

**RESOLUTION NO. 4580**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO  
APPROVING A FRANCHISE AGREEMENT FOR SOLID WASTE, RECYCLABLES,  
AND GREEN WASTE SERVICES BETWEEN THE CITY OF SAUSALITO AND BAY  
CITIES REFUSE SERVICE, INC. AND AUTHORIZING THE MAYOR TO EXECUTE  
SAID AGREEMENT**

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**WHEREAS**, the City of Sausalito has previously entered into solid waste franchise agreements with Bay Cities Refuse Service, Inc.(hereinafter referred to as "BCRS") on August 25, 1989, January 1, 1994, January 1, 1997 and January 1, 2000; and

**WHEREAS**, the City of Sausalito and BCRS wish to enter into a new franchise agreement that will supersede all previous agreements; and

**WHEREAS**, the City of Sausalito has conducted a rate review that has compared the proposed rates for solid waste services in the new franchise agreement with that of other agencies in Marin County and has determined that the proposed rates are both fair and competitive for Sausalito residents and ratepayers; and

**WHEREAS**, the proposed franchise agreement provides significant benefits to the City of Sausalito by listing required services and setting detailed performance and legal standards; and

**WHEREAS**, the approval of this franchise agreement is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15273 and because it is not a project within the meaning of CEQA Guidelines Section 15378.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Sausalito does hereby:

1. Approve the Franchise Agreement with BCRS attached hereto as Attachment 1, including the new rate schedule;
2. Authorize the Mayor to execute the Franchise Agreement upon receipt of insurance and bond certificates as required in the Agreement.

**PASSED AND ADOPTED** by the City Council of the City of Sausalito at a meeting held on the 5<sup>th</sup> day of February, 2002 by the following vote:

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AYES: COUNCILMEMBERS: Albritton, Belser, Bushmaker, Keller, Mayor Roberts

NOES: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

  
\_\_\_\_\_  
MAYOR OF THE CITY OF SAUSALITO

ATTEST:

  
\_\_\_\_\_  
DEPUTY CITY CLERK

**FRANCHISE AGREEMENT**

**for**

**SOLID WASTE, RECYCLABLES,  
AND GREEN WASTE SERVICES**

**between**

**City of Sausalito**

**and**

**Bay Cities Refuse Service, Inc.**

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## AGREEMENT

This AGREEMENT made and entered into this 5th day of February, 2002 between the CITY OF SAUSALITO (hereinafter "City") a municipal corporation of the state of California, and BAY CITIES REFUSE SERVICE, INC., 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 matter handling within their jurisdiction.
2. The Legislature of the State of California, by enactment of California Resources Code Section 40059 *et seq.*, has provided a means by which cities may enter into an exclusive Solid Waste handling and Recycling service contract with an independent contractor without utilizing the competitive process.
3. The City Council of City has determined that the public health, safety and well being of its residents require that certain Solid Waste Collection, transportation, processing, Recycling and Disposal services, as specified in this Agreement, be provided by an exclusive contract.
4. The City Council of City further declares its intention of maintaining reasonable rates for Collection, transportation, processing, Recycling, and Disposal of Solid Waste within City.
5. The Parties previously entered into Prior Agreements including August 25, 1989, January 1 1994, January 1, 1997 and January 1, 2000.
8. The City Council of City, having determined that Contractor has demonstrated experience, reputation, and capacity, and is best qualified to continue to exclusively provide for the Collection of Solid Waste within City, the transportation of such Solid Waste to places of Disposal, as well as the Collection and processing of designated recyclable components of the Solid Waste stream, in accordance with City's Mandatory Recycling ordinance, and that it is in City's best interests to renegotiate the terms of the Prior Agreements, desires that Contractor be engaged to perform such services on the terms and conditions set forth in this Agreement.

## 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 City of Sausalito 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 the Agreement between the City of Sausalito and Bay Cities Refuse Service for Collection, transport, and Disposal of Solid Waste and for the provision of the Recycling services as stated herein, including all exhibits, and future amendments hereto.

**Agreement Area** "Agreement Area" means the entire territory included within City limits as such limits may change from time to time due to annexations or other means. Agreement Area excludes land and property now owned by the federal government and in the future annexed by City.

**Base Term** "Base Term" means 15-year term not including any extensions.

**Bin** "Bin" means those receptacles provided by Contractor for commercial, industrial, construction, government, and Multi-Unit Residential use. "Dumpster" means those Bins which are picked up by means of a truck-mounted apparatus and which generally vary in size from one (1) to two (2) cubic yard capacity. "Roll-Off Bin" means those Bins which are picked up by means of rear-loading winches onto truck-mounted rails and which generally vary in size from ten (10) to fifty (50) cubic yard capacity.

**Bulky Items** "Bulky Items" means all discarded household waste matter which is too large to be placed in a covered Container, including large household appliances (White Goods), furniture, carpets, mattresses, and similar large items. Bulky Items does not include debris from construction, demolition, renovation or remodeling, abandoned or discarded automobiles, trucks, motorcycles or parts thereof, or Solid Waste or other debris brought from Commercial Premises.

**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 Effective Date of any applicable law; or
- b. Order or judgment of any governmental body, on or after the Effective 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 City 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 Section 6.7.

**City** “City” means the City of Sausalito, California. The jurisdiction of City includes all territory within its boundaries, including its boundaries as extended in the future.

**City Council** “City Council” means the legislative body of City.

**City Representative** “City Representative” means City Manager. City Representative is the agent of City in enforcing the terms of this Agreement, and may delegate the authority by written Notice to Contractor. Decisions of the City Representative are appealable to the City Council by Contractor, in writing, within 15 days.

**City Services** “City Services” means the services provided by Contractor to City at no additional cost as provided in Article 5. City Services are a subset of Franchise Services.

**Collection** “Collection,” “Collect,” “Collected,” “Collecting” means Collection by Contractor of Solid Waste, Recyclable Materials, Green Waste or other material specified in this Agreement and its transportation to a permitted Solid Waste Management Facility(ies).

**Commercial Premises** “Commercial Premises” means all industrial, manufacturing, warehouse, wholesale, or retail stores, service establishments of any type, professional offices, schools, and construction sites. All governmental sites and locations whether City, County, State, Federal,

school or special district, or otherwise which are located within City limits shall also be deemed Commercial Premises.

**Commercial Service** "Commercial Service" means provision of Franchise Services to Commercial Premises and Customers.

**Compactor** "Compactor" means any Bin or Container incorporating a built-in mechanism to reduce waste volume by crushing action or other compacting method. Household trash compactors in dwellings are not included in this definition.

**Construction and Demolition Waste** "Construction and Demolition Waste" means the debris, used construction materials, dredging, grubbing, and rubble resulting from constructing, remodeling, repair, razing, renovation, or demolition activities on housing, Commercial or governmental buildings, and any other structure or pavement.

**Consumer Price Index** "Consumer Price Index" (CPI) means the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose, California area as published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index.

**Container** "Container" means either a Solid Waste Container or a Recycling Container. A Solid Waste Container is that receptacle provided by the Customer having maximum capacity of thirty-two (32) gallons but not exceeding a maximum filled weight of fifty (50) pounds. A Recycling Container is that receptacle provided by Contractor which is to be used expressly for the source separation of certain Recyclable Materials.

**Contract Year** "Contract Year" means any given year of the Term beginning on July 1.

**Contractor** "Contractor" means Bay Cities Refuse Service, Inc. a California corporation.

**County** "County" means Marin County.

**Customer** "Customer" means the person or entities receiving Franchise Services.

**Delivery** "Delivery" of Solid Waste or Recyclables by a Customer occurs when Solid Waste, Recyclables, or Green Waste are deposited in a receptacle or at a location that is designated for Collection pursuant to City's codes or ordinances, or is otherwise discarded.

**Disposal** "Disposal," "Disposing," "Dispose," or "Disposed" means the final disposition of Solid Waste Collected by Contractor, at a Disposal Site.

**Disposal Site(s)** “Disposal Site(s)” means the Solid Waste Facility(ies) that shall be selected by Contractor but which shall be approved by City, at its reasonable discretion, for the ultimate Disposal by Contractor of Solid Waste collected by Contractor within the Agreement Area. The purpose of City’s right to approve a Disposal Site shall be to assure that Contractor’s selected Disposal Site meets the conditions enumerated in Section 3.6.

**Effective Date** “Effective Date” the date on which the contract has been executed by the contractor and approved by a vote of the City Council.

**Extension** “Extension” means the ongoing portion of the Term that commences with the end of the Base Term as provided in Article 3.

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

**Franchise Services** “Franchise Services” means all of the rights, duties and obligations of Contractor hereunder.

**Green Waste** “Green Waste” means biodegradable yard waste such as leaves, grass, weeds, and wood materials from trees and shrubs.

**Green Waste Processing Facility** “Green Waste Processing Facility” means the facility designated by City for delivery of Green Waste Collected by Contractor, as provided in Section 3.5B.

**Hazardous Waste** “Hazardous Waste” means any material, substance, waste or component thereof which poses an actual or potential risk to public health and safety or the environment by virtue of being actually or potentially toxic, corrosive, bioaccumulative, reactive, ignitable, radioactive, infectious or otherwise harmful to public health and safety or the environment, and which requires special handling under any present or future Federal, State law or County ordinance, excluding *de minimis* quantities 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 Sections 41500 and 41802 of the California Public Resources Code. Hazardous Waste shall in general 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 successor laws and regulations as may be amended from time to time, but the Parties intend that this definition not be limited to any particular statutory regime and that it be construed as broadly as possible so that Contractor bears the responsibility for exercising due diligence as provided for in this Agreement related to

the identification and proper handling of Hazardous Waste contained in Solid Waste placed for Collection by Residential and Commercial Customers.

**Household Hazardous Waste** "Household Hazardous Waste" or "HHW" means Hazardous Waste generated at Residential Premises located within City, as provided in Section 5.8 and Exhibit C. HHW includes all materials that may be normally collected at permanent California municipal HHW facilities as governed by current or future statute or regulation.

**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.

**Multi-Unit Residential Premises** "Multi-Unit Residential Premises" means any building and/or structure, or portion thereof, located in City which is used for residential housing purposes, irrespective of whether residence therein is transient, temporary, or permanent, and having three (3) or more distinct living units.

**Notice** "Notice" or "Notify" means notification of either Party by the other Party, which shall be in writing unless otherwise specified.

**Owner** "Owner" shall mean the person(s) having more than 50% ownership of Bay Cities Refuse Services, Inc.

**Party** "Party" or "Parties" means City and Contractor.

**Prior Agreements** "Prior Agreements" means any previous solid waste service agreements between City 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 published Rates.

**Rates** "Rates" or "Rate" means the amount each Customer is billed by Contractor as specified in the Rate schedules published periodically by City.

**Recyclable Materials** "Recyclable Materials" or "Recyclables" means domestic, Commercial, or industrial by-products of some potential economic value separated, set aside, handled, packaged, or offered for Collection by a Customer in a manner different from Solid Waste, or as may be separated by Contractor from Solid Waste, and initially includes newsprint, cardboard and other products, glass, aluminum and steel cans, plastic containers and Green Waste. This list may be

expanded or reduced to include or exclude any other materials which are agreed upon by both Parties. Recyclable Materials set out for Collection shall not contain Residue in excess of ten (10) percent, and Contractor shall not be required to Recycle materials set out for Collection that contain Residue in excess of ten (10) percent.

**Recycling** “Recycling” means the process of Collection, sorting, cleansing, treating and reconstituting Recyclable Materials that would otherwise be disposed of in a landfill and returning them to the economy in the form of raw materials for new, reused, or reconstituted products as set forth in public resource code section 40180. The Collection, transportation, or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling.

**Residential Service** “Residential Service” means provision of Franchise Services to Single-Unit and Multi-Unit Residential Premises and Customers.

**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 of the materials processed for Recycling, and may be Disposed of at a Disposal Site(s) of Contractor’s choosing.

**Roll-Off Service** “Roll-Off Service” means Contractor provision on an exclusive basis of a Roll-Off Bin for Customer use on a temporary or permanent basis as provided in Article 4 and billed as provided on the Rate schedule published by City. Roll-Off Service also refers to the use of Bins to provide certain free City services as defined in Article 5. Roll-Off Bins are individually dropped at and picked up from the site of use.

**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 the necessary hauling permits from the City.

**Single-Unit Residential Premises** “Single-Unit Residential Premises” means any building and/or structure, or portion thereof, in City, which is used for residential housing purposes, irrespective of whether residence therein is transient, temporary or permanent, and having two (2) or fewer distinct living units.

**Solid Waste** “Solid Waste” means all putrescible and nonputrescible wastes in solid form; the term includes, but is not limited to, garbage (i.e., putrescible animal, fish, food, fowl, fruit or vegetable matter, or any other material resulting from the preparation, storage, handling or



consumption of such substances), rubbish (i.e., waste wood, wood products, printed materials, paper, pasteboard, rags, straw, used and discarded clothing, packaging materials, ashes, floor sweepings, glass, and other waste materials) ashes, industrial wastes, swill, Construction and Demolition Wastes, Residue, discarded home and industrial appliances, and manure. Not included in the definition of Solid Waste are Hazardous Waste, Medical and Infectious Waste, Special Wastes and source-separated Recyclable Materials, including wood waste and Green Waste.

**Solid Waste Management Facility** “Solid Waste Management Facility” means any facility designed to manage Solid Waste, Recyclable Materials, and Green Waste, and includes Recyclable Materials processing, material recovery, Green Waste processing, transformation, and Disposal facilities.

**Special Events** “Special Events” means community events and activities sponsored or licensed by City.

**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 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.

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

**White Goods** “White Goods” means all large household appliances including, but not limited to, refrigerators, freezers, washing machines, clothes dryers, dishwashing machines, and air conditioning units.

**Working Days** “Working Days” means Monday through Saturday.

**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 shall agree 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 City.

**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 PRIOR AGREEMENTS SUPERSEDED**

The Parties previously entered into Prior Agreements that are scheduled to terminate December 31, 2006. Contractor, in signing this Agreement, stipulates that except for any provisions of the Prior Agreements specified as surviving the termination of either Prior Agreement, all rights and responsibilities of the Parties contained in the Prior Agreements, rate adjustments, addenda to the Prior Agreements or other related documents are superseded by this Agreement, including, but not limited to, any compensation that Contractor may be entitled to but is voluntarily foregoing as a result of the early termination of the Prior Agreements.

**2.4 CITY RIGHT TO APPROVE AND/OR DESIGNATE DISPOSAL SITE**

Contractor acknowledges City's right to review and reasonably approve any Disposal Site selected by Contractor, as provided in Section 3.6C. Contractor or also acknowledges City's right, as provided in Section 3.6E to direct the flow of Solid Waste for delivery to a Disposal Site(s) under specified circumstances.

## **2.5 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.

## **2.6 NO LITIGATION**

As of the Effective 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 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 or its parent company.

## **2.7 NO LEGAL PROHIBITION**

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

## **2.8 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.

## **2.9 INFORMATION SUPPLIED BY CONTRACTOR**

The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct, and complete in all material respects on and as of the Effective Date of this Agreement.

## **2.10 REPRESENTATIVES OF THE PARTIES**

Contractor has designated Gregory Christie as responsible officer who shall serve as the representative of Contractor and who shall have authority in all daily operational matters related to the Agreement. City may rely upon action taken by such designated representative as action of

Contractor except for actions not taken within the scope of the Franchise. The owner shall be the initial designated representative of Contractor. If the designated representative changes, Contractor shall notify City Representative.

### **2.11 WAIVER OF CERTAIN RIGHTS**

Contractor hereby waives any right it may possess to contest the legal right, power, or the authority of City to enter into and perform this Agreement, including particularly the provisions thereof providing for the delivery of Solid Waste to a Disposal Site designated by City under specified circumstances, and delivery of Green Waste to any Green Waste Processing Facility designated by City, and agrees to cooperate with and assist City 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.

### **2.12 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 Section 49520 or any subsequent statute granting the same or similar rights regarding City notice to Contractor of contract termination. Contractor agrees that its rights to provide any of the 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.

**ARTICLE 3**  
**GRANT OF FRANCHISE**

**3.1 TERM OF AGREEMENT AND EFFECTIVE DATE**

**A. Base Term**

The Franchise Services granted in this Agreement shall continue in force for a period of fifteen (15) years ("Base Term") from February 5, 2002 ("Effective Date") to February 4, 2017.

**B. Extension**

Following the Base Term, Contractor shall continue to provide Franchise Services under this Agreement. The Base Term and any Extension period together constitute the Term.

**C. Agreement Transition Extension**

By giving written Notice ninety (90) days prior to the effective date of termination, City, 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 the extension is to ensure uninterrupted Franchise Services in the event of transition to a successor Contractor and/or ongoing contract renegotiations with present Contractor which City anticipates may not be concluded by the effective date of termination.

**D. Option to Extend**

Contractor may exercise an option to extend Agreement for ten (10) years at end of Base Term provided that all of the following conditions are met:

1. There is no uncured event of default as provided in Article 11;
2. Contractor's rates are at or below the median rate for five cities, including Sausalito, Mill Valley, Tiburon, Belvedere and Larkspur. The median rate shall be calculated by an independent consultant retained by City and paid for by Contractor. The median rate shall apply to each of the following rate categories: one-can residential; two-can residential; 2 yd. weekly Bin service; 2 yd. twice-weekly Bin service; and debris box service. The median rate calculation shall be made in accordance with the methodology specified in Exhibit J.
3. Contractor gives notice of intent to exercise option a minimum of one year but not more than 2 years in advance of the end of Base Term.

**E. Option to Subcontract**

Contractor is City's authorized recycling agent pursuant to the provisions of Public Resources Code Sections 40105 and 41950, during the term. Contractor shall have the right to subcontract for such work, but only with the consent of the City, which consent shall not unreasonably be withheld.

### **F. City Right to Rescind**

City may rescind a Notice of termination at any point up to ninety (90) days prior to the effective date of termination, in which case Contractor shall continue to provide Franchise Services as specified in this Agreement.

## **3.2 GRANT OF FRANCHISE**

### **A. Services Provided**

City hereby grants unto Contractor, and Contractor shall have throughout the duration of this Agreement, the exclusive right to engage in the following services and programs. The City designates Contractor as the authorized recycling agent.

1. Single-Unit and Multi-Unit Residential Solid Waste Collection
2. Commercial Solid Waste Collection
3. Single-Unit Residential curbside Recycling program
4. Multi-Unit Residential Recycling program, comparable to the Single-Unit Residential curbside Recycling program
5. Commercial Recycling
6. Single-Unit Residential Green Waste curbside program
7. Multi-Unit Green Waste Collection program
8. Roll-Off Bin Service
9. Compactor Service

### **B. Compensation**

Except as otherwise specified, the Service Rates contained in Exhibit E in their initial form as of the Effective Date or as they are adjusted during the Term are Contractor's sole compensation for provision of Franchise Services.

### **3.3 SCOPE OF AGREEMENT, EXCLUSIONS**

The granting of this Agreement shall not preclude the categories of Solid Waste or other materials listed below from being Delivered to and Collected and transported by others, provided that nothing in this Agreement is intended to, or shall be construed to, excuse any person from obtaining any authorization from City which is otherwise required by law.

1. Recyclable Materials as may be accumulated for Collection by youth, civic, and charitable organizations, and private recyclers as specified by City or as may be collected at a Recycling facility.
2. Green Waste and other compostables removed from a premises by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor rather than as a hauling service, with the exception of occasional site cleanups.
3. Construction or Demolition Waste removed by Self-Haul from a premises by a contractor as an incidental part of a total service offered by that contractor rather than as a hauling service, with the exception of occasional site cleanups.
4. Animal waste and remains for use as tallow.
5. Solid Waste which is generated at any residential premises and which is transported personally by the owner or occupant of such premises (or by his/her other full-time employees) to a licensed Solid Waste Management Facility in a manner consistent with City 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 received or not.
6. Household Hazardous Waste.
7. Collection of Recyclable Material from Commercial Premises on a nonexclusive basis for a fee.
8. Solid Waste collected, or collected and disposed by City, its agents, or contractors in an emergency, as provided in Section 3.14.

Further, the provisions of this Agreement shall not preclude or prohibit City or any officer or employee thereof or any employee of the State of California, or any governmental subdivision thereof, from collecting, removing, and disposing of Solid Waste in the regular course of their respective duties as such officers or employees, nor shall the provisions of this Agreement

preclude or prohibit any person from removing and disposing of loads of their own Solid Waste provided they are paying for weekly scheduled Solid Waste Collection services. Nothing in this section shall abrogate the Contractor's right to an exclusive Franchise.

### **3.4 TRANSPORTATION OF SOLID WASTE**

Contractor shall transport all Solid Waste Collected to a permitted Disposal Site as provided in Section 3.6. Contractor shall maintain accurate records of the quantities of Solid Waste transported to each Disposal Site and will cooperate with City in any audits or investigations of such quantities.

### **3.5 PROCESSING OF SOLID WASTE**

#### **A. General City Right to Direct Flow**

City can direct any or all portions of the Solid Waste, Recyclable Materials, or Green Waste Collected under this Agreement to a material recovery, composting, or any other non-Disposal Solid Waste Management Facility for processing of any materials contained therein. Facility operators will not be required to place for Collection by Contractor any nonprocessable fractions following processing. Contractor shall collect any nonprocessable fraction and deliver it to a permitted Disposal Site if directed to do so by City for itself and any of its officers or employees, subject to the provisions of Article 6.7.

#### **B. Green Waste Processing**

City explicitly reserves the right throughout the Term to designate the Green Waste Processing Facility to which Contractor shall deliver Collected Green Waste. Contractor's compensation for transporting Green Waste to the initial Green Waste Processing Facility, or to any other such Facility located within the Agreement Area, is contained in the Service Rates shown in Exhibit E. Should City direct Contractor to use a Green Waste Processing Facility, rather than facility currently being used, Contractor shall be compensated for increased costs as provided in Article 6.7.

#### **C. Waiver**

Contractor voluntarily waives any right it may have to challenge the provisions of this Section 3.5 except as otherwise provided in this Agreement, including, without limitation, any federal laws or constitutional provisions.



### **3.6 DISPOSAL OF SOLID WASTE**

#### **A. General**

Except as otherwise provided in this Section 3.6, Contractor is responsible for ensuring proper delivery of Solid Waste for Disposal and for payment of all Disposal services from Contractor's Service Rates. Contractor shall select Disposal Site(s) and directly contract for Disposal services.

#### **B. Contractor Responsibility**

Contractor is fully and solely responsible for making all necessary arrangements to ensure that the City has sufficient available disposal capacity for all Solid Waste generated within the City. This responsibility includes entering into such contracts as the Contractor believes necessary to ensure back-up capacity in the event that the primary site is unavailable, for any reason whatsoever. Contractor shall actively seek to minimize cost increases due to transport and/or disposal of Solid Waste.

#### **C. Contractor Right to Propose Disposal Site**

If at any time during the Term, Contractor proposes to use a Disposal Site other than the initial Disposal Site, City may review, but not unreasonably withhold approval of, the proposed Disposal Site. City review of a proposed Disposal Site may address: (i) status of facility permits as required under local, state, or federal law; and/or (ii) status of regulatory compliance and current and past regulatory violations.

Contractor shall Notify City of its proposal to use a new Disposal Site no less than ninety (90) days prior to the date Contractor plans to begin delivery of Solid Waste. In reviewing the requested approval, City may request Contractor provide the draft contract and related information, or if the selected Disposal Site is owned by Contractor or a subsidiary or other affiliate, the business terms for use of the proposed Disposal Site. In addition, City may request that Contractor provide such information as is reasonably necessary for City to ascertain the permit and regulatory compliance status of the proposed Disposal Site.

#### **D. City Right to Direct Disposal**

City may, at its sole discretion, designate a Disposal Site(s) to which Contractor shall transport Solid Waste Collected through provision of Franchise Services. Any City designation of a Disposal Site(s) as provided in this Section 3.6D shall be considered a Change in Scope and shall be subject to the provisions of Section 6.7. Contractor shall be due recompense from City for any reasonable and documented direct costs of breaking an existing contract with a Disposal Site operator, if directed to use another Disposal Site, as well as an increase or decrease in Contractor compensation to reflect reasonable and documented changes in transport and Disposal cost, as provided in Article 8.

### **E. City Rights Upon Assignment**

City retains the right, upon assignment of this contract as provided in Section 12.5 to add to, delete from, or otherwise modify the requirements of this Section 3.6.

### **3.7 FRANCHISE FEE**

Contractor shall remit to City TWELVE (12) percent of total gross Rate Revenue through the Term. Payment shall be made on a three times a year basis, in accordance with the provisions of Article 7.2. Contractor shall provide Sausalito with a certified annual audit of gross receipts for the fiscal year from July first through June thirtieth of each year for the purpose of verifying the correct annual franchise fee. The audit shall be submitted by August 1<sup>st</sup> of each year. An adjusting payment to or refund from Sausalito shall be required for any difference between the monthly franchise fee payments and the correct annual amount of the franchise fee as computed in the certified audit of gross receipts.

### **3.8 GROWTH IN ACCOUNTS**

Contractor shall provide Franchise Service to all Residential and Commercial Customers within City requiring service during the Term and shall be compensated by the then effective Service Rates as provided in Exhibit E.

### **3.9 GROWTH IN CITY SERVICES**

Contractor shall provide all City Services as described in Article 5, including as needed to address growth in Solid Waste, Recyclables, Green Waste, generated within City, permanent or seasonal changes in Collection frequency as may be directed by City, and any new Collection sites for City buildings, facilities, parks, beaches, and transit routes that may be added in the future. Contractor shall provide all City Services except to the extent that growth in resulting tonnage of Solid Waste requiring Disposal shall not exceed an increase of five (5) percent in any one year or an average of two (2) percent per year. Contractor shall be compensated for the cost of Disposal for tonnages that exceed this rate of growth, based on Contractor data documenting the tonnages of Solid Waste resulting solely from the provision of City Services. Contractor is not obligated to provide new types of City Services beyond those specified in Article 5 and Exhibit B without consideration of a Change in Scope as provided in Section 6.7.

### **3.10 ANNEXATIONS**

Contractor's rights and responsibilities as enumerated in this Agreement extend to any territory annexed to City hereafter except to the extent that Collection within such territory so annexed would be unlawful or violate the vested legal rights of another person providing the same service, or that City annexes federal property.

### **3.11 TITLE TO COLLECTED MATERIALS**

It is expressly understood that all Solid Waste, Recyclables, and Green Waste Collected becomes the property of Contractor at the point of Collection, provided that City in its sole discretion may elect to retain ownership of all or select portions of the Solid Waste collected by providing Contractor fifteen (15) days written Notice of City's intent. Said Notice shall only affect the ownership of Solid Waste, Recyclable Materials, and Green Waste Collected by Contractor after the effective date of said Notice and shall not be applied retroactively. Green Waste becomes the property of the operator of the Green Waste Processing Facility upon delivery to that facility. Notwithstanding the above, City retains the right to direct Disposal of Solid Waste as provided in Section 3.6D and of Recyclable Materials and Green Waste consistent with this Agreement.

### **3.12 AB 939 GOALS**

Contractor agrees to actively cooperate with City and County in maintaining its AB 939 goals as described in this Section 3.12. Contractor is responsible for collecting and compiling AB 939-related data and for preparation of mandated regulatory reporting for review by City and County. In addition to the responsibilities specified throughout this Agreement, if City and County are not maintaining mandated diversion levels through Contractor's services, Contractor shall, as requested, submit proposals to City throughout the Term of this Agreement identifying additional City and/or Contractor efforts that singly or in combination may most cost-effectively achieve City's diversion obligations under AB 939. Such proposals shall include, but not be limited to, modified or increased public education efforts or changes in types of collected Recyclable Materials appropriate to the defined need and at costs comparable to industry averages for such services. Contractor shall be eligible for consideration of a Change in Scope, as specified in Section 6.7, if City chooses to implement a new effort, and to the extent such effort results in documented new costs to Contractor.

### **3.13 COMPLIANCE WITH CITY CODES**

#### **A. Municipal Enforcement**

City is responsible for enforcement of certain Solid Waste regulations under City ordinances and codes. Contractor agrees to assume as part of the grant of Franchise, specified responsibilities for assisting City in meeting its enforcement responsibilities as detailed in various portions of this Agreement. Contractor agrees to maintain necessary records and to promptly inform City of violations as specified in this Agreement. Contractor agrees to promptly comply with all reasonable City requests for assistance in enforcing all applicable regulations. Contractor agrees to actively cooperate with City and County in maintaining compliance with National Pollution Discharge Elimination System (NPDES) permits and associated requirements of the Regional Water Quality Control Board.

## **B. Enforcement of Mandatory Solid Waste Collection Service**

Section 12.24.040 of the Sausalito Municipal Code requires all City residents and businesses that generate Solid Waste to have Solid Waste Collection service. Contractor shall submit a plan to City by no later than June 30, 2002 identifying those residents or businesses who do not have Solid Waste Collection service as required by the Municipal Code, and a plan of action for providing such service to those residents and businesses. City shall cooperate in Contractor's efforts to provide mandatory service, including, at City's sole discretion, exercise of City enforcement action. Contractor shall formulate such plan keeping in mind the limited allowance for the transportation of Solid Waste and other materials by third parties as set forth in Section 3.3.

### **3.14 EMERGENCY SERVICES**

Notwithstanding the provisions of Section 3.2 specifying Contractor scope of services, in the event of a declared emergency, City reserves the right to use City staff, agents, contractor, and/or subcontractors as necessary to clear debris from the Agreement Area. Contractor agrees to not contest City's use of other parties to collect, transport, and dispose of Solid Waste or other debris resulting from such emergency.

### **3.15 INFORMATION MANAGEMENT SYSTEMS**

Contractor shall maintain such information management systems as are needed to collect, store, and organize 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.

### **3.16 OTHER SERVICES**

Upon request of City, and pursuant to Section 6.7 as appropriate based on cost incurred, Contractor agrees to assist City in: (i) identifying loads suitable for processing at material recovery, composting, or any other Solid Waste Management Facilities; (ii) modifying routes or storage and Collection procedures, as directed by City, to increase the quality or recoverability of materials generated by Customers; (iii) improving provision of City Services, including Special Events, through rerouting and/or rescheduling of Collection; (iv) promptly cooperating in any City efforts to characterize the composition of Solid Waste.

### **3.17 CONDITIONS TO EFFECTIVENESS OF AGREEMENT**

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement 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 by City. In entering into this Agreement and performing obligations set forth therein, City is relying on the conditions set forth below, any of which it may waive in whole or in part.

**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 Effective Date.

**B. Absence of Litigation**

There is no litigation pending on the Effective Date in any court challenging the award or execution of this Agreement or seeking to restrain or enjoin its performance.

**C. Verification of Insurance Coverage and Faithful Performance Bond**

Contractor shall submit prior to the Effective Date, and shall maintain to the satisfaction of City, endorsements of insurance coverage and Franchise or Contract Bond pursuant to Section 10.4 of this Agreement.

**ARTICLE 4**  
**RESIDENTIAL AND COMMERCIAL SERVICES**

**4.1 GENERAL**

Franchise Services to be provided to Residential and Commercial Customers are defined in this Article 4, in City's Municipal Code, and in the performance standards contained in Exhibit A. The work to be done by Contractor pursuant to this Article shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the Franchise Services required, and shall be accomplished in a thorough and professional manner so that Franchise Services are provided in a litter-free, reliable, courteous, and high-quality manner at all times. The enumeration and specification of requirements for particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether specifically enumerated or not. The enumeration and specification of requirements for particular aspects of service quality shall not relieve Contractor of the duty to accomplish all other aspects in the manner provided in this Article 4 and in Exhibit A, whether or not such other aspects are specifically enumerated.

**4.2 SINGLE-UNIT RESIDENTIAL SOLID WASTE, RECYCLABLE MATERIALS, AND GREEN WASTE SERVICES**

**A. Solid Waste**

At a minimum of once per week, Contractor shall Collect from all Single-Unit Residential Customers pursuant to City's Municipal Code, all Solid Waste which has been compacted or otherwise placed, kept, or accumulated in a Container and placed within the premises at a location accessible to the Contractor. Contractor shall not be required to Collect from Containers, boxes, Carts, or bundles which are more than 100 feet from the curb, which weigh more than sixty (60) pounds, or which are severely damaged or have jagged and/or sharp edges.

**B. Curbside Recycling**

Contractor shall weekly Collect, process and transport all separated Recyclable Solid Waste placed at the curbside by Single-Unit Residential Customers. Such Collection shall be on the same day as the regular Solid Waste Collection unless otherwise authorized by City Representative. Contractor shall provide, at no charge, appropriate Recycling receptacles to each new Customer. All such Recyclable Materials shall be Collected and transported to a processing facility for processing or delivered directly to a secondary materials purchaser if it is economically feasible to do so.

### **C. Green Waste**

Contractor shall Collect and transport separated Green Waste, including Christmas trees, placed at the curbside by Single-Unit Residential Customers – amount to be unlimited when generated from routine maintenance of their residence. Collection will be twice a month on the same day as regular Solid Waste Collection unless otherwise authorized by City. Contractor may provide alternative Cart sizes or Container types by mutual agreement with City. Christmas trees must be in pieces no more than six (6) feet in length and contain no nails, tree stands, flocking, or tinsel.

## **4.3 MULTI-UNIT RESIDENTIAL SOLID WASTE, RECYCLABLE MATERIALS, AND GREEN WASTE SERVICES**

### **A. Solid Waste**

At a minimum of once per week, Contractor shall Collect all the Solid Waste which has been placed, kept, or accumulated in Bins, Containers (where specifically approved by City Representative), for use by all Multi-Unit Residential Customers. The size of the Bins and the frequency of their Collection (which shall be not less than once a week and which shall be in compliance with applicable ordinances and regulations) shall be determined by a separate agreement between Customer and Contractor.

### **B. Recycling**

Contractor shall Collect, remove, and transport all Recyclable Materials from Multi-Unit Residential Premises in City. Contractor shall provide each Multi-Unit complex with appropriate Recycling Containers or Bins or one set of sixty eight (68) gallon outside Recycling Containers at the ratio of up to one (1) set per twenty-five (25) units as appropriate to the Multi-Unit complex. Collection shall be scheduled by Contractor. All such Recyclable Material shall be Collected and transported to a processing facility for processing or delivered directly to a secondary materials purchaser if it is economically feasible to do so.

## **4.4 COMMERCIAL SOLID WASTE, RECYCLABLE MATERIALS SERVICES**

### **A. Solid Waste**

Contractor shall offer the following Solid Waste Collection Services to Commercial Premises:

1. **Bin Collection Service.** Contractor shall provide Collection of Solid Waste to the owner, lessee, or proprietor of all Commercial premises within City which generate Solid Waste. The size of the Bins and the frequency of their Collection (which shall be not less than once a week) shall be determined by mutual agreement between Customer and Contractor. Bins shall be placed on a hard surface in a convenient location and, whenever possible, in legal Bin enclosures which are accessible to Contractor.

2. **Container Collection Service.** If City Representative and Contractor agree that Container service for a Commercial Premises generating small amounts of Solid Waste is appropriate, Contractor shall Collect, at a minimum of once per week from such Commercial Premises, the Solid Waste which has been compacted or otherwise placed, kept or accumulated in 32 gallon can/s and placed at curbside or other designated location meeting Sausalito City Code requirements prior to Contractor's normal weekly Collection time. The number of cans and frequency of their Collection (which shall not be less than once per week) shall be determined by mutual agreement between Customer and Contractor, provided that in no event shall Contractor be required to Collect Containers which weigh more than sixty (60) pounds, or which are severely damaged or have jagged and/or sharp edges, all subject to the terms and conditions of, and in compliance with, the City Code, as currently enacted and hereafter amended.
  
3. **Roll-Off and Compactor Services.** Contractor shall provide service to all Customers requesting Roll-Off Bin or Compactor service, where such service is not otherwise prohibited at that premises. Contractor shall provide such service within two (2) Working Days of receiving the request.

#### **B. Recycling Services**

Contractor shall provide Recycling services to Commercial Customers as stated in this Section. Contractor shall continue to expand the program to Collect, remove, and transport Recyclable Materials as required by applicable laws or as requested by Customer. Contractor will provide each participating Commercial Customer with Carts as appropriate for each Commercial premise. Recyclable Solid Waste shall be transported to a processing facility for processing or delivered directly to a secondary materials purchaser if it is economically feasible to do so. Recycling service are to be provided as part of the City's published rates for solid waste service.

### **4.5 OTHER SERVICES**

#### **A. Temporary Bin Service**

Residential or Commercial customers may request, as an extra service, that Contractor provide a two (2) yard Bin for one-time use at a Rate published by City.

### **4.6 CONTRACTOR'S INABILITY TO PROVIDE SERVICE**

At any time during the Term of this Agreement, should a Customer request a Collection service from Contractor as provided for in this Article 4 and which Contractor cannot render on the next scheduled day (not to exceed five (5) Working Days of Customer's initial request for service), City reserves the right to direct such Customer to seek other providers who can provide such



Collection service. This provision supercedes any exclusive rights granted Contractor elsewhere in this Agreement. If any such requested Collection service is within the scope of services of this Agreement, failure to provide such services may be considered contributory to the termination of this Agreement for cause as provided in Article 11.

**ARTICLE 5**  
**CITY AND COMMUNITY SERVICES**

**5.1 GENERAL**

Franchise Services to be provided at City and community locations are defined in this Article 5 and in the performance standards contained in Exhibit A. The work to be done by Contractor pursuant to this Article shall include the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the Franchise Services required, and shall be accomplished in a thorough and professional manner so that Franchise Services are provided in a litter-free, reliable, courteous and high-quality manner at all times. The enumeration and specification of requirements for particular items of labor or equipment shall not relieve Contractor of the duty to furnish all others, as may be required, whether specifically enumerated or not. The enumeration and specification of requirements for particular aspects of service quality shall not relieve Contractor of the duty to accomplish all other aspects in the manner provided in this Article 5 and in Exhibit A, whether or not such other aspects are specifically enumerated.

**5.2 LITTER CONTAINERS**

Contractor shall provide certain services for all public litter cans or that may be added in the future including, but not limited to, at the locations shown in Exhibit B, or at new or modified locations including cans owned by City. These services are as follows:

1. Contractor shall Collect Solid Waste from all current or future litter cans, subject to Section 3.9. Service standards, locations, and frequencies include, but are not limited to, those listed in Exhibit B.
2. Contractor shall provide all supplies and materials required to service the cans. Contractor shall ensure that liners are replaced in litter cans as a part of each Collection service or as needed.
3. Contractor shall Collect from litter cans in such a manner as to reasonably maintain the clean and sanitary appearance of these cans.
4. Contractor shall promptly maintain any litter cans which no longer present a clean appearance or are in need of repair, replacement, or deodorizing.
5. Contractor shall maintain the areas around all cans so as to ensure a clean appearance and sanitary condition. Contractor shall Collect and dispose of all loose Solid Waste in the

immediate vicinity of all cans, regardless of the cause of the loose Solid Waste. In Collecting from litter cans, Contractor shall ensure that entire area is left litter-free within a ten (10) foot radius of litter cans and bus benches, including around and under bus benches.

6. Contractor shall bear all costs of litter can replacement, Collection, storage, transportation, and Disposal of Solid Waste Collected from litter cans.

### **5.3 COMMUNITY CLEANUP**

Contractor shall provide a community wide cleanup two (2) times a year within thirty (30) days of receipt of written Notice from City Representative. This program shall take place during one regular collection day for each of the months of May and October. During each cleanup week Single-Unit and Multi-Unit Residential Customers may place Bulky Items not exceeding 1 cubic yard at the curb for pickup on regular Collection days. Items shall be placed curbside in a disposable container or securely tied. Contractor and owner/manager(s) of Multi-Unit Residential complexes may agree on alternative, designated locations for free pickup by Contractor.

Promotional and advertising costs, including installation of a sign and placement of notices at each residence, for cleanup weeks shall be borne by Contractor. Cost of cleanup weeks is included in the regular service Rates published by City.

### **5.4 CITY FACILITIES**

1. **Bins.** Contractor shall provide and service at no charge, Bins and Collection services as frequently as specified, or in any case needed, including, but not limited to, at the locations set forth in Exhibit B. Contractor shall dispose of all Solid Waste generated by City and Collected from Bins at no charge to City. The use of those Bins shall be limited to City activities. Upon Notice to Contractor, the location and frequency of collection of the Bins as set forth in Exhibit B may be amended by City, Subject to Section 3.9.
2. **Roll-Off Bins.** Contractor shall bear all costs of providing and servicing Roll-Off Bins as frequently as needed to the City including, but not limited to, at the locations listed in Exhibit B, subject to Section 3.9.
3. **Green Waste Bin and Recycling Container Service.** Contractor shall provide, at no charge, appropriate locking Green Waste Bins and associated Collection service, and other Recycling Containers to facilities including, but not limited to, those City Facilities identified in Exhibit B. These Bins will be for the sole use of City activities.

Contractor shall Recycle, process, or Dispose of all Green Waste and Recyclable Materials Collected from City at no charge to City. Upon Notice to Contractor, City may amend the location and frequency of collection of Green Waste Bins and other Recycling Containers as set forth in Exhibit B, Subject to Section 3.9.

### **5.5 SPECIAL EVENTS**

At City direction, Contractor shall provide collection and disposal service at no additional charge for the special events as set forth in Exhibit B.

### **5.6 DOWNTOWN AND/OR COMPARABLE SUBSTITUTE EVENTS CLEANING SERVICES**

Contractor shall clean all public sidewalks, paths, walkways, and stairwells in the commercial downtown area of the City of seven days per week, including all holidays. As used in this section, the term "commercial downtown area" means Bridgeway between San Carlos Avenue and the Boardwalk, plus Princess Street, Park Street and Anchor Street. Sweeping of the commercial downtown area shall include periodic power washing of sidewalks in front of the storefronts, including Caledonia Street between Johnson and Bee Streets.

Contractor shall provide janitorial services and cleaning two (2) times per day of the one (1) men's restroom and one (1) women's restroom located in the downtown gazebo, and Contractor shall provide all necessary restroom supplies including paper towels, toilet paper and cleaning supplies. Contractor shall also maintain in a clean condition the three (3) commercial downtown area parking lots owned by City, including general policing and trash pick-up, and the three (3) City parks located in the commercial downtown area, namely Gabrelson Park, Vina Del Mar Park and Yee Tok Chee Park. Contractor shall also maintain, repair and periodically empty the garbage cans owned by City and located in the commercial downtown area. Contractor may provide the above services itself or through a qualified subcontractor. Any such contractor must meet with the approval of the City, which approval shall not be withheld unreasonably.

### **5.7 STREET SWEEPING SERVICES**

Contractor shall sweep all residential areas of the City of Sausalito once a month, and the commercial downtown area seven days a week, except holidays. As used in this section, the commercial area will be as designated by City, but will generally be the entirety of Bridgeway between Easterby and Alexander Street, Caledonia and other downtown streets. The remainder of Bridgeway, Filbert Street and Bulkley Avenue will be swept once weekly. Sweeping of the commercial area will be done from 6:00 a.m. to 8:00 a.m., and will include clean off of the sidewalks into the streets, so that the sweeper will be able to sweep this material. The sweeping service by Contractor shall include cleaning of the drain inlets (catch basins) along the sweeping route.

It will be the responsibility of City to enforce parking prohibitions in order to permit the sweeping to occur efficiently. Contractor may provide the above services itself or through a qualified subcontractor. Any such subcontractor must meet with the approval of City, which approval shall not be withheld unreasonably.

**ARTICLE 6**  
**OTHER FRANCHISE SERVICES**

**6.1 CONSUMER INFORMATION AND EDUCATION**

Contractor's public information and education program shall include, at a minimum, the following elements in addition to or in conjunction with those specified in Exhibit D:

1. City shall direct Contractor to prepare service brochures containing information about Contractor's Recycling and Solid Waste services which may include, but is not limited to, times and dates for annual cleanup events, Collection schedules, and complaint procedures.
2. Contractor shall distribute such service brochures to the occupants of all Residential and Commercial Premises. Service brochures shall be revised and distributed to each Customer if there is any material change in the information. City reserves the right to determine if a material change in information has occurred. Service brochures shall also be mailed by Contractor to City residents three times per year with billing.
3. Contractor shall submit proofs of the service brochures to City prior to distribution and shall incorporate City's comments in the final version distributed to the public.
4. Contractor's plan to promote and advertise all special Collection events such as annual cleanup events shall be subject to approval by City. Contractor shall address and incorporate all reasonable direction from City in its efforts to promote and advertise these events.
5. Contractor shall work with the Sausalito Waste and Recycling Commission to promote and increase recycling awareness and provide a budget as directed by City Council not to exceed \$5,000.00 per year. Funds are received from the State of California, Department of Conservation pursuant to Public Resources Code 14549.6(a) and are to be used to promote beverage container recycling. Any change in the budget amount will be negotiated between City and Contractor. This yearly budget is contingent upon receiving the supplemental curbside payment pursuant to Public Resources Code 14549.6(a).

## **6.2 PUBLIC/CUSTOMER SERVICE AND ACCESSIBILITY**

### **A. Office**

Contractor shall provide a business office with a toll-free number for City residents and maintain a corporation yard within a 25-mile radius of City for the purpose of carrying out its obligations under this Agreement.

### **B. Office Hours**

Contractor's office shall be open to the public from 7 a.m. to 4 p.m., Monday through Friday. The office may be closed on Saturdays and Sundays and those holidays approved by City.

### **C. Availability of Representatives**

A representative of Contractor shall be available at Contractor's local office during office hours to communicate with the public in person and by telephone.

### **D. Telephone**

Contractor shall maintain a local telephone system in operation at its office during business hours. Contractor shall install telephone equipment, and have available service representatives sufficient to handle the volume of calls typically experienced on the busiest days. Telephone service shall be provided from 7 a.m. to 4 p.m. Contractor shall also maintain an after-hours telephone number for message use during other than normal business hours. Contractor shall have a representative available during all hours other than normal office hours for City emergency contact.

## **6.3 SERVICE COMPLAINTS**

Contractor agrees to maintain a written log of all oral and written service complaints registered with Contractor from Customers within City ("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 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 City 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.

Contractor shall respond to all complaints from Customers of City within twenty-four (24) hours, Saturdays, Sundays and holidays excluded. Contractor shall make best efforts to resolve all complaints within ten (10) Working Days, except if a complaint involves a failure to Collect Solid Waste, Recyclables or Green Waste from a premises as required by this Agreement, Contractor shall Collect the Solid Waste, Recyclables or Green Waste in question by the end of the next Working Day, excluding Saturday, provided it has been delivered for Collection in accordance with City codes and ordinances. In particular, if a complaint involves a failure to collect Solid Waste from a City-owned litter can or Bin provided for City services, Contractor shall collect the Solid Waste in question within six (6) hours after receiving the complaint, including weekends and holidays.

#### **6.4 CHANGE IN COLLECTION OPERATIONS, ADMINISTRATION, OR SCHEDULE**

Contractor shall notify all affected Residential Customers (Single-Unit and Multi-Unit) at least fourteen (14) days prior to any change in the day on which Solid Waste Collection occurs. Contractor shall notify all affected Commercial Customers at least five (5) days prior to any change in service. Contractor shall not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. Changes to Collection routes or Collection days or other major changes to Collection operations shall be subject to approval of City Representative.

#### **6.5 REPORT ACCUMULATION OF SOLID WASTE: UNAUTHORIZED DUMPING AND CESSATION OF SERVICE**

##### **A. Waste Accumulation**

Contractor shall direct its employees to note and report the address of any accumulation of Solid Waste that is not being delivered for Collection. Contractor shall deliver the address to the City Manager within three (3) Working Days.

##### **B. Contractor Obligation to Provide Service**

Contractor will provide at the direction of City Manager and/or Marin County Health Department information on customers who are in arrears of Service Rates. Contractor shall use best efforts to collect Service Rates from all customers and not allow excess accumulation of Solid Waste on any premises.



## **6.6 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 the Disposal Site 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 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 City. 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 City within forty-eight (48) hours of the date and time incurred.

## **6.7 CHANGE IN SCOPE**

### **A. General**

City may require changes in existing Franchise Services, or request that Contractor provide new services. Contractor shall comply, provided that if such changes result in increased capital or operating costs to Contractor, Contractor's Rates shall be increased as necessary to compensate Contractor for any additional documented costs, including reasonable profit, directly related to the change. City may require deletions in existing services and if such changes result in decreased operating costs for Contractor, Contractor's Rate shall be decreased as necessary to reflect such decrease in costs, including reasonable profit.

### **B. Rate Adjustment**

In the event of a Change in Scope, the Parties agree to negotiate in good faith to determine the applicable increase or decrease in compensation. Contractor shall promptly provide any documentation reasonably requested by City as necessary to identify and quantify any costs or savings 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 cost or savings 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 its parent, shall make its best efforts to redeploy or sell vehicles, equipment, and materials that are not fully amortized.

**ARTICLE 7**  
**BILLING, COLLECTION, AND REMITTANCE**

**7.1 BILLING RESPONSIBILITIES**

The following general billing responsibilities shall remain in effect for the entire Term except as may be modified by mutual agreement of the Parties:

1. Contractor shall be responsible for billing all customers.
2. Contractor may, with the City's express consent, subcontract billing services.
3. Contractor shall be responsible for billing the Rate for each regular or special service as provided in City's published Rate schedule.
4. Contractor shall provide City a report containing the Rate Revenue billed for the prior billing cycle for all categories of service. This report shall be due to City not later than the fifteenth (15th) day following the end of the month for which the report is prepared. City shall provide guidance to Contractor regarding the format of such reports.
5. Contractor shall bill Customers in accordance with the terms of this Agreement based on City's published Rate schedule. Contractor's bill may be adjusted upon mutual agreement of the Parties.

**7.2 FRANCHISE FEE PAYMENTS**

1. Contractor shall remit to the City a Franchise Fee equal to 12% of the Gross Service Rates billed by the Contractor. On or before May 15, 2002 Contractor shall remit to City a Franchise Fee payment equal to 12% of the Gross Services Rates billed by Contractor for the January 1 – April 30, 2002 billing cycle. On or before September 15, 2002 Contractor shall remit to City a Franchise Fee payment equal to 12% of the Gross Service Fees billed by Contractor for the May 1 – August 31, 2002 billing cycle and 12% of the estimated Gross Service Fees to be billed for the September 1-December 31, 2002 billing cycle. After December 31, 2002, Contractor shall remit Franchise Fee payment to City in advance in an amount equal to 12% of the estimated Gross Service Fees according to the following schedule:

**BILLING CYCLE:**

January 1 – April 30

May 1 – August 31

September 1 – December 31

**DUE DATE:**

January 15 of same year

May 15 of same year

September 15 of same year

Contractor shall reconcile and adjust the Franchise Fee Payment to City annually pursuant to an Audit of Revue reporting conducted in accordance with Article 7.6.

**7.3 RESPONSIBILITY FOR BAD DEBT AND DELINQUENT PAYMENTS**

**A. Contractor Responsibility for Bad Debt**

Contractor shall be responsible for collecting and shall bear losses and expenses related to bad debt and delinquent payments resulting from Franchise Services billed by Contractor.

**7.4 BILLING VERIFICATION AND DISCREPANCY REPORTING**

Contractor shall bear responsibility for verifying or reporting discrepancies in billing information and statements presented to City within 60 days of presentation. No response by the City to billing information or a statement within sixty (60) days of presentation of such billing information or statement shall mean that the billing information or statement has been accepted and verified with no corrections. Billing discrepancies may be reported and corrections made in billing information at any time; however, back-billing of Customers shall be supported with appropriate documentation.

**7.5 PUBLICATION OF RATES**

Contractor shall provide written notice of changes in the published Rates to Customers billed by Contractor.

**7.6 AUDIT OF BILLINGS AND FINANCIAL REPORTS**

**A. Scope of Audit**

City shall select an independent certified public accounting firm to perform an audit and to certify the results of the audit. Such audit may be conducted annually at City's sole discretion. City shall determine the scope of any audits based on the general requirements specified below and 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 verify that Customers are receiving the type and level of service for which they are billed. The City may require that the audit cover the entire list of Customers.

**2. Audit of Revenue Reporting.** The auditor shall review relevant financial reports and data submitted by Contractor pursuant to Section 9.1. The purpose of this audit is to verify that Contractor is properly remitting or crediting City for all Franchise Fees due to City.

**B. Cost of Audit**

City has right to conduct at its expense an independent audit of Contractor's Gross Service Fees at any time. If the Gross Service Fees are under reported by Contractor by \$2,000.00 or more in the independent audit, Contractor shall pay the actual cost of the audit, plus any penalty required by this Agreement, and double the amount owed to the City in Franchise Fees.

**ARTICLE 8**  
**CONTRACTOR COMPENSATION**

**8.1 CONTRACTOR COMPENSATION**

**A. General**

Except as otherwise expressly provided in this Agreement, the Rates contained in Exhibit E of this Agreement, in their initial form and as they may be adjusted over the Term, constitute Contractor's full compensation for the provision of Franchise Services.

**8.2 RATE REVIEW**

**A. Rate Review**

Contractor may request a rate adjustment in accordance with the provisions of Exhibit I, Rate Review Guidelines.

**B. Review of Costs**

If Contractor requests a Rate Review, City Representative shall have the right to review any or all revenues or costs reasonably related to Contractor's request.

**ARTICLE 9**  
**REPORTING AND PLAN SUBMITTAL, RECORDKEEPING**

**9.1 REPORTING REQUIREMENTS**

Contractor shall submit the reports described below.

**A. Quarterly Records and Reports**

1. Contractor shall provide Solid Waste and Recycling records and reports in accordance with Exhibit F of this Agreement.
2. Other tonnage reports shall be due as reasonably requested by City in order to comply with all applicable Federal, State, Regional, County, and City Solid Waste and Recyclable Material reporting requirements.
3. Contractor shall provide copies of County monitoring reports to City.

**B. Annual Reports**

1. **Solid Waste Information and Education Plan Report.** Contractor shall annually prepare, and submit by each July 1 a Solid Waste Information and Education Plan report detailing its efforts in meeting the requirements of Section 6.1 and Exhibit D. The Solid Waste Information and Education Plan for the first year of the contract shall be presented to City for approval not later than thirty (30) days after the Effective Date of this Agreement.
2. **AB 939 Reporting.** Contractor shall prepare and submit to County of Marin for review, by July 1 of each year beginning with July 2002, reports and information requested by City for purposes of City compliance with AB 939 and related and/or subsequent regulation or statute, as provided in Section 3.12. County shall provide guidance to Contractor regarding the format and content of such reports. Contractor shall assist County in County's preparation or modification of AB-939 related planning documents as reasonably requested, but is not responsible for preparation of such plans.
3. **Promotional Expenditure Report.** Contractor shall provide City with an annual report listing Contractor's public information, public education, and Collection promotional activities and expenditures. This report shall be provided to City no later than July 1 each year for the preceding twelve (12) month period.

4. **Contribution Reporting.** Contractor shall annually report to City all contributions and in-kind donations to individuals and community organizations. The contribution report shall be due April 15 of each year.
5. **Community Contact Report.** Contractor shall keep records on the number and type of contacts which it makes with community organizations and citizen advisory groups, and shall prepare a Community Contact report to be due April 15 of each year. This report shall be provided to City no later than April 15 each year for the preceding twelve (12) month period.

### **C. Other Reports and Plans**

1. **Contingency Plan.** Contractor shall submit to City a written "Contingency Plan," acceptable to City Council, demonstrating Contractor's arrangements to provide vehicles and personnel and to maintain uninterrupted service during mechanical breakdowns and in case of natural disaster, strikes, or other emergency, including events described in Section 11.10. This plan shall be consistent with, and coordinated with the City's Emergency Plan. City Representative shall provide guidance to Contractor regarding both the format and content of this plan. The plan shall be due to the City within sixty (60) days of receipt of City guidance regarding the plan.
2. **Hazardous Waste Identification.** Within 180 days of the Effective Date, Contractor shall file with City a plan for identifying and separating/containing Hazardous, Medical or Infectious Waste, or Special Waste placed for Collection by Residential and Commercial Customers ("Hazardous Waste Management Plan").
3. Contractor shall provide other reports specifically required by any section of this Agreement.
4. Contractor shall provide any reports as may be required pursuant to Exhibit F.

### **9.2 RIGHT TO PRESCRIBE RECORDS**

Contractor shall maintain such financial and operational records as shall be necessary to develop the reports prescribed by City, as specified in this Article 9, Exhibit F, or elsewhere in this Agreement.

### **9.3 RIGHT TO INSPECT RECORDS**

City shall have the right to inspect or review all relevant documents or records required pursuant to this Agreement or any other similar records or reports of Contractor relating directly to the provision of services to City that it may deem, at its sole discretion, necessary to evaluate Contractor's performance as provided in this Agreement.

### **9.4 CONFIDENTIALITY OF RECORDS**

All data, reports, and plans submitted to City by Contractor shall be considered a matter of public record. City and its agents may upon reasonable Notice to Contractor review records and data stored at Contractor's facilities related to the provision of Franchise Services.

### **9.5 INSPECTION BY CITY**

City Representative or designees shall have the right to observe and review Contractor operations and enter premises for the purpose of such observations during normal business hours without prior Notice, so long as such review does not interfere with the safety of Contractor's operation.

### **9.6 DISCRETIONARY REVIEW OF PERFORMANCE AND QUALITY OF SERVICE**

#### **A. Public Hearing**

Upon thirty (30) days written Notice to Contractor, City may conduct a public hearing to review Contractor's performance and quality of service. Contractor shall attend and participate in such hearings. The reports required by this Agreement regarding customer complaints may be utilized as a basis for review, and any Customer may submit comments or complaints, either orally or in writing, for consideration by the City Council.

#### **B. Report**

Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the Agreement is found, City shall provide Contractor notice to correct the inadequacies in accordance with the terms of Article 11.1.

### **9.7 PERFORMANCE REVIEW AND TERMINATION FOR CAUSE**

During the Term of this Agreement, City reserves the right to conduct one or more performance reviews of Contractor as set forth below.

#### **A. Performance Review**

The performance review shall:

1. Be performed by a qualified firm to be selected by City.



2. Be paid for by City. If the performance review reveals material non-compliance by Contractor of this Agreement and/or applicable laws and regulations, Contractor shall pay for any one (1) performance review up to a cost of \$15,000, which amount shall increase by the CPI as specified in Section 8.2.
3. Address and provide specific improvement recommendations for all appropriate areas, including, but not limited to, the following:
  - a. Compliance with the terms of this Agreement and applicable codes, laws, and regulations.
  - b. Staffing practices, including the deployment of management and supervisory personnel.
  - c. Employee job and safety training, and management of Hazardous Waste.
  - d. Management procedures, systems, and organizational structure for receiving and resolving City and Customer complaints and concerns.
  - e. Comparison with practices of businesses deemed similar to Contractor.

Contractor shall fully cooperate with the performance review(s) and provide all operational, financial and other relevant information deemed reasonable and necessary by City for purposes of conducting the performance review(s). Contractor's failure to cooperate or track or provide all requested information shall be considered an Event of Default. Within thirty (30) days of giving or receiving notice of the breach, Contractor shall cure the breach, provided that if the nature of the breach is such that it will reasonably require more than 30 days to cure, Contractor shall not be in default as long as Contractor promptly commences to cure such breach and provides the City with weekly written status of progress, and diligently proceeds to complete same. The 30 day cure period may only be extended upon Contractor's receipt of written agreement from City.

## **B. Termination for Cause**

1. **Termination.** If, after City has reviewed a particular performance review including problem areas, frequency of occurrence, recommended improvements and compliance therewith, and has considered all evidence presented by Contractor in connection therewith, City determines that any covenants, or conditions of this Agreement on the part of Contractor to be performed, or kept, have not been fully and faithfully performed, or kept, or timely cured, as provided herein, then this Agreement may be terminated by City at its option pursuant to Section 11 hereof, without prejudice to any other remedy to which it may be entitled either at law, in equity.

**ARTICLE 10**  
**INDEMNITY, INSURANCE, BOND**

**10.1 INDEMNIFICATION OF CITY**

Contractor agrees to and shall indemnify, defend and hold harmless City, its officers, officials, employees, volunteers, agents, and assigns (“indemnitees”) from and against any and all loss, liability, penalties, forfeitures, claims, demands, actions, proceedings or suits, 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, or for contribution or indemnity claimed by third parties) arising or resulting from or in any way connected with: (i) the operation of Contractor, its agents, employees, contractors, and/or subcontractors, in exercising the privileges granted to it by this Agreement; (ii) the failure of Contractor, its agents, employees, contractors and/or subcontractors to comply in all respects with the provisions and requirements of this Agreement, applicable laws, ordinances and regulations, and/or applicable permits and licenses; and (iii) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law. The foregoing indemnity shall not apply to any loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage caused in part by any of the indemnitees’ active negligence or willful misconduct as determined by a court or arbitrator. Notwithstanding anything in this Agreement to the contrary, this Section 10.1 shall survive the termination of this Agreement and Contractor’s defense obligation shall be unconditional and absolute irrespective of City’s negligence or willful misconduct.

**10.2 HAZARDOUS SUBSTANCES INDEMNIFICATION**

Contractor shall indemnify, defend with counsel approved by City, protect and hold harmless City, its officers, employees, agents, assigns, and any successor or successors to City’s interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damage, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interests, fines, charges, penalties and expenses (including but not limited to attorneys’ and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees, agents, assignees, or contractors arising from or attributable to any spills or other events occurring during collection, storage, transport or disposal concerning any hazardous substance or Hazardous, Medical or Infectious Wastes. The foregoing indemnity is intended to operate as an Agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. Section 9607(e) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify City from liability.

Notwithstanding anything in this Agreement to the contrary, this Section 10.2 shall survive termination of this Agreement.

### **10.3 INSURANCE SCOPE AND LIMITS**

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 Contractor, its agents, representatives, employees, or subcontractors. With respect to General Liability and Pollution and/or Environmental Impairment Liability, coverage should be maintained for a minimum of five (5) years after termination of the Agreement. The maintenance of claims made against any insurance required of Contractor shall not be considered a waiver by City of any claim or liabilities it may have against Contractor.

The Parties recognize that general usage of the various forms referenced in this section may change over the Term. Existing forms may be modified, deleted, or replaced. Any change in the forms to be used shall be acknowledged by the Parties in writing. The Parties agree that regardless of changes in these forms, coverage shall be maintained over the Term in a manner substantially equivalent to that specified in this section.

#### **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 Coverage.

#### **B. Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

1. **General Liability:** \$3,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage. 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.

### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved in writing by City. At the request of City, Contractor shall either cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, employees, agents, or volunteers, or Contractor shall procure an additional letter of credit or bond guarantying payment of losses and related investigations, claim administration, and defense expenses. Notwithstanding anything in this Agreement, City may elect not to accept any deductibles or self-insured retentions offered by Contractor.

### **D. Other Insurance Provisions**

The policies are to contain, or be endorsed to contain, the following provisions:

#### **1. General Liability and Automobile Liability Coverage**

- a. City, its officials, employees, agents, and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, leased, or used by Contractor; or vehicles owned, leased, hired, or borrowed by Contractor. The coverage shall apply only to actions and equipment utilized in the performance of this Agreement.
- b. Contractor's insurance coverage shall be primary insurance as respects City, its officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers shall be in excess of Contractor's insurance and shall not contribute to it.
- c. Each insurance policy required by this clause shall be occurrence-based or an alternate form approved by City and shall be endorsed to state that coverage shall not be canceled by the insurer except after ninety (90) days prior written notice has been given to City.

- d. Any failure to comply with reporting provisions of the policies, including breaches or warranties, shall not affect coverage provided to City, its officials, employees, agents, or volunteers.
  - e. Coverage shall state that 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.
2. **Automobile Coverage.** 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. **Workers' Compensation and Employers Liability Coverage.** The insurer shall agree to waive all rights of subrogation against City, its officers, officials, employees, and volunteers for losses arising from work performed by Contractor for City.

#### **E. Acceptability of Insurers**

The insurance policies required by this Section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A- or better. 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 City'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**

Contractor shall furnish City Manager with endorsements of coverage required by this Section. The endorsements for each insurance policy are to be signed by a person authorized by that insurer to determine coverage on its behalf. The endorsements must be received and approved in writing by City Manager before work commences. City Manager reserves the right to review complete, certified copies of all required insurance policies at any time.

#### **G. Subcontractors as Insureds**

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

## H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Ninety (90) days prior written notice shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy."

Such notice shall be sent to:

Attention: City Manager  
City Hall  
420 Litho Street  
Sausalito, CA 94965

2. The Public Liability policy shall contain endorsements in substantially the following form:

- a. "Thirty (30) days prior written notice shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy."

Such notice shall be sent to:

Attention: City Manager  
City Hall  
420 Litho Street  
Sausalito, CA 94965

- b. "City, its officers, employees, agents, and volunteers are additional insureds on this policy."
- c. "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d. "City, its officers, agents employees and volunteers shall be named as additional insureds and such inclusion shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. The policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would be liable if only one party had been named as an insured."

**I. Insurance Not a Waiver of Obligation**

Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor from any obligation under this Agreement. If any claim exceeding the amount of any deductibles of self-insured reserves is made by any third person against Contractor or any subcontractor on account of any occurrence related to the Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

**J. Failure to Maintain Coverage**

If Contractor fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Contractor's expense, such insurance as it may deem proper and deduct the cost thereof from any monies due Contractor. Failure to maintain coverage may be deemed an Event of Default as provided in Article 11.

**10.4 CONTRACT OR FRANCHISE BOND**

Simultaneously with the execution of this Agreement, Contractor shall file with City a bond payable to City, securing Contractor's faithful performance of its obligations under this Agreement. The principal sum of the bond shall be \$50,000.00. Upon the Effective Date, the bond shall become Exhibit I of this Agreement. 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 City. The bond shall be in a form reasonably specified by City Representative. In the alternative, Contractor may deposit an irrevocable letter of credit or open a certificate of deposit in the name of City to be held to secure this faithful performance. The performance bond, irrevocable letter of credit, or certificate of deposit shall remain in force for the duration of this Agreement. The premium for the bond shall be paid by Contractor.

**ARTICLE 11**  
**BREACH, DEFAULT, AND TERMINATION**

**11.1 EVENTS OF BREACH**

**A. Definition**

The Parties acknowledge that provision of consistent, reliable Franchise Services is of utmost importance to City and that City 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 11.2), 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 City. 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 City, 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 City 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 City.

**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, City and residents of City 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 H represent a reasonable estimate of the amount of such damages for the specified breaches, without prejudice to City's right to treat uncorrected non-performance as an Event of Default under this Article 11.



#### **D. Notice**

Prior to assessing liquidated damages, and in addition to any other available remedies City may impose, City shall give Contractor written Notice of its intention to do so. The Notice shall include a brief description of the breach. Contractor may review (and copy at its own expense) all information in the possession of City relating to the assessment of liquidated damages. Contractor may, within ten (10) Working Days after receiving the Notice request a meeting with City Representative. Contractor may present evidence in writing and through testimony of its employees and others relevant to the breach. City Representative shall provide Contractor with a written explanation of his or her determination on each breach prior to authorizing the assessment of liquidated damages. The decision of City Representative shall be final. City shall deduct the amount of any liquidated damages from the next monthly remittance due to Contractor.

### **11.2 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 City.
2. **Non-Material Breach.** A non-material breach of this Agreement shall not constitute an Event of Default if (i) such breach is cured as specified in Section 11.1B upon Notice to Contractor, and (ii) such breach is accidental, inadvertent, and occasional and not a pattern and practice of Contractor.
3. **Repeated Pattern of Breaches.** There is a pattern of breaches over time such that in combination, they constitute a significant failure by Contractor to perform its obligations.
4. **Misrepresentation or False Warranty.** Any representation, disclosure, assurance, or warranty made to City 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 is made.
5. **Result of Performance Review.** Failure substantially to provide information for performance review, or as a result of a performance review, as provided in Section 9.7.

6. **Seizure or Attachment of Equipment.** There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, 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.
7. **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 for 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.
8. **Court Order or Decree.** Any court having jurisdiction shall enter 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.
9. **Failure to Provide Performance Assurances.** Contractor fails to provide reasonable assurances of performance as required under Section 11.11.
10. **Failure to Notify City.** Contractor fails to notify City 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, and Household Hazardous Waste collection, transport, and disposal that might materially affect Contractor's ability to perform all of the Franchise Services under this Agreement.
11. **Lapse of Financial Requirement.** Lapse of any insurance, letter of credit, bond or other financial instrument required under this Agreement.

12. **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.
13. **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.
14. **Failure to Meet Payment or Reporting Requirements.** Contractor fails to make any payment of any sum owed to City required under this Agreement and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.
15. **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 there under 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.
16. **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 City reserves the right to exercise one or more of the remedies specified below in Section 11.5. Such action shall be taken after Contractor has been given Notice and an opportunity to present evidence in mitigation.

If City 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.

17. **Assignment.** Contractor assigns this Agreement in violation of Section 12.5.

**B. Notice of Default**

Contractor shall be in default from the date of receipt of a Notice from City identifying such default. The Notice shall include a brief description of the default. Contractor may review (and copy at its own expense) all information in the possession of City relating to the Event(s) of Default. Contractor may, within three (3) Working Days after receiving the Notice, request a meeting with City 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 City Representative regarding determination of an Event(s) of Default shall be final.

**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 City. Upon giving or 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 City, the health, welfare or safety of the public is endangered thereby; or
2. Within ten (10) Working Days of giving or 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, and only upon written agreement from City. During any default cure period, Contractor shall provide City weekly written status of progress in curing such default.

**11.3 CITY 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.

## **11.4 CITY'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 City to such an extent, in such a manner, or for such a time that City should find that such accumulation endangers or menaces the public health, safety or welfare, then City 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 City: (i) to perform, or cause to be performed, such services itself with its own or other personnel; 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. City's authority pursuant to this Section shall cease upon resumption of Contractor's ability to provide franchise services.

Notice of Contractor's failure, refusal or neglect to provide Franchise Services must be given in writing to Contractor at its office and shall be effective immediately.

Contractor further agrees that in such event:

1. It will fully cooperate with City to effect the transfer of possession of property to City for City's use.
2. It will, if City 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 City. City shall determine how to bill and in what amounts. Distribution of amounts received shall be subject to negotiations between the parties.

City's proper exercise of its rights under this Article 11: (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 City to Contractor; and (iii) does not exempt Contractor from the indemnity provisions of Section 10.1, which are meant to extend to circumstances arising under this Section, provided that Contractor is not required to indemnify City against claims and

damages arising from the active negligence or willful misconduct of City officers, employees, agents, or volunteers acting under this section.

### **B. Duration of City's Possession**

City 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. City'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 City's satisfaction that it is ready, willing, and able to resume such services.

### **11.5 CITY REMEDIES FOR CONTRACTOR DEFAULT**

Upon failure to cure a default pursuant to Section 11.2.C, City 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 Section 11.7.
3. **All Other Available Remedies.** In addition to, or in lieu of termination, to exercise all of its remedies in accordance with this Article 11 and any other remedies at law and in equity, to which City shall be entitled, according to proof.
4. **Damages Survive.** If Contractor owes any damages upon City's termination of the Agreement, Contractor's liability under this Section 11.5 shall survive termination.

In the event City does not exercise its right to terminate, City 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.

### **11.6 CITY WAIVER OF BREACH OR DEFAULT**

A waiver by City 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 City of any damages or other money paid by Contractor hereunder shall not be deemed to be a waiver by City of any preexisting or concurrent breach or default by Contractor.

## **11.7 TERMINATION**

### **A. Termination for Cause**

Upon an uncured Event of Default by Contractor or as a result of a performance review as provided in Section 9.7, City shall have the right to terminate this Agreement without need for any suit or legal action. Contractor's liability to provide such records shall survive the termination of this Agreement. Contractor shall forfeit its bond to City to the extent required to compensate City for damages incurred as a result of the breach or default.

### **B. Notice of Termination**

In addition to any other available remedies City may impose as specified in Section 11.5, City may give Contractor written Notice of termination, effective within twenty (20) days. The decision of City Council with regards to termination shall be final. Within 5 days of receipt of notice, Contractor may appeal the notice of termination to City Council. Upon Notice of termination, Contractor shall promptly provide City with any or all records kept in accordance with Article 9, Exhibit F, or any other record keeping provisions of this Agreement or its Exhibits.

## **11.8 POSSESSION OF PROPERTY UPON TERMINATION**

In the event of termination for default, City shall have the right to take temporary possession of any and all of Contractor's land, equipment, and personal property used or useful in the Collection and transportation of Solid Waste, Recyclables, or Green Waste in the provision of services under this Agreement, and the billing and collection of fees for these services and to use such property. City shall pay reasonable compensation to Contractor for the temporary use of such land, equipment, and other property except that City shall not be required to compensate Contractor for the value of business goodwill. City shall have the right to retain the possession of such property until other suitable arrangements can be made for the provision of Solid Waste, Recyclables, or Green Waste Collection services which may include the award of an agreement to another contractor(s). Contractor shall furnish City with immediate access to all of its business records related to its route maps, schedules, and billing of accounts for services.

**11.9 CITY'S REMEDIES CUMULATIVE: SPECIFIC PERFORMANCE** City's right to terminate the Agreement under Section 11.7 and to take possession of Contractor's properties under Section 11.8 are not exclusive, and City'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 City 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 City to Contractor, the remedy of damages for a default hereof by Contractor is inadequate, and City may be entitled to injunctive relief.

## **11.10 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 City or 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 Site 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, shall comply with the emergency plans of City 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 City's right to perform services under Section 11.4 and (ii) if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Article 11 for a period of thirty (30) days or more, other than as the results of third-party labor disputes under which Franchise Services cannot be provided for reasons described earlier in this Article, City 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 Section 11.5 shall apply.

#### **11.11 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 City 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 City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, City 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 City 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 City, such failure or refusal shall be an Event of Default for purposes of Section 11.2.

#### **11.12 PAYMENT OF SERVICE FEE HELD IN ABEYANCE**

During an uncured breach or default, City may withhold any payment or adjustment otherwise due pursuant to Articles 7 or 8 to the extent such withholding is reasonably related to damages sustained by City as a result of such breach or default. This withholding of money shall be in addition to any other right or remedy provided City under this Agreement.

**ARTICLE 12**  
**OTHER AGREEMENTS OF THE PARTIES**

**12.1 RELATIONSHIP OF PARTIES**

The Parties intend that Contractor shall perform the Franchise Services as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Contractor shall be or shall be deemed to be an employee or agent of City. 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 City employees by virtue of their employment with City. Contractor or its employees shall not provide, directly or indirectly, any gifts or gratuities to any City employee or representative.

Contractor shall not be financially interested in any other City contract for provision of Franchise Services. For the limited purposes of interpreting this section, Contractor shall be deemed a "City 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 City contract for this program, that other contract shall be void. Contractor shall indemnify and hold harmless the City for any claims for damages resulting from Contractor's violation of this section of this Agreement.

**12.2 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, 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.

**12.3 GOVERNING LAW**

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

## **12.4 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.

## **12.5 ASSIGNMENT**

### **A. Definition**

For purposes of this Article, "assignment" shall include, but not be limited to: (i) a sale, exchange, or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange, or other transfer of thirty (30) percent or more of the assets of Contractor; (iii) any reorganization, consolidation, merger recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of Contractor; and (iv) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership. Assignment shall not include transfer of ownership to the child(ren) of an owner. If Contractor is not a corporation, an assignment shall also include, among other things, any transfer or reorganization that has an effect similar to the situations described in foregoing sentence for corporations. For purposes of this Article, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. If Contractor is a subsidiary of another corporation or business entity, any assignment, as defined above, by the parent company or corporation shall be considered an assignment by Contractor provided, however, that an assignment by the parent company to an affiliate of Contractor shall not be considered an "assignment" for the purpose of this section.

### **B. City Consent**

Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has relied upon Contractor's representation of its experience and financial resources in qualifying Contractor to Franchise Services under this Agreement. Except as provided in this Article, Contractor shall neither assign its rights nor delegate, subcontract, or otherwise transfer its obligations under this Agreement to any other person or entity without the prior written consent of City. Any such assignment without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement. Under no circumstances shall City be required to consider any proposed assignment if there is an uncured Event of Default at any time during the period of consideration.

### **C. Requirements of Contractor**

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met the following requirements:

1. Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs 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 City with audited financial statements of the proposed assignee's operations for the immediately preceding five (5) operating years.
3. Contractor shall furnish City with satisfactory proof that the proposed assignee has the demonstrated technical capability to perform all Franchise Services, including: (i) 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; (ii) in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any state, federal, or local environmental laws and the assignee has provided City with a complete list of such citations and censures; (iii) the proposed assignee has at all times conducted its operations in a environmentally safe and conscientious fashion; (iv) the proposed assignee conducts its Solid Waste management practices in substantial compliance with all federal, state, and local laws regulating the collection and Disposal of Solid Waste including hazardous substances; and (v) or any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner. City reserves the right to approve an assignment conditioned on an increase to the performance bond required pursuant to Section 10.4 and/or use of another mechanism in addition to, or as an alternative to, the performance bond required in Section 10.4.

### **D. Application and Transfer Fee**

Any application for a Franchise transfer shall be governed by the following conditions:

1. Any application for a Franchise transfer shall be made in a manner prescribed by City Representative. The application shall include a transfer fee in an amount to be set by resolution of the Council to cover the cost of all direct administrative expenses including consultants necessary to adequately analyze the application not to exceed \$10,000.00. In addition, Contractor shall reimburse City for any and all additional costs related to the assignment requested and not covered by the transfer fee. Bills

shall be supported with evidence of the expense or cost incurred. The Contractor shall pay such bills within (30) days of receipt.

2. The Franchise transfer fees are over and above any other fees or charges specified in the Agreement.

#### **E. Transition**

If City consents to an assignment, at the point of transition, Contractor shall cooperate with City and subsequent Contractor(s) or subcontractor(s) to assist in an orderly transition which shall include, but not be limited to, Contractor providing route lists and billing information.

### **12.6 DISPUTE RESOLUTION**

#### **A. Continue Performance**

Except for an Event of Default, in the event of any dispute arising under this Agreement, City and Contractor shall continue performance of their respective obligations under this Agreement and shall attempt to resolve such dispute in a cooperative manner, including but not limited to, negotiating in good faith.

#### **B. Mediation**

Any unresolved dispute arising between the Parties under this Agreement shall first be submitted to non-binding mediation before a recognized mediator having experience with agreements of this nature and that is mutually acceptable to the Parties, provided that neither Party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days from commencement of the dispute resolution process, to agree on a mediator, either Party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the Parties. Each Party shall bear its own costs, including attorney's fees, incurred in connection with the mediation. If the mediation does not result in a resolution of the dispute that is acceptable to both Parties, either Party may institute arbitration.

#### **C. Non-Binding Arbitration**

Any unresolved dispute or claim which arises out of or which relates to this Agreement, or to the interpretation or breach thereof, shall be submitted to non-binding arbitration pursuant to California Code of Civil Procedure, Section 1280 *et seq.* Arbitration shall be by a single, neutral arbitrator having experience with agreements of this nature. The Parties shall mutually agree upon said arbitrator, but if the Parties cannot so agree, either Party may apply to the Superior Court of Marin County to appoint an arbitrator. The arbitrator selected shall have experience with agreements of this nature. The arbitrator shall follow applicable law in reaching a decision on any controversy submitted to arbitration. The arbitrator's fees and expenses and all arbitration costs shall be borne equally by the Parties, unless otherwise required by this Agreement or unless the

arbitrator, in his or her discretion, determines that a different apportionment of fees and costs is appropriate in the interests of justice. If the arbitration reduces expenses applicable to the current year's service, applicable Rate reductions may be enacted. The rules for arbitration shall be the American Arbitration Association ("AAA") rules. Discovery may be undertaken by the Parties in accordance with the Code of Civil Procedure rather than the AAA rules.

#### **12.7 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.

#### **12.8 SUBCONTRACTING**

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

#### **12.9 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.

#### **12.10 TRANSITION TO NEXT CONTRACTOR**

If within one (1) year prior to conclusion of the term City desires to grant to a third party Franchise Services which are Franchised to Contractor under this Agreement, Contractor shall be obligated to cooperate with City 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 City with such information as may reasonably be requested, including but not limited to, route maps, account names and phone numbers, level of service provided. Contractor will not be obligated to sell Collection vehicles, Bins, and Containers to the next contractor. Depending on Contractor's circumstances at the time of transition, Contractor at its option may enter into negotiations with the next contractor to sell (in part or all) Collection vehicles, Bins, and Containers. Failure to provide full cooperation may, at City's sole discretion, preclude Contractor from participating in the next competitive bid.

#### **12.11 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.

**12.12 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.

**12.13 CONDEMNATION**

In addition to the rights in Section 11.4 City 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.

**12.14 NOTICE**

**A. Notice Procedures**

All Notices, demands, requests, proposals, approvals, consents and other communications with this Agreement require, authorize, or contemplate all, except as otherwise specifically provided, 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 City:           Attention: City Manager  
                                  City Hall  
                                  420 Litho Street  
                                  Sausalito, CA 94965

If to Contractor: Attention: District Manager  
                                  Bay Cities Refuse Service  
                                  PO Box 277  
                                  El Cerrito, CA 94530

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 follow any facsimile notice. This follow-up written Notice 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 City: City Manager  
Fax number 415 289-4167

If to Contractor: District Manager  
Fax number 510-237-8078
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.

### **12.15 REPRESENTATIVE OF THE PARTIES**

All actions to be taken by City shall be taken by City Council except as provided below. City Council may delegate, in writing, authority to City Manager and/or to other City officials, 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. City Manager shall be responsible for administration of this agreement on behalf of City.
2. City Manager may delegate authority to appropriate City employees or other appropriate persons.



3. City Council reserves to itself all discretionary and administrative authority not otherwise expressly delegated pursuant to ordinance. Whenever this Agreement requires approval by City, the approval may be given by City Manager or his or her designee, subject to appeal to City Council by Contractor or member of City 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 City in writing of such designation and of any limitations upon his/her authority to bind Contractor. City 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 City.

#### **12.16 CITY FREE TO NEGOTIATE WITH THIRD PARTIES**

City 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, City may solicit proposals from Contractor and from third parties for the provision of Collection services, Disposal services, Recycling services, Green Waste Collection and composting, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration, or earlier termination under Section 11.7, of this Agreement and/or any future agreements.

#### **12.17 CONTRACTOR TO DEFEND AGREEMENT**

Contractor shall defend at its sole expense the validity of this Agreement against all challenges to the Agreement by any entity or person not a Party to this Agreement. Contractor shall indemnify City against any liability to entities or persons not party to Agreement resulting from a determination that this Agreement violates any state or federal law, statute, or constitutional provision.

**ARTICLE 13**  
**MISCELLANEOUS AGREEMENTS**

**13.1 ENTIRE AGREEMENT**

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

**13.2 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.

**13.3 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.

**13.4 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.

**13.5 AMENDMENT**

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

**13.6 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.

**13.7 COUNTERPARTS**

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

## **13.8 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 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**

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 be performed in Marin County, California. All depositions made by City employees shall be made in Marin County, unless another location is selected by City.

### **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.

## **13.9 EXHIBITS**

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

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

ATTEST:

CITY OF SAUSALITO

By Amy Belser

J. R. Roberts

Vice Mayor

BAY CITIES REFUSE SERVICE, INC.

By Lewis Figone

Lewis Figone

President

APPROVED AS TO FORM:

By Paul C. Anderson

Paul Anderson

City Attorney

ATTEST:

By Dana H. Whitson

Dana H. Whitson

City Manager / City Clerk

**EXHIBIT A**  
**CONTRACTOR'S STANDARDS OF PERFORMANCE**

**A. DAYS AND HOURS OF COLLECTION**

Contractor shall make daily Collections (Monday through Saturday) in the business district with special arrangements necessary for Sunday and holidays, and once weekly (Monday through Friday) in all residential districts, subject to such changes as may be approved by resolution of City Council. If the day of Collection on any given route falls on a holiday, Contractor shall provide Collection service for such route on the workday next following the holiday and shall not provide Collection service on the holiday. For purposes of this paragraph, holiday shall mean New Year's Day and Christmas Day. Additional holidays may be added upon mutual agreement of both Parties.

Collection of Solid Waste from Single-Unit and Multi-Unit Residential Premises shall occur only between the hours of 6:00 a.m. and 6:00 p.m. Collection of Solid Waste from Commercial Premises shall occur only between the hours of 6:00 a.m. and 6:00 p.m. Collection may take place every day of the week except Sunday, except for Commercial services as consented to by City.

Contractor shall make use some of the following means for communicating with the public regarding changes in service times and routes and scheduling of periodic services such as cleanup week and Christmas tree Recycling: *Sausalito Quarterly Magazine*; local newspaper ads; local cable television ads; information on website; contractor newsletter placed in bills; recorded messages on the customer service telephone line; and direct notification of owners/managers of Multi-Unit complexes.

**B. COLLECTION STANDARDS**

**1. Care of Public and Private Property**

- a. Reasonable care shall be used by Contractor's employees in handling all Collection Containers and enclosures.
- b. Contractor shall compensate Customers for any damage to private property due to negligence or failure to exercise reasonable care on the part of Contractor's employees. Contractor shall not be responsible for pavement damage caused by normal wear and tear from vehicles operating in compliance with the requirements of the California State Vehicle code.

- c. Contractor shall return Containers upright and with lids properly secured to within five (5) feet of where Contractor picked up Container, provided that it be placed well clear of the public rights-of-way for pedestrians and vehicles.
- d. Contractor's employees shall use all reasonable means to ensure Containers do not obstruct any driveway, sidewalk, or street.
- e. Contractor shall ensure that its employees close all gates opened by them in making Collections, unless otherwise directed by Customer and avoid crossing landscaped areas and climbing or jumping over hedges and fences.
- f. City shall refer complaints about damage to private property to Contractor. Contractor shall respond promptly and fairly to all legitimate complaints.
- g. Contractor shall clean up any loose litter or Solid Waste in immediate area of Collection Container or Bin regardless of who caused the litter.

## **2. Noise**

At all times during Collection and transport of Solid Waste, Contractor shall obey noise limitations set forth in Sausalito City Code and other noise restrictions set forth in this Section of this Exhibit A. All Solid Waste Collection operations shall be conducted as quietly as possible and shall conform to applicable federal, state, County, and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the Collection vehicle. City may conduct random checks of noise emission levels to ensure such compliance. Contractor will promptly resolve any complaints of noise to the satisfaction of City.

## **3. Solid Waste Storage Containers**

- a. **Residential.** The standard size Container for regular Residential services shall not exceed thirty-two (32) gallons unless otherwise agreed to by City. The combined weight of Container and contents shall not exceed sixty (60) pounds. Contractor shall affix to every metal or plastic refuse Container which no longer holds Solid Waste without spilling or leaking, a tag advising that such Container is unsuitable for presenting Solid Waste for Collection, and the continued use of that Container will result in its Disposal. All cartons and boxes used to contain Solid Waste will be disposed of along with their contents.
- b. **Non-Residential.** Contractor shall provide City Bins, Carts, and Containers for storage of Solid Waste which shall be designed and constructed to be watertight and

prevent the leakage of liquids. All Containers with a capacity of one (1) cubic yard or more shall meet applicable federal regulations on Solid Waste Bin safety. All Containers shall be painted Contractor's standard color(s), shall prominently display the name and telephone number of Contractor, and shall be marked with reflectorized material when located, or reasonably expected to be located, in the public right-of-way. All non-residential City Bins and Containers are to be maintained by Contractor at no charge to City. Provisions to lock Containers shall be provided at City's request.

- c. **Cleaning, Painting, Maintenance.** Contractor shall provide cleaning, painting, and maintenance services necessary to maintain a sanitary condition and clean appearance of City Bins. At a minimum, Contractor shall clean, paint, and maintain Bins in accordance with the following conditions:
- i. Contractor shall steam clean Bins as required to maintain a clean appearance and sanitary condition as determined by City.
  - ii. Upon City request Contractor shall steam clean Bins up to two (2) times per calendar year at no charge to City.
  - iii. All Containers shall be maintained in a functional condition and in a manner so as to present a clean and sanitary appearance.
  - iv. All graffiti shall be removed by the end of the next Working Day, excluding Saturdays, in accordance with Sausalito City Code, Section 20.25.6.
  - v. Contractor shall repaint Bins as needed or at City request. If City requests that their Bin be painted, Contractor shall paint Bins once per calendar year at no charge to City.
- d. **Repair and Replacement.** Contractor shall repair or replace all Containers, locks and keys damaged by Collection operations at no cost to City or Customers. Contractor shall replace at no charge to City, locks which may be lost or stolen through no negligence of City.

#### 4. Record of Non-Collection

When any Solid Waste deposited for Collection is not collected by Contractor for sufficient reason, Contractor shall leave written notice on which Contractor has provided its phone number and indicated the reasons for its refusal to Collect the Solid Waste. Contractor shall ensure either that Collection drivers leave tags on Containers or door hangers, or that supervisors leave notice for the Customer. Contractor shall maintain records of non-Collection and provide monthly

reports to City Code Enforcement Division containing the Customer name and address for all consistent repeat locations of non-Collection.

In addition, Contractor shall maintain at its place of business records of non-collections, all Customer inquiries or complaints regarding non-collection notices, and records of non-service issues. Said record shall contain the names and addresses of parties involved, reason for non-collection, and the date of notice. Such record shall promptly be made available for review upon request by representatives of City. Such record shall be maintained by Contractor for a period of three (3) years following the closing of the calendar year in which the complaint occurred.

- b. **Cleaning.** Vehicles used in the Collection of Solid Waste shall be thoroughly washed and cleaned a minimum of once per week so as to present a clean appearance and minimize odors. All vehicles shall be painted as needed to maintain a neat and uniform appearance, although City may require the painting of any vehicle that does not present an appearance deemed satisfactory by City. All graffiti shall be removed in accordance with Sausalito City Code. City may inspect vehicles at any time to determine compliance with sanitation requirements. However, City shall not unreasonably hinder or interfere with Contractor's operations. Contractor shall make vehicles available to County Health Department and the California Highway Patrol for inspection at any frequency they request.
- c. **Maintenance.** Contractor shall: (i) cause drivers to inspect vehicles daily to ensure that all equipment is operating properly, and vehicles which are not operating properly shall be taken out of service until they are repaired; and (ii) perform all scheduled maintenance functions. Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and either mileage or engine hours and shall make all such records available to City upon request. Maintenance of vehicles, Bins, Roll-Off Containers, and pods shall include keeping rear Bin and pod seals tight and minimizing buildup of condensate on working surfaces.
- d. **Repairs.** Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment, including dents or other body damage, for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a neat, safe, and operable condition. If an item of repair is covered by a warranty, Contractor shall obtain warranty performance. Contractor shall include date and either mileage or engine hours, nature of repair, and the signature of a maintenance supervisor that the repair has been properly performed.
- e. **Inventory.** Contractor shall furnish sufficient equipment to provide all Franchise



Services, including backup Collection vehicles. Contractor shall furnish City a written inventory of all vehicles ("Vehicle Inventory List"), including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer ID number, date of acquisition, type, capacity, and decibel rating.

- f. **Storage.** Contractor shall arrange to store all vehicles and other equipment in safe and secure locations(s) in accordance with City's applicable zoning regulations.

## **5. Operation**

- a. Vehicles shall be operated in compliance with the California Vehicle Code and all applicable safety and local ordinances.
- b. Contractor shall not load vehicles in excess of the manufacturer recommendations or limitations imposed by state or local weight restrictions on vehicles.
- c. Contractor shall use all reasonable means to minimize any backing in reverse of Collection vehicles.
- d. Vehicles shall be operated so as not to leak liquids or hydraulic fluid, and to avoid windblown debris.

## **E. PERSONNEL**

### **1. General**

Contractor shall furnish such qualified drivers, collectors, mechanical, supervisory, clerical, and other personnel as may be necessary to provide the Franchise Services required by this Agreement in a safe and efficient manner. All Contractor employees must be sufficiently proficient in oral and written English to enable them to successfully provide the service required in this Agreement.

### **2. Driver Qualifications**

All drivers shall be trained and qualified in the operation of Collection vehicles and must have in effect a valid license, of the appropriate class with appropriate endorsements, issued by the California Department of Motor Vehicles.

### **3. Identification Badge**

Contractor shall require downtown maintenance personnel who come into contact with the public to wear a uniform with an identification badge for the purpose of identifying each employee.

#### **4. Safety Training**

Contractor shall provide suitable operational and safety training for all of its employees who maintain, utilize, or operate vehicles or equipment for Collection of Solid Waste or who are otherwise directly involved in such Collection. Contractor shall train its employees involved in Solid Waste Collection to identify, and not collect, Hazardous Waste, Medical Waste, or Infectious Waste.

#### **5. No Gratuities**

Contractor shall not permit its employees to accept, demand, or solicit, directly, any additional compensation or gratuity from members of the public for the Collection of Solid Waste under this Agreement. Acceptance of a gratuity, provided it does not constitute criminal activity of Contractor, would be considered a Non-Material Breach as defined in Section 11.2 of this agreement.

#### **6. Employee Appearance and Conduct**

All employees, while engaged in collecting or gathering Solid Waste within City by Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in customer service and courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Contractor shall take all appropriate corrective measures including termination.

#### **7. Provision of Field Supervision**

Contractor shall designate a minimum of one (1) qualified employee as supervisor of field operations. The field supervisor(s) will devote at least fifty (50) percent of their regular work time to work in the field checking on Collection operations, including providing timely response to citizen service problems and service requests, including non-service reports, code violations, and other reporting requirements. The field supervisor(s) shall be available during regular working hours, and be readily available by cell phone, pager, or radio on weekends and holidays, in order to respond promptly to City regarding provisions of City and community services specified in Article 5.

**8. General Supervision**

The Collection and removal of Solid Waste shall be under the general supervision of City, whose orders, directions, and instructions to Contractor not inconsistent with the terms of this Agreement, shall promptly be executed by Contractor. City shall not interfere unreasonably with operations of Contractor. City reserves the right to inspect any and all of Contractor's equipment during normal business hours without prior notice.

**EXHIBIT B**  
**CITY AND COMMUNITY SERVICES**

This Exhibit B provides additional detail with relation to certain of the Franchise Services Contractor provides pursuant to Article 5. The following data include a brief description of the present Solid Waste routes, followed by additional information provided by the City Solid Waste Section. CITY may add, delete, and/or modify locations and frequency of such Collection upon prior Notice to Contractor, not to exceed 5%, in any one year nor an average of 2% per year of the agreement.

**SERVICE AREAS**

Service must be provided at the areas listed below and shall be serviced as required. Litter cans to keep the premises free from debris. All public litter cans within the City, including those at transit stops.

**DOWNTOWN CANS**

Service to all City cans in downtown area, 7 days, including Sunday, serviced as frequently as required.

**PARKING LOTS**

All City owned or operated parking lots serviced 7 days per week including Sunday.

**CITY FACILITIES**

Appropriate Solid Waste Disposal Bins or Containers will be provided and serviced as frequently as required at the following facilities:

- Public Works Yard – 20 cubic yard debris boxes for green waste
- City Hall (including Recreation Center, Senior Citizens Center, and Library)
- Fire stations
- Parks
- MLK Property – 8 two yard dumpsters and recycling containers serviced twice weekly
- Police facilities
- Senior Citizens Center
- South Pacific Labs Building (or alternate site as designated by CITY) – two 20 yard debris boxes (for green waste) serviced on call.

## **RECYCLING CONTAINERS**

Appropriate Recycling Containers shall be provided by Contractor and serviced as frequently as required at the following locations:

- MLK Property
- City Hall
- Police Department facilities
- Fire Department facilities
- Parks and recreation centers
- Library
- Public Works Yard
- Current Public recycling bins located throughout City

## **SPECIAL EVENTS**

Appropriate collection and sweeping services shall be provided by the Contractor to the following special events:

- Coastal cleanup
- Sausalito Art Festival – Mayor’s Blue Ribbon Committee
- Caledonia Street Fair
- Easter Parade
- Blues and Jazz by the Bay
- 4<sup>th</sup> of July Parade, Picnic and Fireworks
- Arias by the Bay
- Chili Cook-off
- Halloween
- Winter Festival – Provision of clean snow if weather permits
- Sausalito Nursery School Spring Faire
- Opera by the Bay
- Women’s Club Historic Stair Cleaning

Up to four 20 yard debris boxes each year for any other special events as designated by the City Manager.



## EXHIBIT D

### SOLID WASTE AND RECYCLING EDUCATIONAL AND PROMOTIONAL EVENTS

Recycling literature and other materials for use by the Sausalito Public Library and other civic groups

Public service announcements for local radio and television stations (public and private) and public service news releases for local print media.

Sponsor and coordinate recycling, reuse, and composting educational events programs.

Distribute printed recycling information to all new customers.

Periodically distribute printed recycling information to all households and apartment units throughout normal billing.

Advertise and promote all special cleanup events such as Christmas tree collection, household hazardous waste events, and the twice annual cleanup weeks.

Appropriate advertisements in the local media, including the *Sausalito Quarterly Magazine*, local cable television stations, and recorded messages on Contractor's customer service telephone line.

Provide recycling diversion data for recovery of recyclable materials at public events, whenever possible.

**EXHIBIT E**  
**CITY OF SAUSALITO - INITIAL SERVICE RATES FOR**  
**SOLID WASTE, RECYCLING AND GREEN WASTE COLLECTION AND DISPOSAL**

City of Sausalito – Rates effective May 1, 2002 through December 31, 2003

**Section 1. Residential garbage collection rates shall be:**

- a. For all portions of the City lying easterly of U.S. Highway 101, the maximum rate shall be:

One	(1)	30-gallon can	\$24.00
Two	(2)	30-gallon cans	\$48.00
Three	(3)	30-gallon cans	\$72.00
Four	(4)	30-gallon cans	\$96.00
One	(1)	40-gallon can	\$44.30
One	(1)	45-gallon can	\$50.90
One	(1)	50-gallon can	\$59.05

- b. For all portions of the City lying westerly of U.S. Highway 101, the maximum rate shall be:

One	(1)	30-gallon can	\$25.35
Two	(2)	30-gallon cans	\$50.70
Three	(3)	30-gallon cans	\$76.05
Four	(4)	30-gallon cans	\$101.40
One	(1)	45-gallon can	\$52.00

- c. Bulk collections will be made in residential areas on twenty-four (24) hours notice at the following rates:

Curb Service	\$19.05/cubic yard
Backyard Service	\$21.55/cubic yard

**Section 2. Multiple Unit garbage collection rates shall be:**

- a. The maximum rate for once per week collection and disposal of garbage from apartment buildings for the period May 1, 2002 through December 31, 2003 shall be \$25.20 per apartment unit.



- b. The maximum rate for once per week collection and disposal of two thirty (30) gallon cans from two-unit residences for the period of May 1, 2002 through December 31, 2003 shall be \$50.40 per month.

**Section 3. Commercial garbage collection rates shall be:**

The maximum rate for the collection and disposal of garbage from commercial areas in the City of Sausalito for the period May 1, 2002 through December 31, 2003 for garbage placed in thirty (30) gallon cans shall be \$24.80 per month.

The maximum rates for the collection and disposal of bulk garbage from Commercial areas for the period May 1, 2002 through December 31, 2003 shall be \$22.25 per cubic yard.

- a. The maximum rate for commercial compactor service for the period May 1, 2003 through December 31, 2002 shall be \$46.65 per cubic yard.

**EXHIBIT F**  
**ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS**

**A. SOLID WASTE COLLECTION, GENERATION, RECYCLING, GREEN WASTE REPORTS**

**1. Solid Waste Reports**

- a. **Solid Waste Reports.** Contractor shall keep monthly records of, and provide a quarterly report to City detailing the total Solid Waste collected within the Agreement Area. A copy of the Hauler Monitoring form supplied to County will be provided to City within fifteen (15) days after the end of each quarter.
- b. **Generation Reports.** Contractor may, subject to approval of City, and except as provided in B.1 and 2 below, provide waste generation estimates for those services which cannot be readily segregated from one another. Waste generation estimates shall include a mechanism, acceptable to City, used to assign waste tonnage and service levels to each category in A.1.a above. If deemed necessary, City and Contractor will mutually agree upon format for generation estimates segregated for service levels.

**2. Recycling Reports**

Contractor shall keep records, separate from Solid Waste and other Collection records, documenting the total quarterly quantity of each Recyclable Material and provide a copy of these records to City within fifteen (15) days after the end of each quarter. Contractor shall provide any other report required for City to comply with any existing or future local, regional, state, or federal Recycling reporting requirement. City shall specify the report format to be used by Contractor so that the report meets all submittal requirements of the California Integrated Waste Management Board, or other local, regional, state, or federal agency.

**3. Green Waste Reports**

Contractor shall keep records, separate from Solid Waste and other Collection records, documenting the total monthly quantity of Green Waste collected and provide a copy of these records to City within fifteen (15) days of the end of each quarter. Contractor shall provide any other report(s) required for City to comply with any existing or future local, regional, state, or federal Green Waste Collection reporting requirement. City shall specify the report format to be used by Contractor so that the report meets all submittal requirements of the California Integrated Waste Management Board, or other local, regional, state, or federal agency.



**EXHIBIT G**  
**FRANCHISE OR CONTRACT BOND**

Proof of bond to be attached

To be attached

**RIDER**

To be attached to and form a part of Bond No. SAS114850  
in the amount of \$ 5,000.00 \*\*\*\*\* issued by STAK INSURANCE COMPANY  
on behalf of BAY CITIES REFUSE SERVICE, INC.  
in favor of CITY OF SAUSALITO

Whereas said Obligor has requested that this bond be INCREASED by  
\$ 45,000.00 \*\*\*\*\*; it is hereby understood and agreed that the bond penalty is  
from \$ 1,000.00\*\*\*\*\* to \$ 50,000.00\*\*\*\*\*

Such INCREASED being effective JANUARY 1, 2002

Signed, sealed and dated this 12TH day of FEBRUARY 192002

BAY CITIES REFUSE SERVICE, INC.

By: [Signature]  
Principal

By: [Signature]  
EDITH L. BOQUIREN,  
Attorney-in-Fact



**EXHIBIT H**  
**LIQUIDATED DAMAGES**

In the event that Contractor fails to perform fully any of the Franchise Services under this Agreement (other than "Events of Default" stipulated in Section 11.2) Contractor shall be in breach of this Agreement. As provided in Section 11.1C, in addition to any other available remedies City may have, Contractor agrees to pay the following amounts as liquidated damages and not as a penalty:

1. Failure to correct a missed pickup within two (2) working days: \$100.00 per occurrence; each additional Working Day: \$100.00.
2. Failure to deliver Collected Solid Waste to a Solid Waste Management Facility: \$1,000.00 per incident.
3. Undertaking Collection operations during hours outside of allowable Collection hours: \$100.00 per occurrence.
4. Failure to maintain properties, facilities, and equipment in a neat and orderly manner after notice by City Manager and within ten (10) Working Days: \$100.00 per day.
5. Failure to respond to a Customer complaint as provided in Section 6.3: \$100.00 per occurrence.
6. Failure to record a response to a Customer complaint or request following its resolution, by the end of the next Working Day, excluding Saturday: \$100.00 per occurrence.
7. Failure to clean up spillage or litter during Collection activity: \$100.00 per occurrence.
8. Failure to take reasonable steps to resolve legitimate billing complaint within five (5) Working Days from the complaint: \$100.00 per occurrence.
9. Additional penalty when Contractor receives more than twenty-five (25) unresolved service-related complaints in any thirty (30) day period: \$500.00.

10. Failure to tag materials not collected due to contamination or inappropriate setout: \$100.00 per occurrence.
11. Failure to notify City, within 30 days of Customers no longer receiving service: \$200.00 per occurrence.
12. Failure to maintain or submit documents and reports as required under the terms of this Agreement after ten (10) days notice: \$200.00 per incident per day.

The above amounts may be increased by City by ten (10) percent beginning on July 1, 2005, and on each July 1 every fourth (4th) year thereafter, as provided in Section 8.6. Such periodic increases are to be used as an alternative to annual increases in the CPI.



## EXHIBIT I

### RATE REVIEW GUIDELINES

#### A. GENERAL PROVISIONS

##### 1. Rate Review Years

Formal rate reviews shall be conducted every four years, with the first adjustment to be effective January 1, 2006. Contractor shall submit a rate application, and on the basis of the review of the rate application and supporting documentation, and in accordance with the detailed guidelines provided below the City may increase, decrease, or make no change in the rates. Provided, however, that the City will not unreasonably reject a requested rate adjustment that is logical, fully supported, and consistent with the provisions of this contract. In no event shall a rate increase occur if there is an uncured Event of Default, as provided in Article 11.2.

##### 2. Non-Rate Review Years

The initial rate adjustment under this contract is effective from, May 1, 2002 through December 31, 2003. For non-rate review years, beginning with January 1, 2004, the rates will be adjusted by the City to reflect 75 percent of the Consumer Price Index (CPI). For four-year cycles, beginning with January 1, 2007 through December 31, 2010 the first three years shall be non-rate review years and the fourth year a rate review year.

##### 3. Summary Table

The following table summarizes the rate review process for both the Base Term and the Extension.

No Adjustment	Non-Rate Review Years (January 1 – 75 percent CPI Adjustment)	Rate Review Years (January 1)
2002, 2003	2004, 2005, 2007, 2008, 2009, 2011, 2012, 2013, 2015, 2016, 2018, 2019, 2020, 2022, 2023, 2024, 2026	2006, 2010, 2014, 2017 <sup>1</sup> , 2020, 2025

<sup>1</sup> In the event of an Extension.

Due to the timing of the Extension, following the adjustment of rates on January 1, 2014 based on a rate review, the adjustments for 2015 and 2016 will be CPI-based. The January 2017 rate adjustment will occur if there is an Extension and will be based on a rate review. The four-year cycle of three years of CPI and a fourth year rate review begins again with January 2018. The last possible rate adjustment under this contract is a CPI adjustment effective January 1, 2026.

#### B. DEFINITIONS

“CPI” refers to the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose California Metropolitan Area, Standard Metropolitan Statistical Area, as

published by the United States Department of Labor, Bureau of Labor Statistics, or any successor index.

“Current rate period” means the calendar year beginning with the effective date of any rate adjustment resulting from a rate review. Hence, with relation to the first rate review adjustment scheduled to be effective on January 1, 2006, calendar year 2006 is the current rate period.

“Fixed expenses” are those expenses that do not change with relation to the consumer price index, and include but are not necessarily limited to interest payments, lease payments, and continuing depreciation of specific vehicles. Fixed expenses do not receive adjustments during either rate review or non-rate review years.

“Pass-through expenses” are Contractor expenses that are determined by third parties, and include but are not necessarily limited to disposal expenses, green waste processing expenses, and the Marin County Joint Powers Authority Integrated Waste Management Fee. Subject to any restrictions on these expenses otherwise specified in this contract, pass-through expenses shall be adjusted during both rate review and non-rate review years to reflect the actual change in the expense.

“Prior rate period” means the calendar years immediately preceding the effective date of any rate adjustment resulting from a rate review. Hence, with relation to the first rate review adjustment scheduled to be effective on January 1, 2006, January 2002 through December 2005 constitutes the prior rate period.

“Rate revenue” means all revenues collected by the Contractor as a result of billing customers for franchise services using the City-approved rate schedule. Rate revenues do not include net revenues from the processing and sale of recyclable materials.

“Recycling revenue” means the net positive or negative revenues that result from the sale of recyclable materials less the cost of processing of the materials.

“Variable expenses” are those expenses that are subject to adjustment by the CPI during non-rate review years. Variable expenses include labor and fuel, and all other allowed expenses that are not either pass-through expenses or fixed expenses.

## **C. PROCESS DURING RATE REVIEW YEARS**

### **1. Schedule**

Contractor shall submit a rate adjustment application by the September 15 immediately prior to the effective date of each rate review adjustment. The City Council will act on the application no later than the December 1 immediately prior to the effective date of each rate adjustment, unless the City at its sole discretion believes there is a compelling reason to delay action on the adjustment. All rate adjustments shall be effective January 1, or retroactive to January 1 if the Council acts after December 1 and the Contractor can not complete mailing of bills in a manner that gives customers advance notice of an adjustment.

### **2. Rate Application**

Contractor’s rate application shall include:

1. A summary letter describing the requested rate adjustment request and any key issues affecting service or the franchise that the City should be aware of, with a summary of:
  - a. Each expense to be adjusted.
  - b. The amount of adjustment for each expense as a percentage of that expense.
  - c. The total adjustment as a percentage of the actual rate revenues for the second year of the prior rate period.

2. A table of proposed adjusted rates showing the then-current rate and the proposed rate, including the franchise fee, for each type of service and service level.
3. A detailed description of the reason for the requested adjustment for each type of expense, including:
  - a. Analysis of the amount of the expense over each year of the prior rate period if Contractor is seeking an adjustment based on past changes in the expense.
  - b. Projections of any increase or decrease during the current rate period, and the reason for those projections if Contractor is seeking an adjustment for anticipated increases in expenses.
4. Audited financial statements for the first two years of the prior rate period.
5. Non-audited financial statements for the first eight months of the third year of the prior rate period. Contractor's expenses shall, unless by other mutual agreement with the City be grouped in all financial statements as follows:
  - a. Pass-through expenses.
  - b. Variable expenses.
  - c. Fixed expenses.
  - d. Franchise fees.
  - e. A subtotal for the four above categories of expense titled "Rate-Based Expenses".
  - f. Any disallowed and/or limited expenses that are not included in the rate base.
6. Brief discussion of how each expense or group of expenses is allocated to the City, in whole or in part.
7. Customer count for the most recent billing cycle, including:
  - a. Single-family residential can customers by service level, for regular and hill service.
  - b. Non-residential can customers by service level.
  - c. Number of bin customers by service level (bin size and frequency of collection).
  - d. Number of debris box hauls by box size.
8. Results of a field audit conducted by Contractor during a recent one month period documenting the number of cans, bins and debris boxes collected from City locations as part of unbilled services to the City, including in buildings and in outdoor public locations.
9. A list of all personnel assigned to the franchise during the first eight months of the third year of the prior rate period; their regular and overtime hours, hourly rates, total salary; total benefit cost; and total fully loaded cost for salary and benefits.
10. A listing of all vehicles used in providing franchise services including manufacturer, year of manufacture, year of Contractor purchase or lease, and function of the vehicle; a depreciation schedule for those vehicles being depreciated; and identification of any vehicles sold or salvaged since the last rate review with documentation of the amount of the transaction credited against franchise expenses.

### 3. Review Process

#### **Review of Expenses.** Each rate review entails:

1. Reconciling actual and projected expenses for the prior rate period. The projected expenses for the prior rate period are the three adjustments made during the prior rate period, one through a rate review and generally three through CPI and pass-through adjustments.
2. Projecting expenses for the current rate period.
3. Adjusting rates to reflect: the difference between actual and projected expenses for the prior rate period; and projected increases and/or decreases in expenses for the current rate period. To the extent that disposal tip fees cumulatively increased more than twenty (20) percent since the last rate review, and the Contractor did not receive adjustment for all of this increase during the non-rate review years as provided in Section D of this Exhibit I, Contractor's rates shall be adjusted as needed to reflect any ongoing expense projected forward, but not to recompense the Contractor for the past expense incurred since the last rate review.

The review of expenses for the prior rate period shall be based on actual expenses for the first full years of the prior rate period, and actual expenses for first eight months (January-August) of the last year of the prior rate period projected through the year. Except as otherwise stipulated in writing by the Contractor as part of its rate application and agreed by the City, the City shall assume that the expenses for the first eight months of the last year of the prior rate period represent two-thirds of the total expenses for that year.

Upon reasonable notice, Contractor shall allow the City and/or its representatives access to any financial and operational records related to the provision of franchise services, and reasonably required for review of the application. Contractor shall also facilitate access to any third parties assisting the Contractor in managing the franchise, including but not limited to accountants, attorneys, and insurance brokers.

**Disallowed and Limited Expenses.** The following types of expenses are disallowed or limited for the purposes of rate adjustment, and shall be excluded from the rate application and segregated on the Contractor's financial statements.

- a) City employee and consumer promotions: Provision of food or entertainment for City employees or customers.
- b) Contributions: Contributions to charities, churches, and/or foundations that exceed \$500.00.
- c) Political donations: Contributions to political acts, measures or persons, whether or not such expenses are allowed under state or federal law, and except as otherwise waived by the City.
- d) Fines and penalties: Fines and other financial penalties as levied by a federal, state, regional, or local governmental entity.
- e) Property damage: Direct and indirect expenses (such as legal expenses) related to payment to property owners for damage caused in provision of franchise services, and that exceed the applicable deduction(s).
- f) Salaries of Contractor officers: Salaries of Contractor officers shall be commensurate with the degree of management responsibility and the number of hours spent per year in discharging that responsibility.

- g) Unrelated travel: Expenses related to travel that is not directly related to provision of franchise services.
- h) Any other expense not directly related to provision of franchise services, or that is not normally allowed in regulation of municipal solid waste rates.

**Vehicle Expenses.** Vehicles and containers purchased prior to December 31, 2001 may be depreciated on a five year basis. Vehicles and containers purchased after December 31, 2001 shall be depreciated on a seven year basis.

Total lease payments for leased vehicles shall not exceed the total cost of depreciating the same vehicle, were it purchased outright, without prior agreement of the City..

The franchise shall be credited for the sale, salvage, or transfer to Contractor's affiliated operations of used vehicles and containers as follows:

1. 100 percent of the sale, salvage, or transaction proceeds for fully depreciated vehicles.
2. The percent of the sale or salvage proceeds that is equal to the percent of the portion of depreciation that occurred prior to sale, salvage or transfer.
3. Transfers shall be credited at the reasonable fair market value for the vehicle or equipment.

**Treatment Of Revenues.** Contractor accepts all risk with relation to changes and fluctuations in rate revenues. Contractor shall retain any recycling revenues, and accepts all risk related to changes and fluctuations in recycling revenues.

#### **4. Rate Adjustment**

Each rate adjustment shall consist of the increased expenses plus the then-applicable franchise fee percentage. The rate adjustment shall be calculated as the relative percentage change in the total rate revenues for the second year of the prior rate period.

### **D. PROCESS DURING NON-RATE REVIEW YEARS**

In non-rate review years, beginning with January 1, 2004, the City shall adjust the rates upward or downward by 75 percent of the CPI. The City shall finalize non-rate review adjustments by the December 1 immediately prior to each January of a non-rate review year.

Rates shall be adjusted by three-quarters (75 percent) of the CPI for the twelve month period beginning eighteen months prior to the effective date of the rate adjustment. Thus the CPI adjustment that is effective January 1, 2004 will be based on 75 percent of the CPI for July 1, 2002 through June 30, 2003. Should the CPI exceed a five percent increase for the given twelve month period, the CPI applied to the rate adjustment shall exceed 75 percent of the CPI only to the extent the Contractor demonstrates actual increases in excess of 75 percent of the CPI.

Notwithstanding the above, the first CPI-based rate adjustment (effective January 2004) shall be calculated as follows:  $[1.0 - (08.44-07.05) \times \text{each rate}] \times [0.75 \times \text{CPI}]$ , or  $[0.986 \times \text{each rate}] \times [0.75 \times \text{CPI}]$ .

## **E. OTHER PROVISIONS**

### **1. Additional City Rights**

**Contractor Information.** The City reserves the right to require the Contractor as reasonably required with relation to a review of rate adjustment to:

1. Provide information and data in formats that are acceptable to the City.
2. Provide additional or different types of information, data and/or supporting documentation than is specified in this exhibit.
3. Separate, track, and account for franchise expenses in more detail and/or by line of business, such as can refuse, bin refuse, green waste, curbside recycling, and debris boxes.

**Rate Setting.** City reserves the right to apply rate adjustments to the rates equally or on a differential basis.

## **F. COST OF REVIEWS**

The City reserves the right to pay for third-party costs in conducting rate reviews through the rates or by other means.

## **Exhibit J**

### **BENCHMARKING PROCESS FOR USE PRIOR TO EXTENSION**

The following process shall be used prior to City grant of an extension as specified in Article 3.1D, and to meet the requirements of Article 3.1.D2. The benchmarking process entails four steps to determine if the Contractor's rates are at or below the median of those for five cities in southern Marin County, including Sausalito. All examples included in this exhibit are hypothetical, and presented for illustrative purposes only.

**Step 1 Specify Cities, and Collect Rate Material and Customer Counts:** The comparison is to be based on the published solid waste collection and disposal rates for the cities of Sausalito (City), Belvedere, Larkspur, Mill Valley, and Tiburon. The rates to be used are the following:

- Residential 1 can.
- Residential 2 cans.
- One cubic yard/once per week bin rate.
- One cubic yard/twice per week bin rate.
- Debris box per cubic yard rate.

The selection of the can rates should reflect the relative predominance of hilly collection conditions. The City's can rates are in effect hill rates, and there are no "flat" rates. For Mill Valley, the hill rate provides the better comparison. As noted in the January 2002 rate review document cited below, Tiburon and Belvedere have a mixture of flat and hill conditions, and the selected rate should be a blend that reflects two-thirds of the hill rate and one-third of the flat rate (e.g., if the flat rate is \$20 and the hill rate is \$26, the blended rate to be used for the adjustments is \$24.) A comparable adjustment may be needed for Larkspur.

Bin rates should properly reflect rental charges. Rental charges should be included if service requires, or in effect requires rent of the container.

For Step 3, it is necessary for the Contractor to supply the total number of customers receiving each service in the City. The Contractor's most recent billing cycle(s) should be used to determine the then-current number of customers receiving service as represented by each of the five rates. The number of debris box pulls should be the monthly average for the previous year.

**Step 2 Determine Differences and Adjust Rates:** Each of the other city's rates are to be adjusted (up or down) to reflect the following differences while the City's rate remains unadjusted. The three areas of adjustment and eight specific adjustments are:

1. Fees and Pass-Through Expenses: franchise fees, Marin County IWM Fee, and disposal and green waste tip fees.

2. Service Differences: special events, street sweeping, downtown service, and city collection.
3. Other: vehicle depreciation.

Upon mutual agreement, the two parties may modify the above list to reflect changes in each of the areas that have occurred over time. For instance, adjustments should be made as appropriate for differences in frequency of collection (e.g., weekly green waste versus every other week green waste collection) and location of collection (e.g. curb versus side yard or backyard).

In general, the adjustments shall be made in a manner that is consistent with the rate comparisons contained in the independent rate review document, "Bay Cities Refuse Service – Review of Rate Adjustment Request" developed for the City in conjunction with the January 2002 rate adjustment and presented to the City Council on January 22, 2002.

Adjustments for fees and pass-through charges are to be made as follows:

- As a percent of the rate (e.g. for franchise and IWM fees).
- As the percent difference in tip fees applied to the rate. Assume: The City's tip fee is \$30 per ton and these fees comprise 10 percent of the Contractor's expenses (including fees and pass-throughs), and hence of each rate. Assume City A has a tip fee of \$45 per ton. Thus City A's tip fee is 50 percent greater and its disposal fees are assumed to equal 15 percent of total expenses (and of each rate). For the adjustment City A's rates would be decreased by 5 percent.

Adjustments for differences in types of service or service levels should be made using one of the two following approaches:

- Ideally, by using actual data from each City. Thus for instance if street sweeping expenses are known for the City and for City A, the adjustment is made by adding or subtracting to City A's rates to reflect the difference in this expense as a percentage of total expenses.
- In the absence of the above information, the adjustment is based on best professional judgment regarding the percentage difference in expense related to providing the service, calculated by looking at the main components of the service. Thus for street sweeping, cost differences would relate primarily to number of vehicles and depreciation period (if available), differences in labor requirements, and disposal costs.

Adjustments for depreciation reflect the number of years in which newly purchased vehicles (new or used) are depreciated. To the extent that the Contractor's rate of depreciation is slower or faster, those other city's rates should be adjusted by decreasing or increasing, respectively the relative increment of expenses for the Contractor as it



related to total expenses (the difference in current annual depreciation versus that for a longer schedule).

**Step 3 Calculate Adjusted Rate Revenues:** For each adjusted rate for each city (and the unadjusted rates for the City), multiply the adjusted rates by the number of City customers billed by the Contractor. The result is a total monthly revenue for each rate code. Revenue from special rate codes such as extra pickups, locked gate, or bin pull charges are to be excluded from the analysis. See the following example for two cities, and make the same calculation for the other three cities.

**The City:**

One can: \$22.00 per account per month (published rate) x 1,500 accounts = \$33,000 per month

Two cans: \$40.00 per account per month (published rate) x 400 accounts = \$16,000 per month

One yard bin/once per week: \$200.00 per account (published rate) x 500 accounts = \$100,000 per month

One yard/twice per week: \$350.00 per account (published rate) x 100 accounts = \$35,000 per month

Debris box: \$21.00 per pull (published rate) x 100 pulls/month = \$2,100 per month

Total monthly revenue: \$186,100

**City A:**

One can: \$24.00 per account per month (adjusted rate) x 1,500 accounts = \$36,000 per month

Two cans: \$38.00 per account per month (adjusted rate) x 400 accounts = \$15,200 per month

One yard bin/once per week: \$210.00 per account (adjusted rate) x 500 accounts = \$105,000 per month

One yard/twice per week: \$400.00 per account (adjusted rate) x 100 accounts = \$40,000 per month

Debris box: \$18.00 per pull (adjusted rate) x 100 pulls/month = \$1,800 per month

Total monthly revenue: \$198,000

**Step 4 Compare Total Adjusted Rate Revenues:** Total the monthly rate revenues for each city as above. Place the total monthly city revenues in a table sorted by decreasing revenue, as in the following example.

<u>City</u>	<u>Total Monthly Revenue</u>
City C	\$220,000
City B	\$212,000
City A	\$198,000
Sausalito	\$186,000
City D	\$179,000

In the above example, City A is the median city and Sausalito's adjusted rate revenue is below the median, and no change in the City's rate is necessary prior to granting the contract extension.

Should Sausalito's adjusted rate revenue exceed that of the median city, in order for the contract extension to become effective the City's rates will be adjusted downward by the same percentage by which the City's adjusted rate revenue exceeds that of the median city.