CONTRACT BETWEEN THE TOWN OF FAIRFAX
AND
MARIN SANITARY SERVICE

THIS CONTRACT is made and executed as of December 1, 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."

RECITALS

A. Previously, Fairfax and FAIRFAX GARBAGE DISPOSAL entered into a contract dated April 19, 1993 (the "1993 Agreement"), providing for the exclusive right of collection, removal and disposal of garbage within the Town of Fairfax; and

B. The 1993 Agreement was duly extended such that the term thereof is now scheduled to terminate on June 30, 2013; and

C. The 1993 Agreement was duly transferred, approved by the Town, and assigned to MARIN SANITARY SERVICE on March 10, 2004; and

D. MSS has, since said transfer, satisfactorily performed all of the duties imposed upon it by the 1993 Agreement; and

E. Fairfax wishes to modify the 1993 Agreement to enhance recycling within the Town, support the Zero Waste resolution enacted by the Town Council, and meet Zero Waste Goals established by the Town; and

F. Fairfax and MSS now desire to enter into this contract with MSS, which shall replace and supersede the 1993 Agreement and all previous 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) "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 identifying electronic devices is toxicity. E-Waste includes, but is not limited to, the following:

(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.

(b) "Green Waste/Food Waste" means a subset of organic Recyclable Materials consisting of, but not limited, to 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, commercial or industrial 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) "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.

(d) "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.

(e) "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.

SECTION 2. TERM. The term of this contract shall commence on December 1, 2011, and shall continue through November 30, 2021. An additional five (5) year term extension shall be granted to MSS upon expiration of this contract, in 2021, 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 of the initial term 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. The parties will have an obligation to negotiate in good faith for a reasonable time regarding an extension, but each party shall retain the discretion as to whether it wishes to extend the contract. The 1993 Agreement is hereby terminated as of December 1, 2011.

SECTION 3. PERFORMANCE.

(a) General Description of Services.

(1) 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, Recyclable Materials and Green Waste/Food Waste collection, processing and disposal. 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 Solid Waste, Recyclable Materials and Green Waste/Food Waste are concerned.

(2) MSS shall conduct its Solid Waste collection, Recycling and Green Waste/Food Waste 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.

(3) 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. 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.

(4) MSS shall have no obligation to collect, remove or dispose of Solid Waste or Recyclable Materials or Green Waste/Food Waste from any premises if the owner or resident of said premises is in arrears in the payment of Town approved Solid Waste removal charges.

(5) 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 and Green Waste/Food Waste within the Town limits of Fairfax; provided, however, that a Customer may donate their Recyclable Materials and Green Waste to a non-profit or community group special event, or sell their Recyclable Materials to a recycling buyback center.

(b) Zero Waste/Greenhouse Gas Goals. Marin Sanitary Service shall extend its best efforts to meet Zero Waste and green house gas reduction goals. Town requests Contractor to establish Zero Waste diversion goals of 80% for the third year, 86% for the sixth and 94 % for the ninth year of the contract term. At each of the milestones, if the Town and Contractor fail to meet the goal both parties agree to meet and review all programs and consider reasonable adjustments in their obligations.

(c) Re- Direction of Compostable Material. If a public or private composting facility in Marin County is permitted to operate during the term of the agreement, the Town shall have the option to request a proposal from MSS to re- direct all or part of the compostable component of the waste stream to the facility; provided, however, that any rate adjustment shall be made in accordance with Exhibit B.

(d) Reporting.

(1) **General**. Annual reports shall be submitted no later than August 31 for the previous service year, beginning August 31, 2012. Quarterly and monthly reports shall be submitted as provided below. Monthly, quarterly and annual reports shall be submitted in hard copy, and shall be provided electronically via e-mail. The Town shall in advance approve the format, specific content, and software used for each type of report. All costs associated with preparation of the required reports are the sole responsibility of the Contractor.

(2) **Monthly Reporting**. MSS shall once per month submit to the Town Public Works Director a report of all customer service complaints (the "Complaint Log") 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.

(3) **Annual Reporting**. MSS shall provide a comprehensive report annually that will provide a description and progress of all Zero Waste programs and the status of new technologies and industry practices that could enhance progress towards zero waste. The report shall include public education activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to collection services. The report shall discuss the impact of these activities on Recycling and Green Waste/Food Waste program participation and amounts collected for single family, multi-family and commercial customers. As a way to track how well the outreach program is progressing, the annual report shall include information on the residential mix of bin sizes on land-filled tonnage to track diversion.

(4) **Quarterly Reporting**. MSS shall provide quarterly and annual reporting on quantities and type of Recyclable Material and Green Waste/Food Waste collected. MSS shall provide quarterly reporting on curbside recycling tonnage diverted and shall report quarterly on per capita landfill tonnages generated. MSS shall report on market value of these materials (unit prices) including compost. MSS shall provide information in its quarterly reporting on how many residents use the Household Hazardous Waste ("HHW") service. In

addition MSS shall provide updates to the Town on the progress of the new itemized billing system discussed in Section 18.

(e) Hours of Collection. Collection of Solid Waste, Recyclable Materials, and/or Green Waste/Food Waste 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 Green Waste prior to 6:00 a.m. local time or later than sunset.

(f) Noise. MSS will work with the Town to minimize nuisance noise impacts. All refuse collection operations shall be collected as quietly as possible and shall conform to applicable state and local noise level regulations with the noise level during the stationary compaction process not to exceed 80 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. MSS shall promptly resolve any complaints of noise to the satisfaction of the Town representative.

(g) Minimization of Spills. Contractor shall use due care to prevent Solid Waste, Recyclable Material or Green Waste/Food Waste from being spilled or scattered during the collection or transportation process. If any Solid Waste, Recyclable Material or Green Waste/Food 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.

(h) 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.

(i) 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; Plastics labeled #1-7, mixed Paper, Corrugated Cardboard and E-Waste.

(j) Compost Bins. MSS will highlight County compost program in their periodic newsletter and include relevant web site for compost bin suppliers. MSS shall publish a list of at least three (3) bin suppliers in their Quarterly newsletter.

(k) 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 Department of Resources, Recycling and Recovery (CalRecycle) that the materials have been diverted.

(l) Goal to Reduce Can Size. Town goal is to reduce 64 gallon cans to less than 100 residents and eliminate 96 gallon cans on or before December 1, 2016. If this goal is not achieved MSS and the Town will confer to evaluate options including imposing disincentive fees for 64 and 96 gallon containers. As a way to track how well the outreach program is progressing, MSS shall provide annual reporting on the residential mix of bin sizes.

(m) Green Waste. Green Waste/Food Waste collected by MSS shall be processed at a permitted composting facility, or other facility representing the highest and best use as defined by Cal Recycle. Green Waste may not be used as alternative daily cover as defined in the California Code of Regulations.

SECTION 4. TERMINATION FOR NON-PERFORMANCE. If MSS fails to comply with any of the terms hereof, or any applicable laws, ordinances or regulations referred to herein, or otherwise defaults under any provision of this contract, and does not cure such failure within thirty (30) days' written notice thereof from the Town, then, a hearing, following at least ten (10) days advance written notice of same having been first provided to MSS, shall be conducted by the Fairfax Town Council, 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 received from Town. At the conclusion of said hearing, and upon the Town Council's finding that MSS has failed to comply with, or defaulted under, this contract, 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 5. INSURANCE. MSS shall provide workers' compensation insurance as required by California State Law and a liability policy for the protection of both MSS and Fairfax in accordance with Exhibit E. 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.

SECTION 6. INDEMNIFICATION. 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, damage to property, alleged anti-trust, anti-competitive or unfair business practices, 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. 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 8. 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 15th day of the 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. MSS shall agree that Town has option at any time to increase the fee up to a total of 15%. This fee shall be a line item on the new customer bill.

(b) AB 939 Fee. MSS agrees to pay to Fairfax an amount equal to _____ percent (___%) of the gross receipts of MSS for services provided under this contract. This fee shall be paid monthly, on the 15th day of the 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. This fee shall be a line item on the new customer bill.

(c) Road Impact Fee. MSS shall pay to Fairfax a Road 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 of $4000 on the 15th day of the 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.

(d) Consultant Fee. To defray the Town's costs of retaining a consultant to analyze MSS's reports submitted hereunder, MSS shall pay a consultant fee of $3000 per year, which shall be paid in monthly installments of $250 on the 15th of the month.

(e) Brush Clearing /Fuel Reduction Fee. MSS shall pay to Fairfax a Brush Clearing/Fuel Reduction Fee. The purpose of the fee is to compensate the Town for removing, chipping and disposing of heavy brush that may pose a fire threat to the Town. The fee is $10,000 per year and shall be paid in monthly installments of $833.33 on the 15th of the month. This fee shall be a line item on the new customer bill. Upon request of Town, MSS shall include notification to residents of brush clearing in quarterly billing at no charge to Town. MSS shall also allow delivery of wood chips to Marin Resource Recovery Center free of charge.

SECTION 9. 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 10. 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, processing or disposal of Solid Waste or Recyclable Materials and Green Waste/Food Waste, and to inspect the manner in which collection, removal, processing 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 therefrom.

SECTION 11. 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 at no cost, 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) MSS shall 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 Ross Valley Fire Service, the City of San Rafael Fire Department, and the Marin County Hazardous and Solid Waste Joint Powers Authority.

SECTION 12. PUBLIC INFORMATION PROGRAM (PIP). 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. Exhibit D lists other details of the PIP.

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 13. 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 14. 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 thereof. 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). MSS and the Town agree that on or about January 1, 2015 the rate allocation methodology described in Exhibit B will be reviewed to determine if it is equitable. If the Contractor or the Town determines that it is not equitable, then the Contractor or the Town shall have the option to require use of the MFG percentage increase each year under this contract without calculating the amount attributable to Fairfax.

SECTION 15. SPECIAL INTERIM RATE REVIEW. Rates will be adjusted January 1 of each year according to Section 14 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 8 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.

SECTION 16. 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 17. 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 18. 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. MSS is currently studying a new billing system, with the Franchisors Group and HF&F that would provide the customer with expanded information including detailed billing statement with line item costs for land filled waste, recyclables and green/food waste. Each item should include the proportion of the franchise and AB939 fee associated with the total rate. MSS shall implement the new billing system no later than December 31, 2012.

SECTION 19. ASSIGNMENTS, SUB-COMPANIES, AND CHANGE OFF OWNERSHIP.

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

(b) Neither party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other person without the prior written consent of the

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

(c) For purposes of this section, "assignment" shall include, but not be limited to:

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

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

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

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

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

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

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

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

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

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

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

(3) Contractor shall furnish Town with satisfactory proof:

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

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

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

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

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

Under no circumstances shall the Town be obliged to consider any proposed assignment by Contractor, if Contractor has not performed the Agreement or is in material breach of any provision at any time during the period of consideration.

(f) Assignment of Agreement; Requests for Rate Adjustments. In the case of any assignment, sale, lease, subcontract, or transfer of all or any part of Contractor's assets or stock, the acquiring party shall not be entitled to request any adjustment in rates based on the purchase

price or any other consideration associated with said assignment, purchase, lease, subcontract, or transfer. In addition, any such acquiring party shall not be entitled to request any adjustment in rates under this Agreement for any cost which said acquiring party incurs prior to the assignment, sale, lease, subcontract or transfer of Contractor's assets or stocks.

SECTION 20. 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.

SECTION 21. ATTORNEY'S FEES. If any legal action or proceeding arising out of or relating to this contract is brought by any party to this contract, the prevailing party shall be entitled to receive, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs, and expenses incurred in the action or proceeding by the prevailing party.

SECTION 22. NOTICES. All notices required or permitted under the terms of this License shall be in writing and sent to:

Town: Town of Fairfax
142 Bolinas Road
Fairfax, CA 94930
Attention: Town Manager

MSS: _____
_____
_____
_____

SECTION 23. TIME IS OF THE ESSENCE; ENTIRE AGREEMENT; MODIFICATION. Time is of the essence of each of the terms and provisions of this contract. This contract constitutes the entire agreement among the parties as to the subject matter hereof, and no modification, alteration, or amendment of any part thereof shall be affective unless in writing signed by both parties.

SECTION 24. SUCCESSORS AND ASSIGNS. This contract shall be binding upon, and shall inure to the benefit of, the successors and assigns of the parties.

SECTION 25. GOVERNING LAW. This contract shall be interpreted according to, and shall be governed by, the procedural and substantive laws of the State of California.

[Signatures appear on next page.]

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

by_____
MAYOR

by_____
TOWN MANAGER

MARIN SANITARY SERVICE
A California Corporation

by_____
PRESIDENT

by_____
EXECUTIVE VICE-PRESIDENT & SECRETARY

EXHIBIT A

Description of Services

RESIDENTIAL (less than four units)

Solid Waste:

MSS provides semi-automated "tipper" cans in 20-, 32-, 64- or 96-gallon capacities to be placed at the curb for one time per week collection. Cans must be placed at the curb, or other MSS designated collection location, the night before service. Cans not placed at the curb will incur additional charges as specified in Exhibit C, commonly referred to as "distance charges".

Recycling:

MSS provides one (1) 64-gallon split compartment can (dual-sort can) for collection of Recyclable Materials. One compartment is for fiber (paper, junk mail, newspaper, cardboard, etc.). The other compartment is for containers (glass, plastic, cans, etc.). Cans must be placed at the curb for collection or the can will not be serviced. Customers are required to use the dual-sort can, recycling buckets will not be provided.

Additional quantities of Recyclable Materials that do not fit in the can may be placed beside the can. Cardboard must be broken down and tied into bundles no larger than 24" x 24" x 24". Other fiber materials must be bundled, bagged, or otherwise contained, if not placed inside the can. Additional containers must be placed in bags, or otherwise contained, and placed next to the recycling can.

Green Waste/Food Waste:

MSS provides one (1) 64-gallon capacity green can to each customer for the collection of Green Waste/Food Waste one time per week. The can must be placed at the curb, or MSS designated collection location, the night before service. Up to five (5) additional 32-gallon cans (customer required to provide cans), or equivalent size bio-degradable bags (also required to be customer provided) of Green Waste may be placed at the curb for collection. Cans not placed at the curb for collection will not be serviced.

Improved Notification of Improper Recycling/Green Waste/Food Waste Set Out

Once initial stock of text notices is gone, MSS will institute bold graphical notices for notification of improper recycling/Green Waste/Food Waste set out. MSS shall implement the change no later than June30, 2012

Free On-Call Household Hazardous Waste (HHW) Pickup:

MSS shall provide residential customers (businesses are excluded from this program) one HHW on-call pickup each calendar year at no additional charge by prearranged appointment on their regularly scheduled collection day.

There will be no charge for the following items:

- Household batteries, individually wrapped (no automotive batteries)
- Latex paint in sealed containers (limit 3 gallons)
- Motor oil in sealed or capped containers (limit 2 gallons)
- Oil filters
- Pesticides (limit 3 gallons)
- Fluorescent lights or tubes
- Aerosol cans partially filled (empty aerosol cans may be placed in Dual Sort Cart)
- Computers and computer monitors
- Printers
- Televisions
- Cell phones

No flammable, toxic, or hazardous material will be accepted. All items must be contained in boxes or bags. Customers must call Monday-Friday during normal business hours at least 24 hours in advance to schedule an appointment.

MSS shall implement this program no later than January 1, 2012

MULTI FAMILY COMPLEX (4 or more units)

Solid Waste:

MSS provides tipper cans in 32-, 64-, or 96-gallon capacities or bins in larger sizes as specified in Exhibit C. Service may be provided from one (1) to six (6) times per week. At a minimum, the apartment complex must maintain, and will be charged for, the equivalent of one (1) 32-gallon can per unit picked up one time per week. Can must be placed at the curb, or MSS designated collection location, the night before service. Cans not placed at the curb will incur additional charges as specified in Exhibit C, commonly referred to as "distance charges".

Recycling:

MSS provides unlimited recycling collection for bottles, cans, newspaper, office paper, and cardboard. Tipper cans or bins are provided as requested by the customer. Service may be provided from one (1) to six (6) times per week.

Green Waste:

MSS provides one (1) 64-gallon capacity green can to each customer for the collection of Green Waste one time per week. The can must be placed at the curb, or MSS designated collection location, the night before service. Up to five (5) additional 32-gallon cans(customer provided) of Green Waste may be placed at the curb for collection. Cans not placed at the curb for collection will not be serviced.

Food Waste Pilot Program

MSS shall develop a food waste pilot program at three (3) multifamily units to be designated by the Town. MSS will prepare a scope and schedule for the Pilot Program on or before January 1, 2012, for approval by the Town. On or about one (1) year from commencement of the program, MSS and the Town shall meet to confer about the merits of expanding the program to other parts of the Town.

COMMERCIAL

Solid Waste:

MSS provides tipper cans in 32-, 64-, or 96-gallon capacities or bins in larger sizes as specified in Exhibit C. Service may be provided from one (1) to six (6) times per week. At a minimum, commercial establishments must maintain, and will be charged for, one (1) 32-gallon can, picked up one time per week.

Recycling:

MSS provides unlimited commercial recycling collection for bottles, cans, newspaper, office paper, and cardboard. Tipper cans or bins are provided as requested by the customer. Service may be provided from one (1) to six (6) times per week.

Green Waste:

MSS provides one (1) 64-gallon capacity can to each customer for the collection of Green Waste one time per week. The can must be placed at the curb, or MSS designated collection location, the night before service. Up to five (5) additional 32-gallon cans (customer provided) of Green Waste may be placed at the curb for collection. Cans not placed at the curb for collection will not be serviced.

MUNICIPAL

MSS will provide weekly, and remove as needed, any and all Solid Waste and recycling containers from each and all of the Town government buildings and from the Town's receptacles in the downtown area, parks and other public areas of Fairfax.

MSS will empty, on a weekly basis, a 20 cubic yard debris box from the Town corporation

yard, which box shall be used only for leaves, brush, grass, grass cuttings, tree or brush

Collaboration on Zero Waste Events

Once per year, during the Fairfax Festival, and one other major event designated by the Town, MSS will furnish, at no cost to the promoters, as needed 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 events. MSS shall also furnish Recycling and Food Waste collection, and portable toilet services. Beginning in January 1, 2014 and every three (3) years thereafter the Town and MSS shall review the Town's event requirements and agree to any adjustments regarding service and cost.

Community Compost Availability

MSS shall distribute 15 tons of compost three times per year, spring, summer, and fall at no cost to residents.

The Town shall provide a designated location and will provide a bunker. Compost delivery will commence in the fall of 2011.

Annual Paper Shredding E-waste and Unused Medicine Collection Day.

This will be an annual event to be scheduled by the Town. MSS shall provide paper shredding service at no cost to the resident.

MSS will coordinate with local non-profits for the collection of e-waste. The Town and MSS shall coordinate with the Marin County Sheriff's Department for the collection of unused medications. Together these three items will be collected jointly at a location convenient for the Town at no cost to the resident.

MSS shall provide overall management for the event in cooperation with the Town and include the cost of the entire event in the rate.

ADDITIONAL SERVICES

Extra garbage may be collected in cans or bags and placed next to the regular can on collection day. This will result in an additional charge to the customer.

Disabled and low-income residential customers (must be enrolled in PG&E CARE Program to qualify) are eligible to receive distance service (refuse collection not at the curb) at no additional charge, as listed in Exhibit C.

EXHIBIT B

CONTRACTOR'S COMPENSATION AND RATE ADJUSTMENT

I. CONTRACTOR'S APPLICATION

By October 15, 2012, and by each subsequent anniversary thereof, Contractor shall submit a rate application to the Town requesting the amount of Contractor's compensation and calculating the necessary adjustment to rate revenue for the next Rate Period commencing January 1 of the following year. The Town Council shall conduct a public hearing to consider Contractor's application for a rate adjustment at the earliest possible date.

Allocation Method

The rate application will allocate the Town's costs based on the overall costs incurred by the Contractor in utilizing the Marin Franchise Group ("MFG") rate methodology (as described below), which shall be used by the Town's consultant to calculate the Contractor's costs attributable to Fairfax based on specific criteria such as wages, benefits, disposal fees ,fuel, maintenance, depreciation and other general and administrative ("G&A") expenses that reflect the proportion of the cost of serving Fairfax compared to that of the MFG service area and other jurisdictions participating in the cost allocation. Contractor agrees that the Town shall have full access to the MFG audit to review the rate application submitted by the Contractor for rate adjustment.

The Contractor and the Town agree that on or about January 1, 2015, this method of allocating cost will be reviewed to determine if it is equitable. If the Contractor or the Town reasonably determines that it is not equitable, then the Contractor or the Town shall have the option to require use of the MFG percentage increase each year under this contract without calculating the amount attributable to Fairfax.

Rate Methodology

Once every three years, commencing with the application to be prepared for the year ending December 31, 2012, Contractor shall submit a rate application to the Town containing the following information: the Contractor's actual financial results of operations for the preceding rate year ending December 31; year-to-date financial results of operations for the current rate year; audited financial statements for the preceding year ending December 31; and Contractor's forecasted costs for the next year. This rate application shall be referred to herein as the "Base Year Revenue Requirement." The Base Year Revenue Requirement procedures will continue to be used one out of every three years, specifically, the years ending December 31, 2013, December 31, 2016, etc., throughout the term and any extension of the contract.

In the intervening years, when the Base Year Revenue Requirement procedures are not utilized hereunder, the rate applications requesting the amount of Contractor's compensation shall be based on the data contained in the Base Year Revenue Requirement adjusted as described below. These rate applications shall be referred to herein as the "Indexed Revenue Requirement." The Indexed Revenue Requirement procedures will continue to be used two out of every three years, specifically, the rate years ending December 31, 2014 and December 31, 2015, the rate years

ending December 31, 2017 and December 31, 2018, etc., throughout the term and any extension of the contract.

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

II. DETERMINATION OF CONTRACTOR'S BASE YEAR REVENUE REQUIREMENT

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

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

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

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

B. Methodology for Forecasting Annual Cost of Operations.

1. **Determine Actual Costs.** Contractor's audited financial statements shall be reviewed to determine Contractor's actual costs necessary to perform all the services in the manner required by this Agreement. The Contractor's auditor shall determine that costs have actually been incurred and have been assigned to the appropriate cost category.

2. **Calculate Adjusted Costs.** Contractor shall adjust actual costs to ensure that non-allowable costs are not included in actual costs. Non-allowable costs include the following:

    a. Costs of any category or type which are not required to provide services under this Agreement, or are not actually incurred, or which are not necessary for the provision of services under this Agreement or which are unreasonable in amount.

b. Payments to directors and/or owners of Contractor, unless paid as reasonable compensation for services actually rendered.

c. Fines or penalties of any nature.

d. Federal or state income taxes.

e. Charitable or political donations.

f. Depreciation or interest expense for collection vehicles, containers, other equipment, offices and other facilities if such items are leased from a related party at more than their actual cost.

g. Attorneys' fees and/or other expenses incurred by Contractor in any court proceeding in which the Town and Contractor are adverse parties, unless Contractor is the prevailing party in such proceeding.

h. Attorneys' fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.

i. Attorneys' fees and other expense incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrongdoing are at issue and determined, in a final adjudication, by a Court to have been proven.

j. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services.

k. Goodwill.

l. Processing costs (net of revenues) for curbside Recyclable Materials in excess of $8.00/ton unless supported by an analysis of the financial results of operations of the related party performing the services and an application submitted in a form consistent with those described herein.

m. Disposal costs (including transfer and transport costs) for solid waste whose rate/ton exceeds comparable charges by other companies in the San Francisco Bay Area.

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

a. Wages and salaries expense

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

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

   a. Forecasted wage and salaries expense shall be based on negotiated labor agreements, wage and salary adjustments for non-represented employees, as well as changes in customer demand.

   b. Forecasted benefit expense shall be based on negotiated labor agreements, adjustments for non-represented employees, and changes in insurance premiums net of any refunds.

   c. Forecasted disposal expense shall be based on the transfer, transport, disposal, and processing expense fees at the transfer station (which is comprised of the transfer and transport cost as well as the disposal fee at the landfill), recyclable material processing facility and yard waste processing facility and multiplied by the total tons of solid waste transferred for disposal.

   d. Forecasted fuel and oil expense shall be based on anticipated changes in the consumption and price of these commodities.

   e. Forecasted maintenance expense shall be based on changes in the number of equipment and vehicles to be maintained and the cost of such maintenance.

   f. Forecasted depreciation and lease expense shall be based on the Contractor's asset and depreciation records, which shall reflect the retirement and addition of assets.

   g. Forecasted other operating expense shall be based on Contractor's plans.

5. **Calculate profit.** Contractor shall be entitled to profit on forecasted annual costs of operations. Contractor shall calculate profit by dividing the forecasted annual cost of operations, which shall be determined in accordance with these procedures, by 0.905 and subtracting the forecasted annual costs of operations from the dividend.

6. **Interest Expense.** Forecasted interest expense shall be based on the Contractor's actual, necessary and reasonable interest expense incurred for services provided in accordance with this Agreement.

7. **Franchise Fees Expense.** Forecasted franchise fee expense shall be based on the appropriate methodology using the forecasted values and shall include any other required payments to the Town.

8. **Determine Contractor's Compensation for Base Year Rate Period.** Contractor's compensation necessary to perform all the services in the manner required by this Agreement for the rate year shall be equal to the sum of the following:

    a. Forecasted annual cost of operations (determined in accordance with Step 4 above)

    b. Profit (determined in accordance with Step 5 above)

    c. Forecasted interest and franchise fee expense

III. DETERMINATION OF CONTRACTOR'S INDEXED REVENUE REQUIREMENT

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

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

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

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

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

1. Wages and salaries expense shall be calculated by multiplying the wages and salaries expense contained in the Base Year Revenue Requirement by one (1) plus the percentage change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (Urban Wage Earners; 1982-84=100)" between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.

2. Benefits expense shall be calculated by multiplying the benefits expense contained in the most recent Base Year Revenue Requirement by one (1) plus the percentage change in the Employment Cost Index – Benefits (Private Industry Workers) between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.

3. Forecasted disposal expense shall be based on the transfer, transport, disposal, and processing expense fees at the transfer station (which is comprised of the transfer and transport cost as well as the disposal fee at the landfill), recyclable material processing facility and yard waste processing facility and multiplied by the total tons of solid waste transferred for disposal or recycling.

4. Fuel and oil expense shall be calculated by multiplying the fuel and oil expense contained in the Base Year Revenue Requirement by one (1) plus the percentage change in the "U.S. City Average Consumer Price Index (All Urban Consumers; Motor Fuel Item (1982-84=100)" between the June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.

5. Maintenance expense shall be calculated by multiplying the maintenance expense contained in the most recent Base Year Revenue Requirement by one (1) plus the percentage change in the "Motor Vehicle Maintenance and Repair Index (All Urban Consumers, U.S. City Average 1982-1984=100)" between the June monthly index and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.

6. Depreciation expense shall be based on the Contractor's asset and depreciation records that shall reflect the retirement and addition of assets.

7. Other operating expense shall be calculated by multiplying the other operating expense contained in the most recent Base Year Revenue Requirement by one (1) plus the percentage change in the "San Francisco-Oakland-San Jose Metropolitan Area Consumer Price Index (All Urban Consumers; 1982-84=100)" between the

June monthly index of the current year and the corresponding monthly index published twelve (12) months earlier, in the first year following the Base Year Revenue Requirement. This step will be repeated in the second year following the Base Year Revenue Requirement.

8. Forecasted annual cost of operations for the Indexed Revenue Requirement shall equal the sum of the preceding expenses.

C. **Calculate Profit.** The Contractor shall calculate profit by dividing the forecasted annual costs of operations by 0.905 and subtracting the forecasted annual costs of the operations from the dividend.

D. **Interest Expense.** Forecasted interest expense shall be based on the Contractor's actual, necessary and reasonable interest expense incurred for services provided in accordance with this Agreement.

E. **Franchise Fees Expense.** Forecasted franchise fee expense shall be based on the appropriate methodology using the forecasted values and shall include any other payments to the Town.

F. **Determine Contractor's Compensation for Indexed Rate Period.** Contractor's Compensation for Rate Period shall be equal to the sum of the following:

1. Forecasted annual cost of operations (determined in accordance with Step B above)

2. Profit (determined in accordance with Step C above)

3. Forecasted interest expense (determined in accordance with Step D above)

4. Franchise fee expense (determined in accordance with Step E above)

IV. CALCULATION OF RATE ADJUSTMENT

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

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