

**AMENDMENT 1 TO THE AGREEMENT  
FOR CONSULTATION AND OTHER SERVICES**

This Amendment is entered into this 16<sup>th</sup> day of March, 2010, by and between the City of Milpitas, a municipal corporation of the State of California (hereafter referred to as "City") and HF&H Consultants, LLC (hereafter referred to as "Consultant").

**RECITALS**

WHEREAS, the parties entered into a Consulting Services Agreement for solid waste management services on August 4, 2009; and

WHEREAS, the parties desire to amend the Agreement to allow Consultant to perform additional work not otherwise covered in the scope of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties agree to amend the Agreement as follows:

1. Section 1, entitled "Services" is amended by adding Exhibit "A-1," which is attached hereto and incorporated by reference herein.
2. Section 2, entitled "Compensation" is amended to add \$167,750 in Exhibit "B-1," which is attached hereto and incorporated by reference herein. Section 2 is further amended by changing the following at the beginning of the Section:

City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$208,250 for all services to be performed and reimbursable costs incurred under this Agreement.

3. All other provisions of the Agreement shall remain in full force and effect.

CITY OF MILPITAS

HF&H CONSULTANTS, LLC

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Robert D. Hilton, President

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Greg Armendariz,  
City Engineer / Public Works Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**EXHIBIT A-1  
SCOPE OF WORK**

## PURPOSE

The City's intent is to provide solid waste management system for its community that protects the public health in a sustainable manner, conforms to State regulations, and positively benefits the quality of life of residences and business community everyday. Regulations, cultural values, and industry best practices have changed since the City entered its current collection, processing, and disposal agreements with Allied Waste Services more than 20 years ago. While generally successful (as indicated by rates and waste diversion levels), the City is being challenged in its ability to respond to these changes in the manner that it adjusts costs, determines rates, and administers the Agreement. This challenge will increase as regulations continue to change and market forces drive up the cost of processing and disposal options.

The City desires to plan for its future collection, diversion, and disposal demands in a manner that is reflective of current and projected conditions, regulations, and opportunities. By acting now the City will anticipate its needs, evaluate its options, and act strategically with an understanding of its long-term best interests. The primary objective of this project engagement is two-fold:

- Assist the City in renegotiating its Agreements with Allied Waste for solid waste, recyclables, and yard trimmings collection, diversion, processing, and disposal services (Project 2); and
- Develop a long-term Master Plan that is based on the analyses of the City's future needs and options to guide its current and future actions (Project 3).

### **Project 2, Tasks 10 – 14 – Renegotiate Allied Waste Agreements**

The approach to the first project is governed by the following:

- The City has existing agreements which have significant remaining terms;
- The agreements were originally entered more than 20 years ago, have been amended numerous times, are difficult to administer, are not current with best practices for such agreements, and do not reflect the future needs of the City;
- The City will be conducting a master planning process for solid waste services during the early stages of this engagement, the results of which should be reflected in the revised agreement(s); and,
- Allied has expressed a willingness to renegotiate these agreements.

Therefore, Consultant work will be to support the revision and replacement of the existing agreements with an agreement (or agreements) that meet the current and future needs of the City. Consultant shall proceed initially with addressing the business terms (term of agreement and extension periods, customer services, compensation adjustments, City fees, rate setting, billing, reporting, liquidated damages, default and cure provisions, indemnification, insurance, corporate guarantees, etc.) while the services are being determined through the planning process. When the services are established by the City, they will be incorporated into the service obligations, compensation, and rates for the provision of services by the contractor. In this manner, Consultant shall strive to have an agreement for the provision of services soon after the planning process is complete.

#### ***Task 10 - Plan Future Contract Terms and Contract Structure***

Based on the generic services likely to be necessary by the City (e.g., material collection, transfer and transport, processing, and disposal) and the current and future opportunities for the provision of these services, Consultant will recommend the development of one or more agreements. Consultant will then

develop and document an outline for each of the agreements, presenting optional approaches to the business terms for consideration by City staff where appropriate.

Consultant will prepare and distribute meeting agendas and background materials and facilitate two half-day meetings with City staff. The purpose of these meeting is to facilitate a discussion among City staff (and if the City desires in one of the meetings, Allied staff) of key issues and allow time for additional research between the meetings before reaching a consensus on the key business terms. The results of these meetings will be documented, a report prepared, and, in accordance with staff direction, a presentation made to the City Council to obtain their concurrence with the approaches taken to these business terms.

***Task 11 - Prepare Draft Franchise Agreement***

Based on the direction provided by the City in Task 10, Consultant will prepare a draft franchise agreement, which will be distributed for review and comment by City staff. After receiving comments on the initial draft and preliminary decisions from the City Council on policies, programs and facilities (from the solid waste master planning effort), Consultant will develop a second draft agreement(s). After receiving comments, Consultant will finalize the draft agreement(s).

***Task 12 - Distribute Agreement(s) Request and Evaluate Proposal(s)***

Consultant will prepare a request for proposal (RFP) from Allied for the provision of services identified in the master planning process for the term of the proposed agreement(s). The RFP shall include both directions on the preparation of the description of services as well as for operations and financial data. Consultant will meet with Allied to review the directions and later shall monitor Allied's preparation of its response, responding to questions as appropriate. Consultant will review and evaluate Allied's proposal (using Consultant's extensive database of industry operations and cost data) and seek corrections and clarifications as necessary. Consultant shall meet with City staff and Allied to obtain answers to questions regarding Allied's proposal. Thereafter, Consultant shall meet with City staff to identify areas for negotiation.

***Task 13 - Negotiate Final Franchise Agreement(s) and Rate***

Consultant shall participate in up to three negotiating sessions with City staff and Allied. During this process, Consultant will review Allied's proposals, develop counter-proposals, and amend the draft franchise agreement up to three times. Consultant proposes to participate in a final meeting with Allied and City staff to finalize the agreement for execution by Allied and the City.

***Task 14 - Present Recommendations to Council***

Consultant will review and comment on the City staff report to Council and assist in (or prepare) a presentation to City Council. Thereafter, Consultant will attend one City Council meeting for the presentation of the negotiated agreement.

***Task 15 - Engagement Management***

Consultant will prepare and amend detailed work plans, monitor engagement progress, and provide sufficient resources to ensure timely completion of the engagement, review analytical results and interim findings, review the draft and final reports, and respond to questions regarding the progress of the engagement and other issues. This task also includes organization of work papers related to the project.

### **Project 3, Tasks 20 – 22 - Solid Waste Master Planning**

The approach to this engagement is to:

- 1) Identify the City's future demands on the system;
- 2) Identify alternative policy, program, and facility options (suitable for City); and,
- 3) Estimate diversion potential and system cost estimates for those options.

Based on the evaluation of the options, Consultant will work with the City to develop a scope of work for the next phase of the planning effort that will include additional data gathering and analyses, a specific action plan, and a funding plan. Consultant will focus on what is logical for City given the nature of the community and its customer base, its waste volumes and composition, the collection system, proximity to processing and disposal facility infrastructure, and staff and financial resources. Based on Consultant's experience assisting other municipal clients with diversion planning efforts, Consultant developed the scope of services presented below.

#### ***Task 20 - Document Current and Projected Conditions***

To begin the development of a plan for the City, Consultant will need to establish a comprehensive understanding of the current conditions and establish baseline data from which Consultant can project diversion needs, target key sectors and material types, and calculate diversion potential of various diversion programs and policy options. Consultant shall review background information such as the City's Agreements with Allied and the City's municipal code related to solid waste and recyclables handling. Review of these agreements and regulations will give Consultant an understanding of the scope of services currently provided to waste generators and the contract and regulations that govern those services. Consultant will focus on understanding the results of the current diversion programs and the existing program performance by collecting and reviewing data including:

- the City's annual reports to the state, historical tonnage reports on collected and diverted materials,
- customer account information, operational and cost information for collection and facilities,
- demographics, and
- business profile and development information.

Some of this information Consultant has already collected and other data Consultant can easily obtain through web-sources. Consultant may need to prepare requests for information to solicit tonnage, customer and operational data from Allied, and to request information from the City.

Consultant will use the collected information to provide a summary of current conditions, including diversion per capita. Consultant will obtain, review, and document potential regulatory changes that will affect the City's planning effort and, based on readily available information, identify potential impacts of such changes on the City's solid waste management system. Based on Consultant's recent and current work for the City of San José related to its residential and commercial collection, processing and disposal arrangements, and discussions with City staff, Consultant will identify and document changes in San José's programs that may affect Milpitas' current arrangements and future opportunities.

Consultant will summarize the review of current conditions by preparing tables of program and diversion information that document baseline performance information for each sector and summarize Consultant's findings regarding potential regulatory changes. Consultant will deliver the summary materials to the City for review before proceeding further in the process. The City can review and comment on the summary

assessment, and clarify current conditions.

***Task 21 - Identify Policy, Program and Facility Options***

Consultant asserts that it has developed an inventory of current and potential solid waste management programs and facilities through its solid waste planning experience. Consultant will assemble an in-house team of consultants that have been involved in high-diversion planning efforts for a range of clients. This team will hold a brainstorming session that will result in a comprehensive list of high-diversion program and policy options with an initial comparison based on relative cost and diversion (e.g., high, medium and low diversion potential and cost with comments for qualitative factors such as customer convenience and ease of administration). This list will be summarized and presented to the City for discussion via conference call. Options will generally be organized by sector (e.g., residential, commercial).

After receiving the City's input, the Consultant will hold a planning session of up to a full day in length, as needed, to solicit input on the list of options with the goal of short-listing up to 10 options for further analysis (under Task 22). The planning session can include representatives from the City and Allied (and others as the City desires). The day can be structured to include all parties for some or all of the meeting time or to schedule different stakeholders for different portions of the day. Following the planning meeting, Consultant will review the input received, and finalize a short-list of 10 program and policy options for City concurrence before proceeding to Task 22.

***Task 22 - Estimate Diversion Potential and Costs***

Task 22 will focus on evaluating the 10 options identified through Task 21. The evaluation will include providing more-detailed estimates of diversion potential for each option, their cost impacts, and a more-detailed and thorough bulleted discussion of qualitative factors related to implementation of each option. To estimate diversion potential and costs, Consultant will use program operational and cost data information collected during Task 20 for City's current programs and Consultant's in-house database of program performance benchmarks, cost, and diversion data. The diversion and cost estimates will be summarized in table format for each of the 10 options analyzed, creating a menu of options for the City's consideration. The diversion estimates will look at potential tons diverted and potential percent diverted, which will be converted into pounds per person, per day, to be consistent with the new state reporting method. Consultant will provide this table summary of the diversion and cost estimates and discuss the analysis with City via conference call.

As in Task 21, Consultant proposes to meet with City and other stakeholders to discuss the analysis with the goal of soliciting input to select the program and policy options that will be the focus of the City's High Diversion Plan. Consultant anticipates a four-hour meeting for this purpose and would encourage participation of the City and Allied (and others as the City desires). Following the planning meeting, Consultant will review the input received and work with the City to finalize, document, and present the program and policy options selected for the Master Plan.

**EXHIBIT B-1 - COMPENSATION SCHEDULE, PERSONNEL AND RATES\***

Tasks 10 - 14

Task/Description	Bob Hilton	Tracy Swanborn	Sima Mostafaei	Marisa Gan	Administrative	Total Hours	Total Cost
	\$245	\$210	\$155	\$125	\$90		
<b>Task 10 Planning Future Services &amp; Contract Terms</b>							
Summarize and document structure of agreement's), draft of key business terms (compared with existing terms and including Prop 218 issues), and details of services for review with City staff and Attorney	4	16	0	8	4	32	\$5,700
Facilitate half day planning session with City Staff and City Attorney	8	8	0	0	0	16	\$3,640
Follow-up with areas identified as requiring further analysis	2	8	0	8	0	18	\$3,170
Facilitate half day planning session with City Staff and City Attorney	6	8	0	0	0	14	\$3,150
Document findings, prepare report and present to City Council for concurrence	6	16	0	0	0	22	\$4,830
<b>Total Task 10</b>	<b>26</b>	<b>56</b>	<b>0</b>	<b>16</b>	<b>4</b>	<b>102</b>	<b>\$20,490</b>
<b>Task 11 Prepare Franchise Agreement</b>							
Draft Franchise Agreement	4	40	0	12	4	60	\$11,240
Distribute and present franchise agreement for comment to City Staff	1	6	0	0	0	7	\$1,505
Receive comments, seek clarification and prepare second draft franchise agreement	6	16	0	4	2	28	\$5,510
Distribute and present franchise agreement for comment to City Staff	6	6	0	0	0	12	\$2,730
Finalize franchise agreement based on City comments	1	8	0	0	1	10	\$2,015
<b>Total Task 11</b>	<b>18</b>	<b>76</b>	<b>0</b>	<b>16</b>	<b>7</b>	<b>117</b>	<b>\$23,000</b>

<b>Task 12 Distribute Agreement, Request and Evaluate Allied Proposal</b>							
Prepare cost proposal forms, meet with Allied and review forms and franchise agreement	4	12	8	0	4	28	\$5,100
Monitor Allied's preparation of proposal and respond to questions	0	8	0	0	0	8	\$1,680
Review Allied's proposal for completeness	0	2	2	4	0	8	\$1,230
Evaluate proposal based upon industry benchmarks	2	8	0	12	0	22	\$3,670
Prepare follow-up questions for Allied	1	4	2	0	0	7	\$1,395
Meet with City Staff and Allied for one half day to receive presentation and obtain answers to questions	4	8	8	0	2	22	\$4,080
Meet with City staff for one half day to identify and document areas for negotiation	4	8	0	4	4	20	\$3,520
<b>Total Task 12</b>	<b>15</b>	<b>50</b>	<b>20</b>	<b>20</b>	<b>10</b>	<b>115</b>	<b>\$20,675</b>
<b>Task 13 Negotiate Final Franchise Agreement and Rates</b>							
Participate in three negotiating sessions with City Staff and Allied	24	40	0	16	0	80	\$16,280
Review and/or revise franchise agreement	4	24	0	0	3	31	\$6,290
Meet with City Staff and Allied to finalize agreement	4	4	0	0	0	8	\$1,820
Finalize franchise agreement	2	12	0	12	0	26	\$4,510
Additional negotiation sessions – To be performed at direction of City staff	8	8	0	0	2	18	\$3,820
Rate Modeling – To be performed at the direction of City staff	2	8	40	0	2	52	\$8,550
<b>Total Task 13</b>	<b>44</b>	<b>96</b>	<b>40</b>	<b>28</b>	<b>7</b>	<b>215</b>	<b>\$41,270</b>
<b>Task 14 Present Recommendations to City Council</b>							
Prepare or review City staff report to Council and prepare Council presentation	2	8	0	2	2	14	\$2,600
Attend Council Meeting	4	4	0	0	0	8	\$1,820
<b>Total Task 14</b>	<b>6</b>	<b>12</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>22</b>	<b>\$4,420</b>
<b>Task 15 Engagement Management</b>	<b>12</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>32</b>	<b>\$6,660</b>
<b>Project Total Cost</b>							
<b>Labor</b>	<b>121</b>	<b>306</b>	<b>60</b>	<b>82</b>	<b>34</b>	<b>603</b>	<b>\$116,515</b>
<b>Expense</b>							<b>\$1,250</b>
<b>Total Project 2 Cost</b>							<b>\$117,765</b>

Tasks 20 - 22

Task/Description	Bob Hilton	Peter Deibler	Tracy Swanborn	Rob C. Hilton	Colleen Costine	Marisa Gan	Administrative	Total Hours	Total Cost
	\$245	\$210	\$155	\$175	\$175	\$125	\$90		
<b>Task 20 Document Current and Projected Conditions</b>									
Gather and Review background information; prepare request for information letters for Allied & City	2	4	0	0	2	6	2	16	\$2,610
Document baseline for current programs, sectors, materials	2	8	0	0	2	16	2	30	\$4,700
Identify and document potential areas of regulatory change	1	8	0	0	0	12	4	25	\$3,785
Identify and document changes in the San Jose system that may affect Milpitas	2	8	0	0	0	4	0	14	\$2,670
Summarize current and projected conditions	2	4	1	1	0	2	2	12	\$2,145
<b>Total Task 20</b>	<b>9</b>	<b>32</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>40</b>	<b>10</b>	<b>97</b>	<b>\$15,910</b>
<b>Task 21 Identify Program and Policy Options</b>									
Prepare comprehensive list of program and policy options	1	8	0	0	4	12	2	27	\$4,305
Conduct HF&H brainstorming session	2	2	2	2	0	2	0	10	\$1,930
Discuss with City via conference call	2	2	0	0	0	0	0	4	\$910
Conduct planning session w/ City and Republic to discuss options and prepare short list	6	8	0	0	0	0	2	16	\$3,330
Recommend programs/policy options for future analysis	2	4	1	1	1	0	2	11	\$2,070
<b>Total Task 21</b>	<b>13</b>	<b>24</b>	<b>3</b>	<b>3</b>	<b>5</b>	<b>14</b>	<b>6</b>	<b>68</b>	<b>\$12,545</b>

<b>Task 22 Estimate Diversion Potential and Costs</b>									
Estimate diversion potential	2	8	1	1	10	0	0	22	\$4,305
Estimate costs	2	8	1	1	10	0	0	22	\$4,305
Prepare for and discuss analysis with City	4	6	0	0	0	0	2	12	\$2,420
Conduct 4-hour planning session with City and Republic to review diversion and cost analysis and develop recommendations for programs and policies to be included in the diversion plan	8	8	0	0	0	0	0	16	\$3,640
Finalize, document and present analysis and recommendations	10	14	0	0	2	5	4	35	\$6,725
<b>Task 22 Total</b>	<b>26</b>	<b>44</b>	<b>2</b>	<b>2</b>	<b>22</b>	<b>5</b>	<b>6</b>	<b>107</b>	<b>\$21,395</b>
<b>Total Project Cost</b>									
<b>Labor</b>	<b>48</b>	<b>100</b>	<b>6</b>	<b>6</b>	<b>31</b>	<b>59</b>	<b>22</b>	<b>272</b>	<b>\$49,850</b>
<b>Expenses</b>									<b>\$135</b>
<b>Total</b>									<b>\$49,985</b>