

FRANCHISE AGREEMENT BETWEEN THE CITY OF BRISBANE AND SOUTH
SAN FRANCISCO SCAVENGER CO., INC. FOR THE COLLECTION AND DISPOSAL OF
RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND SOLID
WASTE IN THE CITY OF BRISBANE

This Agreement, dated as of this 20th day of November, 2014, by and between the City of Brisbane, a municipal corporation (hereinafter "City"), and South San Francisco Scavenger Co., Inc., a California corporation (hereinafter "Scavenger Company").

RECITALS

WHEREAS, the State of California has, through enactment of the California Integrated Waste Management Act of 1989, determined that management of solid waste is a shared responsibility of the State and local governments and that it is in the public interest for local governments to be authorized and required to provide adequate solid waste handling services; and

WHEREAS, the amount of solid waste generated in California, coupled with diminishing landfill space, potential adverse environmental impacts from landfilling solid waste, and the need to conserve natural resources have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program; and

WHEREAS, the Act directs local agencies to maximize the use of feasible waste reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of in landfills and requires that City continue to divert fifty percent (50%) of its waste stream from landfills; and

WHEREAS, City and Scavenger Company have determined that the primary method for City to satisfy this requirement will be to increase the recycling and reuse of materials otherwise disposed of in landfills; and

WHEREAS, City is subject to prescribed Waste Discharge Requirements ordered by the San Francisco Bay Regional Water Quality Control Board, including a reduction of waste trash loads from the municipal separate storm sewer system entering receiving waters; and

WHEREAS, City intends to meet a portion of these requirements by entering into an agreement that requires Scavenger Company to establish a Trash Container Management Policy, to provide manual pickup of abandoned waste in the public right-of-way on a scheduled basis for identified streets, to provide on-call pickup service for abandoned waste and illegal dumping, and to collect solid waste at all city facilities including all exterior public trash receptacles; and

WHEREAS, the most contemporary public education and recycling programs, and a modern materials recovery facility capable of diverting greater amounts of solid waste, will be needed to accomplish such result; and

WHEREAS Scavenger Company can meet these requirements and provide solid waste handling services including collection of recyclable and organic materials in a manner and on terms which are in the best interests of City, its residents and businesses, taking into account the qualifications and experience of Scavenger Company and the cost of providing such services and

WHEREAS, City desires for Scavenger Company to assume, and Scavenger Company is willing to assume, the obligation to ensure that compliance with certain requirements of the Act continue to be achieved, subject to the terms and conditions in this Agreement and applicable law; and

WHEREAS, City desires to provide adequate, ongoing service revenues to fund the required programs and facilities while assuring City's residents and businesses of service rates that are competitive with those charged in neighboring communities; and

WHEREAS, Scavenger Company currently collects and disposes of solid waste matter accumulated in City, and collects and sells recyclable materials generated in the City, pursuant to an exclusive franchise agreement with City dated March 1, 1999, as amended (hereinafter the "Prior Franchise Agreement"); and

WHEREAS, City in 2013 amended Municipal Code Section 8.24 to provide for the establishment by resolution of two or more separate geographic zones in City for solid waste collection services, and the Brisbane City Council has established by resolution three solid waste collection zones in City; and

WHEREAS, City has determined that Scavenger Company is the best provider of solid waste collection services in Solid Waste Collection Zones 1 and 2; and

WHEREAS, the parties wish to assure the health, safety and public welfare of City's residents and businesses by providing efficient services for recycling and the collection and disposal of all solid waste generated in City pursuant to the terms of a long-term agreement providing for competitive service rates; and

WHEREAS, Scavenger Company has participated in the development of this Agreement and is ready, willing and able to perform the services which the Agreement requires;

NOW, THEREFORE, the parties agree as follows:

1. Franchise Grant

- 1.1 City hereby grants to Scavenger Company, and Scavenger Company hereby accepts from City, the exclusive franchise right and privilege, subject only to Section 1.4 below, to collect, remove, transport, recycle, compost and dispose of all solid waste generated in Solid Waste Collection Zones 1 and 2, as shown in the Solid Waste Collection Zone Map attached to Resolution 2013-14 in accordance

with the provisions of City's laws and regulations pertaining to the accumulation, collection and removal thereof and any applicable State and Federal statutes or administrative rules.

- 1.2 All solid waste collected by Scavenger Company pursuant to this Agreement shall become the property of Scavenger Company upon its possession thereof; provided that nothing in this section shall be deemed a waiver by City of its rights and duties under this Agreement.
- 1.3 To the extent permitted by applicable law, City agrees to take such steps as may be reasonably necessary to protect Scavenger Company's ownership of solid waste, including recyclable materials, placed at the curbside or designated collection location for collection by Scavenger Company under the terms of this Agreement. City and Scavenger Company shall also cooperate to protect Scavenger Company's exclusive rights to collect all solid waste, including recyclable materials, in accordance with the terms hereof, to the extent permitted by applicable law.
- 1.4 The franchise to collect, remove, transport, recycle, compost and dispose of solid waste (including recyclable materials) granted to Scavenger Company hereunder shall, throughout the term hereof and in all respects, be exclusive, except as otherwise provided by applicable law and as follows:
 - (a) Recyclable materials and salvageable materials generated at any residential, commercial and industrial or institutional property that are source separated may be transported personally by the generating person for donation or sale to a licensed processing facility that has been duly approved and authorized as such by a governmental or other appropriate authority, including beverage containers recycled at authorized facilities under the California Beverage Container Recycling Litter Reduction Act, provided that the generating person is not charged a fee, directly or indirectly, for such materials;
 - (b) Recyclable materials and salvageable materials generated at any residential, commercial and industrial or institutional property that are source separated may be put out for collection at the generating person's property for donation to any charitable entity or sale to any other third party that, to the extent required by applicable law, has been duly approved and authorized by a governmental or other appropriate authority to accept or purchase such materials, provided that the generating person is not charged a fee, directly or indirectly, for such materials;

- (c) Solid waste generated at any residential, commercial and industrial, or institutional property may be personally transported by the person generating same to any licensed transfer station or materials recovery facility;
- (d) Yard waste removed from a residential, commercial and industrial or institutional property by a gardening, landscaping or tree trimming contractor as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed landfill, transfer station or materials recovery facility;
- (e) Yard waste collected by the City for re-use on property owned, leased, operated or controlled by the City;
- (f) Construction debris and demolition debris removed from a residential, commercial and industrial or institutional property by a licensed construction or demolition contractor using its own employees and equipment as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed transfer station or materials recovery facility; and
- (g) Hazardous waste and household hazardous waste may be disposed of in any lawful manner.

1.5 Except as expressly provided herein, this Agreement shall supercede the Prior Franchise Agreement as of the effective date set forth in Section 3 below, when such Prior Franchise Agreement shall cease to have any effect (except for periods prior to such effective date and except for the establishment of the franchise fee referred to in Section 4.1 below).

2. Definitions

- 2.1 “Act” or “the Act” means the California Integrated Waste Management Act of 1989, as amended.
- 2.2 “Charitable entity” means any not-for-profit organization or entity maintained for community service, education or the public good; including service clubs, scouting organizations, religious and educational organizations and recognized charities.
- 2.3 “Collect” or “collection” means the collection, transportation, and removal of solid waste within and from City.

- 2.4 “Commercial and industrial property” means property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon residential property which are permitted under applicable zoning regulations and are not the primary use of the property.
- 2.5 “Construction debris” means used or discarded construction materials generated during the construction or renovation of a residential, commercial and industrial or institutional property.
- 2.6 “Containers” means any and all types of solid waste receptacles including but not limited to rectangular bins or cylindrical containers which shall be provided by Scavenger Company and which shall be approved by City as appropriate for City’s physical environment, including but not limited to, hillside topography, wind conditions and presence of wildlife. Scavenger Company shall utilize best practices in using “state of the art” containers that are commercially available in the industry for wind and wildlife conditions. Scavenger Company and City shall work cooperatively to monitor and adopt improved solid waste receptacles if they become available during the term of this Agreement.
- 2.7 “Demolition debris” means used construction materials generated during the razing or renovation of a residential, commercial and industrial or institutional property.
- 2.8 “Hazardous waste” means all substances defined as hazardous waste, acutely hazardous waste or extremely hazardous waste by the State of California, or identified as hazardous waste by the U.S. Environmental Protection Agency, under applicable laws or regulations.
- 2.9 “Household hazardous waste” means hazardous household waste generated at residential properties within the City.
- 2.10 “Institutional property” means the premises or site of any governmental entity, including city, county, state and/or federal buildings, public schools, colleges, and public recreational sites.
- 2.11 “Organic materials” means food scraps, paper contaminated with food scraps, and biodegradable plastic food service ware. No discarded material shall be considered organic materials unless such material is separated from solid waste, recyclable materials, yard waste and/or salvageable materials.
- 2.12 “Person” means an individual, corporation, partnership, limited liability company, trust, association or other entity.

- 2.13 “Recyclable materials” means solid waste which may be reused or processed into a form suitable for reuse through reprocessing or remanufacture consistent with the requirements of the Act, including, without limitation, paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, beverage containers, used motor oil, oil filters, household batteries, organic materials, yard waste, and wood, brick and stone in reusable size and condition. Recyclable materials shall include those items of construction debris and demolition debris which are described in this Section 2.13.
- 2.14 “Residential property” means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied, with no more than four units in a single structure, connected structure, or series of structures.
- 2.15 “Multiple-Unit Residential Property” means property used for residential purposes, irrespective of whether such dwelling units are rental units or owner-occupied, where there are five or more units, whether in a single structure, or connected structure, or series of structures (“multiple-unit residential properties”). These will be subject to service procedures and rates which differ from residential properties as defined in Section 2.14.
- 2.16 “Salvageable materials” means used articles capable of being restored or resold for reuse, in either case without reprocessing or remanufacture, including antiques, used building supplies and automobiles and automobile parts. Salvageable materials shall include those items of construction debris and demolition debris which are described in this Section 2.16.
- 2.17 “Solid waste” means all putrescible and nonputrescible residential refuse, commercial solid waste, institutional solid waste, garbage, yard waste and rubbish as defined in Public Resources Code Section 40191, including, without limitation, for the purposes of this Agreement construction debris, demolition debris, recyclable materials and salvageable materials, but excluding hazardous waste and household hazardous waste.
- 2.18 “Solid Waste Collection Zone” means the specific geographic area of City designated in a franchise agreement with a scavenger as the territory for which solid waste collection services shall be provided by that scavenger pursuant to Brisbane Municipal Code Section 8.24.010 and as shown in the Solid Waste Collection Zone Map.
- 2.19 “Solid Waste Collection Zone Map” means that map attached to Resolution No. 2013-14 adopted on June 3, 2013, and establishing Solid Waste Collection Zones

1, 2 and 3 in solid waste collection services and as further set out in detail in the Detailed Zone Map attached hereto as Exhibit A.

2.20 “Source separated”

- (a) as to recyclable materials, means recyclable materials (other than organic materials, yard waste, construction debris and demolition debris) that have been separated from solid waste that is not recyclable material and from all other types of recyclable materials by the person generating such solid waste or recyclable materials at the residential, commercial and industrial or institutional property where such solid waste or recyclable materials are generated to form one readily identifiable category of recyclable material as set forth in Section 2.13 above that are saleable without further sorting.
- (b) as to salvageable materials, means salvageable materials that have been separated from solid waste that is not salvageable material by the person generating such solid waste or salvageable materials at the residential, commercial and industrial or institutional property where such solid waste or salvageable materials are generated. (For example, cardboard that has been separated by a business from glass, PET plastic and wet garbage is source separated so long as the separation is accomplished by the generator at the commercial and industrial property where all of such items are generated and all of such items are generated by such business.)
- (c) as to organic materials, means organic materials that, to the extent City permits, directs or requires to be source separated, have been separated from solid waste and recyclable materials (other than organic materials) by the person generating such solid waste or organic materials at the residential, commercial and industrial or institutional property where such solid waste or organic materials are generated.
- (d) as to yard waste, means yard waste that, to the extent City permits, directs or requires to be source separated, have been separated from solid waste and recyclable materials (other than yard waste) by the person generating such solid waste or yard waste at the residential, commercial and industrial or institutional property where such solid waste or yard waste is generated.

2.21 “Yard waste” means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than six (6) inches in diameter) and similar materials generated at a residential, commercial and industrial or institutional property.

3. Term

3.1 The term of the franchise for Zone 1 shall be for a period of twenty (20) years, commencing on the effective date of December 1, 2014 and ending November 30, 2034, provided that City shall have the option, exercisable in writing to Scavenger Company not later than November 30, 2032, to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of (10) years commencing December 1, 2034 and ending November 30, 2044. The term may also be extended by the mutual agreement of the parties.

The term of the franchise for Zone 2 shall be for a period of five (5) years, commencing on the effective date of December 1, 2014 and ending November 30, 2019, provided that the City shall have the option, exercisable in writing to Scavenger Company not later than April 30, 2019, to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of five (5) years commencing on December 1, 2019 and ending November 30, 2024. The term may also be extended by the mutual agreement of the parties.

For the avoidance of doubt, and notwithstanding any other provision in this Agreement, all of Scavenger Company's rights and obligations hereunder with respect to either of Solid Waste Collection Zones 1 or 2 shall remain in effect only during the respective term of the franchise with respect to such Zone (other than any obligations with respect to such Zone that are specifically described as continuing after the expiration or termination of such term, such as the indemnification requirement for such Zone contained in Section 5.18(a) below).

4. Franchise Fee

4.1 Scavenger Company is obligated to pay City, on or before April 30th of each year during the term of this Agreement, a franchise fee in an amount equal to fourteen percent (14%) of Scavenger Company's annual gross revenues from the collection and disposal of all solid waste within Solid Waste Collection Zones 1 and 2 during the preceding calendar year in consideration of the provisions of such Agreement and the exclusive contract, right and privilege therein granted to Scavenger Company (the "Franchise Fee"). The full amount of the Franchise Fee will be included in the rates charged to the customers of Scavenger Company. In the event of any future increase in the Franchise Fee, or the direct or indirect imposition on Scavenger Company of any new government fees, the maximum rates hereunder shall be increased to cover the cost to Scavenger Company of all such increases or additional fees.

5. Services

- 5.1 Solid Waste. Scavenger Company shall collect and dispose of all solid waste (other than source separated recyclable materials, yard waste, organic materials, construction debris and demolition debris, which are subject to Sections 5.2 or 5.3 below) generated by any person at every residential, multiple-unit residential, commercial and industrial, and institutional property within Solid Waste Collection Zones 1 and 2 at least once each week on a regularly scheduled day in accordance with this Agreement. Collection shall be from curbside, where collection containers or loose materials are placed on the street or alley against the face of the curb, or where no curb exists placed not more than five (5) feet from the outside edge of the street or alley, provided that collection containers may be placed at greater distances from curbside with the mutual agreement of Scavenger Company and the Customer, which agreement may include pullout fees. Customers who submit documentation from their physicians of their inability to perform the curbside collection set-out of containers shall be eligible for collection from the rear or side premises at no extra charge.

No later than 90 days after the effective date of this Agreement, Scavenger Company shall develop a Trash Container Management Policy, which will be submitted to the City's Director of Public Works/City Engineer for review and approval. Said policy shall contain procedures for notification to the owner or user of trash containers when such containers are filled beyond their maximum closed-lid capacity, and after first-time warnings and provision of outreach material on alternatives to overfilling containers, may include charging an additional fee for the collection and disposal of solid waste from containers that are filled beyond maximum capacity and require Scavenger to manually mitigate ensuing safety or litter issues.

- 5.2 Recyclable Materials. Scavenger Company shall collect all source separated recyclable materials generated by any person at every residential property (excluding multiple-unit residential properties) within Solid Waste Collection Zones 1 and 2 at least once each week on a regularly scheduled day in accordance with this Agreement, except that until the organic materials collection service (expected by January 2015) is operational, yard waste shall be collected from such properties at least once every two weeks. Scavenger Company shall collect all source separated recyclable materials generated by any person at every commercial and industrial, institutional and multiple-unit residential property within Solid Waste Collection Zones 1 and 2 upon a schedule established between Scavenger Company and each generating person (or the owner, landlord or property manager, in the case of multiple-unit residential properties), but not less frequently than is required to expeditiously collect such recyclable materials,

without creating storage, health, or safety hazards.

Scavenger Company may refuse to collect recyclable materials generated by, and shall not be obligated to continue to provide any recycling receptacle or container to, any person who after reasonable warning, fails to sort recyclable materials properly, or fails or refuses to allow Scavenger Company to collect, on an exclusive basis, said person's recyclable materials. Scavenger Company shall report to City any warning notices issued by Scavenger Company for this purpose, and City shall investigate same to determine whether the person receiving the notice has violated the applicable ordinance.

- 5.3 Yard Waste and Organic Materials Collection; Construction and Demolition Debris. Once Scavenger Company has implemented the organic materials collection service (expected by January 2015), Scavenger Company shall collect all source-separated yard waste and organic materials in a single separate container (unless otherwise agreed to by City and Scavenger Company) from residential properties once per week. Collection of yard waste and organic materials shall occur on the same day as solid waste collection each week. Scavenger Company shall provide each customer with one (1) cart to be used for the collection and storage of yard waste. Customer can rent or purchase additional yard waste carts from Scavenger Company and Scavenger Company can bill customer as specified in Exhibit B. Scavenger Company shall collect all yard waste and organic materials carts curbside unless the customer has a documented medical reason for special handling.

Scavenger Company shall provide each residential customer a kitchen pail at the commencement of source separated organic materials collection service. Scavenger Company must submit kitchen pail specifications to city for City's approval prior to submitting the order to the manufacturer. Scavenger Company shall provide replacement kitchen pails within 5 days of request to customers whose kitchen pail is lost, damaged or destroyed. Residents will be discouraged from placing kitchen pails curbside for collection and will be instructed to deposit the contents of the kitchen pail into the yard waste and organic materials cart.

Scavenger Company shall collect all source-separated yard waste and organic materials in separate containers from multi-unit residential customers and commercial customers that subscribe for either such service once per week. Scavenger Company shall provide each customer with one (1) or more carts to be used for the collection and storage of yard waste and one (1) or more separate carts for the collection and storage of organic materials. Scavenger Company shall bill each multi-unit residential customer and commercial customer for the

collection of source-separated yard waste and organic materials at the rates specified in Exhibit B.

Scavenger Company shall collect all construction debris and demolition debris from residential customers, multi-unit residential customers and commercial customers that subscribe for such service in containers provided by Scavenger Company at the rates set forth in Exhibit B.

- 5.4 Changes; Missed Pick-Ups. Scavenger Company shall not alter or adjust collection services without providing prior notice to all service addresses, and any schedule modifications shall not result in reduced service frequency to any customer. Scavenger Company shall collect and remove solid waste and recyclable materials from any premises “missed” or “skipped” during the regularly scheduled time, within one (1) working day after request for collection is made by the customer or City.
- 5.5 Containers-Solid Waste. Scavenger Company shall collect solid waste from containers of a size and weight customarily sold for use upon residential property and which, when filled, are safely capable of being handled by one person, provided that such containers have lids capable of preventing solid waste from spilling out under normal circumstances. Containers shall be resistant to wind and to animal intrusion, as described in Section 2.5. Nothing in this section shall be deemed to preclude the use of bins or other containers of a size and shape acceptable to Scavenger Company and, in the event City and Scavenger Company shall institute new programs hereunder which require bins or other containers of a particular size and shape, customers on residential properties shall use bins or other containers meeting such requirements, provided that the cost of such bins or other containers is not charged directly to any customer but is recovered by Scavenger Company through the ratemaking process. Scavenger Company shall not be required to purchase or provide additional solid waste containers, unless needed by new participants in the solid waste program, or to replace containers needed by a resident because of loss, damage or destruction beyond the control of resident; however, Scavenger Company shall not be required to replace a residential customer’s containers without charge more than twice in any two-year period.
- 5.6 Containers-Recyclable Materials
- (a) Residential Property. Scavenger Company shall provide and distribute one set of residential recycling containers, at no cost in addition to the monthly rates, to each newly-built residential property (other than multiple-unit residential properties) in City. The recycling containers are those containers

described in the attached Schedule I, entitled "Recycling Containers," or other similar containers mutually agreed upon by Scavenger Company and City. The cost of supplying such recycling containers shall be borne by Scavenger Company, at no cost in addition to the monthly rates.

- (b) Replacement of Containers. Scavenger Company shall not be required to purchase or provide additional recycling containers, unless needed by new participants in the recycling program, or to replace containers needed by a residential customer because of loss, damage or destruction beyond the control of a residential customer; however, Scavenger Company shall not be required to replace a residential customer's recycling containers without charge more than twice in any two-year period. Parties acknowledge that from time-to-time the recycling containers supplied by Scavenger Company may become lost, damaged or destroyed, and that such unusual loss or damage would not be considered within the reasonable control of the resident. Scavenger Company will automatically replace any damaged recycling containers that are placed at curbside, subject to the preceding sentence. In the event City requests Scavenger Company to provide additional single unit residential recycling containers, the cost of the containers and the distribution thereof shall be borne by City, except as provided above.
- (c) Multiple-Unit Residential, Commercial and Institutional. Scavenger Company shall also make available recycling containers for each new multiple-unit residential, each new commercial and industrial and each new institutional property, within City of a size and shape suitable for each such property. The cost of supplying such recycling containers shall be borne by Scavenger Company. Scavenger Company shall not be required to purchase or provide additional recycling containers, except to replace containers needed by one of such customers because of loss, damage or destruction beyond the control of the customer; however, Scavenger Company shall not be required to replace such a customer's recycling containers without charge more than twice in any two-year period.
- (d) Ownership. The ownership of all recycling containers purchased by Scavenger Company under this Agreement shall be and remain with Scavenger Company.

- 5.7 Personnel and Equipment. Scavenger Company shall furnish the personnel, labor and equipment required for the collection, removal, handling and disposal of all solid waste generated within the corporate limits of the City.

- 5.8 Disposal Facilities. Scavenger Company shall haul all solid waste collected by it in City to the existing transfer station operated by Blue Line Transfer, Inc., a related party entity. All of such solid waste that is neither recyclable nor salvageable shall be hauled to a licensed and suitable disposal facility (i.e., landfill) located outside City selected by Scavenger Company.
- 5.9 Local Office. Scavenger Company shall maintain an office where service may be applied for and complaints made. The address and telephone number of such office shall regularly be included in customer billings and service information distributed to the public. Scavenger Company's office shall have a responsible individual available daily between the hours of eight o'clock a.m. and five o'clock p.m., excepting Saturday, Sunday and holidays. Calls for "missed" collections shall be received in person or by voicemail 24 hours per day, seven days per week.
- 5.10 Pick-Ups at City Facilities. Scavenger Company shall remove, without charge, all solid waste generated at the locations owned, leased or operated by City within Solid Waste Collection Zones 1 and 2 set forth on Exhibit E attached to this Agreement ("City Waste Matter"). Such service shall be provided by Scavenger Company once each week (or more frequently as set forth on Exhibit E) for the respective number and size of containers at each such location. City shall also be authorized to deliver up to 50 tons per calendar year of solid waste generated by City at facilities owned, leased or operated by City and located in Solid Waste Collection Zones 1 and 2, hauled in City vehicles, at no charge to City for disposal at the Blue Line Transfer, Inc. transfer station. Scavenger Company shall also provide on-call solid waste pickup from City facilities located in Solid Waste Collection Zones 1 and 2 at the request of City. In the event that City shall direct Scavenger Company: (a) to provide services under this Section 5.10 at more locations than are set forth on Exhibit E, for a greater number of containers than are set forth on Exhibit E, or more frequently than is set forth above in this Section 5.10 or Exhibit E, where such excess locations, containers and/or frequency exceed the current level of service by at least 15% based on the then current rate value of total services currently provided, then the parties shall negotiate appropriate charges by Scavenger Company to City for such excess services; or (b) to provide on-call solid waste service, then Scavenger Company shall charge City for such on-call waste service at the corresponding rates set forth on Exhibit B attached to this Agreement as then in effect after adjustment in accordance with Section 6 below; provided, however, that, in the case of either (a) or (b) above, Scavenger Company and City may agree to have Scavenger Company recover charges and fees for such excess services though the next rate adjustment under Section 6.4 below.

- 5.11 Institutional Customers. Certain institutional customers, including federal, state and local government facilities and public schools, are not required, by statute, to subscribe for or accept services from Scavenger Company. However, if any such customers do subscribe for such services, Scavenger Company may charge at the same rates and provide service on the same terms as for commercial customers hereunder unless such institutional customers enter into separate written agreements with Scavenger Company that provide different terms.
- 5.12 Annual Citywide Yard Waste Clean-Up. Each year during the term of the franchise, Scavenger Company shall provide, for City residents only, at a location in City to be determined by mutual agreement, one (1) free weekend City-wide collection, at which it will accept up to thirty (30) free 14 or 20 cubic yard debris box loads of yard waste. The date for such collections shall be publicized in advance by Scavenger Company. The collection shall be made each year throughout the term of this franchise in accordance with practices and procedures established by Scavenger Company, and approved by the City Manager. Any debris box loads in excess of the thirty (30) per year described above will be charged to City at the applicable maximum rate(s).
- 5.13 On-Call Curbside Bulky Item Collection Service
- (a) General. Scavenger Company shall provide two (2) separate on-call curbside bulky item collection service events to each residential property (as defined in Section 2.14) customer annually upon owner or occupant's request at no additional cost to the customer. Scavenger Company will schedule the on-call bulky item collection service events on the regularly scheduled solid waste collection day for residential property customers, no more than ten (10) business days after the owner or occupant's request.
- (b) Scavenger Company will allow the scheduling of on-call bulky item collection service events from January 1 through December 31 of each rate year. Scavenger Company may provide additional on-call bulky item collection service events for a customer beyond two (2) per rate year, and shall be entitled to bill customer as specified in Exhibit B.
- (c) Accepted Materials. Residential property (as defined in Section 2.14) customers may place the following materials out for bulky item collection service:
- (i) Solid Waste, Source-Separated Recyclable Materials, and Source-Separated Yard Waste - Up to two (2) cubic yards of materials per event, provided that such materials, except as set forth below have been bagged, boxed, bundled, or containerized by the customer.

- (ii) Major Appliances - One (1) large appliance per event (e.g., washing machine, clothes dryer, refrigerator, freezer).
 - (iii) Bulky Items - One (1) large bulky item per event (e.g., reusable furniture, mattresses, four tires).
 - (iv) E-Scrap - One (1) item per event (e.g., a computer, monitor or television) plus a computer keyboard. Additional items may be collected at the Scavenger Company's maximum rates specified in Exhibit B.
- (d) Rejected Materials. Scavenger Company shall reject: liquids or sludge; dirt, rock, concrete or asphalt; and other materials which exceed five (5) feet in length; commercial-sized refrigerators or freezers; construction and demolition debris; hazardous waste; and infectious waste. Scavenger Company may reject any individual item that weighs more than two-hundred (200) pounds (excluding major appliances) unless customer has paid, or has agreed in advance to pay, an additional fee for service. Scavenger Company may reject un-containerized discarded materials with the exception of major appliances, bulky items, e-scrap and large pieces of yard waste such as tree limbs and dimensional lumber.
- (e) Payment. Scavenger Company shall be entitled to payment for excess materials collected and for additional bulky item on-call events as specified in Exhibit B. For other venues and events, Scavenger Company may charge the venue or event organizer at the rates established by City for comparable on-call commercial solid waste and organic materials collection service. Recyclable materials collection service shall be provided at no additional cost to events that subscribe to solid waste or organic materials collection service.

5.14 Abandoned Waste Cleanup Collection Service. Scavenger Company shall provide abandoned waste cleanup collection service within one (1) business day of being notified by City or customer or Scavenger Company's drivers of the occurrence of abandoned waste or illegal dumping at no additional cost to City up to the following annual limits: 100 pick-ups or \$4,000 in fees at the then-current rates set forth in Exhibit B, whichever is greater. This service shall require Scavenger Company to collect all abandoned or illegally dumped solid waste, recyclable materials, and organic materials. The volumes of abandoned waste so collected shall be provided annually to the Director of Public Works. To the extent reasonable, Scavenger Company shall determine the person who abandoned the waste or dumped the waste illegally, e.g., by a cursory examination of the

contents of the waste as to printed or other material that might indicate the source of the waste, and shall advise the City of its determination.

For abandoned materials, Scavenger Company shall dispatch appropriate employees in appropriate vehicles. In the case of special circumstances, such as where the abandoned waste is not accessible from the roadway or is oversized or overweight, either City will provide reasonable assistance as required to place the waste in Scavenger Company's vehicles (for example, by providing its backhoe and an operator for up to two hours) or City will reimburse Scavenger Company for the rental cost of any special equipment required for such purpose with notice to City and authorization for special equipment. For items such as hazardous waste, household hazardous waste and sharps, Scavenger Company shall promptly notify City.

All abandoned or illegally dumped materials collected by Scavenger Company shall be transported for processing, and all related diversion statistics will be included in the appropriate reports to City for all materials collected.

Upon request of City, abandoned waste cleanup collection service may include collection of litter and litter abatement activities along the frontage of City owned properties in Zone 1 and 2; provided, however, that Scavenger Company shall provide monthly manual cleanup of litter along the frontage of the following City streets:

Zone 1- Bayshore Boulevard

Zone 1- Sierra Point Parkway

Zone 1-Main Street

Zone 1-Guadalupe Canyon Parkway

Zone 2- Industrial Way;

and, provided, further, that the cleanup of abandoned waste or litter along the frontage of any of such streets outside the customary cleanup day shall count towards the limits in the first sentence of this Section 5.14.

Scavenger Company shall charge City for all such all abandoned waste collection services in excess of the limits above at the corresponding rates set forth on Exhibit B attached to this Agreement as then in effect after adjustment in accordance with Section 6 below; provided, however, that Scavenger Company and City may agree to have Scavenger Company recover fees for such excess services through the next rate adjustment under Section 6.4 below.

- 5.15 Hazardous Waste Inspection and Handling. Scavenger Company shall inspect any solid waste, recyclable materials, yard waste, organic materials or other materials put out for collection that appear to contain or be contaminated with hazardous waste. Scavenger Company shall develop or maintain a hazardous waste training program for its employees that includes the following components: (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and (iv) recordkeeping and emergency procedures.

Scavenger Company's load checking personnel, including its collection vehicle drivers, shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of prohibited materials; and (iii) emergency notification and response procedures. Collection vehicle drivers shall inspect containers before collection when practical.

Upon City's request, Scavenger Company shall provide City with a copy of its hazardous waste training program, the name of its environmental technician, and the frequency of its training sessions.

Under no circumstances shall Scavenger Company's employees knowingly collect hazardous waste or remove unsafe or poorly containerized hazardous waste from a collection container. If Scavenger Company determines that material placed in any container for collection is hazardous waste or other material that may not legally be accepted or safely processed at the Blue Line Transfer, Inc. transfer station or presents a hazard to Scavenger Company's employees, or those at such transfer station, Scavenger Company shall refuse to accept such material. The generator shall be contacted by Scavenger Company and requested to arrange proper disposal. If the generator cannot be reached immediately, Scavenger Company shall, before leaving the premises, leave a non-collection notice, which indicates the reason for refusing to collect the material and lists the phone number for the San Mateo County Household Hazardous Waste Facility, or other resources as directed by City. Scavenger Company's environmental technician shall be notified to handle the issue with the generator. The Scavenger Company's environmental technician shall be required to guide the generator to safely containerizing the hazardous waste and shall explain the generator's options for proper disposition of such material.

If hazardous waste is found in a collection container or collection area that could possibly result in imminent danger to people or property, Scavenger Company shall immediately notify City's Fire Department using the nine-one-one (911) emergency telephone number. Scavenger Company shall notify City of any hazardous waste identified in containers or left at any premises within twenty-four (24) hours of identification of such material.

Scavenger Company shall provide suitable operational and safety training for all of its employees who operate collection vehicles or equipment or who are otherwise directly involved in such collection. Scavenger Company shall train its employees involved in collection to identify, and not to collect, hazardous waste or infectious waste.

Scavenger Company shall comply with emergency notification procedures for hazardous waste required by applicable law and regulatory requirements. Scavenger Company shall notify all appropriate agencies, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center, of reportable quantities of hazardous waste found or observed by Scavenger Company in solid waste, recyclable materials, yard waste, organic materials, electronic waste and construction and demolition debris anywhere within Solid Waste Collection Zones 1 and 2. In addition to other required notifications, if Scavenger Company observes any substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Scavenger Company will immediately notify City.

Scavenger Company shall retain at its offices all records of hazardous materials required by law to be maintained. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident report and training records. Scavenger Company shall maintain records showing the types and quantities, if any, of hazardous waste found in solid waste, recyclable materials, yard waste and organic materials which was inadvertently collected from customers within Solid Waste Collection Zones 1 and 2, but diverted from landfilling.

- 5.16 Additional Services. Scavenger Company shall place within the City, at a centralized location upon which Scavenger Company and City agree, and collect as needed, a suitable container into which persons may place plastic bags for recycling. Scavenger Company shall provide additional services upon request of City, or upon the proposal of Scavenger Company as approved by City pursuant to Section 5.18 below, subject, if the costs incurred by Scavenger Company to provide such services increase, to the establishment by mutual written agreement of a reasonable rate therefor.

Scavenger Company shall provide emergency services at City's request in the event of major accidents, disaster, or natural calamities. Emergency services may include, but are not limited to: assistance handling, salvaging, processing, composting, or recycling materials; or disposing of solid waste following a major

accident, disruption, or natural calamity. Scavenger Company shall be capable of providing emergency services within twenty-four (24) hours of notification by City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services as described herein shall be compensated by City in accordance with Exhibit B. If Scavenger Company cannot provide the requested emergency services, City shall have the right to temporarily take possession of Scavenger Company's equipment for the purposes of providing emergency services.

5.17 Permit and Licenses. Scavenger Company shall obtain and maintain throughout the term of the franchise all permits, licenses and approvals necessary or required for Scavenger Company to perform the work and services described herein. City shall cooperate with Scavenger Company in connection with such permits, licenses and approvals, and shall renew all such permits, licenses and approvals issued by City, provided that Scavenger Company is not in material breach of this Agreement and provided Scavenger Company shall have fulfilled all then existing requirements for the renewal of such permits, licenses and approvals.

5.18 Diversion Requirement

(a) Programs; Diversion Compliance; Indemnification. In order for City to achieve compliance with the fifty percent (50%) diversion requirement of the Act, Scavenger Company shall propose and implement various recycling, solid waste reduction, public education and reporting programs for City and its residents for so long as compliance with the Act's diversion requirements is required. Subject to Public Resources Code Section 40059.1 and the conditions set forth in Section 5.18(b) below, Scavenger Company hereby agrees (i) to divert the percentage of the City's solid waste, and perform such other actions, as necessary to permit City to achieve compliance, as to Solid Waste Collection Zones 1 and 2 only, with the requirements of the Act as it may be amended from time to time; and (ii) to protect, defend and indemnify City and its Council, boards, commissions, officers, agents, representatives and employees against all fines or penalties imposed by Cal Recycle as the result of the failure to achieve compliance, as to Solid Waste Collection Zones 1 and 2 only, with such 50% or, if applicable, any lesser or greater percentage diversion requirement imposed under the Act as it may be amended from time to time; provided that City, in its reasonable discretion, has contested any such fines or penalties and that City has given Scavenger Company the opportunity to jointly control the contest of any such fines and/or penalties so imposed on City. This indemnification requirement shall survive the expiration or earlier termination of this Agreement.

- (b) City Responsibilities, Other Factors. Notwithstanding any other provision in this Agreement, Scavenger Company's obligations pursuant to Section 5.18(a) above, relating to compliance with the Act and indemnification shall depend upon:
- (i) City taking all actions reasonably necessary to implement programs and adopt reasonable rate increases as proposed by Scavenger Company in accordance herewith;
 - (ii) City considering, enacting, administering, and enforcing appropriate laws, regulations, incentives and sanctions necessary to assure the exclusive nature of Scavenger Company's franchise rights in Solid Waste Collection Zones 1 and 2 hereunder and to gain the waste diversion participation of residential properties, commercial and industrial properties and institutional properties within City as deemed reasonably necessary by City and Scavenger Company to ensure diversion goal compliance;
 - (iii) The fines or penalties which give rise to such indemnification obligations, or the failure to achieve such compliance under the Act, not resulting from the actively negligent or willful acts or omissions of City (excluding for this purpose any negligent or willful acts or omissions by Scavenger Company that would be imputed to City);
 - (iv) Scavenger Company not being required by City or by a change in applicable law or regulation to cease performing any of its recycling or other services which contribute to landfill diversion; and
 - (v) There being no change in any applicable law or regulation which materially impairs Scavenger Company's ability to find bona fide end users of recyclable materials.
- (c) Unforeseeable Circumstances. In the event that Scavenger Company shall have used its best efforts consistent with this Agreement to ensure that the 50% (or greater) diversion requirement of the Act is achieved by City as to Solid Waste Collection Zones 1 and 2 only, but shall determine that such requirement may nonetheless not be satisfied, Scavenger Company shall give City prompt written notice of such determination. City and Scavenger Company shall then meet promptly to decide whether to increase rates beyond the rates called for in Exhibit B and Section 6 below to fund additional efforts which were unforeseeable on the date hereof and which

Scavenger Company has reasonably not undertaken to date to satisfy such diversion requirement, provided that, if City is unwilling to do so or if the parties are unable to agree on a mutually-acceptable alternative, Scavenger Company shall be relieved of its Act compliance and indemnification obligations set forth in Section 5.18(a) above.

(d) Reports; Other Compliance. In connection with its other activities described in this Section 5.18, Scavenger Company shall prepare and/or cooperate with City in preparing and filing all relevant reports to governmental authorities concerning Act compliance, and shall assist City in the biannual review of such reports.

6. Rates. Scavenger Company shall bill customers for its services under this Agreement at the rates set forth in Exhibit B to this Agreement, as adjusted under Section 4.1, Sections 6.2, 6.3 and 6.4 below and other relevant provisions of this Agreement. Residential and multiple-unit residential customers shall be billed quarterly in advance, and commercial and other customers shall be billed monthly in arrears. Scavenger Company shall be entitled to charge commercially reasonable late charges and/or interest on overdue accounts, and may stop service if an account remains overdue for more than ninety (90) days. Scavenger Company shall report to the City the name and address of any customer if it stops service because the customer's account remains overdue for more than 90 days.

6.1 Establishment of Rates. The maximum service rates specified in Exhibit B to this Agreement have been agreed upon by City and Scavenger Company and shall take effect on the effective date of the franchise as set forth in Section 3 above. Such maximum service rates shall be subject to review and revision as set forth in Section 4.1 above, Sections 6.2, 6.3 and 6.4 below and other relevant provisions of this Agreement. Scavenger Company shall not charge any amount in excess of the approved rates for services required by or permitted under this Agreement.

6.2 Modification Based on Consumer Price Index. The maximum rates specified under this Agreement shall be adjusted July 1st every year (beginning in 2016, but excluding the year 2015 and every third year thereafter) by an amount equal to eighty percent (80%) of the percentage change, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as published and maintained by the United States Bureau of Labor Statistics for the San Francisco-Oakland Metropolitan Area (1982-84= 100), for the prior year, using the Index most recently published before March 31st of such year and before the prior March 31st. For example, if the Index should decrease by two percent (2%) as of March 31, 2016 as compared with March 31, 2015, each of the maximum rates set forth on Exhibit B, as previously adjusted, would be decreased as of July 1, 2016 by one and six-tenths percent (1.6%) [negative .02 multiplied by .8]. Likewise, if the

Index should increase by three percent (3%) as of March 31, 2019 as compared with March 31, 2018, each of the maximum rates set forth on Exhibit B, as previously adjusted, would be increased as of July 1, 2019 by two and four-tenths percent (2.4%) [.03 multiplied by .8]. The procedure for rate adjustments under this Section 6.2 shall be as follows.

- (a) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.2, Scavenger Company shall file with City a written Notice of Intention to increase each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if Scavenger Company believes such an increase to be called for, or City shall provide to Scavenger Company a written Notice of Intention to decrease each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if City believes such a decrease to be called for.
- (b) Within thirty (30) days of the filing of the Notice of Intention, the City Manager shall review the Notice of Intention with Scavenger Company, and either confirm that the proposed rates are within the limit of Section 6.2(a) above or establish by mutual agreement with Scavenger Company any necessary changes to the proposed maximum rates to make such confirmation.
- (c) The City Manager shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 6.2 and, not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year.
- (d) In the event that the Consumer Price Index described in Section 6.2(a) above shall be discontinued or materially modified during the term of the franchise, the parties shall use their best efforts to substitute a replacement index and/or otherwise change Section 6.2(a) above so as to replicate, as nearly as possible, the mutual intention of the parties to rely on the results of the Consumer Price Index described in Section 6.2(a) as in effect on the date hereof.

6.3 Extraordinary Items. In addition to adjustments under Sections 6.2 above and 6.4 below, the maximum rates hereunder shall be subject to increase or decrease to reflect extraordinary increases or decreases in Scavenger Company's costs of providing services hereunder, such as landfill or disposal costs, costs mandated by governmental action or judicial decisions, franchise fees and similar items.

Increases or decreases in maximum rates pursuant to this Section 6.3 shall take effect so as to eliminate, to the maximum extent possible, Scavenger Company's loss or gain of revenue and/or profit resulting from the extraordinary increase or decrease in costs from the date(s) such increase or decrease first occurred.

6.4 Modification Based on Neighboring Cities' Rates. Irrespective of any adjustments to maximum rates pursuant to Sections 6.2 and/or 6.3 above, every maximum service rate applicable under this Agreement shall be adjusted effective as of July 1 in each of the years 2015 and every third year thereafter (i) in the case of each of the service categories set forth in Exhibit C attached to this Agreement, so as to equal eighty-eight percent (88%) plus the percentage of the Franchise Fee times the average of the most current rates for such service category charged in the jurisdictions set forth in Exhibit D, and (ii) in the case of every other service category not set forth on Exhibit C, so as to equal an amount reasonably arrived at by extrapolating from the new rates determined in accordance with Section 6.4(i) above. The most current rate charged in each jurisdiction listed in Exhibit D for a service category listed in Exhibit C shall mean the rate that applies as of the date Scavenger Company files the Notice of Intention described in Section 6.4(a) below, and shall be based on the actual published rate for a period including such date. The average of the most current rates for a particular service category listed on Exhibit C shall be determined by adding all the most current rates for such service category, and dividing by the number of jurisdictions set forth in Exhibit D. The procedure for rate adjustments under this Section 6.4 shall be as follows.

- (a) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.4, Scavenger Company shall file with City a written Notice of Intention to adjust, effective as of July 1st of the same year, each of the then current maximum service rates in accordance with Section 6.4 above.

An example of such calculation for an Exhibit C service category and for a related service category not listed in Exhibit C is as follows: if the total of the most current rates in the applicable jurisdictions, which number thirty-two (32), for weekly 2-yard commercial front end loader service per month as of March 31, 2018 were \$4,800, Scavenger Company's Notice of Intention for July 1, 2018 would specify \$150.00 [$\$4,800$ divided by 32 multiplied by .88 plus the percentage of the Franchise Fee] as the new maximum rate for such service category, and could specify \$300.00 for weekly 4-yard commercial front end loader service per month.

- (b) Within thirty (30) days of the filing of the Notice of Intention, the City Manager shall review the Notice of Intention, and either confirm that the

proposed maximum rates conform with Section 6.4 above, or meet with Scavenger Company to establish by mutual agreement with Scavenger Company any necessary changes to the proposed maximum rates to make such confirmation.

- (c) The City Manager shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 6.4 and, not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year.
- (d) From time to time during the term hereof, the list of jurisdictions set forth in Exhibit D shall be changed to conform to any changes in the list of benchmarking jurisdictions set forth in that certain Agreement for the Collection and Disposal of Solid Waste Matter in the City of South San Francisco between Scavenger Company and such City dated July 9, 1997, as amended and as may be further amended from time to time, each such change to be contemporaneous with the corresponding change in South San Francisco.

- 6.5 Potential Rate Constraints. The parties recognize that, as of the date this Agreement is entered into, there is no authoritative judicial determination of whether Articles XIII C or XIII D of the California Constitution apply to charges imposed by private enterprises for solid waste handling and recycling services when those charges are regulated by a local government.

The City will not be in default of this Agreement if (i) a majority protest or referendum prevents the initial maximum rates or a proposed maximum rate increase from being adopted, (ii) a court rules that maximum rates adopted by City are not consistent with Article XIII C or D, or (iii) a voter initiative not endorsed by City reduces maximum rates from those in effect. After the occurrence of any event referred to in clauses (i)-(iii) above, the parties shall promptly meet and negotiate in good faith to adjust service levels commensurate with the rates that Scavenger Company may legally charge, in a manner reasonably calculated (given such rates) to minimize any adverse effect on public health and safety and to allow Scavenger Company to cover its necessary costs plus a commercially reasonable profit.

Nothing in this Agreement shall be deemed or construed to be an admission by City or Scavenger Company that Articles XIII C or XIII D of the California Constitution apply to the rates charged by Scavenger Company under this Agreement.

- 6.6 Scavenger Company shall use in connection with transportation of solid waste modern motor dump trucks with water tight bodies, sufficient in number and capacity to efficiently perform the work required by the Agreement. Scavenger Company shall keep the outside of the truck bodies free from dirt and debris, and shall clean the inside of the trucks in a sanitary manner on a regular basis. Suitable measures shall be taken to prevent refuse from falling into public streets or places. Scavenger Company shall keep all trucks freshly painted in a uniform manner, and the firm name, telephone number, and truck number of each truck shall appear on each side thereof in a conspicuous manner. Scavenger Company shall keep all trucks in good maintenance and repair, regularly inspect same, and keep accurate records of all vehicle maintenance. Scavenger Company shall also be responsible for causing Blue Line Transfer, Inc. to maintain all of its equipment and vehicles in safe and sanitary condition in accordance with the standards set forth for Scavenger Company's vehicles in this Section 7.1.
- 6.7 Scavenger Company shall not litter premises in the process of making collections nor allow refuse to blow or fall from any container or vehicle used for collections. Scavenger Company shall clean-up any and all spills, including oil and debris on the streets, resulting from its operations as soon as possible on the same day as the occurrence. Scavenger Company shall use due care to prevent vehicle oil, vehicle fuel, or other liquids from being spilled during collection or transportation operations. Should Scavenger Company fail to promptly clean up such spills resulting from its operations after notice from City, Scavenger Company shall be liable to City for all reasonable costs incurred by City in doing so
- 6.8 Scavenger Company shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste or who are otherwise directly involved in such collection. Scavenger Company shall use its best efforts to assure that all employees present a neat appearance, conduct themselves in a courteous manner, and perform the work as quietly as possible. Scavenger Company shall also designate one or more qualified employees as supervisors of field operations, who will devote a substantial portion of their time in the field checking on collection operations, including responding to complaints.
- 6.9 Scavenger Company's general manager shall have e-mail capabilities to enable City and Scavenger Company's general manager to communicate via email. Scavenger Company's general manager shall respond to City email correspondence within twenty-four (24) hours of the first business day after notification.

- 6.10 Upon request from City, beginning on the effective date, and then on a monthly basis thereafter if requested, Scavenger Company shall meet with the City to discuss progress of each active diversion program, quality and reliability of collection services, and compliance with the terms of the Agreement. At each meeting, City and Scavenger Company shall have the opportunity to present and discuss proposed changes in service such as changing program requirements or modifying collection methods.
- 6.11 City shall have the right, but not the obligation, to observe and inspect all of Scavenger Company's operations under this Agreement. In connection therewith, City shall have the right to enter facilities used by Scavenger Company during operating hours, speak to any of Scavenger Company's employees and receive cooperation from such employees in response to inquiries. In addition upon reasonable notice and without interference with Scavenger Company's operations, City may review and copy any of Scavenger Company's operational and business records related to this Agreement if City so requests, and Scavenger Company shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media. All of such records shall be subject to confidentiality to the extent provided in, and in accordance with, Section 18 below.
- 6.12 The City Manager may direct Scavenger Company in writing to make changes in services and service levels, and in the manner in which services are performed, that do not cause an increase in the cost of performing the services and that do not cause a material decrease in the level of service, as determined by the City Manager.
- 6.13 Scavenger Company is required to operate a customer service call center that will serve as the primary telephone point of contact and information for all services. The Customer service call center hotline is required to be staffed live during regular business hours (i.e., Monday through Friday 8:00 a.m. to 5:00 p.m.).
- 6.14 Scavenger Company shall maintain and publicize an up-to-date website whereby customers can conduct business with Scavenger Company in both English and Spanish. Scavenger Company is required to update the website monthly, and more frequently if necessary. At a minimum, the website shall:
- (a) Allow customers to view and pay bills issued by Scavenger Company;
 - (b) Allow customers to request services such as, but not limited to, on-call collection service events, on-call bulky item collections, extra collections, service changes, temporary drop box service, service terminations, and service stops;

- (c) Provide answers to 10 frequently asked questions, including, but not limited to: proper container set-out instructions; list of acceptable yard waste and recyclable and organic materials; collection days (in response to customer input of service address); billing issues, customer service telephone and email contact information; and the Blue Line Transfer, Inc. transfer station site hours, directions, and acceptable materials;
- (d) Provide complete list of City-approved rates for all customers;
- (e) Allow customers to file complaints and receive from Scavenger Company e-mail responses to complaints;
- (f) Provide a link to enable customers to email Scavenger Company; and
- (g) Maintain and produce visitor logs and reporting, including, but not limited to, website and individual page visitation, number of web-based bill payments per month, number of website-submitted complaints per month, and individual and summary customer complaint and resolution reporting, subject to applicable privacy laws.

6.15 Scavenger Company shall employ only competent and qualified personnel who serve the public in a courteous, helpful, and impartial manner. Scavenger Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Scavenger Company shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees 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, Scavenger Company shall take all appropriate corrective measures. City may require Scavenger Company to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

Scavenger Company shall adopt policies and procedures consistent with State and federal law that ensure a sober and drug-free workplace. This includes strictly prohibiting unlawful manufacture, distribution, possession, or use of any controlled substance in the workplace, regardless of whether the employee is on duty at the time. Further, the policies and procedures shall prohibit an employee from operating either City or Scavenger Company equipment or vehicles (whether on or off duty) while under the influence of alcohol or drugs. The purpose of these policies and procedures is to ensure workplace safety, productivity, efficiency, and the quality of Scavenger Company's service to customers.

Scavenger Company shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for collection services or accept gratuities or compensation in exchange for additional collection services.

7. Provisions Applicable to Customer Service, Equipment and Personnel

- 7.1 Scavenger Company shall use in connection with transportation of solid waste modern motor dump trucks with water tight bodies, sufficient in number and capacity to efficiently perform the work required by the Agreement. Scavenger Company shall keep the outside of the truck bodies free from dirt and debris, and shall clean the inside of the trucks in a sanitary manner on a regular basis. Suitable measures shall be taken to prevent refuse from falling into public streets or places. Scavenger Company shall keep all trucks freshly painted in a uniform manner, and the firm name, telephone number, and truck number of each truck shall appear on each side thereof in a conspicuous manner. Scavenger Company shall keep all trucks in good maintenance and repair, regularly inspect same, and keep accurate records of all vehicle maintenance. Scavenger Company shall also be responsible for causing Blue Line Transfer, Inc. to maintain all of its equipment and vehicles in safe and sanitary condition in accordance with the standards set forth for Scavenger Company's vehicles in this Section 7.1.
- 7.2 Scavenger Company shall not litter premises in the process of making collections nor allow refuse to blow or fall from any container or vehicle used for collections. Scavenger Company shall clean-up any and all spills, including oil and debris on the streets, resulting from its operations as soon as possible on the same day as the occurrence. Scavenger Company shall use due care to prevent vehicle oil, vehicle fuel, or other liquids from being spilled during collection or transportation operations. Should Scavenger Company fail to promptly clean up such spills resulting from its operations after notice from City, Scavenger Company shall be liable to City for all reasonable costs incurred by City in doing so.
- 7.3 Scavenger Company shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste or who are otherwise directly involved in such collection. Scavenger Company shall also designate one or more qualified employees as supervisors of field operations, who will devote a substantial portion of their time in the field checking on collection operations, including responding to complaints.
- 7.4 Scavenger Company's general manager shall have e-mail capabilities to enable City and Scavenger Company's general manager to communicate via email. Scavenger Company's general manager shall respond to City email

correspondence within twenty-four (24) hours of the first business day after notification.

- 7.5 Upon request from City, beginning on the effective date, and then on a monthly basis thereafter if requested, Scavenger Company shall meet with the City to discuss progress of each active diversion program, quality and reliability of collection services, and compliance with the terms of the Agreement. In particular, Scavenger Company and City shall meet to explore options (a) if the implementation of the organic materials collection service (by which all source separated yard waste and organic materials are placed in a single separate container) causes containers to be upended by animals and the contents to be scattered, and (b) concerning implementing a yard waste and/or organic materials collection program(s) at multiple-unit residential properties and commercial properties. At each meeting, City and Scavenger Company shall have the opportunity to present and discuss proposed changes in service such as changing program requirements or modifying collection methods.
- 7.6 City shall have the right, but not the obligation, to observe and inspect all of Scavenger Company's operations under this Agreement. In connection therewith, City shall have the right to enter facilities used by Scavenger Company during operating hours, speak to any of Scavenger Company's employees and receive cooperation from such employees in response to inquiries. In addition upon reasonable notice and without interference with Scavenger Company's operations, City may review and copy any of Scavenger Company's operational and business records related to this Agreement if City so requests, and Scavenger Company shall make specified personnel available to accompany City employees on inspections and shall provide electronic copies of records stored in electronic media. All of such records shall be subject to confidentiality to the extent provided in, and in accordance with, Section 18 below.
- 7.7 The City Manager may direct Scavenger Company in writing to make changes in services and service levels, and in the manner in which services are performed, that do not cause an increase in the cost of performing the services and that do not cause a material decrease in the level of service, as determined by the City Manager.
- 7.8 Scavenger Company shall maintain and publicize an up-to-date website whereby customers can conduct business with Scavenger Company in English and Spanish. Scavenger Company is required to update the website monthly, and more frequently if necessary. At a minimum, the website shall:
- (a) Allow customers to view and pay bills issued by Scavenger Company;

- (b) Allow customers to request services such as, but not limited to, on-call collection service events, on-call bulky item collections, extra collections, service changes, temporary drop box service, service terminations, and service stops;
- (c) Provide answers to 10 frequently asked questions, including, but not limited to: proper container set-out instructions; list of acceptable yard waste and recyclable and organic materials; collection days (in response to customer input of service address); billing issues, customer service telephone and email contact information; and the Blue Line Transfer, Inc. transfer station site hours, directions, and acceptable materials;
- (d) Provide complete list of City-approved rates for all customers;
- (e) Allow customers to file complaints and receive from Scavenger Company e-mail responses to complaints;
- (f) Provide a link to enable customers to email Scavenger Company; and
- (g) Maintain and produce visitor logs and reporting, including, but not limited to, website and individual page visitation, number of web-based bill payments per month, number of website-submitted complaints per month, and individual and summary customer complaint and resolution reporting, subject to applicable privacy laws.

7.9 Scavenger Company shall employ only competent and qualified personnel who serve the public in a courteous, helpful, and impartial manner. Scavenger Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Scavenger Company shall regularly train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees 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, Scavenger Company shall take all appropriate corrective measures. City may require Scavenger Company to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

Scavenger Company shall adopt policies and procedures consistent with State and federal law that ensure a sober and drug-free workplace. This includes strictly prohibiting unlawful manufacture, distribution, possession, or use of any controlled substance in the workplace, regardless of whether the employee is on duty at the time. Further, the policies and procedures shall prohibit an employee from operating either City or Scavenger Company equipment or vehicles (whether

on or off duty) while under the influence of alcohol or drugs. The purpose of these policies and procedures is to ensure workplace safety, productivity, efficiency, and the quality of Scavenger Company's service to customers.

Scavenger Company shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for collection services or accept gratuities or compensation in exchange for additional collection services.

8. Records, Reports and Audited Statements

- 8.1 Scavenger Company shall keep and maintain accurate books and records clearly showing its revenues and expenses in connection with the operations provided for in this Agreement.
- 8.2 Each fiscal year of Scavenger Company, Scavenger Company shall provide City, within ninety (90) days of Scavenger Company's fiscal year-end, a copy of its annual audited financial statements and management letter for that fiscal year, provided the City Manager may grant an extension of thirty (30) days. Such financial statements shall include a supplemental combining schedule showing Scavenger Company's results of operations by franchise area, including the specific revenues and expenses in connection with the operations provided for in this Agreement and others included in such financial statements. The financial statements and supplemental schedule shall be prepared in accordance with generally accepted accounting principles (GAAP) and audited, in accordance with generally accepted auditing standards (GAAS), by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The CPA's opinion on Scavenger Company's annual financial statements and supplemental schedule shall be unqualified, except as to uncertainties for which the ultimate outcome cannot be determined by the date of the CPA's opinion.

Scavenger Company shall, in its agreement with the CPA performing its annual audit referred to above, have its CPA make available to City (or City's designated representative) such CPA's working papers related to the audit.

- 8.3 Scavenger Company shall make available to City such of its additional records, information or reports, as requested by City from time-to-time upon reasonable notice by City.
- 8.4 Scavenger Company agrees that the records of any and all related party entities, including, but not limited to, Blue Line Transfer, Inc., shall be made available to

City (or City's designated representative) so long as the related party entity does business with Scavenger Company in connection with the services under this Agreement and, in general, is associated with the removal and disposal of solid waste from Solid Waste Collection Zones 1 and 2. As part of the annual review requirement described in Section 8.2, Scavenger Company shall provide City, within ninety (90) days of Blue Line Transfer, Inc.'s fiscal year-end, a copy of Blue Line Transfer, Inc.'s annual audited financial statements and management letter for that fiscal year, provided the City Manager may grant an extension of thirty (30) days. The financial statements shall be prepared in accordance with GAAP and audited, in accordance with GAAS, by a certified public accountant (CPA) licensed in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The CPA's opinion on Blue Line Transfer, Inc.'s annual financial statements shall be unqualified, except as to uncertainties for which the ultimate outcome cannot be determined by the date of the CPA's opinion..

Blue Line Transfer, Inc. shall, in its agreement with the CPA performing its annual audit referred to above, have its CPA make available to City (or City's designated representative) such CPA's working papers related to the audit.

For the purposes of this Section 8.4, “related party entity” shall mean any entity the majority of which is owned or effectively controlled by one or more of the present shareholders, directors, officers or senior management employees of Scavenger Company or their families.

- 8.5 Annually during the period from the commencement of the franchise through the date which applies for purposes of measuring compliance with the diversion requirements of the Act, Scavenger Company shall supply City with a written report setting forth Scavenger Company's best estimate of the diversion rate as of the end of the most recent month. Scavenger Company shall also supply City with such related information as City may reasonably request and as Scavenger Company possesses concerning such estimate.
- 8.6 Scavenger Company shall develop and submit to City an annual sustainability report. Scavenger Company shall annually file its emissions data with The Climate Registry (“TCR”). The annual climate action report shall be submitted with Scavenger Company’s annual report. This report shall include: information on Scavenger Company’s emissions data filed with TCR; a description of Scavenger Company’s carbon footprint; and, a description of Scavenger Company’s activities both planned and implemented to reduce its carbon footprint.

9. Hold Harmless and Insurance

9.1 Scavenger Company shall indemnify and hold harmless City, its Council, boards, commissions, officers, agents, representatives and employees from any and all actions, claims or damages brought for or on account of injuries to or death of any person or damage to property resulting from or arising out of the operations of Scavenger Company, its officers, agents, employees or servants pursuant to this Agreement. The duty of Scavenger Company to indemnify and hold harmless shall include the duty to defend as set forth in California Civil Code Section 2778.

9.2 Scavenger Company shall have in effect during the term of the franchise, workers' compensation and employer liability insurance providing full statutory coverage. In signing this Agreement, Scavenger Company makes the following certification required by Section 1861 of the California Labor Code.

“I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability of workers' compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

9.3 Scavenger Company shall take out and maintain during the term of the franchise liability insurance for the following types and minimum amounts (such minimum amounts to be subject to review by the parties every five (5) years), provided that the stated limits in (a) and (b) below may be satisfied by any combination of basic and excess liability policies:

- (a) General liability, including comprehensive form, premises operations, products/completed operations, hazard, contractual insurance, broad form property damage, independent contractors and personal liability, with limits for bodily and property damage combined of \$1,000,000 each occurrence and \$5,000,000 aggregate.
- (b) Automobile liability, including comprehensive form, owned, hired and non-owned, with a limit of \$2,000,000 for bodily injury and property damage combined.
- (c) Excess liability, umbrella form, with a limit for bodily injury and property damage combined of \$10,000,000 each occurrence and \$10,000,000 aggregate.
- (d) The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of

California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of A or better.

The policies shall contain endorsements or certificates in substantially the following form if available from the insurance companies:

- (i) Workers' Compensation and Employers' liability Policy.
- “Prior written notice shall be given to the Insured in the event of cancellation or nonrenewal of this policy in accordance with the terms of this policy.” (In the event that Scavenger Company receives any such notice, it shall immediately send a copy to:

Attention: (Brisbane contact info).

- “Insurer waives all right of subrogation against City and its officers and employees for injuries or illnesses arising from work performed for City.”

- (ii) Comprehensive General Liability Policy: Automobile liability Policy; Pollution Liability Policy; and Hazardous Materials Policy.

- “Prior written notice shall be given to the Insured in the event of cancellation, reduction of coverage, or nonrenewal of this policy in accordance with the terms of this policy.” (In the event that Scavenger Company receives any such notice, it shall immediately send a copy to:

Attention: (Brisbane contact info).

“The City, its officers, employees, and agents are additional insureds on this policy.”

“This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”

“Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or reconvened against the Scavenger Company.”

Scavenger Company remains responsible for the payment of all losses and investigation, claim administration and defense expenses, including those of City.

No later than thirty (30) days before the effective date, Scavenger Company shall furnish City one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder is in force, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City. Scavenger Company shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the term of this Agreement.

In the event performance of any services is delegated to a subcontractor, Scavenger Company shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the work. The liability insurance required by this Agreement and the automobile liability policy required by this Agreement shall cover all subcontractors or the subcontractor must furnish evidence of separate insurance meeting all of the requirements above.

Scavenger Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Scavenger Company from any obligation under this Agreement. If any claim is made by any third person against Scavenger Company or any subcontractor on account of any occurrence related to this Agreement, other than claims by employees for work-related incidents, Scavenger Company shall promptly report the facts in writing to the insurance carrier and to City.

If Scavenger Company fails to procure and maintain any insurance required by this Agreement, City may take out and maintain such insurance as it may deem proper and may require Scavenger Company to reimburse it for the cost incurred within thirty (30) days and/or deduct the cost from any monies due Scavenger Company. City may also treat the failure as a Scavenger Company default.

City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

10. Hazardous Waste Indemnification

Scavenger Company shall indemnify, defend and hold harmless City and its officers, employees and agents (collectively, the "Indemnitees") against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous wastes released, spilled or

disposed of by Scavenger Company pursuant to this Agreement. 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, protect, hold harmless and indemnify Indemnitees from liability and shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Scavenger Company is not required to indemnify the Indemnitees against claims arising from Scavenger Company's delivery of solid waste, recyclable materials, yard waste or organic materials to the Blue Line Transfer, Inc. transfer station, or their subsequent delivery to other processing locations or the ultimate disposal site, unless such claims are due to Scavenger Company's negligence or willful misconduct.

11. Franchise Termination

- 11.1 In the event Scavenger Company defaults in the performance of any of the duties to be performed by it under the terms of this Agreement, City shall give Scavenger Company written notice, either by mail or by personal service, setting forth the default. Scavenger Company shall correct such default within fifteen (15) days after receipt of such notice unless the default cannot, by its nature, be cured within said period, in which case the cure period shall be extended for such additional time as is reasonably necessary to effect a cure, provided that Scavenger Company shall commence efforts to effect a cure as soon as practicable and shall diligently pursue and complete the cure. If Scavenger Company fails, neglects or refuses for the applicable cure period to correct any default which constitutes a material breach of this Agreement (other than Scavenger Company's failure to divert the percentage of the City's solid waste, and/or perform such other actions, as necessary for City to achieve compliance, with respect to Solid Waste Collection Zones 1 and 2 only, with the requirements of the Act as it may be amended from time to time), then City, without further notice and without suit or other proceedings, may cancel and annul the rights and privileges of the franchise grant. Nothing in this section shall prohibit the parties from meeting to discuss and negotiate ways to resolve the issue.
- 11.2 In the event City elects to terminate the franchise grant pursuant to Section 11.1 above, City shall have the right forthwith to grant a franchise to another scavenger company or City may elect to assume responsibility for collection of solid waste within all or any portion of its jurisdiction. Until such time as trucks and other equipment are either provided by another scavenger company or are acquired by City for its own use, City may take possession of the trucks and other equipment of Scavenger Company used to perform work under this Agreement. In such event, City shall pay to Scavenger Company the reasonable rental value of such trucks and equipment, and keep them in good maintenance and repair, during the

time the same are used by City. City and its authorized representatives shall also have access to Scavenger Company's records for the purpose of billing service accounts during the period City is providing the services described in this Agreement, and shall retain all fees collected for such services.

- 11.3 In the event of any dispute arising between the parties under this Agreement, the parties shall first submit such dispute to non-binding mediation to be completed within ninety (90) days before a JAMS mediator having experience with contracts similar to this Agreement and that is mutually acceptable to the parties. If the parties are unable, after a period of thirty (30) days, 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 litigation. The prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorney's fees, costs and necessary disbursements, including expert witness fees, incurred in such litigation.
- 11.4 If Scavenger Company shall at any time during the term of this Agreement or any extension thereof, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Scavenger Company, or if Scavenger Company shall be adjudged bankrupt or insolvent by any Court, or if a receiver or trustee in bankruptcy or a receiver of any property by Scavenger Company shall be appointed in any suit or proceeding brought by or against the Scavenger Company, or if Scavenger Company shall make an assignment for the benefit of creditors, then and in each and every such case, and provided that such proceedings, adjudication, appointment or assignment, as the case may be, continue in effect for ninety (90) days without being vacated, removed or withdrawn, this Agreement shall immediately cease and come to an end, and the rights and privileges granted shall immediately be cancelled and annulled without notice or action required on behalf of City.
- 11.5 Notwithstanding any other provision herein, no default, delay or failure to perform on the part of either party shall be considered a breach hereunder if such default, delay or failure to perform is due to causes beyond such party's control, including, but not limited to, riots, civil disturbances, actions or inactions of governmental authorities, epidemic, war, embargoes, severe weather, fire, earthquake, acts of God, defaults by the other party, or defaults by carriers. In the event of any such default, delay or failure to perform, any dates or times by which the affected party otherwise is scheduled to perform shall be extended for a period of time equal in duration to the additional time required because of the excused default, delay or failure to perform; provided, however, that in the case of

Scavenger Company's inability to perform due to a labor strike or work stoppage by Scavenger Company's employees (other than in sympathy with any labor strike or work stoppage by employees of a third party), the dates or times for performance shall not be extended beyond a period of five (5) days. Irrespective of any grace period provided for in this Agreement, Scavenger Company shall immediately restore service after such grace period and pick up all solid waste accumulated during such period.

12. Assignment

Scavenger Company acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Scavenger Company to perform the services specified herein based on (i) Scavenger Company's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, and (ii) Scavenger Company's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Scavenger Company to perform the services to be rendered by Scavenger Company under this Agreement.

Scavenger Company shall not assign its rights or delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a Scavenger Company default.

For the purpose of this Section, "assignment" shall also include (i) a sale, exchange or other transfer to a third party not controlled by the then stockholders of Scavenger Company of substantially all of Scavenger Company's assets dedicated to service under this Agreement; (ii) a sale, exchange or other transfer of outstanding common stock of the Scavenger Company to a person who is not a shareholder as of the effective date and which results in a change in control of Scavenger Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change in control of Scavenger Company; and (iv) any assignment of this Agreement or of all or substantially all of Scavenger Company's assets dedicated to service under this Agreement by operation of law, including an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this Agreement, or appointment of a receiver taking possession of Scavenger Company's property, or transfer of such property occurring in the event of a probate proceeding.

"Change in control of Scavenger Company" shall mean a transfer of more than fifty percent (50%) of Scavenger Company's voting stock to one or more persons that are not

then stockholders of Scavenger Company, relatives of any such stockholders or controlling, controlled by or under common control with any such stockholders.

In the event of any assignment, Scavenger Company shall perform in accordance with a reasonable transition plan and direct route supervisors to provide “ride-alongs” so that the new service provider’s employees may ride with drivers in collection vehicles during collection operations. Scavenger Company will direct its drivers and other employees to provide accurate information to the new provider about routing and customers.

13. Waiver

The waiver by either party of any breach or violation of any term or condition of this Agreement or of any provision of law by the other party, shall not be deemed to be a waiver of the term, condition or provision of law, or of any subsequent breach or violation of the same or any other term, condition or provision of law. The acceptance by City of any franchise fee or other fee or other monies which may become due hereunder to City shall not be deemed to be a waiver of any preceding breach or violation by Scavenger Company.

14. Administration

The administration and enforcement of this Agreement shall be the responsibility of the City Manager or a designated representative of that office. This section is not intended to indicate or suggest the City Manager has the authority to grant, amend, or revoke the franchise.

15. Independent Contractor

Scavenger Company, its employees and agents, are independent contractors and not employees or agents of City. The parties intend that Scavenger Company shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner or joint venturer with City. No employee or agent of Scavenger Company shall be deemed to be an employee or agent of City. Except as expressly provided herein, Scavenger Company shall have the exclusive control over the manner and means of conducting the services performed under this Agreement, and over all persons performing such services. Scavenger Company shall be solely responsible for the acts and omissions of its officers, employees, subcontractors and agents. Neither Scavenger Company nor its officers, employees, subcontractors or 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.

16. Notices

All notices required hereunder shall be in writing and shall be delivered in person or transmitted by the United States Postal Service, certified mail, postage prepaid, and addressed as follows:

CITY: City Manager
City of Brisbane
50 Park Lane
Brisbane, CA 94005

SCAVENGER COMPANY: President
South San Francisco Scavenger Co., Inc.
P.O. Box 348
South San Francisco, CA 94080

or to such other person or address as may be specified from time to time in writing by either party. Each such notice shall be deemed effective upon receipt or, if mailed as aforesaid, three (3) business days after so mailed.

17. Compliance with Law

In providing the services required under this Agreement, Scavenger Company shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, and by City, now in force and as they may be enacted, issued or amended during the term of this Agreement, and with all permits affecting the services to be provided hereunder.

18. Reports as Public Records

The reports, records and other information submitted or required to be submitted by Scavenger Company to City, including documents copied pursuant to Section 7.6 and documents copied or submitted pursuant to other provisions of this Agreement, are or may be public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by City upon request.

City agrees to inform Scavenger Company as soon as reasonably feasible upon its receipt of a request under the California Public Records Act for disclosure of any documents relating to Scavenger Company that contain confidential financial and/or operational information belonging to Scavenger Company so that Scavenger Company will have an opportunity to explore whether an exemption from disclosure is available. However,

Scavenger Company will not object to City making available to the public any information submitted by the Scavenger Company, or required to be submitted, in connection with Scavenger Company's maximum rate applications, including, but not limited to, records described in Section 6, provided that disclosure of such information or records is subject to disclosure under the terms of the California Public Records Act, in the City's sole discretion.

19. No Gifts

Neither Scavenger Company nor its employees shall provide, directly or indirectly, any gifts or gratuities to any elected or appointed City official, or to any City employee responsible for administering any provision of this Agreement. Elected or appointed City officials affected by this provision include members of the City Council, the City Manager and any assistant, deputy or interim City Manager, and department-director level employees.

20. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, irrespective of choice of law principles.

21. 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 San Mateo County.

22. Parties in Interest

Nothing in this Agreement is intended to confer any rights on any persons other than the parties to it and their permitted successors and assigns.

23. 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 nor of any subsequent breach or violation of the same or any other provision.

24. Exhibits

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

25. Section Headings

The article headings and section 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.

26. 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.

27. Costs and Attorneys' Fees

The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement shall recover its reasonable costs expended in connection with such an action from the other party, including its reasonable attorneys' fees.

28. No Damages for Invalidation of Agreement

If a final judgment of a court of competent jurisdiction determines that this Agreement is illegal or was unlawfully entered into by City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory.

29. References to Laws

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions the specified agencies are currently performing.

30. Indemnity Against Challenges to Agreement

Scavenger Company shall indemnify, defend and hold harmless City and its officers, employees and agents (collectively, the "Indemnitees") from and against any and all liability, claim, demand, action, proceeding or suit of any and every kind and description brought by a third party challenging the process by which proposals were solicited and evaluated, or this Agreement was negotiated or awarded to the extent that such liability, claim, demand, action, proceeding or such was caused by Scavenger Company's failure to comply with applicable law or the instructions of any Indemnatee with respect to such process.

31. Amendments

This Agreement may be amended from time to time only by written agreement between the parties signed by an authorized representative of each party.

32. Successors and Assigns

This Agreement shall be binding upon, and shall inure to the benefit of, each of the permitted successors and assigns of the parties.

33. Integration; Severability

This Agreement, including the Exhibits hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements between the parties, whether written or oral, relating to such subject matter. If a court finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall remain in effect. The parties further agree to replace such void or unenforceable provision with a valid and

enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

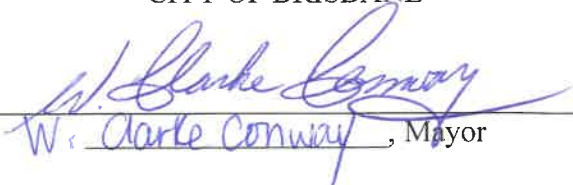
IN WITNESS WHEREOF, the parties have executed this Agreement.

SOUTH SAN FRANCISCO SCAVENGER CO.,
INC.



Doug Button, President

CITY OF BRISBANE



W. Clarke Conway, Mayor

ATTEST:



Sheri Spediacci, City Clerk

APPROVED AS TO FORM



Michael Roush, City Attorney

EXHIBIT A
DETAILED ZONE MAP



includes Main St and Bayshore S of Main



**City of Brisbane
Solid Waste Collection Zone
1 - A**



**City of Brisbane
Solid Waste Collection Zone
1 - B**





**City of Brisbane
Solid Waste Collection Zone
2**

EXHIBIT B

MAXIMUM SERVICE RATES

EFFECTIVE DECEMBER 1, 2014

1. RESIDENTIAL PROPERTY SERVICE -

Single family, and up to four units. As per section 2.14.

Rate is per month, one pickup per week

Includes 64 gallon weekly curbside recycling container service

Includes up to 96 gallon bi-weekly yard waste container service, and once the organic materials collection service is implemented (expected by January 2015) includes up to 96 gallon weekly yard waste and organic materials container service.

20	Gallon Trash container	\$ 17.81
32	Gallon Trash container	28.49
64	Gallon Trash container	56.98
96	Gallon Trash container	85.47

2. MULTIPLE UNIT RESIDENTIAL PROPERTY SERVICES

Multi Unit Properties are five or more units, as per section 2.15.

Rates listed are monthly, for one pickup per week.

Multiple weekly pickups will be prorated accordingly.

Rates apply individually to collection services for solid waste, source separated yard waste, and source separated organic materials.

Collection services for source separated recyclable materials are included in these rates.

0 - 30	Gallons	\$ 26.69
31 - 32	Gallons	28.50
33 - 40	Gallons	35.56
41 - 45	Gallons	40.07
46 - 50	Gallons	48.94
51 - 64	Gallons	56.94
1/2 - yard	Container (96 gallon container)	112.37
1 - yard	Container	224.73
2 - yard	Container	277.15
3 - yard	Container	415.70
4 - yard	Container	554.19
5 - yard	Container	692.75
6 - yard	Container	831.30

3. COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL CAN SERVICE-

Rate is per month, one pickup per week, for Solid Waste
and / or Source Separated Organic Materials
Includes Source Separated Recyclable Materials

0 - 30	Gallons	\$ 26.69
31 - 32	Gallons	28.50
33 - 40	Gallons	35.56
41 - 45	Gallons	40.07
46 - 50	Gallons	48.94
51 - 64	Gallons	56.94

4. COMPACTED YARDAGE (All Customers)

Per Cubic Yard, per pickup 56.52

5. DEBRIS BOXES

Temporary / One Time Use
Residential, Multi Unit Residential, Commercial, Industrial,
and Institutional Customers
Rate is for each pickup

5 yard	Container, 1 ton limit	\$ 236.30
7 yard	Container, Dirt - Rock - Concrete	515.92
14 yard	Container, 3 ton limit	515.92
20 yard	Container, 5 ton Limit	702.32
30 yard	Container, 6 ton limit	1,013.00

Rental Charge (per day, over 3 days for 5 yard
and over 7 days for others)

\$ 23.27

Permanent Commercial, Industrial, and Institutional use

7 yard	Container, Dirt - Rock - Concrete	\$ 434.98
14 yard	Container, 3 ton limit	434.98
20 yard	Container, 5 ton Limit	621.43
30 yard	Container, 6 ton limit	932.14

Overweight Charge

Per ton over limit \$ 134.55

6. CONTAINER SERVICE

Commercial, Industrial, and Institutional Property Services.
Rate is per month, one pickup per week, for Solid Waste
and / or Source Separated Organic Materials
Includes Source Separated Recyclable Materials

A) Regular Pickup (Rate per month, one pickup per week)

1/2 - yard Container (96 gallon container)	\$ 112.37
1 - yard Container	224.73
2 - yard Container	277.15
3 - yard Container	415.70
4 - yard Container	554.19
5 - yard Container	692.75
6 - yard Container	831.30

B) On Call Pick-up Per yard

Per pick-up, per yard	\$ 32.01
Plus Container Rental per Month	

Rental charges (per month)

1 - yard Container	\$ 50.01
2 - yard Container	54.08
3 - yard Container	58.15
4 - yard Container	62.47
5 - yard Container	70.73
6 - yard Container	75.06

7. In the case of any additional service not described in the Agreement, Scavenger Company shall charge such amount as is agreed to by the customer.

EXHIBIT C
SERVICE CATEGORIES TO BE BENCHMARKED

Residential Container Service:
32 Gallons

Commercial and Institutional Container Service:
32 Gallons

Commercial and Institutional Compactor Service:
Per Cubic Yard

Debris Box Service:
14 Yard

Commercial and Institutional Bin Service-Regular Pick-Up:
2 - Yard (Front End Loader Bin)

EXHIBIT D
BENCHMARKING JURISDICTIONS

Alameda
Burlingame
Campbell
Castro Valley
Cupertino
Daly City
El Cerrito
El Sobrante
Fremont
Gilroy
Hayward
Hercules
Los Altos
Los Gatos
Martinez
Menlo Park
Millbrae
Monte Sereno
Morgan Hill
Palo Alto
Piedmont
Pinole
Pittsburg
Richmond
San Bruno
San Leandro
San Mateo
San Pablo
Saratoga
Sunnyvale
Union City
Woodside

EXHIBIT E

See Attached

Service	Service Description	Service Type/Material	Freq	Trips/yr	High/mo.	Low/mo.	Avg/mo.	Other	Rt	Last Service Date :	Work Flow Code :
20DBPGRN	20 YD PERM. DEBRIS BOX	GREEN WASTE	On-Call	55	8	1	5		AREA3	8/13/2014	D/R
14DBTTR	14 YD TEMP. DEBRIS BOX	TRASH	On-Call	2	1	1	0	2X/yr	AREA3	5/20/2014	D/R
14DBPMETAL	14 YD PERM. DEBRIS BOX	METAL	On-Call	0	0	0	0	0	AREA3	5/19/2014	DELIVERDB
C96MP	96 GALLON MIXED PAPER RECYCLE	COMMERCIAL	On-Call	51	5	2	4		704	2/15/2013	SERVICETOT
MISCVC	MISC. SERVICE		On-Call	57	11	1	5		101	7/30/2014	SPECIAL
LOOSEC8	LOOSE CARDBOARD		On-Call	0	0	0	0	0	201		
LOOSEC8	LOOSE CARDBOARD		On-Call	0	0	0	0	0	201		

AMENDMENT NO. 1

This Amendment No. 1 (this "Amendment") is made and entered into as of May 18, 2017 by and between the City of Brisbane, a California municipal corporation ("City"), and South San Francisco Scavenger Co., Inc. ("Scavenger").

WHEREAS, City and Scavenger entered into that certain Franchise Agreement for the Collection and Disposal of Recyclable Materials, Organic Materials and Solid Waste in the City of Brisbane, dated November 20, 2014; and

WHEREAS, pursuant to the methodology set forth in Section 6.2 of the Agreement, maximum rates under the Agreement are to be increased by 2.62% effective July 1, 2017; and

WHEREAS, the City has requested Scavenger to provide manual pick up of litter every two weeks along Sierra Point Parkway which Scavenger is willing to do in exchange for adjusting the number of free box loads of yard waste from thirty (30) to twenty (20) under Section 5.12 Annual Yard Waste Clean Up; and

WHEREAS, the parties wish to amend the Agreement to reflect the foregoing changes;

NOW, THEREFORE, the parties agree as follows:

1. Section 5.12 of the Agreement is hereby amended to read as follows, effective as of the date hereof:

"Annual City Wide Yard Waste Clean-Up. Each year during the term of the franchise, Scavenger Company shall provide, for City residents only, at a location in the City to be determined by mutual agreement, one (1) free weekend City-wide collection, at which it will accept up to twenty (20) free 14 or 20 cubic yard debris box loads of yard waste. The date for such collections shall be publicized in advance by Scavenger Company. The collection shall be made each year throughout the term of this franchise in accordance with practices and procedures established by Scavenger Company, and approved by the City Manager. Any debris box loads in excess of the twenty (20) per year described above will be charged to the City at the applicable maximum rate(s)."

2. Section 5.14, paragraph 4 of the Agreement is hereby amended to read as follows, effective as of the date hereof:

"Upon request of City, abandoned waste cleanup collection service may include collection of litter and litter abatement activities along the frontage of City owned properties in Zone 1 and 2; provided, however, that Scavenger Company shall provide manual cleanup of litter along the frontage of the following City-owned properties on the following schedules:

Semi-Monthly

Zone 1- Sierra Point Parkway

Monthly

Zone 1- Bayshore Boulevard

Zone 1-Main Street

Zone 1-Guadalupe Canyon Parkway

Zone 2- Industrial Way

and, provided, further, that the cleanup of abandoned waste or litter along the frontage of any of such streets outside the customary cleanup day shall count towards the limits in the first sentence of this Section 5.14.”

3. Effective as of July 1, 2017, maximum rates shall be increased by 2.62%, pursuant to Section 6.2 of the Agreement. Exhibit B (Maximum Service Rates) of the Agreement shall be deemed amended accordingly.

4 Except as expressly set forth in this Amendment, the terms and conditions of the Agreement remain in full force and effect.

CITY OF BRISBANE

SOUTH SAN FRANCISCO SCAVENGER
CO., INC.

By: Lori Lue
Name: Lori Lue
Its: Mayor

By: [Signature]
Doug Button
President

Approved As To Form:

Michael Roush
Michael Roush, City Attorney

AMENDMENT NO. 2 TO FRANCHISE AGREEMENT WITH SOUTH SAN FRANCISCO SCAVENGER CO., INC.

This Amendment No. 2 (the "Second Amendment") is made June 6, 2019 between the City of Brisbane ("City") and the South San Francisco Scavenger Co., Inc. ("Scavenger").

RECITALS

- A. City and Scavenger entered into a Franchise Agreement for the Collection and Disposal of Recyclable Materials, Organic Materials and Solid Waste in the City, dated November 20, 2014 (the "Franchise Agreement").
- B. The City and Scavenger first amended the Franchise Agreement on May 18, 2017 concerning, among other things, manual pick up of litter long Sierra Point Parkway.
- C. Under the Franchise Agreement, the term of the franchise for Zone 2 ends on November 30, 2019 unless such term is extended by the mutual agreement of the parties.
- D. Representatives of Scavenger have requested that the term of the franchise for Zone 2 be extended.
- E. The City Council Infrastructure, Utilities and Franchise subcommittee has considered such request and recommends that the term be extended for five years, i.e., to November 30, 2024.
- F. It is in the best interest for the maintenance of public health, safety and welfare to extend the term of the franchise for Zone 2.

NOW, THEREFORE, in consideration of the mutual promises in the Franchise Agreement and this Second Amendment, City and Scavenger agree as follows:

- 1. As provided in Section 3.1 of the Franchise Agreement, the term of the franchise for Zone 2 shall be extended until November 30, 2024.
- 2. Except as set forth in the First Amendment and this Second Amendment, as well as any other resolutions adopted by the City Council of the City concerning Service Rates, the terms of the Franchise Agreement remain in full force and effect.

CITY OF BRISBANE



Madison Davis, Mayor

SOUTH SAN FRANCISCO SCAVENGER CO., INC.



Doug Button, President

Approved as to form:



Thomas McMorrow, City Attorney