



SHORT FORM PURCHASE OF SERVICE CONTRACT

The parties to this Short Form Purchase of Services Contract (Contract) do mutually agree and promise as follows:

1. **Parties.** The parties to this Contract are the CITY OF MILPITAS, CALIFORNIA, a municipal corporation (City) and the following named Contractor: **Alice Wright**

(Contact Name) **Alice Wright**
(Street Address) **3133 Drywood Ln.**
(City/State/Zip Code) **San Jose, CA 95132**
(Telephone) **408-262-5672**
(Email Address) **sofia316@earthlink.net**
(Fax Number) **N/A**
(Taxpayer ID #) **565-71-2981**
(Milpitas Business License #) **31620**

2. **Term.** The effective dates of this contract are **January 18, 2010** thru **June 30, 2010** and **November 1, 2010** thru **June 30, 2011** with a one (1) year option for renewal unless sooner terminated as provided herein.

3. **Payment Limit.** City's total payments to Contractor under this contract shall not exceed: **\$24,250.00. See attached – Compensation Manner and Amount – Exhibit C**

4. **Contractor's Obligations.**

(a) To the satisfaction of the City's Project Manager, Contractor shall provide the following services: **See attached - Scope of Work – Exhibit B**

(b) Contractor shall perform the above-referenced services at the following specified location/s: **City wide per Exhibit D**

(c) Name or type of service: **Abandoned Shopping Cart Retrieval Service**

5. **City's Obligations.** City shall pay Contractor as follows: **Not-To-Exceed \$24,250.00** total payment for all services rendered.

6. **Supplemental Conditions.** This Contract is subject to the Supplemental Conditions attached hereto, which are incorporated herein by reference.

7. **Signatures.** These signatures attest the parties' agreement hereto:

CONTRACTOR:

Name and Title

CITY OF MILPITAS, CALIFORNIA
a municipal corporation:

By: _____
City Manager

Approved as to form:

By: _____
City Attorney

Approved as to content:

By: _____
City Project Manager

Approved as to Insurance:

By: _____
City Risk Manager

Prepared by City Purchasing Agent

SUPPLEMENTAL CONDITIONS

1. Independent Contractor. It is expressly agreed that Contractor is to perform the services described herein as an independent contractor pursuant to California Labor Code Section 3353, under the control of the City as to the result of his work only but not as to the means by which such result is accomplished. Nothing contained herein shall in any way be construed to make Contractor or any of its agents or employees, an agent, employee or representative of the City. Contractor shall be entirely responsible for the compensation of any assistants used by Contractor in providing said services.
2. Termination. This Contract shall automatically terminate when the total accumulated compensation paid or due to Contractor under this Contract reaches **\$24,250.00**. The City shall not be responsible for compensating Contractor for any amounts in excess of **\$24,250.00**.
3. Cancellation. Either the City or Contractor may cancel this Contract at any time upon giving the other party five (5) days' written notice of such cancellation. In the event of cancellation, the City shall be liable only to pay to the Contractor compensation for services rendered up to the date of the Contract's cancellation.
4. Assignment. Contractor shall not assign this Contract, or any part thereof, or any right of the Contractor hereunder without the prior written consent of the City.
5. Indemnity. Contractor shall indemnify, defend and hold the City harmless from and against all claims, demands and causes of action for injury, death or damage to any person or property which may arise or result from the contractor's performance of this Contract or from acts or omissions of any person(s) employed by Contractor.
6. Anti-Discrimination. Contractor agrees to observe the provisions of the City of Milpitas Standard Operating Procedure 16.8 "Anti-Discrimination Policy" and Title VII of the Civil Rights Act of 1964, obligating every contractor or subcontractor under a contract or subcontract to the City of Milpitas for public works or for goods or service to refrain from discriminatory employment practices on the basis of the race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee of, or applicant for employment with, such contractor or subcontractor.
7. Business License. Pursuant to the City of Milpitas Municipal Code, Title III Business and Professions, Section 1-4.01 Requirement and Special Exemptions ... "it shall be unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the City of Milpitas without first having procured a license from said City ..."
8. Insurance. During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the following insurance requirements: **See Exhibit A – Insurance Requirements General**



EXHIBIT A INSURANCE REQUIREMENTS - GENERAL

Definition:

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

Insurance Required:

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the CONTRACTOR allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The CONTRACTOR shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's general liability insurance for the benefit of his employees and the employees of any subcontractor under him not protected by such compensation laws.

Minimum Scope of Insurance:

Coverage shall be *at least as broad as*:

1. Insurance Services Office Form CG 0001 covering Commercial General Liability on an "occurrence" basis.
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Minimum Limits of Insurance:

Contractor shall maintain limits no less than:

1. **General Liability:** (Including operations, products and completed operations.)

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage.
3. **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Other Insurance Provisions:

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. **The City, its officers, officials, employees, and volunteers are to be covered as insureds** with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85), or as a separate owner's policy.
2. For any claims related to this project, the **Contractor's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the **Contractor's insurance and shall not contribute with it.**
3. The Insurance Company agrees to **waive all rights of subrogation** against the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This provision also applies to the Contractor's Workers' Compensation policy.
4. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after **thirty (30) days' prior written notice (10 days for non-payment)** by certified mail, return receipt requested, has been given to the City.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage:

Contractor shall furnish the City with original certificates and amendatory endorsements affecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

Absence of Insurance:

If the CONTRACTOR allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered CONTRACTOR's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

EXHIBIT B

SCOPE OF CONTRACTOR'S DUTIES AND SERVICES

1. Contractor shall retrieve shopping carts located off premises within Milpitas City limits. Off premise is defined as areas other than the properties containing the store that owns the shopping cart. Contractor shall conduct two (2) daily sweeps along the route included as Exhibit D seven days a week, except City recognized holidays. In addition, Contractor shall respond to retrieval requests from citizens, stores, and the City from specified locations. Exhibit D may be modified during the term of this contract as deemed necessary by the City.
2. All unidentifiable carts shall be taken to a recycle facility. If the cart cannot be recycled than it may be taken to the Newby Island Landfill and the City will provide the Contractor necessary documentation to dispose of the carts at the landfill at no charge to the Contractor.
3. The City will provide the Contractor a current list of stores participating in the City's Shopping Cart Retrieval Program (Participating Stores). All carts collected belonging to Participating Stores shall be returned to the store by the Contractor the same day they are collected. A signature shall be obtained by the store representative confirming the number of carts returned. Stores that elect to have their own retrieval program are defined as Non-Participating Stores.
4. All carts collected belonging to Non-Participating Stores shall be delivered to an impound yard provided by the City. Said carts shall be clearly labeled with the date of collection. Contractor may release impounded carts to a representative of the Non-Participating Store that have a collection date less than 4-business days from the date of retrieval. Any cart dated 4-business days or more may not be released without prior approval by the City indicating all necessary fines have been paid. Contractor shall set-aside time every business day to meet representatives of Non-Participating Store at the impound yard for cart retrieval. A signature shall be obtained from the representative retrieving the carts with a date and number of carts retrieved. Any cart impounded for more than 30 days shall be disposed of by the Contractor in a manner approved by the City.
5. Contractor shall provide the City a daily accounting of the number of carts collected from Non-Participating Stores. The daily accounting shall be provided by e-mail to ganaya@ci.milpitas.ca.gov or fax to (408) 586-3069. The daily accounting shall also include carts retrieved at the impound yard and all carts remaining in the yard 4-days after collection.
6. Contractor shall allow City staff to ride along at City's discretion upon 24-hour notice to verify compliance.

EXHIBIT C

COMPENSATION MANNER AND AMOUNT

The Contractor shall submit to the City on a monthly basis a detailed invoice that shall specify at least the following for each cart retrieved:

- a. Date and location of pickup
- b. Name of store and notation if a Participating or Non-Participating Store
- c. Date and signature of responsible party receiving the cart

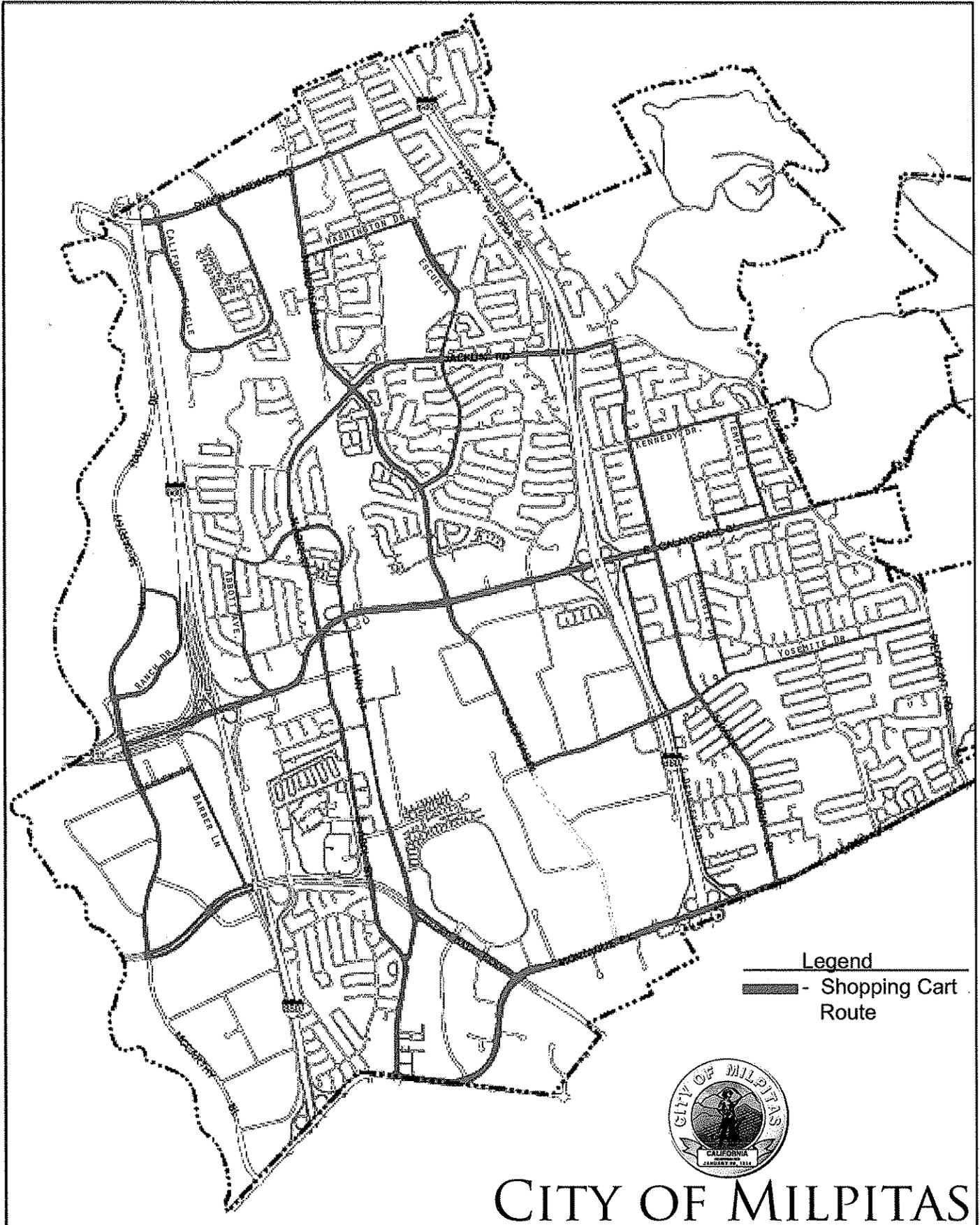
The quantity of carts and pick-up dates shown on the invoice shall reconcile with the daily reports of carts collected from Non-Participating Stores.

The total compensation shall not exceed Twenty-Four Thousand Two Hundred and Fifty dollars (\$24,250.00). Eight Thousand Two Hundred and Fifty dollars (\$8,250.00) consisting of a flat fee of \$1,500.00 X 5.5 months for the period January 18, 2010 to June 30, 2010.

City shall pay the Contractor Sixteen Thousand dollars (\$16,000.00) for the period November 1, 2010 to June 30, 2011 based on a flat fee not to exceed Five Hundred Dollars (\$500.00) per month and an amount not to exceed three dollars (\$3.00) per shopping cart collected and processed in accordance with this contract.

City shall pay Contractor within thirty (30) working days of receipt of the invoice.

EXHIBIT D SHOPPING CART ROUTE MAP



Legend
- - Shopping Cart Route



CITY OF MILPITAS