

CONTRACT BETWEEN THE TOWN OF FAIRFAX
AND
MARIN SANITARY SERVICE

THIS CONTRACT made and executed this _____ day of _____, 2011, by and between the TOWN OF FAIRFAX, a municipal corporation, hereinafter referred to as "FAIRFAX" or "Town", and MARIN SANITARY SERVICE, a California corporation, hereinafter referred to as "MSS" or "Contractor".

WITNESSETH:

- WHEREAS, heretofore FAIRFAX and FAIRFAX GARBAGE DISPOSAL entered into a contract dated April 19, 1993, providing for the exclusive right of collection, removal and disposal of garbage within the Town of Fairfax; and
- WHEREAS, said contract was duly extended such that the term thereof is now scheduled to terminate on June 30, 2013; and
- WHEREAS, said contract was duly transferred, approved by the Town, and assigned to MARIN SANITARY SERVICE on March 10, 2004; and
- WHEREAS, MSS has, since said transfer, satisfactorily performed all of the duties imposed upon it by said contract; and
- WHEREAS, FAIRFAX wishes to amend the contract and enhance recycling within the Town, to support the zero waste resolution enacted by the Town Council; and
- WHEREAS, FAIRFAX now desires to enter into this contract with MSS, which shall replace and supersede the previous and existing contract, referenced above, and all amendments and modifications thereto;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

SECTION 1. DEFINITIONS. As used throughout this contract, it is understood by the parties that the following terms shall have the meanings set forth below:

- (a) "Solid Waste" means waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, § 40191 and includes all putrescible and non-putrescible solid, semi-solid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. For the purposes of this Agreement, "Solid Waste" does not include abandoned vehicles and parts thereof, Hazardous Waste, Radioactive waste, or Medical Waste. (1) "Recycling" is a subset of

Solid waste and means the collection of Recyclable Materials which would otherwise be discarded without receiving compensation and returning them to the economy in the form of raw materials for new, reused, or reconstituted products in compliance with AB 939 diversion requirements.

- (a) "Recyclable Materials" means segregated residential, commercial or industrial by-products of some potential economic value, set aside, handled, packaged, or offered for collection in a manner different from refuse. Recyclable Materials include, but are not limited to, paper, glass, cardboard, plastics, ferrous metal, aluminum and green waste.
- (b) "Green Waste/Food Waste" means a subset of organic Recyclable Materials consisting of grass cuttings, weeds, leaves, pruning's, branches, dead plants, brush, tree trimmings, dead trees (not more than six (6) inches in diameter), meat and poultry, dairy products, cooking oils and grease, fruit, vegetables, egg shells, coffee grounds, tea bags, pizza boxes, all paper plates, napkins, waxed paper and waxed cardboard, paper towels, and similar materials generated at residential properties within the Town, separated and set out for collection, processing, and recycling. Green Waste does not include materials such as, but not limited to, brick, rock, and gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil and wood or sod products. Palm fronds and diseased plants and trees are also excluded from Green Waste.

(c) "E-Waste" means electronic devices that are presumed to be hazardous wastes and that are "covered electronic device[s]" pursuant to chapter 8.5 of part 3 of division 30 of the Public Resources Code section 42460 et seq., if they have a viewable screen size [as defined in sec. 66260.201, (b)(3)(C)] greater than four inches, unless it is determined that the electronic device is not a hazardous waste pursuant to the procedures set forth in section 66262.11. The hazardous characteristic that serves as a basis for listing the following common names of electronic devices is toxicity: e.g.

- (1) Cathode ray tube (CRT)-containing devices (CRT devices);
- (2) CRTs;
- (3) CRT-containing computer monitors;
- (4) Liquid crystal display (LCD)-containing laptop computers;
- (5) LCD-containing desktop monitors;
- (6) CRT-containing televisions; (7) LCD-containing televisions (**excluding LCD projection televisions**);
- (8) Plasma televisions (**excluding plasma projection televisions**); and
- (9) Portable DVD players with LCDs.

SECTION 2. TERM. The term of this contract, shall commence on the date of execution of this Agreement by the Town and shall continue through June 30, 20XX. An additional five (5) year

term extension shall be granted to MSS upon expiration of this contract, in 20XX, provided that both parties hereto consent in writing thereto. Fairfax and MSS shall enter into discussions concerning extension of this contract, prior to the expiration date of this contract in sufficient advance time so as to allow a determination on whether to extend this contract for the additional five (5) year period specified herein.

SECTION 3. PERFORMANCE. MSS shall, during the term of this contract, and any extension thereof, perform all services required of it by the provisions of the Municipal Code of the Town of Fairfax relating to Solid Waste collection and/or Recycling. FAIRFAX agrees, through its officers and agents, to require residents and business owners of the Town of Fairfax to comply with the terms and provisions of this contract insofar as the collection and removal of both Solid Waste and Recyclable Materials are concerned.

MSS shall conduct its Solid Waste collection and Recycling business in the Town of Fairfax in compliance with all California State laws and applicable sanitation regulations, health laws, and ordinances of the Town of Fairfax now in force or which may be adopted at any time during the term of this contract or any extension hereof, and in accordance with good business practices and methods customary in the conduct of such business. The services to be provided by MSS hereunder are further described in Exhibit A which is attached hereto and expressly made a part of this contract.

MSS shall once per month submit to the Town Public Works Director a report of all customer service complaints and any action taken by the company in response to these complaints. Customer calls for new starts, final service, or the exchange of carts for a different size shall not constitute a complaint. Calls for missed pickups or any other call including accidents and injuries, and property damage shall be listed in the Complaint Log.

Hours of Collection. Collection of Solid Waste, Recyclable Materials, and/or Greenwaste may occur only within hours authorized by the Town. Contractor may not collect Solid Waste prior to 3:30 a.m. Recyclable Material prior to 5:00 a.m., or Greenwaste prior to 6:00 a.m. local time or later than sunset.

Noise. All refuse collection operations shall be collected as quietly as possible with the noise level during the stationary compaction process not to exceed 95 decibels at a distance of 25 feet from the collection vehicle. The Town may conduct random checks of noise emission levels to ensure such compliance.

Minimization of Spills. Contractor shall use due care to prevent Solid Waste, Recyclable Material or Green Waste from being spilled or scattered during the collection or transportation process. If any Solid Waste, Recyclable Material or Green Waste is spilled, Contractor shall promptly clean up all spilled materials whether on private or public property. Each collection vehicle shall carry a broom and shovel at all times for this purpose.

Marketing Efforts. Contractor shall use its best efforts in marketing and promoting the sale of all Recovered Materials. As used in this section "Recovered Materials" includes finished compost.

Contractor shall employ its best marketing strategy in effecting disposition of Recovered Materials, and shall use its best efforts to obtain the best possible prices for Recovered Materials consistent with prevailing conditions in the markets, whether foreign or domestic.

Marketing Plan. Contractor shall submit to Town on or before January 1 of each year, a plan for marketing of Recovered Materials for the forthcoming year. The Marketing Plan shall include the following: *Quantities: estimated quantities of Recovered Materials in each of the following categories which Contractor expects to process for marketing during the year: Compost; Newsprint; and Glass Bottles broken down by the type and grade of material.*

Certificate of End Use. If requested by the Town, Contractor will obtain a certification of end use documentation from the purchaser/purchasers/recipients of Recovered Materials establishing that the materials sold have been, in fact, recycled or reused/acquired for uses that will allow the Recovered Materials to qualify as having been diverted from disposal. The documentation shall be sufficient in form and content to satisfy the California Integrated Waste Management Board that the materials have been diverted.

Exhibit A may be amended as agreed to by both MSS and the Town. MSS and the Town shall meet no less frequently than annually to discuss proposed changes to the services provided hereunder and other matters covered under this Agreement. MSS shall report to the Town no less frequently than annually on advancements in technology regarding services provided under this Agreement.

MSS shall receive, collect, remove and dispose of all Solid Waste and Recyclable Materials offered to it for disposal in the Town of Fairfax, when tendered in containers customarily used for such purpose, and when presented in a convenient disposal location, as designated by MSS, for such purposes (see Exhibit A in connection herewith)

Green Waste collected by MSS shall be disposed of at a permitted composting facility, or other facility representing the highest and best use as defined by the California Integrated Waste Management Board (CIWMB). In the future, should the opportunity exist for additional organics recycling (i.e., food waste), the Town and MSS shall cooperate to implement this new program. Changes in costs to provide this service shall be addressed by the process set forth in the rate-setting procedures contained in this Agreement.

MSS shall have no obligation to collect; remove or dispose of Solid Waste or Recyclable Materials from any premises if the owner or resident of said premises is in arrears in the payment of Solid Waste removal charges.

During the term of this contract and any extension hereof, MSS shall have the sole and exclusive right to receive, collect and remove all Solid Waste and Recyclable Materials (inclusive of Green Waste) within the Town limits of Fairfax; provided, however, that a Customer may donate their Recyclable Materials to a non-profit, community group, or sell their Recyclable Materials to a recycling buyback center.

SECTION 4. TERMINATION FOR NON-PERFORMANCE. If MSS fails, refuses or neglects to comply with any of the terms hereof, or any applicable laws, ordinances or regulations referred to

herein, or defaults under any provision of this contract, for a period of thirty (30) consecutive days, and after having been served with a subsequent written notice of such claimed default or breach of provisions of the Agreement by the Town Council of FAIRFAX, providing in said notice from Town a complete description of the claimed breach or default under the terms and provisions of this Agreement asserted by Town AND providing MSS with an opportunity to correct such failure of performance or claimed default within 15 days following receipt of said notice from Town, then, a hearing, following at least ten (10) days advance written notice of same having been first provided to MSS, may be conducted by FAIRFAX, at which MSS shall be entitled to present any evidence it deems necessary or appropriate in connection with the making of a response to the notice and claims received from Town. At the conclusion of said hearing, and upon cause being shown that a breach or failure of performance by MSS has been proven, FAIRFAX shall be entitled to terminate this contract, which remedy shall not be deemed an election and shall be in addition to any and all rights and remedies against MSS which FAIRFAX may have by law or hereunder.

SECTION 6. INSURANCE and INDEMNIFICATION. MSS shall provide workers' compensation insurance as required by California State Law and a liability policy for the protection of both MSS and FAIRFAX. Coverage shall be a minimum of \$6 million. The Town of Fairfax, its officers, agents and employees shall be named as additionally insured. MSS will furnish to FAIRFAX certificates indicating all such required insurance.

Contractor shall indemnify, defend and hold harmless Town, its officers, employees and agents, from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description, whether judicial, quasi-judicial or administrative in nature 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 (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Contractor's performance of, or its failure to perform, its obligations under this Contract. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the negligence or intentional misconduct of Town, its officers, employees or agents, but shall apply if the Claim is caused by the joint negligence of Contractor or other persons. Upon the occurrence of any Claim, Contractor, at Contractor's sole cost and expense, shall defend (with attorneys reasonably acceptable to Town) Town, its officers, employees, and agents.

SECTION 7. HOLD HARMLESS. MSS agrees, at its sole cost and expense, to defend, save and hold FAIRFAX, its officers, agents and employees, free and harmless from any and all losses, claims, causes of action or administrative proceedings arising out of alleged anti-trust, anti-competitive or unfair business practices or any related activities of MSS pursuant this contract or any extension hereof.

SECTION 8. SAFETY.

- (a) MSS shall employ and use only drivers properly licensed by the California Department of Motor Vehicles, and shall make available to FAIRFAX, upon request, certified California Department of Motor Vehicle records demonstrating that all persons who drive vehicles in connection with the services provided in this contract are properly licensed.

- (b) MSS shall maintain and make available to Town on its request all records necessary to demonstrate that all trucks owned or used by MSS have been properly inspected and are in proper operating condition, as required by any law including, without limitation, all California Highway Patrol and Federal Motor Vehicle Safety Standard rules and regulations.
- (c) MSS shall, upon the request of Town, demonstrate that it maintains and actively implements a reasonable program of drug abuse prevention and treatment designed to assure that no driver of any vehicle owned or used by MSS uses any drug unlawfully, or uses any drug lawfully which in any way impairs the driver's ability to operate a motor vehicle.

SECTION 9. PAYMENTS TO TOWN

(a) FRANCHISE FEE

MSS agrees to pay to FAIRFAX an amount equal to ten percent (10%) of the gross receipts of MSS for services provided under this contract. This fee shall be paid monthly, on the fifteenth (15th) of each month, computed on the previous month's gross receipts. It is further agreed that this paragraph may be modified by FAIRFAX, either decreasing or increasing the percentage of gross receipts above specified upon advance notice of such intention and an opportunity for response thereto being provided to MSS before implementing any such modification hereunder. Should FAIRFAX change the percentage, the rates in Schedule C shall be adjusted accordingly to compensate MSS for the impact of the change.

(b) REFUSE IMPACT FEE

MSS shall pay to FAIRFAX a Refuse Impact Fee as outlined in Town Resolution 2340-B. The purpose of the fee is to compensate the Town for costs associated with the repair and maintenance of roadways resulting from the use of Town roadways by MSS vehicles. The annual amount of the fee is \$48,000 and shall be paid in monthly installments on the 15th of each month. Should FAIRFAX undertake to change the amount of the fee, it shall first give notice of such intention to MSS and provide an opportunity for MSS to respond to such proposed action by Town before implementing any such change in said fee. Should FAIRFAX undertake to change the amount of the fee, the rates in Schedule C shall be adjusted accordingly to compensate MSS for the impact of the change.

SECTION 10. EXAMINATION OF RECORDS. MSS shall maintain full and separate financial and accounting records pertaining to cash, billing, and the provision of services under this contract. FAIRFAX shall have the right to examine any of these records. MSS will keep, maintain, and if requested by Town, furnish copies to FAIRFAX, of records of charges, receipts, route maps, route lists, and other necessary books of account for a period of not less than the preceding five (5) years, measured from the date of Town's request made to MSS hereunder.

SECTION 11. RIGHT OF INSPECTION. MSS hereby agrees that it will, at any reasonable time, whenever requested to do so, permit any inspector, appointed for such purpose by FAIRFAX, to

accompany MSS in the course of collection, removal, or disposal of Solid Waste or Recyclable Materials (including Green Waste), and to inspect the manner in which collection, removal and disposal is made, and the size of any containers from which such materials may be, or have been, collected, and the amount of materials collected there from.

SECTION 12. SPECIAL FREE PICK UP.

- (a) MSS shall, for customer convenience, and to increase Recycling, collect up to five (5) additional 32 gallon cans or equivalent size bio-degradable bags of Green Waste on each regularly scheduled collection day (see Exhibit A, page 1).

- (b) MSS shall remove, as needed, any and all Solid Waste and Recyclable Materials containers from each and all of the Town government buildings, the downtown area of the Town of Fairfax, and other public areas.

- (c) MSS shall, at no cost empty once per week a 20 cubic yard debris box from the Town Corporation Yard; such box shall be used only for leaves, brush, grass, grass cuttings, tree or brush clippings, and similar materials.

- (d) Once per year, during the Fairfax Festival, MSS shall furnish, at no cost, up to ten (10), 3 cubic yard debris boxes (or the equivalent) for use by the Town at its corporation yard. These debris boxes are to be used solely for Solid Waste generated by the Fairfax Festival. MSS shall also furnish Recycling collection and portable toilet services for the Festival.

- (e) MSS will be happy to cooperate with the Town of Fairfax and/or any other volunteer group in the Town of Fairfax to divert e-waste from landfill disposal pursuant to the approvals of the Town of Fairfax Fire Department, the City of San Rafael Fire Department, and the Marin County Hazardous and Solid Waste Joint Powers Authority.

SECTION 13. ADVERTISING & PUBLIC OUTREACH. Customer information will be provided throughout the year by MSS in quarterly newsletters. MSS agrees to maintain a community education program that will include a classroom and education coordinator. MSS will provide, upon request, tours of the Marin Recycling Center and Marin Resource Recovery Center to all customers within Fairfax with an emphasis on schools. Recycling handouts, flyers, and other written materials will be provided by MSS upon request to inform customers of recycling collection guidelines.

In addition, MSS will advertise the availability of the low income rates provided in Exhibit C at least once per year in the newsletter and in a once per year bill insert. The low income rate will also be published on the MSS web site.

SECTION 14. RATES. The current rates in effect at the time of execution of this Contract for service are provided in the rate schedule, "Exhibit C", which is attached hereto and made a part of this contract. Exhibit C shall be updated from time to time as circumstances warrant, for changes to rates as provided for in the contract. Subsequent versions of the rate schedule shall be numbered consecutively (i.e. C-2, C-3, etc.) and considered to be part of the contract, replacing and superseding the previous version. References in the contract to Exhibit C shall mean the version of the rate schedule that is then currently in effect.

SECTION 15. RATE SETTING MSS and FAIRFAX intend to create a rate structure which is intended to and will provide reasonable and fair compensation, including a reasonable profit, to MSS from the services rendered to residents and businesses within the Town throughout the duration of this contract and any extensions thereto. In this regard, MSS and FAIRFAX agree that a review and any increase or decrease of said rates or charges, in the future, shall be based upon a rate setting methodology as set forth in Exhibit B, which is attached hereto and incorporated by reference, and as said Exhibit may be amended by the Town Council, with the consent of MSS, from time to time. For this purpose, the books and records and other financial data of MSS shall be open to inspection and audit by the Town Council or their designee(s).

SECTION 16. SPECIAL INTERIM RATE REVIEW. Rates will be adjusted January 1 of each year according to Section 15 and the procedures described in Exhibit B. However, MSS may apply for the consideration of a special interim rate review and adjustment at any time should an event or circumstance arise which substantially affects the economic operation of MSS. A special application will be considered if:

- (a) An event or circumstance occurs which was not reasonably foreseen, and is extraordinary and not a usual business risk, or is beyond the control of MSS, and will cause significant financial hardship to MSS or,
- (b) A change is made to MSS payments to the Town under Section 9 of this Agreement or,
- (c) Changes in disposal methods or sites, or in recycling programs, are mandated by any political authority having legal jurisdiction, or,
- (d) It is necessary for MSS to make a substantial change in operation or substantial capital investment in order to perform obligations under this contract.

MSS will prepare an Interim Rate Review application similar in form to the methodology described in Exhibit B. FAIRFAX, or its designee, will review the application for compliance with this Agreement, accuracy, and reasonableness. (Paragraphs (a) through (d) are illustrative in purpose and not intended to be exhaustive.)

SECTION 17. NOTICE OF RATE REVIEW. Upon submission by MSS of any rate review application, the Town, or its designee, shall review the application for compliance with this Agreement. After the review is completed, the Town Manager shall schedule a public hearing as

soon as practical before the Town Council. The Town shall provide notice of the public hearing in a local newspaper, at least twenty (20) days in advance of the hearing.

SECTION 18. HILL AND FLAT. Rates assigned to "Hill" and "Flat" areas shall be as shown and designated upon a map to be prepared and submitted to the Town for review and approval following execution of this contract. Said map shall be entitled "Map Showing Flat Areas and Hill Areas of the Town of Fairfax Establishing Garbage Collection Rates."

SECTION 19. BILLING. MSS shall be responsible for billing and collecting all rates for franchise services as established by this Agreement. Commercial and apartment customers will be billed monthly in arrears of service. Residential customers will be billed quarterly, in the middle of the service period.

SECTION 20. ASSIGNMENT. MSS may not assign, transfer or convey this contract or any interest in this contract, save and except with the consent and approval of FAIRFAX, evidenced by action of the Town Council, which consent and approval shall not be unreasonably withheld.

SECTION 21. INCONSISTENCY BETWEEN THIS AGREEMENT AND CHAPTER 8.08 OF FAIRFAX MUNICIPAL CODE. To the extent that any term or provision of this Agreement is, or subsequently becomes, inconsistent with the provisions of the Fairfax Municipal Code it is the intention of the parties hereto that this Agreement shall take precedence.

SECTION 22. Contract Duly Executed. The parties executing this contract each warrant and represent that they have been duly authorized to do so and that this contract constitutes a legal, valid and binding obligation of the parties.

IN WITNESS WHEREOF, the parties have executed the foregoing contract as of the day and year first above written.

TOWN OF FAIRFAX,
A Municipal Corporation

MARIN SANITARY SERVICE
A California Corporation

by _____
MAYOR

by _____
PRESIDENT

by _____
TOWN MANAGER

by _____
EXECUTIVE VICE-PRESIDENT
& SECRETARY