbarino, President
565 Jacoby Street
San Rafael, California 94901

To Town: Town of San Anselmo
c/o Debra Stutsman, Town Manager
Town Hall
525 San Anselmo Avenue
San Anselmo, California 94960

If given by mail, time shall be computed from the date of deposit in the United States Post Office, or a Post Office box maintained or controlled by the United States Postal Service.

16. **Use of Streets.** In connection with this Agreement, Town hereby grants permission to Company to carry Solid Water, Recyclable Materials and Green Waste through the streets of the Town, subject to any applicable ordinance or ordinances relating thereto and now in effect or hereafter enacted by Town. Town shall collect a fee for Company's use of street. The fee is currently \$43,600 per year and may be adjusted by Town in the future.

17. **Franchise Fee.** As consideration for the granting by Town to Company of all rights and privileges under this Agreement, Company agrees to pay Town an amount equal to ten percent (10%) of Company's gross receipts except that the Franchise fee for Company's provision of debris box services shall be two percent (2%) of Company's gross receipts for the provision of such services. The Company does not owe a Franchise fee for debris box services provided to the Town. Town reserves the right to modify the Franchise fee related to provisions of the services by Company hereunder at any time during the Term of this Agreement with an associated adjustment in rates. The Town shall give the Company ninety (90) days notice prior to the date on which an increase become effective.

The Franchise fee shall be paid monthly, on the fifteenth of each month, computed on the previous month's gross receipts. The Company shall provide Town with a certified annual independent audit, at Company's expense, of gross receipts for the calendar year (January 1st through December 31st) for the purpose of verification of franchise fee compliance. The audit shall be submitted by April 15th of each year.

Additionally, Company, with respect to any legal challenge resulting from the imposition, payment or collection of said revised rates and fees, agrees to cancel as a lien against property, the imposition, payment or collection of revised rates and fees if such rates cannot be legally enforced.

The parties agree that Company shall have the right, at its sole discretion, to stipulate to a judgment or dismissal in any legal action relating to such a claim or, alternatively, if the Town desires, shall allow the Town to defend the action at the sole expense of the Town.

18. **Litter Control.** Company shall be diligent in all collection activities so as to provide a sanitary and litter-free collection area. Company shall use due care to prevent solid waste and/or liquids from leaking, being spilled, and/or scattered during the collection/transportation process. If any solid waste or fluids escape, leak, or spill, Company shall promptly clean up such spills or leaks. Company shall properly cover all open containers for transportation.

19. **Inspection of Books and Records.** Company shall maintain full, complete and separate financial, statistical and accounting records prepared in accordance with generally acceptable accounting principles. Such records shall be subject to audit,

copy and inspection by the Town Manager or her/his designee during normal business hours. Such records shall be maintained for a period of not less than five (5) years following the close of each of Company's fiscal years.

20. Customer Complaint Resolution. Company shall promptly investigate and correct, where appropriate, any complaint by customer(s) in the franchise area with respect to its service or its employees. Company shall maintain a written record of all customer complaints and the actions taken by Company in response to these complaints. Town may request and receive from Company an up-to-date written record of all customer complaints and actions taken by Company in response to these complaints.

21. End of Term Transition. If following the conclusion of the Term of this Agreement, Town grants the franchise rights under this Agreement to a third-party, Company shall be obligated to cooperate with Town and subsequent contractor to assist in an orderly transition. Contractor shall provide Town with such information as may be reasonably requested, including but not limited to, route maps and days of collection, account names, level of service provided, and inventory of vehicles and containers used in providing services.

22. Entire Agreement. This Agreement, including Exhibits A through C which are attached hereto and incorporated herein by reference as though set forth herein in full, represents the entire agreement between the parties pertaining to the subject matter hereof and supersedes and cancels any and all previous negotiations, arrangements, representations, agreements and communications between the parties whether written or oral, and none of the foregoing shall be used to construe or interpret this Agreement. Notwithstanding the foregoing, Company's indemnification obligations set forth in Article 9 of the immediately preceding Franchise Agreement shall survive and be enforceable by Town with respect to any act or event that occurred during the term of the preceding Franchise Agreement.

23. Attorneys' Fees. In the event of any action or proceeding brought by either party against the other pertaining to or arising out of this Agreement, the finally prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred on account of such action or proceeding.

24. Remedies; Choice of Law. No remedy or election exercised hereunder shall be deemed exclusive but shall be cumulative with all other remedies at law or in equity. This Agreement shall be governed by the laws of the State of California.

25. Successors and Assigns. Subject to the provisions regarding assignment contained herein, this Agreement shall apply to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

26. Severability. A final determination by a court of competent jurisdiction that any provision of this Agreement is invalid shall not affect the validity of any other provision,

and any provision so determined to be invalid shall, to the extent possible, be construed to accomplish its reflected intent.

27. **Authority.** Each individual executing this Agreement on behalf of Company hereby warrants and represents that he is duly authorized to execute this Agreement on behalf of Company and upon execution of this Agreement, will deliver to Town a certified copy of the Articles of Incorporation, the resolution of the Board of Directors of said corporation and minutes of the meeting authorizing said Resolution; authorizing execution of this Agreement and naming the officers who are authorized to execute this Agreement on behalf of Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the day and year first above written.

TOWN:
TOWN OF SAN ANSELMO,
a municipal corporation

Dated: January 19, 2009

By: Barbara Thornton
_____, Mayor

ATTEST:

Barbara Chambers
City Clerk

APPROVED AS TO FORM:

Marya Wagon
Town Special Counsel

COMPANY:

MARIN SANITARY SERVICE,

a California Corporation

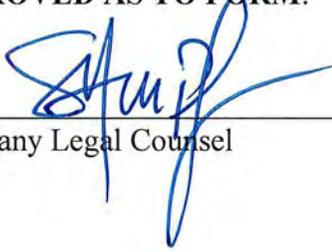
Dated: 27 January, 2010

By:

Patricia Garbarino

Printed name: Patricia Garbarino

APPROVED AS TO FORM:



Company Legal Counsel

EXHIBIT A

DESCRIPTION OF SERVICES

Company shall provide Town with the following services:

Residential Service

Garbage:

Company shall provide each residential customer with a 20, 32, 64 or 96 gallon cart to be placed at the curb for one time per week collection. Carts should be placed at the designated collection location the night before service. On-site collection for cans not placed at the curb is available for an extra charge.

Manual or Vehicle Distance Charge:

A Manual or Vehicle Distance Charge (see Exhibit C) will apply to all garbage containers located more than five feet (5'), but less than fifty feet (50) from the curb or designated collection location. An additional distance charge will be applied to containers located more than fifty feet (50') from the curb for each additional fifty feet (50') or portion thereof, up to a maximum charge for three hundred feet (300').

Customers may be charged both the Manual Distance Charge and the Vehicle Distance Charge if container(s) are not stored within five feet (5') of where the vehicle can easily travel without excessive maneuvering.

Shared Distance Charge: If distance is traveled by the collection vehicle while performing service at more than one (1) customer in a private driveway, that distance charge will be split between the number of customers sharing that distance. If a customer on a shared driveway elects curb collection then only the remaining distance customers will share the charge.

Liability Waiver: If the Company determines that a Load Liability Waiver is required and the property owner or owner's refuses to sign a Load Liability Waiver, the garbage container(s) for those properties must be placed at the curb or designated collection location.

Company has the sole right and ability to determine if distance collection is Manual or Vehicular.

Recycling:

Company shall provide each residential customer with a 64 gallon Dual Sort Cart, blue side for paper products and brown side for all other Recyclable Materials. Recycling cart to be placed at the curb next to the garbage container for one time per week collection. Material must be out by 5:00 AM. The customer may choose to decline the dual sort cart by contacting Company.

Yard waste:

Company shall provide residential customers with one 64-gallon capacity "green" can to be placed at the designated collection location the night before service for every other week collection. Customer may also place up to five 32 gallon customer owned cans for a total of 224 gallons for pick up on regular collection dates. For an additional monthly charge (see Exhibit C), customers may request one additional 64-gallon "green" can.

Commercial Customers

Garbage:

Company shall supply commercial customers with 20, 32, 64 or 96 gallon tipper carts, or for large volume customers bin sizes from two (2) cubic yard to eighteen (18) cubic yards for collection from a minimum of one (1) time per week to a maximum of six (6) times per week. Company will approve all commercial collection locations. Commercial customers may, subject to Company approval, elect to provide their own compactor or make arrangements with Company to supply the appropriate size depending on service levels.

Recycling:

Company provides unlimited commercial recycling collection for Recyclable Materials. Company provides tipper carts or containers when requested by the customer. Service levels are from one time per-week up to six times per week. Cardboard set at the curb or placed in MSS containers may have regularly scheduled service, or service on an on-call basis, as; needed.

Apartments:

Company shall supply apartment customers with 20, 32, 64 or 96 gallon tipper carts, or for large multi-family complexes bins from two (2) cubic yard to six (6) cubic yards for collection from a minimum of one (1) time per week to a maximum of six (6) times per week. Company shall approve all apartment collection locations not at the curb, including bins. Service levels range from a minimum of one (1) thirty-two (32) gallon can per residential unit collected one (1) time per week up to a maximum of six (6) times per week. All apartment

customers desiring on property or collection not at the curb may, upon approval of location, receive collection for an additional distance charge as specified in the rate schedule (Exhibit C). All apartment customers shall also receive all recycling services as specified above for residential customers.

Additional Services:

Extra garbage can be collected in cans or bags, no larger than 32 gallon, when placed next to the regular can on collection day for an extra charge as indicated in Exhibit C. Customers can request an “off-day” pickup by calling Company the day before the requested service for an additional charge as set forth in Exhibit C.

Company shall provide back yard or side yard collection to all disabled and frail or elderly customers at no additional charge.

Emergency Services: In the event of a declared emergency Company shall upon notice from Town make all reasonable efforts to provide vehicles and crews to assist in clearing and/or transporting debris; Town shall also have the right to use Town staff, agents, and or contractors to clear debris.

Intensive Recycling: Company shall provide intensive recycling service of one twenty (20) gallon can or cart every other week to qualified customers. To qualify, residential customers must complete a program application and agree to the program criteria as outlined on the application. Program applications are available from Town Hall.

Lifeline Service: Company shall provide lifeline service to customers with financial need. To qualify, customers must be enrolled in the PG&E CARE residential program.

Free On-Call Cleanups: Company shall provide two on-call pick-ups during each calendar year for residential customers at no additional charge for either: 2 cubic yards of solid waste or the equivalent fourteen 32 gallon bags; or 1 cubic yard of solid waste or the equivalent seven 32 gallon bags and 1 bulky item which means items that are too large be placed in a can such as large household appliances, furniture, carpets, mattresses and similar large items that require special handling due to their size.

Special pick-ups of large or hard to handle items may be requested. Cost estimates can be provided.

Christmas Tree Collection: Company will collect Christmas trees placed whole at the curb on regular collection days each year from December 26 through January 15. The Christmas trees shall be limited in length to five (5) feet. All collected Christmas trees shall be disposed of by Company in the same manner as other

green waste.

Town Facilities: Company will provide free solid waste, recyclables, and green waste collection services for the following Town facilities:

Two 3-cubic yard bins at the Corporation Yard, picked up twice per week

One 3-cubic yard bin at Robson-Harrington House, picked up twice per week

One 3-cubic yard bin at the Parks Department, picked up three times per week

Two 3-cubic yard bins at Town Hall, picked up three times per week

One 18-cubic yard debris box, picked up three times per week October 1 through February 28 and picked up two times per week March 1 through September 30 at the Corporation Yard.

and for any additional facilities or collection points identified by the Town during the Term. Free service may require provision of bins, cans, or debris boxes. Company will service Town-provided compactors, as requested. Company will assist Town staff in selecting the container type, size and collection frequency that best meets their needs. This service is to be provided with no additional compensation to the Company.

Collection from Public Containers: Company will provide collection service seven (7) days per week for all solid waste and recycling containers located in public areas of the Town, with an emphasis on maintaining a pleasing appearance at all times and avoiding overflow conditions. This service, including for any public containers added during the Term, is to be provided with no additional compensation to the Company.

Services at Special Events and Community Clean Up Events: Company shall provide debris box service on an on-call basis up to twelve (12) times per year. Company shall provide the boxes at the time and in the size requested by Town. While such events generally require one (1) box and one (1) pull, some events may require multiple boxes and/or multiple pulls. These services are to be provided with no additional compensation to the Company.

Food Waste:

As part of its overall diversion plan to reduce material taken to the landfill and to comply with all state and local regulations concerning Zero Waste, Company shall, upon approval by Town, and when feasible, implement a residential and commercial food waste/compost collection program. Company shall periodically update the Town with quarterly reports regarding the availability and status of such programs. Company and Town acknowledge that as of the effective date of

this Agreement there is no fully permitted site within a reasonable distance of the Town that receives food waste for composting or other similar uses.

When Company has developed a viable and permitted program for food waste collection it shall submit to the Town the complete details of the plan, including the proposed costs. Town and Company may then agree to amend Exhibit A of this Agreement to include food waste in the Scope of Services, and amend Exhibit C to modify the rates as appropriate to include food waste collection.

EXHIBIT B
RATE-SETTING METHODOLOGY

I. CONTRACTOR'S APPLICATION

By October 15, Contractor shall submit an application requesting the amount of Contractor's compensation and calculating the necessary adjustment to rate revenue for the next Rate Period commencing January 1 of the following year.

Once every three years, commencing with the application to be prepared for the rate year ending December 31, 2010, and then every third rate year following (i.e., rate year ending December 31, 2013, 2016, etc.), the application shall be based upon: the Contractor's actual financial results of operations for the preceding rate year ending December 31; year-to-date financial results of operations for the current rate year; audited financial statements for the preceding rate year ending December 31; and Contractor's forecasted costs for the next rate year. This shall be referred to herein as the "Base Year Revenue Requirement".

For the applications to be prepared for the rate year ending December 31, 2011, and the rate year ending December 31, 2012, the application shall be based on the Base Year Revenue Requirement adjusted as described below. This shall be called the "Indexed Revenue Requirement". The Indexed Revenue Requirement procedures will continue to be used two out of every three years, specifically, the rate years ending December 31, 2014 and December 31, 2015, the rate years ending December 31, 2017 and December 31, 2018, etc.

In either case, the application shall be submitted in the format described in Attachment 1. Contractor shall assemble and provide such information that is necessary to support the assumptions made by Contractor and that underlie the forecasted Contractor's compensation for the projected Rate Period.

II. DETERMINATION OF CONTRACTOR'S BASE YEAR REVENUE REQUIREMENT

The Town, or its representative, will review Contractor's application for compliance with this Agreement, accuracy, and reasonableness. The application shall clearly document Contractor's calculation of Contractor's compensation and rate adjustment based on the methodology described in this Attachment.

Contractor's compensation shall equal the sum of the forecasted annual cost of operations, profit, forecasted interest expense and franchise fees, each of which shall be calculated in accordance with procedures set forth below.

- A. Forecasted Annual Cost of Operations.** The forecasted annual cost of operations consists of the sum of forecasted:

1. Wages and salaries expense
2. Benefits expense
3. Disposal expense
4. Fuel and oil expense
5. Maintenance expense
6. Depreciation/lease expense
7. Other operating expense

B. Methodology for Forecasting Annual Cost of Operations.

1. **Determine Actual Costs.** Contractor's audited financial statements shall be reviewed to determine Contractor's actual costs necessary to perform all the services in the manner required by this Agreement. The Contractor's auditor shall determine that costs have actually been incurred and have been assigned to the appropriate cost category.
2. **Calculate Adjusted Costs.** Contractor shall adjust actual costs to ensure that non-allowable costs are not included in actual costs. Non-allowable costs include the following:
 - a. Costs of any category or type which are not required to provide services under this Agreement, or are not actually incurred, or which are not necessary for the provision of services under this Agreement or which are unreasonable in amount.
 - b. Payments to directors and/or owners of Contractor, unless paid as reasonable compensation for services actually rendered.
 - c. Fines or penalties of any nature.
 - d. Federal or state income taxes.
 - e. Charitable or political donations.
 - f. Depreciation or interest expense for collection vehicles, containers, other equipment, offices and other facilities if such items are leased from a related party at more than their actual cost.
 - g. Attorneys' fees and/or other expenses incurred by Contractor in any court proceeding in which the Town and Contractor are adverse parties, unless Contractor is the prevailing party in such proceeding.
 - h. Attorneys' fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.

- i. Attorneys' fees and other expense incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrongdoing are at issue and determined by a Court to have been upheld .
- j. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services.
- k. Goodwill
- l. Processing costs (net of revenues) for curbside Recyclable Materials in excess of \$8.00/ton unless supported by an analysis of the financial results of operations of the related party performing the services and an application submitted in a form consistent with those described herein.
- m. Disposal costs (including transfer and transport costs) for solid waste whose rate/ton exceeds comparable charges by other companies in the San Francisco Bay Area.

3. Summarize Allowed Costs. The adjusted costs for the forecasted rate year shall be considered "Allowed Costs" for the purposes of forecasting costs following procedures described herein and shall be presented in the cost categories described below.

- a. Wages and salaries expense
- b. Benefits expense
- c. Disposal expense
- d. Fuel and oil expense
- e. Maintenance expense
- f. Depreciation/lease expense
- g. Other operating expense

4. Forecast Annual Cost of Operations. Forecasted annual cost of operations for the forecasted rate year shall include allowed costs of operations determined in Step 3 above adjusted to reflect the impact of changes in costs and changes in operations. The forecasts shall be performed in the following manner:

- a. Forecasted wage and salaries expense shall be based on negotiated labor agreements, wage and salary adjustments for non-represented employees, as well as changes in customer demand.
- b. Forecasted benefit expense shall be based on negotiated labor agreements, adjustments for non-represented employees, and changes in insurance premiums net of any refunds.
- c. Forecasted disposal expense shall be based on the transfer, transport, disposal, and processing expense fees at the transfer station (which is comprised of the transfer and transport cost as well as the disposal fee at the landfill), recyclable material

processing facility and yard waste processing facility and multiplied by the total tons of solid waste transferred for disposal.

- d. Forecasted fuel and oil expense shall be based on anticipated changes in the consumption and price of these commodities.
 - e. Forecasted maintenance expense shall be based on changes in the number of equipment and vehicles to be maintained and the cost of such maintenance.
 - f. Forecasted depreciation and lease expense shall be based on the Contractor's asset and depreciation records, which shall reflect the retirement and addition of assets.
 - g. Forecasted other operating expense shall be based on Contractor's plans.
- 5. Calculate profit.** Contractor shall be entitled to profit on forecasted annual costs of operations. Contractor shall calculate profit by dividing the forecasted annual cost of operations, which shall be determined in accordance with these procedures, by 0.905 and subtracting the forecasted annual costs of operations from the dividend.
- 6. Interest Expense.** Forecasted interest expense shall be based on the Contractor's actual, necessary and reasonable interest expense incurred for services provided in accordance with this Agreement.
- 7. Franchise Fees Expense.** Forecasted franchise fee expense shall be based on the appropriate methodology using the forecasted values and shall include any other required payments to the Town.
- 8. Determine Contractor's Compensation for Base Year Rate Period.** Contractor's compensation necessary to perform all the services in the manner required by this Agreement for the rate year shall be equal to the sum of the following:
- a. Forecasted annual cost of operations (determined in accordance with Step 4 above)
 - b. Profit (determined in accordance with Step 5 above)
 - c. Forecasted interest and franchise fee expense

III. DETERMINATION OF CONTRACTOR'S INDEXED REVENUE REQUIREMENT

The Town, or its representative, will review Contractor's application for compliance with this Agreement, accuracy, and reasonableness. The application shall clearly document Contractor's calculation of Contractor's compensation and rate adjustment based on the methodology described in this Attachment.

Contractor's compensation shall equal the sum of the forecasted annual cost of operations, profit, forecasted interest expense and franchise fees, each of which shall be calculated in accordance with procedures set forth below.

- A. Forecasted Annual Cost of Operations.** The forecasted annual cost of operations consists of the sum of forecasted categories of expense as described below:

1. Wages and salaries expense
2. Benefits expense
3. Disposal expense
4. Fuel and oil expense
5. Maintenance expense
6. Depreciation/lease expense
7. Other operating expense

B. Methodology for Forecasting Annual Cost of Operations. The forecasted annual cost of operations for the Indexed Revenue Requirement shall be based on Contractor's most recent Base Year Revenue Requirement adjusted as described below:

1. Wages and salaries expense shall be calculated by multiplying the wages and salaries expense contained in the Base Year Revenue Requirement by one (1) plus the percentage change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners; 1982-84=100)" between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.
2. Benefits expense shall be calculated by multiplying the benefits expense contained in the most recent Base Year Revenue Requirement by one (1) plus the percentage change in the Employment Cost Index – Benefits (Private Industry Workers) between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.
3. Forecasted disposal expense shall be based on the transfer, transport, disposal, and processing expense fees at the transfer station (which is comprised of the transfer and transport cost as well as the disposal fee at the landfill), recyclable material processing facility and yard waste processing facility and multiplied by the total tons of solid waste transferred for disposal.
4. Fuel and oil expense shall be calculated by multiplying the fuel and oil expense contained in the Base Year Revenue Requirement by one (1) plus the percentage change in the "U.S. City Average Consumer Price Index (All Urban Consumers; Motor Fuel Item (1982-84=100))" between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.
5. Maintenance expense shall be calculated by multiplying the maintenance expense contained in the most recent Base Year Revenue Requirement by one (1) plus the

percentage change in the “Motor Vehicle Maintenance and Repair Index (All Urban Consumers, U.S. City Average 1982-1984=100)” between the June monthly index and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.

6. Depreciation expense shall be based on the Contractor’s asset and depreciation records that shall reflect the retirement and addition of assets.
 7. Other operating expense shall be calculated by multiplying the other operating expense contained in the most recent Base Year Revenue Requirement by one (1) plus the percentage change in the “San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84=100)” between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.
 8. Forecasted annual cost of operations for the Indexed Revenue Requirement shall equal the sum of the preceding expenses.
- C. Calculate Profit.** The Contractor shall calculate profit by dividing the forecasted annual costs of operations by 0.905 and subtracting the forecasted annual costs of the operations from the dividend.
- D. Interest Expense.** Forecasted interest expense shall be based on the Contractor’s actual, necessary and reasonable interest expense incurred for services provided in accordance with this Agreement.
- E. Franchise Fees Expense.** Forecasted franchise fee expense shall be based on the appropriate methodology using the forecasted values and shall include any other payments to the Town.
- F. Determine Contractor’s Compensation for Indexed Rate Period.** Contractor’s Compensation for Rate Period shall be equal to the sum of the following:
1. Forecasted annual cost of operations (determined in accordance with Step B above)
 2. Profit (determined in accordance with Step C above)
 3. Forecasted interest expense (determined in accordance with Step D above)
 4. Franchise fee expense (determined in accordance with Step E above)

CALCULATION OF RATE ADJUSTMENT

In both the Base Year Revenue Requirement Application and Indexed Revenue Requirement Application, the Contractor shall calculate the rate adjustment in accordance with the following formula:

Revenue Requirement – Revenues from All Sources (including rate revenues at current rates and projected subscription levels)/Rate Revenues at Current Rates and Projected Subscription Levels.