

FRANCHISE AGREEMENT

for

**SOLID WASTE, RECYCLING, AND
GREEN WASTE SERVICES**

between

Town of San Anselmo

and

Marin Sanitary Service

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Town of San Anselmo

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AGREEMENT

This AGREEMENT made and entered into this ____ day of _____, 2004 (the “Signature Date”) between the TOWN of San Anselmo (hereinafter “Town”) a municipal corporation of the state of California, and Marin Sanitary Service, a California corporation (hereinafter “Contractor”).

Recitals

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

1. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939), set forth in Public Resources Code Sections 40000 *et seq.*, declares that it is within the public interest to authorize and require local agencies to make adequate provision for Solid Waste handling within their jurisdiction.
2. The Town Council of Town has determined that the public health, safety and well being of its residents require that certain Solid Waste Collection, transportation, processing, Recycling, Green Waste, and Disposal services, as specified in this Agreement, be provided by an exclusive contract.
3. Contractor participated in a competitive procurement process, and demonstrated through its proposal and subsequent interaction with the Town its capability, experience and interest in providing the services specified in this Agreement.

Agreement

NOW, THEREFORE, intending to be legally bound, the Parties agree as follows:

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ARTICLE 1 DEFINITIONS

For purposes of this Agreement the following words or phrases shall have the following meanings unless any such word is otherwise specifically defined herein or unless it is obvious from the context hereof that another meaning is necessarily intended. To the extent that these definitions differ from those found in the Town ordinances and codes, these definitions shall prevail.

AB 939 "AB 939" means the California Integrated Waste Management Act of 1989 (Division 30, California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.

Agreement "Agreement" means this Agreement between the Town and Contractor for the provision of the Franchise Services as specified herein, including all exhibits and future amendments.

Applicable Law "Applicable Law" means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection and disposition of Solid Waste, Recyclable Materials and Green Waste that are in force on the Signature Date as they may be enacted, issued or amended during the Term of this Agreement.

Base Term "Base Term" means the initial five (5) year portion of the Term of the Agreement, commencing on February 1, 2004, the Effective Date of the Agreement and ending on January 31, 2009.

Bin "Bin" means a receptacle for Solid Waste, Recyclable Materials, or Green Waste, generally provided by the Contractor, having a capacity less than ten (10) cubic yards that may have wheels, a handle for ease of movement and a tight-fitting, attached lid, and is designed to be dumped mechanically into a front loading Collection vehicle.

Bin Service "Bin Service" means the provision of Franchise Services using Bins.

Buckets "Buckets" means recycling Containers delivered to Customers by the Contractor with an approximate capacity of five (5) gallons, and used in Multi-Sort Collection of Recyclables.

Bulky Items "Bulky Items" means all discarded household waste matter that is too large to be placed in a Can, including large household appliances, furniture, carpets, mattresses, and similar large items that require special handling due to their size.

Can Service "Can Service" means provision of Franchise Services using Cans as specified in Article 4.

Cans "Can" or "Cans" means Customer provided Containers of up to 32 gallons in capacity, used for Solid Waste and Green Waste, and not weighing more than fifty (50) pounds when full.

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Cart Service “Cart Service” means provision of Franchise Service using Carts, and charged at a single Rate based on Solid Waste Cart size.

Carts “Cart” or “Carts” means wheeled containers of approximately twenty (20), thirty-two (32), sixty-four (64), and ninety-six (96) gallon capacity provided by Contractor to Customers for Collection of Solid Waste, Recyclables, and Green Waste.

CERCLA “CERCLA” means the Comprehensive Environmental Responsibility Compensation and Liability Act, 42 U.S.C.A. Section 9601 *et seq.* (West 1983 & Supp. 1989), as amended or superseded, and the regulations promulgated thereunder.

Change in Law “Change in Law” means any of the following events or conditions which have a substantial, material and adverse effect on the performance by the Parties of their respective obligations under this Franchise (except for performance of remittance obligations):

- a. Enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation on or after the Signature Date of any applicable law; or
- b. Order or judgment of any governmental body, on or after the Signature Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of Town or of Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error, or omission or lack of reasonable diligence.

Change in Scope “Change in Scope” is a significant change in the type or level of Franchise Services for which Contractor may be compensated as provided in Article 5.7.

Collection “Collection,” “Collect,” “Collected,” “Collecting” means Collection by Contractor of Solid Waste, Recyclable Materials, Green Waste, street sweeping material from the Town’s corporation yard, or other material specified in this Agreement and its transportation to a Disposal Facility, Recycling Facility, or Green Waste Facility.

Commercial Service “Commercial Service” means provision of Franchise Services to Commercial Customers including all retail stores, service establishments of any type, professional offices, schools, construction sites, industrial, manufacturing, warehouse, or wholesale businesses.

Compactor, Compactors, Compactor Service “Compactor,” “Compactors,” “Compactor Service” means any Bin or other similar Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method. Compactor Service is the Collection of Franchise Material from Compactors owned by the Customer or rented from Contractor. Household trash compactors in dwellings are not included in this definition.

Construction and Demolition Debris “Construction and Demolition Debris” means the debris, used construction materials, dredging, grubbing, and rubble resulting from constructing,

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remodeling, repair, razing, renovation, or demolition activities at residential, Commercial or governmental buildings, and any other structure or pavement.

Consumer Price Index, CPI, CPI-U “Consumer Price Index” or “CPI” means the Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose, California Metropolitan Area, California, Standard Metropolitan Statistical Area as published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index. The index shall not be seasonally adjusted.

Containers “Containers” means Bins, Buckets, Cans, Carts, Compactors and Debris Boxes used to provide Solid Waste, Recyclables or Green Waste Collection, as well as Town-owned containers used for Solid Waste and Recyclables in public locations.

Contractor “Contractor” means Marin Sanitary Service, Inc., a California corporation.

County “County” means Marin County, California, and as specified the Marin County Hazardous and Solid Waste Management Joint Powers Authority.

CPI Adjustment Factor “CPI Adjustment Factor” means 0.83 or 83 percent, the percentage of CPI by which the Contractor shall have each Rate adjusted.

Customer “Customer” means the person or entities receiving Franchise Services.

Debris Box, Debris Boxes, Debris Box Service

“Debris Box Service” means use of containers with a minimum capacity of ten (10) cubic yards for Construction and Demolition Debris and temporary cleanup purposes. Contractor shall provide the Town with Debris Box Service as required in the Agreement, however, Debris Box Service may not be utilized for regular Collection of Solid Waste generated by parties other than the Town.

Delivery “Delivery” of Solid Waste, Recyclables, or Green Waste has occurred once a Customer has deposited Solid Waste, Recyclables, or Green Waste in a receptacle or at a location that is designated for Collection pursuant to Town’s codes or ordinances, or is otherwise lawfully discarded.

Disposal “Disposal,” “Disposing,” “Dispose,” or “Disposed” means the final disposition of Solid Waste Collected by Contractor, at the Designated or Transfer Disposal Site.

Disposal Facility “Disposal Facility” means the facility(ies) selected solely by the Contractor for the Disposal, or transfer and Disposal of all Solid Waste Collected under this Agreement. Disposal Facilities must be properly permitted and operating in full compliance with local, state, and federal law.

Effective Date “Effective Date” means February 1, 2004.

Extension “Extension” means any of the Extensions that may be provided by the Town as defined in Article 3.1B.

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Franchise “Franchise” means the rights granted to Contractor under the terms and conditions of this Agreement.

Franchise Area “Franchise Area” means the entire territory included within Town limits as such limits may change from time to time due to annexations or other means.

Franchise Materials “Franchise Materials” means all of Solid Waste, Recyclables and Green Waste generated in the Town and included within the grant of Franchise provided in Article 3.2.

Franchise Services “Franchise Services” means all of the rights, duties and obligations of Contractor as specified in this Agreement, and associated with the grant of Franchise.

Green Waste “Green Waste” means biodegradable materials such as leaves, grass, weeds, and wood materials from trees and shrubs, provided that larger items such as tree stumps and intact dead trees constitute Bulky Items.

Green Waste Facility “Green Waste Facility” means the facility(ies) selected solely by the Contractor for the processing of all Green Waste Collected under this Agreement. Green Waste Facilities must be properly permitted and operating in full compliance with local, state, and federal law.

Gross Rate Revenues “Gross Rate Revenues” means all Rate Revenues collected by the Contractor from Customers.

Hazardous Waste "Hazardous Waste" shall have the meaning set forth in California Code of Regulations, Title 14, Division 7, Chapter 3, Article 4, Section 17225.32 and Health and Safety Code Section 25117, or in CERCLA, or in their successor laws and regulations as may be amended from time to time, whichever definition is in the opinion of the Town more inclusive.

Household Hazardous Waste "Household Hazardous Waste" shall have the meaning set forth in California Code of Regulations, Title 14, Division 7, Chapter 7, Article 1.1, Section 18502 or successor laws and regulations as may be amended from time to time.

Intensive Recycling “Intensive Recycling” is a special service level consisting of 20 gallon Solid Waste service every other week for small volume producers that have received an exemption as provided in Article 4.1 D.

Lifeline Service “Lifeline Service” means a every other week Solid Waste collection service of a 32 gallon Can or Cart provided, upon application to the Contractor, to Single-Family Customers over age 65, at a reduced rate.

Liquidated Damages “Liquidated Damages” means the damages for specified violations of the terms of the Agreement levied by Town against Contractor as provided in Article 10.1 and enumerated in Exhibit I.

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Medical and Infectious Waste “Medical and Infectious Waste” means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

Monthly Remittance “Monthly Remittance” means the monthly payment made to the Town by the Contractor as specified in Article 6.

Multi-Family Service “Multi-Family Service” means Franchise Services provided to the owner or residents of any building and/or structure, or portion thereof, located in Town that is used for residential housing and which contains four (4) or more distinct living units.

Multi-Sort Collection “Multi-Sort Collection” means the Collection of Recyclables in two or more separate streams.

Party “Party” or “Parties” means Town or Contractor individually, or Town and Contractor.

Rate Revenue “Rate Revenue” means the revenue billed to and collected from Customers by Contractor for provision of Franchise Services as based on the Town’s approved and published Rates.

Rates “Rates” or “Rate” means the amount each Customer is billed by Contractor for provision of Franchise Services as specified in the Rate schedules as approved by the Town.

Recyclable Materials, Recyclables "Recyclable Materials" or "Recyclables" means discarded materials from the Customer intended for and capable of being Recycled, and that are separated, set aside, handled, packaged, offered, or otherwise Delivered for Collection by a Customer in a manner different from Solid Waste. Exhibit A includes the initial list of Recyclable Materials that may be set out for Collection by Customers receiving Recycling Service.

Recycle, Recycled, Recycling “Recycle, Recycled, Recycling” means the process of Collection, sorting, cleansing, treating and reconstituting Recyclable Materials that would otherwise be Disposed of, 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.

Recycling Facility “Recycling Facility” means the facility(ies) used by Contractor for handling, processing, and preparing Recyclable Materials for marketing.

Refuse “Refuse” means waste material intended for Disposal and including: (1) all putrescible and nonputrescible wastes, whether in solid or liquid form, except liquid-carried industrial wastes or sewage hauled as an incidental part of septic tank or cesspool-cleaning service; (2) garbage (i.e. putrescible animal, fish, food, fowl, fruit or vegetable matter, or any thereof, resulting from the preparation, storage, handling or consumption of such substances); (3) rubbish (such as printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and/or other waste materials).

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Residue “Residue” means materials which remain after processing Recyclable Materials which cannot be Recycled, marketed, or otherwise utilized, including, but not limited to, materials such as rocks, contaminated paper, putrescibles, and other debris. Residue shall not exceed ten (10) percent by weight for source separated materials processed for Recycling but may exceed ten (10) percent by weight for materials processed for Recycling in mixed commercial loads and mixed debris loads at a facility with a Solid Waste Facility permit concurred with by the California Integrated Waste Management Board, and may be Disposed of at a Disposal Facility(ies) of Contractor’s choosing.

Self-Haul “Self-Haul” means that any construction contractor, landscape contractor, or individual may transport and dispose of debris from a construction or demolition or landscaping site at which the contractor or individual is performing work or which the individual owns or leases, so long as the contractor or individual utilizes its own personnel and equipment and has secured any necessary hauling permits from the Town.

Signature Date “Signature Date” means the date of execution of this Franchise Agreement by both Parties.

Single Stream Recycling “Single Stream Recycling” means the use of a single Container to Collect all Recyclables provided for Collection.

Single-Family Service “Single-Family Service” means provision of Franchise Services to any building and/or structure, or portion thereof, in Town that is used for residential housing purposes, irrespective of whether residence therein is transient, temporary or permanent, and which contains three (3) or fewer distinct living units.

Solid Waste "Solid Waste" means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, Section 40191 and regulations promulgated thereunder and without limitation includes the following: (1) Refuse; (2) Bulky Items; (3) Special Wastes; and (4) vehicle parts as defined in California Code of Regulations, Title 23, Division 3, Chapter 15, Section 2520(d)(3) and Section 2523(c). Excluded from the definition of Solid Waste are Hazardous, Medical and Infectious Waste, Recyclable Materials kept separate from Solid Waste for the purpose of Recycling, Green Waste, Construction and Demolition Debris, and Special Wastes that cannot be disposed of in Class III landfills. Notwithstanding any provision to the contrary, “Solid Waste” may include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Section 41500 and 41802 of the California Public Resources Code.

Special Charges “Special Charges” are specific service-related residential and commercial charges that are contained on Exhibit H, Schedule of Approved Rates and that may be billed by the Contractor upon advance notice to the Customer.

Special Waste “Special Waste” includes flammable waste; liquid waste transported in a bulk tanker; sewage sludge; pollution control process waste; residue and debris from cleanup of a spill

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or release of chemical substances, commercial products, or any other Special Wastes; contaminated soil, waste, residue, debris, and articles from the cleanup of a site or facility formerly used for the generation, storage, treatment, Recycling, reclamation, or Disposal of any other Special Wastes; dead animals; manure; waste water; explosive substances; radioactive substances; abandoned or discarded automobiles, trucks, motorcycles or parts thereof, including tires; fluorescent tubes; and any other materials that under current or future statute or regulation require the application of special treatment, handling, or disposal practices beyond those normally required for Solid Waste.

Substantial Evidence “Substantial Evidence” means such evidence as would convince a reasonable person and on which reasonable persons may not differ as to the conclusion to be drawn from such evidence.

Term “Term” means the Base Term and any Extensions, as provided in Article 3.

Town “Town” means the Town of San Anselmo, California, as its boundaries exist now or in the future.

Town Council “Town Council” means the legislative body of Town.

Town Representative “Town Representative” means Town Administrator, or an agent of Town authorized by written notice to Contractor to enforce the terms of this Agreement.

Town Services “Town Services” means the services provided by Contractor at no additional cost to Town buildings and public locations as provided in Articles 4.8, 4.9, and Exhibit F.

Transition “Transition” means the period beginning with the Signature Date and ending with the full completed implementation of Franchise Services as provided in Article 3.6 and in the Contractor’s Transition plan contained in Exhibit C. As specified in Article 3.6 and Exhibit C, and unless otherwise requested or required by the Town in writing the Transition will be completed May 1, 2004.

Vacation Stop “Vacation Stop” means for a minimum period of two weeks, residential customers can place a vacation stop on their service, up to a maximum of three times per year.

Working Days “Working Days”, unless otherwise specified means Monday through Sunday.

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ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 CORPORATE STATUS

Contractor is a division of a corporation duly organized, validly existing, and in good standing under the laws of the State of California. Contractor is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement. Contractor agrees that this Agreement is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. Contractor has not directly or indirectly colluded, conspired, connived, or agreed with any person, partnership, company, association, organization, or corporation to secure any advantage against Town.

2.2 CORPORATE AUTHORIZATION

Contractor has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The persons signing this Agreement on behalf of Contractor have authority to do so. This Agreement constitutes the legal, valid and binding obligation of Contractor enforceable in accordance with its terms, except as limited by applicable bankruptcy insolvency, reorganization, moratorium or other laws or general application relating to or affecting enforcement of creditors' rights.

2.3 CONTRACTOR RESPONSIBILITY FOR SELECTING DISPOSAL AND GREEN WASTE FACILITIES

Contractor is solely responsible for selecting, and as necessary contracting with a Disposal Facility(ies) and a Green Waste Facility(ies). However, Contractor acknowledges Town's right under extraordinary circumstances to direct Contractor to use different Disposal Facility(ies) or Green Waste Facility(ies).

2.4 NO CONFLICT

Neither the execution nor the delivery by Contractor of this Agreement nor the performance by Contractor of its obligations hereunder: (i) conflicts with, violates, or results in a breach of any law or governmental regulation applicable to Contractor; (ii) conflicts with, violates, or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor), or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (iii) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

2.5 NO LITIGATION

As of the Signature Date of the Agreement, there is no action, suit, or other proceeding at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor which is likely to result in an unfavorable decision, ruling, or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in

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connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor.

2.6 NO LEGAL PROHIBITION

Contractor has no knowledge of any applicable law in effect on the Signature Date that would prohibit the performance by Contractor of this Franchise and the transactions contemplated hereby.

2.7 CONTRACTOR'S INVESTIGATION

Contractor has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding the Agreement and the work to be performed by it.

2.8 INFORMATION SUPPLIED BY CONTRACTOR

The information supplied by Contractor in all written submittals made in connection with procurement of Contractor's services, including Contractor's proposal, and negotiation and execution of this Agreement, and all written and verbal representations and warranties made by Contractor throughout this Agreement are true, accurate, correct, and complete in all material respects on and as of the Signature Date of this Agreement.

2.9 REPRESENTATIVES OF THE PARTIES

Contractor has designated in writing a responsible officer who shall serve as the representative of Contractor and who shall have authority in all daily operational matters related to the Agreement. Town may rely upon action taken by such designated representative as action of Contractor except for actions not taken within the scope of the Franchise. Patricia Garbarino, President, shall be the initial designated representative of Contractor. Contractor shall notify Town Representative prior to, or at the time of a change in the designated representative.

2.10 WAIVER OF CERTAIN RIGHTS

Contractor hereby waives any right it may possess to contest the legal right, power, or the authority of Town to enter into and perform this Agreement and agrees to cooperate with and assist Town in supporting the legal validity of, and authorization for, such provisions in the event of any legal challenge thereto brought or made in any manner by a third party.

2.11 WAIVER OF RENEWAL STATUTE

Contractor hereby knowingly and specifically waives any and all rights it may have now or in the future as a result of California Public Resources Code, Division 30, Part 1, Chapter 2, Section 49520, or any subsequent statute granting the same or similar rights regarding Town notice to Contractor of contract termination. Contractor agrees that its rights to provide any of the Franchise Services specified in this Agreement shall be governed solely by the provisions of this Agreement, and any of its rights to provide such services shall terminate upon termination of this Agreement.

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ARTICLE 3 GRANT OF FRANCHISE

3.1 AGREEMENT TERM AND EXTENSIONS

A. Base Term

The Franchise Services granted in this Agreement shall continue in force for a period of five (5) years (“Base Term”) from 12:00 AM on February 1 2004, (“Effective Date”) to Midnight, January 31, 2009. The Base Term also includes the period beginning with the Signature Date and ending with the Effective Date during which the Contractor is conducting a portion of its Transition activities as defined in Exhibit C and during which Contractor receives no compensation.

B. Extensions

Following the Base Term, and at the sole discretion of the Town, Contractor may be granted up to three (3) one-year Extensions of this Agreement and its full rights and responsibilities. The Town shall provide Contractor notice of Extension no less than one hundred and twenty (120) days prior to the conclusion of the Base Term or of any previously granted Extension.

C. Agreement Transition Extension

By giving written notice ninety (90) days prior to the effective date of termination of the Base Term or an Extension, Town, at its sole discretion, may require Contractor to continue to provide Franchise Services under the terms of this Agreement for up to one hundred and eighty (180) days following the effective date of termination. The purpose of such an extension is to ensure uninterrupted Franchise Services in the event of transition to a successor contractor and/or ongoing contract renegotiations with present Contractor that Town anticipates may not be concluded by the effective date of termination.

3.2 GRANT OF FRANCHISE

A. Services Provided

Town hereby grants Contractor, and Contractor shall have throughout the duration of this Agreement, the exclusive right to engage in Collection, transportation, processing, transport for transfer and Disposal, and material sales related to the following:

1. Solid Waste placed in Carts at Curbside or Cans in the Side-Yard.
2. Solid Waste placed in Bins.
3. Single-Family Recyclables placed curb-side in Buckets.
4. Multi-Family Recyclables placed at curbside in Buckets or Carts.
5. Includes Commercial and Other Recyclables placed at the curbside for Collection in Buckets or Carts.
6. Green Waste placed curbside in Cans, Carts, or in Bins.

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The services specified in this Article 3.2A, together with those enumerated throughout the Agreement constitute the Franchise Services.

B. Compensation

The Rates contained in Exhibit H in their initial form as of the Effective Date, and as they may be adjusted during the Term shall constitute Contractor's sole compensation for provision of Franchise Services. Contractor shall retain all revenue from the sale or salvage or Recyclable Materials.

3.3 PROVISION OF SERVICE

A. General

The work to be done by Contractor pursuant to this Agreement shall include the furnishing of all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items necessary to perform all Franchise Services, and the payment of all related expenses including all taxes, utility charges, etc. The Franchise Services shall be performed in a thorough and professional manner that constitutes litter free, reliable, courteous and high-quality service. Contractor shall at all times provide Franchise Services using best industry practice for comparable operations, performed at all times in full accordance with Exhibit A Scope of Services and Exhibit B Standards of Performance.

B. Employment and Wages

1. **Employment of Displaced Workers.** With regard to the labor force used to provide Franchise Services, Contractor commits to offer employment to displaced workers that provided service to the Town as full-time employees of the previous Contractor, and that are qualified under federal and state requirements.
2. **Wages.** Through the Term Contractor shall maintain a unionized workforce operating under the terms of the Teamster's master agreement.

C. Hours of Collection

Contractor shall limit collection to 6 AM to 6 PM except in commercial areas and/or in selected residential areas between 1000 and 1500 Sir Francis Drake Boulevard, Bridge Street, and the parking area of Creekside Park where Contractor shall limit collection to 5 AM to 6 PM. Town reserves the sole right to change the hours of Collection.

3.4 EXCEPTIONS TO GRANT OF FRANCHISE

The following services and materials are expressly excluded from this Franchise. The granting of this Franchise shall not preclude the services and materials described below from being provided, or delivered to, collected and/or transported by others, provided that nothing in this franchise is intended to or shall be construed to excuse any person from any authorization from the Town that is otherwise required by law:

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1. Residential Customers from donating or selling Recyclable Materials to any party of their choice.
2. Materials which would otherwise constitute Franchise Materials that are removed from a premises by a landscaping or gardening contractor as an incidental part of a gardening, landscaping, tree trimming, cleaning, maintenance, construction or similar service offered by that contractor rather than as a hauling service.
3. Self-Haul materials, which are delivered by a Customer directly to a transfer station or disposal facility in a manner consistent with Town ordinances and codes and other applicable laws; provided, however, that this provision does not create an exemption from any law requiring payment for Collection services, whether those services are utilized or not.
4. Debris Box Service provided to Customers for collection of Construction and Demolition Debris or on a temporary basis.

The provisions of this Franchise shall not preclude or prohibit the Town or any officer or employer thereof or any employee of the State, or any governmental subdivision thereof, from Collecting, removing, and Disposing of Solid Waste from Town or other public facilities.

3.5 FRANCHISE FEE

A. Amount

In consideration of the Franchise provided in this Agreement, the Contractor shall pay to the Town a Franchise fee equal to ten (10) percent of Gross Rate Revenues, except that the Franchise fee for Contractor provision of Debris Box Service shall be two (2) percent of Contractor's Gross Rate Revenues for provision of such service. The Contractor does not owe a franchise fee for Debris Box Service provided to the Town. Town reserves the right to modify the Franchise fee related to provision of Franchise Services at any time during the Term of this Agreement, with an associated adjustment in the Rates. The Town shall give the Contractor ninety (90) days notice prior to the date on which an increase becomes effective.

B. Payment

The Franchise fee shall be computed and paid on the basis of the Contractor's receipt of Gross Rate Revenues for each calendar month. The Contractor shall remit the Franchise Fee as part of the Monthly Remittance specified in Article 6.3. If the Contractor fails to pay the entire amount of compensation due the Town through error or otherwise, the difference due the Town shall be paid by the Contractor within thirty (30) days from discovery of the error or determination of the correct amount. In addition, the Contractor shall pay interest on any underpayment at the rate of ten percent (10%) per annum. Any overpayment to the Town through error or otherwise shall be offset against the next payment due from the Contractor. Acceptance by the Town of any payment due under this Article 3.5B shall not be deemed to be a waiver by the Town of any breach of this Agreement, nor shall the acceptance by the Town of any such payments preclude the Town from later establishing that a larger amount was actually due, or from collecting any balance due to the

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Town. In case of dispute between the Town and the Contractor regarding any amounts due, the Contractor shall pay the amount claimed by the Town as due and notify the Town in writing at the time of payment as to any portion that is paid under protest, specifying the basis of its claim of overpayment. Resolution of any dispute hereunder, shall be dealt with utilizing the procedure set forth in paragraph 6.4.

3.6 TRANSITION PLAN

The Parties recognize that substantial planning is required in order to ensure orderly provision of Franchise Services on the Effective Date. As a requirement of the request for proposals, the Contractor's proposal included a Transition plan that in final form is contained in Exhibit C. The Transition plan specifies the Contractor's schedule for acquiring all necessary equipment, hiring personnel, swapping Containers and otherwise arranging for provision of Franchise Services as specified in this Agreement. Successful conduct of the Transition plan is a condition for effectiveness of the Agreement, as provided in Article 3.15 E. Substantive failure on the part of the Contractor to adhere to the timing and/or content of the Transition plan may at the Town's sole discretion constitute a breach of this Agreement and, if incurred, an event of Termination under Article 10.7A.5.

3.7 GROWTH IN ACCOUNTS

Contractor shall provide Franchise Service to all Customers within Town requiring service during the Term and shall be compensated on a per account basis through the then effective Rates.

3.8 GROWTH IN TOWN SERVICES

Contractor shall provide all Town Services and Collection of public Containers as specified in Article 4 and Exhibit F, including as needed to address growth in Franchise Materials generated within Town, permanent or seasonal changes in Collection frequency as may be directed by Town, and any new Collection sites or locations for Town buildings and for public Containers that may be added in the future.

3.9 ANNEXATIONS

Town shall promptly provide written notice to Contractor regarding any geographic area that has been or that will be annexed to the Town. Once such notice is given, the provisions of the Agreement including all the express or implied rights and responsibilities shall apply within the area of annexation. Contractor shall provide Franchise Services within the annexed area within ninety (90) days of receipt of written notice.

3.10 TITLE TO COLLECTED MATERIALS

It is expressly understood that all Franchise Materials, and street sweeping debris collected from the Town's corporation yard become the property of Contractor at the point of Collection, subject to the requirements of Article 4 to ensure proper delivery of specified Franchise Materials to Town designated and/or Contractor selected facilities.

3.11 AB 939 GOALS

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Contractor concurs that the “current” AB 939 diversion level as of the Effective Date is the figure of 50 percent for the Year 2000 as calculated by the County and submitted to the State.

Contractor acknowledges that with this Agreement it is providing a package of Franchise Services, including in particular enhanced Multi-Family and Commercial Recycling services, with attendant public education and customer service programs, and enhanced recovery through Contractor’s facilities, sufficient to maintain a minimum level of diversion for the Town at or above fifty (50) percent. Contractor further acknowledges that notwithstanding Section 40059.1 of the California Public Resources Code, Contractor may at the sole discretion of the Town be subject to Liquidated Damages and/or the termination provisions of Article 10.7 for failure to maintain the fifty (50) percent diversion goal.

3.12 MUNICIPAL ENFORCEMENT

Contractor shall become familiar with all Town ordinances and codes related to the provision of Franchise Services, and shall as requested assist the Town in its enforcement responsibilities by promptly notifying the Town Representative of any third party violations of these ordinances and codes observed by Contractor, and by promptly providing Town any related information it may have.

3.13 EMERGENCY SERVICES

Notwithstanding the provisions of Article 3.2 specifying Contractor scope of services, in the event of a declared emergency, Town reserves the right to use Town staff, agents, contractors, and/or subcontractors as necessary to clear debris from the Franchise Area. Contractor agrees to not contest Town’s use of other parties to Collect, transport, and Dispose of any debris resulting from such emergency. In the event of a declared emergency, Contractor shall upon notice from the Town make all reasonable effort to provide vehicles and crews to assist in clearing and/or transporting debris. To the extent that provision of such service clearly exceeds the Town Services detailed in Article 4.8, Contractor shall be compensated for the additional services as provided in Article 5.7.

3.14 INFORMATION MANAGEMENT SYSTEMS

Contractor shall maintain such information management systems as are needed to collect, store, and organize operational and financial data, and to produce the reports and plans as specified in this Agreement. All data shall be backed up so as to ensure no loss of data due to computer failure.

3.15 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

In entering into this Agreement and performing obligations set forth therein, Town is relying on the conditions set forth below. The obligation of Town to permit this Agreement to become effective is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part in writing by Town. Waiver of any of the following as a condition to the effectiveness of the Agreement does not preclude the Town from pursuing any claim or breach of this Agreement.

A. Accuracy of Representations

The representations and warranties made by Contractor in Article 2 of this Agreement are true and correct on and as of the Signature Date.

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B. Absence of Litigation

There is no litigation pending on the Signature Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance. Contractor shall notify Town in writing within thirty (30) days of Contractor's becoming aware of any litigation that may in any way affect its performance of the Franchise Services.

C. Effectiveness of Council Action

A Council Resolution, or motion, approving this Agreement, shall have become effective pursuant to Applicable Law on or prior to the Signature Date.

D. Verification of Insurance Coverage and Performance Assurances

Contractor shall submit no later than thirty (30) days prior to the Effective Date, and shall maintain to the satisfaction of Town, endorsements of insurance coverage pursuant to Article 9.6, and a performance bond or other performance assurance pursuant to Article 9.7.

E. Transition Plan

Prior to the Effective Date, Contractor has demonstrated to the reasonable satisfaction of the Town Representative its ability to meet the scheduling and substantive requirements of the final Transition plan pursuant to Article 3.6 and as contained in Exhibit C.

F. Payment of Certain Costs

To defray Town administrative expenses related to the award of this Franchise, Contractor shall pay to the Town the amount specified by the Town, but not to exceed \$50,000. Payment shall be made in full within thirty (30) days prior to the Effective Date and separate from all other remittances.

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ARTICLE 4 SCOPE OF SERVICES

4.1 SINGLE-FAMILY SERVICE

The following package of services is to be provided by the Contractor to Single-Families. All materials are to be Collected on a weekly basis on the same day.

A. Refuse Collection

Side-yard Collection of Refuse from Cans. Each Customer receiving Single Family Service may choose to bring their Solid Waste Container to the curb. If a Customer chooses to bring the Container to the curb the Contractor will provide, upon Customer request, a 20, 32, 64 or 96 gallon Cart for that Customer's use. This Cart will be provided at no additional charge. Customers making this election are not eligible for side-yard service. However, Customers that are neither frail, elderly, or disabled, but that were, as of the Effective Date, receiving side-yard service using Cans shall continue to receive such service except as they voluntarily elect to receive curbside service using Carts. Wheeled Carts or Cans for the collection of Solid Waste will be provided to frail, elderly or disabled Customers upon request and at no extra charge. Town may elect to assist Contractor in public education regarding the advantages of curbside service.

B. Recyclables Collection

Curbside Collection of Recyclables, using Buckets, bags, and bundles, as specified in Exhibit A.

C. Green Waste Collection

Curbside Collection of Green Waste as specified in Exhibit A using Carts and Cans, with maximum set-outs equivalent to seven (7) thirty-two (32) gallon Cans, or two hundred and twenty four (224) gallons.

D. Intensive Recycling

Provide Intensive Recycling service of one twenty (20) gallon Can or Cart every other week to qualified Customers. By sixty (60) days prior to the Effective Date, the Contractor shall develop a draft qualification process for review by the Town Representative. Contractor shall then publicize the availability of the service, accept and review applications, provide service to qualified applicants, and submit information on Intensive Recycling efforts as required in Article 8.

E. Billing for Service

Contractor shall bill each Customer according to the size Container used for Refuse Service, as provided in Exhibit H, regardless of the requested level of Recycling and Green Waste service.

4.2 MULTI-FAMILY SERVICE

The Contactor shall provide Multi-Family Customers with a choice of Bin Service or Cart Service. As provided in Article 6.1, the Contractor will bill each Multi-Family account at the rate for Bin Service billed to owner, or Cart Service billed to the individual resident, whichever is less based on relative Container volumes. Contractor may request, but not require, that Multi-Family residences with four (4) or more units receive consolidated service based on equivalent total gallon capacity.

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Contractor shall provide all Multi-Family Customers with the minimum level of Recycling Service specified in Exhibit A.

4.3 COMMERCIAL SERVICE

Contractor shall provide Commercial Customers with a choice of Bin Service or Cart Service. Each Service package shall include the minimum level of Recycling Service specified in Exhibit A as well as a minimum level of Green Waste Service as specified in Exhibit A. Contractor shall also offer increased Recycling service to Commercial Customers as part of the Rates provided in Exhibit H for Bin Service or Cart Service. In providing Commercial Service the Contractor may levy Special Charges as provided in Article 6.1 and in Exhibit H.

4.4 DEBRIS BOX AND COMPACTOR SERVICE

Contractor shall provide Debris Box and Compactor Service on an exclusive basis only for permanent or non-temporary Customers and as related to provision of Town Services or other services provided for municipal purposes as detailed in Article 4, and without charge. Contractor shall fully cooperate with, and as requested assist the Town in developing and fully implementing a Construction and Demolition Debris ordinance, should the Town develop one.

4.5 FREE ON-CALL CLEANUPS

Contractor shall offer, and as requested, provide two on-call pick-ups during each calendar year for residential Customers. Contractor will accept Solid Waste, Bulky Items, Construction and Demolition Debris, and Green Waste. Each pickup is limited to two (2) cubic yards of Solid Waste or to one (1) cubic yard of Solid Waste, and one (1) Bulky Item. Contractor shall advertise the availability of this service as provided in Exhibit E. Upon notice by a Customer, Contractor will schedule the pick-up as provided in Exhibit A. Contractor shall make all reasonable efforts to Recycle or to provide reuse opportunities for the materials collected on-call and specified in Exhibit A, and shall transport remaining materials to a Disposal Facility and/or Green Waste Facility. Contractor will provide additional on-call pick-ups as requested within any calendar year for the Special Charge provided in Exhibit H.

4.6 CHRISTMAS TREE COLLECTION

Contractor will collect Christmas trees placed whole at the curb on regular Collection days. Contractor shall provide this pick-up service on the regular day of Collection service each year from December 26 through January 15. The Contractor shall transport all collected Christmas trees to a Green Waste Facility.

4.7 DISABLED OR FRAIL ELDERLY SERVICE

Contractor shall provide free side-yard, or back-yard Residential Service as requested, for all Franchise Materials to disabled or frail elderly Customers that (1) are physically unable to move Containers as verified by a medical certificate and (2) annually sign a sworn statement that they live in a residence with no other residents capable of moving Containers. Wheeled Carts or Cans

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for the collection of Solid Waste will be provided to frail, elderly or disabled Customers upon request and at no extra charge.

4.8 COLLECTION SERVICE FOR TOWN FACILITIES

Contractor will provide free Solid Waste, Recyclables, and Green Waste Collection services for the facilities listed in Exhibit F, 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. Contractor will service Town-provided Compactors, as requested. Contractor 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 Contractor.

4.9 COLLECTION FROM PUBLIC CONTAINERS

Contractor 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 Contractor. Exhibit F provides the list of current Containers.

4.10 SERVICES AT SPECIAL EVENTS

Contractor is not required to provide services for special events hosted by the Town or third parties. Town reserves the right to require that such service be provided, and should such service be required it will be more fully specified in Exhibit G.

4.11 COMMUNITY CLEANUP EVENTS

In coordination with the Town, Contractor shall provide Debris Box Service on an on-call basis up to twelve (12) times per year as noted in Exhibit G 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 Contractor.

4.12 TRANSPORT AND DISPOSAL OF SOLID WASTE

Contractor shall transport Solid Waste to a Disposal Facility(ies), and is solely responsible for payment of all transport and Disposal services from the Rates. Contractor is solely responsible for all risks related to changes in the cost of Disposal, except as specifically provided in Article 7.4.

4.13 RECYCLING TRANSPORTATION, PROCESSING AND MARKETING

The Contractor shall provide for the transportation, processing and marketing of all Recyclable Materials Collected within this Franchise. The Contractor shall use Recycling Facilities of its own choosing, but shall ensure that processing and marketing occurs in a manner that results in Residue requiring Disposal equal to no more than ten (10) percent by weight of the original weight of the collected Recyclable Materials, and that any Residue is delivered to a permitted Disposal Facility. As specified in Article 8, Contractor's reports to Town will include specified information on the use of Recycling Facility(ies).

4.14 TRANSPORT AND PROCESSING OF GREEN WASTE

Contractor shall transport Green Waste to a Green Waste Facility(ies) for use as compost, mulch, alternative daily cover, or other forms of beneficial reuse, and is solely responsible for payment of

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all transport and Green Waste services from the Rates. Contractor is solely responsible for all risks related to changes in the cost of Green Waste processing service except as specifically provided in Article 7.4.

4.15 PERIODIC REVIEW OF FRANCHISE SERVICES

Contractor and Town shall periodically meet at the request of either party to discuss specific issues related to improving Franchise Services. No later than September 1, 2004, the parties shall meet to discuss issues that include, but are not limited to:

- A.** The status of technology and technique related to Single Stream Recycling.
- B.** The efficacy of Recycling #3-#7 plastics, milk, juice, and soy milk containers, and aseptic beverage containers. Contractor commits to provide Collection of these materials as Recyclable Materials as soon as there is reasonable evidence that reliable markets exist for these materials, regardless of whether their sale results in net revenue to Contractor.
- C.** Equity with regard to use of new Special Charges related to the distance between Collection vehicles and Containers, and to the relative operational cost of service in flat and hilly areas of the Town.
- D.** The addition of food waste Collection and composting to residential and/or Commercial Services as a new Franchise Service. Contractor's proposed Customer Rates for food waste Collection and composting provided in its proposal submitted March 22, 2002 to the Town (see Alternate Plan Form 10 Optional Food Waste Composting) shall be the starting point for negotiating compensation for any change in service as provided in Article 5.7.

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ARTICLE 5 OTHER FRANCHISE SERVICES

5.1 CONSUMER INFORMATION AND PUBLIC EDUCATION

Exhibit E contains the final version of the Contractor's detailed Public Education and Customer Service plan. The Public Education and Customer Service plan specifies the minimum standards for Contractor performance of these activities in a proactive, timely, and professional manner. Contractor acknowledges the importance throughout the Term of developing, and maintaining consistent effort in conducting the activities detailed in the Public Education and Customer Service plan, and in particular the role of information and education in successful implementation of residential Recycling, Intensive Recycling, and enhanced Multi-Family and Commercial Recycling services. Contractor's information and education efforts are also crucial in ensuring that Customers are fully aware of all services to which they are entitled as specified in this Agreement, including but not limited to Christmas tree collection, side-yard or back-yard service for the frail, elderly, and disabled, and free on-call pick-ups. Contractor further acknowledges its responsibility, and the important role of the Contractor's consumer information and public education efforts, in causing the Town to maintain an AB939 diversion level of fifty (50) percent or above.

5.2 CUSTOMER SERVICE AND ACCESSIBILITY

A. General

Contractor acknowledges that Town expects provision by Contractor of highly professional and courteous customer service. Exhibit E contains requirements for provision of customer service as provided in Contractor's proposal, in addition to those contained in this Article 5.

B. Telephone

Contractor shall maintain a toll-free telephone number for customer service. Contractor shall install and maintain telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Dedicated customer service representatives shall be available to answer calls from 7 a.m. to 5 p.m., Monday through Friday. Contractor shall also maintain an after hours telephone message system to take calls received other than during normal business hours. Contractor shall provide the Town a means of contacting a representative of the Contractor on a 24-hour basis. Further specification of these requirements is contained in Exhibit A.

5.3 SERVICE COMPLAINTS AND RESOLUTION

A. General

The Town expects Customers to receive a high level of customer service that is provided in a professional, timely, and courteous manner.

B. Customer Complaint Log

Contractor shall maintain a written log of all oral and written service complaints registered with Contractor from Customers within Town ("Complaint Log"). Contractor shall be responsible for prompt and courteous attention to, and prompt and reasonable resolution of, all Customer complaints. Contractor shall record in the Complaint Log all written and oral complaints, noting

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the name and address of complainant, date and time of complaint, nature of complaint, identity of supervisor, and nature and date of resolution. Such log shall be kept so that it conveniently may be inspected by representatives of Town upon request. Such log shall be retained by Contractor for three (3) years following the end of the year in which the complaint was made.

C. Resolution of Complaints

Contractor shall respond to all Customer complaints within twenty-four (24) hours, Sundays and holidays (as specified in Exhibit A) excluded. Contractor shall make best efforts to resolve all complaints within ten (10) Working Days, with the following exceptions:

1. **Missed Customer Pick-Ups** If a complaint involves a missed pick-up of Solid Waste, Recyclables or Green Waste provided by the Customer for Collection in accordance with Town codes and ordinances, Contractor shall Collect the Solid Waste, Recyclables or Green Waste in question by the same day if the complaint is received by 12:00 Noon, or by 12:00 Noon the following Working Day if the complaint is received after 12:00 Noon.
2. **Town or Public Pick-Ups** If a complaint involves a failure to collect Solid Waste, Recycling or Green Waste from a Container provided for Town services, or emptying of a public Solid Waste or Recycling Container in order to avoid overflow, Contractor shall Collect the Solid Waste, Recyclables or Green Waste in question within six (6) hours after receiving the complaint, including weekends and holidays.

5.4 CHANGE IN COLLECTION OPERATIONS, ADMINISTRATION, OR SCHEDULE

A. Town Notice

Changes to Solid Waste, Recycling and Green Waste Collection routes or Collection days, or other changes to Collection operations that have possible potential to create Customer confusion, are subject to prior approval of the Town Representative, which shall not be unreasonably withheld. A change in Collection route or day is defined as any change that affects more than five (5) percent of Customers on the route.

B. Customer Notice

Contractor shall make the following notifications regarding any changes in service:

1. Notify all affected residential Customers (Single-Family and Multi-Family) at least fourteen (14) calendar days prior to any change in their scheduled day of Solid Waste, Recyclables and Green Waste Collection. Contractor shall not permit any residential Customer to go more than seven (7) calendar days without service in connection with a Collection schedule change.
2. Notify all affected Commercial Customers at least five (5) calendar days prior to any change in service. Except by prior arrangement with the Customer, no change in service shall temporarily reduce the weekly frequency of Collection.

5.5 REPORT ACCUMULATION OF SOLID WASTE: UNAUTHORIZED DUMPING AND CESSATION OF SERVICE

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Contractor shall direct its employees to note and report any Town address at which they observe significant and/or ongoing accumulation of Solid Waste that is not being delivered for Collection. Contractor shall also direct its employees to note and report any Town address or location at which Solid Waste has been apparently dumped in a manner that does not conform to Town codes and ordinances. Contractor shall notify the Town Representative within three (3) Working Days of the address or location of any accumulation or dumping.

5.6 HAZARDOUS WASTE

A. General

If Contractor determines that waste placed in any Container for Collection or delivered to any facility is Hazardous, Medical or Infectious Waste, or other waste that may not legally be disposed of at a Disposal Facility or presents a hazard to Contractor's employees, Contractor shall have the right to refuse to accept such waste. The Customer shall be contacted by Contractor and requested to arrange proper disposal. If the Customer cannot be reached immediately, Contractor staff shall, prior to leaving the premises, leave a tag indicating the reason for refusing to collect the waste.

B. Hazardous Waste Disposal Responsibility

If Hazardous Waste is Collected by Contractor during Contractor's normal Collection service and the Customer cannot be identified or fails to remove the waste after being requested to do so, Contractor shall arrange for its proper disposal at no cost to Town. Contractor shall make a good faith effort to recover the cost of proper disposal from the Customer, and the cost of this effort as well as the cost of disposal shall be chargeable to that individual or entity. If the Customer cannot be identified, Contractor shall absorb the cost of proper disposal. Contractor shall report any such disposal cost in writing to the Town within forty-eight (48) hours of the date and time incurred.

5.7 CHANGE IN SCOPE

A. General

Town may require a Change in Scope, consisting of changes in, or modifications to existing Franchise Services, or a request that Contractor provide new services.

1. Should the Change in Scope result in documented increases in Contractor's operating or capital expenses, the Town shall increase Rates as provided in Article 7.4 as necessary to compensate Contractor for the additional documented expenses, including an increase in profit equal to ten (10) percent of the portion of increased expenses that are not pass-through expenses.
2. Should the Change in Scope result in documented decreases in Contractor's operating or capital expenses, the Town shall decrease Rates, as provided in Article 7.4, as necessary to reflect such decrease in costs, including a decrease in profit equal to ten (10) percent of the portion of reduced expenses that are not pass-through expenses.

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B. Good Faith Negotiation

In the event of a Change in Scope, the Parties agree to negotiate in good faith to determine the applicable increase or decrease in Rates. Contractor shall promptly provide any documentation reasonably requested by Town as necessary to identify and quantify any added or reduced expenses related to the Change in Scope. Either Party may, at its own cost, seek independent third-party assistance in determining the nature of any costs or savings. All determinations of added or reduced expenses shall be based on reasonable industry standards and averages for providing such services. If a Change in Scope results in a reduction or shift in equipment needs, to minimize capital expenditures, Contractor, including a parent or any affiliates, shall make its best efforts to redeploy or sell vehicles, Containers, equipment, and materials that are not fully amortized. Town reserves the right to adjust Contractor's compensation through an alternative method, such as a one-time or phased lump sum payment from the Town to the Contractor, or from the Contractor to the Town.

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ARTICLE 6 BILLING, COLLECTION, AND REMITTANCE

6.1 BILLING RESPONSIBILITIES

A. General

The Contractor is solely responsible for billing and collecting Rates for all Franchise Services. The Contractor shall not charge any amount in excess of the approved Rates for any services required or permitted to be performed by the terms of this Agreement. The approved Rates are those set forth in Exhibit H, "Schedule of Approved Rates," or as they may be adjusted by the Town during the Term.

B. Specific Requirements

In billing the Rates, Contractor shall:

1. Bill customers that receive Multi-Family Service at the Rate for Bin Service or Cart Service, whichever is less based on relative Container volumes. Bin Service should be compared to Cart Service by calculating the nearest gallon size of the former with 1 cubic yard equal to 224 gallons. Thus, for example, a two (2) cubic yard Bin shall be billed at the lesser of the two (2) cubic yard Bin Rate, or the lowest cost combination of Rates for Cart Service.
2. Levy Special Charges as provided in Exhibit H. Special Charges shall not be levied without prior notification to the Customer.
3. Not bill for side-yard service for eligible Customers as specified in Article 4.7 and Exhibit A.
4. Not bill for services provided to Town buildings, for Collection from public Containers, or for special events as provided in Articles 4.8, 4.9, 4.10, and 4.11 respectively, and in Exhibits F and G.

All Bin Customers shall be billed monthly, in arrears of service. Can and Cart Customers may be billed in advance on a monthly or every three months basis, at the Contractor's discretion. All Customer invoices are due and payable within 30 days of the invoice date.

6.2 RECEIPT OF PAYMENT

The Contractor shall segregate within its accounting system all receipts received from Customers for Franchise Services.

6.3 MONTHLY BILLING STATEMENT AND REMITTANCE

For each month the Contractor shall prepare and provide to the Town a monthly statement and a Monthly Remittance by the 20th day of the following month. The monthly statement shall include the following information and calculations for the Monthly Remittance:

A. Gross Rate Revenues

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All Rate Revenues collected from Customers during that month for current and past due accounts are to be reported as Gross Rate Revenues. Documentation should be provided to support the Gross Rate Revenues. Documentation should include the number of accounts for each Rate and total number of Customers billed for each Special Charge.

B. Franchise Fee.

The Contractor shall present the Franchise fee calculations and the amount of the monthly Franchise fee obligation. The Franchise fee shall be as follows:

Franchise fees =Ten (10) percent of Gross Rate Revenues
=Two (2) percent of Debris Box Service Revenues

C. Liquidated Damages

Any Liquidated Damages the Contractor is obligated to pay to the Town, as provided for in Article 10.1 and Exhibit I shall be reported for the month.

D. Other Payments

Any other payments due to the Town, such as the cost of performance reviews or audits.

E. Monthly Remittance

The Monthly Remittance to the Town shall be calculated as follows:

Monthly Remittance = Franchise fee + Liquidated Damages

F. Illustration

For example, for illustrative purposes only assume that:

1. Gross Rate Revenues collected by Contractor during the month equals \$100,000.
2. Franchise Fee for Gross Rate Revenues
= Gross Rate Revenues/1.10 [assuming franchise fee of 10%]
= \$100,000/1.10
= \$90,909
= \$100,000-\$90,909
= \$9,091
3. Franchise Fee for Debris Box Service (calculated as in 2. above) for the month is \$1,000
4. Liquidated Damages due for the month are \$100.
5. Monthly Remittance = \$9,091+\$1,000 + \$100
= \$10,191

6.4 DISPUTES REGARDING REMITTANCES

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If the Town disputes any amount remitted by the Contractor as part of any Monthly Remittance, the Town shall provide the Contractor with written objection indicating the reasons for the Town's objection to or disagreement with such amount. If the Town and the Contractor are not able to resolve such dispute within 30 days after the Town's objection, the parties may, at their election, mediate the dispute pursuant to paragraph 11.6 herein or submit the matter to Town Administrator for final determination. Nothing contained in this Article 6.4 shall limit the Town or any authorized officer of the Town or any other governmental agency from raising a further objection to any amount billed by the Contractor pursuant to an audit conducted pursuant to Article 6.6.

6.5 CONTRACTOR RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS

Contractor shall be responsible for collecting all billed monies from Customers, and shall solely bear all expenses and losses related to collecting or failing to collect bad debt from delinquent accounts.

6.6 AUDIT OF BILLINGS AND FINANCIAL REPORTS

A. Scope of Audit

Town may at its sole discretion select a qualified independent firm to perform up to two audits during the Base Term. The frequency and timing of the audits shall be determined at Town's sole discretion. Town shall provide Contractor sixty (60) days advanced, written notice of any change in the audit schedule. Town shall determine the scope of any audits based on the general requirements specified below and in each instance may elect to conduct either one or both of the following types of audit:

1. **Audit of Billings.** The auditor shall review the billing practices of Contractor with relation to delivery of Franchise Services. The intent of this audit is to use sampling to verify that Customers are receiving the type and level of service for which they are billed.
2. **Audit of Revenue Reporting.** The auditor shall review relevant financial reports and data submitted by Contractor pursuant to Article 8. The purpose of this audit is to verify that Contractor is correctly calculating Gross Rate Revenues, and is properly remitting Franchise fees and Liquidated Damages.

B. Cost of Audit

Contractor shall bear the expense of an audit up to a maximum limit of \$10,000 per occurrence, except that if, in the opinion of the Town, an initial level of audit indicates possible problem areas that require further review by the auditor, Contractor shall bear all such reasonable additional cost.

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ARTICLE 7. CONTRACTOR COMPENSATION AND CUSTOMER RATES

7.1 RATES

The Rates contained in Exhibit H ("Schedule of Approved Rates") are set by Council resolution and are the only compensation to Contractor for provision of Franchise Services. Contractor shall bill Customers and collect payment in accordance with the Rates set forth in Exhibit H and pursuant to Article 6.

7.2 ADJUSTMENT OF RATES

A. Annual Adjustment

Subject to the terms herein, the Contractor is entitled to one Rate adjustment annually beginning January 1, 2005. Contractor's request for an adjustment shall be prepared in a format approved by the Town Representative, and is to be submitted to Town by each September 1 beginning with September 2004. Each adjustment is to be based on data from a previous twelve (12) month period as specified in this Article 7.2, is to be approved by the Council with good faith effort by November 1 of each year, and will be effective on each subsequent January 1.

B. Treatment of Solid Waste and Green Waste Transport, Disposal and Processing Costs

The Rate adjustment process is inclusive of all costs associated with the transport to, and use of and Disposal and Green Waste Facilities. These costs are not treated as separate pass-through expenses.

C. Adjustment Process

Each Rate shall be adjusted up or down to reflect the product of the change in the annual inflation rate measured as the percentage increase in the Consumer Price Index (CPI) over the previous twelve (12) months, and the CPI Adjustment Factor. The twelve (12) month change in the CPI shall be calculated using the twelve (12) months that began eighteen (18) months prior to the effective date of the Rate adjustment. Thus the calculation of the change in the CPI for a Rate adjustment taking effect on January 1, 2005 shall be for the period July 1, 2003 through June 30, 2004. The applicable CPI is then adjusted by the CPI Adjustment Factor. The adjusted Rate shall be calculated as follows:

$$\text{Adjusted Rate} = \text{Current Rate} \times \left[\frac{(\text{Current CPI} / \text{12-month previous CPI}) - 1}{\text{CPI Adjustment Factor} + 1} \right]$$

The adjusted rate shall be rounded to the nearest cent.

In the event that the specified CPI index increases by more than four (4) percent in any one year (i.e., Current CPI/12-month previous CPI is greater than 1.04), the Contractor shall receive an adjustment to each Rate greater than four (4) percent only to the extent that the Contractor can demonstrate that actual costs specific to providing Franchise Services increased more than four (4) percent during that twelve month period.

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If a performance review is scheduled for the coming calendar year, Rates shall be adjusted upwards for that year only to reflect the cost of the performance review. Town reserves right to spread the cost of a review across two (2) years of Rates.

For example, assume:

1. The Rate for Commercial Bin Service, three (3) cubic yards collected once per week is \$100.00 per month.
2. The CPI Adjustment Factor is 0.83.
3. Current CPI = 123.
4. 12-month previous CPI = 118.8

Then the adjusted Rate is calculated as follows:

$$\text{Adjusted Rate} = \$100 \times [((123/118.8) - 1.00) \times 0.83] + 1 = \$102.94$$

In this example a three-and-one-half (3.5) percent increase in the CPI results in a 2.94 percent adjustment to the Rate.

D. Change in the CPI Index

If the CPI is discontinued or revised during the Term by the United States Department of Labor, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the CPI had not been discontinued or revised.

7.3 APPROVAL AND NOTICE OF ADJUSTED RATES

The Town shall act in good faith to approve adjusted Rates to take effect as scheduled on each November 1, beginning with November 1, 2004 to be effective the following January 1. Contractor shall provide all Customers with advance written notice of approved Rate adjustments, in the form of a bill insert at least thirty (30) days prior to the effective date of each Rate adjustment.

7.4 SPECIAL RATE REVIEW

A. Eligible Items

The Contractor is entitled to apply to the Town for consideration of a special Contractor Service Fee review, or the Town may initiate such a review should one or more of the following occur:

1. Change in mandated local, regional, state, or federal fees charged at Disposal Facilities or Green Waste Facilities on a per-ton basis as pass-through expenses.
2. A Change in Scope as provided in Article 5.7.

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3. Changes to the Franchise fee in accordance with Article 3.5.
4. A Change in Law for which Contractor compliance is mandatory, and that results in significant documented increase in specific costs related to providing Franchise Services.

B. Ineligible Items

Items for which Contractor will not be additionally compensated over the Term, except as the same may result in a Change in Scope as defined in Article 5.7 include, but are not limited to:

1. Changes in fuel cost.
2. Changes in Disposal Facility tipping fees, except as specified in Article 7.4 A1.
3. Changes in Green Waste Facility tipping fees, except as specified in Article 7.4 A1.
4. Decreases in Recycling revenues due to change in market conditions or any other factor, from the sale of Recyclables Materials.
5. Increases in the cost of Recyclables processing.
6. Increases in transportation time and/or costs related to provision of Franchise Services.
7. Changes in the number of Customers due to changes in population or housing/business development, or to annexation.
8. Shifts in the number of accounts between larger and smaller Cart sizes, large and smaller Bins, or more or less frequency of Bin pickup.
9. Substantial changes as specified in Exhibit F in the Collection location, volume and/or frequency of Collection of Solid Waste and Recyclables associated with the Town Services specified in Article 5 and in Exhibits A and F.
10. Incorrectly estimated number of accounts; tons of Solid Waste, Recyclables or Green Waste; or inaccuracies in any other assumptions or data at any time during the Term.

C. Review of Costs

Should the Contractor request a special Rate review, the Town shall have the right to review any or all costs associated with the Contractor's services under this Agreement. A special Rate review may, at the Town's sole discretion occur in conjunction with a performance review pursuant to Article 8.7.

D. Submittal of Request

Contractor must submit any request for a special review of Rates, and reasonable cost and operational data in a form and manner specified by the Town at least six (6) months prior to the

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proposed effective date of any Rate adjustment, and shall make every effort to have any such increase coincide with a regular Rate adjustment.

E. Burden of Justification

Contractor shall bear the burden of justifying to Town by Substantial Evidence any entitlement to a Rate adjustment under this Article 7.4. If the Town determines that the Contractor has not met its burden, the Contractor may request another hearing to produce additional evidence. Upon request, the Town may permit said additional hearing.

F. Grant of Request

Based on evidence the Contractor submits, the Council may grant some, all or none of the requested Rate adjustment.

G. Calculation of Rate Adjustment

Any Rate adjustment made pursuant to this Article 7.4 shall be calculated as illustrated in Article 7.2.

7.5 RESOLUTION OF DISPUTES REGARDING SPECIAL RATE REVIEWS

This Article 7.5 pertains only to special Rate reviews requested by Contractor under the provisions of Article 7.4. If Town fails to act in a timely manner upon all or any part of the Contractor's special Rate adjustment application, then Contractor's sole remedy against the Town is to file a petition for writ of mandate pursuant to CCP, Section 1085. Contractor expressly does not have a cause for action for damages against the Town. In addition, Contractor expressly does not have a cause for action for damages against the Town, should the Town be unable to implement a planned adjustment in Rates due to applicable legal requirements including but not limited to California State Proposition 218.

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ARTICLE 8. RECORD KEEPING, REPORTING, AND PERFORMANCE REVIEWS

8.1 RECORD KEEPING

A. Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Franchise Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Such records shall be subject to audit, copy, and inspection. Gross Rate Revenues and Recycling revenues derived from provision of the Franchise Services, whether such services are performed by the Contractor or by a subcontractor or subcontractors, shall be recorded as revenues in the accounts of the Contractor. Contractor shall maintain and preserve all cash, billing and disposal records for a period of not less than five (5) years following the close of each of the Contractor's fiscal years.

B. Franchise Materials Records

Contractor shall maintain records of the quantities of (i) Solid Waste Collected and Disposed under the terms of this Agreement, (ii) Recyclable Materials, by type, Collected, purchased, processed, sold, donated or given for no compensation, and Residue Disposed, and (iii) Green Waste Collected, received, purchased, processed, sold, donated or given for no compensation, and Residue Disposed. These records shall be subject to the inspection provisions provided in Article 8.5.

C. Other Records

Contractor shall maintain all other records reasonably related to provision of Franchise Services, whether or not specified in this Article 8 or elsewhere in the Agreement.

8.2 ANNUAL REPORTING

A. General

Monthly reports shall be submitted no later than the twentieth (20th) day following the end of the month for which a report is due. Annual reports shall be submitted no later than July 1 for the previous calendar year. Annual reports shall be submitted in hard copy, and shall be provided electronically on a 3.5" IBM-compatible diskette in a software acceptable to the Town.

B. Monthly Reports

Contractor shall provide monthly reports to the Town containing the following, and in a format proposed by the Contractor and approved by the Town:

1. **Solid Waste Data.** Provide for Cart, Can, and Bin Service the average number of daily set-outs, and tons collected and Disposed or processed. Indicate number of service accounts by service classification level for Single-Family, Multi-Family and Commercial Customers. Indicate number of Bins, Carts, and Cans distributed by size and Customer type. State Disposal Facility(ies) used for the month. The set out statistics will be calculated on a route-by-route basis using each route's annual audit. The monthly reports will be updated as the annual route audits are performed throughout the year to reflect the most current statistics.

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2. **Recycling Data.** Provide gross tons Collected daily on average by material type for Can, Cart, and Bin Service. Indicate average number of daily Can set-outs. Provide total set-outs and tonnages by material type. Indicate average participation rates relative to the total number of Customers in terms of weekly set-out counts. Indicate, by material type (and grade where appropriate), quarterly totals of Recyclable Materials processed and sold including facility name and location. Indicate number of Buckets, Carts, Bins, and Debris Boxes distributed by size and Customer type. Indicate total number of Intensive Recycling Customers, and the change in number from the previous month. The set out statistics will be calculated on a route-by-route basis using each route's annual audit. The monthly reports will be updated as the annual route audits are performed throughout the year to reflect the most current statistics.
3. **Green Waste Data.** Provide average daily gross tons Collected. Indicate average daily number of set-outs. Indicate average participation rates relative to the total number of Customers in terms of weekly setout counts. Indicate number of Bins and Carts distributed by size and Customer type. The set-out statistics will be calculated on a route-by-route basis using each route's annual audit. The monthly reports will be updated as the annual route audits are performed throughout the year to reflect the most current statistics.
4. **Praises, Complaints, Missed Pickups and Resolutions.** Provide a summary of the type and number of complaints, and their resolutions. Provide written record of all calls related to missed pickups and responses to such calls.
5. **Problems and Actions Taken.** Summary narrative of problems encountered with collection and processing activities and actions taken, including but not limited to type and number of notification tags left at Customer locations, and instances of property damage or injury.

C. Annual Reports to Town

Annual reports to the Town shall include:

1. Summary of data from monthly reports, including the combined figures for the year.
2. A summary of the prior year's monthly Gross Rate Revenues, Franchise fees, Liquidated Damages, any other payments to Town, and Monthly Remittance.
3. Account data submitted in hard copy, including the number of accounts, account names and addresses of collection locations per each service category.
4. Public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Franchise Services. Discuss the impact of these activities on Recycling and Green Waste program participation and amounts collected for Single-Family, Multi-Family and Commercial Customers.

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5. An analysis of any Recycling and Green Waste collection, processing and marketing issues or conditions (such as participation, setouts, contamination, etc) and possible solutions, discussed separately for Single-Family, Multi-Family and Commercial Customers.

D. Annual Reports to County JPA

Contractor shall prepare an annual report providing tonnage information and program information on Collection and processing services required by the Agreement. Contractor shall submit the report to the Town and to the Marin County Hazardous and Solid Waste Management Authority (“Marin WMA”) for review and comment, and revision as needed. Contractor shall consult with the Town and the Marin WMA staff to determine the schedule for developing and submitting reports. Should for any reason the Marin WMA cease to provide the state with countywide data, Contractor shall be responsible for providing, preparing, and submitting all substantially equivalent data required by the California Integrated Waste Management Board.

8.3 ADDITIONAL REPORTING

The Contractor shall furnish the Town with any additional reports as may reasonably be required, to be prepared within a reasonable time following the reporting period. Town, or Town on behalf of the JPA may require submittal of any of the information specified in Article 8.2 on a monthly, quarterly or semi-annual (every six (6) months) basis, and either periodically or on an ongoing basis.

8.4 OTHER RELATED REQUIREMENTS

A. Waste Characterization Studies

The Contractor shall fully and in a timely manner cooperate with and assist the Town or the Marin County JPA in the performance, if and as needed, of periodic waste characterization studies.

B. Collection Monitoring

The Contractor shall monitor its collection of Solid Waste, Recyclable Materials, and Green Waste to identify occurrences of, and to prevent, contamination of Recyclable Materials and Green Waste. Contractor shall allow a person designated by the Town Representative to ride with Contractor’s collection vehicles on any route or routes. The Town Representative will inform Contractor at least one week in advance prior to date of route monitoring.

8.5 INSPECTION BY THE TOWN

Town Representative, or his designee(s) shall have the right to observe and review any Contractor's records, operations, and equipment, used in or connected with the provision of Franchise Services, and to enter premises during normal business hours for the purposes of such observations and review at any time without prior notification. Town Representatives shall make notification to Contractor’s Representative upon arrival.

8.6 PERIODIC REVIEW

Town will periodically review the performance of the Contractor based on Customer complaints, timely payment of sums due, statistical reporting, program progress, etc. This review will be conveyed to the Council, and the Contractor may review the draft report and submit its own statement.

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8.7 PERFORMANCE REVIEW

Town, at its sole discretion, may require up to two times a "performance review" of the Contractor during the initial five -year Term of the Agreement and one time during the three-year extensions if any extensions to the Term are granted. The Performance Review shall be conducted as set forth below.

A. Scope of Performance Review. The performance review shall:

1. Be performed by a qualified firm under contract to the Town. The qualified firm shall be selected by the Town with input from the Contractor.
2. Town cost of the performance review shall be reimbursed by Contractor, as provided herein. Such reimbursement shall not exceed \$20,000 per review or a combined total of \$40,000 during the base term. The cost of each \$20,000 review shall be a one-time adjustment to the Rates as provided in Article 7.2 C. Contractor shall reimburse Town the cost of a performance review following receipt of Rate Revenues reflecting the one-time Rate adjustment. However, if any performance review results in a finding of a material breach or default in the Contractor's performance, the Contractor shall in a timely manner reimburse the Town for the total cost of the performance review without an adjustment to the Rates.
3. Address all appropriate areas of concern to the Town, and shall provide specific recommendations, as appropriate, for improvement in each area, including any or all of, but not limited to the following:
 - a. Compliance with the terms of this Agreement and Applicable Laws.
 - b. Efficiency of Collection operations, including an analysis of routes, schedules and the impact of Franchise requirements.
 - c. Procedures for receiving and resolving Customer complaints and concerns.
 - d. Comparison with practices of businesses deemed similar to the Contractor.

Contractor shall cooperate fully with the performance review, and provide within thirty (30) days of request, all operational, financial and other information deemed reasonable or convenient by Town or the firm selected by the Town for purposes of conducting the performance review. The Contractor's failure to cooperate or provide all requested information shall be considered an Event of Default as provided in Article 10.2A.

B. Changes to Operations

As the result of a performance review, the Town reserves the right to require reasonable changes to the Contractor's operations, which the Town determines to be necessary or appropriate to carrying out the intent of the terms and conditions of this Agreement.

C. Determination of Breach

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If, as result of Performance Review the Town identifies one or more areas of Contractor breach of the Agreement, the provisions of Article 10.1 shall apply.

D. Determination of Default

If, after the Town has reviewed the results of a particular performance review including problem areas, frequency of occurrence, recommended improvements and compliance therewith, and has considered any evidence presented by the Contractor in connection therewith, the Town determines to its satisfaction that any significant Event of Default has occurred, then this Agreement may be terminated by the Town at its option pursuant to Article 10.7 of this Agreement and without prejudice to any other remedy to which it may be entitled to either at law, in equity, or under this Agreement by giving written notice of termination, either by mail or personal service, to the Contractor not less than thirty (30) days prior to the date upon which the termination is to become effective.

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ARTICLE 9. INDEMNITY, INSURANCE, BOND

9.1 INDEMNIFICATION OF THE TOWN

The Contractor agrees to and shall indemnify, defend, with Counsel acceptable to the Town, and hold harmless Town, its officers, officials, employees, volunteers, agents and assigns (indemnitees) from and against any and all damages (whether special, general or punitive), loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits (whether administrative or judicial), attorney's fees including expert witness and expenditures for investigation and administration, in law or in equity, of every kind and description, (including, but not limited to, injury to and death of any person and damage to property, strict liability, product liability, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) all the activities of the Contractor, its agents, employees, contractors, and/or subcontractors, in performing or failing to perform this Agreement; (ii) the failure of the Contractor, its agents, employees, contractors and/or subcontractors to comply in all respects with applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the processing, marketing, and end use of Recyclable Materials and Green Waste. Contractor shall not be responsible for any liability, penalty, forfeiture, loss, claim or negligence or resulting damages, which is exclusively the result of Town's actions or failures to act in connection with implementing the provisions of the Agreement.

In the case where a third party claims both Contractor and Town are responsible for any liability, forfeiture, loss, claim or for negligence or resulting damages, Contractor agrees to defend Town, its officers, officials, employees, volunteers, agents and assigns as provided in this Article 9.1. However, should an agreed settlement or judgment result in a determination that Town is all or in some part responsible for the claim(s) made, Town shall be responsible and pay that portion of the claim(s) allocated to it by the settlement agreement or judgment of the court. The Town, however, will not, in any event, be required to reimburse contractor for the costs of defense.

In the case where a third party makes a claim(s) against Contractor only, but in the course of investigation, Contractor determines that Town is either all or partially responsible for the claim(s) made, Contractor may cross-complain against Town for indemnity. Should an agreed settlement or judgment result which assigns all or a portion of the claim(s) to Town, Town will be responsible for its part of the claim(s) and pay the amount allocated to it by the settlement agreement or judgment of the court.

9.2 AB 939 INDEMNIFICATION OF THE TOWN

The Contractor agrees to and shall indemnify, defend, with Counsel acceptable to the Town, and hold harmless Town, its officers, officials, employees, volunteers, agents and assigns ("indemnitees") from and against any and all damages (whether special, general or punitive) loss, liability, fines, penalties, forfeitures, claims, demands, actions, proceedings or suits, attorney's fees, necessary expert witnesses expenses and investigative costs, of every kind and description (collectively, "damages") of any kind and/or description incurred, suffered by or assessed against indemnitees arising from or attributed to Contractor's performance or failure to perform this Agreement which results in Town's failure to comply with the California Integrated Waste

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Management Act of 1989 (Division 30 of the Public Resource Code of the State of California), as amended, supplemented, superseded, and replaced from time to time (AB939).

9.3 HAZARDOUS SUBSTANCES INDEMNIFICATION

Contractor shall indemnify, defend with counsel acceptable to Town, protect and hold harmless the Town, its officers, officials, employees, agents, assigns and any successor or successors to the Town's interest from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages) injuries, costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorneys fees for the adverse party and expenses (including but not limited to attorneys and expert witness fees and costs incurred in connection with defending against any of the forgoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Town or its officers, officials, employees, agents, assigns, or contractors arising from or attributable to acts or omissions including but not limited to any repair, cleanup, disposal or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance or hazardous wastes of any kind at any place where the Contractor transports, stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the Town from liability.

9.4 PROPOSITION 218 INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless Town, its officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including reasonable attorneys' and expert witness fees, expenditures for investigation and administration) and costs of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against any of the indemnities resulting in any form from the Town's approval of Rates for service under this Agreement or in connection with the application of California Constitution, Article XIII C and Article XIII D to the imposition, payment or collection of Rates and fees for services provided by Contractor under this Agreement.

9.5 CONTRACTOR TO DEFEND AGREEMENT

Contractor shall defend at its sole expense the validity of this Agreement against all legal challenges to the Agreement by any entity or person not a Party to this Agreement. Contractor shall indemnify Town against any liability, including attorneys' and expert witnesses' fees and costs, and expenditures for investigation and administration, to entities or persons not party to Agreement resulting from a determination that this Agreement violates any local ordinance, state or federal law, statute, or constitutional provision.

9.6 INSURANCE SCOPE AND LIMITS

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The Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. With respect to General Liability, Errors & Omissions and Pollution and/or Environmental Impairment Liability coverage should be maintained for a minimum of five (5) years after contract completion. The maintenance of claims made against any insurance required of the Contractor shall not be considered a waiver by Town of any claim or liabilities it may have against the Contractor.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office form number GO 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GO 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage (“occurrence” form CG 0001.).
2. Insurance Services Office form number CA 0001 (Ed. 1/78), covering Automobile Liability, code 1 (any auto) and endorsement CA 0025.
3. Worker’s Compensation Insurance as required by the State of California and Employer’s Liability Insurance.
4. Pollution and/or Environmental Impairment Liability and/or Errors & Omissions.
5. Unemployment and state disability insurance as required by the State of California.

B. Minimum Limits of Insurance

The Contractor shall maintain limits no less than:

1. General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations as applicable. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers’ Compensation and Employer’s Liability: \$1,000,000 each accident, \$1,000,000 policy limit bodily injury or disease, \$1,000,000 each employee bodily injury by disease.

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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. The policy shall stipulate this insurance is primary and no other insurance carried by the Town will be called upon to contribute to a loss suffered by the Contractor hereunder and waive subrogation against the Town and other additional insureds.

C. Deductible and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved in writing by the Town. At the option of the Town, either the Insurer shall reduce or eliminate such deductibles or self insured retentions as respects the Town, its officers, officials, employees and volunteers; or the Contractor shall provide evidence satisfactory to the Town guaranteeing payment of losses and related investigations, claim administration and defense expenses. Notwithstanding the foregoing, the Town may elect not to accept any deductibles or self-insured retentions offered by the Contractor.

D. Other Insurance Provisions

1. The policies are to contain, or be endorsed to contain, the following provisions:
 - a. The Town, its officers, officials, employees and volunteers are to be covered as additional insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations; Pollution and/or Asbestos Pollution.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the Town, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the Town, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - d. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

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2. The Automobile Liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.
3. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Town, its officers, officials, employees and volunteers for losses arising from work performed by the Grantee for the Town.
4. All Coverages. Each insurance policy required by this clause shall be occurrence-based or an alternate form as approved by the Town and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted. If pollution and/or Environmental Impairment and/or errors and omissions coverages are not available from an Admitted insurer, the coverage may be written with the Town's permission, by a Non-admitted insurance company. A Non-admitted company should have an A.M. Best's rating of A:X or higher.

F. Verification of Coverage

As provided in Article 3.15 D and Exhibit K, the Contractor shall furnish the Town with original certificates and amendatory endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that Insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the Town, unless the insurer will not use the Town's form. All endorsements are to be received and approved by the Town before work commences. As an alternative to the Town's forms, the Contractor's insurer may provide complete copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

G. Subcontractors

The Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

H. Other Provisions

1. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the Town, its officers, officials, agents, employees and volunteers.
2. The Town, its officers, officials, agents, employees and volunteers shall be named as additional insureds on all policies.

9.7 FAITHFUL PERFORMANCE BOND

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No later than February 1, 2004, the Contractor shall file with the Town a bond, payable to the Town, in a form acceptable to the Town, securing the Contractor's faithful performance of each and every one of its obligations under this Agreement. The performance bond shall become Exhibit J to this Agreement. The principal sum of the bond shall be \$300,000. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service satisfactory to the Town. The bond shall be in a form specified by the Town Representative. Alternatively, Town may require that Contractor deposit a letter of credit or open a certificate of deposit in the name of the Town to be held to secure this faithful performance. The performance bond or alternative instrument shall remain in force for the duration of this Agreement. The premium for the bond or any other related charges shall be paid by the Contractor.

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ARTICLE 10 BREACH, DEFAULT, AND TERMINATION

10.1 EVENTS OF BREACH

A. Definition

The Parties acknowledge that provision of consistent, reliable Franchise Services is of utmost importance to Town and that Town has considered and relied on Contractor's representations as to its ability and commitment to quality of service in awarding the Franchise. In the event that Contractor fails to perform fully any of its obligations under this Agreement (other than "Events of Default" stipulated in Section 10.2), Contractor shall be in breach of this Agreement.

B. Cure of Breach

Contractor shall begin cure of any breach as soon as it becomes aware of the breach, whether discovered by Contractor or through notice from Town. Upon giving or receiving verbal notice of a breach, Contractor shall proceed to cure such breach as follows:

1. Immediately, if the breach is such that in the sole determination of Town, the health, welfare or safety of the public is endangered thereby; or
2. Within thirty (30) days of giving or receiving notice of the breach; provided that if the nature of the breach is such that it will reasonably require more than thirty (30) days to cure, Contractor shall not be in default so long as Contractor promptly commences to cure such breach, provides Town weekly written status of progress in curing such breach, and diligently proceeds to complete same. The thirty (30) day cure period may only be extended upon Contractor's receipt of written agreement from Town.

C. Liquidated Damages

The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance, and to serve as a specific measure of successful performance under the Agreement. The Parties further recognize that if Contractor fails to perform its obligations, Town and residents of Town will suffer damages that are and will be impractical and extremely difficult to ascertain and determine. The Parties agree that the Liquidated Damage amounts provided in Exhibit I represent a reasonable estimate of the amount of such damages for the specified breaches, without prejudice to Town's right to treat uncorrected non-performance as an Event of Default under this Article 10. Liquidated Damages are paid as damages, and not as a penalty. Town may determine the occurrence of events giving rise to Liquidated Damages through the observation of its own employees or representatives, or by investigation of Customer or resident complaints.

D. Notice

The Town Representative shall make a threshold initial determination whether in his/her judgment a complaint concerning one or more of the events giving rise to liquidated damages listed in Exhibit I, attached hereto, requires implementation of the oral and written communication procedures which follow. In the event that a determination is made by the Town Representative hereunder that a complaint concerning an event giving rise to liquidated damages deserves and/or

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requires implementation of oral and/or written communication with the Contractor, he/she shall proceed as follows;

1. An oral communication shall be made to Contractor specifying one or more of the events giving rise to liquidated damages listed in Exhibit I, attached hereto, advising the Contractor of the complained of conduct, action, or failure to act and that the same should be remedied immediately;
2. A written communication shall be sent to Contractor following a subsequent occurrence of any such events within six months following giving of the oral communication listed in paragraph (1) above, which written communication shall advise Contractor that notice of an additional complaint regarding the same occurrence of any such event(s) shall result in Town issuing to Contractor a written notice of its intention to assess liquidated damages hereunder utilizing the procedures set forth immediately hereinafter.

The Town's written notice shall include a brief description of the incident or non-performance complained of. Contractor may review and copy at its own expense all information in possession of the Town relating to the intended assessment of liquidated damages. Contractor may within ten (10) working days following receipt of this notice request a hearing with the Town Representative to present evidence in writing and/or through testimony of its employees and/or others relevant to the incident or complained of non-performance under this Agreement. The Town Representative shall consider all evidence presented regarding the complaints set forth in the notice and provide Contractor with a brief written explanation of his/her determination on each matter described in the notice of intention to assess liquidated damages. The decision of the Town Representative shall be final. Assessment of liquidated damages by the Town hereunder shall appear on the monthly statement and Contractor shall pay to Town such liquidated damages finally determined hereunder as part of the Monthly Remittance.

10.2 EVENTS OF DEFAULT

A. Definition

Each of the following shall constitute an Event of Default ("Event of Default") hereunder:

1. **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.
2. **Repeated Pattern of Breaches.** - A pattern of breaches over time such that in combination, they constitute a significant failure by Contractor to perform its obligations.
3. **Misrepresentation or False Warranty.** Any representation, disclosure, assurance, or warranty made to Town by Contractor 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.

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4. **Result of Performance Review.** Failure to provide information for performance review, or as a result of a performance review, as provided in Article 8.7.
5. **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 Contractor, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Contractor'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.
6. **Contractor Debt.** Contractor 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 Contractor or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator (or similar official) of Contractor or a part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall become insolvent and unable to pay its debts generally as they become due.
7. **Court Order or Decree.** Any court having jurisdiction - enters a decree or order for relief in respect of Contractor, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor 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 Contractor or for any part of Contractor's operating equipment or assets, or order the winding up or liquidation of the affairs of Contractor.
8. **Failure to Provide Performance Assurances.** Contractor fails to provide reasonable assurances of performance as required under Article 10.11.
9. **Failure to Notify Town.** Contractor 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 Contractor's ability to perform all of the Franchise Services.
10. **Lapse of Financial Requirement.** Lapse of any insurance, letter of credit, bond or other financial instrument required under this Agreement.
11. **Regulatory Violation.** Contractor violates in any material respect any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided Contractor 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.

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12. **Cessation of Services.** Contractor ceases to provide Franchise Services as required under this Agreement for a period of two (2) consecutive days or more, for any reason within the control of Contractor. In the event of a labor dispute, strike or slow down the period shall be seven (7) consecutive days.
13. **Failure to Meet Payment or Reporting Requirements.** Contractor 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.
14. **Unremedied Acts or Omissions.** Any act or omission relative to this Agreement by Contractor 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 Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor 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.
15. **Criminal Activity of Contractor.** Should Contractor or any of its officers or directors be “found guilty” of felonious conduct relating to its obligations, or other felonious conduct at any of Contractor’s operations. The term “found guilty” shall be deemed to include any judicial determination that Contractor or any of Contractor’s officers, directors or employees is guilty, and any admission of guilt by Contractor, or any of Contractor’s officers, directors or employees including, but not limited to, the pleas of “guilty,” “nolo contendere,” “no contest,” or “guilty to a lesser felony” entered as part of any plea bargain. Such felonious 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, or (iv) fraud or tampering. In the event of felonious conduct Town reserves the right to exercise one or more of the remedies specified below in Article 10.5. Such action shall be taken after Contractor has been given notice and an opportunity to present evidence in mitigation. If Town does not terminate this Agreement, Contractor shall dismiss or remove officers, directors or employees found guilty of felonious behavior and take all action necessary and appropriate to remedy any breach of its obligations.
16. **Assignment.** Contractor assigns this Agreement in violation of Article 11.5.

B. Notice of Default

Contractor 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. Contractor may review (and copy at its own expense) all information in the possession of Town relating to the Event(s) of Default. Contractor may, within three (3) Working Days after receiving the notice, request a meeting with Town Representative. Contractor 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.

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C. Cure of Default

Contractor 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, Contractor shall proceed to cure such breach as follows:

1. 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
2. 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, Contractor shall have such additional time as is reasonably needed to expeditiously complete a cure, upon written agreement with Town will not unreasonably withhold its consent in connection with any request from Contractor to extend time to complete cure of default. During any default cure period, Contractor shall provide Town weekly written status of progress in curing such default.

10.3 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.

10.4 TOWN'S RIGHT TO PERFORM

A. General

In addition to any and all other legal or equitable remedies, in the event that Contractor, for any reason whatsoever, fails, refuses or is unable to provide any Franchise Service 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 Contractor upon twenty-four (24) hours prior notice to Contractor 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 Contractor; and/or (ii) to take possession of any or all of Contractor's land, equipment and other property used or useful in providing Franchise Services and to use such property to provide any Franchise Services.

Notice of Contractor's failure, refusal or neglect to provide Franchise Services may be given orally by telephone to Contractor and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

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Contractor further agrees that in such event:

1. It will fully cooperate with Town to effect the transfer of possession of property to Town for Town's use.
2. It will, if Town so requests, and to the extent feasible, keep in good repair and condition all of such property, provide all motor vehicles with fuel, oil and other service, and provide such other service, and provide such other service as may be necessary to maintain said property in operational condition.
3. Contractor shall provide all necessary 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 10: (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 Contractor; and (iii) does not exempt Contractor from the indemnity provisions of Article 9.1, which are meant to extend to circumstances arising under this Section, provided that Contractor 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.

B. Duration of Town's Possession

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

10.5 TOWN REMEDIES FOR CONTRACTOR DEFAULT

Upon failure to cure a default pursuant to Article 10.2C, Town shall have the following rights:

1. **Waive Default.** To, at its sole discretion, waive the Contractor default.
2. **Termination.** Terminate the Agreement in accordance with Article 10.7.
3. **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article 10 and any other remedies at law and in equity, to which Town shall be entitled, according to proof.
4. **Damages Survive.** If Contractor owes any damages upon Town's termination of the Agreement, Contractor's liability under this Article 10.5 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.

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10.6 TOWN WAIVER OF BREACH OR DEFAULT

A waiver by Town of any breach or default by Contractor shall not be deemed to be waiver of any other breach or default by Contractor, 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 Contractor hereunder shall not be deemed to be a waiver by Town of any preexisting or concurrent breach or default by Contractor.

10.7 TERMINATION

A. Termination for Cause

Town shall have the right to terminate this Agreement without need for any hearing, suit, or legal action in the circumstances specified below. - Contractor 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:

1. **Uncured Default.** An uncured Event of Default by Contractor.
2. **Poor Performance Review.** As the result of a poor performance review as provided in Article 8.7.
3. **Excessive Liquidated Damages.** Upon assessment of Liquidated Damages totaling more than \$20,000 in any twelve (12) month period, or \$30,000 in any twenty-four (24) month period.
4. **Failure to Maintain AB 939 Diversion Goal.** Repeated or continued failure to maintain the fifty (50) percent diversion goal.
5. **Transition.** Substantive failure to achieve a successful Transition in service as provided in Exhibit C.

B. Notice of Termination

Town shall have the right to terminate this Agreement in the circumstances specified below, upon giving at least thirty (30) days notice to Contractor, and providing Contractor 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 Contractor 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.

10.8 POSSESSION OF PROPERTY UPON TERMINATION

In the event of termination for default, Contractor agrees to continue to provide Franchise Services under the provisions of this Agreement. Contractor 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 Franchise Services, which may include the award of an agreement to another contractor. Contractor will provide these services for up to 90-days from the date of termination or until the Town requests Contractor to cease providing such services, whichever is later. Contractor shall furnish Town with immediate access to all of its business records related to its route maps, schedules, and billing of accounts for services.

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10.9 TOWN'S REMEDIES CUMULATIVE: SPECIFIC PERFORMANCE

Town's right to terminate the Agreement under Article 10.7 and to take possession of Contractor's properties under Article 10.8 are not exclusive, and Town's termination of the Agreement shall not constitute an election of remedies. Instead, 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 Contractor, the remedy of damages for a default hereof by Contractor is inadequate, and Town may be entitled to injunctive relief.

10.10 EXCUSE FROM PERFORMANCE

A. 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 Contractor's employees or directed at Contractor, or a subcontractor, is not an excuse from performance, and Contractor 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 Contractor has no control, the inability of Contractor to make collections due to the unwillingness or failure of the third party to provide reasonable assurance of the safety of Contractor'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.

B. Inexcuse from Performance

In addition, 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 Contractor or any of its subcontractors affecting their ability to perform their obligations; (iv) the consequences of errors, neglect or omissions by Contractor, 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.

C. 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, Contractor, in the event of a declared disaster,

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shall comply with the emergency plans of Town and County.

D. 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.

E. Interruption or Discontinuance of Service

The partial or complete interruption or discontinuance of Contractor'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 Contractor 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 10.4 and (ii) if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Article 10 for a period of thirty (30) days or more, other than as the result- of third-party labor disputes under which Franchise 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 10.5 shall apply.

10.11 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 Contractor'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 Contractor 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 Contractor 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 10.2.

10.12 PAYMENT HELD IN ABEYANCE

During an uncured breach or default, Town may withhold any payment or adjustment otherwise due pursuant to Articles 6 or 7 to the extent such withholding is reasonably related to damages sustained by Town as a result of such breach or default. This withholding of money shall be in addition to any other right or remedy provided Town under this Agreement.

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ARTICLE 11 OTHER AGREEMENTS OF THE PARTIES

11.1 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the Franchise Services as an independent contractor engaged by Town and not as an officer or employee of Town nor as a partner or joint venturer with Town. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of Town. Except as expressly provided herein, Contractor shall have the exclusive control over the manner and means of conducting Franchise Services and all persons performing such services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, and agents. Neither Contractor nor its officers, employees, subcontractors, and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to Town employees by virtue of their employment with Town. Contractor or its employees shall not provide, directly or indirectly, any gifts or gratuities to any Town employee or representative.

Contractor shall not be financially interested in any other Town contract for provision of Franchise Services. For the limited purposes of interpreting this section, Contractor shall be deemed a "Town officer or employee," and this section shall be interpreted in accordance with the California Government Code, section 1090. In the event that Contractor becomes financially interested in any other Town contract for this program, that other contract shall be void. Contractor shall indemnify and hold harmless the Town for any claims for damages resulting from Contractor's violation of this section of this Agreement.

11.2 COMPLIANCE WITH LAW

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all Applicable Laws of the United States, the State of California, County of Marin, Town, and other states or counties which may have jurisdiction over any service provided in this Agreement and with all applicable regulations promulgated by any federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement, including all permit requirements for facilities used to provide Franchise Services.

11.3 GOVERNING LAW

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

11.4 JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Marin County.

11.5 ASSIGNMENT

A. Assignment Process

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No interest in this Agreement may be assigned, without the prior written consent of the Town. Town will not unreasonably withhold consent to any assignment, sale, subcontract or transfer. Contractor shall promptly notify 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 Contractor of any of its obligations or duties under this agreement unless this Agreement is modified in writing to that effect. Contractor shall also notify the Town of any change in control and/or ownership of Contractor. 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 Contractor's assets or at least 25 percent of Contractor's voting stock.

B. Assignment Rights

Neither party shall assign its rights or delegate or otherwise transfer its obligations under this agreement to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement. The Town may, however, assign its rights and subrogate its obligations under this Agreement to a joint powers authority authorized by Govt. Code section 6500 et seq. without the prior written consent of Contractor.

C. Definition

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 Contractor'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 trustors, trustees, and beneficiaries are limited to members of either or both of these families), of outstanding common stock of Contractor which may result in a change of control of Contractor; and
3. Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, 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 members(s) and a trust whose trustors, trustees, and beneficiaries are limited to members of either or both of these families) to which Contractor or any of its shareholders is a party which results in a change of ownership or control of Contractor, 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 Contractor's property; and

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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 Contractor.

D. Contractor Rendering Vital Service

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

1. Contractor'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. Contractor'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 Contractor to perform the services to be rendered by Contractor under this Agreement.

E. Assignment Standards

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 would exceed what would otherwise be provided for under this Agreement and that do not reflect similar relative changes in service. At a minimum, no request by Contractor for consent to an assignment need be considered by Town unless and until Contractor has met the following requirements:

1. Contractor shall undertake to pay Town its reasonable expenses for attorney's fees and to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;
2. Contractor shall furnish Town with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years; Contractor shall furnish Town with satisfactory proof;
3. 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 Contractor under this Agreement-:
 - a. That in the last five (5) years, the proposed assignee or affiliates have not suffered significant citations or other charges by 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;

Town of San Anselmo

- b. That the proposed assignee has conducted its operations in a reasonably environmentally safe and conscientious fashion;
- c. 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 wastes; and
- d. 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 obligated to consider any proposed assignment by Contractor, if Contractor has not performed the Agreement or is in material breach of any provision at any time during the period of consideration. Town will provide Contractor 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.

11.6 DISPUTE RESOLUTION: MEDIATION

With regard to any unresolved dispute arising between the Parties under this Agreement, the Parties are encouraged to first submit the dispute(s) to non-binding mediation before an agreed mediator, preferably one who has experience with agreements of this nature. But mediation, as herein suggested, is neither mandatory nor a prerequisite to any other process provided in the Agreement.

11.7 NON-DISCRIMINATION

Contractor shall not discriminate in the provision of service or the employment of persons engaged in performance of this Agreement on account of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons or as otherwise prohibited by law.

11.8 SUBCONTRACTING

Contractor shall not engage any subcontractors for performance of Franchise Services without the prior written consent of Town.

11.9 BINDING ON SUCCESSORS

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

11.10 TRANSITION TO NEXT CONTRACTOR

A. Transition Process

Town of San Anselmo

If at any point Town desires to grant to a third party Franchise Services which are Franchised to Contractor under this Agreement, Contractor shall be obligated to cooperate with Town and subsequent contractor(s) to assist in an orderly transition. One (1) year prior to the conclusion of the Term, and in order to assist with the competitive bid process to award the Franchise at the conclusion of the Term, Contractor shall provide Town with such information as may reasonably be requested, including but not limited to, route maps and days of collection, account names and phone numbers, and level of service provided, and an inventory of vehicles and Containers used in providing Franchise Services. Failure to provide full cooperation with a transition may, at Town's sole discretion, preclude Contractor from participating in future competitive procurements.

B. Transfer of Carts (LEAVE THE SAME?)

At the direction of the Town, Contractor shall leave all Carts in place at Customer locations. Should Contractor be required to leave Carts in place, the new contractor shall be required to compensate the Contractor for each Cart based on the number of months remaining prior to December 1, 2012. For each Cart the new contractor shall pay Contractor \$0.33 per month for each month between the date of transition and December 1, 2012. Contractor and the new contractor may choose at their discretion to enter into negotiations to sell (in part or all) Collection vehicles and other Containers to the new contractor.

11.11 PARTIES IN INTEREST

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

11.12 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision not of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either party of any monies which become due hereunder shall not be deemed to be a waiver of any preexisting or concurrent breach of violation by the other party of any provision of this Agreement.

11.13 CONDEMNATION

In addition to the rights in Article 10.4 Town fully reserves the rights to acquire Contractor's property utilized in the performance of this Agreement, by purchase or through the exercise of the right to eminent domain.

11.14 NOTICE

A. Notice Procedures

All notices, demands, requests, proposals, approvals, consents and other communications - concerning this Agreement -, except as otherwise specifically provided, shall be in writing and shall be effective when personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If to Town: Attention: Town Administrator

Town of San Anselmo

Town Hall
525 San Anselmo Avenue
San Anselmo, CA 94960

If to Contractor: Attention: President
Marin Sanitary Service
1050 Andersen Drive
San Rafael, CA 94901

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

B. Facsimile Notice Procedures

1. Facsimile notice may be substituted for written notice with the following limitations:
 - a. Facsimile notice shall be considered valid and delivered at such time as an authorized representative of the receiving Party acknowledges receipt in writing or by a facsimile acknowledgement to the sending Party.
 - b. Written notice must immediately follow any facsimile notice. This follow-up written notice is required in order for the facsimile notice to be valid.
2. If above conditions are met, facsimile notice will be considered effective from date and time of transmission as indicated on receiving parties original copy of the transmission.
3. Facsimile notices must be sent to the following addressees:

If to Town: Town Administrator
Fax number (415) 459-2477

If to Contractor: President
Fax number: (415) 485-1509

4. The facsimile number to which communications may be transmitted may be changed from time to time by a notice given in accordance with this Section.

11.15 REPRESENTATIVE OF THE PARTIES

All actions to be taken by Town shall be taken by Town Council except as provided below. Town Council may delegate, in writing, authority to Town Administrator and/or to other Town officials,

Town of San Anselmo

in turn, to delegate in writing some or all of such authority to subordinate officers. Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

1. Town Administrator shall be responsible for administration of this Agreement on behalf of Town.
2. Town Administrator may delegate authority to appropriate Town employees or other appropriate persons.
3. Town Council reserves to itself all discretionary and administrative authority not otherwise expressly delegated pursuant to ordinance. Whenever this Agreement requires approval by Town, the approval may be given by Town Administrator or his or her designee, subject to appeal to Town Council by Contractor or member of Town Council.

Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Contractor in all matters related to the Agreement and shall inform Town in writing of such designation and of any limitations upon his/her authority to bind Contractor. Town may rely upon action taken by such designated representative as action of Contractor unless they are outside the scope of the authority delegated to him/her by Contractor as communicated to Town.

11.16 TOWN FREE TO NEGOTIATE WITH THIRD PARTIES

Town may, at any time, investigate all options for the provision of the exclusive and non-exclusive services granted to Contractor by this Agreement after the expiration of the Term. Without limiting the generality of the foregoing, Town may solicit proposals from Contractor and from third parties for the provision of any or all Franchise Services and may negotiate and execute agreements for such services which will take effect upon the expiration, or earlier termination under Article 10.7, of this Agreement and/or any future agreements.

Town of San Anselmo

ARTICLE 12 MISCELLANEOUS AGREEMENTS

12.1 ENTIRE AGREEMENT

This Agreement, including the Exhibits, represents the full and entire Agreement between the Parties with respect to the matters covered herein.

12.2 SECTION HEADINGS

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

12.3 REFERENCES TO LAWS

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

12.4 INTERPRETATION

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

12.5 AMENDMENT

This Agreement may not be modified or amended in any respect except by a written agreement duly approved and signed by the Parties.

12.6 SEVERABILITY

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

12.7 COUNTERPARTS

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

12.8 MISCELLANEOUS

A. Privacy

Contractor shall strictly observe and protect the rights of privacy of Customers during provision of all Franchise Services. Information identifying individual Customers or the composition or contents of Customer's Solid Waste, Recyclables or Green Waste shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, written request from a law enforcement agency, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterizations studies or waste stream analysis which may be required by a regional, state, or federal agency.

B. Judicial Venue

Town of San Anselmo

Any lawsuit between parties arising out of this Agreement should be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Marin County, California. All depositions given by Town employees shall occur in Marin County, unless another location is selected by Town.

C. Advice

Each of the Parties has received the advice of legal counsel prior to signing this Agreement. Each Party acknowledges no other party or agent or attorney has made a promise, representation, or warranty whatsoever, express or implied, not contained herein concerning the subject matter herein to induce another party to execute this Agreement. The Parties agree no provision or provisions may be subject to any rules of construction based upon any party being considered the party “drafting” this Agreement.

12.9 EXHIBITS

Each of the Exhibits identified is attached hereto and incorporated herein and made a part hereof by this reference.

IN WITNESS WHEREOF, Town and Contractor have executed this Agreement as of the day and year first above written.

Town of San Anselmo

ATTEST:

TOWN CLERK

By _____

TOWN OF SAN ANSELMO (“Town”)

By _____

Title _____

APPROVED AS TO FORM:

(“Contractor”)

By _____

By _____

Title _____