

AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE MATTER IN THE CITY OF SOUTH SAN FRANCISCO

This Agreement, dated July 9, 1997, is made by and between the City of South San Francisco, a municipal corporation (hereinafter "City"), and South San Francisco Scavenger Company, Inc., a California corporation (hereinafter "Scavenger Company"), with reference to the following:

WHEREAS, the Integrated Waste Management Act of 1989 ("AB 939") requires that City divert fifty percent (50%) of its waste stream from landfills by the year 2000; 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, 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, such new programs and facility will entail a significant, long-term financial investment; and

WHEREAS, City desires for Scavenger Company to assume, and Scavenger Company is willing to assume, the obligation to ensure that compliance with the requirements of AB 939 is achieved, subject to the terms and conditions in this Agreement and applicable law; and

WHEREAS, City desires, and Scavenger Company is willing to provide, an indemnity, on the terms and conditions in this Agreement, against penalties assessed for failure to meet the 50% diversion requirement under AB 939; 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 the City pursuant to an exclusive franchise agreement with City entitled AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE REFUSE IN THE CITY OF SOUTH SAN FRANCISCO and dated August 1, 1990 (hereinafter the "Prior Franchise Agreement"); and

WHEREAS, Scavenger Company currently collects and sells recyclable materials generated in City pursuant to an exclusive franchise agreement with City entitled AGREEMENT TO PROVIDE RECYCLING SERVICES and dated July 20, 1989 (hereinafter the "Prior Recycling Agreement"); and

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

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 1.3 below, as City's Scavenger and Authorized Recycling Agent under applicable law, to collect, remove, transport, recycle, compost and dispose of all solid waste generated in City 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.

(a) 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.

1.3 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 to or collection by a collection or 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;

(b) recyclable materials and salvageable materials generated at any residential, commercial and industrial or institutional property that are source separated may be sold or donated by the generating person to any charitable entity;

(c) recyclable materials and salvageable materials generated at any residential, commercial and industrial or institutional property that are source separated may be accumulated by the generating person for collection and collected

by licensed junk collectors;

(d) solid waste generated at any residential, commercial and industrial, or institutional property may be personally transported by the person generating same to any transfer station or materials recovery facility;

(e) 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;

(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 transfer station or materials recovery facility; and

(g) hazardous waste and household hazardous waste may be disposed of in any lawful manner.

1.4 Except as expressly provided herein, this Agreement shall supersede the Prior Franchise Agreement and the Prior Recycling Agreement as of the effective date set forth in Section 3 below, when such Prior Agreements shall cease to have any effect (except for periods prior to such effective date). In particular, the amount remaining in the balancing account under the Prior Franchise Agreement as of the effective date of the new franchise granted hereunder shall be eliminated without cost to City.

## 2. Definitions.

2.1 "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.

2.2 "Collect" or "collection" means the collection, transportation, and removal of solid waste within and from City.

2.3 "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.

2.4 "Construction debris" means construction materials generated during the construction or renovation of a residential, commercial and industrial or institutional property.

2.5 "Containers" means any and all types of solid waste receptacles including but not limited to rectangular bins, cylindrical containers commonly available at retail stores for residential use, and any and all other kinds of receptacles, irrespective of size or shape.

2.6 "Demolition debris" means used construction materials generated during the razing or renovation of a residential, commercial and industrial or institutional property.

2.7 "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.

2.8 "Household hazardous waste" means hazardous household waste generated at residential properties within the City.

2.9 "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.

2.10 "Licensed junk collector" means a person that is licensed with City to collect source separated recyclable materials and source separated salvageable materials from the person generating such materials in accordance with applicable law.

2.11 "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 AB 939, including, without limitation, paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, beverage containers, compostable materials (including 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 2.11.

2.12 "Residential property" means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied. Complexes of four or more units, whether in a single structure, or connected structure, or series of structures may be subject to procedures and rates which differ from other lower density residential properties.

2.13 "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 2.13.

2.14 "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.

2.15 "Source separated," as to recyclable materials, means recyclable materials 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 2.11 above that is saleable without further sorting. "Source separated," 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.)

2.16 "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 shall be for a period of twenty (20) years, commencing on the effective date of November 1, 1997 and ending October 31, 2017.

3.2 Subject to Section 10.2 of this Agreement, Scavenger Company shall have one (1) option to extend this Agreement and the franchise granted hereunder on the terms and conditions herein for a period of ten (10) years commencing November 1, 2017 and ending October 31, 2027. Notice of Scavenger Company's exercise of such option must be given at least six (6) months prior to October 31, 2007. City shall endeavor to notify Scavenger Company in writing of this deadline at least nine (9) months prior to October 31, 2007, provided that City's failure to do so shall not serve to extend the deadline. The option to extend hereunder may not be exercised unless Scavenger Company shall be in material compliance with the terms of this Agreement at the time of exercise and on October 31, 2017.

3.3 Prior to Scavenger Company's exercise of its option to extend, the parties shall meet to review the terms and conditions of this Agreement in light of changes in circumstances and conditions affecting the subject matter hereof that have occurred since the date hereof. Each party hereby agrees to use its best efforts to identify and agree to any modifications in such terms and conditions needed to fairly and reasonably address any such changes in circumstances and conditions.

#### 4. Franchise Fee.

4.1 On or before the twentieth (20th) day of each month during the term of this franchise, Scavenger Company shall remit to City a sum of money equal to seven percent (7%) of the gross revenues collected by Scavenger Company from customers within the City limits during the preceding calendar month as a franchise fee. If the franchise fee is not paid on or before the twentieth (20th) day of any month, a late payment fee in an amount equal to eighty-three one-hundredths of a percent (0.83%) of the amount owing per month will be charged for each thirty (30) day period the franchise fee remains unpaid.

4.2 Each monthly remittance to City shall be accompanied by a statement detailing gross revenue of Scavenger Company from customers for the period covered from operations conducted or permitted pursuant to this Agreement. In addition, Scavenger Company shall maintain copies of all billings and collection records for three (3) years following the date of billing for inspection and verification by City.

#### 5. Services.

5.1 Solid Waste. Scavenger Company shall collect and dispose of all solid waste (other than source separated recyclable materials, which are subject to Section 5.2 below) generated by any person at every residential, commercial and industrial, and institutional property within City at least once each week on a regularly scheduled day in accordance with this Agreement.

5.2 Recyclable Materials. Scavenger Company shall collect all source separated recyclable materials generated by any person at every residential property (excluding multiple-unit residences) within City at least once each week on a regularly scheduled day in accordance with this Agreement, except that 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 City 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.

(a) 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 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 demand for collection is made by the customer or City.

5.4 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. 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.

5.5 Containers-Recyclable Materials.

(a) Single Unit Residential. Scavenger Company shall provide and distribute one set of residential recycling containers, at no cost in addition to the monthly rates, to each residential property (other than multiple-unit residential properties) in City. The recycling containers are those containers described in the attached Schedule 1, 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.

(i) Replacement of Containers. The parties acknowledge that from time to time a single unit residential generator may damage or destroy the recycling containers supplied by Scavenger Company, and that such unusual loss or damage would not be considered within the reasonable control of the residential generator. Scavenger Company agrees that it will encourage the residential generator to replace said recycling containers at the expense of the residential generator. To this end, Scavenger Company shall make sets of three (3) such recycling containers available for purchase by any single unit residential generator at a price not to exceed the prevailing cost to Scavenger Company. The parties also acknowledge that from time to time residential recycling containers may be stolen from the curb. When notified of such occurrence, Scavenger Company shall replace, at no charge to the single unit residential generator, not more than a reasonable number of times, the stolen container(s). The frequency with which this shall occur shall be determined mutually between City and Scavenger Company. Following the distribution of a recycling container to each single unit residential property, Scavenger Company shall not be required to purchase or provide additional recycling containers to such property unless requested to do so by City, or as replacement containers are needed by a residential generator because of unusual loss or damage beyond the reasonable control of the resident as described above. 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.

(b) Multiple-Unit Residential, Commercial and Institutional. Scavenger Company shall also make available recycling containers for each

multiple-unit residential, each commercial and industrial and each institutional property, within City of a size and shape suitable for each such location. The cost of supplying, repairing, and replacing such recycling containers shall be borne by Scavenger Company.

(c) Ownership. The ownership of all recycling containers purchased by Scavenger Company under this Agreement shall be and remain with Scavenger Company.

5.6 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.

5.7 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. As soon as the Blue Line Transfer, Inc. relocated transfer station and materials recovery facility referred to in the Recitals above are operational, Scavenger Company shall haul all solid waste collected by it in City to such facility. 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. In the event that such a disposal facility is not readily available due to no fault of Scavenger Company, or due to events beyond the control of Scavenger Company, such as acts of God, public emergency, strike or lockout by employees of another entity, Scavenger Company shall use its best efforts to locate such a disposal facility, but shall not be held liable to the extent that such lack of disposal facility prevents the hauling of solid waste to a site outside City.

5.8 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 24 hours per day.

5.9 Pick-Ups at City Facilities. Scavenger Company shall remove, without charge, all solid waste generated at all City facilities (of the nature and in the amounts currently collected) at least once per week, but Scavenger Company may charge all other public agencies for services rendered at the same rates and on the same basis as private firms or individuals are charged for similar services.

5.10 Annual Citywide Clean-Up. Scavenger Company shall provide one annual free all purpose City-wide collection, at which it will accept all nature of solid waste, except hazardous waste and household hazardous waste. The dates 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.

5.11 Additional Services. Scavenger Company shall provide additional

services upon request of City, or upon the proposal of Scavenger Company as approved by City pursuant to Section 5.13 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.

5.12 Permits 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 existing requirements for the renewal of such permits, licenses and approvals.

5.13 Diversion Requirement.

(a) Programs; AB 939 Compliance; Indemnification. In order to achieve compliance with the fifty percent (50%) or, if applicable, lesser diversion requirement of AB 939, Scavenger Company shall propose and implement various recycling, solid waste reduction, public education and reporting programs for City and its residents, including the basic elements set forth in Exhibit "A" attached to this Agreement. (Scavenger Company shall continue to propose and implement new or improved programs for so long as compliance with AB 939's diversion requirements is legally required.) Subject to the conditions set forth in Section 5.13(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 achieve compliance with the requirements of AB 939 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, after reasonable contest, by the California Integrated Waste Management Board as the result of the failure to meet such 50% or, if applicable, any lesser percentage diversion requirement imposed under AB 939 as it may be amended from time to time; provided, that Scavenger Company is given the opportunity to jointly control the contest of any such fines and/or penalties so imposed with City.

(b) City Responsibilities, Other Factors. Notwithstanding any other provision in this Agreement, Scavenger Company's obligations pursuant to Section 5.13(a), above, relating to AB 939 compliance and indemnification shall depend upon:

(I) City taking all actions 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 hereunder and to gain the waste diversion participation of residential properties, commercial and industrial properties and institutional properties within City as deemed reasonably necessary to ensure diversion goal compliance;

(iii) The fines or penalties which give rise to such indemnification obligations, or the failure to achieve AB 939 compliance, not

resulting from the 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 Exhibit "A" to ensure that the 50% (or lesser) diversion requirement of AB 939 is achieved, 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 Section 6 below to fund additional efforts which were unforeseeable on the date hereof and which Scavenger Company has reasonably not undertaken to date (excluding any residential yard waste program, and excluding the construction and operation of a new materials recovery facility in a commercially reasonable manner for the purpose of achieving compliance with AB 939's diversion requirements) to satisfy such diversion requirement, provided that, if City is unwilling to do so, Scavenger Company shall be relieved of its AB 939 compliance and indemnification obligations set forth in Section 5.13(a) above.

## 6. Rates.

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 Sections 6.2, 6.3 and 6.4 below. 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 increased July 1st every year (beginning in 1998, but excluding the year 2000 and every third year thereafter) by an amount equal to eighty percent (80%) of the percentage increase, 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; provided, however, that, in 1998, the maximum rates set forth on Exhibit "B" shall be adjusted by the percentage increase in the Index for the prior seventeen (17) months, using the Index most recently published before March 31, 1998 and before November 1, 1996. 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 increase under this Section 6.2, Scavenger Company shall file with City a written

Notice of Intention to adjust each of the then current maximum rates effective as of July 1st of the same year by the above-specified percentage of the percentage increase in the Index for the applicable period.

(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 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 2000 and every third year thereafter (I) in the case of each of the service categories set forth in Exhibit "C" attached to this Agreement, not to exceed ninety-five percent (95%) of 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", 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.

(1) 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, 2000 were \$4,480, Scavenger Company's Notice of Intention for July 1, 2000 would specify \$133 [\$4,480 divided by 32 multiplied by .95] as the new maximum rate for such service category, and could specify \$266 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 of the franchise, but at least every seven (7) years after the beginning of such term, City and Scavenger Company shall meet to review the list of jurisdictions set forth in Exhibit "D" for the purpose of assuring that the services and rate structures in such jurisdictions are comparable to those of Scavenger Company in City. Such comparison shall take into account such factors as each party reasonably believes to be relevant, including those set forth in Exhibit "E" attached to this Agreement. Any change to the jurisdictions set forth in Exhibit "D" shall require the consent of each party, which consent shall not be unreasonably withheld.

## 7. Provisions Applicable to 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 filth, 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 vehicle used for collections. Scavenger Company shall clean-up any and all spills, including oil and debris on the

streets, resulting from its 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 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.

## 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, commencing with fiscal year 1997-98, 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.

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.

8.3 Scavenger Company agrees that the records of any and all related party entities including but not limited to Blue Line Transfer, Inc. but excluding Royal Salvage Company shall be made available to City (or City's designated representative) so long as the related party entity does business with Scavenger Company and, in

general, is associated with the removal and disposal of solid waste or recyclable materials. As part of the annual audit 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 purposes of this Section 8.3, "related party entity" shall mean any entity the majority of which is owned or effectively controlled by one or more of the present and former shareholders, directors, officers or senior management employees of Scavenger Company or their families.

8.4 Every three (3) months during the period from the commencement of the franchise through the date which applies for purposes of measuring compliance with the diversion requirements of AB 939, 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.

## 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:

(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 \$500,000 each occurrence and \$500,000 aggregate.

(b) Automobile liability, including comprehensive form, owned, hired and non-owned, with a limit of \$1,000,000 for bodily injury and property damage combined.

(c) Excess liability, umbrella form, with a limit for bodily injury and property damage combined of \$5,000,000 each occurrence and \$5,000,000 aggregate.

Insurance certificates evidencing the required coverage shall be filed with City and shall be subject to approval by the City Attorney. City, its City Council, boards, commissions, officers, agents and employees shall be named as additional insureds on any such policies of insurance which shall also contain a provision that the insurance afforded thereby shall be primary. No such policy shall be canceled or modified except upon thirty (30) days' prior written notice to City.

## 10. Franchise Termination.

10.1 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 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, 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 ways to resolve the issue.

10.2 Notwithstanding Section 10.1, above, the sole remedy for Scavenger Company's failure to divert the percentage of the City's solid waste, and/or perform such other actions, as necessary to achieve compliance with the requirements of AB 939 as it may be amended from time to time, shall be as set forth in this Section 10.2. Provided that all the conditions to Scavenger Company's AB 939 compliance obligation set forth in Section 5.13(b), above, shall have been satisfied, and City shall have suffered material harm as the result of such failure by Scavenger Company to achieve compliance, Scavenger Company's ability to exercise its option to extend the term of this Agreement for an additional ten (10) years, under Section 3.2, shall be subject to approval by City, and such circumstances shall constitute the sole permissible ground for City to deny a requested extension of this Agreement under this Section 10.2.

10.3 In the event of termination of this Agreement for default by Scavenger Company as above specified, City shall have the right forthwith to grant a franchise to another scavenger service or to take possession of trucks and other equipment of Scavenger Company used to perform work under this Agreement. City shall have the right to retain possession of the trucks and equipment until other suitable trucks and equipment can be purchased or otherwise acquired by City for the purpose and City shall pay 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 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.

10.4 In the event of any dispute arising between the parties under this Agreement, the parties shall first submit such dispute to non-binding mediation before a recognized mediator having experience with contracts like the Agreement and that is mutually acceptable to the parties, provided that neither party shall unreasonably withhold its acceptance. If the parties are unable, after a period of thirty (30) days, 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.

10.5 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 canceled and annulled without notice or action required on behalf of City.

10.6 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.

11. Assignment.

11.1 Scavenger Company shall not assign this Agreement, or any interest therein, without the written consent of the City Council. City may review the competency and financial integrity of the proposed assignee. A consent to one assignment shall not be deemed to be a consent to any subsequent assignment. Any assignment without such consent and approval shall be void and shall at the option of City, terminate this Agreement.

City shall be notified of any stock transaction in which an existing stockholder transfers, sells or otherwise relinquishes majority interest in his or her stock in Scavenger Company.

Any stock transaction involving transfer, sale or exchange of stock which results in a change in majority control of Scavenger Company shall be subject to City review and approval.

12. Waiver.

12.1 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.

13. Administration.

13.1 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.

13.5 Termination of Blue Line Transfer Station

Within one year of commencement of operation of a new facility designed to handle waste transfer and AB 939 diversion requirements, including but not limited to a materials recovery facility or compliance with applicable diversion requirements of AB 939 through actions other than construction of a new facility, whichever occurs first, Blue Line Transfer Incorporated shall terminate operation of the transfer station it operates on Oyster Point Boulevard in South San Francisco.

14. Independent Contractor.

14.1 Scavenger Company, its employees and agents, are independent contractors and not employees or agents of City.

15. Notices.

15.1 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 Hall  
P.O. Box 711  
South San Francisco, CA 94083

SCAVENGER COMPANY: President  
South San Francisco Scavenger Co.  
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) days after so mailed.

16. Amendments.

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

17. Successors and Assigns.

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

18. Integration; Severability.

18.1 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.

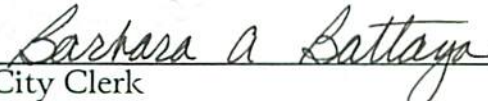
SOUTH SAN FRANCISCO SCAVENGER COMPANY, INC.

By: 

CITY OF SOUTH SAN FRANCISCO

By:   
City Manager

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
City Attorney

**SCHEDULE 1  
SINGLE-UNIT RESIDENTIAL RECYCLING CONTAINERS**

Scavenger Company shall provide to each residential unit, a set of three (3) recycling containers, specially made of rigid plastic construction for stacking into each other, to assist residents in participating in the recycling program.

One container is used to store glass; one container is used to store newspapers; and the third container is used to store metal food and beverage containers as well as PET plastic beverage containers.

Each container shall be respectively identified with contrasting lettering appropriately denoting: "glass", "newspapers", and "cans".

The distribution of the recycling containers shall be the responsibility of Scavenger Company, and the ownership of the recycling containers shall remain in Scavenger Company. Similar alternative containers may be provided upon mutual agreement between City and Scavenger Company.

## EXHIBIT A DIVERSION PROGRAM

### YEAR 2000 DIVERSION PROGRAM

In 1989, the California State Legislature passed Assembly Bill 939 which mandates that all cities and counties in the state divert 25% of their waste by 1995, and 50% by the year 2000. In 1990, when an initial survey was conducted, South San Francisco had a diversion rate of 11%. Through a variety of new programs, however, the City of South San Francisco has surpassed the 1995 goal, with a diversion rate of 25.31%. Although this is an important achievement, the City must continue to be aggressive in its diversion efforts in order to reach the goal of 50%. New programs will need to be implemented to reach 50%, and existing programs will need to be expanded aggressively. These new programs will take additional resources, yet they are important in order to reach the state mandated goals.

Below is an overview of existing programs and possible new programs that can bring South San Francisco above the 50% diversion rate goal. Much of the additional diversion will need to come from the commercial industrial sector, as a majority of the waste in the City comes from this sector. To achieve 50% will not only require strengthening existing programs and implementation of new programs, but also the construction of new sorting lines in order to extract additional materials from the waste stream. Expanding education, in both the residential and commercial/industrial sectors, stressing the importance of participating in the programs is also critical, and will represent a cost effective way to increase diversion.

The tonnage that is currently hauled and disposed of by non-franchised haulers is also extremely important. Because of the amount being disposed by these haulers (estimated to be 22% of existing generated tonnage), it would be unlikely that the 50% diversion goal could be achieved without recovery of this tonnage. The diversion estimates listed in the program categories below are calculated based on the amount of material currently being hauled by South San Francisco Scavenger Company (SSFSC) and self-haulers, without the non-franchised hauler tonnage. The additional diversion that might be achieved as a result of recovery of the materials currently being hauled by non-franchised haulers is considered separately in Section 7.

Since the 1990 Source Reduction and Recycling Element (SRRE) was based on a subset of total tonnage which did not include non-franchised haulers, we made a conservative estimate that the initial waste characterization applies to non-franchised haulers as well, even though non-franchised hauler tonnage is disproportionately in the commercial sector as compared to tonnage in the SRRE.

#### 1. Yard Waste

Currently the South San Francisco Scavenger Company picks up yard waste once per month from residential customers. There are two trucks picking up material each morning before continuing with other assignments. Because of the lack of regular exposure to the program, residents do not utilize the service to its fullest potential. In order to achieve maximum utilization from the yard waste program, a

greater degree of exposure and publicity is necessary.

Currently SSFSC is diverting about 65 tons per month from the yard waste program, which translates to 6.8 pounds per household per month. An informal survey of Bay Area communities reveals that there is an average of about 40 pounds per household per month collected from their yard waste programs. Because of the smaller lot sizes in SSF than in some of the surrounding communities, we are using a 20 pound per household per month figure as a reasonable estimate for yard waste collection. Using this figure would result in an additional yearly diversion of approximately 2%.

Additional yard waste can also be diverted upon the completion of new sorting lines and transfer stations in South San Francisco. As in the case with construction and demolition debris recovery, as well as yard waste, designing a line specifically for recovery of targeted materials can greatly increase diversion rates. The amount of yard waste generated by the commercial/industrial sector in South San Francisco is about four times that produced by the residential sector, and although little is currently diverted, most of this will be captured over an improved sorting line. If 50% of the commercial/industrial yard waste (based on SRRE tonnage adjusted to 1995) is diverted, it would add approximately 2.0% to the diversion total. Because the SRRE was done during a drought, the tonnage in the SRRE is most likely underestimated, thus making the 50% diversion of the original SRRE a very achievable goal.

Prior to implementation of a yard waste program, as well as any other new services, the SSF Scavenger Company will undertake a public awareness campaign to explain the program, as well as the benefits of participating in the program.

## 2. Construction & Demolition Debris (C&D) and Wood Waste

Presently, there is no formal program in South San Francisco to recycle C & D debris and wood waste. The material that is currently diverted is generally from construction companies that rent debris boxes for their waste, and the tonnage amounts from these construction customers is relatively small. The amount of these materials in the overall waste stream is significant, however, comprising 12.7% of the generated waste tonnage in South San Francisco. As a result, recovery of these materials is essential if the goal of 50% is to be realized.

In order to make diversion of these materials successful, resources must be employed to educate generators about the materials, as well as to increase recovery at the transfer station. Source separation at construction sites is an important part of any building material diversion program. Companies that do large scale projects, as well as those that do smaller projects such as remodeling, need to be made aware of the importance of diverting these materials from the landfill, as well as the laws that require the city to do so. Financial incentives can be very helpful, and an explanation of the costs and benefits associated with separating materials at the job site could help gain the participation of contractors. A tiered hauling (or disposal, for self haul) fee may be considered for certain materials in order to increase tonnage diverted. A separate wood waste collection program for businesses could also be considered at least on an "on call" basis.

It is important to work closely with the contractors in order to maximize diversion. Site visits for large projects in order to discuss disposal options may be an important step. As each project is different, with different quantities of materials being disposed, so are the possible disposal options. A quick waste audit and training of the crew will go a long way in maximizing diversion. Also helpful are printed materials, such as a booklet explaining the options for recycling building materials, which has been shown to be an effective tool for increasing recycling. It can also be effective in creating a relationship with the local building industry association in order to distribute information and to become known as a resource for the industry.

The status of the market can also be an important criteria, as low value materials may be handled differently than high value ones. C & D recycling is growing, however, and markets for the materials have been expanding over the last several years, making the future promising. There has also been an increase in re-use of building materials, as several stores exist in the Bay Area that sell previously-used building materials.

In order to implement the above programs and maximize diversion of the materials, a new sorting line designed for these materials must be considered. Recovery at Material Recovery Facilities (MRF's) has consistently proven to be an important step in the diversion of C&D and wood debris. Although source separation of all materials at job sites is not realistic, a combination of customer education and increased recovery at the MRF can significantly increase diversion. If 40% of the material is recovered with dedicated lines as specified in the SRRE, consistent with documented experience at other MRF facilities, this will increase diversion by approximately 3.8% annually.

### 3. Food Waste

Currently there is no formal program in South San Francisco to divert food waste from the commercial sector, although commercial food waste constitutes 6% of the waste stream (according to the SRRE). In various areas of the country there has been increased collection and composting of food waste for the last several years. These programs tend to concentrate on the large quantity generators, such as larger restaurants and grocery stores. Large grocery stores tend to produce the most compostable waste and there are different issues that need to be addressed when composting restaurant waste, as compared to produce waste. As a result, implementation of food waste programs may be facilitated by first concentrating on produce waste, and then expanding to other organics. The issue of composting this material will have to be discussed with the compost facility operator, but collection and composting of these materials has been shown to be both economically and technologically feasible. In order to get cooperation of the producers, a lower rate for collection of these materials may be necessary. It is anticipated that a food waste program would divert an additional (approximately) 1.5%.

### 4. Residential Recycling

The current residential curbside recycling program in South San Francisco is comprehensive, collecting all paper, cardboard, glass, tin, aluminum, PET and HDPE plastics. Although the material types collected are varied, there still is potential for

increased diversion through higher participation in the existing program. As paper is a majority of the material recycled, it is also an area where the most potential diversion exists.

Participation is not the only indicator of the success of a residential program, however. It is also important to ensure that those participating in the programs are efficient in their recycling, and are keeping their recyclable material out of the garbage cans. Generally a cost-effective way to increase residential tonnage is increased information and education. Mailings to customers, as well as presentation to citizen and neighborhood groups can help to increase diversion.

If recovery of residential paper and cardboard eventually reached 70% (a realistic goal) which is consistent with some estimates for potential diversion, an additional 770 tons 4.1% total (2.1% additional) could be recovered.

## 5. Commercial Recycling

Commercial recycling is an area that has substantial potential for increased diversion. There are several programs that could be implemented to increase diversion.

Increase Education and Information - Similar to residential recycling, a cost effective way to increase participation and diversion rates in commercial recycling is by increasing communication with customers, both by mailing educational materials and conducting site visits.

Speaking to Business Groups - This is often an efficient way to meet with many businesses leaders and owners at one time. Workshops can be held for businesses to help with waste management.

Target Largest Producers - There are often a few large commercial customers that produce a significant portion of the waste stream. Inspection of these generators, as well as site visits (in order to conduct waste audits) can help to increase recycling.

Small Business "Strip" Recycling - It is often cost effective to identify areas with large concentrations of small businesses that can cooperatively participate in recycling programs. This may also require site visits.

Award a Yearly "Recycler of the Year" - This can help to increase awareness and participation.

Recyclable paper and cardboard from the commercial/industrial sector is 15.5% of the generated waste, in which recyclable glass is 1.2% and metals are 5.0%. If 50% of the recoverable paper, metals, and glass are recycled, 11.14 tons will be diverted (an additional 7.1%). If commercial recycling programs fail to demonstrate such a performance it is very unlikely that diversion goals could be reached, and as a result, this should be considered a critical area.

6. New Sorting Lines

New sorting lines with better designs and increased capacity can achieve additional diversion beyond yard waste and C & D, many additional materials can be recovered from the waste stream with sorting lines that have increased capacity and sorting ability. The ability of having flexibility in sorting is a major reason that many of the programs listed above can succeed. There are other materials, not included above, that may be able to be recovered from the waste stream as a result of increased sorting capability. A reasonable estimate of increased diversion beyond the programs listed above is 3%.

7. Increased Recycling Due to Tonnage Recovered from Non-Franchised Haulers

As mentioned above, haulers servicing customers in South San Francisco contrary to the franchise are disposing of a significant portion of the waste in the City, and it is felt that there are materials being landfilled that could be recycled if they were collected through the franchised hauler. Recovery of this material is an important part of increasing diversion in the City. If SSFSC was hauling this material per the franchise agreement, there would be increased tonnages in all of the above programs, and thus increased diversion. Some of this material would likely end up in source separated recycling programs, while other material would go to the transfer station, with an additional opportunity for recovery. We believe that an additional 5% of the waste stream could be diverted from the landfill through the recovery of this tonnage.

8. Increased Educational and Outreach Efforts

Although increased education and outreach is not a separate diversion category for the purposes of this study, it is an essential part of all diversion efforts. As a result, below is a summation of the education and outreach efforts suggested for the above programs, as well as additional educational outreach.

Yard Waste - Mailings to customers explaining the benefits of the program, as well as newspaper articles and other media.

Food Waste - Public education targeted at large restaurants, supermarkets, and produce stores may help to maximize participation in the program.

Construction and Demolition Debris - On site visits to construction projects in order to educate the crew on material separation can be beneficial. Printed materials reviewing disposal options have been shown to be successful. Meeting with industry groups to educate them on the benefits of recycling can also be useful.

Residential Recycling - Mailings to customers, as well as newspaper articles and media advertising can be effective methods. An audit of participation in the programs can allow educational efforts to be more directed, and henceforth more cost-effective.

Commercial Recycling - Speaking with staff of large commercial customers in order to educate them about programs and the benefits of recycling can help to

increase participation and diversion. Building relationships with business groups is a cost effective method to get educational information to customers and can also be useful.

School Programs - Sponsoring special events and/or curriculum, for primary and secondary schools can be an effective educational tool, as well as field trips to the transfer station/MRF facility.

### Conclusion

In summary, we've discussed an overview of existing programs and possible new programs that can bring South San Francisco above the 50% diversion rate goal. As presented, additional diversion must come from the commercial/industrial sector, as a majority of the waste in the City comes from this sector. We have the ability to reach 50%, but it will require strengthening existing programs and the implementation of new programs. It will also necessitate the construction of new sorting lines in order to extract additional materials from the waste stream. A crucial factor is the expansion of education in both the residential and commercial/industrial sectors regarding the importance of participating in recycling programs. With the assistance of the City, there is the ability to comply with AB 939 and meet the mandated diversion goals.

**EXHIBIT B**  
**MAXIMUM SERVICE RATES**  
**Effective November 1, 1997**

1. Residential Can Service (Per Month) - includes curbside recycling

A. Service Level by Container Volume

20 Gallons (Senior Citizen)	\$	11.28
30 Gallons		13.22
32 Gallons		14.10
64 Gallons		31.02
96 Gallons		48.65
128 Gallons or more		67.68

2. Commercial and Institutional Can Service (Per Month) - no charge for source separated recyclable materials

30 Gallons	\$	14.36
32 Gallons		15.31
40 Gallons		19.14
45 Gallons		21.53
55 Gallon Drum		26.32

3. Commercial and Institutional Compactor Service

Per Cubic Yard	\$	28.81
----------------	----	-------

4. Debris Box Service, Residential and Commercial and Institutional

Temporary / One Time Use

5 Yard Mini-Box	\$	106.87
7 Yard		233.52
14 Yard		233.52
20 yard		317.95
30 Yard		458.67

Rental Charge (per day, over 3 days for 5 Yard and over 7 days for others) \$ 8.79

Permanent Commercial Use

7 Yard	\$	197.01
14 Yard		197.01
20 Yard		281.44
30 Yard		422.16

Overweight Charge

Content Weight in excess of 3 tons, per ton	\$	55.02
---	----	-------

5. Commercial and Institutional Bin Service - no charge for source separated recyclable materials

A. Regular Pick-Up (Per Month)

1 - Yard Container	\$	85.46
2 - Yard (Front End Loader Bin)		128.14
3 - Yard (Front End Loader Bin)		192.22
4 - Yard (Front End Loader Bin)		256.29
5 - Yard (Front End Loader Bin)		320.37
6 - Yard (Front End Loader Bin)		384.43

B. On Call Pick-Up, Per Yard

Per Pick-Up, Per yard	\$	14.79
Plus Container Rental Per Month		

Rental Charges:

1 Yard Container	\$	22.38
2 Yard Container		24.29
3 Yard Container		26.08
4 Yard Container		27.99
5 Yard Container		31.70
6 Yard Container		33.62

**EXHIBIT C  
SERVICE CATEGORIES TO BE BENCHMARKED**

Residential Can Service:

20 Gallons (Senior Citizen)

32 Gallons

Commercial and Institutional Can 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  
NON-EXCLUSIVE FACTORS AFFECTING CHOICE OF JURISDICTIONS

Container size  
Franchise fees  
Disposal fees  
Haul distance to the disposal site  
Billing/Collection  
Franchise exclusivity  
Level of service provided (e.g., materials collected)  
Frequency of collection  
Location of containers  
Provision of containers  
Recycling program - frequency and commodities  
Recycling programs - separate rates or charges  
Topography and geography  
Nature of streets and ease of access  
Potential for commercial subsidy  
Demographic information  
Revenue information

J:\WPDMODEMFRAGSF.JNK

AMENDMENT TO THE AGREEMENT FOR THE COLLECTION AND DISPOSAL OF  
WASTE MATTER IN THE CITY OF SOUTH SAN FRANCISCO

This Amendment, dated 5/25, 2001, is made by and between the City of South San Francisco ("City"), a municipal corporation, and South San Francisco Scavenger Co., Inc., a California corporation ("Scavenger Company"), with reference to the following:

WHEREAS, Scavenger Company operates a franchise within the City for the collection of waste and disposal and recycling of same pursuant to that certain Agreement For The Collection And Disposal Of Solid Waste Matter In The City Of South San Francisco dated 6/25, 1997; and,

WHEREAS, City and Scavenger wish to amend the Agreement to allow greater flexibility in conducting the annual clean up required under the Agreement;

NOW, THEREFORE, the parties agree as follows:

1. Section 5.10 of the Agreement is deleted in its entirety and the following language is to be inserted as the new section 5.10 and is effective as of the date of this Amendment:

"Citywide Clean-Up: Scavenger Company shall schedule up to two (2) special pick-ups per calendar year, at no cost to the resident or City, for each resident of the City of South San Francisco. A resident may call and schedule a special pick-up at any time during the course of the calendar year on the resident's regular service day of the week and Scavenger Company shall arrange for service at the convenience of the resident. Scavenger shall accept all nature of solid waste, except hazardous waste and household hazardous waste. The only limitation upon receiving service from Scavenger Company is residents requesting this service must adhere to the published regulations regarding material amounts for each pick-up scheduled. The twice annual collections 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."

2. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

SOUTH SAN FRANCISCO SCAVENGER  
CO., INC.

By: Stephanie Uccelli Mermer

CITY OF SOUTH SAN FRANCISCO

By: Michael A. Wilson  
Michael A. Wilson, City Manager

ATTEST:

Brian Payne  
City Clerk

APPROVED AS TO FORM

Steven T. Mattas  
Steven T. Mattas, City Attorney

**SECOND AMENDMENT TO THE AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE MATTER IN THE CITY OF SOUTH SAN FRANCISCO**

This Second Amendment (the "Amendment"), dated May 9, 2002, is made by and between the City of South San Francisco, a municipal corporation ("City"), and South San Francisco Scavenger Co., Inc., a California corporation ("Scavenger Company"), with reference to the following:

WHEREAS, Scavenger Company operates a franchise within City for the collection of waste and disposal and recycling of same pursuant to that certain Agreement For The Collection And Disposal Of Solid Waste Matter In The City Of South San Francisco dated July 9, 1997, as previously amended by that certain Amendment dated May 25, 2001 (the "Agreement"); and

WHEREAS, Scavenger Company has, since July 1, 2001, been collecting and disposing of City-generated sewage sludge for a fee; and

WHEREAS, City and Scavenger Company wish to amend the Agreement to provide for Scavenger Company's collection and disposal of City-generated sewage sludge on the terms herein;

NOW, THEREFORE, the parties agree as follows:

1. Section 5.9 of the Agreement is amended, effective as of the date of this Amendment, to insert a new subsection (a) at the end thereof, as follows:

“(a) **Sewage Sludge:** Throughout the term of this Agreement, Scavenger Company shall have the right to, and shall, collect and dispose of all sewage sludge generated at treatment facilities owned by, or operated by or for, City (“Sludge”) in accordance with the terms of this Section 5.9(a). Scavenger Company’s right to collect Sludge shall be exclusive, subject to the following exceptions: (i) City may dispose of Sludge which constitutes recyclable materials within the meaning of Section 2.11 above in accordance with any of the exceptions to Scavenger Company’s exclusive franchise hereunder set forth in Section 1.3 above; and (ii) City may dispose of Sludge which constitutes hazardous waste within the meaning of Section 2.7 above as City desires and Scavenger Company may refuse to collect such Sludge.

(1) Scavenger Company shall collect Sludge on a schedule that is sufficient in frequency and volume to maintain the efficient operation of the applicable treatment facilities; provided, however, that City shall be solely responsible for designing, constructing and maintaining equipment at such facilities adequate to permit Scavenger Company to meet such collection responsibilities. Scavenger Company may dispose of Sludge collected by it as waste or recycle same in any lawful manner. Scavenger Company may assign its collection and disposal or recycling obligations hereunder to one or more subcontractors so long as each subcontractor complies with Sections 7, 8.1 and 9 below.

(2) City shall pay Scavenger Company \$38.05 for each wet ton of Sludge collected and disposed of hereunder (the “Tonnage Rate”). The Tonnage Rate shall be subject to increase as of July 1 each year during the term of this Agreement (commencing with July 1, 2002) in accordance with Section 6.2 below, and shall also be subject to adjustment in

accordance with Section 6.3 below. Scavenger Company shall bill City monthly for its services in collecting and disposing of Sludge. Each bill shall be accompanied by a statement setting forth the number of tons of Sludge collected by Scavenger Company for the previous calendar month. City shall pay the amount billed within thirty (30) days after receipt. None of the amounts paid by City to Scavenger Company pursuant to this Section 5.9(a) shall be subject to the franchise fees described in Section 4 above.

(3) To the extent Scavenger Company uses Sludge for land application, City shall provide Scavenger Company with such periodic certifications as to the content of Sludge and the levels of pathogen and vector attraction reduction achieved as are reasonably necessary to permit compliance with 40 C.F.R. 503.

(4) In the event of any conflict between this Section 5.9(a) and any other provision in this Agreement, this Section 5.9(a) shall prevail.”

2. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment.

SOUTH SAN FRANCISCO SCAVENGER  
CO., INC.

By: Stephanie Vesceki Menner

CITY OF SOUTH SAN FRANCISCO

By: Michael A. Wilson  
Michael A. Wilson, City Manager

ATTEST:

Sam Payne  
City Clerk

APPROVED AS TO FORM

Steven T. Mattas  
Steven T. Mattas, City Attorney

**THIRD AMENDMENT TO THE AGREEMENT  
FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE MATTER  
IN THE CITY OF SOUTH SAN FRANCISCO**

This Third Amendment to the Agreement for the Collection and Disposal of Solid Waste Matter in the City of South San Francisco made and entered into as of June 11, 2003 by and between the City of South San Francisco, a municipal corporation (hereinafter "City"), and South San Francisco Scavenger Company, Inc. a California corporation (hereinafter "Scavenger Company"), bears the following recitals:

A. On July 9, 1997, the parties entered into an Agreement for the Collection and Disposal of Solid Waste Matter in the City of South San Francisco.

B. The parties now desire to amend the Agreement as hereinafter provided.

NOW, THEREFORE, the parties hereto agree as follows:

Section 4.1 of the Agreement is amended to state as follows in its entirety and the following language is to be inserted as Section 4.1 and is effective as of the date of this Amendment:

4.1 **"Franchise Fee:** On or before the twentieth (20<sup>th</sup>) day of each month during the term of this franchise, Scavenger Company shall remit to City a sum of money equal to ten percent (10%) of the gross revenues collected by Scavenger Company from customers within the City limits during the preceding calendar month as a franchise fee. If the franchise fee is not paid on or before the twentieth (20<sup>th</sup>) day of any month, a late payment fee in an amount equal to eighty-three one hundredths of a percent (0.83%) of the amount owing per month will be charged for each thirty (30) day period the franchise fee remains unpaid."

Section 5.9 of the Agreement is amended to state as follows in its entirety and the following language is to be inserted as Section 5.9 and is effective as of the date of this Amendment:

5.9 **"Pick Up at City Facilities:** Scavenger Company shall remove, without charge, all solid waste generated at all City facilities (of the nature and in the amounts collected as of the commencement of this franchise agreement) at least once per week, but Scavenger Company may charge all other public agencies for services rendered at the same rates and on the same basis as private firms or individuals are charged for similar services. As of July 1, 2003, Scavenger may charge the City for removal of solid waste generated by the City's Water Quality Control Plant in accordance with rates, terms and conditions charged to other public agencies or other comparable rate categories operating within the City of South

San Francisco. No other City facility will be subject to a charge for the removal of solid waste.”

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and year first above written.

CITY OF SOUTH SAN FRANCISCO


DATED: 8.15.03

BY:   
Michael A. Wilson, City Manager

90

SOUTH SAN FRANCISCO  
SCAVENGER COMPANY, INC.

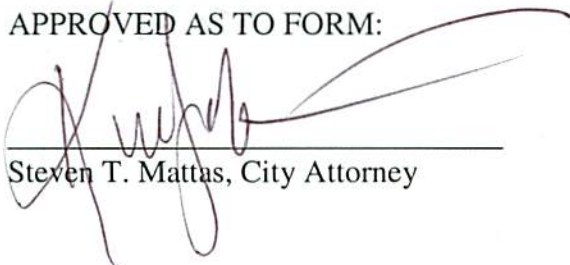
DATED: \_\_\_\_\_

BY: 

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
Steven T. Mattas, City Attorney

C:\Third Amendment to Scavenger Agreement - SSF.DOC

FOURTH AMENDMENT TO THE AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE MATTER IN THE CITY OF SOUTH SAN FRANCISCO

This Fourth Amendment dated February 13, 2013 is made by and between the City of South San Francisco, a municipal corporation (hereinafter "City"), and South San Francisco Scavenger Company, Inc., a California corporation (hereinafter "Scavenger Company"), and amends that certain Agreement for the Collection and Disposal of Solid Waste in the City of South San Francisco dated July 9, 1997 by and between the City and the Scavenger Company, as previously amended (hereinafter the "Franchise Agreement"), with reference to the following:

WHEREAS, the current term of the Franchise Agreement ends on October 31, 2017; and

WHEREAS, there is a single optional extension provision in the Franchise Agreement which could extend its term for an additional ten years but which has not yet been exercised; and

WHEREAS, the Scavenger Company has embarked upon a number of large capital projects which City and Scavenger Company believe will be of benefit to the citizens of South San Francisco and in some cases, are required by changes in state law; and

WHEREAS, the Scavenger Company will need to seek a substantial amount of financing for those capital projects; and

WHEREAS many of those capital projects have useful lives extending for many years beyond the current term of the Franchise Agreement even should it be extended as described above; and

WHEREAS financing for such capital projects with principal repayment provisions extending through a term closer to those useful lives will keep the annual cost of financing those projects as low as possible for the Scavenger Company and the ratepayers of the City; and

WHEREAS bank underwriting criteria generally requires that the term of any financing for solid waste, recycling and similar projects cannot extend past the expiration of any such exclusive franchise; and

WHEREAS the parties hereto have determined that in order to allow development of the various capital projects described above and to assist the Scavenger Company in obtaining the lowest possible annual cost of financing therefore and resulting beneficial effect on the City's ratepayers, that the term of the Franchise Agreement should be extended and structured so as to provide the Scavenger Company and its lender with the ability to finance its beneficial projects now and in the future over periods closer to the useful lives of those projects; and

WHEREAS the parties are not changing the provisions in Section 10 of the Franchise Agreement with respect to rights to terminate with cause, which provide ratepayers and customers adequate protections, even with the Franchise Agreement extension.

THEREFORE, the City and the Scavenger Company in consideration of the above and other valuable consideration, receipt of which is hereby acknowledged do agree as follows:

A. Section 3 of the Franchise Agreement is hereby amended by striking it and replacing it in its entirety with the following:

3. Term.

3.1 The term of the Franchise Agreement shall be for a period of twenty (20) years, commencing on November 1, 2012 and ending on October 31, 2032.

3.2 Provided that Scavenger Company is in material compliance with the terms of this Franchise Agreement, the term of this Franchise Agreement shall be annually extended for one (1) additional year on October 31, 2013, and on October 31 of each succeeding year as determined by the City so that the remaining term of this Franchise Agreement shall be twenty (20) years.

3.3 The annual one (1) year extension described in Section 3.2 above may be terminated by either party in its sole discretion, without cause, by providing written notice to the other party ("Notice of Non-Extension"). Such Notice of Non-Extension shall cause the one year extension described in Section 3.2 to not occur. Accordingly, the term of the Franchise Agreement shall end twenty (20) years from the date of the Notice of Non-Extension.

B. Section 4 of the Franchise Agreement is hereby amended by adding the following Section 4.3 to read as follows:

4.3 Beginning July 1, 2013, the Scavenger Company shall remit to the City \$15,000 each month as a Source Reduction and Recycling Element franchise fee ("SRRE fee"), which the City may use for purposes related to, but not limited to, landfill monitoring, landfill remediation and/or reducing the City's stream of solid waste within the City of South San Francisco.

(a) Each July 1 beginning on July 1, 2014, the \$15,000 SRRE monthly fee will be adjusted by an amount equal to eighty percent (80%) of the percentage increase, 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 on or before March 31st of such year and on or before the prior March 31st.

C. Section 6 of the Franchise Agreement is hereby amended by adding the following section 6.2(e) to read as follows:

(e) Concurrently with the rate review materials submitted to the City as described in this Section, not later than March 31st, of each year that is subject to a rate increase, the Scavenger Company shall provide the City with an updated twenty (20) year capital master plan which outlines the Scavenger Company's capital investment needs and any other documents reasonably necessary to keep the City Council informed of the Scavenger Company's longer term investment plans consistent with the twenty (20) year Franchise Agreement term.

D. Section 10 of the Franchise Agreement is hereby amended by striking Section 10.2 in its entirety and shall read as follows:

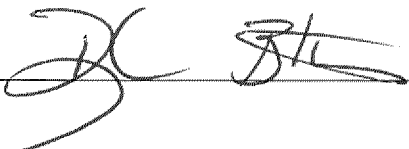
10.2 Reserved.

As modified by this Fourth Amendment, the Franchise Agreement shall remain in full force and effect in accordance with its terms.

In the event of any inconsistency between this Fourth Amendment and the Franchise Agreement, this Fourth Amendment shall prevail.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment effective as of the date first set forth above.

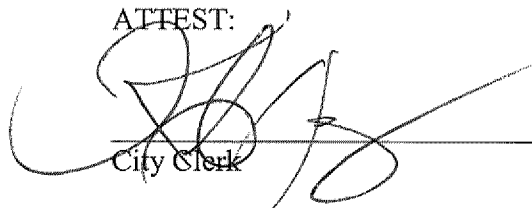
SOUTH SAN FRANCISCO SCAVENGER COMPANY, INC.

By:  \_\_\_\_\_

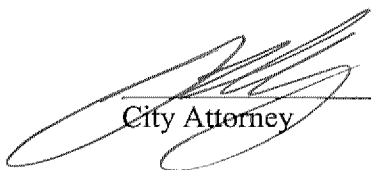
CITY OF SOUTH SAN FRANCISCO

By:  \_\_\_\_\_ 

ATTEST:

 \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

 \_\_\_\_\_  
City Attorney

RESOLUTION NO. 10-2013

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

A RESOLUTION APPROVING THE FOURTH AMENDMENT TO THE AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE MATTER IN THE CITY OF SOUTH SAN FRANCISCO

WHEREAS, on July 9, 1997, the City of South San Francisco ("City") and South San Francisco Scavenger Company, Inc., entered into an agreement for collection and disposal of solid waste matter in the City ("Agreement"); and

WHEREAS, in 2001, 2002 and 2003, respectively, the City and South San Francisco Scavenger have amended the Agreement; and

WHEREAS, the City and South San Francisco Scavenger now desire to further amend the Agreement by extending the term of the Agreement to a twenty (20) year term, that automatically extends for one (1) year every year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of South San Francisco that the City Council hereby approves of the Fourth Amendment to the Agreement for the Collection and Disposal of Solid Waste Matter in the City of South San Francisco with South San Francisco Scavenger Company, Inc., as set forth in Exhibit A, attached hereto.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Fourth Amendment on behalf of City of South San Francisco, subject to approval as to form by the City Attorney.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was adopted by the City Council of the City of South San Francisco at a regular City Council meeting held on the 13<sup>th</sup> day of February, 2013 by the following vote:

AYES: Councilmembers Mark N. Addiego, Richard A. Garbarino, Pradeep Gupta,

Mayor Pro Tem Karyl Matsumoto, and Mayor Pedro Gonzalez

NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:

  
Clerk