

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

This Amendment is entered into this 18th day of June, 2013, 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, a California Limited Liability Company (hereafter referred to as "CONSULTANT").

**RECITALS**

- A. WHEREAS, the parties entered into an Agreement on August 4, 2009 entitled "Consultant Services Agreement between the City of Milpitas and HF&H Consultants, LLC for Solid Waste Services ("Agreement"); and
- B. WHEREAS, the parties desire to amend the Agreement to increase the scope of work and compensation by \$28,446 for a total amount not to exceed \$236,696;

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 to read as follows:

"Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A, A-1 and A-2 at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, A-1 and A-2, the Agreement shall prevail."

- 2. Section 2, entitled "Compensation", is amended to read as follows:

"Compensation. City hereby agrees to pay Consultant a guaranteed maximum price not to exceed \$236,696 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing services shall be as shown in Exhibits B, B-1 and B-2. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement."

3. Section 2.5, entitled "Reimbursable Expenses", is amended to read as follows:

"Reimbursable expenses are shown on Exhibit B, B-1 and B-2, and shall not exceed six hundred and thirty-five dollars (\$635). Expenses not listed in Exhibit B, B-1 and B-2 are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement."

4. Section 4.1, entitled, "Workers' Compensation", the second paragraph is amended to read as follows:

"Consultant shall provide the City with thirty (30) days prior written notice for any planned reduction in coverage or planned non-payment of premium."

5. Subsection e of Section 4.2.3, entitled "Additional requirements", is amended to read as follows:

"Consultant shall provide the City with thirty (30) days prior written notice for any planned reduction in coverage or planned non-payment of premium."

6. Subsection 4.3.2 of Section 4.3, entitled "Professional Liability Insurance", is amended to read as follows:

"Consultant shall provide the City with thirty (30) days prior written notice for any planned reduction in coverage or planned non-payment of premium."

7. CONSULTANT agrees to continue maintain and pay for all insurance policies as stated in Section 4, entitled "Insurance Requirements" of the Agreement. CONSULTANT shall provide CITY with renewal certificates of the current policies upon the expiration of the current policy.

8. Exhibit A-2 attached to this Amendment No. 2 is fully incorporated by reference to the Agreement.

9. Exhibit B-2 attached to this Amendment No. 2 is fully incorporated by reference to the Agreement.

10. All other provisions of the Agreement not amended by this Second Amendment shall remain in full force and effect.

This Amendment is executed as of the date written on page 1.

PROJECT NAME: 2014-2015 Solid Waste Rate Review

CITY COUNCIL APPROVAL

PROJECT NO.: NA

DATE: 6/18/13

APPROVED BY:

CITY OF MILPITAS

CONSULTANT

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

\_\_\_\_\_  
Marva M. Sheehan, Vice President

APPROVE AS TO CONTENT:

\_\_\_\_\_  
Jeff Moneda, Public Works Director/City Engineer

APPROVED AS TO FORM:

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

## **EXHIBIT A - 2 SCOPE OF WORK**

The work consists of reviewing the proposed rate proforma submitted by Allied Waste Services of North America, Inc dba Republic Services of Santa Clara County (Republic).

### **Task 1: Prepare for and Attend Kick-Off Meeting (via Conference Call)**

We have assumed preparing for, facilitating and documenting the kick-off meeting to discuss the City's goals and objectives with Republic.

### **Task 2: Review Republic's Rate Adjustment Statement**

#### **Subtask 2a: Mathematical Accuracy and Logical Consistency**

HF&H shall review the mathematical accuracy and logical consistency of Republic's Rate Adjustment Statement in which it calculates the rate adjustment, as well as to confirm its compliance with the terms of the existing agreement.

#### **Subtask 2b: Indices**

We will verify the calculation of the indices used to adjust the collection rates, ensuring compliance with the current contractual requirements. We understand that the calculated indices are applied to the current rates, not to individual cost components. Thus, we do not anticipate performing tasks normally associated with a detailed rate review, such as verifying the reasonableness of Republic's costs of service, unless Republic submits a claim for extraordinary costs (see Subtask 2d below).

#### **Subtask 2c: Non-Recurring or Fully Amortized Costs**

HF&H will identify any non-recurring or fully amortized costs (e.g., household dump day overage reimbursement) that should be deleted prior to applying the applicable CPI adjustment.

#### **Subtask 2d: Extraordinary Cost Review**

We will review Republic's claim, if any, for reimbursement of any extraordinary cost increases for appropriateness and reasonableness. We understand that, in past rate adjustments, these claims have included adjustments to the per ton disposal rate, unanticipated increases in liability insurance costs, and extraordinary increases to workers compensation premiums and fuel expenses. We will review Republic's supporting documentation in light of our industry knowledge and experience in reviewing other Republic divisions in the last year. Often, the hauler will have other costs that are less than anticipated and offset the extraordinary increases in these costs.

#### **Subtask 2e: Subtitle D Costs**

We will review Republic's calculation of the annual Subtitle D costs related to the landfill, including verifying the proper calculation of interest expense.

#### **Subtask 2f: City Fees**

We understand the City is not planning on changing its fees. We will review the current model to ensure the existing fees are calculated properly.

**Subtask 2g: Calculate Adjusted Solid Waste Rates**

We will recalculate the necessary rates (by service type and service level), based on our findings and recommended adjustments from the subtasks described above.

**Subtask 2h: Communicate Preliminary Results of Analysis**

The engagement director and engagement manager will communicate the preliminary results to Republic and City staff.

**Task 3: Communicate Results****Subtask 3a: Prepare Preliminary Letter Report**

Based on the completion of each of the above tasks, we will develop a preliminary draft letter report for staff review. Our report will contain the recommended rate schedule tables. We will present this report in person to ensure adequate understanding of our findings and staff comments. This report basically functions as a working document intended to illicit staff comments and direction.

**Subtask 3b: Prepare Final Letter Report**

As appropriate, we will incorporate staff comments and submit a draft report for review by City staff and Republic staff. Upon receipt of final comments, we will finalize the draft and issue a final engagement report.

**Subtask 3c: Prepare for and Attend Council Meeting (Optional)**

At the request of City staff, we will present our recommendations to the City Council at one public hearing and be available at that meeting to answer questions of the Council and member of the public. If additional public hearings or Council workshops are necessary, we will be pleased to participate on a time-and-materials basis.

**Task 4: Engagement Management**

We 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.

**Schedule**

Recognizing that we rely upon Republic for the timely preparation of documents and response to our questions, we plan to perform this engagement in accordance with the following schedule:

<b>Task Description</b>	<b>Deliverable</b>	<b>Dates</b>
1. Kick-off Meeting with City and Republic (Conference Call)	Agenda	Early July
2. Review Republic's Rate Adjustment Statement		July - August
3. Communicate Findings: <ul style="list-style-type: none"> <li>• Issue Draft Letter Report</li> <li>• Issue Final Letter Report</li> <li>• Council Presentation (Optional)</li> </ul>	Letter Report	August 16, 2013 August 30, 2013 TBD

Our ability to achieve this schedule is dependent upon the cooperation of both City and Republic staff. We will look to City staff to effectively represent the objectives of the engagement. Additionally, we anticipate that staff will provide complete and timely responses to our requests for documents and information. Finally, we expect staff to review material sent in a timely manner and to actively participate in engagement meetings.

Similarly, we will look to Republic staff to effectively represent their company. Additionally, we anticipate that they will provide complete and timely responses to our requests for documents, information and answers to our questions. Finally, we expect them to review material sent to them and actively participate in engagement meetings.

### **Staffing**

I will be the engagement director and principal contact for the City as I was during the conduct of the last biennial review. I have over 30 years of auditing and accounting experience of which more than 20 years have been in the solid waste industry. I will be responsible for the overall satisfaction of the City with the performance of this review. I will attend all meetings with the City and Republic throughout the engagement.

Sima Mostafaei will serve as the engagement manager and will participate in kick-off meeting with the City and Republic staff. Ms. Mostafaei was intricately involved during the last biennial review and she will provide a continuity and efficiency for establishing any goals and objectives that were discussed during the previous review that the City may want to revisit. Ms. Mostafaei has over ten years of accounting and auditing experience, with over four years in the solid waste industry.

Ms. Sheehan and Ms. Mostafaei may be assisted by less senior staff that will perform more routine tasks under their supervision.

### **Budget**

We bill for our services based on our standard hourly rates and out-of-pocket expenses for local travel. Attached is a fee estimate (Exhibit B-2) showing the hours by staff member assigned to perform each task. Our not to exceed budget for this engagement to review and evaluate Republic's 2014 and 2015 rate application is \$28,446.

**EXHIBIT B-2  
COMPENSATION SCHEDULE**

		Sheehan	Mostafaei	Erwin	Total	Proposed
		\$235	\$170	\$98	Hours	Cost
<b>Task 1 Kick-off Meeting</b>						
1a	Prepare for and attend kick-off meeting (Conference Call)	1	2	0	3	\$575
	<b>Task 1</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>3</b>	<b>\$575</b>
<b>Task 2 Review Republic's Rate Adjustment Statement</b>						
2a	Mathematical Accuracy and Logistical Consistency	6	18	0	24	\$4,470
2b	Indices	0	2	0	2	\$340
2c	Non-Recurring or Fully-Amortized Costs	4	8	0	12	\$2,300
2d	Extraordinary Cost Review	2	8	0	10	\$1,830
2e	Subtitle D Costs	2	12	0	14	\$2,510
2f	City Fees	1	2	0	3	\$575
2g	Calculate Adjusted Solid Waste Rates	2	8	0	10	\$1,830
2h	Communicate Preliminary Results of Analysis	4	8	0	12	\$2,300
	<b>Task 3</b>	<b>21</b>	<b>66</b>	<b>0</b>	<b>87</b>	<b>\$16,155</b>
<b>Task 3 Communicate Results</b>						
3a	Prepare Preliminary Letter Report	8	16	0	24	\$4,600
3b	Prepare Final Letter Report	4	6	2	12	\$2,156
3c	Prepare for and Attend Council Meeting (optional)	8	4	0	12	\$2,560
	<b>Task 4</b>	<b>20</b>	<b>26</b>	<b>2</b>	<b>48</b>	<b>\$9,316</b>
<b>Task 4 Engagement Management</b>						
		4	8	0	12	\$2,300
<b>Total Costs</b>						
	<b>Labor</b>	46	102	2	150	\$28,346
	<b>Out-of-Pocket Expenses</b>					\$100
	<b>Total Budget</b>					<b>\$28,446</b>