

MEMORANDUM

Engineering Division

To: Greg Armendariz, Public Works Director/City Engineer
From: Kathleen Phalen, Utility Engineer
Subject: HF&H Report of Negotiations with Allied Waste
Date: April 21, 2008



Summary: The attached report, prepared by HF&H Consultants, our solid waste services consultant, documents discussions the City held with Allied Waste from August through November, 2007 which led up to the 2008/2009 rate adoption. This report documents additional desired agreement services changes and supplements an earlier HF&H report included in the December 11, 2007 Council packet that documented the rate review discussions.

Background: The City has long-running agreements with Allied Waste Services (Allied) continuing through September 5, 2017 for collection and disposal of solid waste, recycling, and residential yard trims, and for street sweeping services. These agreements specify that the City adjust customer rates biennially by a contract formula to compensate Allied for increasing costs. With the assistance of HF&H Consultants, staff began the 2008 biennial rate discussions with Allied in August 2007. Although the primary purpose of this work was to receive and review Allied's proforma statement of costs, Allied and staff also discussed various desirable contract changes that would improve services, optimize City and contractor mutual efforts, and respond to changes in market, industry, and regulatory environments. Because these desired changes did not have a deadline, staff decided to separate them from the rate increase and bring them before Council for consideration in spring 2008.

Recommended Changes: The table at the end of this memorandum summarizes the recommended contract changes. These include actions such as reducing the frequency of customer surveys, shifting task assignments between the City and Allied, adding or removing materials from lists acceptable for recycling, defining container types and sizes, and adding a dry waste definition. Staff believes that these are not substantial changes and that they will have only minor, if any, impact on the majority of the City's customers. Possible exceptions are a recommendation to reduce the maximum length of excess yard trims bundled waste from five to three feet to fit Allied collection equipment; and allowing a one-year trial of a 6 AM residential collection start time. Currently, Allied is allowed to start work at 6 AM during the summer, but can start no earlier than 7 AM during the rest of the year.

HF&H qualified the value of these changes and found that in aggregate they balance out to give Allied and the City equal benefit. Therefore, if implemented in toto, they will not affect customer rates. As shown on the summary table, staff has also assessed the expected benefits and negative impacts to customers from each recommended change and find that overall customers will benefit from the proposed changes.

Finally, the proposed amendments include a number of minor “cleanup” changes to contract and ordinance language to correct typographic errors, omissions, or inconsistencies. These changes will not affect customer service and so are not further summarized in this report.

Incorporating Recommended Changes: Each substantive change requires amendment to one or more of the following four documents:

- City of Milpitas and Allied Franchise Agreement for Solid Waste Services
- City of Milpitas and Allied Franchise Agreement for Yard Trims Services
- City of Milpitas Solid Waste Ordinance
- City of Milpitas Noise Ordinance

I have prepared the recommended amendments to the four documents in a redline/strikeout format for inclusion in the Council packet.

Allied Request for Diesel Fuel Index: Allied also asks the City to amend the agreement to change the way rates are adjusted to account for fuel increases. The existing rate adjustment process does not have a separate fuel component, but instead includes fuel as part of the base rate that is increased to 75% of the Bay Area consumer price index (CPI) increase. Allied asked that the City instead consider fuel to be an extraordinary cost beyond its control, because fuel costs have been increasing at a much faster rate than the CPI. They asked the City to change the contract rate adjustment provisions to include a Bay Area Diesel Fuel Index component, which would more closely track fuel costs. The impact of this change would be to add about \$0.16 per month to the single-family cost. Changing the contract rate adjustment provisions would require Proposition 218 public notice and public protest requirements, which the City has not done at this time.

Staff reviewed Allied’s request and found that the fuel increase was handled correctly according to the contract terms. Therefore, staff does not recommending changing the contract provisions for fuel rate increases.

**SUMMARY OF STAFF-RECOMMENDED PROGRAM & CONTRACT LANGUAGE CHANGES
RESIDENTIAL AND COMMERCIAL SERVICES**

RESIDENTIAL		
ACTION	PROS FOR CUSTOMER	CONS FOR CUSTOMER
1. Add shredded paper placed in paper bags to accepted residential recycling materials.	Adds a recyclable paper type service requested by residential customers.	Customers will need to place shredded paper in paper bags; possible litter problem if shredded paper placed loose in cart.
2. Limit Yard Trims bundle length from 5-feet to 3-feet for excess yard waste not fitting into yard cart. Excludes Holiday Trees, which can be up to 5-foot length.	Increases traffic and driver safety. Reduced equipment failure on route will improve service delivery.	Residential customers will be required to prepare shorter bundles. Outreach needed to inform customers of set out change.
3. Change responsibility of Street Sweeping annual calendar & Fall Leaf Clean-up collection notice from City to Allied.	Improves efficiency and coordination for related programs. Both service calendar and promotions to be managed by Contractor.	None, since City reviews and approves promotional materials prior to release.
4. Expand 6AM start time to year round (currently only June, July, August) in residential areas on one-year trial. Will be rescinded if customers negatively impacted	Increases traffic safety. Reduced traffic impacts near schools at peak times.	Potential noise nuisance to residential customers. However, three-year log shows minimal complaints during summer schedule.
5. Revise survey-monitoring processes: Remove biennial yard trims survey and reduce commercial services survey from annual to biennial requirement.	Reduces low-value program recordkeeping and tracking effort for 12-year old yard trims program. Sufficient data exists to demonstrate program acceptance. Biennial survey is sufficient to track mature commercial services. Past results showing steady improvement.	Minimal; survey out-lived its usefulness. Yard trims survey established at program start (1996). Minimal, 10-year old commercial survey accomplished intended purpose.
6. Modify the holiday tree pick-up to be for two weeks following the week of the Christmas holiday.	Improves customer service. Reduces illegal dumping of trees.	None.
7. Increase compost bags giveaway from one to two per household	Matches existing practice.	None.
8. Offer smaller 32-gallon recycling carts for seniors and high-density sites.	Some seniors requesting smaller carts. Limited set-out and storage space at some high-density sites.	None.
9. Clarify Household Dump Day requirements for materials, load sizes, and proof of residency.	Better, clearer, and more consistent customer service. Less customer frustration at gate.	May require customer education.

COMMERCIAL		
ACTION	PROS FOR CUSTOMER	CONS FOR CUSTOMER
10. Remove polystyrene from accepted commercial recycling materials; includes wording in Agreement Exhibit F re: new materials added subject to market availability and mutual agreement.	Strengthens contract wording to review adding recyclable materials as markets become available. Polystyrene is not feasibly recycled at this time.	Removes polystyrene from commercial recyclables list. However, issue is moot at this time due to lack of market and technology to recycle polystyrene.
11. Define a commercial class of dry (non-putrescible) waste not requiring weekly hauling.	Commercial customers will save by using large open-top containers and compactors to maximum efficiencies.	Potential nuisance if customers mix wet waste in dry waste containers.
12. Update equipment definitions for containers and service types.	Provides clarity and uniformity for commonly used equipment and services.	None.
13. Add new Milpitas Public Library and Midtown Garage for free containerized services.	In accordance with contract, provides services consistent with other City facilities.	None.
14. Add five days for payment processing time prior to late payment penalty.	Allows sufficient time lag for customer payment receipt and processing. Reduces chance of incurring unfair late penalty.	None.
15. Allow up to 6 cubic yards of dirt and concrete within 10 cy roll-off container.	Adds customer option for heavy materials. Current sizes do not meet street load limits.	None. Allied will paint allowable fill lines on designated containers.
16. Change test of commercial bin leakage from quarterly to semi-annually	Reduces staff time. Several years of quarterly testing show leakage to be minimal. Semi-annual testing is sufficient to spot check containers.	None.
17. Expand voluntary food waste composting pilot program to allow additional interested customers to participate at cost.	Several "high-tech" businesses with cafeteria services willing to pay for service as their corporate commitment to environmental stewardship.	None.
18. Allow use of vacuum street sweeping equipment whenever broom equipment is allowed.	Improves Contractor's flexibility for equipment choices. Vacuum equipment may be more efficient in some conditions.	None.



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April 30, 2008

Ms. Kathleen Phalen
Utility Director
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA 95035

Subject: Negotiation Assistance Provided to the City of Milpitas for the Setting of Solid Waste Rates for Rate Years 2008 and 2009

Reference Number: S3733

Dear Ms. Phalen:

HF&H Consultants, LLC is pleased to present this report documenting our findings and recommendations to the City of Milpitas (City) from our negotiation assistance during the rate setting process for solid waste rates to be effective January 1, 2008 and January 1, 2009. The rate setting process was done in accordance with the September 2, 1986 franchise agreement with Browning Ferris Industries, later assigned to Allied Waste Services (Allied), for the exclusive right to collect, process and dispose of solid waste and recyclables within the City and the agreement between Allied and the City for the collection and processing of yard trimmings from single-unit dwellings dated December 17, 1996, (Agreements). The Agreements were last amended on November 11, 2004.

Our report dated December 5, 2007 documented our findings and recommendations directly relating to the setting of solid waste rates to be effective for the two-year period from January 1, 2008 through December 31, 2009.

This letter report includes our findings from: 1) the negotiation of additional services and revisions to the Agreements, 2) our review of agreed-upon subsequent rate application statement considerations, and 3) our review of Allied's request for a change to the rate setting methodology for fuel costs. This letter is organized into the following sections:

- Executive Summary
- Scope of Work and Limitations
- Findings



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Executive Summary

As part of the rate negotiation process, the City prepared a list of areas in the Agreements that needed clarification or additional wording to correspond with actual practices or desired practices. Allied also prepared a list of items to be discussed and modifications to be made to the Agreement. The most significant items Allied and the City agreed to, at no additional cost to the ratepayers, were:

- Expansion of food waste pilot program;
- Add shredded paper placed in paper bags to accepted residential recycling materials;
- Add new Milpitas Public Library to containerized service provided to the City at no charge;
- Responsibility of annual street sweeping calendar and fall leaf clean-up collection notice transitioned from City staff to Allied staff;
- 6 am collection start time year round; and,
- Definition of non-putrescible waste and collection frequency.

Scope of Work and Limitations

Our scope of work included the following:

- We reviewed the Agreement (including amendments) and existing conditions and operations to identify opportunities for improvement and to determine the scope of the desired future solid waste services and performance standards;
- We reviewed for reasonableness all cost proposals provided by Allied as requested by City Staff;
- We maintained a negotiation point matrix from information obtained from the City and Allied;
- We attended weekly rate adjustment negotiation meetings and conference calls with City staff and Allied management; and,
- We prepared this letter report documenting our findings and recommendations.



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Findings

Our findings section is divided into four sections: 1) negotiated revisions to the Agreements; 2) review of additional services; 3) agreed-upon subsequent rate application statement considerations; and, 4) extraordinary cost adjustment - fuel.

Agreement Negotiation Assistance

As part of the solid waste rate negotiations, City Staff presented changes to the Agreements they would like to discuss at the initial negotiation meeting and Allied brought items they would like to discuss to the subsequent meeting. HF&H assisted the City in evaluating each party's requests. After a series of meetings a final list of negotiated items was compiled and was agreed upon by Allied and City Staff at **no additional cost** to the ratepayers as shown below:

City Staff requested and Allied agreed to the following Agreement modifications:

- **Recyclable Materials.** Add shredded paper placed in paper bags to accepted residential recycling materials as requested by residential customers to increase diversion;
- **Definitions.**
 - (1) Add definitions for putrescible & non-putrescible wastes. Non-putrescible waste does not have to be collected on a weekly basis according to State regulations. This modification will allow commercial customers disposing of non-putrescible waste the flexibility to schedule collection less than once per week, keeping the hauler from making unnecessary trips to collect partially filled containers;
 - (2) Update definitions to include additional definitions for equipment and high density developments to provide clarity in the Agreements;
- **Collection Frequencies.** Adjust collection frequencies for roll-off open-top containers and compactors for non-putrescible waste. In its effort to promote diversion, the City staff elected to allow commercial customers with non-putrescible waste to have less frequent service as long as it is separated from their putrescible waste;
- **Additional Services.** Add new Milpitas Public Library to containerized service provided to City at no charge;
- **Customer Notices.** Add responsibility of Street Sweeping annual calendar & Fall Leaf Clean-up collection notice to Allied. This change will improve efficiency and coordination for related programs since both programs are managed by Allied; and,



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- **Customer Payment Process.** Revise commercial customer payment process to allow for payment processing time by Allied and give customers two delinquent notices.

Allied requested and City Staff agreed to the following Agreement modifications:

- **Recyclable Materials.** Remove polystyrene from accepted commercial recycling materials; includes wording to Exhibit F re: new materials added subject to market availability and mutual agreement. Allied does not have a market for polystyrene at this time. The additional wording strengthens the Agreement to require Allied to add recyclable materials as markets develop;
- **Street Sweeping Vehicles.** Add wording to allow vacuum-style trucks for street sweeping to the Agreement. This addition provides Allied with the option of using the brush-style truck or vacuum-style truck for sweeping in the City. Allied provided operational information on the vacuum-style truck for the City staff to review;
- **Yard Trim Bundles.** Limit Yard Trims bundle length to three feet from five feet, as previously stated in the Agreement. The reduction in the bundle length will increase driver safety as the driver will not have to manually place the bundles in the truck hopper. Additionally, there will be a reduction in the truck maintenance as the truck hoppers were not designed for five-foot bundles and the extra length requires additional repairs;
- **Additional Customer Rates.** Add a rate for 6 CY dirt & concrete roll off container. Dirt and concrete boxes are extremely heavy and boxes greater than 6 CY have a high possibility of being overweight by governmental standards;
- **Service Times.** Allow residential service to begin at 6AM for twelve months of the year. Currently Allied begins residential service at 6AM during June, July, and August. The year around 6AM start time will reduce traffic near schools at peak times and service time will be consistent throughout the year;
- **Customer Surveys.**
 - (1) Change commercial customer survey from an annual to a biennial requirement. The commercial survey was established in 1998 and the annual results have steadily improved. The last five years show an overall customer satisfaction increase from 89% to 93% and participation increased from 50% to 86%. City staff believes the biennial schedule will provide sufficient trending analysis;
 - (2) Discontinue bi-annual Yard Trims customer survey. The Yard Trims survey was established at the beginning of the program in 1996 to determine the acceptance and convenience of the program. City staff feels sufficient data exists to gauge



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acceptance and use of the Yard Trims program and the survey is no longer needed;

- **Reporting.** Remove community promotions annual outline requirement in both Agreements. Existing advance quarterly planning schedule requirements provide promotion details and estimated costs; and,
- **Testing Requirements.** Change the testing of commercial bin leakage from quarterly to semi-annually. The recent quarterly testing has not disclosed areas of concern. The reduction in testing will save time for the City staff and for Allied.

The City also requested, and Allied has agreed, to the following minor Agreement changes:

- Change the due date in the Yard Trims Agreement for the City payment to Allied of the differential between Single Unit rates and Senior rates from fiscal year to calendar;
- Revise the due dates for the quarterly schedules to correspond with actual practice;
- Add wording for Allied to coordinate the annual Compost Giveaway event;
- Delete the requirement for classroom tours at the Recyclery due to the elimination of the "wall of garbage" and other educational areas at the Recyclery with the introduction of the single-stream recycling materials processing equipment;
- Add wording for Allied to hold a "Second Chance" Compost Giveaway program;
- Change the due date for the Rate Adjustment Statement from September 15th to June 15th;
- Revise Attachment B in Exhibit F to list the same recyclable materials that is collected from the Single unit program;
- Revise Exhibit N to reflect Allied will be responsible for providing, maintaining and coordinating the computer links with the City's billing system;
- Add wording to provide an option for a 32-gallon recycling cart for senior rate payers and high-density developments receiving single unit services; and,
- Added High Density Developments definition in the Agreement.



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The following items were discussed by the City and Allied and they mutually agreed to drop or defer until a later date:

- The City had thought they might enhance the Ligated Damages section of the Agreements. After discussion and comparison of the current Agreements to other agreements in the Bay Area, the City decided keep the current wording;
- The City asked about an extension of the current disposal agreement with Allied for disposal at the Newby Island Landfill to approximately 2023. Allied was not able to commit to any time beyond the current agreement (expires in 2017) because of the uncertainty of expansion approvals from the local authorities;
- Allied wanted the tonnage collected from the street sweeping activities that is used for Alternative Daily Cover at the landfill to be counted as diverted tonnage for their commercial diversion goal. The City agreed only if the commercial goal was revised. After discussion, it was determined that if the goal was revised then the benefit would be diminished. Allied decided not to pursue the issue any further;
- Due to the complexity of trying to manage two agreements, Allied suggested merging the two agreements into one agreement. It was determined this would be beneficial to both parties but not one that could be completed within the timeframe of the current negotiations. The parties agreed the merging of the two agreements should be done during a year in which the biennial review is not being conducted;
- Allied asked to convert the single unit services from unlimited service in a customer-owned container to automated collection service with Allied providing variable size carts. Due to time constraints within the rate review process, Allied was not able to provide the actual cost or benefit to the ratepayers for the conversion. However, Allied did not anticipate a cost savings for the conversion but thought it might increase overall costs. The City Staff did not feel there was enough time to fully review the program and its costs. Allied may choose to pursue this option in the future. We recommend the City staff and Allied explore this option before the next biennial review;
- Allied asked the City to consider giving Allied the exclusive rights for debris box collection. The City ordinance currently requires haulers to sign a non-exclusive agreement with the City and pay the City a franchise fee. Allied felt there were haulers that were not in compliance the ordinance and if there was just one exclusive hauler allowed in the City it would be easier to identify the non-permitted hauler(s). In order to offer an exclusive right to one hauler, the City must first give a five year



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notice to the existing haulers. The City staff did not see a significant benefit to the City and felt this was not an issue to pursue; and,

- Allied asked if the billing cycle could be changed to billing in advance for services in order to increase the timing of Allied receiving payment for their services. The City made an inquiry to their billing department and it was determined the billing system could not be changed due to the billing for sewer and water on the same bill.

Review of Additional Services

Food Waste Pilot Program Expansion. As part of the last negotiation process, Allied and the City agreed to implement a pilot program to collect food waste from a single commercial customer. Rates were established and approved by the City. The program has proven to be successful and the City would like to expand the program to include six more commercial accounts. Allied has agreed to expand the program and will maintain the same rate structure, adjusted annually by CPI, as originally established. HF&H has reviewed the cost structure for establishing the rates and the costs are reasonable when compared to other food waste collection programs in the Bay Area of similar size. If the pilot program were to expand beyond six customers, the rate structure should be revisited.

Cell Phone and Battery Collection. In 2007 State legislation was passed to prohibit household batteries from being disposed in landfills. In an effort to provide residents with a convenient method to comply with the new regulations, the City asked Allied to provide the costs to collect cell phones and household batteries curbside or at designated locations throughout the City. Allied provided the annual costs for curbside collection (\$251,595), collection at five strategic locations (\$50,875) and at ten strategic locations (\$78,563) throughout the City. After reviewing the costs the City determined there are currently sufficient drop-off locations within the City and nearby communities provided through the County of Santa Clara's Household Hazardous Waste Program (i.e., Orchard Supply Hardware and Savers). It was determined the additional benefit from this program did not justify the additional cost to the ratepayers. To increase participation, the City decided to increase the public awareness of the existing drop-off locations through their public education material.

Subsequent Rate Application Statement Issues

As part of the rate application review for 2008 and 2009, several items came to our attention that should be part of the next rate application statement review:

- **Yards Billed Report.** The calculations of the extraordinary costs reimbursement are calculated on a per-yard basis and rates are set for Allied to be reimbursed based on the yards billed to each customer. As part of the review process, Allied looks back to



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the prior two years to determine if it received the full reimbursement. Allied currently uses annual tonnage, converted to yards, to determine if they have been over or under paid. We feel there is uncertainty in the tons-to-yards conversion factor. Allied has agreed to provide a monthly report that shows the actual yards billed to single-unit, multi unit, commercial and roll-off customers for future rate applications so no conversion of tons to yards will be necessary.

- **City Tons.** It was noted during the current review process that the tons used for the extraordinary costs reimbursement for the City were significantly greater than the tons reported to the California Integrated Waste Management Board (CIWMB). Allied reviewed their records and revised their original tonnage amounts. Allied has agreed to revise their monthly tonnage reports to correlate with the quarterly reporting to the CIWMB.
- **Street Sweeping.** The City will begin compensating Allied for Street Sweeping in 2009 based on the number of miles swept within the City. In order to set the 2009 rates, an estimate for miles to be swept was used in the calculation. The City has agreed to allow Allied to reconcile the actual street miles swept to the estimated miles in the current application. The difference will be included in the next review process.
- **Account Data.** The City and Allied have agreed to review their applicable records to coordinate the customer count information. As new sub-divisions or multi-family developments are added the City and Allied have agreed to review each others records to ensure the proper count for billing purposes.
- **Mixed Use Developments.** The City and Allied have agreed to use the current rate structure for multi unit dwellings for any new mixed use developments. A mixed use development is a development where there are commercial establishments as well as residential units in one complex.

Extraordinary Cost Adjustment – Fuel

Allied requested, as part of its rate adjustment application, the City allow a portion of the base rate be adjusted to reflect the recent trend in fuel prices. In Allied's opinion, the increase in fuel prices is out of their control and should be considered an extraordinary cost and allowed to be included in the rate application in accordance with Agreement. We do not recommend the City consider Allied's request because of the following:

- The rate setting methodology set forth in the Agreement is a CPI-based methodology. In this case both parties, the City and Allied, assumed the risk for



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changes in market conditions. Individual costs may go up or, in some cases, due to possible special pricing contracts between Allied and third-party vendors, may go down. We believe the change in fuel costs is a market-driven condition not an Extraordinary Cost as described in the Agreement. The CPI-based methodology does not reflect these types of changes but rather looks at consumer-based prices. Both parties agreed to this methodology as part of the rate setting process in 2004. Allied stated in our negotiation meetings that CPI does not reflect the costs of a transportation company. They believe that housing costs are a driving factor of the CPI and rent expense is a small percentage of their business. Again, the CPI-based methodology was agreed to in 2004.

- Allied's request is actually a change to the rate setting methodology previously agreed to in 2004 as opposed to a request for reimbursement of Extraordinary Costs. They have not submitted invoices as specified in the Agreement rather they have elected to add an additional index to the rate setting methodology. The use of a motor-fuel index is quite common in agreements written today. This is usually done at the inception of an agreement where the costs of service are presented and rates can be broken down by expense components. Allied is not required to submit actual costs of service and profit to the City. Therefore, the breakdown of the rate components is not known and the fuel component submitted by Allied cannot be verified. In order for the City to know the rate components, a cost-of-service study would need to be performed, but there are risks to both parties. Changes to the rate setting methodology will result in either higher rates to the ratepayers or lower profits to the company. There are ways to mitigate the risk with specific contract language but there is still a risk.

Since Allied is requesting a change in the rate setting methodology that requires a cost-of-service study and there was insufficient time during the negotiation process to complete such a study, we recommend not including the fuel index. However, we understand Allied's fuel costs have increased in recent years and we recommend the City conduct a cost-of-service study prior to the next biennial rate study to gain an understanding of all components (cost plus profit) of the current rates. This understanding will allow the City to establish a rate-setting methodology that will reflect increases and decreases in market conditions for not only fuel but other significant cost items.

* * *



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We would like to express our appreciation to Allied management and staff for their assistance. In addition, we express our appreciation to you and City staff for assistance and guidance during the course of the review. Should you have any questions, please call me at 925-977-6952.

Very truly yours,
HF&H CONSULTANTS, LLC

Robert D. Hilton, CMC
President

Rick Simonson
Vice President

Marva M. Sheehan
Engagement Manager

cc: Mr. Gil Cheso, Allied Waste Services
HF&H Client Files

AGREEMENT FOR THE COLLECTION AND DISPOSAL

OF SOLID WASTE BETWEEN

THE CITY OF MILPITAS

AND ALLIED WASTE SERVICES OF NORTH AMERICA, LLC

DBA ALLIED WASTE OF SANTA CLARA COUNTY, SUCCESSOR IN

INTEREST TO BFI WASTE SYSTEMS OF NORTH AMERICA,

A DELEWARE CORPORATION, BOTH SUBSIDIARY CORPORATIONS OF

ALLIED WASTE INDUSTRIES, INC. A DELAWARE CORPORATION

ITS SUCCESSORS AND ASSIGNS

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Dated September 2, 1986

Amended:

January 8, 1991

July 21, 1992

December 15, 1992

January 4, 1994

December 20, 1994

November 21, 1995

June 4, 1996

December 17, 1996

August 5, 1997

February 2, 1999

May 18, 1999

February 20, 2001

December 17, 2002

May 18, 2004

November 16, 2004

January 15, 2008

Amended May 20, 2008, Effective June 20, 2008

Deleted: May 6

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Exhibits

"A"	Recycling Services at City-Sponsored Events
"B"	Amended Disposal Agreement between City of Milpitas and International Disposal Corporation dated September 2, 1986
"C"	Milpitas Single-Unit Service Level Rates
"D"	Milpitas Multiple-Unit Service Level Rates
"E"	Certificate of Consent to Self-Insure
"F"	Recycling Services
"G"	Community Relations Work Plan
"H"	Household Dump Day Plan
"I"	Milpitas Commercial Service Level Rates
"J"	Performance Measurements
"K"	(Deleted February 2, 1999)
"L"	Commercial Customer Notice Procedures
"M"	Deleted January 1, 2005
"N"	Residential Billing Technology and Customer Services Telecommunications Support
"O"	Street Sweeping
"P-2009"	2008-2009 Rate Adjustment Provisions
"P-2007"	2005-2007 Rate Adjustment Provisions
"Q"	Neighborhood Clean-Ups

This Agreement is made and entered into this 2nd day of September, 1986, to be effective September 5, 1986 (hereinafter "Commencement Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereinafter "CITY"), and Allied Waste Services of North America, LLC dba Allied Waste of Santa Clara County, Successor in Interest to BFI Waste Systems of North America, a Delaware Corporation, both subsidiary corporations of Allied Waste Industries, Inc., a Delaware Corporation, its successors and assigns, (hereinafter "CONTRACTOR").

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WHEREAS, pursuant to and in accordance with the provisions of Title V, Chapter 200, (Solid Waste Management) of the Milpitas Municipal Code (hereinafter "MMC V-200"), CONTRACTOR has applied for an agreement authorizing said CONTRACTOR to engage in the business of collecting and disposing of Solid Waste and Recyclables produced, kept or accumulated within the City limits of Milpitas; and

WHEREAS, City Council has found and determined that the public health, safety and general welfare of the City of Milpitas and the efficient collection and removal of Solid Waste and Recyclables will be preserved and protected by the execution of this Agreement subject to and in accordance with applicable laws and ordinances; and

WHEREAS, one guiding intent of this Agreement is to fulfill the mandates of the California Integrated Waste Management Act of 1989 (Assembly Bill 939), requiring that each City and County in the State of California divert twenty-five percent (25%) of its Solid Waste by 1995 and fifty percent (50%) by 2000 away from landfills using an integrated waste management program of source reduction, recycling and composting activities; and

WHEREAS, this Agreement provides for both the collection and disposal of Solid Waste and for street sweeping services through September 5, 2017, and the City Council has entered into a companion agreement with an affiliate of CONTRACTOR for the disposal of Solid Waste in the event this Agreement is terminated prior to its expiration on September 5, 2017.

NOW, THEREFORE, for and in consideration of the authority, privilege, covenants, promises, undertakings and obligations herein granted, made and assumed by the parties hereto, each to the other, the parties hereto agree as follows:

1. Applicable Laws. This Agreement is made and entered into pursuant to the provisions of MMC V-200. The parties agree that the applicable laws and regulations governing this Agreement are those of the State of California, and by MMC V-200 as adopted on August 5, 1986, by Ordinance 48.7, and any amendments thereto.

The parties enter into this Agreement with the understanding that MMC V-200 may be amended by the City Council to be consistent with the terms and conditions herein, both at the date of execution and the date of subsequent amendments, if any, and to fully carry out certain obligations of CITY hereunder. If said amendments are not adopted by the City Council, the parties shall immediately enter into good faith negotiations regarding same, but this Agreement shall remain in full force and effect.

The parties enter into this Agreement with the understanding that CONTRACTOR shall operate landfill, recycling, and compost facilities in accordance with applicable permits.

2. Definitions. All terms, not otherwise defined herein, shall be construed to have the same meaning as given to them in the MMC V-200.

(a) Approval by City. "Approval by City" or "Approved by City" shall mean, with respect to:

- (i) The services to be performed pursuant to this Agreement, the rates for services and a determination to seek arbitration pursuant to Paragraph 29, a majority vote of the City Council;
- (ii) Changes in equipment, operating procedures or minor or temporary changes in service frequency or the service level to be provided to a Premises and the acceptance of inkind services in lieu of a financial penalty for liquidated damages, the determination of the City Manager or his/her designee;
- (iii) The handling of situations which in the judgment of the City Manager require prompt action, including those relating to the protection of public health and the environment, the determination of the City Manager or his/her designee.

(b) Biohazardous Waste. "Biohazardous Waste", means those materials as "Biohazardous Waste" in California Health and Safety Code Section 25020.5, as amended from time to time.

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(c) Bin. "Bin" means a Container with the capacity of approximately one to eight cubic yards, with a hinged lid, that is serviced by a front end-loading vehicle.

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(d) Bulky Items. "Bulky Items" means discarded items which, because of their size and shape, cannot be placed in Solid Waste containers, including, but not limited to, large household appliances, furniture, carpets, mattresses, tree stumps or similar large items.

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(e) Cart. "Cart" means a plastic Container provided by CONTRACTOR with a hinged lid and wheels that is serviced by an automated or semi-automated collection vehicle. A Cart has a capacity of approximately 32, 64 or 96 gallons.

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(f) Centralized Collection Service. "Centralized Collection Service" means the level of service provided to a multi-family development that provides a designated collection point for garbage and recycling services in roll-off compactors.

(g) Commercial Premises. "Commercial Premises" means all Premises except Single-Unit and Multiple-Unit Dwellings.

(h) Commercial Service Level. "Commercial Service Level" means the level of service, fees and rates provided to or paid by Premises other than those included within the Single-Unit Service Level or Multiple-Unit Service Level.

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(i) Compactor. "Compactor" means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include two to four cubic yard Bin Compactors serviced by front-end loader collection vehicles and 6 to 50 cubic yard Debris Box Compactors serviced by roll-off collection vehicles.

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(j) Containers. "Containers" means Bins, Carts, Compactors, and Roll-off Containers.

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(k) Debris Box. "Debris Box" means an open-top Container with a capacity of 6 to 50 yards serviced by a roll-off collection vehicle.

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(l) Disposal Agreement. "Disposal Agreement" means that certain Agreement between the City of Milpitas and International Disposal Corporation for disposal of Solid Waste dated September 2, 1986 and as amended from time to time.

(m) Extraordinary Costs. "Extraordinary Costs" are those costs which increase CONTRACTOR's costs of providing service under this Agreement, as more fully described and set forth in paragraphs 4, 7 and 8(b) herein.

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(n) High Density Developments. “High Density Developments” are defined in the City’s General Plan (or as modified per Milpitas City Council approval) as follows:

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- (1) Medium Density – “Medium Density” housing may include single-family attached and semi-attached houses and duplexes.
- (2) High Density – “High Density” housing may include attached row houses to triplexes and four-plexes, stacked townhomes, and walk-up garden apartments.
- (3) Very High Density – “Very High Density” housing may include attached row houses and townhouses to lofts and stacked flats with structured parking.
- (4) Mixed Use – “Mixed Use” allows for commercial offices, retail and services, High Density residential and public and quasi-public uses. Mixed use buildings can contain a combination of residential and commercial uses. Mixed use projects are subject to rates and services shown in Exhibit D.

(o) Multiple-Unit Dwelling. "Multiple-Unit Dwelling" means any Premises, other than a Single-Unit Dwelling, including each residential unit of a condominium project, a townhouse project, a mobile home park and other buildings with four or more residential units, used for residential purposes, but excluding temporary and transient residences including hotels or motels.

(p) Multiple-Unit Service Level. "Multiple-Unit Service Level" means the level of service, fees and rates provided to or paid by a) mobile home parks or b) any residential premises of four or more units, including but not limited to apartments, townhouses and condominiums, or c) other Multiple-Unit Dwellings.

(q) Newby Island. "Newby Island" means the landfill located at 1601 Dixon Landing Road, San Jose, California, currently classified as a Class III (Nonhazardous Solid Waste) landfill under applicable laws and regulations of the State of California and/or the composting facility operated at the same address.

(r) Non-putrescible Waste. Solid Wastes which are not capable of being decomposed by micro-organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions.

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(s) Putrescible Waste. "Putrescible Waste" means the component of the waste stream likely to become putrid – including wastes that contain organic materials such as food wastes or wastes from animal or vegetable origin, which readily bio-degrade within the environment of a landfill.

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(t) Recycling. "Recycling" means the process of collecting, sorting, cleansing, treating or reconstituting Solid Waste materials, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products.

(u) Recyclables. "Recyclables" or "Recyclable Materials" mean materials which through collection (the cost of which is referred to hereinafter as the "Recyclables Collection Cost") processing, sorting, cleansing, treating, reconstituting, resale or non-landfill disposition (the cost of which is referred to hereinafter in the aggregate as the "Recyclables Processing Cost") may be returned to the economic mainstream in the form of raw material for new, reused or reconstituted products, including but not limited to material types such as newspapers, white paper, mixed paper, corrugated cardboard, glass, polyethylene terephthalate ("PET"), high density polyethylene ("HDPE"), polystyrene foam, wood, bi metal cans, aluminum cans, ferrous metals, non-ferrous metals, motor oil, or other materials as may be identified from time to time by the City (subject to the provisions of Paragraph 3 herein).

(v) Recycler. "Recycler" is a person or entity that engages in Recycling.

(w) Roll-off Container. An open top debris box or closed compactor unit for disposal of solid waste or recyclable materials serviced by a roll-off vehicle.

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(x) Senior. "Senior" means the occupant(s) of a Single-Unit Dwelling who is sixty-two (62) years of age or older, responsible for paying the water bill of the dwelling, and is approved by CITY for a senior discount for solid waste services.

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(y) Single-Unit Dwelling. "Single-Unit Dwelling" means each Premises used for or designated as a single-unit residential dwelling, including each residential unit of a duplex and, a triplex; and

1) Multiple-Unit Dwellings billed by CONTRACTOR if:

A) Single-Unit designation is requested by the Owner of Premises, the Owner's Representative, or the Homeowner's Association; and

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- B) The request is approved by CITY and CONTRACTOR in accordance with the criteria set forth in subparagraph (s)(3) below; and
 - C) The service provided is ninety-six (96) gallon or sixty-four (64) gallon Solid Waste container collection, curbside recycling, and no motor oil collection.
- 2) In making an approval or disapproval of a request for Single-Unit designation, CITY and CONTRACTOR shall consider the following criteria:
- A) Containers must be reasonably accessible to CONTRACTOR's vehicles and personnel, and allow for collection from one side of the collection vehicle at curbside or adjacent to roads or accessways.
 - B) Containers must meet all requirements of MMC V-200 relating to curbside set-out, and must not obstruct other vehicles, roads, accessways, or equipment. The Premises must also meet all requirements of MMC V-200 relating to the storage of Solid Waste and Recyclables.
 - C) The request must be reviewed and approved by CITY's Fire Marshall and Traffic Engineer.
 - D) The request must not unreasonably interfere with the efficiency or consistency of CONTRACTOR's service to surrounding properties, as determined in the CONTRACTOR's reasonable judgment.
- (z) Single-Unit Service Level. "Single-Unit Service Level" means the level of service, fees and rates provided to or paid by the owner or resident of a Single-Unit Dwelling.
- (aa) Solid Waste. "Solid Waste" or "Solid Wastes" means all ~~Putrescible~~ and ~~Non-putrescible nonhazardous solid, semi-solid and liquid~~ discarded material, including garbage, refuse, trash, paper, rubbish, ashes and other discarded solid and semi-solid material, which (i) are not Hazardous Wastes or Biohazardous Wastes, (ii) fall within the definition of Nonhazardous Solid Waste, as that term is defined in Title 23, Chapter 15, Section 2523(a) of the California Code of

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Regulations, (iii) are produced, generated or accumulated in the City or by CITY, and (iv) are not designated as Recyclable Materials in Exhibit F, or Yard Trimmings.

Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of Hazardous Substances (as that term is defined in 42 U.S.C. Section 9601(14)) remaining in the waste stream following implementation of a program for the safe collection, recycling, treatment and disposal of Hazardous Waste generated in households, in accordance with Sections 41500 and 41802 of the Public Resources Code.

(bb) Street Sweeping. "Street Sweeping" refers to the program described in Exhibit O.

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(cc) Waste Reduction Program. "Waste Reduction Program" means any program that reduces the amount of waste that would otherwise be disposed of in a landfill, including without limitation, Recycling.

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(dd) Yard Trimmings. "Yard Trimmings" means all materials, containing not less than ninety-five percent (95%) by weight-per-load plant debris, including grass clippings, leaves, prunings, weeds, branches, brush and tree trunks, as well as other forms of organic waste generated from landscapes and gardens, and other such materials as mutually agreed upon in writing by CONTRACTOR and CITY staff, which are collected by CONTRACTOR pursuant to a separate written agreement between CONTRACTOR and CITY.

3. Authority Granted. CITY hereby grants exclusively to CONTRACTOR the authority and privilege to engage as a Collector in the business of collecting, processing and disposing of Solid Waste and Recyclables produced, kept or accumulated in the City of Milpitas, on Premises not owned or leased by any school district or the State of California or any of its subdivisions, subject to and in accordance with the provisions of this Agreement. CONTRACTOR, however, is only required and authorized to collect and process those particular Recyclable Materials designated for collection by CITY in Exhibit F hereto, which designation may be amended from time to time by agreement of CITY and CONTRACTOR. The authority and privilege herein does not extend to Hazardous Wastes and Biohazardous Wastes, or where said authority and privilege is declared by Paragraph 5 hereunder to be non-exclusive or where the Producer of the Solid Waste or Recyclable Material has not discarded the material. This exclusive grant of said authority and privilege is and shall be expressly conditioned upon CONTRACTOR being ready, willing and able at all times to collect, process and dispose (with CONTRACTOR choosing the manner, method or location of disposal) of all

Solid Waste and Recyclables except Hazardous Wastes and Biohazardous Wastes from such Premises in accordance with the provisions of this Agreement and all applicable laws.

In the event that CONTRACTOR, inadvertently or otherwise, receives Hazardous Wastes or Biohazardous Wastes in the course of its activities, CONTRACTOR shall have the responsibility at its own cost to promptly notify CITY Fire Department and properly respond to the incident and assure proper handling and disposal of the material. CONTRACTOR shall also reimburse CITY for cleanup costs incurred by CITY or its authorized contractor, if any. The CITY Fire Department shall make the final determination as to the adequacy of cleanup efforts performed by CONTRACTOR. Thereafter, CITY and CONTRACTOR agree to diligently investigate the cause of the incident and CITY agrees to prosecute (and CONTRACTOR agrees to assist in any prosecution) any persons who are found to have delivered Hazardous Wastes or Biohazardous Wastes to CONTRACTOR. If any monetary award is received as a result of a civil proceeding, the proceeds shall be divided in accordance with the following priorities: (i) costs of prosecution reimbursed to CITY, (ii) costs of response reimbursed to CONTRACTOR, and (iii) any remaining monies divided equally between CITY and CONTRACTOR.

4. Enforcement of Exclusivity. CITY shall not let any contract to, or enter into any contract or agreement with, any other Person for the performance of the services herein required to be performed by CONTRACTOR, except as expressly otherwise provided below, as long as this Agreement is in effect.

CITY shall make its best efforts to protect CONTRACTOR's rights to such exclusive contract by proper ordinances or resolutions, and by reasonable enforcement thereof. Said enforcement shall include prompt written notification to any Person violating such exclusivity, and, should said violations not cease, CITY shall promptly conduct such administrative hearings as may be necessary followed by initiation as soon as practicable of litigation against said violators if the violations have not ceased. CITY shall enforce in said manner against any Person known to CITY to be in violation; CONTRACTOR shall inform CITY by written notice of any Person known to it to be in violation.

Costs of said litigation per occurrence shall be allocated as follows:

CITY shall pay the first Ten Thousand Dollars (\$10,000.00) of costs and attorneys' fees; CITY and CONTRACTOR shall bear equally the next Fifty Thousand Dollars (\$50,000.00) of costs and attorneys' fees; the remainder shall be initially borne by CONTRACTOR, and, at CITY's option, (i) passed through as Extraordinary Costs to all classes or certain designated classes of

service recipients as CITY shall determine, or (ii) reimbursed to CONTRACTOR by CITY within a reasonable time period, such reimbursement to include simple interest commencing on the first (1st) day following the day on which said litigation costs were paid at CONTRACTOR's actual cost of funds, not to exceed the reference rate of Bank of America N.T. and S.A. (San Francisco Branch) plus one percent (1%). In the event the aforementioned bank is no longer in business, the reference rate from another primary dealer of the federal reserve system shall be used.

CITY shall have the right to control said litigation, except that, unless and until Sixty Thousand Dollars (\$60,000.00) in costs and attorneys' fees have been incurred by the parties hereto in the manner above-mentioned, any settlement of such litigation shall require the consent of both CITY and CONTRACTOR. Thereafter, CITY agrees to enter into good faith discussions with CONTRACTOR regarding any settlement. Should any damages be assessed against Defendants in the above-described litigation, CITY and CONTRACTOR shall share in the award as follows: attorneys' fees and costs of litigation shall be reimbursed in proportion to each party's contribution thereto, with the remainder reimbursed in proportion to each party's losses.

CITY's obligation hereunder to litigate as necessary to enforce the exclusivity of this Agreement shall not prejudice nor foreclose CONTRACTOR from filing an independent action against violators. The above cost sharing arrangements apply only to lawsuits brought by CITY to enforce the exclusivity of this Agreement.

5. Exceptions to Exclusivity of Authority Granted. The authority and privilege herein granted to CONTRACTOR shall be exclusive except with respect to the following:
 - (a) Commercial temporary Debris Boxes at construction sites for collection of construction debris from the commencement to the completion of construction, including new construction and/or remodeling, renovating, rehabilitating or demolition of existing structures;
 - (b) Residential temporary Debris Boxes at Single-Unit Dwellings. The Debris Boxes shall not be located thereon for more than thirty (30) days within any sixty (60) day period.

All hauling of temporary Debris Boxes referred to in Subparagraphs (a) and (b) above shall be provided only by haulers authorized by contract with CITY pursuant to MMC V-200. CITY shall include in said contract or contracts such franchise fees, limitations on hours of collections, and other

obligations no less restrictive than those imposed upon CONTRACTOR in this Agreement in connection with the hauling of the Debris Boxes.

(c) Non-containerized hauling services, including but not limited to landscapers, tree services, and Bulky Item haulers.

(d) Collection of Recyclables from Commercial Premises, so long as (i) the transaction does not result in a payment or other consideration to the hauler of the recyclable materials and if (ii) the Producer subscribes to Solid Waste service for the balance of its Solid Waste pursuant to this Agreement and MMC V-200.

(e) Collection of tallow and restaurant grease.

(f) Collection of Yard Trimmings for Recycling.

(g) Collection of cardboard, mixed paper, scrap metal, polystyrene, clean wood, wood pallets and circuit boards so long as the Producer subscribes to Solid Waste service for the balance of its Solid Waste pursuant to this Agreement and MMC V-200; the recyclables listed above are separated and stored for collection by material type; the recyclables contain no residual materials; the recyclables are processed for beneficial reuse and are not disposed in a landfill; and, the recycler maintains required City permits and licenses.

6. Services Provided by CONTRACTOR. CONTRACTOR shall collect and dispose (with CONTRACTOR choosing the manner, method or location of disposal) of all Solid Waste produced, kept or accumulated within or upon all Premises in the City except as herein otherwise provided in this Agreement, and subject to and in accordance with the terms and provisions hereof and applicable laws. CONTRACTOR shall provide the following services at the rates set forth in this Agreement except as herein otherwise provided below:

(a) To Single-Unit Dwellings:

(1) Weekly curbside pick-up of Solid Waste and Recyclables, pursuant to the terms and conditions of Exhibits C and F hereto except that CONTRACTOR shall not be required to collect dirt, sod, concrete, masonry and asphalt. The number of Recyclable Materials collected may be increased or decreased beyond those identified in Exhibit F hereto upon agreement of CITY and CONTRACTOR, with an appropriate increase or decrease in the service rate based upon the

incremental increase or decrease in the Recyclables Collection Cost or Recyclables Processing Cost.

- (2) Curbside pick-up of used motor oil which has been placed in receptacles provided by CONTRACTOR and approved by CITY. CONTRACTOR shall deliver receptacles to CITY within forty-eight (48) hours of CITY's request, excepting circumstances beyond the control of CONTRACTOR. CONTRACTOR shall affix any labels or lids to receptacles prior to delivery to CITY or residents. Any additional costs associated with procuring a more utilitarian container distributed to Single-Unit Dwellings for collection of motor oil, and the manner in which these costs are to be allocated to the service rates, will be negotiated in good faith by and between the parties, and subject to arbitration as provided in Paragraph 29 of this Agreement.
- (3) Collection of uncontainerized Bulky Items, including but not limited to refrigerators, washers, dryers, sofas, on an on-call basis at rates set pursuant to this Agreement. Requests for service must be made forty-eight (48) hours in advance of the next scheduled collection day. This service shall be non-exclusive; Producers may haul their own Bulky Items or solicit service of a private hauler to do so.
- (4) Household Dump Day of Non-industrial and Non-commercial Solid Waste at Newby Island landfill and Yard Trimmings and Scrap Wood at Newby Island composting facility every 2nd and 4th Saturday except when Christmas and New Year's falls on a Saturday, pursuant to the terms and conditions of Exhibit H hereto. Yard Trimmings shall also be accepted at Newby Island landfill and/or composting facility on Household Dump Day until January 1, 1997. Thereafter, Yard Trimmings shall not be accepted at either Newby Island landfill or composting facility on Household Dump Day except as provided in Exhibit H. "Non-industrial" and "Non-commercial" Solid Waste shall mean that Solid Waste normally produced at residential Premises and legally authorized for acceptance and disposal at Newby Island pursuant to all applicable laws, regulations, policies, guidelines and permit conditions regarding waste acceptance, and excludes Solid Waste produced in a commercial or industrial enterprise. Any additional costs associated with the acceptance and handling of Non-industrial and Non-commercial waste materials which are not legally authorized

for collection or disposal, and the manner in which these costs are to be allocated to the service rates, shall be negotiated in good faith by and between the parties and subject to arbitration as provided in Paragraph 29 of this Agreement.

This privilege is effective only during the term of this Agreement, and except (i) when Newby Island cannot accept such Solid Waste, Yard Trimmings or Scrap Wood due to circumstances beyond the control of CONTRACTOR or its affiliate operating Newby Island, or (ii) if Newby Island is no longer owned and operated by an affiliate of CONTRACTOR; provided, however, if the exceptions of (i) or (ii) occur, this privilege shall be effective at another disposal and/or compost facility owned and operated by an affiliate of CONTRACTOR and closest to the City, subject to the same conditions of availability and continued ownership set forth in (i) and (ii) above. For purposes of this subparagraph, circumstances beyond the control of CONTRACTOR shall not include strikes, labor stoppages or labor unrest.

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- (6) Additional services as necessary to accommodate the needs of disabled residents, as defined in the Americans with Disabilities Act, at the same level of service provided and rate charged to non-disabled residents, including but not limited to collecting Solid Waste and Recyclables from containers stored in side or back yards, replacing empty containers in side or back yards, and maintaining a TDD telephone line.

(b) To Multiple-Unit and Mixed Use Dwellings:

- (1) At least weekly collection of Solid Waste from Solid Waste Containers, and weekly collection of Recyclables from Recycling Bins, pursuant to the terms and conditions of Exhibits D and F hereto. The number of Recyclable Materials collected may be increased or decreased beyond those identified in Exhibit F hereto upon agreement of CITY and CONTRACTOR, with an appropriate increase or decrease in the service rate based upon the incremental increase or decrease in the Recyclables Collection Cost or Recyclables Processing Cost.
- (2) Household Dump Day of Non-industrial and Non-commercial Solid Waste (as defined in paragraph 6(a)(4) above) at Newby Island Landfill and Yard Trimmings and Scrap Wood at

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Newby Island composting facility every 2nd and 4th Saturday of each month, except when Christmas and New Year's falls on a Saturday, pursuant to the terms and conditions of Exhibit H hereto.

- (3) Pickup of Holiday trees cut into lengths of five (5) feet or less placed next to Solid Waste ~~Containers~~. This service shall be provided for two (2) weeks beginning the ~~following week of the Christmas Day holiday~~.

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(c) To Commercial Premises:

- (1) At least ~~weekly~~ collection of ~~Putrescible~~ Solid Waste from ~~Solid Waste Containers pursuant to the terms and conditions of Exhibit I hereto, collection of Non-putrescible Solid Waste at least once every thirty (30) days for Compactors and Debris Boxes and at least weekly for all other service types, and~~ collection of Recyclables at least once every sixty (60) days for ~~Compactors~~ and at least once every ~~thirty (30) days~~ for all other service types pursuant to the terms and conditions of Exhibit F hereto.

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- (2) Monthly reporting of volumes of ~~Solid Waste~~ or ~~Recyclables~~ to commercial customers who submit a written request for such reporting service. There shall be no additional charge for this service.

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Pursuant to MMC V-200-4.02-2, CONTRACTOR shall not be required to enter private property for the purpose of collecting Solid Waste or Recyclables pursuant to Subparagraphs (b) and (c) above. CONTRACTOR's trucks will enter private property if and only if said service recipients execute CONTRACTOR's service agreement granting authority for CONTRACTOR's trucks to enter onto the premises to provide such service and exempting CONTRACTOR from liability for any damage to the premises in the course of collecting said Solid Waste or Recyclables except for the negligence of CONTRACTOR, its agents, servants and employees. If said service recipients do not execute the service agreement, CONTRACTOR shall charge an additional charge, the "Push and Return Charge" set forth in Exhibits "D" and "I" attached hereto, for CONTRACTOR's employees to dismount truck, prepare container for service, or push out the container to the public right-of-way and return it to its original location.

- (d) To Single-Unit Dwellings, and to Commercial Premises subscribing to minimum can service:

- (1) Within thirty (30) days of the Commencement Date of this Agreement, CONTRACTOR shall begin supplying an approximately ninety-six (96) gallon wheeled cart as an option to the above service recipients, except that Senior Citizens may use two cans or, as an option, shall be provided with a sixty-four (64) gallon cart or a thirty-two (32) gallon cart. A separate service fee shall be charged for the cart, and additional carts shall be available for an additional fee. These carts, if damaged, lost, or marked with graffiti, except through repeated negligence or intentional conduct by the recipients, shall be repaired or replaced, at its option, by CONTRACTOR at no charge. Printing on the carts shall be limited to their identification as property of CONTRACTOR including a serial number, and to instructions for use. In addition to the cart or carts, Single-Unit Dwellings may deposit for collection unlimited numbers of thirty-two (32) gallon cans or containers meeting the requirements set forth in MMC V-200.
- (2) CONTRACTOR shall provide Recycling Bins and/or wheeled carts for the collection of Recyclables pursuant to the terms and conditions set forth in Exhibit F hereto.

CONTRACTOR shall notify CITY in writing at least sixty (60) days in advance of any proposed changes in the equipment or supplies provided pursuant to this subparagraph. CITY shall review and render a decision regarding its approval of the proposed changes, and, where appropriate, amend MMC V-200, within sixty (60) days of receipt of the written notification.

(e) To CITY:

- (1) Free containerized Solid Waste service to facilities operated by CITY and staffed with CITY employees, including police and fire stations, City Hall complex, Community Center, Senior Center, Sports Center, Corporation Yard, Vehicle Maintenance Facility, Higuera Adobe Park, Milpitas Public Library and Midtown Parking Garage, and other similar facilities or similar facilities which CITY acquires during the effective period of this Agreement, on a regular schedule as provided to normal commercial premises. This privilege shall not extend to any CITY owned or operated, or CITY-affiliated facilities in the nature of residences, schools,

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community care, hospitals, or other such facilities which may be acquired in the future by CITY.

- (2) Free dumping privileges of Solid Waste and Recyclables generated from routine maintenance of CITY parks, athletic fields, and streets at Newby Island landfill, Recyclery, and Compost Facility by CITY owned and operated vehicles, including *street sweeping debris delivered by a CITY-authorized contractor*, tree trimmings, litter and the like, but excluding (i) road construction or repair projects performed by private contractors hired by CITY and (ii) demolition projects by private contractors hired by CITY unless written consent has been obtained from CONTRACTOR. Free dumping privileges to include street sweeping debris delivered to Newby Island by a CITY contractor. City street sweeping contractor to provide Newby Island with City authorization and verification letter confirming that material delivered has originated from routine maintenance of City streets.

CITY shall notify CONTRACTOR in writing within 24 hours of a declaration of emergency within the CITY. Said notification shall include identification of which CITY or CITY-authorized vehicles will be hauling materials for disposal from emergency operations. CITY shall notify CONTRACTOR during the course of the emergency of any changes to the CITY or CITY-authorized vehicles used for emergency disposal hauling including the cessation of such operations. CONTRACTOR shall maintain separate records of all CITY emergency disposal operations.

The CITY's dumping privilege is effective only during the term of this Agreement, and except (i) when Newby Island cannot accept such Solid Waste due to circumstances beyond the control of CONTRACTOR or its affiliate operating Newby Island, or (ii) if Newby Island is no longer owned and operated by an affiliate of CONTRACTOR; provided, however, if the exceptions of (i) or (ii) occur, this privilege shall be effective at another disposal and/or composting facility owned and operated by an affiliate of CONTRACTOR and closest to the City, subject to the same conditions of availability and continued ownership set forth in (i) and (ii) above.

- (3) CONTRACTOR shall also provide each calendar year an additional five hundred (500) yards of hauling and disposal services for special cleanups, the CITY's emergency disposal storage site or other civic programs as directed by CITY.
- (4) CONTRACTOR shall provide, at no cost, recycling containers to a non-profit organization designated by CITY for use at CITY-sponsored events or programs up to six (6) times each calendar year, at the request of CITY, pursuant to the terms and conditions of Exhibit A hereto.
- (5) CONTRACTOR shall provide, at no cost to CITY, collection and shredding of confidential CITY documents at such times and in such amounts as requested by CITY, at a frequency not to exceed two (2), eight (8) hour days each calendar year.
- (6) CONTRACTOR shall provide, at no cost to CITY, Recycling collection services for mixed paper and rigid containers at City Hall Police Station, Fire Stations, Senior Center, Sports Center, Corporation Yard, Milpitas Public Library and Midtown Parking Garage, and other CITY owned or operated facilities as of the effective date of this Agreement, or acquired during the effective period of this Agreement, as agreed to by CITY and CONTRACTOR.

Collection of recyclables shall be on an as needed basis as agreed to by CITY and CONTRACTOR.

- (7) CONTRACTOR shall provide bus stop Solid Waste collection service at sixty-three (63) locations identified by CITY. Weekly services shall include collecting and disposing of the contents of containers, relining containers with a thirty-two (32) gallon plastic liner, sweeping of bus stop site, cleanup of any litter that appears to be caused by the use of the bus stop and response, within twenty-four (24) hours of notification, of complaints regarding overflowing containers at the designated bus stop locations. Should the level of service at bus stops be modified, the change in service cost shall be passed through at the bi-annual rate adjustment in accordance with Paragraph 8.

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 (7) . CONTRACTOR shall provide, at cost to CITY, two (2) drop-off locations within the CITY, at locations to be determined by the CITY, for the purpose of collecting used telephone books for recycling, and shall collect this material from the drop-off locations on an as-needed basis during the annual distribution of telephone directories in the City.¶

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- (8) CONTRACTOR shall provide up to ten (10) neighborhood clean-ups annually as described in Exhibit Q.

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(f) Other Obligations of CONTRACTOR:

- (1) Recycling: CONTRACTOR shall work with and assist CITY to encourage Recycling, including, but not limited to, the collection and processing of additional Recyclable Materials.

- (2) CONTRACTOR shall continue their historic level of involvement, support and responsiveness in the Milpitas community, through the term of this contract and irregardless of changes in ownership, title, and management of CONTRACTOR's business organization.

- (g) Street Sweeping. All street sweeping requirements must be provided as set forth in Exhibit O.

7. Disposal Obligation. CONTRACTOR shall have the obligation to dispose of Solid Waste collected hereunder in a manner, method and location chosen by CONTRACTOR. It is understood between the parties that it is CONTRACTOR's decision and intent to dispose of the Solid Waste at Newby Island unless and until Newby Island is unable to accept such Solid Waste due to circumstances beyond the control of CONTRACTOR. If Newby Island is so unavailable, CONTRACTOR shall exercise its best efforts to obtain disposal space at the facility owned and operated by CONTRACTOR or its affiliates closest to Newby Island, at the prevailing rate at that facility charged to other public agencies. Increased costs resulting from disposal at another facility shall be passed through to service recipients of this Agreement and treated as Extraordinary Costs pursuant to Paragraph 8(d)(1)(A). However, in the event that the increased costs result in an increase to all service recipients in excess of twelve and one-half percent (12-1/2%), CITY at its sole option may serve written notice to CONTRACTOR requiring renegotiation of the rate provisions of this Agreement. If the parties have failed to reach agreement within one hundred and twenty (120) days from receipt of the written notice, CITY at its sole option may give written notice of termination, such termination to be effective one (1) year from the date of receipt of said notice by CONTRACTOR.

For purposes of this paragraph, circumstances beyond the control of CONTRACTOR shall not include (i) the inability to provide adequate disposal space resulting from the failure of Newby Island's owner to comply with all laws, directives, orders, guidelines or permits of any governmental agency having jurisdiction over Newby Island, (ii) the inability to provide adequate disposal space resulting from waste disposal commitments or other business arrangements made by Newby Island's owner to other customers, or

(iii) the transfer of ownership of Newby Island from International Disposal Corporation of California (IDC) to any entity other than an affiliate of IDC or CONTRACTOR.

CONTRACTOR shall have the obligation to collect, transport, process, sort, cleanse, treat, reconstitute, sell, donate or dispose of Recyclables collected hereunder in a manner, method and location chosen by CONTRACTOR. Notwithstanding the foregoing, CONTRACTOR shall make all reasonable efforts to avoid landfill disposal of any Recyclable Material, which efforts shall include but not be limited to (i) storage of the Recyclable Material for a period not less than sixty (60) days, (ii) ongoing efforts to locate and create markets for Recyclable Materials, and (iii) non-landfill disposition of Recyclable Materials where commercially reasonable. Disputes regarding this provisions shall be subject to arbitration pursuant to Section 29 herein.

The parties acknowledge that CITY has entered into a Disposal Agreement defined hereunder, a copy of which is attached hereto as Exhibit "B." Said Disposal Agreement sets forth the obligations of CITY and International Disposal Corporation of California, and the terms and conditions for disposal of Solid Waste in the event this Agreement is terminated prior to its expiration on September 5, 2017.

8. Service Rates and Adjustments.

a. Service Rates. From the Commencement Date of this Agreement through December 31, 1986, the monthly rates for Solid Waste collection and disposal thereof are those rates adopted by the City Council on December 6, 1983, by Resolution No. 3937. Effective January 1, 1994, or as amended thereafter, and except as otherwise provided in this Agreement, the monthly service rates for Solid Waste collection and disposal hereunder are detailed in Exhibit C, entitled "Milpitas Single-Unit Service Level Rates", Exhibit D, entitled "Milpitas Multiple-Unit Service Level Rates", and Exhibit I, entitled "Commercial Service Level Rates" attached hereto and incorporated herein by reference.

b. Biennial Adjustment; One-time Triennial Adjustment. The rates set forth in Exhibits C, D and I shall be adjusted on January 1st every two (2) years, beginning January 1, 1995, pursuant to this paragraph (the "Adjustment Cycle") except that on January 1, 2005 the rates shall be adjusted annually for a five (5) year period through December 31, 2009 and return to a two (2) year cycle beginning January 1, 2010. Exhibit P-2007 describes the provisions for the 2005-2007 rates adjustment. Exhibit P-2009 describes the provisions for the 2008-2009 rate adjustment. For purposes of adjustment, the

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"Base Rates" shall be the rates in effect on December 31 of the year prior to each adjustment, adjusted if necessary to delete non-recurring, fully amortized Extraordinary Costs. Notwithstanding any provision herein to the contrary, Extraordinary Costs of the type set forth in subparagraphs 8 (d)(1)(A)(1) and 8(d)(3) added to the Base Rates subsequent to the January 4, 1994, execution of the amended Agreement shall be deleted from the Base Rate prior to making any Adjustment by Index pursuant to subparagraphs (b) and (c) of this paragraph.

(1) Adjustment Index:

Each Base Rate shall be adjusted upward or downward on the basis of seventy-five percent (75%) of the net percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"). All net percentage changes shall be calculated by the following formula:

$$\text{Net percentage change (NPC)} = \frac{X(i)-X(i-2)}{X(i-2)}$$

Where X(i) = Index value for April of the year preceding the adjustment year;

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X(i-2) = Index value for April of the third preceding year

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Changes in the Index of less than one full point (1.0) shall be rounded to the nearest full point, i.e., 1.50 to 1.99 shall be treated as 2.0; 1.01 to 1.49 shall be treated as 1.0.

Should the Index not be published in April of the year required for calculation of rate adjustments, the Index values of the month most immediately preceding that April shall be used. If said Index is discontinued, it shall be replaced by the

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index which most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

Notwithstanding any provision of this subparagraph to the contrary, the biennial adjustment by index taking place on January 1, 1995 with respect to Single-Unit Recycling (mixed paper portion of rate only), Multiple-Unit Recycling and Commercial Recycling shall consider only those changes in the Consumer Price Index occurring between effective date of the respective program, as set forth in Exhibit F, and August, 1994, and shall not consider any changes in the Consumer Price Index occurring prior to the effective date of the respective program.

(2) Service Rate Adjustment Statement

On or before June, 15 of each year preceding a rate adjustment, CONTRACTOR shall send to CITY a service rate adjustment statement setting out the following information for each service rate:

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- (a) The index values of X(i) and X(i-2);
- (b) The Net Percentage Change (NPS) calculated pursuant to subparagraph (a) above;
- (c) Seventy-five percent (75%) of the Net Percentage Change.
- (d) The values of Base Rates plus [Base Rates x (NPC x .75)]
- (e) Any adjustment to the charges for CITY billing services not subject to prior adjustment during the current biennial Adjustment Cycle.
- (f) Any adjustment to CITY charges for Solid Waste or Recycling services not subject to prior adjustment during the current biennial Adjustment Cycle.
- (g) Any Extraordinary Costs not subject to prior adjustment during the current biennial Adjustment Cycle.
- (h) The resulting service rates.

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The Biennial Rate Adjustment effective 1999 will include a ~~Solid Waste~~ rate adjustment to reduce annual commercial garbage gross revenues \$55,000 to resolve CITY concerns in full regarding the subsidy for lost Solid Waste volume due to implementation of the Commercial Recycling Program.

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c. Annual Adjustment.

(1) Consumer Price Index

Upon the initiation by CITY or the request of CONTRACTOR to the City Council, the rates set forth in Exhibits C, D and I may be adjusted by CITY on January 1 of each ~~odd-numbered year~~, but only in the event that seventy-five percent (75%) of the net percentage change in the Consumer Price Index referenced above would result in an increase or decrease in the Base Rate of greater than five percent (5%) in a twelve (12) month period. Such initiation or request shall be made on or before ~~June 15 of 2010~~ or any year preceding a scheduled Base Rate adjustment. The making of an adjustment pursuant to this subparagraph (c) shall not otherwise affect the making of adjustments to the Base Rate at the end of the Adjustment Cycle pursuant to subparagraph (b) above.

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d. Ongoing Adjustments

(1) Extraordinary Costs

(A) The rates set forth in Exhibits C, D, and I may be adjusted at any time, upon the initiation of CITY or the request of CONTRACTOR to City Council, to fully reimburse CONTRACTOR for Extraordinary Costs to the extent of CITY's pro rata share of CONTRACTOR's increased costs of providing service resulting from (i) changes in laws, regulations, orders or guidelines affecting the collection and disposal of Solid Waste generated within the City or material changes in the enforcement and interpretation of said laws, regulations, orders or guidelines (collectively, "changes in law"), or (ii) circumstances beyond the control of CONTRACTOR, which occur or become effective subsequent to the date of execution of this Agreement or any amendments thereto. Without limiting the types of circumstances that may arise in the future, examples of Extraordinary Costs include, but are not limited to:

1. Fees, taxes or charges, except for Household Dump Day charges described in Section

8.d.(1).(A).6, imposed by any public entity on the collection or disposal of Solid Waste or Recyclables, whether on the basis of quantity of Solid Waste or some other basis.

2. Fees, taxes or charges imposed on the equipment or facilities utilized for the collection or disposal of Solid Waste or Recyclables by any public entity (such as facility permit fees or fees required as part of equipment retrofitting) where (i) the additional charges are significant to CONTRACTOR's overall cost of operation or (ii) the additional costs relate exclusively to facilities or equipment utilized by CONTRACTOR to perform its obligations pursuant to this Agreement.
3. Changes in the methods and manner of collection or disposal of Solid Waste or Recyclables due to changes in laws, regulations, ordinances or orders of a governmental entity.
4. Subject to the provisions of Paragraph 7 above, costs associated with disposal at another disposal facility pursuant and to the extent permitted pursuant to Paragraph 7. Said costs shall include but not be limited to the incremental costs over and above disposing of the Solid Waste at Newby Island plus transportation costs.
5. Costs associated with litigation to enforce the exclusivity provisions of this Agreement pursuant to Paragraph 4 borne by CONTRACTOR in an amount greater than Twenty Five Thousand Dollars (\$25,000), unless CITY had reimbursed CONTRACTOR for said expenditures. CITY shall direct the methods by which said costs shall be added to the service rates of all classes or certain designated classes of service recipients.

6. Incremental cost increases of fees, taxes, charges, or conversion factors imposed by any public entity on the landfilling of those volumes of Solid Waste or other materials received from City residents on household dump days after January 1, 2003. CONTRACTOR agrees to waive all Extraordinary Costs related to household dump day pursuant to this subsection that it may have incurred prior to January 1, 2003.
7. Remittance of Liquidated Damages resulting from Section 28.b. (14) (failure to achieve Commercial Recycling Program's diversion goal).
8. Formerly, CONTRACTOR had been entitled to treat the costs of disposal from Household Dump Day exceeding 3,100 tons annually as Extraordinary Costs. That provision was deleted in the amendment effective December 17, 2002. CONTRACTOR agrees to waive all Extraordinary Costs associated with costs of disposal from Household Dump Day exceeding 3,100 tons annually that it may have incurred for years 2001 and 2002.

(B) Any adjustment to the service rates for Extraordinary costs shall be subject to the following:

1. No increases in costs which result from CONTRACTOR's failure to conform to existing, consistently interpreted applicable statutes, rules or regulations shall be added to the service rates.
2. The costs shall be allocated as expenses or capital expenditures as determined by CONTRACTOR's controller, or upon the request of CITY an independent public accounting firm, using generally accepted accounting principles. If the costs are determined to be allocated as capital expenditures, such costs may be spread over a

number of service rate adjustments in accordance with generally accepted accounting principles.

3. If Extraordinary Costs incurred by CONTRACTOR are amortized over several years, the increase in the Base Rates shall be repealed at the end of such amortization period. The repeal shall not affect other increases resulting from Extraordinary Costs which are not amortized.
4. CONTRACTOR shall submit all invoices for Extraordinary Cost claims identified in Sections 8.d.(1)(A)3. And 8.d.(1)(A)4. No later than 24 months after costs are paid. CITY shall complete its audit of cost claims no later than nine (9) months after CONTRACTOR submittal. Any accrued interest between the submittal deadline and actual date of submittal will be waived and non-recoverable by CONTRACTOR.

- (C) To compensate CONTRACTOR for any increases applicable under this paragraph for those periods of time which have elapsed prior to the date the new service rates become effective, the adjusted rates shall also include simple interest commencing on the first (1st) day following the day on which Extraordinary Costs were paid at CONTRACTOR's actual cost of funds, not to exceed the reference rate of Bank of America N.T. & S.A. (San Francisco Branch) plus one percent (1%). In the event the aforementioned bank is no longer in business, the reference rate from another primary dealer of the federal reserve system shall be used.

Interest accumulation for any Extraordinary Cost that does not meet the deadline for claim submittal, detailed in Section 8.d.(B)4. above, shall cease for that period between the deadline date and the effective date of the Biennial Rate Adjustment.

- (D) The adjustment herein shall be subject to arbitration pursuant to Paragraph 29 of this Agreement.

- (2) Franchise Fees and Charges for CITY Billing Services. The rates set forth in Exhibits C, D and I may be adjusted at any time to fully reimburse CONTRACTOR for changes to the franchise fees and charges for CITY billing services established herein, such that any increased fees or charges shall be passed through to the service recipients hereunder.
- (3) City Solid Waste - Related Programs. The rates set forth in Exhibits C, D and I may be adjusted upward or downward at any time to fully reimburse CONTRACTOR for changes to the franchise fees or imposition of special fees resulting from CITY's implementation of programs related to the collection, handling, minimization, recycling, or toxicity reduction of Solid Waste, at the level determined appropriate by CITY.
- (4) Commercial Recycling Program Revenue Sharing. If, during any calendar year, material prices are reported to exceed 150% of the estimated base price for Mixed Paper and Old Corrugated Cardboard, then CONTRACTOR shall share equally with CITY any revenue proceeds for those materials collected during that calendar year that exceeds 150% of the base material prices. The following calculation shall be used in determining the shared revenue amount:
- a. The revenue for each commodity at the base material price shall be determined and summed together (Sum 1).
 - b. The revenue for each commodity at the reported actual material price shall be determined and summed together (Sum 2).
 - c. Any revenue above 50% of the base material price sum (1.5 x Sum 1) shall be shared equally with the CITY (Sum 2 - (1.5 x Sum 1)).

The base material prices are: \$12.50 for Mixed Paper and \$70.00 for Old Corrugated Cardboard. For purposes of determining revenue sharing proceeds "Mixed Paper" shall include all office waste paper reported monthly as collected in front load containers by CONTRACTOR for the Commercial Recycling Program. Reported material prices shall be those reported in the last weekly issue of the month in Official Board Markets, currently published by Advanstar

Publications. In the event Official Board Markets is not published, or the transacted paper stock prices are not reported or does not include the program material types, it shall be replaced by a published source that most closely approximates the Official Board Markets as agreed to by both the CITY and CONTRACTOR. Payment by the CONTRACTOR shall be in a form acceptable to the CITY and be made no later than May 1 of the subsequent calendar year. Delinquent sums due CITY shall bear interest from the date of delinquency to the date of payment at the rate of ten percent (10%) per annum.

(5). Arbitration. The adjustment herein shall be subject to arbitration pursuant to Paragraph 29 of this Agreement.

e. New Service Rates.

The new service rates shall be the sum of each Base Rate plus the Base Rate multiplied by seventy-five percent (75%) of the Net Percentage Change, plus any annual adjustments, ongoing adjustments or one-time adjustment.

f. Late Fees.

Late customer payments are subject to penalties as described in Milpitas Municipal Code Title V, Chapter 200.

9. Compensation to CITY. CONTRACTOR shall pay to CITY for the privilege and as sole and exclusive consideration of the licenses granted hereby, a franchise fee equal to the sum of the following:

- (a) Twelve percent (12%) of the total Base Rate actually collected or received by CITY for Solid Waste collection service to Single-Unit Dwellings excepting (i) those monies collected for cart service and curbside collection of Recyclables over and above the basic rates set forth in Exhibit C and (ii) any amounts collected pursuant to subparagraph (e) below; and
- (b) Four percent (4%) of the total gross receipts actually collected or received by CITY in compensation for CITY billing for Solid Waste collection services to Single-Unit Dwellings excepting those monies collected for cart service and collection of Recyclables over and above the basic rates set forth in Exhibit C and (ii) any amounts collected pursuant to subparagraph (e) below; and

- (c) Twelve percent (12%) of the total gross receipts actually collected or received by CONTRACTOR for Solid Waste collection service to Multiple-Unit Dwellings excepting (i) those monies collected for cart service and curbside collection of Recyclables over and above the basic Solid Waste Front Loader Service rates set forth in Exhibit D and (ii) any amounts collected pursuant to subparagraph (e) below; and
- (d) Twelve percent (12%) of the total gross receipts actually collected or received by CONTRACTOR or its subcontractor(s) for other services rendered or equipment provided under this Agreement, whether such services are exclusive or non-exclusive rights herein.
- (e) Amounts collected or received to reimburse CITY for its costs of implementing CITY Solid Waste-Related Programs pursuant to Paragraph 8(d)(3) above.

CITY shall have the right to adjust the above billing charges, franchise fees, and charges for CITY Solid Waste related programs, provided, however, CONTRACTOR shall have the right to adjust the service rates accordingly to pass through any such adjustments to the service recipients hereunder. If the effective date of the CITY's adjustment hereunder is different from the rate adjustment date set forth in Paragraph 8, then notwithstanding anything in Paragraph 8 to the contrary, CONTRACTOR shall have the right to immediately adjust the service rates to reflect any such changes.

10. Billing Services

- a. By CITY. CITY shall bill and collect receipts on a monthly or bi-monthly basis for all services provided under this Agreement to Single-Unit Dwellings. Amounts for such services are due upon presentation, or mailing to the account holder's address as listed on CITY records, and shall become overdue fifteen (15) days thereafter. CITY shall provide written notice to overdue accounts, and inform CONTRACTOR thereof. It shall be CITY's obligation to collect such overdue accounts. CITY shall provide and maintain all necessary personnel and equipment to timely and accurately process bills, and to diligently proceed with collection.

CITY shall notify CONTRACTOR on or before August 31 of any losses due to CITY'S inability to collect delinquent accounts, along with a description of its efforts to collect from any delinquent accounts, and may thereafter deduct fifty percent (50%) of that amount from the next payment owing to CONTRACTOR pursuant to paragraph 12. The amount of and basis for the deduction is subject to arbitration pursuant to Paragraph 29 below.

It is understood and agreed between the parties that CITY shall include the billing for the above services in its unified bill for water, sewage and Solid Waste. Partial payments of the unified bill shall be first applied to that portion of the bill relating to Solid Waste service.

- b. By CONTRACTOR - CONTRACTOR shall bill for services and collect payments on a monthly basis for all services provided under this agreement to all non-Single-Unit dwellings. Payment is due when the customer receives the bill and will become past-due 45 days thereafter. CONTRACTOR shall allow five (5) additional days for payment processing prior to implementing late fees. CONTRACTOR shall provide written notice to overdue accounts. It shall be the CONTRACTOR'S obligation to collect such overdue accounts. CONTRACTOR shall provide and maintain all necessary personnel and equipment to timely and accurately process bills, and to diligently proceed with collection.

- 11. Payment to CITY. Not more than sixty (60) days following the end of each calendar month during the term of this Agreement, CONTRACTOR shall pay to CITY the payments prescribed above in Paragraphs 9(c), 9(d) and 9(e) for such month; and said payment for each of said calendar months shall be delinquent on the 61st day after each such month. If the sixtieth (60th) day following the end of the month falls on a weekend or a City-recognized holiday, said payment shall be due on the next regular business day. Delinquent sums due CITY shall bear interest from the date of delinquency to the date of payment at the rate of ten percent (10%) per annum.

Each such payment shall be accompanied by a statement to be filed with the City Manager of CITY setting forth the total gross receipts subject to the franchise fees described in Paragraph 9 above derived by CONTRACTOR during such month, and the computation of total fees due to CITY. Such statement shall be certified as true and correct by CONTRACTOR and each of its subcontractors.

- 12. Payment to CONTRACTOR. Not more than thirty (30) days following the end of each calendar month during the term of this Agreement, CITY shall pay to CONTRACTOR the total gross receipts actually collected or received by CITY in the preceding month as a result of its billings of Single-Unit Dwellings, minus the amounts due CITY pursuant to Paragraphs 9(a) and 9(b). Such payment for each of said calendar months shall be delinquent on the thirty-first (31st) day after each such month. Delinquent sums due CONTRACTOR shall bear interest from the date of delinquency to the date of payment at the rate of ten percent (10%) per annum.

Notwithstanding any provision of this paragraph to the contrary, CITY shall not bill or collect revenues from, and CONTRACTOR shall receive no compensation for, the collection of Solid Waste and Recyclables from Single-Unit Dwellings which are vacant and listed for sale by a source approved by the City Manager or designee.

Customers in Single-Unit Dwellings who have been charged for cart service but have not received such service may receive a full refund or credit through the CITY's billing process for a period of time not to exceed twelve (12) months.

Each such payment to the CONTRACTOR shall be accompanied by a statement to be filed with the District Manager of CONTRACTOR setting forth the total gross receipts and the portion of the total gross receipts subject to the franchise fees and billing fees during such month, and the computation of total fees due to CONTRACTOR. Such statement shall be certified as true and correct by CITY.

13. Books and Records. Books and records relating to services provided under this Agreement shall be kept and maintained by CONTRACTOR. The City Manager or his/her designated agent may audit and inspect such books and records, and those of any subcontractors under this Agreement, to the extent and for the sole purpose of ascertaining the correct amount of sums due CITY under Paragraphs 8(d)(1), 9(c), 9(d) and 9(e) above. CITY shall not have the right to audit or inspect any books or records for any other purpose except as otherwise provided in this Agreement.

Books and records relating to billing and collection services provided under this Agreement by CITY shall be kept and maintained by CITY. The District Manager of CONTRACTOR or his/her designated agent may audit and inspect such books and records to the extent and for the sole purpose of ascertaining the correct amount of sums due CONTRACTOR under Paragraph 9(a) and 9(b) above.

14. Term of Agreement. This Agreement shall - terminate on September 5, 2017. The Anniversary Date of this Agreement shall be September 5 of each year following the Commencement Date of September 5, 1986.
15. Solid Waste and Recyclables Required to Be Collected. In accordance and compliance with the provisions of this Agreement and applicable laws, CONTRACTOR shall collect and remove from any and all Premises in the City any and all Solid Waste and Recyclables produced, kept or accumulated within or upon any and all such Premises, at the request of the owner or Producer of such Solid Waste and Recyclables or at the request of the owner,

lessee, tenant or other person in possession or charge of such Premises who is legally authorized to make such request, except that CONTRACTOR may refuse service if any container fails to meet the requirements of the MMC V-200, provided, however, that CONTRACTOR gives written notice by leaving a copy thereof attached to said container of its reasons for non-collection. Subject to the provisions of Exhibit L, CONTRACTOR may charge customers with open top containers and compactors a return pickup fee if the CONTRACTOR must make more than one trip to service the container.

16. Routes, Time, Manner, and Equipment of Collection.

(a) Frequency. The CONTRACTOR shall conduct a City-wide collection ~~as~~ described in Section 6.

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Regularly scheduled collection for commercial customers on subsequent days shall occur no later than 36 hours after the preceding pickup excluding weekends and holidays and without violating State and Federal rules and regulations. For example, if Monday collection was at 5 a.m., then Tuesday collection shall be no later than 5 p.m. Collection for on call commercial service shall occur no later than 48 hours after the customer's request for service was made. Whenever possible, the CONTRACTOR shall meet commercial customer requests for collection time schedules.

(b) Hours. No Solid Waste or Recyclables of any kind shall be collected or removed from any Premises in the City except between the hours of 4:00 o'clock a.m. and 7:00 o'clock p.m. from October 1st to March 31st inclusive, and the hours of 3:00 o'clock a.m. and 7:00 o'clock p.m. from April 1st to September 30th inclusive, of the same calendar day. CONTRACTOR shall, however, exercise reasonable efforts to avoid collection in the vicinity of residential neighborhoods before the hour of 7:00 o'clock a.m. Beginning June 20, 2008, CONTRACTOR may begin a one-year trial of 6 o'clock start time for collections in residential neighborhoods. During this trial period, CONTRACTOR shall log, track and report all residential inquiries and complaints about the 6 a.m. "start time." CONTRACTOR shall provide a separate, written report to the City within 10 months of initiating the 6 a.m. "start time." Said report shall outline service delivery during this time frame, provide a tally of inquiries, and document customer comments. If the CITY determines that the 6:00 o'clock a.m. is acceptable to residents, CONTRACTOR may continue collections at 6 o'clock a.m. throughout the year.

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(c) Routes. For purposes of collection, CONTRACTOR may divide the City into collection districts, and provide for different days of collection in each of the districts. The CONTRACTOR shall, within ten (10) days

of the Commencement Date of this Agreement, file with the City Manager a statement showing the districts into which the CONTRACTOR has divided the City, together with a schedule of the routes, and days and hours of collection in each of the districts, and give reasonable notice to the general public thereof. Said districts, routes or schedules may be changed from time to time, provided that at least two weeks notice of the change is given to the general public in such reasonable manner as shall be required by the City Manager. Any such change in districts, routes or schedules shall not result in collection service at any residence being performed at any interval of more than seven (7) days from the date of the most recent prior collection at the residence. Upon request of the City Manager, CONTRACTOR shall promptly provide a copy of the current route map, statement or route schedule.

- (d) Holidays. Regular collections shall be made at the times so scheduled, provided, however, that no regular or other collection shall be made upon any Sunday, Thanksgiving, Christmas and New Year's except for emergency collections of Solid Waste requested by the Health Officer. Where the scheduled time of collection falls on New Year's Day, Thanksgiving Day or Christmas, collection need not be made on such holiday provided that in such case collection shall be made on the day immediately following the regular scheduled collection day nearest said holiday (i.e., Monday customers will be serviced Tuesday, Tuesday customers will be serviced Wednesday, Wednesday customers will be serviced Thursday, Thursday customers will be serviced Friday, Friday customers will be serviced Saturday).
- (e) Manner. In collecting or removing any Solid Waste or Recyclables from any Premises, the CONTRACTOR shall exercise reasonable care and diligence to refrain from dropping or spilling any Solid Waste or Recyclables within or upon any Premises or within or upon any public property or place, and the CONTRACTOR shall without delay pick up and remove from any Premises or public property or place any Solid Waste or Recyclables dropped or spilled by it within or upon any such Premises, property or place. The CONTRACTOR shall, without delay, after removing any Solid Waste or Recyclables from any container, securely replace the cover or lid on such container. The CONTRACTOR shall refrain from making any unnecessary noise, and shall refrain from causing or creating any unnecessary disturbance or disorder. For the protection of City streets, the CONTRACTOR shall limit the weight of each vehicle, including its contents, to 20,000 pounds per axle.
- (f) Equipment.
 - i. Leak-proof Containers. Containers shall be leak-proof. CONTRACTOR shall conduct a field self-monitoring, testing,

reporting and replacement program acceptable to the CITY to insure leak-proof containers are deployed. Testing shall be conducted at least semiannually, and the testing results, including location of bins tested, date of test, and results of test, shall be included in the Monthly Report. CITY shall have the option of observing testing upon request by CITY to CONTRACTOR. The City will provide the Contractor with at least 48 hours prior notice that it will be observing container testing.

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ii. Graffiti. CONTRACTOR shall follow graffiti reporting and replacement program guidelines. CONTRACTOR shall submit program updates to April 1, 2004 letter to CITY by January 31, 2005. Within ten (10) days of receiving reports of graffiti on Solid Waste, Recycle, or Yard Trimmings Containers, CONTRACTOR shall abate as described below. Residential carts marked with graffiti shall be replaced at no cost to the Customer or CITY. CONTRACTOR shall identify bins marked with graffiti and shall contact the affected customer to facilitate the graffiti removal process. CONTRACTOR shall supply paint at no cost to affected customers for their use in removing the graffiti. If the affected customer so requests, CONTRACTOR shall perform a container-exchange within three business days (see Exhibits D and I for cost information). CONTRACTOR shall provide reports to CITY once a month identifying graffiti incidents and corrective actions taken.

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iii. Scout Trucks. CONTRACTOR shall deploy scout trucks to provide service in areas within the City that, because of site configurations, site limitations, or other site factors, cannot be serviced by CONTRACTOR'S regular fleet. The scout truck shall have a minimum capability of transferring a fully compacted three (3) cubic yard front-end load bin, and shall require no more than eight (8) feet of vertical clearance. Deployment of scout trucks shall be as determined by CONTRACTOR and is subject to push and return charges as shown on Exhibits D and I.

17. Disposal Within City Limits. CONTRACTOR may not accumulate, dump, bury, burn or otherwise dispose of any Solid Waste within the City, unless CONTRACTOR is specifically authorized to do so by CITY. CONTRACTOR shall transport any and all Solid Waste collected by or picked up by it to a place or places outside the City for disposal pursuant to this Agreement.

18. Customer Service.

- (a) Business Office. CONTRACTOR shall establish and maintain a business office at a location convenient to and accessible to the public; shall keep said office open for business from 9:00 a.m. to 5:00 p.m. of each weekday except Saturday and Sunday and except New Year's Day, Thanksgiving Day, Christmas, and any other federal, state or religious holidays normally observed by businesses; shall keep and maintain in said office at all times during the hours which it is required to be open a representative of CONTRACTOR who shall have authority to represent CONTRACTOR and its subcontractors in their relations with CITY and with their customers.
- (b) Customer relations. CONTRACTOR shall obtain and keep in said office sufficient listed telephones and personnel to courteously, quickly and expeditiously receive and answer all telephone and other calls to and from said office; shall return all customer calls and messages within 24 hours of the next business day; shall meet with customers at their Premises when requested on a mutually agreeable time and date; shall not make significant service changes without first notifying the customer in person or by phone before confirming in writing.
- (c) Translations. CONTRACTOR shall utilize commercial language translation services (i.e., AT&T Language Line) where reasonably available; if commercial language translation services are not used, shall have representatives reasonably available (through employees or subcontractors) during normal business hours who are fluent in three languages other than English;
- (d) Complaints. CONTRACTOR shall compile information regarding each customer complaint received, including the name and address of the complainant, the nature of the complaint and the actions taken to resolve the complaint; shall employ, acquire and maintain sufficient personnel and equipment, other than personnel and equipment used on regular collection routes, to collect and remove from any and all Premises, within twenty-four (24) hours after notice, demand or request, any and all Solid Waste or Recyclables which CONTRACTOR or its subcontractors shall have failed to collect and remove as required by this Agreement at the regular scheduled time; and CONTRACTOR shall collect and remove from any and all such Premises, within the said twenty-four hours except for Sunday, Thanksgiving, Christmas, and New Year's, any and all Solid Waste or Recyclables which it or its subcontractors shall have failed to collect and remove as required by this Agreement at the regular scheduled time, except when notice has been provided by CONTRACTOR to the Premises pursuant to Paragraph 15 above.

(e) Customer Satisfaction Assessment. CONTRACTOR shall conduct a statistically reliable quantitative and qualitative commercial customer satisfaction survey on a bi-annual basis during odd-numbered years. The results of the survey shall be reported to the CITY within 60 days after the surveys have been completed. The design of the survey shall be to the satisfaction of the CITY but may include an insert with the Solid Waste bill.

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CONTRACTOR'S survey report is due no later than December 15 of odd-numbered years. The CONTRACTOR'S annual report to the CITY, as outlined in Section 36(b) of this Agreement, shall include a summary of the survey results, a description of service improvement goals for the next year as identified by the CITY based on the survey findings, identification of tasks required of CONTRACTOR during the next year to accomplish the service improvement goals, and a report of the CONTRACTOR'S accomplishments for last year's service improvement goals.

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19. Faithful Performance Bond and Insurance. By January 10, 2005, CONTRACTOR shall furnish to CITY and shall file with the City Clerk a corporate surety bond approved as to form by the City Attorney, executed by the CONTRACTOR as principal and by a corporate surety as surety, in the sum of One Million Dollars (\$1,000,000) for the term of this Agreement, conditioned upon the faithful performance by CONTRACTOR and its subcontractors of this Agreement and of all relevant provisions and requirements of the MMC V-200. CONTRACTOR may provide one faithful performance bond that combines the obligations of this Agreement and the Agreement for Single Unit Residential Yard Trimmings Collection and Processing between CITY and CONTRACTOR for a total amount not to exceed One Million Dollars (\$1,000,000).

CONTRACTOR and its subcontractors shall obtain and maintain in full force and effect throughout the entire term of this Agreement and during the entire term of the authority and privilege hereinabove granted to it, full Worker's Compensation insurance in accordance with the laws of the State of California and other applicable laws. Certificates of such insurance shall be filed with the City Clerk within ten days after execution of this Agreement. CONTRACTOR shall immediately inform CITY of any cancellation, withdrawal and/or change of any such insurance.

CONTRACTOR and its subcontractors shall, at their sole cost and expense, obtain and maintain in full force and effect throughout the entire term of this Agreement and during the entire term of the authority and privilege hereinabove granted to it, public liability insurance with CITY named therein as an additional insured to the extent of liability based upon

CONTRACTOR's negligence, insuring said CONTRACTOR and its subcontractors and said CITY and each of them against liability for bodily injury or death to and of any person or persons and for any property damage, arising or resulting from the operations of the CONTRACTOR or its subcontractors in conducting the business hereinabove authorized.

CONTRACTOR shall maintain commercial general liability insurance with a combined single limit of not less than ten million dollars (\$10,000,000) per occurrence. Property damage coverage shall be a minimum of Five Hundred Thousand Dollars (\$500,000) per occurrence. The inclusion of CITY as an additional insured shall not preclude CITY from claims under the policy against other insured parties. This, however, shall not act to increase the limit of liability of the insuring company.

CONTRACTOR shall also maintain environmental impairment liability insurance in the amount of Three Million Dollars (\$3,000,000) per occurrence, Six Million Dollars (\$6,000,000) aggregate covering both sudden and gradual pollution occurrences.

The above insurance shall be considered primary insurance as respects any other valid and collectible insurance the CITY may possess, including any self-insured retention the CITY may have, and any other insurance the CITY does possess shall be considered excess insurance only.

Policies or certificates of said insurance shall be filed with the City Clerk within twenty (20) days after execution of this Agreement. The policy of insurance shall contain a provision whereby said insurance shall not be canceled by the insurer without giving 25 days written notice to CITY of any cancellation so proposed.

Notwithstanding any language of the foregoing to the contrary, CONTRACTOR may satisfy the insurance obligations hereunder by providing to CITY proof of self-insurance in a form reasonably acceptable to CITY, to the extent such self insurance is permitted by the laws of the State of California and in accordance therewith. The self-insurance may be maintained by the parent company of CONTRACTOR. The Certificate of Consent to Self-Insure issued by the State of California is attached hereto as Exhibit "E". CONTRACTOR shall provide confirmation of continuing self-insurance upon the request of CITY.

20. Indemnification and Title.

- a. Basic Indemnification. CONTRACTOR shall indemnify and hold harmless the CITY, its officers and employees, for and from any and all loss, liability, claims, demands, actions or suits, of any and every

kind and description, arising or resulting from or in any way connected with any operations of the CONTRACTOR or its subcontractors in exercising the authority and privileges granted to them by this Agreement, or arising or resulting from the failure of CONTRACTOR or its subcontractors to comply in all respects with the provisions and requirements of this Agreement, or all applicable ordinances of the CITY and of all other applicable laws. CONTRACTOR shall, upon demand of CITY, at its sole cost and expense, defend and provide attorneys to defend, the CITY, its officers or employees, against any and all claims, actions or suits brought against CITY, its officers or employees, arising or resulting from or in any way connected with the above mentioned operations of Collector or its subcontractors or its subcontractors' failure to comply with this Agreement and with applicable ordinances and laws hereinabove mentioned.

CONTRACTOR's obligation under this paragraph to defend, indemnify and hold harmless CITY and any officers and employees thereof, shall not extend to any loss, liability, penalty, claim, demand, action or suit arising or resulting solely from acts or omissions constituting negligence or willful misconduct on the part of CITY, its officers, agents or employees.

- b. Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend and hold harmless CITY from all damages and liability (including reasonable attorney's fees) for removal, remedial, cost recovery or other actions brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also known as "Superfund"), and regulations promulgated thereunder, and comparable state law, and regulations promulgated thereunder, incurred as a result of the disposal of Solid Waste collected from residents and businesses located within the geographical limits of the City by CONTRACTOR and disposed of at a disposal facility; provided, however, the foregoing indemnity shall be null and void to the extent that CITY delivers or causes the delivery of materials other than Solid Waste to CONTRACTOR from CITY-owned or operated facilities.

The foregoing indemnity shall not have any dollar limitation where CONTRACTOR disposes of Solid Waste at a facility owned and operated by CONTRACTOR, or a corporate affiliate of CONTRACTOR. However, the foregoing indemnity shall be limited to an amount of one million dollars (\$1,000,000.00) where CONTRACTOR disposes of Solid Waste at a facility not owned or

operated by CONTRACTOR, or a corporate affiliate of CONTRACTOR.

- c. Litigation Indemnification. CONTRACTOR shall indemnify, defend and hold harmless CITY from all damages and liability (including reasonable attorney's fees) arising out of the awarding of an exclusive franchise to CONTRACTOR, the execution of an amendment to this Agreement pursuant to Paragraph 14, challenges based upon the permissible duration of this Agreement or any amendments thereto, or the process by which such action was taken. The foregoing indemnity specifically excludes liability arising out of (i) the negligence or willful misconduct of CITY, its agents or employees or (ii) the failure of CITY to abide by all applicable laws and regulations relating to the awards of municipal contracts under federal, state or local law except for any State laws relating to the permissible duration of an exclusive Solid Waste franchise agreement.
 - d. Title. Title, ownership and the right to possession of Recyclables placed in containers and set out at the usual place of collection for the purpose of delivery to CONTRACTOR transfers from the resident to CONTRACTOR at the time of set out, as provided by Public Resources Code Section 41950(c). Title, ownership and the right to possession of Solid Waste shall transfer to CONTRACTOR at the time of collection. Notwithstanding any provision herein to the contrary, title to materials other than Solid Waste or Recyclables as defined herein shall remain with the Producer at all times. Subject to the provisions of this Agreement, CONTRACTOR shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the Solid Waste or Recyclables which it collects.
21. Assignments. CONTRACTOR shall not assign this Agreement, or any interest therein, or any privilege or right granted therein, without the written consent of CITY. Such consent shall not be unreasonably withheld, nor shall such consent be required in the event of an assignment to an affiliate, parent or subsidiary of CONTRACTOR, where such entity has the financial and technical ability to perform the services required hereunder. Any assignment without the consent required by this paragraph shall be void, and CITY may, at its option, terminate this Agreement and the authority and privileges granted herein.
22. Subcontractor. CONTRACTOR shall not subcontract all or any portion of the work or business in which it is herein authorized to or granted a privilege to engage, without the written consent of CITY. No such subcontracting shall free CONTRACTOR from any obligation or liability under this

Agreement or under any applicable laws or ordinances, and, in the event of any such subcontracting, CONTRACTOR shall continue to be liable and responsible for the faithful performance of and compliance with, by itself and its subcontractors, all provisions of this Agreement. CONTRACTOR shall not, without the written consent of CITY, substitute any person or persons as subcontractor in place of any subcontractor theretofore approved by CITY, nor permit any such subcontract to be assigned or transferred or performed by anyone other than the original subcontractor theretofore approved by CITY. Any subcontract, or any substitution of any subcontract, or any transfer or assignment of any such subcontract, made without the written consent of CITY shall be void, and CITY may, at its option, terminate this Agreement and all privileges granted herein. Nothing herein contained, however, shall be deemed to prohibit one subcontractor from assigning its subcontract to the CONTRACTOR, or to another subcontractor where both subcontractors have theretofore been approved by CITY and are at the time of the proposed assignment actually engaged in the performance of their subcontracts.

With respect to all reasonable requests hereunder, CITY may not unreasonably withhold its consent.

23. Termination of Service. No services herein required to be furnished by CONTRACTOR to any person shall be terminated because of such person's failure to pay for such service unless such person is more than 30 days delinquent and fails to pay for the same after written notice mailed at least 10 days in advance of such discontinuance. CITY shall have the obligation to promptly provide such notice to Single-Unit Dwellings, CONTRACTOR shall notice other service recipients, with each party informing the other party of such notice if requested. Refer to Exhibits C, D, and I for late fees.
24. Authorized Rates and Charges; Receipts. Neither CONTRACTOR nor any of its subcontractors shall ever demand, request, charge or collect as compensation for any Solid Waste or Recyclables collection and disposal service any amount of money other than the monthly rates and charges specified in this Agreement (except for donated services which are reported to CITY pursuant to Paragraph 36(a)(10) below).

Upon payment to the CONTRACTOR of any rates or charges hereinabove mentioned for which the CITY is not acting as billing agent, the person paying the same shall be entitled to, and CONTRACTOR shall give to such person upon request, a receipt showing the amount paid, the rate upon which the same is based, the period of time covered by the payment and the Premises for which it is paid. All such payments shall be properly accounted for as revenue items by the CONTRACTOR.

25. Notices. Any and all notices to be given under this Agreement, or which either party may desire to give to the other, shall be in writing. Said notices shall be deemed delivered by personal delivery to the other party's place of business during regular business hours, or on the third day following deposit in the mail in the County of Santa Clara, California, said deposit by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the CONTRACTOR:

Allied Waste of Santa Clara County
 1601 Dixon Landing Road, Building 1
 Milpitas, CA 95035
 Attn: General Manager

Deleted: [BFI ALLIED
 Deleted: Systems
 Deleted: of North America, Inc.
 Deleted: . .
 Deleted: . .
 Deleted: [

To CITY:

City of Milpitas
 455 E. Calaveras Blvd.
 Milpitas, CA 95035
 Attn: City Manager

Changes of address shall be promptly filed with the other party.

Notices to the CONTRACTOR of the failure, neglect or refusal of CONTRACTOR or of any of its subcontractors to collect and remove and transport and dispose of any Solid Waste from any Premises in the CITY at the time scheduled and in the manner required by this Agreement and applicable law and ordinances may be given to the CONTRACTOR orally by telephone to an agent or employee of the CONTRACTOR at the District office of said CONTRACTOR; should no agent or employee of the CONTRACTOR be present at such office during regular business hours to answer said telephone and to receive said notice, then such notice shall be deemed to be given upon the CITY's attempt to communicate by telephone, notwithstanding the CONTRACTOR's failure to receive such notice because of the failure of CONTRACTOR or of any of his/her agents or employees to answer said telephone; provided, however, that CITY then delivers written notice to CONTRACTOR by noon the following day.

26. Waivers. The waiver by CITY or CONTRACTOR of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by CITY or CONTRACTOR of any

compensation or moneys which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation of any term, covenant or condition of this Agreement or any applicable law or ordinance.

27. Breaches, Defaults and Liquidated Damages.

- a. Breaches and Defaults. In the event either party should default in the performance of any of the covenants, terms, conditions or other agreements to be kept, done or performed by it under the terms thereof, or in the event either party should breach or fail to comply with any and all terms, covenants and conditions of this Agreement, then the non-breaching party shall give ten days' written notice setting forth in detail in said notice the nature of the default or breach or violation. If the breaching party fails, neglects or refuses for a period of more than fifteen (15) days after such notice is given to cure said default or breach, or if said breach or default cannot be cured within fifteen (15) days, to commence and diligently process to cure within ninety (90) days said default or breach, then the non-breaching party, by written notice but without suit or other proceeding, may terminate this Agreement and all authority and privileges granted herein.

- b. Liquidated Damages. CITY and CONTRACTOR agree that, as of the time of execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by CITY as a result of a material breach of certain of CONTRACTOR's obligations under this Agreement. Accordingly, CITY may assess Liquidated Damages for the following material breaches, and for the following amounts, where the material breach by CONTRACTOR occurs without reasonable cause:
 - (1) For each failure to submit the annual report -- \$500.00 for each business day the report is late;
 - (2) For each failure to accomplish the previous year's tasks, identified by the CITY, to address commercial customer service improvement goals per Paragraph 18 of this Agreement -- \$300.00
 - (3) For each failure to submit CONTRACTOR's request for biennial (or special rate) adjustment on the date required -- \$500.00 for each business day the report is late;
 - (4) For each failure to submit the monthly reports to the CITY -- \$50.00 for each business day the report is late;

- (5) For each failure to submit a regular report to a commercial customer, as provided for in Paragraph 6(c) of this Agreement -- \$50.00 for each business day the report is late;
- (6) For each failure to report a customer complaint and its resolution to the City in the monthly report --\$100.00;
- (7) For each occurrence (in excess of ten (10) times per calendar year) of a report of discourteous behavior verified by the CITY to a customer by a customer service representative , driver, supervisor or any other CONTRACTOR employee -- \$100.00;
- (8) For each occurrence of the collection of waste outside authorized hours, including commercial collection in the vicinity of residential developments, under Paragraph 16 (b)-- \$250.00;
- (9) For each occurrence (in excess of five (5) times per calendar year) of a report of noise as defined by the City Noise Ordinance resulting from collection --\$100.00;
- (10) For each failure to meet the requirements outlined in Paragraph 18 of this Agreement (i.e., returning phone calls, meeting with the customer) or to respond to a customer by the end of the next business day as determined in the reasonable judgment of CITY -- \$100.00;
- (11) For each failure to provide service subject to Paragraph 16, or for failure to respond to a customer request for a change in or for maintenance on equipment (i.e., carts, bins) on or before the customer's next regularly scheduled service day, as determined in the reasonable judgement of CITY --\$250.00;
- (12) For each day of failure (in excess of ten (10) days per calendar year) to collect properly placed waste from an established customer on the scheduled collection day, subject to verification by CITY --\$100.00;
- (13) For each failure (in excess of five (5) times per calendar year) to clean up materials spilled, caused by CONTRACTOR, from containers or trucks within two (2) business days after notification by CITY or customer -- \$100.00;

- (14) For each day of failure (in excess of ten (10) days per calendar year) to replace garbage can and cart lids in place after collection, subject to verification by CITY --\$100.00;
- (15) For each day of failure (in excess of ten (10) days per calendar year) to replace recycle carts and cart lids in place after collection, subject to verification by CITY --\$100.00;
- (16) For each failure to set-up booths and/or displays and/or recycling and garbage containers at special/community events -- \$150.00 for every half-hour late up to \$450.00 from the agreed upon and/or publicized start time;
- (17) For complete failure to attend and/or participate in special/community events, as agreed upon in the annual events schedule and/or work plan -- \$300.00 for each event unattended.
- (18) For each failure to meet review and approval deadlines as described in Exhibit G -- \$200.00 for each business day past the deadline;
- (19) For each failure to meet any deadline for writing, review or approval that affects advertising placement agreed upon in the annual community relations work plan or project production schedules -- \$300.00 for every missed insertion (but not for each publication in which the advertisement would have appeared).
- (20) For failure to meet 17 % diversion goal for the Commercial Recycling Program as outlined in Exhibit F -- \$25,000 for each calendar year that the average diversion rate did not meet or exceed 17 % diversion.
- (21) For failure to meet the December 15 deadline of the annual Commercial Customer Satisfaction Survey as outlined in Section 18 (e) --\$50.00 for each business day the survey report is late.

For purposes of this subsection, "reasonable cause" shall include, among other things, CONTRACTOR's inability to perform its obligations due to circumstances beyond its reasonable control, including (i) vehicle or collection equipment breakdown which occurs despite regular maintenance, (ii) data processing equipment or

software breakdown if backup systems are not reasonably available, (iii) inability to obtain necessary information for report filing beyond its reasonable control.

CITY may deduct Liquidated Damages from the amounts due and owing CONTRACTOR pursuant to Paragraph 12. However, CITY shall return any amounts deducted to CONTRACTOR upon agreement of the parties or the finding of the City Manager, an arbitrator or a court of law that the Liquidated Damages should not have been assessed.

CITY may accept in-kind services from CONTRACTOR in lieu of the financial Liquidated Damages penalties listed above when (i) the determination is made by the City Manager or his/her designee, (ii) both the CITY and CONTRACTOR agree to the provision of inkind services, and (iii) the inkind services are equal in value to the financial penalty and (iv) the inkind service is of value to the CITY.

Upon making a determination to impose Liquidated Damages, CITY shall notify CONTRACTOR of its determination in writing. Thereafter, CONTRACTOR shall have ten (10) days from receipt of notice to request a hearing from the City Manager or his/her designee based on procedures agreed to by the parties. Following the completion of that hearing and the ruling of the City Manager, either party may request arbitration pursuant to Paragraph 29 of this Agreement.

- c. Performance Measurements. CITY and CONTRACTOR agree that it is in their respective best interests to review the activities performed by CONTRACTOR on a periodic basis and make revisions as necessary, in order to maximize the benefit to CITY and minimize the problems that could lead to the imposition of Liquidated Damages. As a result, CITY will undertake a Performance Measurements review pursuant to the terms and conditions set forth in Exhibit J hereto, and CONTRACTOR shall cooperate with CITY's efforts including, but not limited to, the providing of necessary information.

28. Heirs, Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators, assigns and subcontractors of the CONTRACTOR.
29. Arbitration. Upon the request of CONTRACTOR or CITY (by a majority vote the City Council), unresolved disputes arising under Paragraphs 7, 8(d)(1), 8(d)(4), 6(a)(3), 6(e)(2), 10 and 27 of this Agreement, relating

respectively to landfill disposal of Recyclables, rate adjustments for Extraordinary Costs, costs of containers distributed to Single-Unit Dwellings for collection of motor oil, rates for special materials collected at household dump day, delinquent accounts and Liquidated Damages, shall be limited to arbitration as described herein.

The dispute shall be heard by a three-member panel of arbitrators, one (1) member selected by CITY, one (1) member selected by CONTRACTOR and the neutral chairperson selected by the first two panel members. Within fifteen (15) working days of the date that either party has notified the other party in writing that the dispute has been submitted to arbitration, each party shall select one (1) member of the arbitration panel. If either party fails or refuses to select a member of the panel, the other party shall be entitled to an order from a court of competent Jurisdiction appointing such panel member, and shall be entitled to reasonable attorney's fees incurred for such action.

In the event the panel members selected by CITY and CONTRACTOR are unable to agree upon a third arbitrator within thirty (30) days after the selection of the second arbitrator, the parties shall request from the American Arbitration Association a list of five (5) arbitrators residing in California. The parties shall alternately strike names from the list until only one name remains. The arbitrator whose name remains shall be the chairperson of the arbitration panel.

The arbitration hearing shall be held in accordance with the Commercial Arbitration rules of the American Arbitration Association.

The award of the arbitration panel, or of a majority of them, shall be in writing with reasons included, rendered within thirty (30) days of the arbitration hearing, and shall be final and binding on the parties; provided that nothing herein shall give the panel any authority to amend, modify, alter or delete any term, condition or provision of this Agreement.

Costs of arbitration incurred pursuant to this paragraph shall be borne equally by the parties.

30. Force Majeure. Anything to the contrary herein notwithstanding, it shall not be deemed a breach of this Agreement if either party is temporarily unable to perform services hereunder as a result of major disasters, epidemics, or other extreme emergencies; disruptions arising by reason of the enforcement of federal, state or local laws not now in effect; riots, wars, insurrections, sabotage, fire, labor disputes, acts of God, or other similar or different contingencies beyond the reasonable control of the party affected. Any time that a party intends to rely upon Force Majeure to suspend obligations as

provided in this paragraph, such party shall notify the other party as soon as reasonably possible, setting forth the particulars of the situation. Notice shall again be given when the effect of the event of Force Majeure has ceased.

In the event of a labor dispute wherein scheduled collection of Solid Waste by CONTRACTOR is discontinued for more than seventy-two (72) hours, CITY shall have the right to forthwith take temporary possession of all facilities and equipment of CONTRACTOR to continue service provided herein on the terms and conditions set forth in MMC V-200-11.10, 11.11, and 11.12.

In the event of major disasters in or proximate to the CITY resulting in the declaration of a State of Emergency by the City Manager or the City Council, then CITY shall have the right to take possession of all trucks, equipment and personnel normally performing services under this Agreement for emergency operations conducted or directed by the CITY's emergency organization pursuant to the terms and conditions set forth in MMC V-200-10.10, 10.11, and 10.12.

If any event of Force Majeure prevents performance of a party for a period in excess of six (6) months, the other party may, upon ten (10) days notice to the nonperforming party, submit to arbitration pursuant to Paragraph 29 hereunder, the issue of whether the cause for nonperformance is an event of Force Majeure as defined herein. If any event of Force Majeure prevents performance of a party for a period in excess of nine (9) months, the parties shall immediately enter into good faith negotiations concerning the terms and conditions of this Agreement for a period of ten (10) working days. At the end of said time period, if the parties are unable to agree upon mutually advantageous terms and conditions under which to continue this Agreement, then either party may terminate this Agreement upon thirty (30) days' written notice.

31. Obligations Surviving Termination. Should this Agreement be terminated pursuant to its terms, CONTRACTOR shall have the continuing obligation to pay to CITY all compensation pursuant to Paragraph 11 of this Agreement for services provided prior to the termination date, and CITY shall have the continuing obligation to pay to CONTRACTOR all sums due and owing as of the termination date pursuant to Paragraph 12 of this Agreement.
32. Time of the Essence. Time is of the essence in performance of the obligations of this Agreement.
33. Entirety. This Agreement, and any amendments thereto, supersedes that certain contract dated December 15, 1955, and all amendments thereto, executed between CITY and San Jose Scavenger Company, a predecessor to

CONTRACTOR. The parties agree that this Agreement, and any amendments thereto, represents the full and entire Agreement between the parties hereto with respect to matters covered herein.

34. Nondiscrimination. In connection with the performance of this Agreement, CONTRACTOR assures that no person shall be subject to discrimination because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or denial of family care leave.

35. Funding and Public Recognition. The responsibilities of CITY and CONTRACTOR for Community Relations activities, and the financial contribution of each, are set forth in Exhibits F and G hereto.

36. Reporting

(a) Monthly Report. CONTRACTOR shall submit to City Manager or his/her designee a Monthly Report in a form acceptable to CITY on or before the twenty-fifth (25th) day following the end of each calendar month, which report shall at a minimum include the following information:

- (1) Volume of Solid Waste collected by service type (in tons) and billed yards;
- (2) Volume of Solid Waste disposed of in a landfill by CONTRACTOR (including computer-generated records of each load of Solid Waste disposed of by CONTRACTOR), by City residents through self-haul, and by City residents on household dump days (in tons);
- (3) Volume of Solid Waste diverted by program (Single-Unit Dwelling, Commercial, Multiple-Unit) and commodity (paper, glass, aluminum) (in tons or gallons, as appropriate), and volume of Solid Waste diverted from the landfill gate on household dump day; by weight, and material type; and
- (4) Volume of Materials collected, disposed of or recycled as the result of special pickups (bulky waste, phone books, holiday trees) and, when recycled, the destination of the material;
- (5) Indication of recycling program participation including, but not limited to, the curbside set out rate and number of commercial recycling customers and accounts; and

- (6) List of Multiple-Unit and Commercial Service Level customers by service address, service level, service frequency and service rate only when requested by CITY; and
 - (7) Number of vehicles accepted, yardage and resulting tonnage and number of persons and vehicles turned away at household dump day, with the reason therefor; and
 - (8) The number of Commercial Premises, Multiple-Unit Dwellings and Single-Unit Dwellings serviced; and
 - (9) The information compiled concerning customer complaints pursuant to paragraph 18 of this Agreement. This information shall include a separate count and classification of complaints for residential and commercial service and shall include a description of the action taken to resolve the complaint;
 - (10) Gross service and franchise fee revenues received by CONTRACTOR, by service type (i.e. Single-Unit, Multiple-Unit or Commercial (by front end loader, cans/carts, compactors and roll-off), and the value of services donated to Milpitas-based organizations.
 - (11) The number of recycling bins currently in CONTRACTOR's inventory.
 - (12) A Commercial and Multiple-Unit Recycling Program Customer Report listing notices issued detailing contamination problems and CONTRACTOR'S follow-up actions pursuant to the Commercial Screening Program set forth in Exhibit F.
 - (13) Summary of leak test self-monitoring testing and replacement program as described in Paragraph 16(f)(i).
 - (14) Summary of graffiti complaints and abatement actions as described in Paragraph 16(f)(ii).
- (b) Annual Report. CONTRACTOR shall submit to CITY an Annual Report in a form acceptable to CITY on or before February 21 of each calendar year, which report shall at a minimum include the following information:

- (1) An annual compilation of the information contained in the Monthly Reports;
- (2) Information regarding Performance Measurements required pursuant to Exhibit J, including information submitted by July 31 of each calendar year describing mid-year progress toward achieving goals;
- (3) A comparison with the basic program data from the previous year,
- (4) A discussion of CONTRACTOR's efforts to utilize products made of recycled materials (office supplies, motor vehicle supplies, container) in the performance of services pursuant to this Agreement;
- (5) Results of the commercial customer satisfaction survey, as provided for in Paragraph 18 of this Agreement, description of service improvement goals for the next year identified by the CITY based on the survey findings, identification of tasks required of CONTRACTOR during the next year to accomplish the service improvement goals, report of CONTRACTOR'S accomplishments for last year's service improvement goals; and
- (6) Suggested operational changes to improve the level and efficiency of future services to be performed pursuant to this Agreement, if any.

IN WITNESS WHEREOF, THIS AMENDED Agreement IS EXECUTED THE DAY AND YEAR FIRST ABOVE WRITTEN.

CITY: CITY OF MILPITAS
a Municipal Corporation

BY:

City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

CONTRACTOR: Allied Waste Services of North America, LLC
dba Allied Waste of Santa Clara County, successor in interest to
BFI Waste Systems of North America, a Delaware Corporation,
both subsidiary corporations of Allied Waste Industries, Inc. A
Delaware Corporation.

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Deleted: Waste Systems of North America, Inc.

BY: _____

Deleted: ¶

Norm Christensen, Authorized Agent

Deleted: Bill Jones

**EXHIBIT
A**

**RECYCLING SERVICES AT CITY-SPONSORED
EVENTS**

Dated: January 4, 1994

CONTRACTOR shall provide, at no cost, unassembled recycling and garbage containers to CITY and, or non-profit organizations designated by CITY, for use at CITY-sponsored events or programs up to six (6) times each calendar year, at the request of CITY. CONTRACTOR agrees to conduct such activities in accordance with the following terms and conditions:

1. Provide CITY-specified number of recycling and solid waste containers on pallets with additional plastic liners to a location determined by the CITY.
2. CITY will return the recycling and solid waste containers unassembled to the pallet location for pick-up by CONTRACTOR within twenty-four (24) hours of the events' closing.
3. CONTRACTOR acknowledges that recycling and solid waste containers are subject to wear and tear and shall replace damaged containers.
4. Recycling containers shall bear CONTRACTOR'S logo and/or slogan.
5. Recycling containers shall be designated as receptacles for aluminum, glass, and PET/HDPE plastic beverage containers.
6. CITY shall designate a non-profit organization as having primary responsibility for the collection of Recyclables placed into the containers during a CITY-sponsored event.
7. In the event a non-profit organization defaults on its responsibility to collect Recyclables as provided above, CONTRACTOR agrees to collect and transport the Recyclables.
8. CONTRACTOR acknowledges that all proceeds from the sale of collected Recyclables shall be retained by the CITY-designated non-profit organization, except where the non-profit organization defaults on its responsibility to collect the Recyclables as provided above, in which case the proceeds will be retained by CONTRACTOR.
9. CONTRACTOR shall cooperate with CITY in identifying non-profit organizations suitable for designation by CITY.

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Services at City-Sponsored Events
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EXHIBIT B

AGREEMENT BETWEEN THE CITY OF MILPITAS
AND INTERNATIONAL DISPOSAL CORPORATION OF CALIFORNIA FOR
DISPOSAL OF MUNICIPAL SOLID WASTES

Dated: September 2, 1986

Amended: November 21, 1995

Amended: November 16, 2004

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This Agreement is made and entered into this 2nd day of September, 1986, by and between the CITY OF MILPITAS, a municipal corporation (hereinafter "CITY"), and INTERNATIONAL DISPOSAL CORPORATION, a California corporation, its successors and assigns (hereinafter "CONTRACTOR").

WHEREAS, CITY is required to make adequate provision for the final disposition of solid wastes collected within its corporate limits to protect the health and safety of its inhabitants;

WHEREAS, CITY is acting under clearly articulated and affirmatively expressed policies of the State of California empowering cities to regulate the final disposition of solid wastes under powers expressly granted to cities in Article XI, Section 7, of the California Constitution, and by Public Resource Code section 49300 et seq.; and

WHEREAS, CONTRACTOR owns and operates a disposal site known as Newby Island and located in San Jose, California; which is available for landfill disposal of solid wastes; and

WHEREAS, CITY desires to ensure the disposal of solid wastes, recyclables, and yard trimmings in the event the Collection Agreement between CITY and Browning-Ferris Industries of California, Inc. is terminated pursuant to its terms prior to its expiration date of September 5, 2017; and

WHEREAS, the City Council has found and determined that the public health, safety and general welfare of the City of Milpitas will be preserved and protected by the execution of this Agreement, subject to and in accordance with applicable laws and ordinances, by ensuring the availability of a suitable site for the disposal of solid wastes, recyclables, and yard trimmings on a long-term basis;

NOW, THEREFORE, in consideration of the foregoing recitals and of, the mutual promises, covenants and conditions herein contained, and the execution, concurrently herewith of that certain Collection Agreement, as defined herein, between CITY and BFI-CAL, the parties hereto agree as follows

1. Definitions. All terms, not otherwise defined herein shall be construed to have the same meaning as given to them in the Milpitas Municipal Code, Title V, Chapter 200 (Solid Waste Management), hereinafter "MMC V-200".
 - (a) Alternate Facility. "Alternate Facility" means a disposal facility other than Newby Island owned and/or operated by CONTRACTOR and authorized to receive Solid Wastes for disposal under applicable laws and regulations of the State of California.
 - (b) Biohazardous Waste. "Biohazardous Waste", means all materials defined in "Biohazardous Waste" in California Health and Safety Code Section 25020.5, amended from time to time.

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- (c) City. "City" means and includes all the territory lying within the municipal boundaries of the City of Milpitas as presently existing together with all territory which may be added thereto during the term of this Agreement by annexation or otherwise.

When capitalized, the "CITY" means the City of Milpitas, a municipal corporation organized under the laws of the State of California, and its divisions, departments, and agencies.

- (d) Collection Agreement. "Collection Agreement" means that certain Agreement between the City of Milpitas and Browning-Ferris Industries of California, Inc. - San Jose District (BFI-CAL), for the collection of Solid Waste as defined thereunder, dated September 2, 1986, as subsequently amended.
- (e) CONTRACTOR. "CONTRACTOR" means International Disposal Corporation of California, its successors and assigns.
- (f) Extraordinary Costs. "Extraordinary Costs" means those costs which increase CONTRACTOR's costs of providing service under this Agreement at an Alternate Facility due to changes- in circumstances beyond the control of CONTRACTOR, including revisions to laws, ordinances, regulations, and/or the interpretation or enforcement thereof, and events of Force Majeure.
- (g) Gate Rate. "Gate Rate" means the fee or charge to members of the general public imposed on disposal of Solid Wastes at a disposal facility where such fee or charge is determined or assessed on the basis of the number of Gate Yards or other unit of measure brought to the disposal facility.
- (h) Gate Yard. "Gate Yard" means one cubic yard of Solid Wastes delivered at the entrance gate of a disposal facility.
- (i) Newby Island. "Newby Island" means the landfill located at 1601 Dixon Landing Road, San Jose, California, currently owned and operated by CONTRACTOR and authorized to receive Solid Wastes, Recycling, and Organics under applicable laws and regulations of the State of California.
- (j) Organics. "Organics" means the receipt, sorting, processing, treating, or storage of landscape trimmings and kitchen waste.
- (k) Recycling. "Recycling" means the process of collecting sorting, cleansing, treating or reconstituting Solid Waste materials, and returning them to the economic mainstream in the form of raw material, for new, reused or reconstituted products.
- (l) Solid Waste. "Solid Waste" or "Solid Wastes" means all

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putrescible and nonputrescible nonhazardous solid, semi-solid and liquid discarded material, including garbage, refuse, trash, paper, rubbish, ashes and other discarded solid and semi-solid material, which (i) are not Hazardous Wastes or Biohazardous Wastes, (ii) fall within the definition of Nonhazardous Solid Waste, as that term is defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations and (iii) are produced, generated or accumulated in the City or by CITY.

Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of Hazardous Substances (as that term is defined in 42 U.S.C. Section 9601(14)) remaining in the waste stream following implementation of a program for the safe collection, recycling, treatment and disposal of hazardous wastes generated in households, in accordance with Sections 41500 and 41802 of the Public Resources Code.

(m) Waste Reduction Program. "Waste Reduction Program" means any program that reduces the amount of waste that would otherwise be disposed of in a landfill, including without limitation, Recycling.

2. Condition Precedent and Term of Agreement. The effective date of this Agreement is September 5, 1986. However, the concomitant rights and duties of the parties relating to CONTRACTOR'S acceptance of CITY'S Solid Wastes and CITY'S direction of said Wastes to Newby Island and payment for disposal thereof shall be expressly conditioned upon the following condition precedent: the termination of that certain Collection Agreement as defined herein prior to its September 5, 2017 expiration.

Immediately upon such termination, the parties' obligations referred to above and fully set forth hereunder shall commence; such date of commencement is hereinafter referred to as the "Commencement Date". This Agreement shall terminate at midnight, September 5, 2017.

3. Obligations of Parties. CONTRACTOR represents that Newby Island has current capacity to receive Solid Wastes as defined hereunder. CONTRACTOR shall have the obligation to reserve sufficient capacity at Newby Island to receive said Solid Wastes beginning on the Commencement Date and continuing for the term of this Agreement.

4. Unavailability of Newby Island. If Newby island is unable to accept the Solid Wastes contracted for hereunder due to circumstances beyond the control of CONTRACTOR, CONTRACTOR shall exercise its best efforts to obtain disposal of CITY'S Solid Wastes at an Alternate Facility, subject to the approval of the public agency or public agencies having regulatory authority under the laws of the State of California over said facility. CITY, however, shall have no obligation to accept the Alternate Facility or to direct its Solid Wastes to said facility, but if CITY accepts such Alternate Facility, CITY shall direct to it its Solid Wastes.

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5. Disposal Fees. The CITY has entered into a certain Collection Agreement, defined in this Agreement. During the term of that Collection Agreement, disposal fees charged to CITY for the disposal of Solid wastes collected pursuant to the Collection Agreement are included in the service rates and adjustments therein.

The following are the disposal fees to be charged to CITY in, certain instances:

- (a) Termination of Collection Agreement. Immediately the disposal rate charged to and collected from CITY for its Solid Wastes shall be as follows: upon termination of the Collection Agreement,
- 1) if all of the Solid Waste brought to Newby Island under the Collection Agreement continues to be brought to Newby Island under this Agreement, the lesser of (i) ninety-three percent (93%) of the average Gate Rate of all privately owned landfills of the same classification as Newby Island located within the County of Santa Clara ("Rate 1"); or (ii) ninety-seven percent (97%) of the Gate Rate at Newby Island ("Rate 2").
 - 2) if any amount less than the amount of Solid Waste brought to Newby Island under the Collection Agreement is brought to Newby Island under this Agreement, ninety-seven percent (97%) of the Gate Rate at Newby Island ("Rate 2").
- (1) Adjustments to Disposal Rate. No more frequently than once per year, CONTRACTOR shall have the right to a disposal rate adjustment. The new disposal rate shall be the lesser of Rate 1 and Rate 2 described in subparagraph (a) above in effect on the disposal rate adjustment date.
- (2) Disposal Rate Adjustment Notification. CONTRACTOR at its sole option, shall determine the disposal rate adjustment date. At least sixty (60) days prior to said disposal rate adjustment date, CONTRACTOR shall deliver written notice of same to CITY, including a disposal rate adjustment statement setting out the following information:
- (i) The average Gate Rate of all privately owned landfills of the same classification as Newby Island located within the County of Santa Clara.
 - (ii) Ninety-three percent (93%) of the average Gate Rate stated above.
 - (iii) Ninety-seven percent (97%) of the Gate Rate at Newby Island.
 - (iv) The resulting disposal rate.
- (b) Alternate Facility. Should Newby Island be unable to accept CITY's Solid Wastes due to circumstances beyond the control of CONTRACTOR, and if CONTRACTOR can obtain disposal services for CITY' s Solid Wastes at an Alternate Facility and CITY accepts said services, the initial

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disposal rate shall be the prevailing rate at the Alternate Facility charged to other public agencies.

- (1) Adjustments to Disposal Rate. No more frequently than once per year, CONTRACTOR shall have the right to a disposal rate adjustment based upon changes in said prevailing rate, plus any adjustment for Extraordinary Costs pursuant to subparagraphs (i) through (vi) below.
 - (i) The parties agree to adjust the disposal rate to fully reimburse CONTRACTOR for Extraordinary Costs to the extent and in proportion to CONTRACTOR's increased costs of providing service hereunder, subject to the following:
 - (ii) No increases in costs which result from CONTRACTOR's failure to conform to existing applicable statutes, rules or regulations shall be added to the disposal rate; provided, however, CONTRACTOR shall have the right to contest its alleged failure to conform to said regulations.
 - (iii) The costs shall be allocated as expenses or capital expenditures as determined by CONTRACTOR's independent public accounting firm using generally accepted accounting principles. If the costs are determined to be allocated as capital expenditures, such costs may be spread over a number of disposal rate adjustments in accordance with generally accepted accounting principles.
 - (iv) If Extraordinary Costs incurred by CONTRACTOR are amortized over several years, the increase resulting therefrom in the disposal rate shall be repealed at the end of such amortization period. The repeal shall not affect other increases resulting from Extraordinary Costs which were not amortized.
 - (v) To compensate CONTRACTOR for any increases applicable under this paragraph for those years or portions thereof which have elapsed prior to the date the new service rates become effective, the adjusted rates shall also include simple interest commencing on the first (1st) day following the day on which Extraordinary Costs were paid at CONTRACTOR's actual cost of funds, not to exceed the reference rate of Bank of America N.T.&S.A. (San Francisco Branch) plus one percent (1%). In the event the aforementioned bank is no longer in business, the reference rate from another primary dealer of the federal reserve system shall be used.
 - (vi) The adjustment for Extraordinary Costs shall be subject to arbitration pursuant to Paragraph 13 of this Agreement.

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(2) Disposal Rate Adjustment Notification. CONTRACTOR, at its sole option, shall determine the disposal rate adjustment date. At least sixty (60) days prior to said date, CONTRACTOR shall deliver written notice of same to CITY, including a disposal rate adjustment statement setting out the following information:

- (i) The current prevailing rate charged to other public agencies.
- (ii) Any adjustment for Extraordinary Costs. CONTRACTOR shall specifically identify said Costs and present to CITY the justification for expending said Costs.
- (iii) The resulting disposal rate.

6. Payment to CONTRACTOR. In the event the Collection Agreement is terminated, then CONTRACTOR shall bill CITY for services hereunder pursuant to Paragraph 5(a) or (b) on a calendar monthly basis. Said bill shall be presented to CITY within fifteen (15) days following the month in which CITY incurred the liability hereunder, and shall be accompanied by a statement setting forth the total Solid Wastes expressed in Gate Yards and/or Tons disposed of by CITY hereunder at Newby Island or the Alternate Facility, with copies of the weight receipts or other documentation satisfactory to the CITY and the computation of total fees due to CONTRACTOR. Such statement shall be certified as true and correct by CONTRACTOR. The Statement will be accompanied by a report of Solid Waste volumes disposed through self-haul customers. CITY's obligation to pay CONTRACTOR the payment prescribed in Paragraph 5(a) or (b) above shall become due and payable on the thirty-first (31st) day following the end of each calendar month. Such payment for each of said calendar months shall be delinquent on the forty-fifth (45th) day after each such month. Delinquent sums due CONTRACTOR shall bear interest from the date of delinquency to the date of payment at the rate of ten percent (10%) per annum.

7. Books and Records. Books and records relating to services provided under this Agreement shall be kept and maintained by CONTRACTOR. The City Manager or his designated agent may audit and inspect such books and records to the extent and for the sole purpose of ascertaining the correct amount of sums due from CITY under Paragraph 5(a) or (b) above.

Books and records relating to payments required from CITY as provided under this Agreement shall be kept and maintained by CITY. CONTRACTOR's designated agent may audit and inspect such books and records to the extent and for the sole purpose of ascertaining the correct amount of sums due CONTRACTOR under this Agreement.

8. Designated Haulers. Only haulers and vehicles authorized by CITY (hereinafter "Designated Haulers") shall deliver Solid Wastes to Newby Island or the Alternate Landfill pursuant to this Agreement.

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CITY shall require that Designated Haulers entering Newby Island or the Alternate Landfill shall comply with all federal, state and local health and safety regulations, including any reasonable work or safety rules which have been promulgated by CONTRACTOR to govern operations of Newby Island or the Alternate Landfill, which have been reduced to writing and a copy of which has been delivered to CITY. Vehicles or persons found not to be in compliance maybe denied entry to or removed from Newby Island or the Alternate Landfill, provided that CONTRACTOR gives written notice to CITY, within twenty-four (24) hours of such denial or removal of the reasons therefor.

At least three (3) days prior to the first of each month, CITY will provide CONTRACTOR with a master list of all vehicles authorized by CITY to deliver Solid Wastes to Newby Island or the Alternate Landfill. (This Agreement does not provide household dump days of residential refuse for residents of Milpitas, and therefore their vehicles are excluded from the above master list.) The master list shall contain for each such authorized vehicle: name of owner and rated capacity (or, if no manufacturer rated capacity is available, capacity as determined by actual measurement of the vehicle witnessed by the representatives of CITY, CONTRACTOR and the hauler operating such vehicle). If CITY fails to provide said master list at the time specified above, the prior master list shall remain in effect for an additional thirty (30) days.

Vehicles not identified on the master list may be denied entry to Newby Island or the Alternate Landfill, unless CONTRACTOR has received a written authorization from the City Manager that a particular vehicle not included on the master list be allowed to enter Newby Island or the Alternate Landfill to dispose of Solid Wastes.

9. Operation of Newby Island. CONTRACTOR shall have the exclusive right and responsibility for the operation of Newby Island or the Alternate Facility for solid waste, recycling, and composting in accordance with CONTRACTOR's approved permits.

CONTRACTOR shall be responsible for obtaining all necessary permits, licenses and approvals from all governmental entities having jurisdiction over Newby Island or the Alternate Facility, in order for CONTRACTOR to operate Newby Island or the Alternate Facility in accordance with the terms and conditions of this Agreement. From the Commencement Date of this Agreement, the costs or expenses thereof (including attorneys' fees and experts' costs) shall be initially borne by CONTRACTOR, but those associated with the Alternate Facility shall be deemed within the scope of Extraordinary Costs under Paragraph 5(b)(1)(i) through (vi) for the purpose of adjustment to disposal rates.

A designated representative of CITY shall have the right to observe and review CONTRACTOR's operations pertaining to calculation of the quantities of Solid Wastes accepted at Newby Island or the Alternate Landfill and to enter CONTRACTOR's premises at Newby Island or the Alternate Landfill for the purpose of such observation and review during normal operating hours. Nothing herein shall be construed as giving to CITY

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any-right to exercise control over the business or operations of CONTRACTOR or to direct in any respect the manner in which CONTRACTOR's business and operations shall be conducted.

CONTRACTOR shall use reasonable business efforts to ensure, subject to any conditions, events or acts of force majeure described in this Agreement, that Newby Island is open to receive Solid Wastes from 6:00 a.m. to 5:00 p.m., Monday through Friday, and from 8:00 a.m. to 4:00 p.m., on Saturday, except that Newby Island may be closed on January 1, Thanksgiving Day and Christmas Day.

10. Performance Bond and Insurance. Within ten days after the execution of this Agreement, CONTRACTOR shall furnish to CITY and shall file with the City Clerk a corporate surety bond approved as to form by the City Attorney, executed by the CONTRACTOR as principal and by a corporate surety as surety, in the sum of Twenty-Five Thousand Dollars (\$25,000.00) for the term of this Agreement, conditioned upon the faithful performance by CONTRACTOR of this Agreement, and of all relevant provisions and requirements of MMC V-200 and any amendments thereto except as may be in conflict with the provisions herein. Within ten (10) days from the Commencement Date of this Agreement, CONTRACTOR shall furnish to CITY an additional corporate surety bond in the sum of Twenty-Five Thousand Dollars (\$25,000.00) in the same manner and subject to the same terms as the initial bond.

Each party agrees at all times during the term of this Agreement to maintain in effect Workers' Compensation, Public Liability and Property Damage insurance, including contractual liability coverage.

Each party shall obtain and maintain full Workers' Compensation insurance in accordance with the laws of the State of California and other applicable laws. Each party shall immediately inform the other of any cancellation, withdrawal and/or change of any such insurance. Each party shall obtain and maintain public liability insurance, with the other party named therein as an additional insured to the extent of liability based upon the negligence of the party carrying the insurance, insuring said parties and each of them against liability for bodily injury or death to and of any person or persons and for any property damage, arising or resulting from the operations of the parties in conducting the business hereinabove authorized. Minimum bodily injury or death coverage provided by said insurance shall be Five Hundred Thousand Dollars (\$500,000.00) per each person and One Million Dollars (\$1,000,000.00) per occurrence. Property damage coverage shall be a minimum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) per occurrence. The inclusion of a party as an additional insured shall not preclude that party from claims under the policy against other insured parties. This, however, shall not act to increase the limit of liability of the insuring company.

The above insurance shall be, considered primary insurance as respects any other valid and collectible insurance the CITY may possess, including any self-insured retention the CITY may have, and any other insurance the CITY does possess shall be considered

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excess insurance only. Policies or certificates of said insurance, or other reasonable verification of self-insurance, shall be filed with the others party within twenty (20) days often execution of this Agreement. The policy of insurance shall contain a provision whereby said insurance shall not be canceled by the insurer without giving 25 days written notice to the certificate holder and the additional named insured of any cancellation so proposed.

Notwithstanding any language of the foregoing to the contrary, either warty may satisfy all or any part of the insurance obligations hereunder under a plan of self-insurance, to the extent such self-insurance is permitted by the laws of the State of California and in accordance therewith. The coverages required to be maintained by CONTRACTOR may be maintained through plans of insurance or self-insurance through its parent company, provided CONTRACTOR's operations are covered therein. The Certificate of Consent to Self-Insure issued by the state of California is attached hereto as Exhibit A. Upon request by CITY, CONTRACTOR shall provide confirmation of continuing self-insurance.

11. Indemnification.

- (a) Basic Indemnification. CONTRACTOR and CITY shall each defend and indemnify the other from and against any claim asserted by, or any liability to, any person, including without limitation, the parties to this Agreement, any agency, branch or representative of federal, state or local government, on account of any personal injury or death or damage, destruction or loss of property, or substantial contamination of the environment resulting from (i) the indemnifying party's sole negligence, (ii) the indemnifying party's respective share of the joint negligence of the parties, or (iii) the indemnifying party's breach of any obligation or responsibility imposed on that party by the provisions of this Agreement. For purposes of the preceding sentence, "negligence" shall be deemed to include both acts and omissions, or willful misconduct, and the negligence of a party shall include the respective negligence of its officers, employees, agents (including subcontractors) or representatives.
- (b) Hazardous Substance Indemnification. CONTRACTOR shall indemnify and hold harmless CITY from all damages and liability (including reasonable attorney's fees) for removal, remedial, cost recovery or other actions brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also known as "Superfund") and regulations promulgated thereunder, comparable state law, and regulations thereunder, incurred as a result of the disposal of Solid Waste collected from residents and businesses located within the geographical limits of the City and disposed of at Newby island; provided, however, the foregoing indemnity shall be null and void to the extent that CITY delivers or causes the delivery of materials other than Solid Waste to Newby

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Island. The foregoing indemnity shall not have any dollar limitation.

With respect to any claim for indemnification, the party claiming the right to indemnity shall (i) give written notice thereof within a reasonable period following knowledge of the event of occurrence as to which the right to indemnification is or array be asserted and (ii) allow the other party (including its employees, agents and counsel) reasonable access to any of its employees, property and records for the purpose of conducting an investigation of such claim and taking such other steps as may be necessary to preserve evidence of the occurrence on which the claim is based.

In any instance in which a party claims indemnification hereunder, the indemnifying party may elect to defend the party claiming indemnification in (and control the defense of) any litigation arising out of the occurrence from which the party claiming indemnification claims that the indemnifying party's indemnity obligation exists.

Neither party shall have a right to defense or indemnification against claims, demands, actions or suits incurred by or made against either party based upon the asserted or claimed invalidity of this Agreement or any provisions hereof.

12. Heirs. Successors. The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators and assigns of CONTRACTOR and CITY.
13. Arbitration. Upon the request of either party, unresolved disputes relating to disposal rate adjustments for Extraordinary Costs at the Alternate Facility shall be submitted to arbitration as described herein.

The dispute shall be heard by a three-member panel of arbitrators, one (1) member selected by CITY, one (1) member selected by CONTRACTOR and the neutral chairperson selected by the first two panel members. Within fifteen (15) working days of the date that either party has notified the other party that the dispute has been submitted to arbitration, each party shall select one (1) member of the arbitration panel. If either party fails or refuses to select a member of the panel, the other party shall be entitled to an order from a court of competent Jurisdiction appointing such panel member, and shall be entitled to reasonable attorney's fees incurred for such action.

In the event the panel members selected by CITY and CONTRACTOR are unable to agree upon a third arbitrator within thirty (30) days after the selection of the second arbitrator, the parties shall request from the American Arbitration Association a list of five (5) arbitrators residing in California. The parties shall alternately strike names from the list until only one name remains. The arbitrator whose name remains shall be the chairperson of the arbitration panel.

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The arbitration hearing shall be held in accordance with the Commercial arbitration rules of the American Arbitration Association.

The award of the arbitration panel, or of a majority of them, shall be in writing with reasons included, rendered within thirty (30) days of the arbitration hearing, and shall be final and binding on the parties, provided that nothing herein shall give the panel any authority to amend, modify, alter or delete any term, condition or provision of this Agreement.

Costs of arbitration incurred pursuant to this paragraph shall be borne equally by the parties.

14. Assignments. CONTRACTOR shall have the right to assign this Agreement, or any interest therein, or any privilege or right granted therein, to a new owner of Newby Island in the event a transfer of ownership occurs, or to an affiliate parent or subsidiary of CONTRACTOR where such entity has the financial and technical ability to perform hereunder, provided, however, the assignee assumes the obligations hereunder in writing. CONTRACTOR shall not, however, assign the Agreement, or any interest therein, or any privilege or right granted therein, without the written consent of CITY in any other circumstances, such consent not to be unreasonably withheld.

CITY shall not assign this Agreement, or any interest therein, or any privilege or right granted therein, except to any successor entity, provided, however, that in such case this Agreement shall be effective only with regard to Solid Wastes collected, produced or accumulated within the boundaries of the City of Milpitas as they existed as of the date of such assignment. Any assignment without the consent required by this paragraph, shall be void, and the non-consenting party may, at its option, terminate this Agreement and the authority and privileges granted herein.

15. Notices. Any and all notices to be given under this Agreement, or which either party may desire to give to the other, shall be in writing. Said notices shall be deemed delivered by personal delivery to the other party's place of business as designated below during regular business hours, or on the third day following deposit in the mail in the County of Santa Clara, California, said deposit by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the CONTRACTOR: International Disposal Corporation
1601 Dixon Landing Road
Building 1
Milpitas, CA 95035
Attn: District Manger

To CITY: City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035
Attn: City Manager

Changes of address shall be promptly filed with the other party.

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Notice by CITY to CONTRACTOR of the alleged failure, refusal or neglect by CONTRACTOR to accept or dispose of Solid Wastes, may be given to CONTRACTOR orally or by telephone at CONTRACTOR's principal office, and must be immediately confirmed in writing and personally delivered by noon the following day to CONTRACTOR.

16. Waivers. The waiver by CITY or CONTRACTOR of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance or law, or of any subsequent breach or violation of the same or any other term, covenant, condition, ordinance or law. The subsequent acceptance by CONTRACTOR of any compensation or moneys which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation of any term, covenant or condition of this Agreement or any applicable law or ordinance.
17. Breaches, Defaults. In the event either party should default in the performance of any of the covenants, terms, conditions or other agreements to be kept, done or performed by it under the terms thereof, or in the event either party should breach or fail to comply with any and all terms, covenants and conditions of this Agreement, then the non-breaching party shall give written notice setting forth in said notice the nature of the default or breach or violation. If the breaching party fails, neglects or refuses for a period of more than thirty (30) days after such notice is given to cure said default or breach, or if said breach or defaults cannot be cured within thirty (30) days, to commence and diligently process to cure within one hundred twenty (120) days said default or breach, then the non-breaching party, by written notice but without suit or other proceeding, may terminate this Agreement and all authority and privileges granted therein.
18. Force Majeure. Anything to the contrary herein notwithstanding, it shall not be deemed a breach of this Agreement if either party is temporarily unable to perform services hereunder as a result of major disasters, epidemics, or other extreme emergencies, disruptions arising by reason of the enforcement or interpretation of federal, state or local laws now in effect or hereafter effective; riots, wars, insurrections, sabotage, fire, labor disputes, acts of God; or other similar or different contingencies beyond the reasonable control of the party affected.

In the event either party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such Force Majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided but for no longer period. Any time that such a party intends to rely upon Force Majeure to suspend obligations as provided in this paragraph, such party shall notify the other party as soon as reasonably possible, setting forth the particulars of the situation. Notice shall again be given when the effect of the event of Force Majeure has ceased.

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If any event of Force Majeure prevents performance of a party for a period in excess of eleven (11) months, the other party may terminate this Agreement upon thirty (30) days written notice.

- 19. Obligations Surviving Termination. Should this Agreement be terminated pursuant to its terms, each party shall meet its obligations hereunder accruing to tide date of termination, including the continuing obligation of CITY to pay to CONTRACTOR all sums due and owing as of the termination date.
- 20. Time of the Essence. Time is of the essence of this Agreement.
- 21. Entirety. The parties agree that this Agreement represents the full and entire agreement between the parties hereto with respect to matters covered herein, and acknowledge the Companion Agreement to this Agreement, the Collection Agreement as defined herein.

IN WITNESS WHEREOF, THIS AMENDED Agreement IS EXECUTED THE DAY AND YEAR FIRST ABOVE WRITTEN.

CITY: CITY OF MILPITAS
a Municipal Corporation

BY:

City Manager

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

CONTRACTOR: BFI Waste Systems of North America, Inc.

BY: _____
Bill Jones, Authorized Agent

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EXHIBIT "C"

**CITY OF MILPITAS
SINGLE UNIT SERVICE LEVEL**

Dated: September 2, 1986

Amended: December 1988; December 20, 1990; January 8, 1991; July 21, 1992; December 15, 1992;
January 4, 1994; December 20, 1994; November 21, 1995; June 4, 1996; December 17, 1996;
May 4, 1999; June 1, 1999; February 20, 2001; December 17, 2002; November 16, 2004, January 15, 2008

TABLE 1
**MONTHLY RATE
SINGLE UNIT DWELLINGS**

Item	Effective 1-1-2008	Effective 1-1-2009
ALLIED RATE	\$14.11	\$15.57
FRANCHISE & BILLING FEES (1)	\$2.69	\$2.96
BASE RATE (SUBTOTAL)	\$16.80	\$18.53
RECYCLING PROGRAM	\$4.05	\$4.05
COMMUNITY RELATIONS	\$0.40	\$0.40
STABILIZATION FEE	\$0.26	\$0.26
TELECOMMUNICATIONS Ongoing	\$0.04	\$0.04
HOUSEHOLD HAZARDOUS WASTE PROGRAM	\$0.09	\$0.09
ADMINISTRATIVE FEE	\$0.44	\$0.44
STREET SWEEPING	\$0.00	\$0.42
BILLING RATE (TOTAL) (2)	\$22.08	\$24.23
CART RENTAL (3)	\$2.76	\$2.76

- (1) *Billing fee set at 0% for senior citizen and 4% for all others*
- (2) *Amount may not be the actual amount billed to customers. The cost of other services provided under separate agreements (i.e., yard trimmings service) should be included to obtain the actual billed amount as reflected in City Council Resolution.*
- (3) *Optional 96 gallon cart.*

TABLE 2
SENIOR CITIZEN (1)

Item	Effective 1-1-2008	Effective 1-1-2009
ALLIED RATE	\$5.69	\$6.27
FRANCHISE & BILLING FEES (2)	\$0.78	\$0.86
BASE RATE (SUBTOTAL)	\$6.47	\$7.13
RECYCLING PROGRAM	\$4.05	\$4.05
COMMUNITY RELATIONS	\$0.40	\$0.40
TELECOMMUNICATIONS <i>Ongoing</i>	\$0.00	\$0.00
HOUSEHOLD HAZARDOUS WASTE PROGRAM	\$0.09	\$0.09
ADMINISTRATIVE FEE	\$0.22	\$0.22
STREET SWEEPING FEE	\$0.00	\$0.21
BILLING RATE (TOTAL)(3)	\$11.23	\$12.10
CART RENTAL (4)	\$2.76	\$2.76

- (1) Limited to two 32 Gallon Cans or cart rented from COLLECTOR
- (2) Billing fee set at 0% for senior citizen and 4% for all others
- (3) Amount may not be the actual amount billed to customers. The cost of other services provided under separate agreements (*i.e., yard trimmings service*) should be included to obtain the actual billed amount as reflected in City Council Resolution.
- (4) Optional 64 gallon cart

TABLE 3
BULKY ITEM PICK-UP
Effective January 1, 2008

\$47.27	Pickup fee for two items
\$17.81	Pickup fee for each additional item
\$35.15	Fee in addition to pickup fees for appliances containing refrigerants
\$0	Senior on-call fee for first two (2) pickups per year.

Late Utility Payment Penalties

All accounts are due and payable within fifteen (15) days of the date of the bill. Accounts shall become delinquent and a late fee equal to five percent of the amount due shall be imposed if payment has not been received by 5:00pm on the due date. Prior to discontinuing service for delinquent accounts, a final notice shall be issued to delinquent account and payment shall be due within fifteen (15) days of the date of the final notice. If payment has not been received by 5:00 p.m. of the due date of the final notice, an additional late fee equal to five percent of the amount then due shall be imposed. A twenty-four (24) hour warning notice shall be placed on an exterior door of the building where service is provided and for which payments are delinquent and a service charge of ten dollars (\$10) shall be imposed on the delinquent account. Said warning notice shall state that water and/or solid waste service will be discontinued if payment of the delinquent account is not received by 5:00 p.m. of the due date indicated on the warning notice. If payment has not been received by 5:00 p.m. of the due date on the warning notice, water and/or solid waste service shall be discontinued. Restoration of service which has been discontinued for non-payment of a bill may be had by payment of all outstanding charges to date plus a fifty-dollar (\$50.00) service charge at the offices of the City during normal business hours.

EXHIBIT "D"

**CITY OF MILPITAS
MULTI-UNIT SERVICE LEVEL RATES**

Dated: September 2, 1986

Amended: December 20, 1988; December 18, 1990; July 21, 1992; December 15, 1992; January 4, 1994;
December 20, 1994; November 21, 1995; December 17, 1996; May 4, 1999, February 20, 2001; December 17,
2002; November 16, 2004; January 15, 2008, June 20, 2008

SOLID WASTE COLLECTION

**1A. SOLID WASTE FRONT LOADER SERVICE
MONTHLY RATES**

Effective January 1, 2008

BIN RENTAL <i>(1)</i>	CONTAINER SIZE (CUBIC YARDS)	FREQUENCY PER WEEK					
		1X	2X	3X	4X	5X	6X
\$14.15	1	\$65.98	\$108.62	\$148.17	\$181.90	\$220.30	\$258.68
\$14.15	1.5 <i>(2)</i>	83.80	148.14	194.68	250.15	305.56	361.01
\$14.15	2	101.59	181.90	258.69	335.46	412.21	489.05
\$18.84	3	145.42	265.31	380.41	495.59	610.80	725.94
\$21.29	4	166.83	303.29	426.84	550.46	674.02	797.61
\$23.57	6	227.66	419.45	612.66	788.05	981.26	1,174.46
\$26.00	8	295.56	542.75	780.59	1,018.53	1,256.41	1,494.32

(1) Included in rates. Deducted from monthly rate if customer owns bin.

(2) This size no longer offered to new accounts.

**1B. SOLID WASTE FRONT LOADER SERVICE
MONTHLY RATES**

Rates Effective January 1, 2009

BIN RENTAL <i>(1)</i>	CONTAINER SIZE (CUBIC YARDS)	FREQUENCY PER WEEK					
		1X	2X	3X	4X	5X	6X
\$14.47	1	\$69.17	114.48	156.63	192.84	233.82	274.78
\$14.47	1.5 <i>(2)</i>	88.24	156.59	206.76	266.05	325.28	384.56
\$14.47	2	107.29	192.83	274.78	356.70	438.61	520.61
\$19.27	3	153.83	281.54	404.39	527.30	650.23	773.11
\$21.77	4	177.43	323.83	457.06	590.35	723.57	856.84
\$24.11	6	243.07	449.50	657.38	847.06	1,054.96	1,262.83
\$26.59	8	315.93	582.47	839.45	1,096.53	1,353.56	1,610.61

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BIENNIAL
EXHIBIT D

- (1) Included in rates. Deducted from monthly rate if customer owns bin.
- (2) This size no longer offered to new accounts.

**2. WEEKLY SOLID WASTE CART SERVICE
MONTHLY RATE**

<i>NUMBER OF 96 GALLON CARTS</i>	<i>RATE</i> Effective January 1, 2008
1	\$23.01
2	\$43.47
3	\$62.65
4	\$83.10

Service more frequent than once per week shall be charged at 75% above the monthly rate for each additional service day.

**3. SOLID WASTE PUSH AND RETURN
MONTHLY RATES**

Rates Effective January 1, 2008

<i>NUMBER OF FEET DISMOUNTED</i>	<i>FREQUENCY PER WEEK</i>					
	<i>1X</i>	<i>2X</i>	<i>3X</i>	<i>4X</i>	<i>5X</i>	<i>6X</i>
Up to 25'	\$7.82	\$15.61	\$23.36	\$31.17	\$38.95	\$46.72
26'-50'	15.61	31.17	46.72	62.29	77.89	93.46
51'-75'	23.36	46.72	70.08	93.46	116.81	140.16
76'-100'	31.17	62.29	93.46	124.58	155.77	186.90
101'-125'	38.95	77.89	116.81	155.77	194.67	233.60
126'-150'	46.72	93.46	124.58	194.67	233.60	280.32
151'-175'	54.54	109.02	163.54	218.05	272.53	327.06
176'-200'	62.29	124.58	186.90	249.19	311.49	373.77

**4. CENTRALIZED COLLECTION MULTI-FAMILY ROLL-OFF REFUSE SERVICE
MONTHLY RATES**

<i>CONTAINER SIZE (CUBIC YARDS)</i>	<i>Effective 1-1-2008</i>	<i>Effective 1-1-2009</i>
10	\$380.49	405.99
20	517.35	563.14
30	640.92	706.84

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BIENNIAL
EXHIBIT D

40	774.07	860.36
50	912.02	1,018.81

(see next page for per unit charges)

Per unit, per month Household Hazardous Waste Fee	\$0.09
Stabilization fee	\$0.08
Per unit, per month Bus Stop Fee	\$0.02
Per unit, per month Administrative Fee	\$0.42

**5. CENTRALIZED COLLECTION MULTI-FAMILY ROLL-OFF
REFUSE COMPACTOR SERVICE
MONTHLY RATE**

	Effective 1-1-2008	Effective 1-1-2009
PER SERVICE MINUTE	\$2.72	\$2.78
PER CUBIC YARD	\$17.81	\$19.49

Plus 12% Franchise Fee

Per unit, per month Household Hazardous Waste Fee	\$0.09
Per unit, per month Stabilization Fee	\$0.08
Per unit, per month Bus Stop Fee	\$0.02
Per unit, per month Administrative Fee	\$0.42

**6. SOLID WASTE
MISCELLANEOUS CHARGES**

Lock Installation (After Delivery)	\$93.32
Bin Repairs	\$75.42
Lock (Padlock Only)	\$14.07
Container Delivery (New Account Set-Up And Bin Size Exchange)	\$49.85
Graffiti Removal	
Second and subsequent bin exchanges per calendar year	\$49.85
Allied supplies paint to Owner	no cost
Container Exchange (Dirty Container)	\$93.32

RECYCLING

**7. SOLID WASTE PROGRAM FIXED
MONTHLY RATE PER DWELLING UNIT**

	Effective January 1, 2008	Effective January 1, 2009
RECYCLING PROGRAM	\$2.69	\$2.69
PUBLIC INFORMATION	\$0.48	\$0.48
HOUSEHOLD HAZARDOUS WASTE	\$0.09	\$0.09
STABILIZATION FEE	\$0.08	\$0.08
BUS STOP SERVICE	\$0.02	\$0.02
ADMINISTRATIVE FEE	\$0.42	\$0.42
STREET SWEEPING	\$0.00	\$0.46
TOTAL RATE	\$3.78	\$4.24

**8. RECYCLING PUSH AND RETURN
MONTHLY RATES EFFECTIVE JANUARY 1, 2008**

<i>NUMBER OF FEET DISMOUNTED</i>	<i>FREQUENCY PER WEEK</i>					
	<i>1X</i>	<i>2X</i>	<i>3X</i>	<i>4X</i>	<i>5X</i>	<i>6X</i>
26'-50'	15.61	31.17	46.72	62.29	77.89	93.46
51'-75'	23.36	46.72	70.08	93.46	116.81	140.16
76'-100'	31.17	62.29	93.46	124.58	155.77	186.90
101'-125'	38.95	77.89	116.81	155.77	194.67	233.60
126'-150'	46.72	93.46	124.58	194.67	233.60	280.32
151'-175'	54.54	109.02	163.54	218.05	272.53	327.06
176'-200'	62.29	124.58	186.90	249.19	311.49	373.77

**9. CENTRALIZED COLLECTION
MULTI-FAMILY ROLL-OFF RECYCLE
MONTHLY RATES**

CONTAINER SIZE (CUBIC YARDS)	Effective 1-1-2008	Effective 1-1-2009
10	\$97.34	\$99.54
20	123.87	126.67
30	160.52	164.16
40	185.82	190.03
50	213.64	218.48

**10. CENTRALIZED COLLECTION MULTI-FAMILY ROLL-OFF RECYCLE
COMPACTOR SERVICE**

	Effective 1-1-2008	Effective 1-1-2009
PER SERVICE MINUTE	\$2.54	\$2.60
PER CUBIC YARD	11.69	11.95
PER CUBIC YARD *	8.32	8.51

*Rates per cubic yard when recyclable loads exceed 50% of any single commodity
Plus 12 % Franchise Fee

11. SOLID WASTE FRONT LOAD COMPACTOR MONTHLY RATE
(Refer to Exhibit I)

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12. SUPER COMPACTORS MONTHLY RATE
(Refer to Exhibit I)

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MOBILE HOME PARKS

13. MOBILE HOME PARKS
SOLID WASTE AND RECYCLING
MONTHLY RATE

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SERVICE LEVEL PER DWELLING UNIT	MONTHLY RATE Effective 1-1-08	MONTHLY RATE Effective 1-1-09
One 32 gallon can	\$7.72	\$8.32
Two 32 gallon cans	\$11.93	\$12.84

14. Late Utility Payment Penalties

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All accounts are due and payable within forty-five (45) days of the date of the bill. Accounts shall become delinquent and a late fee of five percent of the amount due shall be imposed if payment has not been received by 5:00 p.m. on the due date. Prior to discontinuing service for delinquent accounts, a final notice shall be issued to delinquent account stating that payment shall be due within fifteen (15) days of the date of the final notice and that service may be terminated after sixteen (16) days of final notice if payment is not received. If payment has not been received by 5:00 p.m. of the due date of the final notice, an additional late fee equal to five percent of the amount then due shall be imposed.

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

NUMBER 1980

CERTIFICATE OF CONSENT TO SELF-INSURE

THIS IS TO CERTIFY, That BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC. (a California corporation) has complied with the requirements of the Director of Industrial Relations under the provisions of Sections 3700 to 3705, inclusive, of the Labor Code of the State of California and is hereby granted this Certificate of Consent to Self-Insure.

This certificate may be revoked at any time for good cause shown.

EFFECTIVE:

THE 1st DAY OF October 1981

DEPARTMENT OF INDUSTRIAL RELATIONS
OF THE STATE OF CALIFORNIA

Donald Veal
DONALD VEAL
DIRECTOR

Richard S. Anderson
RICHARD S. ANDERSON
MANAGER

Revocation of Certificate.—"A certificate of consent to self-insure may be revoked by the Director of Industrial Relations at any time for good cause after a hearing. Good cause includes, among other things, the impairment of the solvency of such employer, the inability of the employer to fulfill his obligations, or the practice by such employer or his agent in charge of the administration of obligations under this division of any of the following: (a) Habitually and as a matter of practice and custom inducing claimants for compensation to accept less than the compensation due or making it necessary for them to resort to proceedings against the employer to secure the compensation due; (b) Discharging his compensation obligations in a dishonest manner; (c) Discharging his compensation obligations in such a manner as to cause injury to the public or those dealing with him." (Section 3702 of Labor Code.) The Certificate may be revoked for noncompliance with Title 8, California Administrative Code, Group 2—Administration of Self-Insurance.

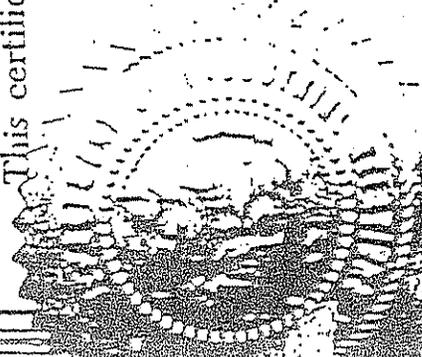


EXHIBIT F

RECYCLING SERVICES

Dated: January 8, 1991
 Amended: January 4, 1994
 November 21, 1995
 August 5, 1997
 February 20, 2001
 December 17, 2002
 November 16, 2004
May 20, 2008

1. Single-Unit Dwellings.

- a. Effective Date: June 20, 2008
- b. Frequency of Service: CONTRACTOR shall provide curbside collection of Recyclables to Single-Unit Dwellings on a weekly collection schedule coinciding with regularly scheduled Solid Waste collection services, and subject to Section 16 of the Agreement.
- c. Materials to be Collected: The materials set forth in Attachment B hereto.
- d. Recycling Containers:

Service on and after February 1, 2006. To initiate single-stream services hereunder, CONTRACTOR shall supply a single 64 or 96-gallon wheeled Recycling Cart to each Single-Unit Dwelling or an optional 32-gallon wheeled Cart to senior rate payers or high-density households, which Recycling Cart shall remain the property of CONTRACTOR. CONTRACTOR shall deliver recycling cart prior to February 1, 2006. Thereafter, CONTRACTOR shall provide a Recycling Cart to new Single-Unit Dwellings. Upon request the CONTRACTOR shall provide or exchange the 32 or 64-gallon wheeled Cart for a 96 gallon wheeled Cart. Cost of all Recycling Carts shall be borne by CONTRACTOR. Recycling Carts for disabled customers shall also be provided. CONTRACTOR shall provide replacement Recycling Carts as deemed necessary by CONTRACTOR, except that the Producer shall bear the cost of replacement where the need for replacement is caused by repeated negligence, intentional conduct or misuse. CONTRACTOR shall bear the cost of distribution for replacement Recycling Carts. CONTRACTOR shall investigate the feasibility of using alternative containers for the storage of motor oil and shall upon mutual agreement authorize the use of certain alternative containers.
- e. Uncollectible Material: CONTRACTOR shall leave all uncollectible material at the Premises with written notice explaining the reason why the material is

Deleted: January 1, 2005

Deleted: Newspapers, glass bottles and glass jars, corrugated cardboard, bimetal and aluminum cans, plastic containers #1 -7 , and motor oil and such other materials as mutually agreed upon in writing by CITY and CONTRACTOR. Beginning April 4, 1994, CONTRACTOR shall also collect mixed paper.

Deleted: Bins

Deleted: ~~Service through January 31, 2006.~~ To initiate the services hereunder, at CITY's sole cost, CONTRACTOR shall supply a single Recycling Bin to each Single-Unit Dwelling, which Recycling Bin shall remain the property of CONTRACTOR. CONTRACTOR shall deliver two (2) additional Recycling Bins to each Single-Unit Dwelling prior to April 5, 1994. Thereafter, CONTRACTOR shall provide three Recycling Bins to new Single-Unit Dwellings and additional Recycling Bins as requested by the Producer. Cost of all Recycling Bins shall be borne by CITY. Recycling Bins for disabled customers shall also be provided. CONTRACTOR shall provide replacement Recycling Bins as deemed necessary by CONTRACTOR, except that the Producer shall bear the cost of replacement where the need for replacement is caused by repeated negligence, intentional conduct or misuse. CONTRACTOR shall bear the cost of distribution for replacement Recycling Bins. CITY and CONTRACTOR shall investigate the feasibility of using alternative containers for the storage of motor oil and shall upon mutual agreement authorize the use of certain alternative containers.¶

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Deleted: Upon deployment of the Carts, CONTRACTOR relinquishes ownership of the three bins to the Single-Family customers. The Single-Family customers may donate the bins to CONTRACTOR for recycling purposes.

unacceptable. CONTRACTOR is under no obligation to collect any items that: (1) do not fall within the definition of Materials to be Collected as set forth above, and/or are not fully contained in a Recycling Bin or other container agreed to by CITY and CONTRACTOR and presented curbside; (2) constitute Hazardous Waste with the exception of motor vehicle oil; (3) are presented in any manner threatening to the health and safety of CONTRACTOR’s employees.

2. Multiple-Unit Dwellings

- a. Effective Date: ~~June 20, 2008~~ Deleted: June 1, 1994
- b. Frequency of Service: CONTRACTOR shall provide curbside collection of Recyclables to Multiple-Unit Dwellings on a collection schedule subject to Section 6 of the Agreement. Deleted: weekly
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- c. Materials to be Collected: ~~The materials set forth in Attachment B hereto.~~ Deleted: Newspapers, mixed paper, glass, corrugated cardboard, bimetal and aluminum cans, polyethylene terephthalate (“PET”) and high density polyethylene (“HDPE”) and such other materials as mutually agreed upon in writing by CITY and CONTRACTOR.
- d. Recycling Containers: To initiate the services hereunder, at CONTRACTOR’s sole cost, CONTRACTOR shall supply ~~a front load recycling bin or sixty-four (64) or ninety-six (96) gallon Recycling Carts~~ for each Refuse Bin located for Multiple-Unit Dwellings, which Recycling ~~Bins and Carts~~ shall remain the property of CONTRACTOR. Thereafter, CONTRACTOR shall provide ~~Recycling Bins and Carts~~ to new Multiple-Unit Dwellings, which cost shall be borne by CONTRACTOR. CONTRACTOR shall provide replacement Recycling ~~Bins and Carts~~ as deemed necessary by CONTRACTOR at its sole cost, except that the owner of the Premises shall bear the cost of replacement where the need for replacement is caused by repeated negligence, intentional conduct or misuse. CONTRACTOR shall secure the Recycling Bins, if necessary. ~~CONTRACTOR shall provide an option of a 32 or 64 gallon Recycling Cart to mobile homes.~~ Deleted: Bins
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- e. Uncollectible Material: CONTRACTOR shall leave all uncollectible material at the Premises with written notice explaining the reason why the material is unacceptable. CONTRACTOR is under no obligation to collect any items that: (1) do not fall within the definition of Materials to be Collected as set forth above, and/or are not fully contained in a Recycling Bin or other container agreed to by CITY and CONTRACTOR; (2) constitute Hazardous Waste; (3) are presented in any manner threatening to the health or safety of CONTRACTOR’s employees. Deleted: Prior to implementation of a recycling program in mobile home parks, CONTRACTOR shall provide a Recycling Bin supplied by CITY to each mobile home park dwelling and each dwelling in the Terrace Gardens apartments.¶

CONTRACTOR shall provide a tracking and feedback system for contamination problems pursuant to Paragraph e of this Exhibit (the same system used for commercial).

3. Commercial Premises

- a. Effective Date: ~~June 20, 2008~~ Deleted: January 1
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- b. Frequency of Service: To be agreed upon between CONTRACTOR and customer. CONTRACTOR shall offer a mix of recycling services customized to

meet the needs of that particular business. Front-end loader service shall be offered Monday through Saturday; the remaining types of service shall be offered Monday through Friday. Service options shall include, but not be limited to, the following:

- Shared containers for strip malls,
- Compactors,
- Residential cart service for small businesses
- Front-end loader service
- Roll-off

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• Every-other-week pick-up for smaller generators

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c. Materials to be Collected: The materials set forth in Attachment A hereto.

d. Rates: CONTRACTOR shall not charge for collection of recycled materials except for the collection of recycled materials using a roll-off compactor or roll-off container and push and return rates for front-end load service.

e. Recycling Bins: To initiate the services hereunder, at CONTRACTOR's sole cost, CONTRACTOR shall supply Recycling Bins to each Commercial Premise. Said Recycling Bins shall remain the property of CONTRACTOR. Thereafter, CONTRACTOR shall provide a Recycling Bin to new Commercial Premises and additional Recycling Bins as requested by the owner of the Premises, which cost shall be borne by CONTRACTOR. CONTRACTOR shall provide replacement Recycling Bins as deemed necessary by CONTRACTOR at its sole cost, except that the owner of the Premises shall bear the cost of replacement where the need for replacement is caused by repeated negligence, intentional conduct or misuse. Commercial premises may utilize compactors or roll-off containers.

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f. Tracking and Feedback System. CONTRACTOR shall provide a Tracking and Feedback System for commercial recycling contamination problems, as approved by the CITY, with the following elements:

- (1) Commercial Screening Program: CONTRACTOR establishes and maintains an operating system that includes:
 - A. Systematic driver inspection of commercial recycling bins;
 - B. Printed notification piece, in triplicate NCR format, outlining contamination problems for placement on recycling bins;
 - C. Upon issuance of the first notice of contamination problems: Verbal follow-up contact from CONTRACTOR's designee to assist customer representatives with correcting the contamination problem;
 - D. Upon issuance of a second notice of contamination problems: Verbal follow-up from CONTRACTOR's designee to schedule a meeting with a customer representative responsible for correcting contamination problems;
 - E. Upon issuance of a third notice of contamination problems: written notification from CONTRACTOR's designee to company

representatives about the risk of losing recycling services and potential Solid Waste hauling and disposal costs;

- F. Upon issuance of a fourth notice of contamination problems, written notification from CONTRACTOR's designee to company representatives of CONTRACTOR's intention to recover appropriate costs for Solid Waste collection and disposal of recycling containers.
- G. Use of a computer data base system tracking the contamination notification(s) issued by company; company contact(s) information by name, title, address, phone number, date and time of messages and actual contact and/or meetings scheduled and completed, and problem resolution.

- (2) **Operating Procedures:** CONTRACTOR shall establish, implement and maintain written operating procedures, as approved by the CITY, including and in addition to the Commercial Screening Program specified above.
- (3) **Training:** CONTRACTOR shall establish, implement and maintain a written training program for all its employees responsible for the identification, removal, handling and disposal of commercial recyclables, as well as for those employees responsible for screening, tracking and, reporting contamination problems, that reinforces the Commercial Screening Program and Operation Procedures. CONTRACTOR shall provide prior notification to CITY of training sessions that relate to contamination problems of the Commercial Screening Program and Operating Procedures. Training sessions for affected employees shall be conducted no less than twice a year.
- (4) **Documentation:** CONTRACTOR shall submit, when requested, one triplicate copy of the printed notification piece to the CITY.

CONTRACTOR shall provide reports pursuant to subparagraph 36.

CONTRACTOR shall maintain the digital files of the computer data base as described under the Commercial Screening Program and provide printed versions to the CITY within five (5) days of request.

- (5) **Inspection by CITY:** Commercial Screening Program, Operating Procedures, Training and Documentation required shall be available for review by the CITY and the CITY shall have the right to audit CONTRACTOR's maintenance and implementation of said Commercial Screening Program, Operations Procedures and Training Program.
- (6) **Commercial Recycling Coordinator:** CONTRACTOR shall provide one intern position devoted to promoting and supporting commercial recycling in the City. Individual employment decisions shall be at the sole discretion of CONTRACTOR. This person shall be the direct liaison

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Deleted: In determining the program cost and appropriate increase to the rates for Solid Waste collection from commercial premises necessary to fund the commercial recycling program, CONTRACTOR and CITY shall consider, at a minimum, the following issues or areas:

- Program participation
- Number of bins needed to service participants
- Diversion rates
- Commodity values
- Commodity mix (percentage of each commodity)
- Anticipated and actual public education costs
- Anticipated and actual service time for pick-ups
- Participants using shared bins
- Participants using every other week pick-up

to CITY staff for the commercial recycling program. This position shall be in addition to the community relations position as required in Exhibit F, Section 7, and Yard Trimming Agreement, Section 6, Item B. The responsibilities of this position shall include, but not be limited to the following duties:

- Daily positive and professional interaction with customers at business locations, on the phone, and in e-mail
- 24-business hour response to customer inquiries with ongoing contact to resolve questions or complaints
- Establish, manage, and update written procedures for customer service follow-through
- Consistent distribution of City-provided promotional materials to customers
- Attendance at business functions and public events, as requested by CITY, individual business, or organization representatives
- ~~Timely response to CITY for service research, information, and collateral material review to support program promotions and new program elements~~
- Monthly reporting to CITY of field observations and customer inquiries related to recycling commodities, program use, and other service trends
- Conduct surveys, perform research, statistical analysis, and reporting to City
- Track and document commercial recycling information provided in the Monthly and Annual Reports
- ~~Regular and consistent attendance at CITY/CONTRACTOR monthly coordination meetings~~

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The City has the right to approve the selection of the CONTRACTOR's commercial recycling coordinator or any persons responsible for performing the duties of the commercial recycling coordinator as described in Exhibit F, Section 3 (f)(7), provided that the CITY's approval may not unreasonably withheld.

4. Recycling Containers: In addition to the requirements set forth herein, each Recycling Container shall be (i) readily distinguishable from Solid Waste containers, (ii) contain signs indicating the acceptable materials to be placed therein, and (iii) other information as agreed to in writing by CITY and CONTRACTOR.

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5. Materials Sorting: On a periodic basis, CONTRACTOR shall conduct a sorting of Single-Unit and Multiple-Unit Recyclable Materials collected in a manner set forth below:

- a. For reporting purposes, CONTRACTOR shall calculate monthly the average composition of all recycled materials, by program and by material type, processed together with material from other similar programs at the material recovery facility (The Recyclery). The average of each material type shall be used to calculate the total tonnage collected and the percentage of the total tonnage

contributed by any specific Recyclable Material (hereinafter, the “Factor”), both over a seven (7) day period.

- b. Once per year, at a time agreed upon by the CITY, CONTRACTOR shall conduct a one week sort of materials collected from each of the Milpitas recycling programs.
- c. City staff shall be notified two weeks prior to the sort so they may witness the unloading and sorting of materials. The results of the sort shall be compared with the monthly averages. If there is significant variation between the sort and the monthly averages, then the CITY and the CONTRACTOR will determine how to adjust the monthly averages. Any adjustment shall provide more accurate reporting of tonnages by material type for the curbside program.

6. Rebate and Revenue Sharing

- a. Rebate: CONTRACTOR agrees that in consideration for the commodity value it will receive from the Recyclable materials collected through the Single-Unit curbside recycling program, it shall pay to CITY a rebate as shown below. Each month's payment is determined based on the recycle tonnage for that month only. The rebate amount shall be included as a credit to the rate charge to Single-Unit Dwellings for Solid Waste and Recyclables collection service set forth in Exhibit C herein.
 - i. For any month where recyclable materials collected from CITY residents exceeds 400 tons but less than 470 tons, CONTRACTOR shall pay CITY two thousand dollars (\$2,000).
 - ii. For any month where recyclable materials collected from CITY residents exceeds 470 tons but less than 540 tons, CONTRACTOR shall pay CITY two thousand seven hundred fifty dollars (\$2,750).
 - iii. For any month where recyclable materials collected from CITY residents exceeds 540 tons, CONTRACTOR shall pay CITY three thousand five hundred dollars (\$3,500).
- b. Special Funding: CONTRACTOR shall share equally with CITY any payments received from any other federal, state or local governmental agency for the performance of recycling programs, including, but not limited to, the State Oil Recycling Incentive Payment. However, CONTRACTOR shall not be required to share with CITY any payments received from AB 2020 container refunds and processing payments.

- 7. CONTRACTOR Participation: CONTRACTOR shall provide one full-time position to coordinate with CITY staff in preparing and implementing the Community Relations Quarterly Schedules as set forth in Exhibit G to the Agreement and other associated public awareness programs. This position shall also fulfill the responsibilities required in Exhibit C of the Agreement for Single Unit Residential Yard Trimmings Collection and Processing between CITY and CONTRACTOR. This position shall be in addition to the commercial recycling position as described in Exhibit F, Section 3, (f)(7). This staff person shall provide, but not be limited to, the following professional outreach services:

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- Interaction with customers and CITY staff to develop timely and effective public and media relations related to communications efforts promoting CITY and CONTRACTOR programs and campaigns
- Assist in achieving each objective outlined in the Community Relations Quarterly Schedules, and assist with all public events and other public awareness campaigns
- Develop mutually agreed upon production schedules to implement outreach elements and associated public awareness campaigns and activities listed in the Quarterly Schedules.
- Provide accurate and prompt information gathering and editing for written and oral contributions to develop public information to achieve contractual performance goals
- Maintenance of complex timelines with overlapping activities to coordinate CONTRACTOR's human and material resources that facilitate and implement customer and CITY requests to attend speaking engagements, public events, tours, interviews and other community and media relations requests
- 24-business-hour response to public inquiries elevated from CONTRACTOR and CITY staff
- Conduct surveys, perform research, statistical analysis and reporting to CITY
- Track and document customer and public information provided in the Monthly and Annual Reports
- Regular and consistent attendance at CITY/CONTRACTOR monthly coordination meetings

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The City has the right to approve the selection of the CONTRACTOR's community relations representative or any persons responsible for performing the duties of the community relations representative as described in Exhibit F, Section 3(f)(7), provided that the CITY's approval may not be unreasonably withheld.

8. Compliance: CONTRACTOR shall provide to CITY information reasonably requested by CITY and necessary in providing this recycling program, as set forth in Section 36 of the Agreement.
9. Program Performance: Program performance shall be reviewed on an annual basis and any needed revisions will be negotiated.

The Commercial Recycling Program will undergo a comprehensive review by the City Council in August 1998. Factors to be evaluated include contractor performance (i.e., diversion, customer service), cost effectiveness (i.e., comparison of program expectations with actual average load densities) and program funding. The review will also include determination of the disposition of \$56,000 annually received by the CONTRACTOR as revenue from commercial solid waste rates. The revenue is partial compensation to the CONTRACTOR for assumed solid waste volume lost when the Commercial Recycling Program was implemented in 1994. The CITY and the CONTRACTOR will negotiate any identified program revisions as a result of the program review. Any changes to solid waste rates, as a result of the negotiated program revisions, will be incorporated into the biennial rate adjustment effective January 1, 1999.

EXHIBIT F

ATTACHMENT A

Amended: February 20, 2001, December 17, 2002, May 6, 2008

Co-mingled materials to be collected from Commercial Premises receiving front end loader or roll off Recycling Services:

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- White Paper
- Computer Paper
- Copy Paper
- Fax Paper
- Carbonless Forms
- Envelopes (with or without windows)
- Colored, White, and Manila File Folders
- Laser-Printed Paper
- Junk Mail
- Newspapers
- Magazines
- Phone Books

- Glossy Paper
- Corrugated Cardboard
- Chipboard
- Shredded Paper
- Bi-Metal Cans
- Aluminum
- Tin
- Glass Bottles and Jars
- Plastic Containers #1 - 7, excluding polystyrene (#6) in all forms
- Any Other Materials as Recycling Commodity Markets Accept and as Mutually Agreed Upon by CONTRACTOR and CITY

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EXHIBIT F
ATTACHMENT B

Recyclable materials to be collected from Single-Unit and Multiple-Unit Dwellings:

- Magazines
- Catalogs
- Phone Books
- Shredded Paper (placed in paper bags for collection)
- Envelopes
- Junk Mail
- Corrugated Cardboard
- Brown Paper Grocery Bags and Mixed or Colored Paper
- Paperboard
- Paper Egg Cartons
- Office Ledger Paper
- White plastic grocery bags
- Glass bottles and jars
- Food (bimetal) and aluminum cans
- Newspaper
- Plastic containers #1-7, excluding #6, polystyrene in all forms
- Motor oil in approved containers (single family only)

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EXHIBIT G

Community Relations

Dated: November 21, 1995

Effective Date: February 1, 1996

Amended: May 18, 1999

Amended: December 17, 2002; November 16, 2004; May 20, 2008

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Effective Date: June 20, 2008

General Responsibilities

Community relations planning requires the CITY's preparation of quarterly schedules. CONTRACTOR and CITY acknowledge that program modifications may require altering Quarterly Schedules to suit changing conditions. The Quarterly Schedules shall include, but are not limited to, CONTRACTOR's activities in connection with items 'A' through 'I'.

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CONTRACTOR shall:

- A. Provide assistance in developing communications goals, objectives, strategies and evaluation criteria to encourage participation in City of Milpitas recycling and source reduction programs, including establishing and providing assistance with distribution methods, providing targeted neighborhood route and tonnage information, and maintaining an accurate data base of customer contacts.
- B. Attend and assist with coordination of program events.
- C. Provide general planning assistance for the development, printing and distribution of collateral materials, as written in the quarterly schedules.
- D. Assist with preparation and provide presentations to schools, community and business groups.
- E. Assist with coordination between the CITY and Milpitas Unified School District to encourage and support school recycling programs and activities.
- F. Provide participation at up to six (6) selected special and public events such as events and workshops sponsored or co-sponsored by the CITY that promote the City's recycling and source reduction programs.
- G. Assist with outreach and distribution to the ethnic communities to promote participation among non-English speaking households.

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H. Provide storage for up to 15,000 deskside recycling boxes (or 60 pallets) annually for the Commercial Recycling Program. Deliver deskside recycling boxes from storage location to customers.

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I. Perform street sweeping outreach as described in EXHIBIT O.

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Basic Requirements

CONTRACTOR shall provide one full-time position to coordinate with CITY staff in preparing and implementing the Community Relations Quarterly Schedules as stated in Exhibit F, Section 7 of this Agreement.

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CITY shall submit drafts of Quarterly Schedules within five (5) working days before the first working day of each CITY fiscal quarter. The CITY shall discuss any changes to the Quarterly Schedule with the CONTRACTOR within this time frame. CITY shall revise and submit the final quarterly schedule within two (2) working days before the first working day of each quarter, with the exception of the schedule set above for the first quarter of the CITY's fiscal year.

Deleted: CITY shall prepare drafts of the Annual Community Relations Outline and the Quarterly Schedule for the first quarter of the fiscal year by June 15, or next working day, every year. CONTRACTOR shall respond within ten (10) working days with comments. CITY and CONTRACTOR shall discuss any changes to the Annual Community Relations Outline within this time frame. CITY shall revise and submit changes to the final draft of the Community Relations Outline and Quarterly Schedule for the first quarter of the CITY's fiscal year on or before June 10, or next working day, of each year.

CONTRACTOR shall:

- A. acknowledge that CITY staff shall direct all design concepts, color choices, layouts, etc., to suit city image and styles;
- B. acknowledge that review of all designs, prepress reviews, press checks and digital files of collateral materials are subject to CITY approval;
- C. provide review and comments of all written draft collateral, including but not limited to translated materials, as submitted to CONTRACTOR by the CITY within forty-eight (48) hours, or an agreed-upon extension;
- D. acknowledge that CITY staff shall determine any production schedule of collateral materials, when planning collateral materials for production, as reasonable;
- E. participate in interviewing communications vendors such as advertising and promotions professionals, printers, designers and photographers.

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Specific Responsibilities

CONTRACTOR shall:

- A. acknowledge that the job requirements for its selected representatives shall include, but not be limited to: staffing community and special events; accompanying CITY staff on speaking engagements; information distributions; providing translations checks of professionally translated materials, and; maintaining contact with targeted ethnic communities.
- B. use a phone tree system or other method to have foreign language speakers available to customers;
- C. provide CITY with review and opportunity to comment on training materials for customer service representatives and route drivers;
- D. notify CITY when training sessions for services provided under the recycling provisions of the City of Milpitas Agreement occur. CITY staff may opt to attend and/or assist with some sessions;
- E. notify CITY when customer service policies and procedures change.
- F. work at the direction of CITY staff to schedule and participate in up to six (6) Milpitas events per year;
- G. maintain full staffing at community and special events of at least two people trained to discuss City of Milpitas recycling programs;
- H. maintain a webpage specific to Milpitas programs
- I. set-up and be ready for all events at publicized start times;
- J. acknowledge that CITY reserves the right to request bi- or trilingual collector personnel or translator at any community or special events;
- K. provide joint promotion between CITY and CONTRACTOR in the form of banners, displays and exhibits, and table space;
- L. assist the CITY with the preparation of giveaway items and attendance counts;
- M. provide set-up and take-down staff for both CITY and CONTRACTOR displays and materials at all events with joint participation between CITY and CONTRACTOR.

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In the case of an unstaffed scheduled event or staffing of untrained CONTRACTOR personnel, CONTRACTOR agrees to commit to another event, of the CITY's choosing, in place of the originally scheduled event.

Media and Governmental Relations

CONTRACTOR shall:

\\callisto\milpitas\CITY CLERK\CURRENT AGENDA PACKETS (for WebMaster)\2008\05-06-08_Council Meeting\Working Docs\SW and Noise Ords\AW Contract\EXHIBIT G.doc

A. Media Inquiries

Immediately notify CITY by both phone and email of all requests for news media interviews and requests for information related to the solid waste and recycling services before responding to any inquiries involving potentially controversial issues or any issues likely to affect participation or recipient perception of services. CONTRACTOR shall wait four (4) hours for a response from the CITY before responding to media inquiries.

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B. Media and Governmental Relations

Submit copies of draft news releases or proposed feature articles, including awards and grant applications, to the CITY at least five (5) working days in advance of release or submittal, except where materials are required by any regulatory agency in a shorter period of time, in which case CONTRACTOR shall also submit such materials to the CITY simultaneously with CONTRACTOR's submittal to such regulatory agency.

CITY shall notify COLLECTOR of above same media requests, draft news releases and feature articles, and approvals under the same terms as outlined above.

Notification will be sent to the following phone numbers or such other numbers and email addresses as CITY may designate in writing:

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<u>Public Information Specialist</u>	<u>Principal Civil Engineer</u>
<u>City of Milpitas, Utility Engineering</u>	<u>City of Milpitas, Utility Engineering</u>
<u>455 East Calaveras Blvd.</u>	<u>455 E. Calaveras Blvd</u>
<u>Milpitas, CA 95035</u>	<u>Milpitas, CA 95035</u>
<u>408/586-3352 - PHONE</u>	<u>408/586/3345 - PHONE</u>
<u>408/586-3305 - FAX</u>	<u>408/586-3305 - FAX</u>

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EXHIBIT H

HOUSEHOLD DUMP DAY PLAN

Dated: October 20, 1992

Amended: January 4, 1994; November 21, 1995, May 18, 1999,
February 20, 2001, December 17, 2002, November 16, 2004, [May 20, 2008](#)

1. Effective Date: Procedures for Household Dump Day as outlined below shall be effective on [June 20, 2008](#).
2. Schedule for Household Dump Day: The second (2nd) and fourth (4th) Saturday of each month except where it falls on Christmas Day or New Year's Day.
3. Availability for Use: Each Milpitas Single-Unit or Multiple-Unit Dwelling shall be able to dispose of Solid Waste at the Newby Island landfill six times annually. Yard Trimmings shall also be accepted at Newby Island landfill and/or composting facility on Household Dump Day until January 1, 1997. Thereafter, Yard Trimmings shall not be accepted at either Newby Island landfill or composting facility on Household Dump Day except as provided in Section 10 below. Clean scrap wood shall be accepted at the Newby Island Composting Facility on Household Dump Day. In addition, in the event that the owner of a Single-Unit Dwelling has extenuating circumstances which require the use of Household Dump Day on different terms and conditions, those terms and conditions shall be negotiated between the owner or resident and CONTRACTOR, and CONTRACTOR shall make all reasonable efforts to accommodate the special needs of the owner or resident.
4. Identification Required: Each resident wishing to dispose of waste material shall present the following two (2) forms of identification at the landfill gate:
 - a. CITY Utility Bill (water, sewer and Solid Waste services [excluding Reminder Bills and Final Notices](#)) with service dates no older than twelve (12) months prior and showing Milpitas Dwelling address (those residents not receiving a CITY issued utility bill may present the two most recent electric bills or mobile home park rent receipts); and
 - b. Driver's license, or other photo identification, listing the same address or account holder name as above.

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5. CONTRACTOR's Recording of Use: CONTRACTOR shall stamp the utility bill or both electric bills or both mobile home park rent receipts at the landfill gate following confirmation of proper identification. No CITY current water utility bill shall contain more than one (1) stamp, and no electric bills or mobile home park rent receipts shall contain more than one (1) stamp.
6. Vehicles Permitted: Residents may utilize any vehicle with a load capacity of one (1) ton or less, including rental trucks and trailers, and vehicles advertising a business, but excluding commercial vehicles such as dump trucks, flatbed trucks or bobtail vans. Recycling collection facilities located at Newby Island shall remain open and available to residents during all hours that Household Dump Day privileges are available.
7. Receipt of Non-industrial or Non-commercial materials which are not legally authorized for collection or disposal: CONTRACTOR shall accept only appliances containing coolant, such as refrigerators, chillers, freezers, ice-makers, and air conditioning units. CONTRACTOR shall also accept mattress, boxsprings and car and truck tires at rates not more than that charged to the general public. CONTRACTOR shall also accept for recycling automobile batteries, televisions, computer monitors, and large metal items (appliances, metal furniture) at a special location set aside at Newby Island at rates not more than that charged to the general public.
8. Extraordinary Costs: CONTRACTOR shall be entitled to recover costs associated with fees, taxes or charges imposed by any public entity on the landfilling of those volumes of Solid Waste or other materials received from residents as described in Section 8.d of the Agreement.
9. Program Review: CITY and CONTRACTOR shall conduct a program performance review in May 1997, and at each biennial rate adjustment thereafter, and negotiate program changes if necessary.
10. Yard Trimmings Exceptions: Milpitas residents shall be allowed exceptions to deliver yard trims to the Newby Island Composting Facility on Household Dump Day at no charge. A Yard Trimmings Exception will provide a convenient disposal option for residents with occasional large quantities of yard trimmings that are inconvenient to dispose in a yard trims container on a regular collection day.

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Yard trims will only be allowed when specific criteria outlined below have been met and the resident has been issued an exception in writing from City solid waste staff. No more than two (2) Yard Trimmings Exceptions shall be issued to one household during a twelve month period. No more than three (3) trips in one day to the Composting Facility shall be authorized under a Yard Trimmings Exception.

Professional gardeners and tree trimmers may be allowed to haul the yard trimmings for a resident provided (a) the vehicle meets the requirements of Section No. 6 above and (b) CITY-issued written verification of the Yard Trimmings Exception is provided at the landfill gate identifying the party providing the hauling service.

The application procedure to request a Yard Trimmings Exception shall be agreed to in writing by the CITY and CONTRACTOR.

CITY staff must find that the following criteria have been met to issue a Yard Trimmings Exception:

- A. Resident's yard trims cannot be reasonably accommodated with regular curbside collection.
- B. The yard trims load(s) will meet vehicle requirements described in Section No. 6 above.
- C. The yard trims load(s) shall include materials accepted in the curbside yard trimmings collection service. Tree stumps shall be less than two (2) feet in diameter, and no more than (4) feet in length.

- 11. Customer Cost – Loads measuring one cubic yard or less (3 feet by 3 feet by 3 feet) are accepted at no cost with one utility bill. Loads measuring between one and two cubic yards (6 feet x 3 feet x 3 feet) are accepted at no cost if two utility bills are presented. Additional volumes shall be accepted with payment at rates not more than that charged to the general public. In addition, CONTRACTOR shall charge for special items as described in Section 7.

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EXHIBIT "I"

**CITY OF MILPITAS
COMMERCIAL SERVICE LEVEL**

Dated: January 4, 1994

Amended: December 20, 1994; November 21, 1995; December 17, 1996; August 5, 1997; May 4, 1999;
February 20, 2001; December 17, 2002; November 16, 2004; January 15, 2008; [May 20, 2008](#)

[Effective: June 20, 2008](#)

SOLID WASTE COLLECTION

**1A. FRONT LOADER SOLID WASTE SERVICE
MONTHLY RATES**

Effective January 1, 2008

BIN RENTAL (I)	CONTAINER SIZE (CUBIC YARDS)	FREQUENCY PER WEEK					
		1X	2X	3X	4X	5X	6X
\$14.15	1	\$77.80	\$138.50	\$189.55	\$233.75	\$283.43	\$333.13
\$14.15	1.5 (2)	99.48	189.44	251.07	323.12	395.12	467.10
\$14.15	2	121.17	233.75	333.13	432.43	531.76	631.16
\$18.84	3	173.93	341.44	490.46	639.50	788.52	937.53
\$21.29	4	202.32	395.74	559.35	722.99	886.56	1050.17
\$23.57	6	278.14	550.97	805.56	1,039.32	1,293.91	1,548.48
\$25.99	8	361.58	714.59	1,030.88	1,347.31	1,663.66	1,980.03

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(1) Included in rates. Deducted from monthly rate if customer owns bin.

(2) This size no longer offered to new accounts.

COLLECTOR will remit to CITY, pursuant to Subparagraph 8(d)3 of agreement, \$57,000 annually for community relations program funding.

COLLECTOR will remit to CITY, pursuant to subparagraph 8(d)3, \$98,040 for front end load and \$108,015 for roll off for the total of \$206,055 annually for city administration fee.

**1B. FRONT LOADER SOLID WASTE SERVICE
MONTHLY RATES**

Effective January 1, 2009

BIN RENTAL (I)	CONTAINER SIZE (CUBIC YARDS)	FREQUENCY PER WEEK					
		1X	2X	3X	4X	5X	6X
\$14.47	1	\$82.86	\$148.25	\$203.80	\$252.35	\$306.49	\$360.66
14.47	1.5 (2)	106.70	203.70	271.74	350.44	429.08	507.72
14.47	2	130.55	252.35	360.66	468.90	577.15	685.48

**BIENNIAL
EXHIBIT "I"**

19.27	3	187.86	369.15	531.56	694.00	856.42	1,018.85
21.77	4	220.26	431.45	612.21	793.01	973.73	1,154.51
24.10	6	304.54	603.66	884.19	1,143.45	1,423.97	1,704.45
26.58	8	396.59	784.44	1,134.84	1,485.39	1,835.86	2,186.34

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- (1) Included in rates. Deducted from monthly rate if customer owns bin.
 (2) This size no longer offered to new accounts.

COLLECTOR will remit to CITY, pursuant to Subparagraph 8(d)3 of agreement, \$57,000 annually for community relations program funding.

COLLECTOR will remit to CITY, pursuant to subparagraph 8(d)3, \$98,040 for front end load and \$108,015 for roll off for the total of \$206,055 annually for city administration fee.

**2. WEEKLY SOLID WASTE CAN SERVICE
MONTHLY RATE**

Effective January 1, 2008

<i>NUMBER OF 96 GALLON CARTS</i>	<i>RATE</i>	<i>NUMBER OF 32 GALLON CANS</i>	<i>RATE</i>
1	\$26.84	1-3	\$33.23
2	\$52.41	4-6	\$69.03
3	\$75.42	7-9	\$93.32
4	\$99.71	10-12	\$121.44

Service more frequent than once per week shall be charged at 75% above the monthly rate for each additional service day.

**3. SOLID WASTE ROLL-OFF
MONTHLY RATES**

<i>CONTAINER SIZE (CUBIC YARDS)</i>	<i>EFFECTIVE JANUARY 1, 2008 CHARGE PER HAUL*</i>	<i>EFFECTIVE JANUARY 1, 2009 CHARGE PER HAUL*</i>
10	\$398.90	424.80
20	\$541.09	587.38
30	\$669.28	735.77
40	\$807.56	894.53
50	\$950.91	1,058.45

* For 2.5 average hauls per month. If there is less than 2.5 hauls per month, there is an additional bin rental charge.

**4. ROLL OFF BIN RENTAL
MONTHLY RATES**

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CONTAINER SIZE (CUBIC YARDS)	EFFECTIVE JANUARY 1, 2008 CHARGE PER MONTH	EFFECTIVE JANUARY 1, 2009 CHARGE PER MONTH
10	\$99.83	102.09
20	\$127.62	130.51
30	\$165.52	169.27
40	\$190.77	195.09
50	\$219.83	224.81

**5A. SOLID WASTE ROLL-OFF COMPACTOR
MONTHLY RATE**

Effective January 1, 2008

\$2.85 PER SERVICE MINUTE + \$18.48 PER YARD + 12% FRANCHISE FEE = PER
HAUL RATE

**5B. SOLID WASTE ROLL-OFF COMPACTOR
MONTHLY RATE**

Effective January 1, 2009

\$2.91 PER SERVICE MINUTE + \$20.41 PER YARD + 12% FRANCHISE FEE = PER
HAUL RATE

**6A. SOLID WASTE FRONT LOAD COMPACTOR
MONTHLY RATE**

Effective January 1, 2008

WEEKLY YARDAGE x \$24.03 PER YARD x 52 WEEKS DIVIDED BY 12 MONTHS +
12% FRANCHISE FEE = MONTHLY RATE

**6B. SOLID WASTE FRONT LOAD COMPACTOR
MONTHLY RATE**

Effective January 1, 2009

WEEKLY YARDAGE x \$25.24 PER YARD x 52 WEEKS DIVIDED BY 12 MONTHS +
12% FRANCHISE FEE = MONTHLY RATE

6C. SUPER COMPACTORS MONTHLY RATE

Effective January 1, 2008

BIENNIAL
EXHIBIT "I"

(WEEKLY YARDAGE x \$22.59 PER YARD) + (WEEKLY YARDAGE x \$12.34 PER YARD) x 52 WEEKS DIVIDED BY 12 MONTHS + 12% FRANCHISE FEE = MONTHLY RATE

Note: For purposes of the application of the above rate, Super Compactors are distinguished by a compaction ratio greater than or equal to 6:1 and generating an average container density greater than 550 pounds per cubic yard. The CONTRACTOR shall determine the applicability of this definition. The CONTRACTOR's determination may be appealed by the Producer in writing to CITY.

6D. SUPER COMPACTORS MONTHLY RATE

Effective January 1, 2009

(WEEKLY YARDAGE x \$23.77 PER YARD) + (WEEKLY YARDAGE x \$13.29 PER YARD) x 52 WEEKS DIVIDED BY 12 MONTHS + 12% FRANCHISE FEE = MONTHLY RATE

Note: For purposes of the application of the above rate, Super Compactors are distinguished by a compaction ratio greater than or equal to 6:1 and generating an average container density greater than 550 pounds per cubic yard. The CONTRACTOR shall determine the applicability of this definition. The CONTRACTOR's determination may be appealed by the Producer in writing to CITY.

**7A. SOLID WASTE
EXTRA PICK-UP RATES**

Rates Effective January 1, 2008

<i>SIZE</i>	<i>CONTAINER TYPE</i>	<i>MONDAY-FRIDAY RATE</i>	<i>SATURDAY RATE</i>
1	32 Gallon Can	\$7.67	\$11.52
1	Wheeled Cart	24.29	26.84
1.0	Yard Bin	51.13	72.86
1.5	Yard Bin	54.96	80.55
2.0	Yard Bin	61.36	86.93
3.0	Yard Bin	71.59	94.61
4.0	Yard Bin	84.38	102.28
6.0	Yard Bin	115.05	123.99
8.0	Yard Bin	123.99	139.34
Any Compacted Yardage	Compactor	\$37.07 per cubic yard	\$43.47 per cubic yard

RECYCLING COLLECTION

**8. RECYCLING
ROLL-OFF RATES**

CONTAINER SIZE (CUBIC YARDS)	EFFECTIVE JANUARY 1, 2008*	EFFECTIVE JANUARY 1, 2009*
<u>6**</u>	<u>Up to \$283.14</u>	<u>Up to \$289.56</u>
10	Up to \$283.14	Up to \$289.56
20	Up to \$334.96	Up to \$342.55
30	Up to \$371.62	Up to \$380.05
40	Up to \$418.40	Up to \$427.88
50	Up to \$470.24	Up to \$480.89

* For 2.5 average hauls per month. If there is less than 2.5 hauls per month, there is an additional bin rental charge.

** Customers may request a designated 10 yard container to be filled up to the delimited 6 yard capacity line for dirt and concrete loads. Dirt and concrete cannot otherwise be serviced due to their excessive density

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**9. RECYCLING ROLL-OFF BIN RENTAL
MONTHLY RATES**

CONTAINER SIZE (CUBIC YARDS)	Effective January 1, 2008	Effective January 1, 2009
10	\$97.34	\$99.54
20	123.87	126.67
30	160.52	164.16
40	185.81	190.03
50	213.64	218.48

10A. RECYCLING ROLL-OFF COMPACTOR

Rates Effective January 1, 2008

\$2.68 PER SERVICE MINUTE + \$8.76 TO
\$12.32 PER YARD + 12% FRANCHISE FEE = PER HAUL RATE
When recyclable loads exceed 50% of any single commodity, then per yard cost will decrease to \$8.76 per yard.

10B. RECYCLING ROLL-OFF COMPACTOR

Rates Effective January 1, 2009

\$2.74 PER SERVICE MINUTE + \$8.96 TO
\$12.60 PER YARD + 12% FRANCHISE FEE = PER HAUL RATE

BIENNIAL
EXHIBIT "I"

When recyclable loads exceed 50% of any single commodity, then per yard cost will decrease to \$8.96 per yard.

**11A. RECYCLING FRONT LOAD COMPACTOR
MONTHLY RATE**

Rates Effective January 1, 2008

WEEKLY YARDAGE x \$8.76 TO \$20.44 PER YARD x 52 WEEKS DIVIDED BY 12 MONTHS + 12% FRANCHISE FEE = MONTHLY RATE

When recyclable loads exceed 50% of any single commodity, then per yard cost will decrease to \$8.76 per yard.

**11B. RECYCLING FRONT LOAD COMPACTOR
MONTHLY RATE**

Rates Effective January 1, 2009

WEEKLY YARDAGE x \$8.96 TO \$20.90 PER YARD x 52 WEEKS DIVIDED BY 12 MONTHS + 12% FRANCHISE FEE = MONTHLY RATE

When recyclable loads exceed 50% of any single commodity, then per yard cost will decrease to \$8.96 per yard.

OTHER CHARGES

**12. FRONT LOADER PUSH AND RETURN
MONTHLY RATES PER BIN**

Effective January 1 2008

<i>NUMBER OF FEET DISMOUNTED</i>	<i>FREQUENCY PER WEEK</i>					
	<i>1X</i>	<i>2X</i>	<i>3X</i>	<i>4X</i>	<i>5X</i>	<i>6X</i>
25'	\$7.82	\$15.61	\$23.36	\$31.17	\$38.95	\$46.72
26'-50'	15.61	31.17	46.72	62.29	77.89	93.46
51'-75'	23.36	46.72	70.08	93.46	116.81	140.16
76'-100'	31.17	62.29	93.46	124.58	155.77	186.90
101'-125'	38.95	77.89	116.81	155.77	194.67	233.60
126'-150'	46.72	93.46	124.58	194.67	233.60	280.32
151'-175'	54.54	109.02	163.54	218.05	272.53	327.06
176'-200'	62.29	124.58	186.90	249.19	311.49	373.77

13. SOLID WASTE MISCELLANEOUS CHARGES

Effective January 1, 2008

Lock Installation (After Delivery)	\$93.32
Bin Repairs	\$75.42
Lock (Padlock Only)	\$14.07
Container Delivery (New Account Set-Up And Bin Size Exchange)	\$49.85
Graffiti Removal - Second and subsequent bin exchanges per calendar year	\$49.85
Graffiti Removal - Allied supplies paint to Owner	no cost
Container Exchange (Dirty Container)	\$93.32

**14.A. RETURN COLLECTION OF OPEN TOP SOLID WASTE
CONTAINERS
PER HAUL**

Rates Effective January 1, 2008

The criteria and procedures outlined in Exhibit L of this Agreement shall be followed before the CONTRACTOR may charge this fee.

\$72.71 per haul

**14.B. RETURN COLLECTION OF OPEN TOP SOLID WASTE
CONTAINERS
PER HAUL**

Rates Effective January 1, 2009

The criteria and procedures outlined in Exhibit L of this Agreement shall be followed before the CONTRACTOR may charge this fee.

\$75.20 per haul

15. VOLUNTARY FOOD WASTE COMPOST PILOT PROGRAM

<u>Times/Week</u>	<u>1-cubic yard (CY)</u>	<u>1.5-CY</u>	<u>2-CY</u>	<u>3-CY</u>
<u>1 x week</u>	<u>\$110.67</u>	<u>\$148.61</u>	<u>\$186.56</u>	<u>\$271.92</u>
<u>2 x week</u>	<u>\$204.07</u>	<u>\$287.59</u>	<u>\$364.40</u>	<u>\$537.33</u>
<u>3 x week</u>	<u>\$287.70</u>	<u>\$397.94</u>	<u>\$528.94</u>	<u>\$784.09</u>
<u>4 x week</u>	<u>\$364.40</u>	<u>\$518.83</u>	<u>\$693.38</u>	<u>\$1,093.84</u>
<u>5 x week</u>	<u>\$446.66</u>	<u>\$639.67</u>	<u>\$857.88</u>	<u>\$1,277.59</u>
<u>6 x week</u>	<u>\$528.94</u>	<u>\$760.49</u>	<u>\$1,022.44</u>	<u>\$1,524.33</u>
<u>Bin Rental</u>	<u>\$14.31</u>	<u>\$14.31</u>	<u>\$14.31</u>	<u>\$19.05</u>
<u>Extra Pickup</u>	<u>\$65.86</u>	<u>\$77.05</u>	<u>\$90.82</u>	<u>\$115.77</u>

16. Late Utility Payment Penalties

All accounts are due and payable when the customer receives the bill and will become delinquent 45 days after the invoice date. A late fee of five (5) percent of the amount due shall be imposed if payment has not been received by 5:00 p.m. on the delinquent date (plus five (5) business days for payment processing). At sixty (60) days from the invoice date (plus five (5) business days for payment processing), an additional five (5) percent of the amount due shall be imposed on amounts not paid. Additionally at sixty (60) days from the invoice date (plus five (5) days for payment processing), a final notice shall be issued to delinquent accounts stating that payment shall be due within fifteen (15) days of the date of the final notice and that service may be terminated after twenty (20) days of the date of the final notice if payment is not received. CONTRACTOR shall notify City ten (10) business days prior to service termination.

Deleted: All accounts are due and payable within forty-five (45) days of the date of the bill. Accounts shall become delinquent and a late fee of five percent of the amount due shall be imposed if payment has not been received by 5:00 p.m. on the due date. Prior to discontinuing service for delinquent accounts, a final notice shall be issued to delinquent account stating that payment shall be due within fifteen (15) days of the date of the final notice and that service may be terminated after sixteen (16) days of final notice if payment is not received. If payment has not been received by 5:00 p.m. of the due date of the final notice, an additional late fee equal to five percent of the amount then due shall be imposed.

EXHIBIT J

PERFORMANCE MEASUREMENTS

Dated: April 1, 1994

Amended: November 21, 1995, May 18, 1999, February 20, 2001, December 17, 2002,
November 16, 2004, May 6, 2008

Effective: June 20, 2008

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I. Purpose

The purpose of performance measurements is to monitor and maintain (1) CONTRACTOR's achievement of minimum service levels and (2) CONTRACTOR's contribution toward the CITY's achievement of State mandated fifty percent (50%) disposal reduction goal by the year 2000 and beyond.

II. Conduct Of Review

The performance of this Agreement shall be assessed twice each calendar year, on or before February 28 and August 31. The review shall be conducted jointly by CITY and CONTRACTOR. It shall be documented in writing and approved by the City. The goals shown below are applicable to each calendar year.

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The review shall consist of the following.

1. The CONTRACTOR's achievement of the following minimum service levels:

A. Diversion Goals

Single Unit	580 Pounds/Dwelling Unit Annually
Multiple Unit	220 Pounds/Dwelling Unit Annually
Commercial	17% Of Commercial Wastestream

B. Service Quality Goals

- 1) Ten (10) or fewer liquidated damages assessed each calendar year.

- 2) Completion of all activities by dates identified in Community Relations Quarterly Schedules, per Exhibit G, unless change is approved in writing by CITY.

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- 3) Completion of bi-annual commercial customer satisfaction survey and analysis.

III. Consequences

If any goal is not achieved the following consequences shall apply:

1. Diversion Goals: If a diversion goal is not met, CONTRACTOR shall prepare a plan with recommended actions for achieving goals, for review and approval by CITY. If additional services are recommended, CITY and CONTRACTOR shall negotiate the terms and conditions for providing additional services, including an adjustment to the applicable rate.
2. Service Quality Goals: If a service quality goal is not met, the amount of liquidated damages imposed shall increase for the next 12 month period by one hundred percent (100%) over the amounts set forth in Paragraph 27 (b) of the Agreement, or one hundred percent (100%) over the amount of liquidated damages as previously adjusted pursuant to this provision.

EXHIBIT L

COMMERCIAL CUSTOMER NOTICE PROCEDURES

Dated: August 5, 1997

Amended: May 18, 1999

Effective Date: June 1, 1999

PURPOSE: To outline procedures to be followed by the CONTRACTOR to:

- Impose the Return Trip Charge provide for in Exhibit I (Rate Table 14) of this agreement when the CONTRACTOR must return to complete the servicing of Solid Waste or Recycling Container or compactor that could not be serviced on the first attempt because the container is overloaded, contaminated, blocked, not accessible or empty; and,
- Impose service reductions or charge garbage service rates for commercial recycling customers with contaminated Recycling Containers or continued loading of recycling Containers entirely with unflattened boxes.

PROCEDURE: The actions described above may be applied when the following steps have been followed by the CONTRACTOR:

1. All commercial Solid Waste customers have received mailed notification of the Notice Procedures;
2. CONTRACTOR has revised the customer service agreement to include a return trip charge explanation;
3. The customer has had two previous incidents within a one year period where: the CONTRACTOR has had to return to service a container due to any of the reasons Stated in the "Purpose" statements previously listed in this Exhibit.
4. With each incident described in no.2 above, the customer was advised verbally or in writing that after the first two incidents the appropriate charge will be imposed or action taken. In each incident, the customer shall have been given a reasonable opportunity to correct the situation and avoid the actions described under "Purpose" above.

EXHIBIT N

RESIDENTIAL BILLING TECHNOLOGY AND
CUSTOMER SERVICES TELECOMMUNICATIONS SUPPORT
Amended: February 20, 2001, November 16, 2004, May 20, 2008
Effective: June 20, 2008

This EXHIBIT outlines a policy agreement for limited technology and telecommunications support to CONTRACTOR for residential billing and customer services. The policy agreement is effective throughout the life of the Agreement For Collection & Disposal Of Solid Waste (hereinafter "Agreement").

Resolution for any disagreements of responsibility shall be negotiated between CITY and CONTRACTOR designee, with written documentation and are subject to approval by the City Manager.

SECTION 1.00 RESIDENTIAL BILLING TECHNOLOGY SERVICES PROVIDED BY CITY

1.01 CITY shall maintain an on-line custom screen that provides CONTRACTOR use and access into the CITY'S utility billing system to customer inquiry and solid waste cart history maintenance. Customer inquiry elements of the screen shall include: 1) service address; 2) most recent 'finalled' customer's name; 3) new customer's name; and 4) maintenance of information entered by CONTRACTOR about the number of carts, collection day and comments. Solid waste cart history elements of the screen shall include: 1) cart identification in ten (10) alphanumeric characters; 2) cart size; 3) start date of cart service, and; 4) stop date of cart service. On-line screen shall update CONTRACTOR'S data entry in the CITY'S utility billing system for residential billing to be conducted by CITY.

1.02 CITY shall support one CITY-produced custom report of customer 'move ins/move outs' provided to CONTRACTOR on a weekly basis. CITY may create additional custom reports upon mutual agreement of report content and responsibility for development costs between CITY and CONTRACTOR.

1.03 Upon CONTRACTOR request, CITY shall conduct training of the on-line custom screen of the CITY'S utility billing system for CONTRACTOR staff assigned to access the CITY's on-line customer screen.

1.04 CITY shall provide to CONTRACTOR support services for inquiries about connectivity into the CITY's data network upon request. These services are limited to: remote access; CITY utility billing applications; client server applications. The level of support is defined herein as response to initial inquiry troubleshooting, problem determination and resolution of issues directly related to the CITY'S utility billing application. CONTRACTOR shall contact the CITY'S Information Systems Department's Helpdesk at (408) 586-2700 or helpdesk@ci.milpitas.ca.gov to report system access problems. CITY shall assist with log-in and lock-out problems, error messages, new CONTRACTOR employee password and sign-on, and resetting Virtual Private Network (VPN) access when access is denied, upon system crash, or new computer installation. In the event of blocked system access, CONTRACTOR staff shall apply the following steps to connect to the CITY's utility billing system before calling the CITY'S Helpdesk:

- (1) Launch VPN client by clicking on the icon, enter the username and password in all lower case letters. Always check the "caps lock" before entering the password. The account will lock itself out after three (3) wrong attempts.

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Deleted: This Addendum agreement is made and entered into this twentieth day of February, 2001 by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and BFI WASTE SYSTEMS OF NORTH AMERICA, INC. (BFI WASTE SYSTEMS), its successors and assigns (hereinafter "CONTRACTOR").

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Deleted: All equipment purchased as described below becomes the sole property of CONTRACTOR after the duration of this Agreement.

Deleted: ¶ CONTRACTOR shall submit a written list of additional software to CITY, as needed. CITY shall conduct all additional software and network installations at an hourly rate of \$75.00. This rate shall be negotiated as part of every biennial rate adjustment. CONTRACTOR shall be responsible for reimbursing CITY within thirty (30) days upon presentation of CITY'S item (... [1])

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Deleted: ONGOING SERVICES FOR RESIDENTIAL BILLING (... [4])

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Deleted: Check lights in FRONT of the computer.

(2) If account is locked it will display a corresponding message. CONTRACTOR shall contact the City of Milpitas Helpdesk at 408-586-7200, who can unlock an account remotely.

(3) Once the VPN is connected, launch the Remote Desktop (there is a shortcut on the desktop) and connect to one (1) of three (3) personal computers: WBF1101, WBF1102, and WBF1103. The login for each personal computer is the same username and password in all lowercase letters. All login IDs for Cayenta are set up by the City of Milpitas Finance Department. However, all requests shall start at the Helpdesk (408-586-7200) and will be forwarded to the appropriate CITY staff. CONTRACTOR and CITY acknowledge that the login process is dependent upon CONTRACTOR'S ability to maintain VPN connectivity into the public internet.

(4) Once connected, launch the Cayenta application by clicking on the icon and begin data entry.

1.05 CITY shall log all service requests into its tracking system and forward CONTRACTOR requests for research and completion. Normal access to CITY support services is from 8:00 AM to 5:00 PM. CITY reserves the right to terminate connections as necessary during normal operating hours for emergency and maintenance situations. CONTRACTOR shall be notified in advance by CITY. CONTRACTOR shall immediately disconnect ("log out") of CITY utility billing system when requested.

SECTION 2.00 RESIDENTIAL BILLING TECHNOLOGY SERVICES PROVIDED BY CONTRACTOR

2.01 CONTRACTOR shall provide and maintain Virtual Private Network (VPN) connectivity via the public internet into the CITY's data network. CONTRACTOR shall provide and maintain Ethernet-based inbound VPN-capable internet capability at its facility.

2.02 CONTRACTOR shall provide maintenance services on an as needed basis to support connections into CONTRACTOR'S facility. These services shall include, but may not be limited to: 1) circuit degradation, and; 2) out-of-service situations.

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Deleted: Check lights on TOP of the modem.¶

Deleted: IF computer doesn't react to movement of the mouse or stroke of the keys:¶

Check connectivity of the five cables listed below in the back of the Computer.¶

- (1) Mouse Cord¶
- (2) Keyboard Cord¶
- (3) Modem Cord¶
- (4) Monitor Cord¶
- (5) Power Cord¶

¶
IF machine is working fine, but cannot connect to the City Network¶

Check phone cord for the modem.¶

¶
IF nothing works¶
Reboot the machine & try again, and:¶
After 2 tries, if you still have problem, call City Helpdesk at 586-2700.¶
¶

Deleted: The CITY shall charge CONTRACTOR the \$75.00 per hour rate in the event that CITY staff needs to respond to problems caused by not following the above checklist. City shall respond to all CONTRACTOR requests within 1 hour during regular CITY business days. Both CITY and CONTRACTOR will determine the severity of CONTRACTOR'S request.¶

¶
A Priority 1 request would include CONTRACTOR'S inability to obtain access to CITY'S Utility Billing system from all of CONTRACTOR'S dial-in machines, or to successfully input data into the Utility Billing system from all CONTRACTOR'S dial-in machines.¶

¶
A Priority 2 situation would include CONTRACTOR'S inability to obtain access to CITY'S Utility Billing system from half (3 or less) of ... [6]

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Deleted: IMPLEMENTATION FOR CUSTOMER SERVICES TELECOMMUNICATIONS¶

CITY shall provide and maintain tieline trunks into the CITY'S telecommunications system. CONTRACTOR shall provide and ... [7]

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Deleted: CONTRACTOR shall be responsible for establishing and maintaining a direct-connection tieline account with a private telephone services provider or other comparable service and/or technology as specified by CITY.

CONTRACTOR shall submit a written list of additional software to CITY, as needed. CITY shall conduct all additional software and network installations at an hourly rate of \$75.00. This rate shall be negotiated as part of every biennial rate adjustment. CONTRACTOR shall be responsible for reimbursing CITY within thirty (30) days upon presentation of CITY'S itemized invoice. CONTRACTOR shall not install any software to CITY-provided equipment without prior written approval from CITY during the life of the Agreement. CONTRACTOR shall be responsible for reimbursing CITY at the aforementioned hourly rate should CITY have to remove any unauthorized software installed by CONTRACTOR.

CONTRACTOR shall maintain equipment and software at 1601 Dixon Landing Road Bldg. 1, Milpitas. CONTRACTOR shall not remove CITY-provided and installed equipment or software from its original placement by CITY at 1601 Dixon Landing Road Bldg.1, Milpitas without written consent from CITY.

for CONTRACTOR in addition to reports that may be obtained from the utility billing system's standard reports: 1)

shall be automatically reported to CONTRACTOR, and; 2) CONTRACTOR-requested daily activity on the on-line screen sorted by route number, including and limited to: service address, most current service level, account status (open or closed). Additional

ONGOING SERVICES FOR RESIDENTIAL BILLING TECHNOLOGY

CONTRACTOR shall obtain an outside maintenance contract for all CITY-provided computer equipment. This maintenance contract shall include, but may not be limited to: 1) hardware repairs and/or replacements not covered under warranty, and; 2) all hardware repairs and/or replacements after warranties expire. Potential problems to be covered under a maintenance contract include, but are not limited to: "operator error" problems such as spills and broken equipment; wear from general use; sabotage, and; theft. CITY shall provide CONTRACTOR with advice and review of maintenance contract elements. CONTRACTOR shall not add, delete or modify CITY-provided equipment and software without prior written approval from CITY. Examples of actions that shall not be conducted include, but are not limited to: delete or alter CITY software; add software or change software configurations in any manner; disable the virus checker function.

IF nothing is shown on the screen:

Check power for the Computer, Monitor AND Modem.

The CITY shall charge CONTRACTOR the \$75.00 per hour rate in the event that CITY staff needs to respond to problems caused by not following the above checklist. City shall respond to all CONTRACTOR requests within 1 hour during regular CITY business days. Both CITY and CONTRACTOR will determine the severity of CONTRACTOR'S request.

A Priority 1 request would include CONTRACTOR'S inability to obtain access to CITY'S Utility Billing system from all of CONTRACTOR'S dial-in machines, or to successfully input data into the Utility Billing system from all CONTRACTOR'S dial-in machines.

A Priority 2 situation would include CONTRACTOR'S inability to obtain access to CITY'S Utility Billing system from half (3 or less) of CONTRACTOR'S dial-in machines, or to successfully input data into the Utility Billing system from half (3 or less) dial-in machines.

A Priority 3 situation would include any enhancements to CONTRACTOR'S machines, such as upgrades.

For each service request CONTRACTOR shall provide:
Requestor's name, department name and location;
A clear problem description;
Agreement with CITY of problem severity (as described above);
Contact or alternate individual with direct phone number and extension(s), and;
Arrangements for CITY access to CONTRACTOR premises as required for problem resolution.

CITY will provide CONTRACTOR with a daily status of any outstanding request.

IMPLEMENTATION FOR CUSTOMER SERVICES TELECOMMUNICATIONS

CITY shall provide and maintain tieline trunks into the CITY'S telecommunications system.

CONTRACTOR shall provide and maintain trunks at its facility.

EXHIBIT O

GENERAL SPECIFICATIONS FOR STREET SWEEPING

Dated: May 18, 2004

Amended: November 16, 2004; May 6, 2008

Effective Date: June 20, 2008

1.00

DEFINITIONS

- 1.01 Curb Mile
- 1.02 Street Debris
- 1.03 Sweeping Path
- 1.04 CITY
- 1.05 Reserved
- 1.06 CONTRACTOR
- 1.07 Disposal Site
- 1.08 Scheduled Service
- 1.09 Unscheduled Service
- 1.10 Agreement

2.00

FINANCIAL CONSIDERATIONS

- 2.01 Payment to CONTRACTOR
- 2.02 Faithful Performance Bond and Insurance

3.00

SCOPE OF WORK

- 3.01 Service Provided
- 3.02 Frequency of Service

4.00

OPERATIONS AND REPORTS

- 4.01 Days & Hours of Operation
- 4.02 Sweeping Routes
- 4.03 Performance Standard
- 4.04 Weekly/Monthly Reports
- 4.05 Complaints
- 4.06 Sweeping Equipment
- 4.07 Office
- 4.08 Hauling
- 4.09 Weather
- 4.10 Water
- 4.11 Disposal
- 4.12 Point of Contract

5.00

COMPLIANCE WITH LAWS

- 5.01 Damage to Property
- 5.02 Clean Air Act of 1970 and Federal Water Pollution Control Act
- 5.03 Wage Scale

- 6.00 **TERMINATION**
- 7.00 **SKILL**
- 8.00 **INDEPENDENT CONTRACTOR**

Exhibits

- O-1 Urban Runoff Monthly Record Keeping Form**
- O-2 Street Sweeping Abandoned Car Parking Control Program Maintenance Activity**
- O-3 Street Sweeping Tree Control Program Maintenance Activity**
- O-4 Daily Report of Motor Street Sweeper**
- O-5 Residential Area Map**

1.00 **DEFINITIONS**

- 1.01 Curb Mile - Linear measurement of 5,280 feet of curbing or pavement edge to be used as standard unit of Scheduled Service.
- 1.02 Street Debris - All loose, inert, dry waste material including refuse, dirt, sand, glass, metal fragments and typical street litter (i.e. cans, bottles, leaves), but excluding bulky or putrid wastes. Street debris does not include waste materials in the catch basins of storm sewers.
- 1.03 Sweeping Path - Specified paved surface distance from curb line or pavement edge in which Scheduled Service is to be performed. This sweeping path is the only area to be swept in Scheduled Service.
- 1.04 CITY - City of Milpitas, California.
- 1.05 Reserved -
- 1.06 CONTRACTOR - The person, corporation or partnership performing street sweeping services under contract with the CITY.
- 1.07 Disposal Site - A waste or refuse depository including, but not limited to, sanitary landfills, transfer stations, incinerators, and waste processing/separation centers licensed, permitted or approved to receive for processing or final disposal of street debris by all governmental bodies and agencies having jurisdiction and requiring such licenses, permits or approvals.
- 1.08 Scheduled Service - Regularly scheduled sweeping frequency for residential, commercial and industrial areas is defined in Section 3.02. Specific routes and sweeping frequencies are also shown in the map provided in Exhibit O-5.
- 1.09 Unscheduled Service - That service which can be requested by the CITY to be performed outside the bounds of the scheduled service (i.e. sweeping after parades or major events).

1.10 Agreement - Agreement refers to the document titled AGREEMENT FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE BETWEEN THE CITY OF MILPITAS AND ALLIED WASTE.

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2.00 **FINANCIAL CONSIDERATIONS**

2.01 Payment to CONTRACTOR

(a) Scheduled street sweeping service shall be provided to CITY at no cost for the period of June 21, 2004 through December 31, 2008. CONTRACTOR shall be reimbursed for Scheduled Service beginning January 1, 2009 as stated in Exhibit P, Section 3(d).

(b) Frequency of payment - CONTRACTOR shall submit monthly invoices for payment. CITY shall remit payment within 30 days of receipt of invoice and reports due in accordance with Section 4.04 of this exhibit.

(c) Books and Records relating to services provided under this Exhibit shall be kept and maintained by CONTRACTOR. The City Manager or his/her designated agent may audit and inspect such books and records, and those of any SUBCONTRACTOR under this Exhibit, to the extent and for the sole purpose of ascertaining the correct sums due CONTRACTOR.

2.02 FAITHFUL PERFORMANCE BOND AND INSURANCE - The Faithful Performance Bond required by Section 19 of the Agreement shall include street sweeping services.

3.00 **SCOPE OF WORK**

3.01 Service Provided

(a) The CONTRACTOR will furnish Scheduled Service using modern sweeping equipment for those public streets designated by CITY at the time of the execution of the Agreement. After the execution of the Agreement, CITY may add other public streets, or portions of public streets.

(b) The CONTRACTOR will also provide, if required by the CITY, unscheduled sweeping before or after major events such as parades, fairs, etc., of any street or streets, or portions of streets. CONTRACTOR shall provide this service at no additional cost to the CITY twice per calendar year. In the event that the CITY request unscheduled sweeping services more than two times in a calendar year, then CITY shall be obligated to pay CONTRACTOR for such services at the rate of \$17.87 per curb mile through December 31, 2007, and at the value calculated in Section 2.01 (a) thereafter.

3.02 Frequency of Service – Residential areas shall be swept twice a month. Commercial and industrial areas shall be swept four times a month.

(a) EXCEPTION: Residential Areas C, E, F, G, H, and J as shown on Exhibit O-5, shall be swept weekly during the months of November and December. Sweeping equipment provided shall be vacuum type units.

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4.00 **OPERATIONS AND REPORTS**

4.01 Days and Hours of Operation – Sweeping for the purposes of this agreement shall be Monday through Friday, only. Sweeping of residential and mixed use areas shall not start before 7:00 a.m. or continue after 5:00 p.m.. Industrial/commercial areas shall be swept between 12:00 a.m. and 8:00 a.m. Exceptions to sweeping hours or days shall be only upon the mutual written agreement of the CITY and CONTRACTOR. If CONTRACTOR reasonably determines that an exception is necessary in order to complete sweeping due to unusual circumstances in case of emergency, such exception shall require written approval of the CITY, within ten working days of said emergency. If CONTRACTOR experiences a breakdown, or other reason, which prevents the completion of daily scheduled street sweeping services, CONTRACTOR shall notify CITY immediately.

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The CONTRACTOR shall provide additional equipment and staff as necessary to complete the street sweeping on the frequency shown in Section 3.02 during weeks with less than normal working days. Street sweeping shall not occur on City holidays, which are New Years Day, Monday observing Martin Luther King's Birthday, President Lincoln's Birthday, Monday observing President Washington's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day after, Christmas Eve, and Christmas Day. Street sweeping shall not occur on any other additional holidays approved by the Milpitas City Council. In the event a holiday falls on a Sunday, the following Monday shall be the holiday instead. In the event a holiday falls on a Saturday, the preceding Friday shall be a holiday instead.

4.02 Sweeping Routes – Sweeping routes shall be established by the CONTRACTOR. CONTRACTOR to provide a description of how they plan to meet the sweeping routine schedule. CONTRACTOR shall submit a map designating the routes to the CITY for approval. CONTRACTOR shall provide full page advertisements describing street sweeping schedule in the Milpitas Post quarterly. On an annual basis no later than January 15 of each year, or next following business day, CONTRACTOR shall provide a street sweeping calendar by service section to each single family household receiving street sweeping services. On an annual basis to be received by affected customers no later than the last Monday of October, CONTRACTOR shall provide mailed notification of the weekly street sweeping schedule to households in service areas described in Section 3.02 (a). CONTRACTOR shall provide doorhangers to customers affected by route changes. CONTRACTOR shall be required to coordinate sweeping routes with garbage collection. It is understood that if vehicles are parked on the streets when services are being performed by the CONTRACTOR, then CONTRACTOR's operations will be impeded and CONTRACTOR will be required to bypass said parked vehicles. In such events, the rates charged by CONTRACTOR shall not be reduced.

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4.03 Performance Standards – CONTRACTOR shall sweep 90 percent of the total number of curb miles scheduled on a monthly basis without penalty. Failure to meet this performance standard will result in penalty to the CONTRACTOR as follows: two dollars (\$2.00) per curb mile for each unswept curb mile less than 90% percent of the total number of curb miles scheduled on a monthly basis.

4.04 Reports – CONTRACTOR shall submit a daily report of curb miles swept and cubic yards and tonnage of debris collected. Reports to the CITY shall be submitted at the beginning of each workday for the previous day. (See Exhibit O-4 attached).

Monthly reports are required for compliance and are due on or before the twenty-fifth (25th) day following the end of each calendar month. (See Exhibit O-1 attached).

Monthly reports are also required to track parked cars and low trees. (See Exhibits O-2 and O-3 attached).

4.05 Complaints – All complaints shall be made directly to the CONTRACTOR and shall be given prompt and courteous attention.

4.06 Sweeping Equipment – The CONTRACTOR shall provide list of vehicles for scheduled sweeping services adequate to accomplish the sweeping effectively (broom and vacuum units). Commercial and industrial streets shall be broom swept. Residential streets shall be broom swept, except where heavy leaf concentrations make such methods less effective as described in Section 3.02(a). Heavy leaf concentrations shall be vacuum swept. The CONTRACTOR may use a vacuum truck with curb broom anywhere a broom truck is permitted. All vehicles and other equipment shall be kept in good repair, appearance, and in a sanitary condition at all times. Each vehicle shall be equipped with mobile radios and hour meters. A two-way mobile radio shall be made available to the street maintenance supervisor on each work day. Each vehicle shall have clearly visible on each side the identity and telephone number of the CONTRACTOR. Sweeping equipment to be used must provide a minimum sweeping path of 72 inches and be capable of removing street debris, which lies in this path. CONTRACTOR shall sweep at speeds which minimize the amount of streaking and is required to make additional passes if necessary to remove this debris. Each vehicle shall have a dust control system which shall be utilized at all times during sweeping operations. All vehicles shall have sound control devices and shall comply with Milpitas Municipal Code - Chapter 213, Noise Abatement.

4.07 Office – The CONTRACTOR shall maintain an office or such other facility through which he/she can be contacted and from which he/she can maintain radio contact with sweeping vehicles. It shall be equipped with sufficient telephones and shall have a responsible person in charge from 9:00 a.m. to 5:00 p.m., Monday through Friday.

4.08 Hauling – All street debris hauled by the CONTRACTOR shall be contained, tied or enclosed so that leaking, spilling or blowing are prevented.

4.09 Weather – In the event of heavy rain or other severe weather conditions, the scheduled sweeping service may be suspended. The decision to sweep will be made by the CITY after consultation with the CONTRACTOR.

4.10 Water – CITY will provide at no cost to the CONTRACTOR access to water from CITY hydrants, except during periods of declared water shortage. During such shortages, water supply site(s) shall be designated by the CITY. CONTRACTOR shall be required to use a construction meter, provided by the CITY, for this purpose.

4.11 Disposal – All street debris collected for disposal by the CONTRACTOR shall be disposed of immediately by the CONTRACTOR.

4.12 Point of Contact – All dealings, contacts, etc., between the CONTRACTOR and the CITY shall be directed by the CONTRACTOR to City Manager or the City Manager's designated Representative and by the CITY to General Manager.

5.00 COMPLIANCE WITH LAWS

The CONTRACTOR shall conduct operations under this Contract in compliance with all federal, state and local applicable laws.

5.01 Damage to Property - Any property, including, but not limited to, the existing structures, equipment, piping, pipe covering, grounds, sidewalks, curbs, gutters, driveways, fences, etc.,

damaged by the CONTRACTOR during the course of his work as a result of CONTRACTOR's (including its employees and agents) negligence shall be replaced or repaired by the CONTRACTOR in a manner satisfactory to the CITY and to the CONTRACTOR's expense.

5.02 Clean Air Act of 1970 and Federal Water Pollution Control Act - The CONTRACTOR shall comply with the provisions of the Clean Air Act, as amended (42 W.C.S. 1957 et. seq.) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.) and the regulations thereunder (40 C.F.R. part 15).

5.03 Wage Scale - Resolution No. 5981 of the City of Milpitas requires that any CONTRACTOR performing routine and recurring labor or services in excess of \$1,000.00 on behalf of the City of Milpitas, pay not less than general prevailing wage of per diem wages as set forth in CONTRACTOR's collective bargaining agreement with its employees to all employees engaged to perform said labor or services. (This requirement shall not apply to the sale of goods or to professional services, including, but not limited to, consultant services, construction inspection services, engineering services, architectural services, land surveying services, legal services, financial services, accounting or auditing services, data processing services, administrative services, instructional services, personnel services, and services provided by other public entities.) In addition, CONTRACTOR shall pay prevailing wages as otherwise required by State law.

6.00 **TERMINATION**

CITY may issue a written notice to terminate the street sweeping service with 30 days notice.

7.00 **SKILL**

CONTRACTOR shall perform its duties hereunder in a good and workmanlike manner and with reasonable skill and diligence.

CONTRACTOR shall furnish qualified drivers, mechanical, supervisory, and other personnel as may be necessary to provide the services required by this exhibit in a safe and efficient manner. CONTRACTOR shall provide suitable safety training for all its employees who operate street sweeping vehicle or equipment or who are otherwise directly involved providing the services required by this exhibit. Upon the CITY's request, CONTRACTOR shall provide a copy of its safety policy and safety training program, the name of its safety officer, and the frequency of trainings.

8.00 **INDEPENDENT CONTRACTOR**

CONTRACTOR is an independent CONTRACTOR and not an agent, servant or employee of CITY in furnishing the services or materials and performing the work required hereunder.



Exhibit O-1

FY **Monthly Record Keeping Form**

Month and Year: _____

Agency: _____

Completed By: _____ Date: _____

STREET SWEEPING	Volume of material collected (cubic yards)	Miles swept* (Curb miles)
1. Sweeping		
Residential Area:		
Broom	_____	_____
Regenerative Air	_____	_____
Vacuum	_____	_____
Commercial Areas:		
Broom	_____	_____
Regenerative Air	_____	_____
Vacuum	_____	_____
Industrial Areas		
Broom	_____	_____
Regenerative Air	_____	_____
Vacuum	_____	_____
Other Areas Swept:		
(eg parking lots, major arterials)		
Broom	_____	_____
Regenerative Air	_____	_____
Vacuum	_____	_____
2) Have there been any changes in your street sweeping program? (efforts to have parked cars removed, changes sweeping frequency, new equipment, significant downtimes, etc)		

LEAF REMOVAL
Volume of leaves removed by City/Town crews: _____ cubic yards.
Leaves bagged by residents and picked up by your City/Town: _____ bags
Check box if you do not have a leaf removal program other than routine street sweeping: <input type="checkbox"/>

O-1

**Exhibit O-3
City of Milpitas
Street Sweeping Tree Control Program**

Maintenance Activity

Reporting Agency _____ Month of _____

Completed By: _____ Date _____

<u>Address</u>	<u>Street</u>	<u>Deficiency</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____
12.	_____	_____
13.	_____	_____
14.	_____	_____
15.	_____	_____
16.	_____	_____
17.	_____	_____
18.	_____	_____

Exhibit O-4 City of Milpitas Daily Report of Motor Street Sweeper

Date: _____

Route:	Equip No.	Operator:
Time Start:	Time Finish:	Total Hours:
Miles Start:	Miles Finish:	Total Miles:
Cu. Yards:	Water Use:	

Streets in addition to those listed on Routes: _____

From: _____ To: _____ Mileage: _____

Total to be added to Route: _____

Streets Listed on Route which were not cleaned: _____

Total to be deducted from Route: _____

Curb Miles in Route	Additional Miles	Deducted Miles	Net Miles

EXHIBIT P-2007

2005-2007 Rate Adjustment Provisions

Dated: November 16, 2004
Effective Date: January 1, 2005

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1. Purpose

Rate adjustments are typically made for a two year period and are primarily based upon a reimbursement of known values. Normally, a two year rate adjustment with an effective date of January 1, 2005 would be based upon reimbursement of expenses incurred during calendar years 2003 and 2004. For the calendar years 2005 through 2007, the rate adjustments will be effective for a three year period and are based upon some known values for 2003 and 2004 and some assumed values for a third year. The purpose of this Exhibit is to document the assumptions used in the January 1, 2005 rate analysis such that corrections may be applied during the preparation of the calendar year 2008 and 2009 rate adjustments.

2. Consumer Price Index

The AGREEMENT allows a rate adjustment of 75% of the Consumer Price Index (CPI). The known value for a twenty-four month period covering calendar years 2003 and 2004 is 2.33%. The CPI value of 2.33 % is divided by two and multiplied by three, resulting in a rate of 3.5%. The equivalent CPI index that would have resulted in a 3.5% increase (value equal to 202) shall be used as the starting point for the CPI adjustment of the next rate adjustment.

3. Extraordinary Expenses

a. Known extraordinary expenses that do not require future correction consist of several components described below.

- Landfill taxes for calendar year 2003 at \$5,908.86, and 2004 at \$13,587.27 for a total of \$21,640.70 including interest have been paid in full at December 2007.
- Air emission expenses for the solid waste, recycling, and yard trims fleet at \$123,482.00 (retrofits for three vehicles were excluded as these vehicles have reached the end of their useful life and are scheduled for replacement) have been paid in full at December 2007.
- Subtitle D 2000 expenses at \$69,416.91 have been approved by the City and have been paid in full at December 2007.

- Continuation of prior year approved Subtitle D capital amortized expenses have been paid in full at December 2007.
 - Residential share of Subtitle D 2001 through 2003 have been paid in full at December 2007.
- b. Assumed extraordinary expenses requiring future correction consist of components described below.
- Landfill taxes for 2005 at \$15,572, 2006 at \$15,572, and 2007 at \$15,572 and shall be corrected only if there is a change in landfill taxes not if there is only a change in projected tonnage.
 - 2001 Subtitle D operating costs have been assumed at \$63,304.20, including interest. The actual value will be determined by CITY's consultant based upon CONTRACTOR's submittals. Any corrections are not applicable to residential rates.
 - 2002 Subtitle D operating costs have been assumed at \$100,058.58 (including interest) and capital at \$71,019.50 (including interest). The actual value will be determined by CITY's consultant based upon CONTRACTOR's submittals. Any corrections are not applicable to residential rates.
 - 2003 Subtitle D operating costs have been assumed at \$331,003.35 (includes interest) and capital at \$15,079.61 (includes interest). The actual value will be determined by CITY's consultant based upon CONTRACTOR's submittals. Any corrections are not applicable to residential rates.
 - Landfill post-closure financial assurance requirements for 2002 and 2003 are both at \$0 for 2005-2007 rates. A future correction would consist of the actual value approved by the CITY. Any corrections are not applicable to residential rates.
- c. The following extraordinary expenses are not deemed eligible for reimbursement and do not require future correction.
- 2004-2006 union labor costs.
 - Increases for 2005 and 2006 fuel expenses.
 - Increases for workers' compensation insurance expenses.
- d. The street sweeping rate for 2009 shall be calculated by adjusting the June 2004 value of \$17.87 per curb mile per year by applying seventy-five percent of the net percentage change for the twelve (12) month period June 2006 to June 2007 of the Consumer Price Index. Future escalations for 2010 and beyond shall be calculated by applying seventy-five percent of the net percentage change of Consumer Price Index from June 2007 to June 2009.

4. Multi-family and Commercial Rates

At Fall 2007, the 2005 base rate for Multi-family and Commercial customers shall be the values that would have resulted if a single rate increase were applied January 1, 2005 instead of the rates shown in Exhibits D and I. For example, the base rate for front end load 3 cubic yards once per week would be \$155.32 per month instead of \$161.04 per month. The use of the single rate increase as a starting basis for 2008 rates is in consideration for revising the commercial diversion goal from 19% to 17% for calendar year 2004.

EXHIBIT P-2009

2008-2009 Rate Adjustment Provisions

Effective Date: June 20, 2008

1. Purpose

The purpose of this Exhibit is to document the assumptions used in the January 1, 2007 rate analysis such that corrections may be applied during the preparation of the calendar year 2008 and 2009 rate adjustments.

2. Extraordinary Expenses

a. Known extraordinary expenses that do not require future correction consist of several components described below.

- Landfill taxes for a credit to Allied of \$844, \$1,654, and \$1,898 for calendar years 2005, 2006 and 2007 have been fully incorporated into the 2008 and 2009 rates.
- Subtitle D 2003 expenses at \$26,351 have been approved by the City and \$11,987 has been paid by December 2009.
- Subtitle D 2004 expenses at \$104,958 have been approved by the City and \$40,287 has been paid by December 2009
- Subtitle D 2005 expenses at \$23,421 have been approved by the City and \$8,077 has been paid by December 2009.

b. Assumed extraordinary expenses requiring future correction consist of components described below.

- Landfill taxes for 2008 at \$34,185 and 2009 at \$34,185 shall be corrected only if there is a change in landfill taxes not if there is only a change in projected tonnage.
- Subtitle D 2006 expenses at \$142,989 have been estimated and \$39,118 have been paid back by December 2009. The actual value will be determined by CITY's consultant based upon CONTRACTOR's submittals.
- Landfill post-closure financial assurance requirements for 2002 through 2006 are at \$0 for 2005-2009 rates. A future correction would consist of the actual value approved by the CITY.

c. The CONTRACTOR is providing 2008 street sweeping services at no cost to Milpitas per Exhibit O. The 2008 solid waste rates do not include a street sweeping cost component. The 2009 solid waste rates do include a street

sweeping cost component. CONTRACTOR shall collect this cost component monthly and forward to CITY. CITY shall use these monies to pay CONTRACTOR invoices (based upon mileage swept). Future escalations of the street sweeping cost component shall be determined by CITY.

3. Single-family, Multi-family and Commercial Rates

At Summer 2009, the 2008 base rate for Single-family, Multi-family and Commercial customers shall be the values that would have resulted if a single rate increase were applied January 1, 2008 instead of the rates shown in Exhibits C, D, and I. For example, the multi-family base rate for front end load 3 cubic yards once per week would be \$149.62 per month instead of \$153.83 per month.

4. Mixed-Use Rates

CITY anticipates one or more mixed-use developments to begin service during the 2008 and 2009 calendar years. Mixed-use development service shall be charged in accordance with Exhibit D. CITY shall track proportion of residential and non-residential space in mixed-use developments. In summer 2009, CITY shall determine whether waste streams from mixed-use developments are more similar to residential or commercial premises and determine if these developments should be charged in accordance with a different Exhibit. If a different Exhibit is selected in the future, there will be no retroactive adjustments to customer accounts.

5. Pilot Food Waste Composting Program

CITY and CONTRACTOR agreed to expand the pilot food waste program from one customer to seven total customers. The food waste composting program rates shall be subject to adjustment in accordance with the CPI methodology described in Paragraph 8B(1) of the Solid Waste agreement. If the pilot program is expanded beyond seven customers in the future, the base rates are subject to re-evaluation.

EXHIBIT Q

Neighborhood Clean-up Events

Dated: November 16, 2004, Amended May 20, 2008

Effective Date: June 20, 2008

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1.00 General Responsibilities

1.01 CONTRACTOR shall provide up to ten neighborhood clean-up events annually. CONTRACTOR shall coordinate event details with City staff, and provide the labor and materials to perform the services described below. The clean-up events total area of coverage shall include all the residential areas of the city each year. Events shall be conducted on Saturdays for a maximum of five (5) hours each.

1.02 CONTRACTOR shall:

- a. Lead the planning activities for each clean-up event.
- b. Develop maps delineating each area for each event, including proposed bin placement and police department notification one (1) week prior to each event.
- c. Develop, provide and distribute outreach materials informing the community of the clean-up events.
- d. Attend and take the lead during performance of clean-up events, including but not limited to: providing separate bins for metals, wood, and disposal, confirming identification of Milpitas residents, reviewing materials and directing residents to insure proper disposal of materials, removal of bins, proper disposal of collected materials, and clean up after the event.
- e. Provide adequate bins to handle the trash and recycle collection.

2.00 Basic Requirements

2.01 Each year, CITY staff shall coordinate with contractor to identify the schedules, outreach program, and boundaries of the neighborhood clean-up events. Area events may be combined upon mutual agreement. CONTRACTOR shall plan and execute neighborhood clean-up events. CONTRACTOR shall include neighborhood clean-up event outreach in the Community Relations Quarterly Schedules. City will provide up to four support persons for each event.

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**Allied Waste of Santa Clara County
Milpitas Commercial Foodwaste Premiums
2006-Monthly Charge**

Times/wk	1 yd	1 1/2 yd	2 yd	3 yd
1 X wk	105.20	141.26	177.34	258.48
2 X wk	193.98	273.37	346.39	510.77
3 X wk	273.48	378.27	502.79	745.33
4 X wk	346.39	493.18	659.11	979.89
5 X wk	424.58	608.05	815.48	1,214.44
6 X wk	502.79	722.90	971.90	1,448.98
Bin Rental	13.60	13.60	13.60	18.11
Extra PU	62.60	73.24	86.33	110.05

RELEVANT DATA (Series ID: CUURA422SA0 & WPU057303)

		CPI
1) x(i)	CPI Index (All Urban Consumers) June 2007	216.12
x(i-2)	CPI Index (All Urban Consumers) June 2005 (Estimated at 202 actual 201	202.00
	Increase/(Decrease) in Index	14.00
	Per rounding convention stipulated in Section 8(b)(1)	

COMPUTATION OF PRICE INCREASE

2) Net Percentage Change (NPC) =	6.93%
3) Percent Allowed Per Contract =	75%
Price Increase For CPI Change	5.20%

**Allied Waste of Santa Clara County
Milpitas Commercial Foodwaste Premiums
2008-Monthly Charge**

Times/wk	1 yd	1 1/2 yd	2 yd	3 yd
1 X wk	110.67	148.61	186.56	271.92
2 X wk	204.07	287.59	364.40	537.33
3 X wk	287.70	397.94	528.94	784.09
4 X wk	364.40	518.83	693.38	1,030.84
5 X wk	446.66	639.67	857.88	1,277.59
6 X wk	528.94	760.49	1,022.44	1,524.33
Bin Rental	14.31	14.31	14.31	19.05
Extra PU	65.86	77.05	90.82	115.77

AGREEMENT
FOR
SINGLE-UNIT RESIDENTIAL YARD
TRIMMINGS COLLECTION &
PROCESSING

The City of Milpitas ~~and~~
ALLIED WASTE SERVICES OF NORTH AMERICA, LLC
DBA ALLIED WASTE OF SANTA CLARA COUNTY,
SUCCESSOR IN INTEREST TO BFI WASTE SYSTEMS OF
NORTH AMERICA, A DELAWARE CORPORATION, BOTH
SUBSIDIARY CORPORATIONS OF ALLIED WASTE
INDUSTRIES, INC. A DELAWARE CORPORATION

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of North America, Inc.

Approved: December 17, 1996
Amended: March 18, 1999, February 20, 2001, December 17, 2002,
November 16, 2004, January 15, 2008, [June 20, 2008](#)

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AGREEMENT BETWEEN

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC
DBA ALLIED WASTE OF SANTA CLARA COUNTY, SUCCESSOR IN INTEREST TO BFI
WASTE SYSTEMS OF NORTH AMERICA, A DELAWARE CORPORATION, BOTH
SUBSIDIARY CORPORATIONS OF ALLIED WASTE INDUSTRIES, INC. A DELAWARE
CORPORATION AND

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Deleted: Allied Waste Service systems of North America, Inc
Deleted: .

THE CITY OF MILPITAS

FOR RESIDENTIAL YARD TRIMMINGS COLLECTION
AND PROCESSING SERVICES

This Agreement is made and entered into this 21st day of November, 1995, to be effective March 2, 1996 (hereinafter "Commencement Date"), by and between the CITY OF MILPITAS, a municipal corporation of the State of California (hereinafter "CITY"), and Allied Waste Services of North America, LLC dba Allied Waste of Santa Clara County, successor in interest to BFI Waste Systems of North America, a Delaware Corporation, both subsidiary corporations of Allied Waste Industries, Inc. A Delaware Corporation, (hereinafter "CONTRACTOR").

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Deleted: (BFI) a California Corporation, its successors and assigns,

WHEREAS, pursuant to Public Resources Code 40057, CITY is required to provide source reduction, recycling, and composting services; and

WHEREAS, the State of California has recognized in Public Resources Code Section 40059 that CITY may determine all aspects of Solid Waste handling which are of local concern, including frequency of collection, methods of collection and transportation, level of services, charges and fees, and has declared that CITY may determine whether any such services are to be provided by means of contracts, licenses, permits or other means, and that CITY may grant to others authorization to provide Solid Waste handling services under such terms and conditions as CITY may prescribe; and

WHEREAS, the State of California has found and declared in the enactment of Public Resources Code and the Integrated Waste Management Act of 1989 that the rapidly increasing volume of Solid Waste resulting from population growth, industrial expansion and other factors requires an organized and comprehensive approach to Solid Waste management; and

WHEREAS, CITY desires to implement a Single-Unit Residential Yard Trimmings Collection and Processing Program.

NOW, THEREFORE, for and in consideration of the authority, privilege, covenants, promises, undertakings and obligations herein granted, made and assumed by the parties hereto, each to the other, the parties hereby agree as follows:

1. Applicable Laws. This Agreement is made and entered into pursuant to the provisions of the Milpitas Municipal Code (hereinafter "MMC") Title V, Chapter 200. The parties agree that the applicable laws and regulations governing this agreement are those of the State of California.
2. Definitions. All terms, not otherwise defined herein, shall be construed to have the same meaning as given to them in the MMC V-200.

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\\callisto\milpitas\CITY CLERK\CURRENT AGENDA PACKETS (for WebMaster)\2008\05-06-08_Council Meeting\Working Docs\SW and Noise Ords\Yard Trims\Residential Yard Trimmings Agreement FINAL.doc

RESIDENTIAL YARD TRIMMINGS AGREEMENT

Agitated Windrow Method. "Agitated Windrow Method" means the process in which compostable material is placed in elongated piles. The piles, or windrows, are aerated mechanically and turned periodically to speed up the decomposition process and reduce odors.

Alternative Daily Cover. "Alternative Daily Cover" means any material, other than soil, used as daily cover. The California Integrated Waste Management Board must approve the material for use as alternative daily cover. Its use must also be a condition of the Solid Waste Facilities Permit.

Approval by City. "Approval by City" or "Approved by City" means, with respect to:

- (i) The services to be performed pursuant to this Agreement, the rates for services or a determination to seek arbitration pursuant to Paragraph 24, a majority vote of the City Council;
- (ii) Changes in equipment, operating procedures, or minor or temporary changes in service frequency or the service level to be provided to a Premises, and the acceptance of inkind services in lieu of a financial penalty for liquidated damages, the determination of the City Manager or his/her designee;
- (iii) The handling of situations which in the judgment of the City Manager require prompt action, including those relating to the protection of public health and the environment, the determination of the City Manager or his/her designee.

Biohazardous Waste. "Biohazardous Waste" means those materials defined as "Biohazardous Waste" in California Health and Safety Code Section 25020.5, as amended from time to time.

Extraordinary Costs. "Extraordinary Costs" means those costs which increase CONTRACTOR's costs of providing service under this agreement, as more fully described and set forth in Paragraph 8 D herein.

Holidays. "Holidays" means Thanksgiving Day, December 25 and January 1.

Newby Island. "Newby Island" means the landfill located at 1601 Dixon Landing Road, San Jose, California, currently classified as a Class III (Nonhazardous Solid Waste) landfill under applicable laws and regulations of the State of California and/or the composting facility operated at the same address.

Processed or Processing. "Processing" means the chipping, mulching, or composting of Yard Trimmings.

Processing Facility. "Processing Facility" means CONTRACTOR's facility, located at and adjacent to Newby Island Landfill in the City of San Jose.

Single-Unit Dwelling. "Single-Unit Dwelling" means each Premises used for or designated as a single-family residential dwelling, including each residential unit of a duplex and a triplex.

Yard Trimmings. "Yard Trimmings" means all materials, containing not less than 95% by weight-per-load plant debris, including grass clippings, leaves, prunings, weeds, branches, brush and tree trunks less than six (6) inches in diameter, as well as other forms of organic waste generated from landscapes and gardens, and other such materials as mutually agreed upon in writing by CONTRACTOR and CITY staff, which are collected by CONTRACTOR pursuant to this Agreement.

3. Authority Granted. CITY hereby grants to CONTRACTOR the exclusive authority and privilege to engage as a collector in the business of collecting and processing Yard Trimmings produced, kept, or accumulated at Single-Unit Dwellings within the City of Milpitas, subject to and in accordance with the provisions of this Agreement. CONTRACTOR, however, is only required to collect and process those particular Yard Trimming materials designated for collection by CITY in Exhibit A hereto, which designation may be amended from time to time by written agreement of CITY and CONTRACTOR. This grant of said authority and privilege is and shall be expressly conditioned upon CONTRACTOR being ready, willing and able at all times to collect and process all Yard Trimmings from such Premises in accordance with the provisions of this Agreement and all applicable laws.

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

In the event that CONTRACTOR, inadvertently or otherwise, receives Hazardous Wastes or Biohazardous Wastes in the course of its activities, CONTRACTOR shall have the responsibility at its own cost to promptly notify CITY Fire Department and properly respond to the incident and assure proper handling and disposal of the material. The CITY Fire Department shall make the final determination as to the adequacy of cleanup efforts performed by CONTRACTOR. CONTRACTOR shall also reimburse CITY for cleanup costs incurred by CITY or its authorized contractor, if any. Thereafter, CITY and CONTRACTOR agree to diligently investigate the cause of the incident and CITY agrees to prosecute (and CONTRACTOR agrees to assist in any prosecution) any persons who are found to have violated the MMC by delivering Hazardous Wastes or Biohazardous Wastes to CONTRACTOR. If any monetary award is received as a result of a civil proceeding, the proceeds will be divided in accordance with the following priorities: (i) costs of prosecution reimbursed to CITY, (ii) costs of response reimbursed to CONTRACTOR, and (iii) any remaining monies divided equally between CITY and CONTRACTOR.

4. Enforcement of Exclusivity. CITY shall not let any contract to, or enter into any contract or agreement with, any other person for the performance of the services herein required to be performed by CONTRACTOR as long as this Agreement is in effect.

CITY shall make its best efforts to protect CONTRACTOR'S rights to such exclusive contract by proper ordinances or resolutions, and by reasonable enforcement thereof. Said enforcement shall include prompt written notification to any Person violating such exclusivity, and, should said violations not cease, CITY shall promptly conduct such administrative hearings as may be necessary followed by initiation as soon as practicable of litigation against said violators if the violations have not ceased. CITY shall enforce in said manner against any Person known to CITY to be in violation; COLLECTOR shall inform CITY by written notice of any Person known to it to be in violation.

5. Exceptions to Exclusivity of Authority Granted. The authority and privilege herein granted to CONTRACTOR shall be exclusive except with respect to non-containerized hauling services, including but not limited to landscapers and tree services.

6. Services Provided by CONTRACTOR. Beginning March 2, 1996, CONTRACTOR shall perform collection service for segregated Yard Trimmings in the City of Milpitas as follows:

A. Yard Trimmings Collection, Processing & Handling

- 1. Collection Service. In accordance and compliance with the provisions of this Agreement and applicable laws, CONTRACTOR shall collect and remove from any and all Single-Unit Premises within the City of Milpitas all Yard Trimmings produced, kept or accumulated within or upon any and all such Premises, at the request of the Owner, lessee, tenant, or other person in possession or charge of such Premises who is legally authorized to make such request, except that CONTRACTOR shall refuse service if any Yard Trimmings Container or set-out fails to meet the requirements of this Agreement or of the MMC Title V, Chapter 200.

All residents of Single-Unit Dwellings shall be encouraged to segregate and deposit their Yard Trimmings without delay in Yard Trimmings Containers. In the event that a resident wishes to set out more Yard Trimmings than can be contained in the provided Yard Trimmings Container, CONTRACTOR shall collect Yard Trimmings set out in resident-provided, labeled, 32-gallon containers, provided that the containers meet the standards set forth in MMC Title V, Chapter 200. CONTRACTOR shall provide residents with labels for said purpose at no cost.

CONTRACTOR shall collect tree and brush prunings in bundles of ~~three~~ (3) feet or less, set out next to Yard Trimmings Containers.

- 2. Non-Collection Notice. CONTRACTOR shall not be required to collect material that does not constitute Yard Trimmings as previously defined in this Agreement, or material which is deposited in a manner other than that specified in this Agreement, or Yard Trimming Containers or bundles weighing over seventy-five (75) pounds. In such instances, CONTRACTOR must leave one part of a multi-part

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

non-collection notice on the curbside Yard Trimmings container, which shall list the reason(s) for non-collection and the date notice was given. A copy of each notice shall be maintained by the CONTRACTOR and be made available to CITY upon request. A summary of issued Non-Collection Notices shall be included in the monthly report. If noticed material is salvageable, a follow-up collection day shall be indicated on the notice.

- 3. Delivery of Yard Trimmings. CONTRACTOR shall deliver the Yard Trimmings collected to the Processing Facility.
- 4. Ownership of Yard Trimmings. The Yard Trimmings segregated and deposited by each household shall remain the property of the resident until it is set out at the curb at which point ownership transfers to CONTRACTOR.
- 5. General Standards. The work to be done by the CONTRACTOR pursuant to this Agreement shall include the furnishing of all necessary items to perform the services described herein, including but not limited to supervision, training, labor, materials, equipment, tools, expertise, and administration. The CONTRACTOR shall ensure that said work shall be done in a competent, professional manner. CONTRACTOR shall cooperate with CITY in the design and operation of the services pursuant to this Agreement to provide a high degree of overall system efficiency and customer satisfaction.
- 6. All vehicles used by CONTRACTOR in providing services under this Agreement shall be registered with the California Department of Motor Vehicles, shall be kept clean and in good repair, and the load shall be kept covered at all times except when material is actually being loaded or unloaded or when the vehicles are moving along a collection route in the course of collection.
- 7. Missed Pick-ups. If CONTRACTOR fails to pick up separated Yard Trimmings which was set out by a Single Unit Dwelling, it shall be considered a missed pick-up, and CONTRACTOR shall collect the Yard Trimmings from such residence within twenty-four (24) hours after notice, demand or request. CONTRACTOR shall maintain a written record of all calls related to missed pick-ups and such reports shall be submitted to the CITY with the monthly report.
- 8. Monitoring. CONTRACTOR shall provide CITY with access to all necessary records, staff, and equipment to adequately monitor the accuracy and efficiency of Yard Trimmings collection and processing services.
- 9. Receiving, Weighing, and Handling. CONTRACTOR shall accept delivery of all collected Yard Trimmings at the Processing Facility at no charge to CITY other than as set forth in this Agreement. CONTRACTOR shall not accept material that does not constitute Yard Trimmings or Hazardous Materials as defined in this Agreement. CONTRACTOR shall employ reasonable diligence in identifying non-Yard Trimmings set out for collection and in excluding such materials from those it collects. In the event any non-Yard Trimmings is collected by CONTRACTOR, CONTRACTOR must properly dispose of same at no charge to CITY. All Yard Trimmings shall be inspected, accepted, and weighed by CONTRACTOR in such a way that it remains separate from Yard Trimmings from sources other than Milpitas households. Weight records shall be kept for each collection vehicle delivering Yard Trimmings to CONTRACTOR. Data pertaining to these collection vehicles shall be included in the monthly report and provide tonnage delivered to the processing facility.
- 10. Base Processing. All Yard Trimmings shall be Processed by CONTRACTOR as outlined in Exhibit E.
- 11. Yard Trimmings Distribution. CITY may collect and transport up to 300 tons per year of finished compost product from CONTRACTOR's premises upon forty-eight (48) hours' notice and at no cost to CITY. In addition, CONTRACTOR will annually make available a minimum of two (2), one cubic foot bag of finished compost to all Milpitas households. The amount of finished compost or mulch product distributed to residents and City will be included in the monthly report.

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

12. Prohibited Disposal. All Yard Trimmings accepted by CONTRACTOR shall be Processed and sold or given away in Processed form. No Yard Trimmings as defined herein shall in any form be deposited in a landfill except as Alternate Daily Cover.

13. Collection of Holiday Trees. CONTRACTOR shall provide curbside collection of Christmas holiday trees for Single Unit households cut into lengths of five (5) feet or less. This service shall be provided for two (2) weeks on regular collection days following the week of the Christmas holiday.

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B. Community Relations

CONTRACTOR shall provide community relations materials and activities as outlined in Exhibit C.

C. Local Manager

CONTRACTOR shall at all times during the term of this Agreement have a local manager charged with the responsibility of supervision of contracted services and shall at all times maintain a local office and telephone and be accessible to CITY during the term of this contract.

D. Reports

CONTRACTOR shall file with CITY written reports of CONTRACTOR's performance under this Agreement as set forth in Subparagraph 30, "Reports."

E. Coordination with Other City Programs

CONTRACTOR shall coordinate, as needed, with CITY to ensure that Yard Trimmings collection and processing services do not interfere with CITY's ongoing street maintenance programs. CONTRACTOR shall meet as needed with City staff for contract coordination purposes. CITY may request additional Yard Trimmings collection and processing services to be performed by CONTRACTOR to facilitate various CITY street maintenance activities, where CONTRACTOR incurs no significant costs or where CITY and CONTRACTOR have mutually agreed upon reimbursement of the costs of such additional services. CITY reserves the right to suspend and reschedule the services pursuant to this Agreement upon forty-eight (48) hours' notice of CONTRACTOR to accommodate CITY maintenance programs.

7. Processing Obligation. CONTRACTOR shall have the obligation to process Yard Trimmings collected hereunder in a manner, method, and location as specified in Exhibit E. It is understood between the parties that CONTRACTOR will process the Yard Trimmings at Newby Island unless and until Newby Island is unable to accept such Yard Trimmings due to circumstances beyond the control of CONTRACTOR. If Newby Island is so unavailable, CONTRACTOR shall exercise its best efforts to obtain processing space at the facility owned and operated by CONTRACTOR or its affiliates closest to Newby Island, at the prevailing rate at that facility charged to other public agencies.

For purposes of this paragraph, circumstances beyond the control of CONTRACTOR shall not include (i) the inability to provide adequate Processing space resulting from the failure of Newby Island's owner to comply with all laws, directives, orders, guidelines or permits of any governmental agency having jurisdiction over Newby Island, (ii) the inability to provide adequate Processing space resulting from Processing commitments or other business arrangements made by Newby Island's owner to other customers, or (iii) the transfer of ownership of Newby Island from International Disposal Corporation of California (IDC) to any entity other than an affiliate of IDC or CONTRACTOR.

8. Service Rate and Adjustments

A. Service Rates. The monthly rate for Yard Trimmings collection and Processing is listed in Exhibit F.

B. Biannual Adjustment. One Time Triennial Adjustment. The rates set forth in Exhibit F shall be adjusted on January 1st every two (2) years, beginning January 1, 1997, pursuant to this paragraph (the "Adjustment Cycle") except that on January 1, 2005 the rates shall be adjusted for a three (3) year period through

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

December 31, 2007 and return to a two (2) year cycle beginning January 1, 2008. Exhibit P-2007, in the Solid Waste Agreement, describes the provisions for the 2005-2007 rate adjustment. Exhibit P-2009, in the Solid Waste Agreement, describes the provisions for the 2008-2009 rate adjustment. For purposes of adjustment, the "Base Rate" shall be the rate in effect on December 31 of the year prior to each adjustment, adjusted if necessary to delete nonrecurring, fully amortized Extraordinary Costs.

The Base Rate shall be adjusted upward or downward on the basis of seventy-five percent (75%) of the net percentage change in the Consumer Price Index, All Urban Consumers (All Items), for the San Francisco/Oakland Metropolitan Area as published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index"). All net percentage changes shall be calculated by the following formula:

Net percentage change (NPC) = $\frac{X(i)-X(i-2)}{X(i-2)}$

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Where X(i) = Index value for April of the year preceding the adjustment year;

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X(i-2) = Index value for April of the third preceding year

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Changes in the Index of less than one full point (1.0) shall be rounded to the nearest full point, i.e., 1.50 to 1.99 shall be treated as 2.0; 1.10 to 1.49 shall be treated as 1.0.

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Should the Index not be published in April of the year required for calculation of rate adjustments, the Index values of the month most immediately preceding that April shall be used. If said Index is discontinued, it shall be replaced by the index which most closely approximates the original category as determined by the U.S. Bureau of Labor Statistics.

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Notwithstanding any provision of this subparagraph to the contrary, the first biannual adjustment taking place on January 1, 1997, shall consider only those changes in the Consumer Price Index occurring between the startup of this Agreement on March 2, 1996 and August 1996.

- C. Biannual Service Rate Adjustment Statement. On or before June 15 of each year preceding a rate adjustment, CONTRACTOR shall send to CITY a service rate adjustment statement setting out the following information:

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- (a) The index values of X(i) and X(i-2);
(b) The Net Percentage Change (NPS) calculated pursuant to subparagraph (a) above
(c) Seventy-five percent (75%) of the Net Percentage Change;
(d) The values of Base Rate plus [Base Rate x (NPC x 0.75)];
(e) Any Extraordinary Costs not subject to prior adjustment during the current bi-annual Adjustment Cycle.
(f) The resulting service rate.

- D. Extraordinary Costs. The rate set forth in Exhibit F may be adjusted at any time, upon the initiation of CITY or the request of CONTRACTOR to City Council, to fully reimburse CONTRACTOR for Extraordinary Costs to the extent of CITY's pro rata share of CONTRACTOR's increased costs of providing service resulting from (i) changes in laws, regulations, orders or guidelines (collectively, "changes in law"), or (ii) circumstances beyond the control of CONTRACTOR, which occur or become effective subsequent to the date of execution of this Agreement or any amendments thereto. Without limiting the types of circumstances that may arise in the future, examples of Extraordinary Costs include,

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but are not limited to, fees, taxes or charges imposed by any public entity on the collection or processing of Yard Trimmings, whether on the basis of quantity or some other basis.

- E. Late Payments. Late customer payments are subject to penalties as described in Milpitas Municipal Code Title V, Chapter 200.
- F. Termination of Service. No services herein required to be furnished by CONTRACTOR to any person shall be terminated because of such person's failure to pay for such service unless such person is more than 30 days delinquent and fails to pay for the same after written notice mailed at least 10 days in advance of such discontinuance. CITY shall have the obligation to promptly provide such notice to Single-Unit Dwellings, CONTRACTOR shall notice other service recipients, with each party informing the other party of such notice if requested. Refer to Exhibit F for late fees.

9. Payment to CONTRACTOR. Not more than thirty (30) days following the end of each calendar month during the term of this Agreement, CITY shall pay to CONTRACTOR total gross receipts actually collected or received by CITY in the preceding month as a result of its billings of Single Unit Dwellings for Yard Trimmings collection service. Such payment for each of said calendar months shall be delinquent on the thirty-first (31st) day after each such month. Delinquent sums due CONTRACTOR shall bear interest from the date of delinquency to the date of payment at the rate of ten percent (10%) per annum.

Not later than ~~January 31~~ of each year, City will pay to CONTRACTOR, CITY's share of the difference between the Single Unit rate and Senior Citizen rate, CITY's share of the difference between Single Unit rate and Senior Citizen rate will be 25% of the standard Single Unit dwelling as identified in Exhibit F. The CITY's payment will be calculated as follows

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Senior Rate July 1, 2007 through December 31, 2008

$\$/HH$ = 25% of the monthly Single Unit rate for yard trimmings service as of January 1, 2007

$\#\text{SrHH}$ = Number of accounts qualifying for Senior Citizen rates as of January 1, 2008,

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$\text{Bi}\$/HH$ = 25% of the monthly Single Unit rate for yard trimmings service as of January 1, 2008.

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$\text{\$ch}$ = $\text{bi}\$/HH - \text{\$/HH}$

Formula $(\text{\$/HH} \times \#\text{SrHH} \times 18 \text{ months}) + ((\text{\$ch} \times \#\text{SrHH} \times 12 \text{ months}) = \text{CITY's share of the difference between the Single Unit rate and Senior Citizen rate}$

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Senior Rate from January 1, 2009, forward

$\$/HH$ = 25% of the monthly Single Unit rate for yard trimmings service for each calendar year.

$\text{\$SrHH}$ = Number of accounts qualifying for Senior Citizen rates as of January 1st of each year.

Formula $(\text{\$/HH})(\text{\$SrHH})(12 \text{ months}) = \text{City's share of the difference between Single Unit rate and Senior Citizen rate.}$

Notwithstanding any provision of this paragraph to the contrary, CITY will not bill or collect revenues from, and CONTRACTOR will receive no compensation for, the collection of Yard Trimmings from Single-Unit Dwellings which are vacant and listed for sale by a source approved by the City Manager or designee.

Each such payment shall be accompanied by a statement to be filed with the District Manager of CONTRACTOR setting forth the total payment due to CONTRACTOR. Such statement shall be certified as true and correct by CITY.

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

10. Term of Agreement. This Agreement shall terminate on September 5, 2017. The Anniversary Date of this Agreement shall be September 5 of each year following the Commencement Date of September 5, 1996.

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11. Extension of Term. The term of this Agreement may be extended, for periods of not less than one year each, up to and including three (3) years. If CITY desires to extend term of this Agreement, CITY shall provide written notice of such extension to CONTRACTOR, at least one hundred twenty (120) days prior to the termination date. Such written notice shall specify the period of time the term is being extended and shall specify the new termination date of this Agreement. CITY Manager is authorized to send such written notice on behalf of the CITY. In the event CITY notifies CONTRACTOR of the extension of the term of this Agreement, CONTRACTOR shall notify CITY in writing whether it agrees to extension of the Agreement within 14 days of receiving said notice from CITY. If CONTRACTOR agrees to the extension, CONTRACTOR shall continue to provide the services specified in this Agreement through the extended term at the same rate of compensation in effect at the time of the extension.

12. Routes and Times of Collection. The CONTRACTOR shall conduct collection of Yard Trimmings at least once each week, on the same day as scheduled collection of Solid Waste. No Yard Trimmings of any kind shall be collected or removed from any Premises except between the hours of 6:00 o'clock a.m. and 7:00 o'clock p.m., except as expressly permitted under the MMC. Upon citywide residential notification, the 6:00 o'clock a.m. "start time" for Yard Trimmings collection may begin. CONTRACTOR shall log, track and report all residential inquiries and complaints about the 6 a.m. "start time." CONTRACTOR shall provide a separate, written report within 10 months of initiating the 6 a.m. "start time." Said report shall outline service delivery during this time frame, provide a tally of inquiries, and document customer comments.

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Upon request of the CITY, CONTRACTOR shall promptly provide a copy of the current route map, statement, or route schedule. CONTRACTOR shall notify CITY in advance of any changes to collection routes and schedules. Regular collection shall be made at the times so scheduled, provided, however, that no regular or other collection shall be made upon any Sunday or Holiday except for emergency collections of Yard Trimmings requested by the Health Officer. Where the scheduled time of collection falls on a Holiday, collection need not be made on such Holiday provided that in such case collection shall be made on the day immediately following the regular scheduled collection day nearest said Holiday.

13. Collection Manner and Equipment.

A. Manner. In collecting or removing any Yard Trimmings from any Premises, the CONTRACTOR shall exercise reasonable care and diligence to refrain from dropping or spilling any Yard Trimmings within or upon any such Premises or within or upon any public property or place, and the CONTRACTOR shall without delay pick up and remove from any Premises or public property or place any Yard Trimmings dropped or spilled by it within or upon any such Premises, public property or place. The CONTRACTOR shall, without delay, after removing any Yard Trimmings from any container, securely replace the cover or lid on such container. The CONTRACTOR shall refrain from making any unnecessary noise, and shall refrain from causing or creating any unnecessary disturbance or disorder. For the protection of City streets, the CONTRACTOR shall limit the weight of each vehicle, including its contents, to 20,000 pounds per axle.

B. Equipment.

i. CONTRACTOR shall provide equipment stated in this Agreement in Section 6 (A)(1).

ii. Graffiti. CONTRACTOR shall follow graffiti reporting and replacement program guidelines. Within ten (10) days of receiving reports of graffiti on yard trims containers, CONTRACTOR shall abate as described below. Containers marked with graffiti shall be replaced at no cost to the Customer or CITY. CONTRACTOR shall provide reports to CITY once a month identifying graffiti incidents and corrective actions taken.

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14. Disposal Within City Limits. CONTRACTOR may not accumulate, dump, burn, bury, or otherwise process or dispose of any Yard Trimmings within the City. CONTRACTOR shall transport any and all Yard Trimmings collected by or picked up by it to a place or places outside the City for processing pursuant to this Agreement.

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15. Complaints. CONTRACTOR shall establish and maintain a business office at a location convenient to and accessible to the public; shall keep said office open for business from 9:00 o'clock a.m. to 5:00 o'clock p.m. of each day except Saturday and Sunday and except Holidays; shall keep and maintain in said office at all times during the hours which it is required to be open a representative of CONTRACTOR who shall have authority to represent CONTRACTOR and its subcontractors in their relations with CITY and with their customers; shall obtain and keep in said office sufficient listed telephones and personnel to courteously, quickly, and expeditiously receive and answer all telephone and other calls to and from said office; shall utilize commercial language translation services (e.g., AT&T Language Line) where reasonably available; if commercial language translation services are not used, shall have representatives reasonably available (through employees or subcontractors) during normal business hours who are fluent in three languages other than English; shall compile and report monthly, pursuant to Section 30, information regarding each complaint received, including the name and address of the complainant, the nature of the complaint and the actions taken to resolve the complaint; shall employ, acquire and maintain sufficient personnel and equipment, other than personnel and equipment used on regular collection routes, to collect and remove from any and all Premises, within twenty-four (24) hours after notice, demand, or request, any and all Yard Trimmings which CONTRACTOR or its subcontractors shall have failed to collect and remove as required by this Agreement at the regular scheduled time, except when notice has been provided by CONTRACTOR to the Premises pursuant to Paragraph 6 above.
16. Faithful Performance Bond and Insurance. On January 10, 2005, CONTRACTOR shall furnish to CITY and shall file with the City Clerk a corporate surety bond approved as to form by the City Attorney, executed by the CONTRACTOR as principal and by a corporate surety as surety, in the sum of one million dollars (\$1,000,000) for the term of this Agreement, conditioned upon the faithful performance by CONTRACTOR and its subcontractors of this Agreement and of all relevant provisions and requirements of the MMC Title V Chapter 200. CONTRACTOR may provide one faithful performance bond combining the obligations of this Agreement and the agreement for Collection and Disposal of Solid Waste between the City and Contractor for a total amount not to exceed one million dollars (\$1,000,000).

CONTRACTOR and its subcontractors shall obtain and maintain in full force and effect throughout the entire term of this Agreement and during the entire term of the authority and privilege herein above granted to it, full Workers' Compensation insurance in accordance with the laws of the State of California and other applicable laws. Certificates of such insurance shall be filed with the City Clerk within ten days after the execution of this Agreement. CONTRACTOR shall immediately inform CITY of any cancellation, withdrawal and/or change of any such insurance.

CONTRACTOR and its subcontractors shall, at their sole cost and expense, obtain and maintain in full force and effect throughout the entire term of this Agreement and during the entire term of the authority and privilege herein above granted to it, public liability insurance with CITY named therein as an additional insured to the extent of liability based upon CONTRACTOR's negligence, insuring said CONTRACTOR and its subcontractors and said CITY and each of them against liability for bodily injury or death to and of any person or persons and for any property damage, arising or resulting from the operations of the CONTRACTOR or its subcontractors in conducting the business herein above authorized. Minimum bodily injury or death coverage provided by said insurance shall be One Million Dollars (\$1,000,000) per each person and Two Million Dollars (\$2,000,000) per occurrence. Property damage coverage shall be a minimum of Five Hundred Thousand Dollars (\$500,000) per occurrence. The inclusion of CITY as an additional insured shall not preclude CITY from claims under the policy against other insured parties. This, however, will not act to increase the limit of liability of the insuring company.

The above insurance shall be considered primary insurance as respects any other valid and collectible insurance the City may possess, including any self-insured retention the CITY may have, and any other insurance the CITY does possess shall be considered excess insurance only.

Policies or certificates of said insurance shall be filed with the City Clerk within twenty (20) days after execution of this Agreement. The policy of insurance shall contain a provision whereby said insurance shall not be canceled by the insurer without giving 25 days' written notice to CITY of any cancellation so proposed.

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Notwithstanding any foregoing language to the contrary, CONTRACTOR may satisfy the insurance obligations hereunder by providing to CITY proof of self-insurance in a form reasonably acceptable to CITY, to the extent such self insurance is permitted by the laws of the State of California and in accordance therewith. The self-insurance may be maintained by the parent company of CONTRACTOR. The Certificate of Consent to Self-Insure issued by the State of California is attached hereto as Exhibit B. CONTRACTOR shall provide confirmation of continuing self-insurance upon the request of CITY.

17. Indemnification and Title.

- a. Basic Indemnification. CONTRACTOR shall indemnify and hold harmless the City, its officers and employees, for and from any and all loss, liability, claims, demands, actions or suits, of and every kind and description, arising or resulting from or in any way connected with any operations of the CONTRACTOR or its subcontractors in exercising the authority and privileges granted to them by this Agreement, or arising or resulting from the failure of CONTRACTOR or its subcontractors to comply in all respects with the provisions and requirements of this Agreement, or all applicable ordinances of the CITY and of all other applicable laws. CONTRACTOR shall, upon demand of CITY, at its sole cost and expense, defend and provide attorneys to defend the CITY, its officers or employees, against any and all claims, actions or suits brought against CITY, its officers or employees, arising or resulting from or in any way connected with the above mentioned operations of CONTRACTOR or its subcontractors or its subcontractors' failure to comply with this Agreement and with applicable ordinances and laws herein above mentioned.

CONTRACTOR's obligation under this paragraph to defend, indemnify and hold harmless CITY and any officers and employees thereof, shall not extend to any loss, liability, penalty, claim, demand, action, or suit arising or resulting solely from acts or omissions constituting negligence or willful misconduct on the part of CITY, its officers, agents or employees.

- b. Hazardous Substances Indemnification. CONTRACTOR shall indemnify, defend and hold harmless CITY from all damages and liability (including reasonable attorney's fees) for removal, remedial, cost recovery or other actions brought pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (also known as "Superfund"), and regulations promulgated thereunder, and comparable state law, and regulations promulgated thereunder, incurred as a result of the processing of Yard Trimmings collected from residents located within the City by CONTRACTOR and Processed at a processing facility; provided, however, the foregoing indemnity shall be null and void to the extent that CITY delivers or causes the delivery of materials other than Yard Trimmings to CONTRACTOR from CITY-owned or operated facilities.

The foregoing indemnity shall not have any dollar limitation where CONTRACTOR processes Yard Trimmings at a facility owned and operated by CONTRACTOR, or a corporate affiliate of CONTRACTOR. However, the foregoing indemnity shall be limited to an amount of One Million Dollars (\$1,000,000) where CONTRACTOR processes Yard Trimmings at a facility not owned or operated by CONTRACTOR, or a corporate affiliate of CONTRACTOR.

- c. Litigation Indemnification. CONTRACTOR shall indemnify, defend, and hold harmless CITY from all damages and liability (including reasonable attorney's fees) arising out of the awarding of a franchise to CONTRACTOR, the execution of an amendment to this Agreement, challenges based upon the permissible duration of this Agreement or any amendments thereto, or the process by which such action was taken. The foregoing indemnity specifically excludes liability arising out of (i) the negligence or willful misconduct of CITY, its agents or employees, or (ii) the failure of CITY to abide by all applicable laws and regulations relating to the awards of municipal contracts under federal, state or local law.

- 18. Assignments. It is understood and agreed that this Agreement shall not be assignable by operation of law or otherwise, unless agreed to in writing by the parties to this Agreement, which shall not be withheld unreasonably. No transfer or assignment of this Agreement, or any interest hereunder shall release the parties from their obligation hereunder.

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

19. Subcontractor. CONTRACTOR shall not subcontract all or any portion of the work or business in which it is herein authorized to or granted a privilege to engage, without the written consent of CITY. No such subcontracting shall free CONTRACTOR from any obligation or liability under this Agreement or under any applicable laws or ordinances, and, in the event of any such subcontracting, CONTRACTOR shall continue to be liable and responsible for the faithful performance of and compliance with, by itself and its subcontractors, all provisions of this Agreement. CONTRACTOR shall not, without the written consent of CITY, substitute any person or persons as subcontractor in place of any subcontractor theretofore approved by CITY, nor permit any such subcontract to be assigned or transferred or performed by anyone other than the original subcontractor theretofore approved by CITY. Any subcontract, or any substitution of any subcontract, or any transfer or assignment of any such subcontract, made without the written consent of CITY shall be void, and CITY may, at its option, terminate this Agreement and all privileges granted herein. Nothing herein contained, however, shall be deemed to prohibit one subcontractor from assigning its subcontract to the CONTRACTOR, or to another subcontractor where both subcontractors have theretofore been approved by CITY and are at the time of the proposed assignment actually engaged in the performance of their subcontracts.

With respect to all reasonable requests hereunder, CITY may not unreasonably withhold its consent.

20. Notices. Any and all notices to be given under this Agreement, or which either party may desire to give to the other, shall be in writing. Said notices shall be deemed delivered by personal delivery to the other party's place of business during regular business hours, or on the third day following deposit in the U.S. mail in the County of Santa Clara, California, said deposit by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

To the CONTRACTOR: [Allied Waste of Santa Clara County](#)
1601 Dixon Landing Rd., Building 1
Milpitas, CA 95035
Attn: General Manager

To the CITY: City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035
Attn.: City Manager

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Changes of address shall be promptly filed with the other party.

Notices to the CONTRACTOR of the failure, neglect, or refusal of CONTRACTOR or of any of its subcontractors to collect and remove and transport and process of any Yard Trimmings from any Premises at the time scheduled and in the manner required by this Agreement and applicable law and ordinances may be given to the CONTRACTOR orally by telephone to an agent or employee of the CONTRACTOR at the District office of said CONTRACTOR; should no agent or employee of the CONTRACTOR be present at such office during regular business hours to answer said telephone and to receive said notice, then such notice shall be deemed to be given upon the CITY's attempt to communicate by telephone, notwithstanding the CONTRACTOR's failure to receive such notice because of the failure of CONTRACTOR or of any of his/her agents or employees to answer said telephone; provided, however, that CITY then delivers written notice to CONTRACTOR by noon the following day.

21. Waivers. The waiver by CITY or CONTRACTOR of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by CITY or

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

CONTRACTOR of any compensation or moneys which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation of any term, covenant or condition of this Agreement or any applicable law or ordinance.

22. Breaches, Defaults, Liquidated Damages and Performance Measurements

- a. Breaches and Defaults. In the event either party should default in the performance of any of the covenants, terms, conditions or other agreements to be kept, done, or performed by it under the terms thereof, or in the event either party should breach or fail to comply with any and all terms, covenants and conditions of this Agreement, the non-breaching party shall give ten days' written notice setting forth in detail in said notice the nature of the default or breach or violation. If the breaching party fails, neglects, or refuses for a period of more than fifteen (15) days after such notice is given to cure said default or breach, or if said breach or default cannot be cured within fifteen (15) days, to commence and diligently process to cure within ninety (90) days said default or breach, then the non-breaching party, by written notice but without suit or other proceeding, may terminate this Agreement and all authority and privileges granted therein.
- b. Liquidated Damages. CITY and CONTRACTOR agree that, as of the time of execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by the CITY as a result of a material breach of certain of CONTRACTOR's obligations under this Agreement. Accordingly, CITY may assess Liquidated Damages for the following material breaches, and for the following amounts, where the material breach by CONTRACTOR occurs without reasonable cause:

- (1) For each failure to submit the twelve-month report -- \$500.00 for each day the report is late;
- (2) For each failure to submit the monthly reports -- \$50.00 for each day the report is late;
- (3) For each failure to respond to a customer complaint within 24 working hours as determined in the reasonable judgment of CITY -- \$100.00;
- (4) For each failure to respond within ten (10) calendar days to a customer request for a change in or for maintenance on equipment-- \$250.00;
- (5) For each failure to collect (in excess of ten (10) days per calendar year), when material has been properly delivered for collection, from an established customer within 24 hours from receiving the complaint-- \$100.00;
- (6) For each failure (in excess of five (5) times per calendar year) to clean up materials spilled from containers or trucks -- \$100.00;
- (7) For each failure to meet review and approval deadlines as described in Exhibit C -- \$200.00 for each day past the deadline;
- (8) For each failure to meet any deadline for writing, review, or approval that affects advertising placement agreed upon in the project production schedules -- \$300.00 for every missed insertion (but not for each publication in which the advertisement would have appeared).

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For purposes of this subsection, "reasonable cause" shall include, among other things, CONTRACTOR's inability to perform its obligations due to circumstances beyond its reasonable control, including (i) vehicle or collection equipment breakdown which occurs despite regular maintenance, (ii) data processing equipment or software breakdown if backup systems are not reasonably available, (iii) inability to obtain necessary information for report filing beyond CONTRACTOR's reasonable control.

CITY may deduct Liquidated Damages from the amounts due and owing CONTRACTOR pursuant to Paragraph 9. However, CITY shall return any amounts deducted to CONTRACTOR upon agreement of

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

the parties or the finding of the City Manager, an arbitrator, or a court of law that the Liquidated Damages should not have been assessed.

CITY may accept inkind services from CONTRACTOR in lieu of the financial Liquidated Damages penalties listed above when (i) the determination is made by the City Manager or his/her designee, (ii) both the CITY and CONTRACTOR agree to the provisions of inkind services, and (iii) the inkind services are equal in value to the financial penalty and (iv) the inkind service is of value to the CITY.

Upon making a determination to impose Liquidated Damages, CITY shall notify CONTRACTOR of its determination in writing. Thereafter, CONTRACTOR shall have ten (10) days from receipt of notice to request a hearing from the City Manager or his/her designee based on procedures agreed to by the parties. Following the completion of that hearing and the ruling of the City Manager, either party may request arbitration pursuant to Paragraph 24 of this Agreement.

- c. Performance Measurements. CITY and CONTRACTOR agree that it is in their respective best interests to review the activities performed by CONTRACTOR on a periodic basis and make revisions as necessary, in order to maximize the benefit to CITY and minimize the problems that could lead to the imposition of Liquidated Damages. As a result, CITY will undertake a Performance Measurements review pursuant to the terms and conditions set forth in Exhibit D hereto, and CONTRACTOR will cooperate with CITY's efforts including, but not limited to, the providing of necessary information.

- 23. Heirs, Successors. The terms, covenants, and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators, assigns, and subcontractors of the CONTRACTOR.

- 24. Arbitration. Upon the request of CONTRACTOR or CITY (by a majority vote of the City Council), unresolved disputes arising under Paragraphs 8, 22 and 25 of this Agreement, relating respectively to rate adjustments for Extraordinary Costs, Liquidated Damages, and Force Majeure shall be limited to arbitration as described herein.

The dispute shall be heard by a three-member panel of arbitrators, one (1) member selected by CITY, one (1) member selected by CONTRACTOR and the neutral chairperson selected by the first two panel members. Within fifteen (15) working days of the date that either party has notified the other party in writing that the dispute has been submitted to arbitration, each party shall select one (1) member of the arbitration panel. If either party fails or refuses to select a member of the panel, the other party shall be entitled to an order from a court of competent jurisdiction appointing such panel member, and shall be entitled to reasonable attorney's fees incurred for such action.

In the event the panel members selected by CITY and CONTRACTOR are unable to agree upon a third arbitrator within thirty (30) days after the selection of the second arbitrator, the parties shall request from the American Arbitration Association a list of five (5) arbitrators residing in California. The parties shall alternately strike names from the list until only one name remains. The arbitrator whose name remains shall be the chairperson of the arbitration panel.

The arbitration hearing shall be held in accordance with the Commercial Arbitration rules of the American Arbitration Association. The award of the arbitration panel, or of a majority of them, shall be in writing with reasons included, rendered within thirty (30) days of the arbitration hearing, and shall be final and binding on the parties; provided that nothing herein shall give the panel any authority to amend, modify, alter or delete any term, condition or provision of this Agreement. Costs of arbitration incurred pursuant to this paragraph shall be borne equally by the parties.

- 25. Force Majeure. Anything to the contrary herein notwithstanding, it shall not be deemed a breach of this Agreement if either party is temporarily unable to perform services hereunder as a result of major disasters, epidemics, or other extreme emergencies; disruptions arising by reason of the enforcement of federal, state or local laws not now in effect; riots, wars, insurrections, sabotage, fire, labor disputes, acts of God; or other similar or different contingencies beyond the reasonable control of the party affected. Any time that party intends to rely upon Force Majeure to suspend obligations as provided in this paragraph, such party shall notify

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

the other party as soon as reasonably possible, setting forth the particulars of the situation. Notice shall be given when the effect of the event of Force Majeure has ceased.

In the event of a labor dispute wherein scheduled collection of Yard Trimmings by CONTRACTOR is discontinued for more than seventy-two (72) hours, CITY shall have the right to forthwith take temporary possession of all facilities and equipment to continue service provided herein on the terms and conditions set forth in the MMC.

In the event of major disasters in or proximate to the CITY resulting in the declaration of a State of Emergency by the City Manager or City Council, CITY shall have the right to take possession of all trucks, equipment, and personnel normally performing services under this Agreement for emergency operations conducted or directed by the CITY's emergency organization pursuant to the terms and conditions set forth in the MMC.

If any event of Force Majeure prevents performance of a party for a period in excess of six (6) months, the other party may, upon ten (10) days' notice to the nonperforming party, submit to arbitration pursuant to Paragraph 24 hereunder, the issue of whether the cause for nonperformance is an event of Force Majeure as defined herein. If any event of Force Majeure prevents performance of a party for a period in excess of nine (9) months, the parties shall immediately enter into good faith negotiations concerning the terms and conditions of this Agreement for a period of ten (10) working days. At the end of said time period, if the parties are unable to agree upon mutually advantageous terms and conditions under which to continue this Agreement, then either party may terminate this Agreement upon thirty (30) days' written notice.

- 26. Time of the Essence. Time is of the essence in performance of the obligations of this Agreement.
- 27. Entirety. The parties agree that this Agreement, and any amendments thereto, represents the full and entire Agreement between the parties hereto with respect to matters covered herein.
- 28. Nondiscrimination. In connection with the performance of this Agreement, CONTRACTOR assures that no person shall be subject to discrimination because of sex, race, color, ancestry, religious creed, national origin, sexual orientation, age, physical or mental disability, medical condition, marital status, or denial of family care leave.
- 29. Funding and Public Recognition. The responsibilities of CITY and CONTRACTOR for Community Relations activities, and the financial contribution of each, are set forth in Exhibit C hereto.
- 30. Reporting.
 - (a) Monthly Report. CONTRACTOR shall submit to City Manager or his/her designee a Monthly Report in a form acceptable to CITY on or before the twenty-fifth (25th) day following the end of each calendar month, which report shall at a minimum include the following information:
 - (1) Volume of Yard Trimmings collected in tons;
 - (2) Volume of Yard Trimmings Processed by CONTRACTOR by processing method;
 - (3) Indication of resident participation including, but not limited to, the curbside set out rate;
 - (4) Monthly average weight of Yard Trimmings collected from participating Single-Unit Dwellings;
 - (5) Listing of customer service complaint calls including the name and address of the complainant, the nature of the complaint and the actions taken to resolve the complaint;
 - (6) Summary of non-collection notices listed by problem type and reporting CONTRACTOR's followup actions;

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RESIDENTIAL YARD TRIMMINGS AGREEMENT

- (7) The number of odor complaints confirmed by the Bay Area Air Quality Management District to the Processing Facility;
 - (8) Total of compost and mulch distributed to Residents and City per Section 6 of this Agreement; and
 - (9) Summary of complaints and abatement actions as described in paragraph 13(B)(ii).
- (b) Twelve-Month Report. CONTRACTOR shall submit to CITY a twelve-month report in a form acceptable to CITY on or before February 21 of each calendar year, which report shall at a minimum include the following information:
- (1) An annual compilation of the information contained in the monthly reports;
 - (2) Information regarding performance measurements required pursuant to Exhibit D;
 - (3) Suggested operational changes to improve the level and efficiency of future services to be performed pursuant to this and/or any other Yard Trimming collection agreement.

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IN WITNESS WHEREOF, THIS AGREEMENT IS EXECUTED THE DAY AND YEAR FIRST ABOVE WRITTEN:

CITY:

CITY OF MILPITAS
A Municipal Corporation

By _____

CITY MANAGER

ATTEST:

CITY CLERK

CONTRACTOR:

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC
DBA ALLIED WASTE OF SANTA CLARA COUNTY,
SUCCESSOR IN INTEREST TO BFI WASTE SYSTEMS OF
NORTH AMERICA, A DELAWARE CORPORATION, BOTH
SUBSIDIARY CORPORATIONS OF ALLIED WASTE
INDUSTRIES, INC. A DELAWARE CORPORATION

By _____

NORM CHRISTENSEN
AUTHORIZED AGENT

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Deleted: BILL JONES,

APPROVED AS TO FORM:

CITY ATTORNEY

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EXHIBITS

- A. List of Acceptable Materials for Yard Trimmings Collection and Processing
- B. Contractor Certificate of Intent to Self-Insure
- C. Community Relations Workplan
- D. Contractor Performance Measurements
- E. Yard Trimmings Processing Requirements
- F. Service Rate

EXHIBIT A

[Amended May 20, 2008](#)

[Effective: June 20, 2008](#)

List of Acceptable Materials for Yard Trimmings Collection

Grass Clippings

Brush, Weeds.

Prunings & Tree Trimmings

Leaves

Tree Trunks of less than six (6) inches in diameter and three (3) feet in length

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Vegetables & Fruits on the Vine or Limb

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STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

NUMBER 1980 _____

CERTIFICATE OF CONSENT TO SELF-INSURE

THIS IS TO CERTIFY, That BROWNING-FERRIS INDUSTRIES OF CALIFORNIA, INC. (a California corporation) has complied with the requirements of the Director of Industrial Relations under the provisions of Sections 3700 to 3705, inclusive, of the Labor Code of the State of California and is hereby granted this Certificate of Consent to Self-Insure.

This certificate may be revoked at any time for good cause shown.

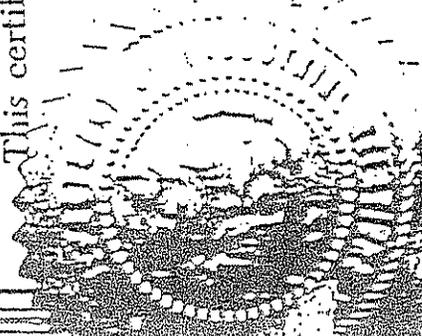
EFFECTIVE:

THE 1st DAY OF October 1981

DEPARTMENT OF INDUSTRIAL RELATIONS
OF THE STATE OF CALIFORNIA

Donald Vial
DONALD VIAL
DIRECTOR

Richard S. Anderson
RICHARD S. ANDERSON
MANAGER



Revocation of Certificate.—"A certificate of consent to self-insure may be revoked by the Director of Industrial Relations at any time for good cause after a hearing. Good cause includes, among other things, the impairment of the solvency of such employer, the inability of the employer to fulfill his obligations, or the practice by such employer or his agent in charge of the administration of obligations under this division of any of the following: (a) Habitually and as a matter of practice and custom inducing claimants for compensation to accept less than the compensation due or making it necessary for them to resort to proceedings against the employer to secure the compensation due; (b) Discharging his compensation obligations in a dishonest manner; (c) Discharging his compensation obligations in such a manner as to cause injury to the public or those dealing with him." (Section 3702 of Labor Code.) The Certificate may be revoked for noncompliance with Title 8, California Administrative Code, Group 2—Administration of Self-Insurance.

**EXHIBIT C
Community Relations**

Amended: May 18, 1999; December 17, 2002; November 16, 2004; May 20, 2008

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Effective: June 20, 2008

General Responsibilities

Community relations planning requires the CONTRACTOR's preparation of quarterly community relations schedules. CONTRACTOR and CITY acknowledge that program modifications may require altering quarterly schedules to suit changing conditions. The quarterly schedules shall include, but shall not be limited to, CONTRACTOR's activities in connection with items 'A' through 'F'.

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CONTRACTOR shall:

- A. Be responsible for all collateral material development including, but shall not be limited to: originating and meeting production schedules as agreed upon with the CITY for writing, design, production, and distribution activities.
- B. Be responsible for all media relations activities including, but shall not be limited to: maintaining accurate media lists; preparation of all news releases, media advisories and public service announcements; obtaining approval from the CITY prior to the release of any information targeted to the news media.
- C. Include CITY-sponsored media outlets, such as the City of Milpitas Cable TV, KMLP Channel 15, Radio 1620AM, and electronic mail systems in the preparation of news releases and public service announcements for all program information being released to other news media.
- D. Provide leadership, planning and implementation for up to two (2) annual special events intended to promote the Yard Trimmings Program: one targeting the schools, and; one targeting Milpitas residents.
- E. Provide cooperative participation in up to six (6) public events annually that may include, but shall not be limited to: labeled samples of processed yard trimmings; presentation of the composting process, and staffing during all events. These events are not in addition to but shall correspond with CONTRACTOR's participation in public events as outlined under Exhibit G of the Agreement for the Collection and Disposal of Solid Waste between the City of Milpitas and Allied Waste.

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- F. Provide consistent communication between program operations and CITY to determine problem areas and find viable and timely solutions.

Basic Requirements

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CONTRACTOR shall provide one full-time position to coordinate with CITY staff in preparing and implementing the Quarterly Schedules as stated in Exhibit F, Section 7 of the Agreement for the Collection and Disposal of Solid Waste between CITY and CONTRACTOR.

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CONTRACTOR shall submit drafts of quarterly schedules within five (5) working days before the first working day of each CITY fiscal quarter. The CITY shall discuss any changes to the quarterly schedule with the CONTRACTOR within this five (5) day time frame. CONTRACTOR shall revise and submit the final quarterly schedule within two (2) working days before the first working day of each quarter, with the exception of the schedule set above for the first quarter of the CITY fiscal year.

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CONTRACTOR shall:

A. Communications Planning

Develop communications objectives to assist in meeting solid waste reduction goals. This includes, but shall not be limited to: providing strategies designed to encourage public participation in the City of Milpitas Yard Trimmings Recycling Program; outlining estimated budgets reserved for annual and quarterly activities; targeting and reaching audiences and neighborhoods with cultural and language barriers; establishing evaluation criteria and completing surveys to gauge public opinion, participation, and satisfaction with program operations; establishing and maintaining effective distribution methods to all program households; establishing and maintaining an accurate mailing data base of program households.

B. Media Inquiries

Immediately notify CITY by telephone and email of all requests for news media interviews and requests for information related to the Yard Trimmings Recycling Program before responding to any inquiries involving potentially controversial issues or any issues likely to affect participation or recipient perception of services. CONTRACTOR shall wait four (4) hours for a response from the CITY before responding to media inquiries.

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C. Media and Governmental Relations

Submit copies of draft news releases or proposed feature articles, including awards and grant applications, to the CITY at least five (5) working days in advance of release or submittal, except where materials are required by any regulatory agency in a shorter period of time, in which case CONTRACTOR shall also submit such materials to the CITY simultaneously with CONTRACTOR's submittal to such regulatory agency.

D. Approval Process

Meet a forty-eight (48) hour turnaround time during the development of all written draft collateral material and production schedules outlined in the Quarterly Schedules.

E. Logo Placement, Use of Slogans & Program Name

Place the Yard Trimmings Recycling Program logo and any slogans on collateral materials as agreed upon with the CITY.

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F. Data Base Management

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Maintain a current mailing data base of program households. CONTRACTOR shall update the data base upon receiving an annual update or new data base in a digital format from the CITY.

G. Customer Service Support

Use a phone tree system or other method to have foreign language speakers available to customers. Provide trained and knowledgeable personnel for set-up, staffing and take-down support at special and public events.

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H. Use of Recycled Paper

Print all program materials on recycled paper stock with a minimum of thirty (30) percent post consumer content.

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CITY shall notify CONTRACTOR of above same media requests, draft news releases and feature articles, approvals, and data base updates under the same terms as outlined above.

Notification shall be sent to the following telephone and email or such other numbers and email addresses as CITY may designate in writing:

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Public Information Specialist	Kathleen Phalen
City of Milpitas, Utility Engineering	City of Milpitas, Utility Engineering
455 E. Calaveras Blvd.	455 E. Calaveras Blvd
Milpitas, CA 95035	Milpitas, CA 95035
408/586-3352 PHONE	408/586-3345 PHONE
408/586-3305 FAX	408/586-3305 FAX
lstobbe@ci.milpitas.ca.gov	kphalen@ci.milpitas.ca.gov

Specific Responsibilities

CONTRACTOR shall conduct the following public information activities, as agreed upon with the CITY and included in the Annual Community Relations Outline and Quarterly Schedules:

A. Continuous & Innovative Information

Continuous and innovative information elements include, but shall not be limited to: seasonal information distributions; holiday tree recycling advertising and promotions; information about annual distribution of free compost; targeted information distributions to residents with cultural and language barriers, as agreed upon with the CITY; targeted distributions to areas with contamination, set-out or other problems that negatively impact the program; neighborhood networking, and; door-to-door information distributions.

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B. Effective Community Partnerships

Development for effective community partnerships began on the program start date. Effective community partnerships implementation begins six months after the program start date and continues throughout the life of the Yard Trimmings Recycling Program. Effective community partnerships elements include, but shall not be limited to: cooperative participation with the City in the recycling school education program for educational mini-grants up to \$10,000 per year, and compost for vermicomposting activities delivered free to designated school sites; planning and implementation for up to two annual special events intended to promote the Yard Trimmings Recycling Program, one targeting the schools and

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one targeting Milpitas single family residents for free giveaway of up to two (2) bags, one (1) cubic foot each, of compost per household, including an annual "Second Chance Giveaway" with the same offer within two weeks from the scheduled free giveaway event, and; speaking engagements reaching homeowners, community and civic organizations.

C. Commitment to Celebrate Success

Development for the commitment to celebrate success began one year from the program start date. The commitment to celebrate success continues throughout the life of the Yard Trimmings Recycling Program. The commitment to celebrate success elements include, but shall not be limited to: one annual event to include such activities as tree plantings, seed or seedling giveaways that honor and publicize residential and school community accomplishments; coordination with all applicable elements in effective community partnerships, and; plaque dedications, or other mechanisms to immortalize community achievements.

D. Media Relations & Outreach

Development for media relations and outreach began one year from the program start date and continues throughout the life of the Yard Trimmings Recycling Program. Media relations and outreach elements include, but shall not be limited to: maintaining current lists of media contacts; targeting media representatives in the *Milpitas Post* and *Tri-City Voice* with program and associated event information; one annual feature article about individual, community, and program accomplishments associated with the Yard Trimmings Program; ongoing media announcements and invitations to special events, and; positive and effective responses to media inquiries.

Deleted: *San Jose Mercury News, Valley Section*

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Definitions of Terms

- Collateral Material(s): Used herein for promotional materials written and designed for distribution to residents. Collateral materials include, but shall not be limited to: advertising, brochures, mailers, door hangers, posters and specialty items.
- Neighborhood Networking: Used herein for all activities that establish a dialog with program recipients including, but not limited to: speaking engagements; field surveying; ethnic and cultural outreach; written and spoken translation activities; door-to-door contact with accompanying information; neighborhood block leader outreach, and; recognition programs.
- Public Event(s): Used herein for all events open to the general public that are sponsored or co-sponsored by the City of Milpitas.
- Special Event(s): Used herein for all events open to Milpitas residents and school district personnel that are originated and sponsored by the City of Milpitas and CONTRACTOR to promote the Yard Trimmings Recycling Program.

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EXHIBIT D

PERFORMANCE MEASUREMENTS

Amended November 16, 2004, [May 20, 2008](#)

Effective Date [June 20, 2008](#)

Deleted: January 1, 2005

I. Purpose

The purpose of performance measurements is to monitor and maintain (1) CONTRACTOR's achievement of minimum service levels and (2) CONTRACTOR's contribution toward the CITY's achievement of State mandated fifty percent (50%) disposal reduction goal by the year 2000 and beyond.

II. Conduct Of Review

The performance of this Agreement shall be assessed twice. each calendar year, on or before February 28 and August 31. The reviews conducted in August 1996 and February 1997 shall not assess a full calendar year of Yard Trimmings collection services. The review shall be coordinated with the performance measures review outlined in the agreement for the Collection and Disposal Of Solid Waste between the CITY and CONTRACTOR The review shall be conducted jointly by CITY and CONTRACTOR and shall be documented in writing and approved by the City Manager or his designated representative.

The review shall consist of two parts.

1. The CONTRACTOR's achievement of the following minimum service levels:
 - A. Collection of Yard Trimmings from at least thirty percent (30%) of total Producers each month.
 - B. Collection of at least thirty-five (35) pounds of Yard Trimmings per cart set out by Producers for collection by CONTRACTOR each month.
 - C. Completion of all activities by dates identified in [Quarterly Schedules](#), pursuant to Exhibit C, unless change is approved in writing by CITY.
2. The CONTRACTOR's contribution toward the CITY's achievement of State mandated 50% disposal reduction goal by the year 2000 as outlined in an annual Disposal Reduction Workplan (DRW). The DRW shall be developed jointly by the CITY and CONTRACTOR by February 28 of each year. The DRW shall identify diversion targets for the CONTRACTOR and outline the tasks anticipated for the year that will help the CITY meet or maintain the 50% disposal reduction goal.

Deleted: Community Relations Annual Outline and

III. Consequences

If any goal is not achieved the CONTRACTOR shall prepare a plan with recommended actions for achieving goals, for review and approval by CITY. If additional services are recommended, CITY and CONTRACTOR shall negotiate the terms and conditions for providing additional services, including an adjustment to the applicable rate.

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EXHIBIT E
PROCESSING REQUIREMENTS

Amended November 16, 2004
Effective January 1, 2005

Processing Site. CONTRACTOR has designated the Newby Island Compost Facility (NICF) as the processing site for Yard Trimmings generated by CITY Single-Unit Dwellings. This facility is located near the Northwestern border of Milpitas, in the City of San Jose.

Under the current facility configuration, composting and grinding operations are performed in separate areas at NICF. Composting, curing and final product screening are performed on the eight-acre area located north of The Recyclery.

Compost Technology. CONTRACTOR has chosen the Agitated Windrow Method as the appropriate technology for composting at NICF.

Marketing. Under the terms of this agreement, all Yard Trimmings will be composted, land applied, or used for green waste in erosion control. Preparation for these uses will be done at the NICF.

Process Flow. Yard Trimmings collected from Producers will be delivered to the Processing Facility. Each load of Yard Waste will be visually inspected and incidental contaminants such as those materials that are either unsuitable for composting or are prohibited from the Processing Facility will be identified and removed. Incidental contaminants found in the Yard Trimmings will be stored in a roll-off container on site and later disposed of at the Newby Island Landfill. All Yard Trimmings from CITY will be ground within twenty-four (24) hours upon receipt.

A list of materials accepted at the Processing Facility is included as Exhibit A. Unacceptable materials includes the following:

- rocks, concrete, sod, dirt
- plastic bags.
- loose fruits or vegetables
- household garbage
- demolition wood
- pet waste

Operating Days and Hours. The Processing Facility shall operate six (6) days per week. The operational hours are Monday through Friday, 6:00 AM - 5:00 PM, and Saturday, 7:30 AM - 4:00 PM. No activities take place on Sundays or Holidays except in emergency situations.

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EXHIBIT F

CITY OF MILPITAS
RESIDENTIAL YARD TRIMMINGS SERVICE
MONTHLY SERVICE RATE

Approved December 17, 1996

Amended May 4, 1999, February 20, 2001, December 17, 2002; November 16, 2004;
January 15, 2008

	Effective January 1, 2008	Effective January 1, 2009
Single-Unit Dwelling	\$5.88	\$5.88
Senior Citizen	\$2.75	\$2.95

Late Utility Payment Penalties

All accounts are due and payable within fifteen (15) days of the date of the bill. Accounts shall become delinquent and a late fee equal to five percent of the amount due shall be imposed if payment has not been received by 5:00pm on the due date. Prior to discontinuing service for delinquent accounts, a final notice shall be issued to delinquent account and payment shall be due within fifteen (15) days of the date of the final notice. If payment has not been received by 5:00 p.m. of the due date of the final notice, an additional late fee equal to five percent of the amount then due shall be imposed. A twenty-four (24) hour warning notice shall be placed on an exterior door of the building where service is provided and for which payments are delinquent and a service charge of ten dollars (\$10) shall be imposed on the delinquent account. Said warning notice shall state that water and/or solid waste service will be discontinued if payment of the delinquent account is not received by 5:00 p.m. of the due date indicated on the warning notice. If payment has not been received by 5:00 p.m. of the due date on the warning notice, water and/or solid waste service shall be discontinued. Restoration of service which has been discontinued for non-payment of a bill may be had by payment of all outstanding charges to date plus a fifty-dollar (\$50.00) service charge at the offices of the City during normal business hours.

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REGULAR

NUMBER: 48.20

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING SECTIONS 1-7 AND 9 OF TITLE V, CHAPTER 200 OF THE MILPITAS MUNICIPAL CODE, RELATING TO SOLID WASTE MANAGEMENT

HISTORY: This ordinance was introduced (first reading) at a meeting of the City Council of the City of Milpitas on _____, 2008, by motion by Councilmember _____, and was adopted (second reading) by the City Council at its meeting of _____, 2008, upon motion of Councilmember _____. Said ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

1. **SECTION 1.40:** Title V, Chapter 200, Section 1.40 of the Milpitas Municipal Code is hereby amended as follows:

V-200-1.40 Solid Waste Service Design Requirements

The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage or handling which shall accommodate the solid waste loading anticipated and which shall allow for efficient and safe waste removal or collection. Solid waste and recycling collection shall be accommodated on-site. The design shall comply with City requirements. (Ord. 48.19 (1), 5/1/07)

2. **SECTION 2.10:** Title V, Chapter 200, Section 2.10 of the Milpitas Municipal Code is hereby amended as follows:

V-200-2.10 Definitions

The definitions contained in this Section shall govern the construction of this Chapter, unless the context otherwise requires.

(a) Administrator. The “Administrator” means the City Manager or his or her designee.

(b) Agent. The word “agent” means a person, designated by the owner, as responsible for procuring and maintaining solid waste, recyclables and yard trimmings collection services.

(c) Authorized Contractor. The words “Authorized Contractor” means any person or persons, or the agents or employees thereof, with whom CITY shall have duly contracted as hereinafter provided, or to whom CITY shall have issued a permit, to collect, remove, transport, recycle or dispose of any or all solid waste, recyclables, or yard trimmings produced, kept or accumulated in the city.

(d) Bin. ”Bin” means a Container with the capacity of approximately one to eight cubic yards, with a hinged lid, that is serviced by a front end-loading vehicle.

(e) Cart(s): “Cart(s)” means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated collection vehicle. A Cart has a capacity of 32, 64 or 96 gallons.

(f) City. The word “city” means and includes all the territory lying within the municipal boundaries of the City of Milpitas as presently existing together with all territory which may be added thereto by annexation or otherwise. When capitalized, “CITY” means the City of Milpitas, a municipal corporation organized under the laws of the State of California, and its divisions, departments and agencies.

(g) Centralized Collection Service. The phrase “centralized collection service” means the level of service provided to a multiple family development that provides a designated collection point for garbage and recycling services in roll-off compactors. It is the responsibility of the Property Management of the development to provide move-in and semi-annual recycling program information to multi-family residents.

(h) Container(s). The word “Container(s)” means Front-end Loader Bins, Carts, Compactors, and Roll-off Containers.

(i) Compactor. The word “Compactor” means a mechanical apparatus that compresses materials and/or the Container that holds the compressed materials. Compactors include two to four cubic yard Bin Compactors serviced by front-end loader collection vehicles and 6 to 50 cubic yard Debris Box Compactors serviced by roll-off collection vehicles.

(j) Curbside Service: The phrase “Curbside Service” means individual collection services for garbage, recycling and yard trimmings recycling as typically provided to single-family

homes, duplexes, townhomes and mobile homes. See V-200-4.20 for specific set-out requirements for customers receiving Curbside Service.

(k) Debris Box. The phrase “debris box” means an open-top Container with a capacity of 5 to 50 cubic yards and serviced by a roll-off collection vehicle

(l) Front-end Loader Bin. The phrase “Front-end Loader Bin” means a container with the capacity of approximately one to eight cubic yards and with a hinged lid that is serviced by a front end-loading vehicle.

(m) Hazardous Waste. The phrase “hazardous waste” means hazardous materials, as defined by Title V, Chapter 3 of the Milpitas Municipal Code, Hazardous Substances, as defined in 42 U.S.C. Section 9601 (14), Designated Wastes, as defined in Title 23, Chapter 15, Section 2522 of the California Code of Regulations, biohazardous and any other wastes which are not nonhazardous solid waste, as defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations.

(h) Health Officer. The phrase “Health Officer” means the Santa Clara County Health Officer, or his or her designee(s) acting as the Health Officer of the CITY.

(n) Medium and High Density Developments. “Medium and High Density Developments” are defined in the City’s General Plan as follows:

(1) Medium Density – “Medium Density” housing may include single-family attached and semi-attached houses and duplexes.

(2) High Density – “High Density” housing may include attached row houses to triplexes and four-plexes, stacked townhomes, and walk-up garden apartments.

(3) Very High Density – “Very High Density” housing may include attached row houses and townhouses to lofts and stacked flats with structured parking.

(4) Mixed Use – Mixed-use may include commercial offices, retail services, High Density residential, public, and quasi-public uses. Mixed use buildings can contain a combination of residential and commercial uses.

(o) Non-putrescible Waste: The phrase “Non-putrescible Waste” means the component of the solid waste which is not capable of being decomposed by micro-organisms with sufficient rapidity as to cause odors, gases, attraction of vectors or other offensive conditions.

(p) Occupant. The word “occupant” means individual(s) occupying any premise, business establishment, industry, or other property for the purpose of residing at that location.

(q) Person. The word “person” includes any individual, firm, association, organization, partnership, business trust, joint venture, corporation, company, state, county, city, or entity, whether acting as principal, agent or officer, servant or employee, for himself, herself, itself or for any other person. The word “person” includes the masculine, feminine, and plural forms.

(r) Premises. The word “premises” means and includes any land, building or structure in the City where any solid waste, recyclables, or yard trimmings are produced, kept, deposited, placed or accumulated. The word “premises” extends to and includes, but is not limited to, any agricultural, industrial, commercial or residential land, building or structure and without regard to ownership or use by a profit or nonprofit organization or institution.

(l) Producer. The word “producer” means any person, firm or entity that creates or owns solid waste, recyclables, or yard trimmings or the materials from which they are derived, prior to collection or sale.

(s) Putrescible Waste: “Putrescible Waste” means the component of the solid waste that is likely to become putrid. It includes but is not limited to wastes that contain organic materials such as food wastes or wastes from animal or vegetable origin.

(t) Recyclables. The word “recyclables” or the phrase “recyclable materials” means materials which through collection, processing, sorting, cleansing, treating, reconstituting, resale or non-landfill disposition, may be returned to the economic mainstream in the form

of raw material for new, reused or reconstituted products, including but not limited to material types such as newspapers, white paper, mixed paper, corrugated cardboard, glass, polyethylene terephthalate (“PET”), high-density polyethylene (“HDPE”), polystyrene foam, wood, bi-metal cans, aluminum cans, ferrous metals, non-ferrous metals, motor oil, or other materials as may be identified from time to time by CITY.

(u) Recycling. The phrase “recycling” means the process of collecting, sorting, cleansing, treating or reconstituting solid waste materials, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products.

(o) Recycling Container. The phrase “recycling container” means the container provided by an authorized contractor which shall only be used for the purpose of collecting recyclables and presenting them for collection to an authorized contractor.

(v) Roll-Off Container. “Roll-Off Container” means an open top debris box for disposal of solid waste or recyclable materials serviced by a roll-off vehicle.

(w) Scrap Wood. The phrase “scrap wood” means clean, unvarnished, unpainted, used wood.

(x) Solid Waste. The phrase “solid waste” means all putrescible and nonputrescible nonhazardous solid, semi-solid and liquid discarded material, including garbage, refuse, trash, paper, rubbish, ashes and other discarded solid and semi-solid material, which are:

- (1) Not hazardous wastes or biohazardous wastes;
- (2) Fall within the definition of nonhazardous solid waste, as that term is defined in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations;
- (3) Are produced, generated or accumulated in the City or by CITY; and
- (4) Are not designated as recyclable materials in an agreement between City and an authorized contractor or are not designated yard trimmings.

Notwithstanding any provision to the contrary, solid waste may include de minimis volumes or concentrations of hazardous substances (as that term is defined in 42 U.S.C. Section 9601(14)) remaining in the waste stream following implementation of a program for the safe collection, recycling, treatment and disposal of hazardous waste generated in households, in accordance with Sections 41500 and 41802 of the Public Resources Code.

(y) Solid Waste Containers. The phrase “solid waste containers” means all solid waste containers described in Section V-200-3.30.

(s) Stable Matter. The phrase “stable matter” means and includes all manure and other waste matter normally accumulated in and about a stable or any animal, livestock or poultry enclosure and resulting from the keeping of any animal, poultry or livestock.

(z) Yard Trimmings. The phrase “yard trimmings” means all materials, containing not less than ninety-five percent (95%) by weight-per-load plant debris, including grass clippings, leaves, prunings, weeds, branches, brush and tree trunks, as well as other forms of organic waste generated from landscapes and gardens.

(aa) Yard Trimmings Container. The phrase “yard trimmings container” means an authorized contractor-supplied or approved wheeled cart with a capacity of up to ninety-six (96) gallons and used for the collection of yard trimmings. (Ord. 48.19 (2), 5/1/07; Ord. 48.14, 3/6/01; Ord. 48.12 (part), 12/5/95)

3. SECTION 3.20: Title V, Chapter 200, Section 3.20 of the Milpitas Municipal Code is hereby amended as follows:

V-200-3.20 Owner Responsible for Solid Waste, Recyclables, and Yard Trimmings Collection Service

For utility accounts opened on or after June 2, 2006 serving residential premises with single-family curbside services connected to a common water meter installed to provide water to two or more residential units, the owners shall designate an agent who shall be responsible for payment to the City for water and curbside services on behalf of the owners. Nothing in this section is intended to prevent an arrangement, or the continuance of an existing arrangement, under which payments for collection service are made by a tenant or tenants, or any agent, on behalf of the owner. Any such arrangement, however, will not affect the owner's obligation as provided herein.

4. SECTION 3.30: Title V, Chapter 200, Section 3.30 of the Milpitas Municipal Code is hereby amended as follows:

V-200-3.30 Solid Waste Containers Required, Description

Any and all solid waste produced, kept or accumulated within or upon any premises in the City shall be placed without delay in solid waste containers described in this Section and shall be kept and maintained within such containers and upon such premises, until the contents thereof are disposed of in accordance with the provisions of this Chapter. Solid waste cans, plastic or polyethylene disposal bags, or authorized contractor-supplied or approved containers shall be authorized solid waste containers for use in the City and shall meet the standards for each such container as established in this Section.

Each container shall:

- (a) Be constructed of metal, plastic or other substantial materials;
- (b) Be of sufficient strength or rigidity to hold without collapsing all solid waste deposited and kept therein;
- (c) Be of sufficient strength and rigidity to prevent it from being broken or crushed under ordinary conditions of use;
- (d) Be leakproof and flyproof;
- (e) Be free of sharp, rough or jagged surfaces or edges likely to cause injury to persons lifting or handling the container;
- (f) Have a close-fitting cover.

In addition to the foregoing, containers supplied by the authorized contractor shall be of approximately ninety-six (96), sixty-four (64), or thirty-two (32) gallons in capacity and not weigh more than two hundred (200), one hundred fifty (150), and seventy-five (75) pounds, respectively, when fully loaded.

(g) Be graffiti-free. Containers supplied by the authorized contractor shall be free of graffiti and all graffiti shall be removed promptly.

(h) Be in good condition. Containers supplied by the authorized contractor shall:

- (1) Be maintained by the same at a minimum level of good condition.
- (2) Include identification as the property of the authorized contractor that includes a serial number, instruction for use and telephone number of the Authorized Contractor.

Containers of thirty-two (32) gallon capacity, whether supplied by the authorized contractor or not, shall, in addition to the requirements of subsections (a) through (h) above:

- (1) Be equipped with two attached handles or bales, one on each side of the container, of sufficient strength and size and so located to facilitate the lifting and handling of the container;
- (2) Be of such shape that it can be lifted and handled without unreasonable strain by one person; and
- (3) Not weigh more than seventy-five (75) pounds when fully loaded.

Plastic or polyethylene disposal bags with wire or plastic tie closure shall meet the requirements of paragraphs (a) through (e) of this subsection, and the National Sanitation Foundation standards for polyethylene refuse disposal bags as follows:

(1) Dimensions. The bags shall have a minimum circumference of sixty (60) inches and a minimum inner dimension of thirty-seven (37) inches.

(2) Strength. The bags, exclusive of packaging and ties, shall have a minimum weight of one hundred five (105) pounds per one thousand (1,000) bags.

Authorized contractor-supplied or approved solid waste containers with a capacity in excess of ninety (90) gallons and dimensions providing not less than one (1) cubic yard capacity shall meet the requirements of paragraphs (a) through (h) of this subsection.

5. SECTION 3.31: Title V, Chapter 200, Section 3.31 of the Milpitas Municipal Code is hereby amended as follows:

V-200-3.31 Location of Solid Waste, Recycling and/or Yard Trimmings Containers and Debris Boxes

Each and every solid waste, recycling, and yard trimmings container(s) shall be placed, kept and maintained at all times in a side, or back yard, in an enclosure or elsewhere on the premises so as not to be visible from the street or accessible to animals and may not protrude past the front of any building for multi-unit premises. This requirement does not apply during the twelve (12) hour period before or after a scheduled collection day. To comply with the Americans With Disabilities Act (“ADA”), customers requesting an exception to this provision will be considered on a case by case basis by the City Manager or his or her designee.

Except for those premises receiving service at the single unit curbside service level, as defined in the Agreement for the Collection and Disposal of Solid Waste between City and Allied Waste Services, dated September 2, 1986 and as amended thereafter, containers shall not be placed, kept, maintained or serviced in a public street, sidewalk or public easement of any kind or in the front yard setback without prior written consent of City. (Ord. 48.16 (part), 12/7/04; Ord. 48.13 (part), 6/1/99; Ord. 48.12 (part), 12/5/95)

6. SECTION 3.32: Title V, Chapter 200, Section 3.32 of the Milpitas Municipal Code is hereby amended to read as follows:

V-200-3.32 Solid Waste, Recycling and Yard Trimmings Containers: Use and Maintenance

Each unit of duplex or triplex shall be deemed to be a single unit for the purpose of this Chapter. Multiple dwelling units with four or more dwelling units on one parcel of property and subject to the multi-unit service level pursuant to the Agreement for the Collection and Disposal of Solid Waste between the City of Milpitas and Allied Waste Services, dated September 2, 1986 and as amended thereafter, shall be required to subscribe to solid waste container service. (Ord. 48.13 (part), 6/1/199; Ord. 48.12 (part), 12/5/95)

The City may prescribe mandatory garbage cart rental service for curbside services provided to Medium and High Density Development residences with limited setout space.

7. **SECTION 3.40:** Title V, Chapter 200, Section 3.40 of the Milpitas Municipal Code is hereby amended to read as follows:

V-200-3.40 Minimum Allowable Collection Frequencies Disposal

Weekly Collection: No more than one week's accumulation of putrescible solid waste shall be kept or be permitted to remain upon any premises in the City. At least once each week all putrescible solid waste produced, kept or accumulated within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than one week's accumulation of non-putrescible solid waste shall be kept in front-end loader bins. At least once each week all solid waste kept or accumulated in front-end loader bins within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

30 Day Collection No more than thirty (30) day's accumulation of non-putrescible solid waste, except recyclables, shall be kept or be permitted in compactors and debris boxes. At least once each thirty (30) days all such wastes kept or accumulated in compactors and debris boxes within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

No more than thirty (30) day's accumulation of non-putrescible recyclables shall be kept or be permitted in front-end loader bins and debris boxes. At least once each thirty (30) days non-putrescible recyclables kept or accumulated in front-end loader bins and debris boxes within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

60-Day Collection No more than sixty (60) day's accumulation of non-putrescible recyclables shall be kept or be permitted in compactors only. At least once each sixty (60) days non-putrescible recyclables kept or accumulated in compactors within any premises in the City shall be disposed of in accordance with the provisions of this Chapter.

8. **SECTION 3.61.** Title V, Chapter 200, Section 3.61 of the Milpitas Municipal Code is hereby amended to read as follows:

V-200-3.61 Exemptions: Employees of Authorized Contractor; Hardship Variance

Employees of an Authorized Contractor collecting solid waste, recyclables, or yard trimmings within the City, are exempt from the charges applicable for collection of solid waste, recyclables, or yard trimmings at the employee's primary place of residence, provided that this residence is located within the City, such employee provides proof of employment with the Authorized Contractor to the City on an annual basis, and employee receives curbside service.

The City Council may grant a variance from the provisions of Section V-200-3.20 or V-200-3.31 when the strict application of the Section creates an undue hardship. The following standards shall guide the City Council in the decision to grant or deny a variance request:

(a) A variance is intended to alleviate a hardship imposed by the strict application of Section V-200-3.20 or V-200-3.31 and arising from the particular size, shape, topography, location, surrounding, or other condition of the property, not including economic hardship; and

(b) An acceptable alternative method of disposal of solid waste must be used by the person owning, controlling, or maintaining the premises for which the variance is requested. Acceptable alternative methods of disposal shall not include disposal of solid waste at another premises or

any disposal facility, whether or not such premises or disposal facility is located within the City. (Ord. 48.12 (part), 12/5/95)

9. SECTION 4.20. Title V, Chapter 200, Section 4.20 of the Milpitas Municipal Code is hereby amended as follows:

V-200-4.20 Delivery to the Authorized Contractor

Additional Services Allowed for Disabled Customers: Solid waste, recyclables, and/or yard trimmings are to be delivered to an authorized contractor authorized to collect, dispose, and/or recycle same. The authorized contractor shall provide additional services as necessary to accommodate the needs of disabled residents, as defined in the Americans with Disabilities Act (ADA), at the same level of service provided and rate charged to nondisabled residents, including, but not limited to, collecting Solid Waste, Recyclables and Yard Trimmings from containers stored in side or back yards, replacing empty containers in side or back yards and maintaining a TDD telephone line. The authorized contractor shall not be required to enter upon a private driveway or upon a private yard or enclosure for the purpose of collecting solid waste, recyclables, or yard trimmings, except to accommodate disabled residents as defined by the ADA.

Curbside Service: Solid waste accumulated in 32-gallon plastic or metal cans, or in 32-gallon plastic bags that are tied at the top, at residential premises with curbside services, shall be delivered to the authorized contractor by placing cans and/or bags alongside the street curb, but not in the street, in front of the premises wherein solid waste is produced and accumulated. Solid waste or recyclables accumulated in carts at residential premises with curbside services shall be delivered to the authorized contractor by placing the carts in the street with the wheels against the curb, two (2) feet from parked cars and mail boxes in front of the premises wherein solid waste and/or recyclables are produced and accumulated. In the event any Producer fails to return containers to their approved locations in a timely manner, Producer may be cited. After two citations within one year, the City may require the Producer to contract for a minimum of 12 months subscription to push and return services as provided by authorized contractor.

Yard trimmings shall be delivered to an authorized contractor in an authorized yard trimmings container by placing the cart in the roadway with the wheels adjacent to the curb. Tree prunings and branches shall be bundled with twine and cut in lengths no longer than three (3) feet long. Bundles shall be placed on the ground alongside the street curb adjacent to the yard trimmings container. Excess yard trimmings shall be placed in a clean thirty-two (32) gallon plastic or metal can provided by the resident alongside the street curb. Resident shall obtain a yard trimmings sticker from the authorized contractor and attach it to the container.

Single family curbside service weekly set out of used motor oil shall use only approved one-gallon jugs available at City of Milpitas fire stations and from the Authorized Contractors office.

Non-Curbside Service: Solid waste or recyclables accumulated in containers of thirty-two (32) gallons or larger capacity shall be delivered to the authorized contractor in a location on private property, consistent with the provisions of Section V-200-3.31, so as not to require the driver of the collection vehicle to dismount from the vehicle in order to service the containers. In the event that the driver is required to dismount due to the location of the bin, travel more than twenty-five (25) feet to the recycling bin, or because the producer does not want the collection vehicle on the producer's property, or if site conditions require the use of a scout truck, the producer shall be

liable to the authorized contractor for an additional charge (called a “push and return charge”) for pushing, collecting and returning the container(s). This charge shall also apply if the contractor must use non-standard equipment (scout truck).

The authorized contractor shall not be liable for any damage to private property in the course of collecting solid waste, recyclables, or yard trimmings or for delivery, maintenance, or removal of any container or debris box, except for the negligence of the authorized contractor, its agents, servants and employees.

10. SECTION 5.11 Title V, Chapter 200, Section 5.11 of the Milpitas Municipal Code is hereby amended as follows:

V-200-5.11 Contract Provisions

Each authorized contractor(s) providing residential and non-residential solid waste collection services shall comply with all licenses, permits, or written approval requirements of the City. Such written approval shall be contingent upon the authorized contractor’s demonstrated capability to comply with these standards and use of equipment which is safe and sanitary.

Any contract executed hereunder may provide that the authorized contractor(s) shall have the right to collect and receive the collection charges and fees established therein for the collection, transportation, removal, processing or disposal of solid waste, recyclables, and/or yard trimmings; provided, however, City may elect to collect and receive said collection charges and fees subject to the contract provisions concerning the remittance thereof to the authorized contractor. Said contract shall also provide for the compensation to be paid to City by the authorized contractor for the granting of the right to engage in said business. Nothing herein contained shall be deemed to limit the authority of the City to renew or extend a contract upon the expiration of any term thereof. The contract may contain such other terms, covenants and conditions as the City shall deem necessary or convenient for the efficient collection, transportation, removal, processing or disposal of solid waste, recyclables, and/or yard trimmings and the preservation and protection of the public health, safety, peace and welfare. (Ord. 48.19 (7), 5/1/07; Ord. 48.12 (part), 12/5/95)

11. SECTION 6.11: Title V, Chapter 200, Section 6.11 of the Milpitas Municipal Code is hereby amended as follows:

V-200-6.11 Senior Rate

Rates for residential premises with curbside collection for persons sixty-two (62) years or older and who are responsible for paying the water bill of the dwelling, upon application, shall be reduced upon such terms and conditions as are agreed to between City and authorized contractor. (Ord. 48.12 (part), 12/5/95)

12. SECTION 7.51: Title V, Chapter 200, Section 7.51 of the Milpitas Municipal Code is hereby amended as follows:

V-200-7.51 Household Dump Day

Pursuant to the terms of a contract between authorized contractor and City, Authorized Contractor shall provide at its solid waste disposal and compost facility site(s) nearest the City (or at such other site as may be agreed to between Authorized Contractor and the City) the privilege to any resident of the City to dispose of any non-putrescible waste free of charge subject to program criteria. Yard trimmings shall not be accepted on Household Dump Day after December 31, 1996 except as provided by City authorized permit. It is the intent of this section to allow free disposal and recycling of non-putrescible waste produced from residences within the City; it is not intended to authorize the free disposal of such materials generated from commercial or industrial sources or from sources outside the City.

Motor vehicle tires, auto batteries, mattresses and box springs, computer monitors and televisions, and appliances which contain refrigerants, including but not limited to refrigerators, chillers, freezers, ice-makers and air-conditioning units will be accepted provided the resident bringing the item shall pay a charge to be determined by the City for removal of the refrigerant from the appliance and for the disposal and/or recycling of both the refrigerant and the appliance or for disposal or processing of the tires, auto batteries, mattresses and box springs, computer monitors and televisions.

Nothing herein contained, however, shall prohibit any person from collecting or transporting solid waste (in excess of the minimum collection for which City service is provided) produced, kept or accumulated at a residential premises owned or leased by such person in the City and disposing of the same outside City limits at a site approved by the Health Officer. (Ord. 48.13 (part), 6/1/99; 48.12 (part), 12/5/95)

13. SECTION 9.21: Title V, Chapter 200, Section 9.21 of the Milpitas Municipal Code is hereby amended as follows:

V-200-9.21 Notice of Violation Fees

Violations of Chapter 200 Solid Waste Management shall be administered as infractions pursuant to Title 1, Chapter 1, Section 4.09, Penalty Provisions.

14. SECTION 9.41: Title V, Chapter 200, Section 9.41 of the Milpitas Municipal Code is hereby amended as follows:

V-200-9.41 Administrator's Decision

After considering all of the testimony and evidence submitted at the administrative hearing, the administrator shall issue a written decision to uphold or dismiss the allegations contained in the notice of violation or other decision and shall list in the decision the reasons for that decision. The decision of the administrator shall be served on the applicable party pursuant to this Section. The decision of the administrator is final.

15. SECTION 9.60: Title V, Chapter 200, Section 9.60 of the Milpitas Municipal Code is hereby amended as follows:

V-200-9.60 Multiple Offenses

Any violation which would otherwise be an infraction may be a misdemeanor if a defendant has been convicted of three (3) or more violations of this Chapter within the twelve (12) month period immediately preceding the commission of the offense, and such prior convictions are admitted by the defendant or are alleged in the accusatory pleading. For purposes of this Section, a bail forfeiture, payment of notice of violation fee and waiver of right to an administrative hearing at an administrative hearing shall be deemed to be a conviction of the offense charged.

16. SECTION 9.21: Title V, Chapter 200, Section 9.80 of the Milpitas Municipal Code is hereby amended as follows:

V-200-9.80 Debt

In addition to any other penalties herein provided, unpaid charges for the removal of solid waste, recyclables, or yard trimmings are a joint and several obligation of the producer thereof and the owner of the premises within which or upon which the same has been produced, and may be recovered in a civil action or a lien process, together with interest and costs. (Ord. 48.12 (part), 12/5/95)

17. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance and all prior amendments, language and iterations of any related ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phrases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

18. Publication and Effective Date

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force 30 days after the date of its passage. At least 5 days prior to City Council's adoption of this Ordinance, the City Clerk of the City of Milpitas shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California. Within 15 days after City Council's adoption of this Ordinance, the City Clerk shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the Office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California.

REGULAR

NUMBER: 196.9

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING SECTION 3.03 OF CHAPTER 213, TITLE V OF THE MILPITAS MUNICIPAL CODE RELATING TO NOISE ABATEMENT

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

1. Section 3. Chapter 213 of Title V of the Milpitas Municipal Code is hereby amended to read as follows:

3.03 The above prohibition against making, continuing or causing to be made or continued any disturbing noise in any district zoned for residential use shall not apply to the authorized collection of solid waste, recyclables, and/or yard trimmings by an authorized collector after 6:00 a.m.

2. Severability

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the ordinance and all prior amendments, language and iterations of any related ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of the ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause, or phases, or the application of any of the foregoing to a particular person or circumstance, be held unconstitutional, invalid, or unenforceable.

3. Publication and Effective Date

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect and be in force 30 days after the date of its passage. At least 5 days prior to City Council's adoption of this Ordinance, the City Clerk of the City of Milpitas shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California. Within 15 days after City Council's adoption of this Ordinance, the City Clerk shall cause a summary of this Ordinance prepared by the City Attorney to be published and a certified copy of the full text of the proposed ordinance to be posted in the Office of the City Clerk in accordance with Section 36933 of the Government Code of the State of California.