CITY OF NEWARK
CITY COUNCIL

City Administration Building, City Council Chambers

37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org

AGENDA

Thursday, April 13, 2023
7:00 P.M.

A. ROLL CALL

B. PRESENTATIONS

1. Commending the City of Newark Maintenance Division for their outstanding storm response efforts

2. Proclaim April as Fair Housing Month

3. Proclaim April 23rd to April 29th as National Crime Victims' Rights Week

C. PUBLIC COMMENT

The public is invited to address the City Council on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Council from acting on non-agenda items.

D. CONSENT CALENDAR

Consent Calendar items are considered to be routine and may be approved by one motion. There will be no separate discussion on these items unless there is a request by a Council Member, a staff member, or a member of the public to remove an item for separate discussion and action.

1. Audited Demands

2. Approval of March 23, 2023 minutes

3. Adopt a Resolution Approving a First Amendment to Contractual Services Agreement with Metropolitan Planning Group for On-Call Planning Services

4. Adopt a Resolution approving an agreement with the County of Alameda for participation in the County of Alameda Strategic Vision Initiative – VISION 2026 Community Grant program and amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023

5. Adopt a resolution accepting work with Rosas Brothers Construction for FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279. Exempt from CEQA Review per CEQA Guidelines Section 15301 (Existing Facilities)

6. Adopt a Resolution authorizing the City Manager to execute the first amendments to the Contractual Services Agreements with Baird + Driskell Community Planning (Community Planning Collaborative) and Environmental Sciences Associates, Inc. and authorizing amendment of the 2022-2024 Biennial Budget for Fiscal Year 2023 to provide funding for consultant services related to the 2023-2031 Housing Element

7. Approval of plans and specifications and adopt a resolution accepting the bid and awarding the contract for the Base Bid and Additive Alternate Bid No. 1 to VSS International, Inc. for Cherry Street Class IV Separated Bikeways, Project 1254 and amending the 2022-2024 Biennial Budget for Fiscal Year 2023; Exempt from CEQA Review per CEQA Guidelines Section 15301

8. Approval of the plans and specifications and adopt a resolution accepting the bid and awarding the contract for the total bid to Contract Decor, Inc. for Window Coverings for Newark Civic Center, Project 1353 and amending the 2022-2024 Biennial Budget for Fiscal Year 2024; Exempt from CEQA Review per CEQA Guidelines Section 15301 (Existing Facilities)

9. Adopt a resolution authorizing the City Manager to execute an Agreement with Alameda County to restore library service hours and amend the Fiscal Year 2024 budget

E. PUBLIC HEARINGS

1. Public hearing pursuant to Government Code Sections 4217.10, et seq. to adopt certain findings and to adopt a resolution authorizing the City Manager to execute an energy services agreement with Syserco Energy Solutions (SES) in an amount not to exceed $1,598,265 and approving an amendment to the biennial budget and to adopt a resolution authorizing the City Manager to apply for the Energy Conservation Assistance Act (ECAA) loan from the California Energy Commission and to execute any necessary loan documents. Exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines

F. OTHER BUSINESS

1. Adopt a Resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023 for Capital Improvement Plan budget rollovers

2. Adopt a resolution approving a ten-year extension to the Franchise Agreement with Allied Waste Services of North America LLC (Republic Services) for collection of solid waste and collection and processing of source separated recyclable material, organic materials, and construction and demolition debris and revising the maximum limit for rates for solid waste collection, recycling, organics, and construction and demolition debris services starting on June 1, 2023

G. CITY COUNCIL MATTERS

City Council Members report on attendance at intergovernmental agency meetings, conferences, and seminars since the last meeting. City Council Members may also announce upcoming events and coordinate attendance; report on local events attended since the last meeting; and make brief comments on issues of concern.

H. CLOSED SESSION

1. Conference with legal counsel - Existing Litigation
Pursuant to California Government Code Section 54956.9(d)(1)
Name of Case: In re National Prescription Opiate Litigation, Northern District of Ohio (National opioid litigation involving Teva, Allergan, CVS, Walgreens, and Walmart)
Case No. 1:17-MD-2804

I. ADJOURNMENT

MEETING INFORMATION

Members of the public may attend the meeting in person, virtually via Zoom, or watch it via YouTube or Cable Channel 26. If you attend the meeting in person, a face covering is recommended but not required.

How to view the meeting remotely:
Livestream online at YouTube: https://www.youtube.com/@cityofnewark3077/streams
Copy/paste the YouTube URL into your browser if the link does not automatically open.

How to participate in the meeting remotely, via Zoom Webinar:
From a PC, Mac, iPad, iPhone or Android device: https://us06web.zoom.us/j/82516012597

From a telephone dial 1- 669-900-9128, Webinar ID 82516012597

Provide live, remote public comments, when the Mayor calls for comments. Use the raise your hand feature in Zoom to be called upon by the City Clerk.

For frequently asked Zoom questions, please go to Agendas and Minutes and select the Frequently Asked Questions link.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:

The agenda packet is available for review at Agendas and Minutes. The packet is typically posted to the City website the Friday before the meeting, but no later than 72 hours before the meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and will be posted, if time allows, at Agendas and Minutes. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the City Clerk at least two days prior to the meeting at City Clerk or 510-578-4266.

STAFF REPORT

Item B. 1.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Commending the City of Newark Maintenance Division for their outstanding storm response efforts

Over the last three months, City of Newark Maintenance Division has prepared for and responded to serious storm events. They have worked tirelessly for extended hours, including overnight hours, in order to clear downed trees and branches, resolve flooding issues, help residents obtain sandbags, and keep City streets clear and safe.

A commendation has been prepared to honor the Maintenance Division for their ongoing dedication to the City of Newark and the Newark community and thank them for their outstanding storm response efforts.

Attachments

Commendation

COMMENDING THE CITY OF NEWARK MAINTENANCE DIVISION

WHEREAS, a continuous series of powerful winter storms with multiple atmospheric rivers have poured across the Bay Area region and State of California in the last several months, providing much needed rainfall and welcomed drought relief; and

WHEREAS, these storms have also seriously impacted most California jurisdictions with ongoing rain and/or snow, high-intensity precipitation events, and multiple windstorms resulting in catastrophic flooding, downed trees, and in many cases permanent significant damage to homes, businesses and public infrastructure; and

WHEREAS, many of the major storm events in the Bay Area that occurred between late December, 2022 through Tuesday, March 14, 2023 have impacted the City of Newark; these include several windstorm events with sustained winds up to 50 miles per hour and wind gusts approaching 70 miles per hour, multiple lengthy periods of significant rainfall, and several extremely high-intensity rainfall events all of which resulted in localized flooding, full flood control channels, many downed trees and branches, and debris scattered through local streets and parks; and

WHEREAS, the City of Newark's Maintenance Division has responded to each of these storm events by working tirelessly for extended hours, including overnight hours in many cases, in order to clear downed trees and branches, resolve flooding issues, help residents obtain sandbags, and keep City streets clear and safe, among other duties; and

WHEREAS, advanced storm preparation efforts by the Maintenance Division helped prevent any serious permanent damage to the City's infrastructure and minimized the overall adverse impact to residents and businesses; and

WHEREAS, all Maintenance Division team members are to be recognized for their outstanding efforts, including Francisco Aguirre, Warren Antida, Jason Avery, Luis Bailon, Dan Cianciarulo, Tonya Connolly, Thomas Curtis, Brandon Gordon, Neal Hornbeck, Lorenzo Houle, Nick Icasiano, Brian Lewis, Josue Lopez-Duenas, Gustavo Perez, Ryan Perez, Jackson Posadas, Jose Rodriguez, Raymundo Ruiz, Miguel Sanchez-Casillas, Jennifer Tran and Mark Valdez.

NOW, THEREFORE, I, Michael K. Hannon, Mayor of the City of Newark, on behalf of the Newark City Council, do hereby commend

The entire City of Newark Maintenance Division

for their ongoing dedication to the City of Newark and the Newark community and thank them for their outstanding efforts over the last three months in responding to these serious storm events.

IN WITNESS THEREOF, I have hereunto set forth my hand and caused the Official Seal of the City of Newark, State of California, to be affixed this Twenty-third Day of March, Two Thousand Twenty-Three.

MICHAEL K. HANNON
Mayor

STAFF REPORT

Item B. 2.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Proclaim April as Fair Housing Month

This year is the 55th anniversary of the passage of the Fair Housing Act, the landmark civil rights law signed by President Lyndon B. Johnson that made discrimination in housing transactions unlawful. The Fair Housing Act prohibits discrimination in housing because of race, color national origin, religion, sex (including gender identity and sexual orientation), disability, and familial status. A proclamation has been prepared proclaiming April as Fair housing month and will be presented to a member of the Bay East Association of REALTORS®.

Attachments

Proclamation

PROCLAMATION NO. 1887

FAIR HOUSING MONTH

WHEREAS, the passage of the Fair Housing Act in 1968 enshrined into federal law the goal of eliminating racial segregation and ending housing discrimination in the United States; and

WHEREAS, the Fair Housing Act prohibits discrimination based on race, color, religion, sex, disability, familial status and national origin, and

WHEREAS, fair housing is a positive community good, benefitting the environment and our social fabric; and

WHEREAS, economic stability, community health, and human relations in all communities are improved by diversity and integration; and

WHEREAS, Fair Housing is integral to the ethical commitment of members of the National Association of REALTORS® and the Bay East Association of REALTORS® and is critical to the ability of all real estate professionals to serve their clients, customers and communities; and

WHEREAS, acts of housing discrimination and barriers to equal housing opportunity are repugnant to a common sense of decency and fairness.

NOW, THEREFORE, I Michael K. Hannon, Mayor of the City of Newark, on behalf of the Newark City Council, do hereby proclaim April 2023 as

FAIR HOUSING MONTH

in Newark, establish the City of Newark as an inclusive community committed to fair housing, and promote appropriate activities by private and public entities providing and advocating for equal housing opportunities for all residents and prospective residents of Newark.

IN WITNESS THEREOF, I have hereunto set forth my hand and caused the Official Seal of the City of Newark, State of California, to be affixed this Thirteenth Day of April, Two thousand twenty-three.

MICHAEL K. HANNON
Mayor

STAFF REPORT

Item B. 3.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Proclaim April 23rd to April 29th as National Crime Victims' Rights Week

A proclamation has been prepared declaring April 23rd to April 29th as National Crime Victims' Rights Week. This proclamation recognizes the efforts being made to assist crime victim survivors. A representative from the Alameda County District Attorney's Office Victim/Witness Assistance Division will accept the proclamation.

Attachments

Proclamation

Proclamation No.
NATIONAL VICTIMS' RIGHTS WEEK
April 23-29, 2023

Whereas, more than 26 million people become victims of crime each year, and these crimes affect family members, friends, neighbors, and co-workers. The Alameda County Victim-Witness Division is dedicated to ensuring the rights of crime victims and their families by providing services to aid in their recovery from the emotional, psychological, social and economic impact of crime as they reclaim their sense of safety, well – being and dignity. The Victim/Witness staff assists victims of crime without regard to a person's race, gender, religion, nationality, sexual orientation, and gender identity or immigration status; and

Whereas, the Alameda County District Attorney's Office Victim/Witness Assistance Program was the first such program established in 1974, beginning with one Victim Advocate. Today, the Alameda County District Attorney's Office employs more than 60 individuals dedicated to working with Victims of Crime; and

Whereas, in 1984, the Crime Victims Fund was established by the Victims of Crime Act to provide a permanent source of support for crime victim services and compensation. Alameda County District Attorney's Office Victim-Witness Assistance Division partners with survivors, community service providers, criminal justice professionals and victims to enhance a criminal justice system response that is accessible, culturally competent, and appropriate for all victims of crime; and

Whereas, in 2022, the Alameda County District Attorney's Office Victim/Witness Assistance Division provided over 1,651 services to 289 crime victims in Newark. For victims of crime without financial means, the District Attorney's office facilitated financial support through the victim Compensation Program; and,

Whereas, National Victims' Rights Week, provides an opportunity to celebrate the energy, creativity and commitment that launched the victims' rights movement, inspired its progress, and continues to advance the cause of justice for crime victims.

NOW, THEREFORE, I, Michael K. Hannon, Mayor of the City of Newark, on behalf of the Newark City Council, do hereby proclaim April 23-29, 2023

National Victims' Rights Week

and reaffirm the commitment to respect and enforce victims' rights and addressing their needs and express our appreciation for those victims of crime who have turned personal tragedy into a motivating force to improve the response to victims of crime and build a more just community.

Michael K. Hannon, Mayor

STAFF REPORT

Item D. 1.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Audited Demands

Approval of Audited Demands

Attachments

Audited Demands

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 03/09/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	03/09/2023	7856 Accounts Payable	34TH STREET INC.		5,982.90
	Invoice	Date	Description		Amount
	2022-78	11/30/2022	CONFLICT RESOLUTION, CULTURE ASSESSMENT, COMMUNICATION, PROFE		2,357.45
	2022-79	11/30/2022	CITYWIDE COMMUNICATION TRAINING		3,005.45
	2022-70	10/13/2022	CONFLICT RESOLUTION, CULTURE ASSESSMENT, COMMUNICATION, PROFE		620.00
Check	03/09/2023	7857 Accounts Payable	4LEAF INC		14,755.00
	Invoice	Date	Description		Amount
	J3962Q	02/23/2023	TEMP PROFESSIONAL PLANNING SRVCS-SECOND AMENDMENT 01/01-01/31/23		14,755.00
Check	03/09/2023	7858 Accounts Payable	HEALTH AND HUMAN RESOURCES CENTER, INC.		495.72
	Invoice	Date	Description		Amount
	E0285403	01/12/2023	EMPLOYEE ASSISTANT PROGRAM (EAP)-JANUARY 23		247.86
	E0285404	01/12/2023	EMPLOYEE ASSISTANT PROGRAM (EAP)-FEBRUARY 23		247.86
Check	03/09/2023	7859 Accounts Payable	ALLDATA		1,661.25
	Invoice	Date	Description		Amount
	030423-030324	01/25/2023	ALLDATA SUBSCRIPTION RENEWAL 03/04/23-03/03/24		1,661.25
Check	03/09/2023	7860 Accounts Payable	ALLIED AUTO STORES INC		881.40
	Invoice	Date	Description		Amount
	FEB' 23	02/28/2023	ALLIED-FLEET SUPPLIES 2/1-2/28/23		881.40
Check	03/09/2023	7861 Accounts Payable	MATTHEW AVILA		306.94
	Invoice	Date	Description		Amount
	022323EXP	02/23/2023	EXPENSE REIMBURSEMENT - BOOTS & JACKET		306.94
Check	03/09/2023	7862 Accounts Payable	BAILEY FENCE COMPANY INC		7,972.00
	Invoice	Date	Description		Amount
	83556	02/16/2023	FS 1 CYCLONE FENCE INSTALLATION		7,972.00
Check	03/09/2023	7863 Accounts Payable	BUREAU VERITAS NORTH AMERICA INC.		65,808.13
	Invoice	Date	Description		Amount
	RI 23006229	02/13/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES		44,225.21
	RI 23006230	02/13/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES		19,944.46
	RI 23006231	02/13/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES		292.08
	RI 23006232	02/13/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES		421.58

	RI 23006233	02/13/2023	BI FIELD INSPECTION AND RELATED PROFESSIONAL SERVICES	924.80
Check	03/09/2023	7864 Accounts Payable	CSULB FOUNDATION	470.00
	Invoice	Date	Description	Amount
	0313-031623 ST	03/01/2023	BACKGROUND INVESTIGATION-GARDEN GROVE	470.00
Check	03/09/2023	7865 Accounts Payable	APRO LLC	215.00
	Invoice	Date	Description	Amount
	080122-083122	08/31/2022	CAR WASH 08/01-08/31/22	215.00
Check	03/09/2023	7866 Accounts Payable	ALAMEDA COUNTY MAYORS' CONFERENCE	3,405.00
	Invoice	Date	Description	Amount
	364	01/30/2023	2023 ACMC MEMBERSHIP DUES	3,405.00
Check	03/09/2023	7867 Accounts Payable	CITY OF UNION CITY	16,426.50
	Invoice	Date	Description	Amount
	2023-0354	02/01/2023	50% OF EMERGENCY SERVICES COORDINATORY SALARY FEBRUARY 2023	7,939.57
	2023-0355	03/01/2023	50% OF EMERGENCY SERVICES COORDINATORY SALARY MARCH 2023	8,486.93
Check	03/09/2023	7868 Accounts Payable	CLASSIC GRAPHICS	1,713.65
	Invoice	Date	Description	Amount
	47532	02/08/2023	FLEET REAR TAIL GATE REPAIR 2/8/23	1,713.65
Check	03/09/2023	7869 Accounts Payable	COMCAST	878.07
	Invoice	Date	Description	Amount
	8821-032823	02/24/2023	TELEVISION & PUBLIC WIFI ACCESS - 3/1-3/28/2023	878.07
Check	03/09/2023	7870 Accounts Payable	CONNECTWISE	890.88
	Invoice	Date	Description	Amount
	INV00670472	08/31/2022	IT MANAGEMENT SOFTWARE 09/20-10/19/2022	890.88
Check	03/09/2023	7871 Accounts Payable	DIVISION OF THE STATE ARCHITECT	522.60
	Invoice	Date	Description	Amount
	1001-123122	01/17/2023	CA STATE CASP FEES (AB1379)	522.60
Check	03/09/2023	7872 Accounts Payable	DUKE DE LEON	300.00
	Invoice	Date	Description	Amount
	4170	03/01/2023	BROADCAST AND STREAM FEBRUARY 2023 CITY COUNCIL AND PC MEETINGS	300.00
Check	03/09/2023	7873 Accounts Payable	ECS IMAGING, INC.	15,227.33
	Invoice	Date	Description	Amount
	17571	02/17/2023	LASERFICHE CLOUD UPGRADE & RENEWAL	15,227.33
Check	03/09/2023	7874 Accounts Payable	EQUIFAX INFORMATION SVCS LLC	50.54
	Invoice	Date	Description	Amount
	2054253236	02/13/2023	CREDIT BUREAU REPORT FEES	50.54
Check	03/09/2023	7875 Accounts Payable	FRANK BONETTI PLUMBING INC	1,105.00
	Invoice	Date	Description	Amount
	25083	02/14/2023	SENIOR CENTER BATHROOMS BACKUP 1/26/23	1,105.00
Check	03/09/2023	7876 Accounts Payable	FREMONT FORD	3,200.85

	Invoice	Date	Description	Amount
	412730	11/22/2022	2018 FORD FUSION MECHANICAL DIAGNOSTIC 11/13/22	3,126.20
	212245	02/27/2023	FLEET SUPPLIES-BLADE ASY-WIPER	74.65
Check	03/09/2023	7877 Accounts Payable	FRONTIER BUILDING PRODUCTS PACIFIC, INC	2,740.00
	Invoice	Date	Description	Amount
	11-18-804109	11/18/2022	FIRE STATION 29 DOOR REPAIR 11/18/22	1,077.00
	1-9-499297	01/09/2023	FIRE STATION 28 - DOOR REPAIR 1/9/23	694.00
	1-9-499298	01/09/2023	FIRE STATION 29 DOOR REPAIR 1/9/23	969.00
Check	03/09/2023	7878 Accounts Payable	HYATT REGENCY MONTEREY	1,249.18
	Invoice	Date	Description	Amount
	0320-032223TBW-G	03/08/2023	TEAM BUILDING WORKSHOP - 3/20-3/22/2023 - ADDING GUSTAVO ARROYO	1,249.18
Check	03/09/2023	7879 Accounts Payable	ROBERTO GARCIA-ACOSTA	129.00
	Invoice	Date	Description	Amount
	022223EXP	03/08/2023	GFOA GAAFR EBOOK	129.00
Check	03/09/2023	7880 Accounts Payable	GHA TECHNOLOGIES, INC.	2,253.32
	Invoice	Date	Description	Amount
	101278500	02/17/2023	NUTANIX RAM/HARD DRIVES	2,253.32
Check	03/09/2023	7881 Accounts Payable	GOLDEN STATE WARRIORS, LLC	2,370.00
	Invoice	Date	Description	Amount
	6931	01/23/2023	JUNIOR WARRIORS COACHES SHIRTS AND JERSEYS	2,370.00
Check	03/09/2023	7882 Accounts Payable	GRAINGER	1,732.40
	Invoice	Date	Description	Amount
	9592874896.1	02/01/2023	SILLIMAN GP MOTOR	1,732.40
Check	03/09/2023	7883 Accounts Payable	GRAINGER	712.12
	Invoice	Date	Description	Amount
	9594334980	02/01/2023	CITY HALL RECYCLING CONTAINERS	26.32
	9591029609	01/30/2023	SILLIMAN LIGHT BULBS T6	360.63
	9592874896	02/01/2023	SILLIMAN WATERTIGHT LOCKING	325.17
Check	03/09/2023	7884 Accounts Payable	GYM DOCTORS	225.00
	Invoice	Date	Description	Amount
	00139420	02/03/2023	FITNESS CENTER MAINTENANCE 02/02/23	225.00
Check	03/09/2023	7885 Accounts Payable	JAYSON IMAI	233.24
	Invoice	Date	Description	Amount
	0202-020823EXP	02/02/2023	EXPENSE REIMBURSEMENT	233.24
Check	03/09/2023	7886 Accounts Payable	IXII GROUP, INC	296.00
	Invoice	Date	Description	Amount
	0327-032923 ST	03/01/2023	TACTICL DISPATCHER-CAMPBELL SANDRA	296.00
Check	03/09/2023	7887 Accounts Payable	KBA DOCUMENT SOLUTIONS, LLC	2,739.87
	Invoice	Date	Description	Amount

	55Y1342293	02/01/2023	COPIER LEASE YEAR 1 OF 5 SUPPLIES	2,739.87
Check	03/09/2023	7888 Accounts Payable	KBA DOCUMENT SOLUTIONS	5,309.33
	Invoice	Date	Description	Amount
	65900	01/13/2023	COPIER LEASE YEAR 1 OF 5 - 01/05-02/04/2023	369.82
	71700	02/14/2023	COPIER LEASE YEAR 1 OF 5 02/05-03/04/2023	204.80
	72988	02/23/2023	COPIER LEASE YEAR 1 OF 5 -02/15-03/14/2023	4,734.71
Check	03/09/2023	7889 Accounts Payable	KELLCO SERVICES INC	1,125.00
	Invoice	Date	Description	Amount
	2302-020214	02/14/2023	ENVIRONMENTAL TESTING AT COMMUNITY 2/08/23	1,125.00
Check	03/09/2023	7890 Accounts Payable	NAPA AUTO PARTS	1,277.38
	Invoice	Date	Description	Amount
	JAN ' 23	01/31/2023	NAPA-FLEET SUPPLIES 1/31/2023	1,277.38
Check	03/09/2023	7891 Accounts Payable	LEGACY ROOFING & WATERPROOFING	2,900.00
	Invoice	Date	Description	Amount
	6009103-WO	02/22/2023	SVC CTR ROOF REPAIR 02/22/23	2,205.00
	6009606-WO	02/20/2023	COMMUNITY CENTER ROOF REPAIR 02/20/23	695.00
Check	03/09/2023	7892 Accounts Payable	LOOMIS	433.40
	Invoice	Date	Description	Amount
	13203873	02/28/2023	ARMORED CAR SERVICE - 02/23	433.40
Check	03/09/2023	7893 Accounts Payable	LYNN PEAVEY COMPANY	333.07
	Invoice	Date	Description	Amount
	397850	02/17/2023	BRUSHES AND SWAB FOR CERT	333.07
Check	03/09/2023	7894 Accounts Payable	MEYERS NAVE, A PROFESSIONAL CORPORATION	27,449.09
	Invoice	Date	Description	Amount
	202869	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	180.69
	202876	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	16,711.10
	202877	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	714.30
	202878	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	1,432.20
	202879	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	1,464.90
	202881	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	4,044.60
	202882	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	294.30
	202883	02/17/2023	LEGAL SERVICES THROUGH JANUARY 31, 2023	2,607.00
Check	03/09/2023	7895 Accounts Payable	PAKPOUR CONSULTING GROUP, INC.	4,466.45
	Invoice	Date	Description	Amount
	4058	03/02/2023	ON-CALL CIVIL ENGINEERING PLAN REVIEW SERVICES 02/01-02/28/23	4,466.45
Check	03/09/2023	7896 Accounts Payable	PLAN JPA	3,876.42
	Invoice	Date	Description	Amount
	PLAN-2023-0151	02/15/2023	GENERAL LIABILITY PREMIUM FY22-23-JANUARY 2023	3,876.42
Check	03/09/2023	7897 Accounts Payable	R3 CONSULTING, INC	11,175.00
	Invoice	Date	Description	Amount
	122531	03/02/2023	WASTE HAULER FRANCHISE AGREEMENT NEGOTIATION SERVICES - 02/28/23	11,175.00

Check	03/09/2023	7898 Accounts Payable	SHEENA RAJ	201.51
	Invoice	Date	Description	Amount
	012523EXP	01/31/2023	MILAGE AND SUPPLIES	201.51
Check	03/09/2023	7899 Accounts Payable	REVOLUTION DANCEWEAR, LLC	3,164.57
	Invoice	Date	Description	Amount
	SI-2452274	02/16/2023	DANCE COSTUMES	3,164.57
Check	03/09/2023	7900 Accounts Payable	ROADRUNNER GLASS DOOR, INC	700.00
	Invoice	Date	Description	Amount
	10947	02/23/2023	WATKINS HALL GLASS REPAIR 2/17/23	700.00
Check	03/09/2023	7901 Accounts Payable	SAFETY COMPLIANCE MANAGEMENT INC	126.40
	Invoice	Date	Description	Amount
	HMS6724	02/13/2023	HAZWOPER ONLINE COURSE	126.40
Check	03/09/2023	7902 Accounts Payable	SILVER & WRIGHT LLP	262.00
	Invoice	Date	Description	Amount
	31013	02/01/2023	LEGAL SERVICES FOR JANUARY 2023	262.00
Check	03/09/2023	7903 Accounts Payable	SIMON & COMPANY INC	1,720.00
	Invoice	Date	Description	Amount
	02-2023	02/25/2023	PROFESSIONAL FEDERAL AFFAIRS ASSISTANCE FEBRUARY 2023	1,720.00
Check	03/09/2023	7904 Accounts Payable	SPORTS IMPORTS, INC.	1,376.18
	Invoice	Date	Description	Amount
	INV5640	11/07/2022	TAPERED INDOOR VOLLEYBALL POLE PADDING	1,376.18
Check	03/09/2023	7905 Accounts Payable	STAPLES	635.91
	Invoice	Date	Description	Amount
	8069276546	02/15/2023	OFFICE SUPPLIES	635.91
Check	03/09/2023	7906 Accounts Payable	SYSERCO INC	3,194.28
	Invoice	Date	Description	Amount
	11743	01/20/2023	BLDG PARTS - MS4-THC	3,194.28
Check	03/09/2023	7907 Accounts Payable	ULINE	1,334.81
	Invoice	Date	Description	Amount
	159814442	02/14/2023	NEW DESK FOR ERGONOMIC USE	1,334.81
Check	03/09/2023	7908 Accounts Payable	URBAN PLANNING PARTNERS, INC.	24,452.83
	Invoice	Date	Description	Amount
	22002-221231	02/06/2023	PRJT MGMT SRVCS-LEPAKSHI @ 6781 THORNTON AVE 09/01-12/31/22	24,452.83
Check	03/09/2023	7909 Accounts Payable	VERIZON WIRELESS	7,280.56
	Invoice	Date	Description	Amount
	9927989451	02/18/2023	WIRELESS SERVICE 01/19-02/18/2023	7,280.56
Check	03/09/2023	7910 Accounts Payable	VERIZON BUSINESS SERVICES	2,344.87
	Invoice	Date	Description	Amount
	72381158	10/20/2022	MDC WIRELESS THROUGH 9/30/2022	584.45
	72408622	11/20/2022	MDC WIRELESS SERVICE THROUGH 10/31/2022	584.78

	72431843	12/20/2022	MDC WIRELESS SERVICE THROUGH 11/30/2022	584.78
	72462676	01/20/2023	MDC WIRELESS SERVICE THROUGH 12/31/2022	590.86
Check	03/09/2023	7911 Accounts Payable	AQUINO , SOCORRO	34.40
	Invoice	Date	Description	Amount
	08/22 - 01/23RFD	03/02/2023	UTILITY USERS TAX REFUND	34.40
Check	03/09/2023	7912 Accounts Payable	CHANDRA , PRIYADARSHINI	92.00
	Invoice	Date	Description	Amount
	668747	02/28/2023	MAKEUP CLASSES CANCELLED	92.00
Check	03/09/2023	7913 Accounts Payable	CHANG , IRENE	5.00
	Invoice	Date	Description	Amount
	668844	03/02/2023	REFUND FOR CANCELLED CLASS	5.00
Check	03/09/2023	7914 Accounts Payable	MUNOZ , HELEN	14.06
	Invoice	Date	Description	Amount
	0322-012323RFD	03/02/2023	UTILITY USERS TAX REFUND	14.06

AP ZBA ACCOUNTS PAYABLE Totals: Transactions: 59 $262,233.41

Checks: 59 $262,233.41

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 03/16/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	03/16/2023	7915 Accounts Payable	ALL CITY MANAGEMENT SERVICES, INC.		6,874.42
	Invoice	Date	Description		Amount
	83530	02/22/2023	SCHOOL CROSSING GUARD SVCS 2/05-2/18/23		6,874.42
Check	03/16/2023	7916 Accounts Payable	GUSTAVO ARROYO		958.56
	Invoice	Date	Description		Amount
	0126-012723 EXP	03/09/2023	MISSION PLANNING FOR LAW ENFORCEMENT		958.56
Check	03/16/2023	7917 Accounts Payable	AT&T		363.00
	Invoice	Date	Description		Amount
	2300-02012023	02/01/2023	CAPTION LISTINGS 02/01-02/28 2023		181.50
	2300-03012023	03/01/2023	CAPTION LISTING 3/1-3/31/2023		181.50
Check	03/16/2023	7918 Accounts Payable	BAY CENTRAL PRINTING		64.27
	Invoice	Date	Description		Amount
	194811	03/09/2023	BUSINESS CARD IMPRINTING-TERRI		64.27
Check	03/16/2023	7919 Accounts Payable	BEAR ELECTRICAL SOLUTIONS, INC.		6,424.44
	Invoice	Date	Description		Amount
	18020	01/28/2023	FY22-23 STREET LIGHT MAINTENANCE - 01/23		6,424.44
Check	03/16/2023	7920 Accounts Payable	C.A.P.E.		300.00
	Invoice	Date	Description		Amount
	11815	01/30/2023	CAPE 2023 ANNUAL TRAINING SEMINAR 04/03-04/07/23; JEREMY B		300.00
Check	03/16/2023	7921 Accounts Payable	BEACON VETERINARY SPECIALISTS		450.00
	Invoice	Date	Description		Amount
	136549	01/30/2023	VET SVCS 1/29/23		150.00
	135988	01/13/2023	VET SVCS 1/12/23		150.00
	136548	01/30/2023	VET SVCS 01/24/23		150.00
Check	03/16/2023	7922 Accounts Payable	CENTRAL VALLEY TOXICOLOGY, INC.		410.00
	Invoice	Date	Description		Amount
	325751	02/07/2023	LAB TESTS 02/07/2023		40.00
	325884	02/13/2023	LAB TESTS 02/13/2023		160.00
	325885	02/13/2023	LAB TESTS 2/13/23		210.00
Check	03/16/2023	7923 Accounts Payable	CLASSIC GRAPHICS		3,636.98

	Invoice	Date	Description	Amount
	47603	02/23/2023	FLEET REAR LIFT 2/23/23	3,636.98
Check	03/16/2023	7924 Accounts Payable	EFFECTV	9,800.00
	Invoice	Date	Description	Amount
	WC938934	02/26/2023	PRODUCTION COST FOR TWO REC DEPT COMMERCIALS	9,800.00
Check	03/16/2023	7925 Accounts Payable	ALAMEDA COUNTY CLERK	50.00
	Invoice	Date	Description	Amount
	PRJ1300	03/14/2023	NOTICE OF EXEMPTION HANDLING FEE - 1300	50.00
Check	03/16/2023	7926 Accounts Payable	DPREP INC.	249.00
	Invoice	Date	Description	Amount
	0411-041223	03/10/2023	CRISIS NEGOTIATIONS TEAM LEADERSHIP-SHANNON T	249.00
Check	03/16/2023	7927 Accounts Payable	DYNAMIC FUEL SOLUTION	4,975.23
	Invoice	Date	Description	Amount
	1745	02/09/2023	FUEL POLISHIG	4,975.23
Check	03/16/2023	7928 Accounts Payable	KARL FREDSTROM	393.78
	Invoice	Date	Description	Amount
	021323 EXP	03/09/2023	DUI CHECKPOINT MANAGEMENT TUITION - ELK GROVE	133.00
	0123-020323 EXP	03/09/2023	SUPERVISOR COURSE - MILPITIS	260.78
Check	03/16/2023	7929 Accounts Payable	GHA TECHNOLOGIES, INC.	764.91
	Invoice	Date	Description	Amount
	101280080	02/22/2023	NUTANIX RAM/HARD DRIVES	764.91
Check	03/16/2023	7930 Accounts Payable	GRAINGER	223.78
	Invoice	Date	Description	Amount
	9604099557	02/10/2023	COMMUNITY CENTER GENERATOR 2/10/23	191.55
	9605016808	02/10/2023	SUCTION CUP LIFTER 2/10/23	32.23
Check	03/16/2023	7931 Accounts Payable	SCOTT HESTER PRODUCTIONS	1,298.80
	Invoice	Date	Description	Amount
	337	02/14/2023	HEADSHOT PHOTOGRAPHY 1/26/2023 CITY COUNCIL, PC, EXEC TEAM	1,298.80
Check	03/16/2023	7932 Accounts Payable	YAMA HOMAYOUN	447.62
	Invoice	Date	Description	Amount
	0213-021523 EXP	03/09/2023	SLI SESSION 4-RANCHO MURIETA	447.62
Check	03/16/2023	7933 Accounts Payable	JEFF'S MOBILE GLASS INC.	498.86
	Invoice	Date	Description	Amount
	IJMG-0124-79842	01/24/2023	WINSHIELD REPAIR FOR #33	498.86
Check	03/16/2023	7934 Accounts Payable	JONES HALL, A PROFESSIONAL LAW CORPORATION	12,500.00
	Invoice	Date	Description	Amount
	022723	02/27/2023	BOND COUNSEL SERVICES FOR AID NO. 35	12,500.00
Check	03/16/2023	7935 Accounts Payable	KBA DOCUMENT SOLUTIONS, LLC	1,223.95
	Invoice	Date	Description	Amount

	55Y1347365	02/21/2023	COPIER LEASE YEAR 1 OF 5 - OVERAGES	1,208.95
	55Y1347666	02/22/2023	COPIER LEASE YEAR 1 OF 5 SUPPLIES	15.00
Check	03/16/2023	7936 Accounts Payable	KNORR SYSTEMS INC	562.00
	Invoice	Date	Description	Amount
	PWSVI-8320	02/22/2023	SILLIMAN LAZY RIVER TROUBLESHOOT 1/13/23	562.00
Check	03/16/2023	7937 Accounts Payable	LINCOLN AQUATICS	538.94
	Invoice	Date	Description	Amount
	D8806151	02/06/2023	LIFEGUARD LOGO FANNY PACKS	538.94
Check	03/16/2023	7938 Accounts Payable	LYNX TECHNOLOGIES INC	1,350.00
	Invoice	Date	Description	Amount
	9821	03/11/2023	GIS PROFESSIONAL SERVICES FEB 2023	1,350.00
Check	03/16/2023	7939 Accounts Payable	MISSION LINEN SUPPLY - UNIFORM	2,107.99
	Invoice	Date	Description	Amount
	FEB' 23	02/28/2023	UNIFORM/MATS FEBRUARY 2023	2,107.99
Check	03/16/2023	7940 Accounts Payable	KSB SKATEBOARD CO	327.60
	Invoice	Date	Description	Amount
	01/09-03/06/2023	03/08/2023	KSB SKATEBOARD LESSONS SESSION DATES 01/09-03/06/2023	327.60
Check	03/16/2023	7941 Accounts Payable	ANDREW MUSANTRY	99.00
	Invoice	Date	Description	Amount
	0223223 EXP	03/09/2023	TUITION-DRUG UNDUCED HOMICIDE INVESTIGATION-VIRTUAL	99.00
Check	03/16/2023	7942 Accounts Payable	PACIFIC GAS & ELECTRIC	33,248.08
	Invoice	Date	Description	Amount
	7460-021423	02/14/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 12/24-01/25/23	2,877.91
	9045-030223	03/02/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/26-02/24/23	224.19
	2305-030323	03/03/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/26-02/26/23	89.94
	7786-022123	02/21/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/14-02/14/23	27,233.23
	0870-030823	03/08/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/31-03/01/23	74.95
	1859-030723	03/07/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/30-02/28/23	2,591.58
	3926-030723	03/07/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/30-02/28/23	72.72
	0552-030623	03/06/2023	ANNUAL ELECTRICITY FOR STREET/TRAFFIC LIGHTS 01/27-02/27/23	83.56
Check	03/16/2023	7943 Accounts Payable	PERFORMANCE PEST MANAGEMENT	819.00
	Invoice	Date	Description	Amount
	67203	02/15/2023	PEST SERVICES - CITY HALL #102699 2/15/23	267.00
	67204	02/24/2023	PEST SERVICES - CITY HALL #102699 2/24/23	267.00
	67237	01/24/2023	PEST SERVICES -SWARM IN ELEC. BOX-35789 SHERIDAN #102699 1/24/23	285.00
Check	03/16/2023	7944 Accounts Payable	PHOENIX GROUP INFORMATION SYSTEMS	614.75
	Invoice	Date	Description	Amount
	012023101	02/15/2023	PARKING CITATION PROGRAM JANUARY 2023	614.75
Check	03/16/2023	7945 Accounts Payable	SIRCHIE ACQUISITION COMPANY, LLC	198.74
	Invoice	Date	Description	Amount
	0579605-IN	02/22/2023	EVIDENCE BAGS	198.74

Check	03/16/2023	7946 Accounts Payable	CENTERVILLE LOCKSMITH	9.97
	Invoice	Date	Description	Amount
	331737	02/06/2023	FLEET KEYS	9.97
Check	03/16/2023	7947 Accounts Payable	LEHR	2,851.81
	Invoice	Date	Description	Amount
	SI84133	02/23/2023	LEHR - CF-33 PROJECT 2023-03	2,851.81
Check	03/16/2023	7948 Accounts Payable	T-MOBILE	139.68
	Invoice	Date	Description	Amount
	966241989-022123	03/09/2023	IPHONE SVC 01/21-02/20/23	139.68
Check	03/16/2023	7949 Accounts Payable	TEMPERATURE TECHNOLOGY INC.	2,124.59
	Invoice	Date	Description	Amount
	I2232	12/27/2022	HEATER REPAIR 12/2/22	2,124.59
Check	03/16/2023	7950 Accounts Payable	THIRD DEGREE COMMUNICATIONS, INC.	275.00
	Invoice	Date	Description	Amount
	040323	03/10/2023	CRITICAL INCIDENT RESPONSE, USE OF FORCE & DE-ESCALATION-ARIEL	275.00
Check	03/16/2023	7951 Accounts Payable	TMT ENTERPRISES INC	3,009.25
	Invoice	Date	Description	Amount
	15510	02/21/2023	PARKS INFIELD MIX	3,009.25
Check	03/16/2023	7952 Accounts Payable	UNITED STATES POSTMASTER	3,825.00
	Invoice	Date	Description	Amount
	IN031423	03/14/2023	POSTAGE FOR SUMMER REC ACTIVITIES POSTCARD	3,825.00
Check	03/16/2023	7953 Accounts Payable	UTILITY TELECOM GROUP, LLC	160.00
	Invoice	Date	Description	Amount
	17669	02/28/2023	TELEPHONE & NETWORK PROVIDER - LABOR	160.00
Check	03/16/2023	7954 Accounts Payable	BOSCO OIL INC DBA VALLEY OIL	29,461.33
	Invoice	Date	Description	Amount
	149159	03/10/2023	DIESEL/GASOLINE 3/10/23	29,461.33
Check	03/16/2023	7955 Accounts Payable	VERIZON BUSINESS SERVICES	590.86
	Invoice	Date	Description	Amount
	72489784	02/20/2023	MDC WIRELESS SERVICE THROUGH 01/31/2023	590.86
Check	03/16/2023	7956 Accounts Payable	MARK LEWIS WAGNER	800.00
	Invoice	Date	Description	Amount
	040933	03/14/2023	CHALK ART SERVICES FOR FAMILY DAY AT PARK EVENT 4/1/23	800.00
Check	03/16/2023	7957 Accounts Payable	WEISSMAN'S DESIGNS FOR DANCE	60.42
	Invoice	Date	Description	Amount
	2342755486	02/27/2023	DANCE COSTUMES	60.42
Check	03/16/2023	7958 Accounts Payable	ANAS , GEORGE	12.16
	Invoice	Date	Description	Amount
	03/22-02/23RFD	03/15/2023	UTILITY USERS TAX REFUND	12.16

Check	03/16/2023	7959 Accounts Payable	GALLAGHER , BILMA	123.00
	Invoice	Date	Description	Amount
	669370	03/08/2023	PROVIDING FULL REFUBD FOR REMAINING AMOUNT	123.00
EFT	03/16/2023	515 Accounts Payable	CLIENTFIRST TECHNOLOGY CONSULTING 122037760 / 001064667052	3,708.75
	Invoice	Date	Description	Amount
	14767	02/28/2023	IT SUPPORT - 2/1 - 2/28/2023	3,708.75

AP ZBA ACCOUNTS PAYABLE Totals: Transactions: 46 $138,925.52

Checks:	45	$135,216.77
EFTs:	1	$3,708.75

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 03/16/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	03/16/2023	7960 Accounts Payable	ALAMEDA COUNTY CLERK		50.00

Invoice	Date	Description	Amount
PRJ1301	03/14/2023	NOTICE OF EXEMPTION HANDLING FEE - 1301	50.00

AP ZBA ACCOUNTS PAYABLE Totals: Transactions: 1 $50.00

Checks: 1 $50.00

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 03/23/2023

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	03/23/2023	7961 Accounts Payable	4IMPRINT, INC.		1,872.13
	Invoice	Date	Description		Amount
	10938635	03/02/2023	ZIPPERED PORTFOLIOS		1,872.13
Check	03/23/2023	7962 Accounts Payable	ACCESS		100.00
	Invoice	Date	Description		Amount
	10049658	02/28/2023	SHREDDING SVCS FEBRUARY 2023		100.00
Check	03/23/2023	7963 Accounts Payable	AIRGAS USA, LLC		85.36
	Invoice	Date	Description		Amount
	9995562347	02/28/2023	CYL ACETYLENE RENTAL 02/28/23		85.36
Check	03/23/2023	7964 Accounts Payable	ALLIED 39802 CEDAR LLC		594,978.84
	Invoice	Date	Description		Amount
	DRAW#3	03/01/2023	PROJECT EXPENSES FROM 12/09/22 - 01/16/23		594,978.84
Check	03/23/2023	7965 Accounts Payable	APPLIED AIR FILTERS		1,528.28
	Invoice	Date	Description		Amount
	46453	01/23/2023	LIBRARY AIR FILTERS		1,528.28
Check	03/23/2023	7966 Accounts Payable	BAIRD + DRISKELL COMMUNITY PLANNING		78,565.10
	Invoice	Date	Description		Amount
	1444	03/02/2023	ON-CALL PLANNING SERVICES 10/07-01/19/23		20,956.30
	1446	03/03/2023	HOUSING ELEMENT UPDATE PREPARATION 04/20/22-01/31/23		57,608.80
Check	03/23/2023	7967 Accounts Payable	BAY AREA AIR QUALITY MGMT DIST.		422.00
	Invoice	Date	Description		Amount
	T149146	01/31/2023	BAAQM-GENERATOR FEES RENEAL 670816 4/1/2023 - 4/1/2024		422.00
Check	03/23/2023	7968 Accounts Payable	BLAISDELL'S BUSINESS PRODUCTS		855.42
	Invoice	Date	Description		Amount
	MAR'23	03/01/2023	OFFICE SUPPLIES		855.42
Check	03/23/2023	7969 Accounts Payable	BLUEBEAM, INC.		2,082.00
	Invoice	Date	Description		Amount
	1569533	02/27/2023	BLUEPRINT REVIEW SOFTWARE 03/28/23 - 03/27/24		2,082.00

Check	03/23/2023	7970 Accounts Payable	CAL-WEST LIGHTING & SIGNAL MAINTENANCE	6,291.34
	Invoice	Date	Description	Amount
	230204	02/28/2023	TRAFFIC LIGHT MAINTENANCE 02/23	6,291.34
Check	03/23/2023	7971 Accounts Payable	CALLYO 2009 CORP.	3,888.00
	Invoice	Date	Description	Amount
	R17474	03/02/2023	CALLYO SOFTWARE FOR PD 02/01/2023-01/31/2024	3,888.00
Check	03/23/2023	7972 Accounts Payable	DIANA CANGCO	193.85
	Invoice	Date	Description	Amount
	0217-030223EXP	03/02/2023	EXPENSE REIMBURSEMENT	193.85
Check	03/23/2023	7973 Accounts Payable	APRO LLC	85.00
	Invoice	Date	Description	Amount
	020123-022823	02/28/2023	CAR WASH 02/01-02/28/23	85.00
Check	03/23/2023	7974 Accounts Payable	CHRISP COMPANY	15,175.27
	Invoice	Date	Description	Amount
	23598	01/31/2023	CITYWIDE THERMOPLASTIC STREET STRIPING 01/01-01/31/23	15,175.27
Check	03/23/2023	7975 Accounts Payable	CINDY K. HULL & ASSOCIATES - FORENSIC CONSULTING	295.00
	Invoice	Date	Description	Amount
	138	02/28/2023	LATENT PRINT ANALYSIS FEB 2023	295.00
Check	03/23/2023	7976 Accounts Payable	COST RECOVERY SYSTEMS INC	7,750.00
	Invoice	Date	Description	Amount
	2023-24	03/10/2023	STATE MANDATE CLAIM PREP SRVCS FY22-23	7,750.00
Check	03/23/2023	7977 Accounts Payable	DAILY JOURNAL CORPORATION	120.00
	Invoice	Date	Description	Amount
	B3674381	03/07/2023	PH NOTICES FOR FY 22-23	120.00
Check	03/23/2023	7978 Accounts Payable	DEPARTMENT OF JUSTICE	533.00
	Invoice	Date	Description	Amount
	640326	03/02/2023	FINGERPRINTING FEES-02/2023	533.00
Check	03/23/2023	7979 Accounts Payable	DOT/ FEDERAL HIGHWAY ADMINISTRATION	420,871.00
	Invoice	Date	Description	Amount
	22K500012FY23	01/18/2023	CFLH FUNDS TRANSFER AGREEMENT, PROJECT 1284	420,871.00
Check	03/23/2023	7980 Accounts Payable	GROUP 4 ARCHITECTURE RESEARCH + PLANNING, INC.	8,635.28
	Invoice	Date	Description	Amount
	11534	12/31/2022	FMP CONSULTANT SERVICES, PROJECT 1274 (THROUGH 12/31/22)	7,149.03
	11490	11/30/2023	FMP CONSULTANT SERVICES, PROJECT 1274 (THROUGH 11/30/22)	1,486.25
Check	03/23/2023	7981 Accounts Payable	GYM DOCTORS	225.00
	Invoice	Date	Description	Amount
	00140362	03/02/2023	FITNESS CENTER MAINTENANCE 03/01/23	225.00

Check	03/23/2023	7982 Accounts Payable	HWA POWER	11,303.90
	Invoice	Date	Description	Amount
	60317	02/28/2023	YEARLY ADVANTAGE 2/28/23	3,334.00
	60316	02/22/2023	BATTERY MONITOR AND MODULAR BATTERY REPLACEMENT SERVICE 2/22/23	7,969.90
Check	03/23/2023	7983 Accounts Payable	HOLIDAYGOO, INC.	2,065.49
	Invoice	Date	Description	Amount
	19736	02/13/2023	10,000 CANDY FILLED EGGS FOR FAMILY DAY EVENT 4/1/23	2,065.49
Check	03/23/2023	7984 Accounts Payable	VALBRIDGE PROPERTY ADVISORS, HULBERG & ASSOCIATES	5,000.00
	Invoice	Date	Description	Amount
	33225	01/23/2023	TIMBER STREET APPRAISAL SERVICES	5,000.00
Check	03/23/2023	7985 Accounts Payable	IDN WILCO INC	431.93
	Invoice	Date	Description	Amount
	10078088-00	02/23/2023	SILLIMAN DOOR CLOSER	431.93
Check	03/23/2023	7986 Accounts Payable	ICMA	1,000.00
	Invoice	Date	Description	Amount
	439145	02/27/2023	2023 MEMBERSHIP FOR LENKA HOVORKA	1,000.00
Check	03/23/2023	7987 Accounts Payable	DEEPA IYER	1,158.25
	Invoice	Date	Description	Amount
	EDUEXP032023	03/20/2023	EDUCATIONAL REIMBURSEMENT-2023 PSHRA HR ESSENTIALS PROGRAM	1,158.25
Check	03/23/2023	7988 Accounts Payable	LANGUAGE LINE SERVICES	159.09
	Invoice	Date	Description	Amount
	10945179	02/28/2023	INTERPRETATION SVCS FEB 2023	159.09
Check	03/23/2023	7989 Accounts Payable	LEXISNEXIS RISK DATA MANAGEMENT INC.	424.20
	Invoice	Date	Description	Amount
	1415640-20230228	02/28/2023	BACKGROUND CHECKS FEB 2023	424.20
Check	03/23/2023	7990 Accounts Payable	LINCOLN AQUATICS	779.38
	Invoice	Date	Description	Amount
	SL040108	02/17/2023	MURIATIC ACID SOLUTION FOR POOLS	779.38
Check	03/23/2023	7991 Accounts Payable	MARK GOTHARD	500.00
	Invoice	Date	Description	Amount
	032123	03/21/2023	2/16 & 3/16/23 SENIOR CHAIR FITNESS CLASSES	500.00
Check	03/23/2023	7992 Accounts Payable	METROPOLITAN TRANSPORTATION COMMISSION	7,100.00
	Invoice	Date	Description	Amount
	AR031263	02/28/2023	P-TAP CONTRIBUTION RD. 24, CUSTOMER NO. V00652	7,100.00
Check	03/23/2023	7993 Accounts Payable	MNS ENGINEERS INC	17,628.65
	Invoice	Date	Description	Amount
	82684	03/22/2023	ON-CALL PUBLIC WORKS CONSTRUCTION INSPECTION SERVICES 02/23	17,628.65
Check	03/23/2023	7994 Accounts Payable	NHA ADVISORS, LLC	7,700.00

	Invoice	Date	Description	Amount
	00861	03/01/2023	FINANCIAL CONSULTING	5,000.00
	00864	03/03/2023	2022 CONTINUING DISCLOSURE & CDIAC COMPLIANCE	2,700.00
Check	03/23/2023	7995 Accounts Payable	PREFERRED ALLIANCE INC	65.00
	Invoice	Date	Description	Amount
	0185518-IN	01/31/2023	RANDOM & NON RANDOM DRUG TESTING	65.00
Check	03/23/2023	7996 Accounts Payable	HELEN QUE-GARCIA	57.93
	Invoice	Date	Description	Amount
	EXP021323	02/13/2023	CANDIES FOR THE EMPLOYEE SERVICE AWARDS LUNCHEON	57.93
Check	03/23/2023	7997 Accounts Payable	REDFLEX TRAFFIC SYSTEMS, INC.	17,400.00
	Invoice	Date	Description	Amount
	INV0050004	02/28/2023	REDLIGHT CAMERA MONITORING FEB 2023	17,400.00
Check	03/23/2023	7998 Accounts Payable	REYES COCA-COLA BOTTLING LLC.	942.97
	Invoice	Date	Description	Amount
	11581213913	03/03/2023	CAFE BEVERAGES SERVICES	942.97
Check	03/23/2023	7999 Accounts Payable	RUGGERI-JENSEN-AZAR	831.00
	Invoice	Date	Description	Amount
	89539	02/17/2023	ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN REVIEW SVCS 01/29/23	554.00
	89795	03/21/2023	ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN REVIEW SVCS 02/26/23	277.00
Check	03/23/2023	8000 Accounts Payable	DOUBLETREE BY HILTON NEWARK-FREMONT	8,015.72
	Invoice	Date	Description	Amount
	35956	02/22/2023	2023 EMPLOYEE SERVICE AWARDS LUNCHEON, VENUE RENTAL AND CATERING	8,015.72
Check	03/23/2023	8001 Accounts Payable	SEDGWICK	660.00
	Invoice	Date	Description	Amount
	BRS-0020312	02/28/2023	Remote Risk Control-January 2023	660.00
Check	03/23/2023	8002 Accounts Payable	SIGNATURE CARPET ONE	500.00
	Invoice	Date	Description	Amount
	I-13807	03/07/2023	CITY HALL CARPET REPAIR PROJ 9854 3/7/23	500.00
Check	03/23/2023	8003 Accounts Payable	SILVER & WRIGHT LLP	94.00
	Invoice	Date	Description	Amount
	31255	03/01/2023	LEGAL SERVICES THROUGH FEBRUARY 24, 2023	94.00
Check	03/23/2023	8004 Accounts Payable	STAPLES	420.98
	Invoice	Date	Description	Amount
	8069432752	02/28/2023	OFFICE SUPPLIES	420.98
Check	03/23/2023	8005 Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY	42,284.00
	Invoice	Date	Description	Amount
	2023-0201	02/28/2023	JANITORIAL SERVICES FEBRUARY 2023	36,923.00
	512173	02/28/2023	PD FLOORS AND SHOWERS JANITORIAL SERVICES 2/20/23	396.00
	511281	02/28/2023	LIBRARY DAY PORTER AND JANITORIAL SERVICES FEBRUARY 2023	4,965.00

Check	03/23/2023	8006 Accounts Payable	WASHINGTON HOSPITAL	75.00
	Invoice	Date	Description	Amount
	0223-NPD-LB	03/03/2023	LAB TESTS FEB 2023	75.00
Check	03/23/2023	8007 Accounts Payable	WEX BANK	1,676.89
	Invoice	Date	Description	Amount
	87728095	03/06/2023	CHEVRON CC 03/06/23	1,676.89
Check	03/23/2023	8008 Accounts Payable	ZAKIYA ASHA KHALFANI	1,950.00
	Invoice	Date	Description	Amount
	0000070	02/23/2023	FACILITATION OF SELF-LEADERSHIP	1,950.00
Check	03/23/2023	8009 Accounts Payable	LEON , MAGDALENA	500.00
	Invoice	Date	Description	Amount
	669959	03/17/2023	CANCELLED COMM. CTR. RENTAL DUE ROOF LEAKS. CHECK FOR DEPOSIT	500.00
Check	03/23/2023	8010 Accounts Payable	MARENCO , MIGUEL	500.00
	Invoice	Date	Description	Amount
	669778	03/14/2023	REFUND FOR COMM CTR RENTAL DEPOSIT	500.00

AP ZBA ACCOUNTS PAYABLE Totals: Transactions: 50 $1,275,776.25

Checks:	50	$1,275,776.25

STAFF REPORT

Item D. 2.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Approval of March 23, 2023 minutes

Attachments

Minutes

Draft

Thursday, March 23, 2023
7:00 P.M.

A. ROLL CALL

Mayor Hannon called the meeting to order at 7:00 p.m. Council Members Freitas, Bucci, Jorgens and Vice Mayor Collazo were present.

B. PRESENTATIONS

1. Commending the City of Newark Maintenance Division for their outstanding storm response efforts

Mayor Hannon announced that this commendation would be rescheduled for the next City Council meeting.

2. Proclaiming March as American Red Cross Month

Mayor Hannon presented the proclamation to Margot Simpson Disaster Action Team Lead for Alameda County.

3. Presentation on Eden I & R, Inc. 2-1-1 information and referral services

Alison DeJung, Executive Director of Eden I & R, Inc. gave the presentation on how 2-1-1 connects people to health, housing, human services and disaster preparedness, in multiple languages. Presentation on file with City Clerk.

Mayor Hannon requested that a future edition of the *Newark News* include an article on 2-1-1.

C. PUBLIC COMMENT

No one requested to speak.

D. CONSENT CALENDAR

Council Member Bucci moved, Council Member Freitas seconded, to approve Consent Calendar Items D.1 through D.9, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 5 AYES.

1. Approval of Audited Demands

2. Approval of the March 9, 2023, minutes

3. Adopt a resolution to amend the position allocations in the 2022-2024 Biennial Budget and Capital Improvement Plan to delete one Cashier and add one Accounting Assistant I-II
Resolution No. 11472

4. Approval of the plans and specifications, adopt a resolution accepting the bid, and award of contract for the total bid to American Asphalt Repair & Resurfacing Company Inc. for FY 2021-2022 Citywide Park Pathways Resurfacing for ADA Access, Project 1297 and amending the 2022-2024 Biennial Budget and Capital Improvement Plan. Exempt from CEQA Review per CEQA Guidelines Section 15301 (Existing Facilities)
Resolution No. 11473
Contract No. 23011

5. Adopt a resolution authorizing the City Manager to issue a purchase order and execute related documents with Environmental Systems Research Institute (Esri), Inc., for software and support in an amount not to exceed $89,400 and authorizing a budget amendment to the 2022-2024 biennial budget and capital improvement plan for fiscal year 2023
Resolution No. 11474
Contract No. 23012 ProWest

6. Resolution approving the reappointment of Senior Advisory Committee Members
Resolution No. 11475

7. Adopt a resolution authorizing the acceptance of the Officer Wellness and Mental Health Grant through the State of California Office of State and Community Corrections and amend the 2022-2024 Biennial Budget and Capital Improvement Plan to appropriate $34,402.05 to the California Board of State and Community Corrections Fund
Resolution No. 11476

8. Adopt a resolution approving a ten-year extension of the current Alameda County Vehicle Abatement Program agreement
Resolution No. 11477

9. Mid-year Budget Review and Adopt a Resolution Amending the 2022-2022 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023
Resolution No. 11478

E. PUBLIC HEARINGS

1. Adopt a resolution to authorize the allocation of a $12 million funding award from the Affordable Housing Impact Fee Fund to Satellite Affordable Housing Associates and authorize the City Manager to execute the Affordable Housing Loan Agreement and all related loan documents to effectuate the approval of the funding award for an affordable housing project at 6347-6375 Thornton Avenue. Exempt from CEQA Review per CEQA Guidelines Section 15061(b)(3)
Resolution No. 11479

Senior Planner Lopez gave the staff report recommending approval. Presentation on file with City Clerk.

Jonathan Astmann, Satellite Affordable Housing Associates (SAHA) reviewed the 57 unit apartment building with a mix of 1 to 3 bedrooms and affordable rent. There are 7 funding sources for the project including the $12 million City Loan.

Christy Wang, Community Planning Collaborative reviewed the project against Notice of Funding Availability(NOFA) priorities and found the project to be in line with the NOFA priorities. The $12 million loan has a 3 percent interest rate with a term of 57th anniversary of final certificate of occupancy.

Council Member Bucci suggest that SAHA attend community events to share information on the project.

Mayor Hannon opened the public hearing at 8:01 p.m.

There was no public testimony.

Mayor Hannon closed the public hearing at 8:02 p.m.

Council Member Bucci moved, Council Member Jorgens seconded, to adopt a resolution authorizing a loan in the amount of $12,000,000 of city of Newark Affordable Housing Impact Fee Fund to Satellite Affordable Housing Associates for development of a multifamily affordable housing rental development at 6347-6375 Thornton Avenue. The motion passed, 5 AYES.

F. OTHER BUSINESS

1. Adopt a resolution authorizing the City Manager to execute a Contractual Services Agreement with Government Technology Group, LLC for development of a Citywide Broadband Master Plan and amend the 2022-2024 Biennial Budget and Capital Improvement Plan
Resolution No. 11480
Contract No. 23013

Information Technology Director Miranda gave the staff report recommending an agreement with the Government Technology Group, LLC to develop a Broadband Master Plan for citywide high-speed internet access that includes access to all communities in the city. Presentation on file with the City Clerk.

Morgan Pedersen stated that she was excited for this project. She highlighted the need for students to have accessible and consistent internet access.

Vice Mayor Collazo moved, Council Member Freitas seconded, to adopt a resolution authorizing the city manager to execute a contractual services

agreement with Government Technology Group, LLC to provide a Broadband Master Plan and amend the 2022-2023 Biennial Budget and Capital Improvement Plan. The motion passed, 5 AYES.

G. CITY COUNCIL MATTERS

Council Member Freitas wished everyone a Happy Easter.

Council Member Bucci invited everyone to attend the League of Volunteer's casino night at Swiss Park on April 1.

Vice Mayor Collazo stated that March is Women's History Month and she acknowledged the women who work for the city. She stated that Music for Minors is holding a fundraising concert on Saturday. Happy Easter. She stated that Family Day at the Park will be held on April 1. Shop Newark.

Mayor Hannon announced that the Alameda County Superior Court was seeking county residents to serve on the Alameda County Civil Grand Jury. Anyone interested in applying should go to www.alameda.courts.ca.gov for more information.

Mayor Hannon recognized Ramadan as a time of reflection and collaboration.

City Manager Benoun stated the Maintenance Division responded to another storm this week and thanked them. He stated that Family Day at the Park would be held at the Community Center and Park from 10 am to 12:30 pm on April 1.

H. CLOSED SESSION

1. Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: City Manager Benoun, Assistant City Manager Hovorka, and Human Resources Director Solito; Employee Groups: the Newark Association of Miscellaneous Employees; the Newark Police Management Association; the Newark Police Association; the Confidential Employee Group; and City Officials and the Management, Supervisory, and Professional Employee Group

Mayor Hannon announced that the Closed Session would not be held.

I. ADJOURNMENT

Mayor Hannon adjourned the meeting at 8:36 p.m.

STAFF REPORT

Item D. 3.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Art Interiano, Deputy Community Development Director
SUBJECT	Adopt a Resolution Approving a First Amendment to Contractual Services Agreement with Metropolitan Planning Group for On-Call Planning Services

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council approve the First Amendment to the Contractual Services Agreement (CSA) with Metropolitan Planning Group for On-call Professional Planning Services. The Community Development Department, through an RFQ process in 2020, selected Metropolitan Planning Group as a qualified consultant that has provided on-call professional planning services for the last two years. The City entered into the original CSA with Metropolitan Planning Group on December 2, 2020. The Community Development Department has a need for additional services within the scope of the original agreement that require an increase in the not-to-exceed amount by $175,000, for a total of $350,000 (from a previous not-to-exceed of $175,000). The services provided by Metropolitan Planning Group have been primarily for large projects which have had their costs paid through a developer reimbursement agreement.

BACKGROUND

The City has relied upon professional consultants to provide services and experience that City staff are unable to provide, such as technical traffic and circulation studies and environmental review services, as well as capacity during busy periods or when staff resources are low. For example, the City currently has several contractual services agreements with consultants for on-call Public Works Construction Inspection, Civil Engineering Development Plan Review services, and Code Enforcement services. These consultant services agreements provide the City with flexibility to address specialty services and experience needs while maintaining high customer service levels.

The Community Development Department (CDD) has current needs for specialty services and technical assistance. The Community Development consists of four professional planners to perform current and long-range planning activities within the Planning Division. Staff includes the Community Development Director, Deputy Community Development Director, Senior Planner, and an Associate Planner. Staff is responsible for major projects such as the implementation of the NewPark Mall Specific Plan, Integral's housing developments in the Bayside Newark TOD area, the SAHA

affordable housing project on Thornton Ave, AC Marriott project at the Nijo Castle restaurant, and Eden Housing's affordable housing project on Timber Street. Staff is also responsible for processing numerous smaller commercial and residential projects throughout the community and is also responsible for administering the City's existing housing policies and programs as well as implementing new policies to address community needs and to be consistent with State housing laws. Significant staff work and cooperation with CDD's two other divisions, Community Preservation and Economic Development, is also necessary to ensure that all CDD functions to serve the public are operating efficiently. CDD's current eight-person full-time team is near or above its capacity to accommodate new projects and develop innovative new policies, programs, and other improvements, particularly with regard to affordable housing.

DISCUSSION/ANALYSIS

In accordance with the City's Purchasing Rules and Regulations, staff prepared and initiated an open and competitive Request for Qualifications (RFQ) for on-call Professional Planning services and Affordable Housing Program Management services in 2020. The Metropolitan Planning Group (M-Group) was identified as a qualified consultant chosen for professional planning services and the City approved a contractual service agreement per Resolution No. 11,134. Over the last two years, M-Group has been providing project management services to projects such as FMC Willow and preparing the environmental review documents for the Robson Homes project. The Community Development Department is satisfied with their performance and would like to continue using M-Group staff for project management and California Environmental Quality Act (CEQA) services that will be paid through reimbursement agreements with developers.

Staff is recommending the approval of the First Amendment of the Contractual Service Agreement for on-call Professional Planning Services with M-Group as indicated below. Typical work under this agreement would be consistent with the services initially provided and include, but are not limited to:

- Provide project management for large, complex planning projects;
- Process planning entitlements and long-range planning projects, including but not limited to general plan and zoning code amendments, planned development permits, design review, and conditional use permits;
- Assist City staff in overseeing CEQA consultants for the preparation of complex environmental reviews, including Addendums, Mitigated Negative Declarations and Environmental Impact Reports, and
- Make presentations before the City Council, committees, community groups, boards, commissions, and other governmental bodies as required.

Work performed under this agreement would primarily be for large, complex projects with costs that are reimbursable by the project applicant.

M-Group would provide assistance to City staff to enhance staff capacity for projects that are not reimbursable by project applicants and for various administrative and customer service functions. This work would include:

- Review development proposals and work with developers;
- Prepare staff reports and graphic displays;

- Analyze projects and prepare initial studies and environmental documents;
- Check development plans for conformance with the Zoning Ordinance;
- Process applications including but not limited to design review, zoning verification letters, and minor use permits/conditional use permits, and
- Confer with and advise applicants regarding City development policies and standards.

Work performed for these activities would be paid from the General Fund, Community Development – Planning – Professional Services budget. There is an adequate budget for these activities.

FISCAL IMPACT

Work performed under this agreement would primarily be for large, complex projects with costs that are reimbursable by the project applicant. Occasionally, work performed under this agreement may be staff-initiated studies or analysis, and these activities would be paid from the General Fund, Community Development Planning Division Professional Services budget. Existing appropriations are adequate to fund these activities, therefore only contracting authority is needed.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The staff recommendation is not a "Project" as defined by the California Environmental Quality Act and is therefore not subject to environmental review.

REVIEW AND APPROVAL

Prepared by - Art Interiano, Deputy Community Development Director
Reviewed by - Steven Turner, Community Development Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Draft Resolution Exhibit 1

Resolution

1st Amendment to CSA for M-Group

C 20066
R 11134

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 2nd day of December, 2020 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and METROPOLITAN PLANNING GROUP, an S-Corp ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested qualifications to perform the services generally including: to serve in an on-call capacity as project manager for moderate- or large-sized discretionary planning entitlement projects, as well as other planning services as requested from time-to-time and to serve and support the City's affordable housing program efforts, policy development, and regional planning efforts.

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to perform the Services more particularly described in Exhibit "A" ("Services"), in return for the compensation described in this Agreement and Exhibit "B".

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C", City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. CONSULTANT'S SERVICES. Consultant shall perform Services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall control.

Services will be authorized by City, as needed, with a task order assigned and approved by the City's Community Development Director or their designee. Each task order will be in substantially the same form as attached Exhibit B-1, which is incorporated herein by reference. Each task order will designate a City Project Manager and will contain a specific scope of work, a specific schedule of performance, and a specific compensation amount. The total price of all task orders may not exceed the amount of compensation set forth in Section 3 below. Consultant will only be compensated for work performed under an authorized task order.

2. TIME FOR PERFORMANCE. Time is of the essence in the performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit "A"; provided, that City shall grant reasonable extensions of time for the performance of such Services occasioned by governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays

shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Consultant.

Consultant acknowledges the importance to City of City's performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound professional practices.

3. COMPENSATION.

A. "Not to Exceed" Compensation. City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Seventy-Five Thousand and No/100 Dollars ($175,000.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

B. Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

Consultant shall submit all billings for said Services to City in the manner specified in Exhibit "B"; or, if no manner is specified in Exhibit "B", then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Blvd.
Newark, CA 94560

Upon completion of Services, City shall sign off and acknowledge that all terms and conditions have been satisfactorily met; upon which, unless waived by City in writing, Consultant shall prepare an itemized statement, briefly describing by task and/or labor category the items billed.

C. Payment. Upon receipt of an invoice, City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit "B", for Services, which are performed in accordance with this Agreement to the satisfaction of City.

D. Consultant's Failure to Perform. In the event that Consultant performs Services that do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from City, re-perform the services (without additional compensation to Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to City, Consultant shall reimburse City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

5. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement.

Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

6. PERSONNEL. Consultant understands that, in entering into this Agreement, City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of Consultant, including the qualifications of its Authorized Representative, its designated personnel, and its Subconsultants, if any, identified in Exhibit "C". Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or Subconsultants identified in Exhibit "C", without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

Consultant agrees to include with all Subconsultants in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of this Agreement's Indemnity and Insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all Sub-subconsultants to provide a valid certificate of insurance and the required

endorsements included in this Agreement prior to commencement of any Services and will provide proof of compliance to the City.

In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any of Consultant's designated personnel or Subconsultants, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

7. FACILITIES AND EQUIPMENT. Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing Services.

8. INFORMATION AND DOCUMENTATION.

A. Information from City. City has made an effort to provide Consultant with all information necessary for Consultant's performance of Services. If Consultant believes additional information is required, Consultant shall promptly notify City and City will provide to Consultant all relevant non-privileged information in City's possession.

B. Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

C. Ownership of Work Product. All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("Work Product"), whether complete or in progress, are the property of City and shall be given to City at the completion of Consultant's Services, or upon demand of City. Consultant shall have a right to make and keep copies of the Work Product except for any confidential information. Consultant shall not reveal the Work Product or the confidential information contained in the Work Product, or make it available, to any third party without the prior written consent of City.

9. CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with City (including this Agreement) involving Consultant's conflicting interest may be terminated by City.

10. NONDISCRIMINATION. Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or

applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, age, or any other basis, as defined in California Civil Code Section 51.

11. COMPLIANCE WITH LAW AND STANDARD OF CARE. Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform Services using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

12. RESERVED.

13. RESERVED.

14. INSURANCE. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, subconsultants, or employees.

A. Verification of Coverage.

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

CITY OF NEWARK
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01covering Commercial General Liability on an occurrence basis, including

products and completed operations, property damage, bodily injury, and personal and advertising injury; and

2. Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

C. <u>Minimum Limits of Insurance</u>.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: (including products and completed operations, property damage, bodily injury, and personal and advertising injury)	**$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, 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.
4. Errors and Omissions Liability:	**$1,000,000** per occurrence or claim; $2,000,000 aggregate.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers, or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

E. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant changes insurance carriers Consultant shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than five (5) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

F. Wasting Policies.

No policy required by this paragraph 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

3. Terminate this Agreement.

H. 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 Risk Manager. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

I. Other Insurance Provisions.

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

1. Additional Insureds. City, its officers, officials, directors, employees and volunteers ("Additional Insureds") are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant; including materials, parts or equipment furnished in connection with such work or operations.

2. Primary Coverage. For any claims related to Services, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not be contribute with it. Consultant's policy will not seek contribution from the City's insurance or self-insurance.

3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled during the term of this Agreement without notice to City.

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

5. Deductibles and Self-Insured Retentions (SIR). All deductibles and self-insured retentions must be disclosed to the City Risk Manager for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

6. Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such

insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

15. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 19, herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

16. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of Services or the termination of this contract. The provisions of this paragraph are not limited by and do not affect the provisions of this contract relating to insurance.

Consultant/Subconsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

17. LICENSES, PERMITS, ETC. Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

18. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire upon completion of performance of Services hereunder by Consultant.

B. Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by **STEVEN TURNER, COMMUNITY DEVELOPMENT DIRECTOR** of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

20. NOTICES. Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent) postage prepaid and addressed, in the case of Consultant, to:

METROPOLITAN PLANNING GROUP	**CITY OF NEWARK**
HEATHER BRADLEY	STEVEN TURNER
Consultant	**Administrator**
Address: 51 E. Campbell Avenue #1247 Campbell, CA 95009	City of Newark Attn: Steven Turner 37101 Newark Boulevard Newark, CA 94560

21. PARAGRAPH HEADINGS. Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

22. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

24. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

25. ATTORNEY'S FEES. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

26. ASSIGNABILITY. Neither Consultant nor City shall subconsult, assign, sell, mortgage, hypothecate, or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party.

27. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

28. WAIVERS. Waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

29. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

30. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

31. COVENANT AGAINST CONTINGENT FEES. Consultant hereby warrants that Consultant has not employed or retained any company or person, other than a *bona fide* employee working for Consultant, to solicit or secure this Agreement, and Consultant has not paid or agreed to pay any company or person, other than a *bona fide* employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at City's discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 12-2-20

By Heather Bradley
Consultant

Date 11/13/2020

Heather Bradley, Principal
Printed Name

Attest:

Sheila Harrington
City Clerk

Date 12/2/2020

Approved as to form:

K Kolstad
City Attorney

Date 12/2/2020

EXHIBIT A

SCOPE OF SERVICES

On-Call Professional Planning Services
Consultant will provide on-call current and long-range professional planning services to the City under the direction of the Community Development Director or their designee. Consultant will provide planning staff as assigned personnel to provide the services including, but not limited, to the following:

Entry and Junior Level Planning Work

- Respond to phone and/or email inquiries;
- Review development proposals and work with developers;
- Prepare staff reports and graphic displays;
- Analyze projects and prepare initial studies and environmental documents;
- Check development plans for conformance with the Zoning Ordinance;
- Process applications including but not limited to design review, zoning verification letters, and minor use permits/conditional use permits, and
- Confer with and advise applicants regarding City development policies and standards

High Level Planning Work (in addition to the above tasks)

- Plan, organize, and coordinate aspects of the City's planning functions, including program planning, setting priorities, and scheduling projects;
- Ensure accuracy, completeness, and timely submittal of reports and analyses prepared by staff planners for various boards or commissions;
- Provide project management for large, complex planning projects;
- Process planning entitlements and long-range planning projects, including but not limited to general plan and zoning code amendments, planned development permits, design review, and conditional use permits;
- Assist City staff in overseeing California Environmental Quality Act (CEQA) consultants for the preparation of complex environmental review, including Addendums, Mitigated Negative Declarations and Environmental Impact Reports;
- Prepare CEQA documents if requested. Consultant will also provide other staff for supplemental support as needed;
- Make presentations before the City Council, committees, community groups, boards, commissions, and other governmental bodies as required;
- Assist in supervising and training lower level planning staff as directed including review of staff reports, notices of official action, and policy memos and reports

EXHIBIT "B"

PAYMENT – TASK ORDERS

The City will issue Consultant a Task Order to proceed for each specific requested assignment.

Upon the request by the City's Community Development Director or his/her designee, Consultant shall identify appropriately experienced staff and produce a scope of work and budget associated with the assignment, and provide a recommendation to the City. City will review the recommendation and, if it is determined to be acceptable, will prepare the Task Order. The Task Order shall be executed prior to the start of the assignment.

City will pay Consultant on a time and materials basis a total not-to-exceed amount of Three Hundred Thousand Dollars ($150,000.00) for the completion of all work and services associated with this Agreement and specifically defined by the Task Order(s). The positions provided in the Fee Schedule below will be used to calculate the hourly billing for services as reflected in Consultant's invoices.

Work product prepared by Consultant will be submitted to the Community Development Director or his/her designee. Assigned personnel provided by Consultant shall meet or exceed the experience associated with the Scope of Services provided in Exhibit A.

Fee Schedule

Position	**2020 Fee**	**2021 Fee**
Principal	$210-$260	$220-$270
Principal Planner , Principal Environmental Planner, Director of Urban Design	$165	$175
Senior Planner, Senior Urban Designer , Senior Environmental Planner, Project Manager	$145	$155
Environmental Planner, Historic Preservation Specialist , Public Art Specialist	$135	$145
Associate Planner, Associate Urban Designer	$125	$125
Assistant Planner, Assistant Urban Designer, Social Media Coordinator	$95	$100
Admin Analyst, Planning Tech	$80	$85

Key Staff

In-House Direct Expenses

Activity	Unit Cost
Reproduction	$0.15/page
Color Reproduction	$0.45/page
Mileage	$0.58/mile

EXHIBIT "B-1"

TASK ORDER

TASK ORDER NO.___ TO AGREEMENT FOR SERVICES

This Task Order No._ ("Task Order") is made and entered into by and between the CITY OF NEWARK, a municipal corporation of the State of California ("City"), and Metropolitan Planning Group, a California corporation ("Consultant").

RECITALS

City and Consultant entered into an agreement entitled Agreement for Services ("Agreement"), by which the Consultant agreed to perform services in accordance with Task Orders issued by the City.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. INCORPORATION BY REFERENCE. This Task Order hereby incorporates by reference all terms and conditions set forth in the Agreement.

2. SCOPE OF TASK ORDER. Consultant will perform the services described in Attachment A, attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement. For purposes of this Task Order, the City's Project Manager will be the Community Development Director or their Designee.

3. PAYMENT. For services performed by Consultant in accordance with this Task Order, City will compensate Consultant in accordance with the terms and conditions of the Agreement , in an amount not to exceed *[write out amount in words]* dollars($).

4. AUTHORITY. The individuals executing this Task Order and the instruments referenced in it on behalf of Consultant each represent and warrant that they have the legal power, right and actual authority to bind Consultant to the terms and conditions of this Task Order.

IN WITNESS WHEREOF, the City and Consultant do hereby agree to the full performance of the terms set forth herein.

CITY OF NEWARK	METROPOLITAN PLANNING GROUP
By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT C

QUALIFICATIONS

On-Call Discretionary Project Review and Other Planning Project Tasks

M-Group is prepared to provide the City assistance in managing discretionary land development applications from entitlement through construction. M-Group has acted as an extension of City and County staff to manage discretionary projects throughout the Bay Area. M-Group has experience of providing these services remotely and, as necessary, on-site to suit the jurisdiction's needs.

M-Group possesses the following experience in on-call discretionary project review: Effective team coordination; Succinct technical memo writing; Demonstrating clear communication; Thorough project review for consistency with relevant regulations and policies; Thorough review of technical reports; Review of California Environmental Quality Act (CEQA) documentation; Preparation of detailed and concise staff reports; Presentation of project to decision-makers; Thorough review of construction documents for consistency with entitlement plans; and Conducting construction inspections for compliance with approved building permits.

Affordable Housing and Federal Grant Programs Program Management

M-Group is prepared to provide the City assistance in managing its housing program including leading and overseeing the production and preservation of affordable housing; investigating the affordable housing needs of the City; participating in the RHNA efforts for the upcoming Housing Element cycle; representing the City at stakeholder meetings; assessing potential programs to enhance affordable housing for the City; and other similar assignments as necessary to meet program objectives.

M-Group possesses the following experience relevant to affordable housing program management: Housing Element preparation; Participation in Regional Housing Needs Allocation workshops; Conducting demographic research; and Completing annual reporting.

Staff

M-Group has assembled a skilled team of planning professionals to assist the City of Newark with project planning management and housing program assistance. With this team, we will provide the City with a variety of experience levels from Associate Planner through Principal Planner that include a range of experience in planning, housing, environmental, and historic preservation fields. This arrangement will allow for M-Group to match the types of projects submitted to the City for review and implement the City's objectives for affordable housing.

The team includes: **Heather Bradley, AICP – Principal-in-Charge; Sheldon Ah Sing, AICP – Principal Planner + Team Leader; Sung Kwon, AICP– Principal Planner, Richard Patenaude, AICP – Principal Planner; Ranu Aggarwal, AICP – Senior Planner; Mandy Kang – Senior Planner; Sonal Aggarwal – Associate Planner**. Brief bios of the team are included below.

HEATHER BRADLEY, AICP | PRINCIPAL IN CHARGE
Heather has a strong background in public sector planning with an emphasis on design and development review, environmental review, and policy planning including General Plan and housing element updates. She is a collaborative planning professional with over 25 years of experience and is highly skilled in written and oral communications. Heather is highly motivated to provide applicants and clients with excellent service, creative ideas, thoughtful decisions and timely results.

SHELDON S. AH SING, AICP | PRINCIPAL PLANNER + TEAM LEADER
Sheldon has over 19 years of planning experience and tackles projects in a thoughtful and effective manner. He fully understands the planning practice and capably coordinates a multitude of public and private interests on complex projects, bringing them to successful completion. Sheldon is adept at balancing the big picture with the need for attention to detail while meeting aggressive schedules. His experience in environmental review, project management, entitlement processing, policy planning, development review and historic preservation make him an effective leader and team member in a variety of situations. Sheldon has managed the entitlements for complex and high-profile commercial, industrial, residential, mixed use, and Transit Oriented Development projects.

SUNG KWON, AICP | PRINCIPAL PLANNER
Sung is an established and well-rounded planning expert with a keen eye for detail and a creative spirit. He has broad knowledge of urban planning including the disciplines of Housing, Environmental, Current Planning, Architecture/Urban Design, Financial Analysis, and Project Management. Sung is a highly experience project manager adept at verbal and written communication, collaboration, engaging communities and stakeholders, and building consensus. He values ingenuity balanced with sensibility and is motivated by the challenge of presenting innovative, data driven, forward thinking solutions.

RICHARD PATENAUDE, AICP | PRINCIPAL PLANNER
Richard has over 30 years of public sector planning experience including long term positions with the Cities of Palmdale and Hayward, where his attention to detail and warm personality enabled him to direct the path of large and complex projects, environmental reviews, zoning and general plan amendments, historic preservation, native tribal issues, land use policy information, public outreach, sign ordinances and zoning code updates. Richard has experience in overseeing the preparation of Environmental Impact Reports involving multiagency participation and the preparation of several Negative Declarations and Mitigated Negative Declarations.

RANU AGGARWAL, AICP | SENIOR PLANNER
Ranu has over 15 years of experience in environmental, long-range, development and design review with both local governments and non-profit organizations. She has authored and managed

the preparation of several CEQA documents. She has also participated in the review of an EIR/EIS for the Santa Clara Valley Habitat Plan, a long-range planning documents for species and habitat conservation in the Santa Clara Valley. Ranu has reviewed, evaluated and managed complex development proposals, and negotiated with project proponents to resolve difficult issues on behalf of client cities. Her skills include conducting special studies for General Plans, community, and economic development, urban and regional analyses, urban design, report writing, community outreach, and geographic information systems. Ranu's professional practice philosophy emphasizes teamwork, thoroughness, accuracy, and efficient time management. She has a strong client and customer service ethic and regards effective communication as the cornerstone to building relationships and teamwork.

MANDY KANG | SENIOR PLANNER

Mandy is a highly organized, determined and motivated planner with over 11 years in the profession. She has acquired the in-depth knowledge of project management, environmental review, and current planning that only comes with hands on experience. She has a passion for organization and time management that keep her projects on schedule. Her direct communication approach builds trusted professional relationships with both public and private stakeholders making her a valued planning consultant and effective problem solver. Mandy has worked with several California public planning departments including the Cities of Dublin, Manteca, and Benicia where she managed entitlement projects, prepared CEQA compliant environmental documentation, General Plans, and developed policies and procedures. She has developed scopes and budgets; staff reports and authored Request for Proposals.

SONAL AGGARWAL | ASSOCIATE PLANNER

Sonal brings a wealth of knowledge from working for seven years on projects nationally and internationally. Her portfolio spans development project management, environment impact assessments, housing, urban design, transportation, and architecture. She is a result-oriented planner who can effectively coordinate project workloads and support client needs. Sonal holds a Bachelor's in Architecture and Master's in Environmental Planning from CEPT University, India, and a second Master's in Urban & Regional Planning with specialization in transportation from San José State University.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AN AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT WITH METROPOLITAN PLANNING GROUP FOR A NOT-TO-EXCEED AMOUNT OF $350,000

WHEREAS, in 2020 the Community Development Department issued Requests for Qualifications for On -call Professional Planning Services; and

WHEREAS, Metropolitan Planning Group was determined to be the most qualified firm for On-call Professional Planning Services; and

WHEREAS, the City entered into a Contractual Service Agreement, Resolution 11134 (Exhibit 1), with Metropolitan Planning Group on December 2, 2020 and now wishes to increase the not-to-exceed amount from the original amount of $175,000 by $175,000, for a total not-to-exceed amount of $350,000; and

WHEREAS, the costs for Professional Planning Services would be primarily recovered though reimbursement agreements as well as the existing Community Development General Fund budget.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute an amendment to the Contractual Services Agreement with Metropolitan Planning Group, in a form approved by the City Attorney, to increase the not to exceed amount by $150,000.

BE IT FURTHER RESOLVED that the City Manager is authorized to take any actions necessary to effectuate the intent of this Resolution.

FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND METROPOLITAN PLANNING GROUP

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Metropolitan Planning Group, a Type "S" Corporation ("Consultant") (sometimes referred to as "Parties") dated December 2, 2020 (the "Agreement"), is entered into as of _____ ___, 2023 for the provision of temporary professional planning services.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of professional planning services to provide project management for moderate or large discretionary planning entitlement projects, as well as other planning services as requested from time-to time; and

WHEREAS, Section 27, Modifications, of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; and

WHEREAS, City staff is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation, of the Agreement, is amended to increase the not to exceed compensation by $175,000, for a total not to exceed amount of $350,000 (from a previous not to exceed amount of $175,000.).

2. The Agreement's Exhibit B (Payment) is amended as outlined in the new Payment (Exhibit 1), attached hereto and incorporated herein by reference.

3. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark

_____

David J. Benoun
City Manager

Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

Consultant

_____

Heather Bradley
Principal
Metropolitan Planning Group

Dated: _____

EXHIBIT 1

PAYMENT-TASK ORDERS

The City will issue Consultant a Task Order to proceed for each specific requested assignment.

Upon the request by the City's Community Development Director or his/her designee, Consultant shall identify appropriately experienced staff and produce a scope of work and budget associated with the assignment, and provide a recommendation to the City. City will review the recommendation and, if it is determined to be acceptable, will prepare the Task Order. The Task Order shall be executed prior to the start of the assignment.

City will pay Consultant on a time and materials basis a total not-to-exceed amount of Three Hundred and Fifty Thousand Dollars ($350,000.00) for the completion of all work and services associated with this Agreement and specifically defined by the Task Order(s). The positions provided in the Fee Schedule of the Agreement will be used to calculate the hourly billing for services as reflected in Consultant's invoices.

Work product prepared by Consultant will be submitted to the Community Development Director or his/her designee. Assigned personnel provided by Consultant shall meet or exceed the experience associated with the Scope of Services provided in the Agreement.

Fee Schedule

Position	**2023 Fee**	**2024 Fee**
Principal	$265-285	$280-$300
Principal Planner , Principal Environmental Planner, Director of Urban Design	$185	$195
Senior Planner, Senior Urban Designer , Senior Environmental Planner, Project Manager	$165	$175
Environmental Planner, Historic Preservation Specialist , Public Art Specialist	$155	$160
Associate Planner, Associate Urban Designer	$140	$145
Assistant Planner, Assistant Urban Designer, Social Media Coordinator	$110	$115
Admin Analyst, Planning Tech	$90	$95

Key Staff

In-House Direct Expenses

Activity	Unit Cost
Reproduction	$0.15/page
Color Reproduction	$0.45/page
Mileage	$0.58/mile

STAFF REPORT

Item D. 4.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Nicholas Cuevas, Recreation and Community Services Manager
SUBJECT	Adopt a Resolution approving an agreement with the County of Alameda for participation in the County of Alameda Strategic Vision Initiative – VISION 2026 Community Grant program and amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving an agreement with the County of Alameda for participation in the County of Alameda's Strategic Vision Initiative. The City has been awarded a VISION 2026 Grant for the Fiscal Year 2023 in the amount of $52,000. This grant will allow the City to provide community support services and tools aimed at developing leadership skills and providing enrichment activities for families and youth residing in Newark.

BACKGROUND

In 2006, the Alameda County Board of Supervisors (Board) launched an ambitious initiative to look 10 years into the future and develop strategies that anticipate major trends and changes that could potentially affect county operations and services. In November 2008, the Board formally adopted the County's first strategic vision - Vision 2016. It provided a framework that helped the County address many challenges and continue to thrive. In March 2016, the accomplishments of Vision 2016 were assessed. Findings included that the County was better prepared in responding to changes more effectively and had accomplished many successes. Rapid technological and demographic changes, and the unpredictable nature of the funding environment demand that the County continue to deploy strategic visioning approaches to prepare itself to better respond to future challenges. In March 2016, the Alameda County Board of Supervisors adopted "Facing Forward: Vision 2026," a countywide initiative to refresh the County's strategic vision and build upon the prior successful Vision 2016 initiative. The foundation of Vision 2026 identifies the following strategic priorities: 1) Safe and Livable Communities, 2) Thriving and Resilient Populations, 3) a Healthy Environment, and 4) Prosperous and Vibrant Economy. Vision 2026 includes goals and objectives to achieve these priorities.

On June 29, 2018, the Board established the Enhancing Vision 2026 (EV2026) Fund to help the County reach its Vision 2026 goals of creating a healthy, safe, livable and resilient County for children, youth and families by eliminating homelessness, poverty

and hunger; supporting accessible infrastructure; and providing healthcare and employment for all. The three-year EV2026 Fund consists of $5 million per year (COVID delayed original funding timeline), divided equally between all five County supervisorial districts.

In 2021, the City of Newark requested funding from EV2026 to fund support services through leadership and enrichment activities for families and youth. In August 2022, the Alameda County Health Care Services Agency notified the City of a $52,000 grant award, and an agreement was finalized in January 2023.

DISCUSSION/ANALYSIS

The City was awarded a $52,000 EV2026 grant to provide:

1. Scholarships for youth and family classes and George M. Silliman Activity Center memberships (approximately $30,000)
    - Funds will be used to match the City of Newark's contributions to the youth and family scholarship program. Scholarships fund up to 75% of program cost and typically are used for swim lessons, dance classes, enrichment classes, and camps or memberships.
    - Participants with a current youth scholarship membership will have their passes converted into a family membership so all household members can benefit from community recreation opportunities.
2. Laptop computers for scholarship participants and Promotores families to access training courses (approximately $15,000)
    - Laptops will provide families access to services, training and programs such as Manitasen Acción (Little Hands in Action reading program).
3. Outdoor activities and overnight camping opportunities for Newark families (approximately $4,000)
    - This will provide an opportunity for families to attend a well-established local family camp during the summer.
    - Typical activities include arts and crafts, archery, hiking, swimming, and a group campfire.
4. Visits to local art and science-based museums for Teen Leadership Program participants (approximately $3,000)
    - Funds will provide up to three visits to local art and science-based museums and academies. Funds can also be allocated for teen social activities such as visits to local amusement attractions and cultural/artistic performances.

Alameda County provided a standard services agreement (attached) outlining each program goal and requirements. City staff reviewed the agreement and, if approved by City Council, is prepared to swiftly implement all program goals to ensure the most significant impact possible for community members in need.

FISCAL IMPACT

If approved, the City would accept a grant award in the amount of $52,000. This new revenue and the appropriation of this grant funding would be added to the Recreation and Community Services Department Miscellaneous Local Grant Fund (491) for the same amount. Expenditures would occur in FY 2023 and any unspent funds and appropriation would be carried forward to FY 2024.

REVIEW AND APPROVAL

Prepared by - Nicholas Cuevas, Recreation & Community Services Manager
Reviewed by - Lenka Hovorka, Assistant City Manager
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

629_EV2026 Resolution

EV2026 Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY TO ACCEPT AND THE CITY MANAGER TO SIGN THE ALAMEDA COUNTY ENHANCING VISION 2026 FUND GRANT AND AMEND THE FISCAL YEAR 2023 BUDGET

WHEREAS, the City applied to participate in the Alameda County Enhancing Vision 2026 Fund program (EV2026) to provide services for Newark youth and families; and

WHEREAS, in January 2023, Alameda County awarded the City a $52,000 EV2026 Fund grant; and

WHEREAS, the City of Newark recognizes the need to provide services to low-income individuals, at-risk youth, predominantly Spanish-speaking youth, adults, and families, and others in need of community resources; and

WHEREAS, the City of Newark desires to enhance family ties and enjoyment in young people's lives, as well as enrich their lives by supporting their learning and introducing them to new experiences; and

WHEREAS, the City of Newark will use the EV2026 grant to specifically expand the teen leadership program; purchase computers for community members to access online training, education and employment opportunities; provide scholarships for George M. Silliman Activity Center memberships and recreation activities, including family camping.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark authorizes the City to accept and the City Manager to sign the Alameda County Enhancing Vision 2026 Grant.

BE IT FURTHER RESOLVED that the Fiscal Year 2023 Budget is amended as follows and any unspent funds and appropriation would be carried forward to FY 2024.:

FR:	491.70.079.790.4791	County Grant	$52,000
TO:	491.70.079.790.6130	Laptops	$15,000
TO:	491.70.079.790.6221	General Contractual Services	$37,000

COUNTY OF ALAMEDA
STANDARD SERVICES AGREEMENT

This Agreement, dated as of January 4, 2023, is by and between the County of Alameda, hereinafter referred to as the "County", and City of Newark dba City of Newark Resource Center hereinafter referred to as the "Contractor".

WITNESSETH

Whereas, County desires to obtain SUPPORT SERVICES THROUGH EDUCATION, LEADERSHIP, AND ENRICHMENT ACTIVITIES FOR FAMILIES AND YOUTH which are more fully described in Exhibit A hereto ("Definition of Services"); and

Whereas, Contractor is professionally qualified to provide such services and is willing to provide same to County; and

Now, therefore it is agreed that County does hereby retain Contractor to provide SUPPORT SERVICES THROUGH EDUCATION, LEADERSHIP, AND ENRICHMENT ACTIVITIES FOR FAMILIES AND YOUTH, and Contractor accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

Exhibit A	Definition of Services
Exhibit B	Payment Terms
Exhibit C	Insurance Requirements
Exhibit D	Debarment and Suspension Certification
Exhibit E	Contracting Compliance Reporting Requirements

The term of this Agreement shall be from _01/1/2023 through 8/31/2023.

The compensation payable to Contractor hereunder shall not exceed *fifty-two thousand dollars* (*$52,000*) for the term of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COUNTY OF ALAMEDA

By: DocuSigned by: Colleen CB284AE84C50405...
Signature

Name: Colleen Chawla
(Printed)

Title: Director, Health Care Services Agency

Date: 1/5/2023

Approved as to Form: DONNA R. ZIEGLER,
County Counsel for the County of Alameda

By: DocuSigned by: Scott Dickey 41E878ED27CC4CF...
K. Scott Dickey
Assistant County Counsel

CITY OF NEWARK dba
CITY OF NEWARK RESOURCE CENTER

By: DocuSigned by: David Benoun 075767B2C2304C4...
Signature

Name: David Benoun
(Printed)

Title: City Manager

Date: 1/31/2023

By signing above, the signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that Contractor is an independent contractor. Contractor is not the agent or employee of the County in any capacity whatsoever, and County shall not be liable for any acts or omissions by Contractor nor for any obligations or liabilities incurred by Contractor.

   Contractor shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

   Contractor shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold County harmless from any and all liability which County may incur because of Contractor's failure to pay such amounts.

   In carrying out the work contemplated herein, Contractor shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as independent contractors and shall not be treated or considered in any way as officers, agents and/or employees of County.

   Contractor does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with currently approved methods and practices in his/her field and that the sole interest of County is to insure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the County agency concerned.

   Notwithstanding the foregoing, if the County determines that pursuant to state and federal law Contractor is an employee for purposes of income tax withholding, County may upon two week's notice to Contractor, withhold from payments to Contractor hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the fullest extent permitted by law, Contractor shall hold harmless, defend and indemnify the County of Alameda, its Board of Supervisors, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of services under this Agreement, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the performance of this agreement (collectively "Liabilities") except where such Liabilities are caused solely by the negligence or willful misconduct of any indemnitee. The County may participate in the defense of any such claim without relieving Contractor of any obligation hereunder. The obligations of this indemnity shall be for the full amount of all damage to County, including defense costs, and shall not be limited by any insurance limits.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Alameda County Employees' Retirement Association (ACERA) or California Public Employees' Retirement System (PERS) to be eligible for enrollment in ACERA and PERS as an employee of County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for ACERA and PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

3. **INSURANCE AND BOND:** Contractor shall at all times during the term of the Agreement with the County maintain in force, at minimum, those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein. The County and all parties as set forth on Exhibit C shall be considered an additional insured or loss payee if applicable. All of Contractor's available insurance coverage and proceeds in excess of the specified minimum limits shall be available to satisfy any and all claims of the County, including defense costs and damages. Any insurance limitations are independent of and shall not limit the indemnification terms of this Agreement. Contractor's insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to County. Contractor's excess and umbrella insurance shall also apply on a primary and non-contributory basis for the benefit of the County before County's own insurance policy or self-insurance shall be called upon to protect it as a named insured.

4. **PREVAILING WAGES:** Pursuant to Labor Code Sections 1770 et seq., Contractor shall pay to persons performing labor in and about Work provided for in Contract not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for legal holiday and overtime work in said locality, which per diem wages shall not be less than the stipulated rates contained in a schedule thereof which has been ascertained and determined by the Director of the State Department of Industrial Relations to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this contract.

5. **WORKERS' COMPENSATION:** Contractor shall provide Workers' Compensation insurance, as applicable, at Contractor's own cost and expense and further, neither the Contractor nor its carrier shall be entitled to recover from County any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

6. **CONFORMITY WITH LAW AND SAFETY:**

   a. In performing services under this Agreement, Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. Contractor shall indemnify and hold County harmless from any and all liability, fines, penalties and consequences from any of Contractor's failures to comply with such laws, ordinances, codes and regulations.

   b. Accidents: If a death, serious personal injury, or substantial property damage occurs in connection with Contractor's performance of this Agreement, Contractor shall immediately notify the Alameda County Risk Manager's Office by telephone. Contractor shall promptly submit to County a written report, in such form as may be required by County of all accidents

which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of Contractor's sub-Contractor, if any; (3) name and address of Contractor's liability insurance carrier; and (4) a detailed description of the accident and whether any of County's equipment, tools, material, or staff were involved.

c. Contractor further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the County the opportunity to review and inspect such evidence, including the scene of the accident.

7. **DEBARMENT AND SUSPENSION CERTIFICATION:** (Applicable to all agreements funded in part or whole with federal funds and contracts over $25,000).

a. By signing this agreement and Exhibit D, Debarment and Suspension Certification, Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations, including but not limited to 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

b. By signing this agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded by any federal department or agency;

(2) Shall not knowingly enter into any covered transaction with a person who is proposed for debarment under federal regulations, debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction.

8. **PAYMENT:** For services performed in accordance with this Agreement, payment shall be made to Contractor as provided in Exhibit B hereto.

9. **TRAVEL EXPENSES:** Contractor shall not be allowed or paid travel expenses unless set forth in this Agreement.

10. **TAXES:** Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the Contractor.

11. **OWNERSHIP OF DOCUMENTS:** Contractor hereby assigns to the County and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) respecting in any way the subject matter of this Agreement, whether prepared by the County, the Contractor, the Contractor's sub-Contractors or third parties at the request of the Contractor (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

Contractor also hereby assigns to the County and its assignees all copyright and other use rights in any Documents and Materials including electronic copies stored in Contractor's Information System, respecting in any way the subject matter of this Agreement.

Contractor shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. Contractor agrees to take such further steps as may be reasonably requested by County to implement the aforesaid assignment. If for any reason said assignment is not effective, Contractor hereby grants the County and any assignee of the County an express royalty – free license to retain and use said Documents and Materials. The County's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not Contractor's services as set forth in Exhibit "A" of this Agreement have been fully performed or paid for.

In Contractor's contracts with other Contractors, Contractor shall expressly obligate its Sub-Contractors to grant the County the aforesaid assignment and license rights as to that Contractor's Documents and Materials. Contractor agrees to defend, indemnify, and hold the County harmless from any damage caused by a failure of the Contractor to obtain such rights from its Contractors and/or Sub-Contractors.

Contractor shall pay all royalties and license fees which may be due for any patented or copyrighted materials, methods or systems selected by the Contractor and incorporated into the work as set forth in Exhibit "A", and shall defend, indemnify and hold the County harmless from any claims for infringement of patent or copyright arising out of such selection. The County's rights under this Paragraph 11 shall not extend to any computer software used to create such Documents and Materials.

12. **CONFLICT OF INTEREST; CONFIDENTIALITY:** The Contractor covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement. Without limitation, Contractor represents to and agrees with the County that Contractor has no present, and will have no future, conflict of interest between providing the County services hereunder and any other person or entity (including but not limited to any federal or state wildlife, environmental or regulatory agency) which has any interest adverse or potentially adverse to the County, as determined in the reasonable judgment of the Board of Supervisors of the County.

The Contractor agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this Agreement for the County will be kept confidential and not be disclosed to any other person. The Contractor agrees to immediately notify the County by notices provided in accordance with Paragraph 13 of this Agreement, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this Agreement. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to the County hereunder.

13. **NOTICES:** All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service. Telex or facsimile transmission: When sent by telex or facsimile to the last telex or facsimile number of the recipient known to the party

giving notice, notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given by telex or facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.
Addresses for purpose of giving notice are as follows:

To County: COUNTY OF ALAMEDA
Health Care Services Agency
1000 San Leandro Blvd., 3rd Floor
San Leandro, CA 94577
Attn: Maria Smith

To Contractor: CITY OF NEWARK dba
City of Newark Resource Center
6800 Mowry Avenue
Newark, CA 94560
Attn: Nick Cuevas C/o
David Benoun

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.
Any party may change its address or telex or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

14. **USE OF COUNTY PROPERTY:** Contractor shall not use County property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.

15. **EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS:** Contractor assures that he/she/it will comply with Title VII of the Civil Rights Act of 1964 and that no person shall, on the grounds of race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement.

a. Contractor shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

b. Contractor shall, if requested to so do by the County, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their race, creed, color, disability, sex, sexual orientation, national origin, age, religion, Vietnam era Veteran's status, political affiliation, or any other non-merit factor.

c. If requested to do so by the County, Contractor shall provide the County with access to copies of all of its records pertaining or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

d. Contractor shall recruit vigorously and encourage minority - and women-owned businesses to bid its subcontracts.

e. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.

f. The Contractor shall include the provisions set forth in paragraphs A through E (above) in each of its subcontracts.

16. **DRUG-FREE WORKPLACE:** Contractor and Contractor's employees shall comply with the County's policy of maintaining a drug-free workplace. Neither Contractor nor Contractor's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If Contractor or any employee of Contractor is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the Contractor within five days thereafter shall notify the head of the County department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.

17. **AUDITS; ACCESS TO RECORDS:** The Contractor shall make available to the County, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the County, and shall furnish to the County, its authorized agents, officers or employees such other evidence or information as the County may require with regard to any such expenditure or disbursement charged by the Contractor.

The Contractor shall maintain full and adequate records in accordance with County requirements to show the actual costs incurred by the Contractor in the performance of this Agreement. If such books and records are not kept and maintained by Contractor within the County of Alameda, California, Contractor shall, upon request of the County, make such books and records available to the County for inspection at a location within County or Contractor shall pay to the County the reasonable, and necessary costs incurred by the County in inspecting Contractor’s books and records, including, but not limited to, travel, lodging and subsistence costs. Contractor shall provide such assistance as may be reasonably required in the course of such inspection. The County further reserves the right to examine and reexamine said books, records and data during the three (3) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the County, and the Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after the County makes the final or last payment or within three (3) years after any pending issues between the County and Contractor with respect to this Agreement are closed, whichever is later.

18. **DOCUMENTS AND MATERIALS:** Contractor shall maintain and make available to County for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 11 of this Agreement. Contractor’s obligations under the preceding sentence shall continue for three (3) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by County), and Contractor shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for three (3) years following the County’s last payment to Contractor under this Agreement.

19. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

20. **TERMINATION:** The County has and reserves the right to suspend, terminate, or abandon the execution of any work by the Contractor without cause at any time upon giving to the Contractor prior written notice. In the event that the County should abandon, terminate, or suspend the Contractor's work, the Contractor shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination, or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to Contractor for its SUPPORT SERVICES THROUGH EDUCATION, LEADERSHIP, AND ENRICHMENT ACTIVITIES FOR FAMILIES AND YOUTH shall not exceed $52,000 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment.

21. **SMALL LOCAL AND EMERGING BUSINESS (SLEB) PARTICIPATION:**

Contractor has been approved by County to participate in contract without SLEB participation. As a result, there is no requirement to subcontract with another business in order to satisfy the County's Small and Emerging Locally owned Business provision.

However, if circumstances or the terms of the contract should change, Contractor may be required to immediately comply with the County's Small and Emerging Local Business provisions, including but not limited to:

a. Contractor must be a certified small or emerging local business(es) or subcontract a minimum 20% with a certified small or emerging local business(es).

b. SLEB subcontractor(s) is independently owned and operated (i.e., is not owned or operated in any way by Prime), nor do any employees of either entity work for the other.

c. Small and/or Emerging Local Business participation and current SLEB certification status must be maintained for the term of the contract. Contractor shall ensure that their own certification status and/or that of participating subcontractors (as is applicable) are maintained in compliance with the SLEB Program.

d. Contractor shall not substitute or add any small and/or emerging local business(s) listed in this agreement without prior written approval from the County. Said requests to substitute or add a small and/or emerging local business shall be submitted in writing to the County department contract representative identified under Item #13 above. Contractor will not be able to substitute the subcontractor without prior written approval from the Alameda County Auditor Controller Agency, Office of Contract Compliance & Reporting (OCCR).

e. All SLEB participation, except for SLEB prime contractor, must be tracked and monitored utilizing the Elation compliance System.

County will be under no obligation to pay contractor for the percent committed to a SLEB (whether SLEB is a prime or subcontractor) if the work is not performed by the listed small and/or emerging local business.

For further information regarding the Small Local Emerging Business participation requirements and utilization of the Alameda County Contract Compliance System contact OCCR via e-mail at ACSLEBcompliance@acgov.org.

22. **FIRST SOURCE PROGRAM:** For contracts over $100,000, Contractor shall provide County ten (10) working days to refer to Contractor, potential candidates to be considered by Contractor to fill any new or vacant positions that are necessary to fulfill their contractual obligations to the County that Contractor has available during the contract term before advertising to the general public.

23. **CHOICE OF LAW:** This Agreement shall be governed by the laws of the State of California.

24. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between County and Contractor relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties and sets forth the entire understanding of the parties regarding the subject matter thereof. The Agreement may not be modified except by a written document signed by both parties.

26. HEADINGS herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

27. **ADVERTISING OR PUBLICITY:** Contractor shall not use the name of County, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of County in each instance.

28. **MODIFICATION OF AGREEMENT:** This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.

29. **ASSURANCE OF PERFORMANCE:** If at any time County believes Contractor may not be adequately performing its obligations under this Agreement or that Contractor may fail to complete the Services as required by this Agreement, County may request from Contractor prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in Contractor's performance. Contractor shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. Contractor acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.

30. **SUBCONTRACTING/ASSIGNMENT:** Contractor shall not subcontract, assign, or delegate any portion of this Agreement or any duties or obligations hereunder without the County's prior written approval.

a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph shall confer no rights on any party and shall be null and void.

b. Contractor shall use the subcontractors identified in Exhibit A and shall not substitute subcontractors without County's prior written approval.

c. Contractor shall require all subcontractors to comply with all indemnification and insurance requirements of this agreement, including, without limitation, Exhibit C. Contractor shall verify subcontractor's compliance.

d. Contractor shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between Contractor and its subcontractors.

31. **SURVIVAL:** The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2), Ownership of Documents (Paragraph 11), and Conflict of Interest (Paragraph 12), shall survive termination or expiration.

32. **SEVERABILITY:** If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.

33. **PATENT AND COPYRIGHT INDEMNITY:** Contractor represents that it knows of no allegations, claims, or threatened claims that the materials, services, hardware or software ("Contractor Products") provided to County under this Agreement infringe any patent, copyright or other proprietary right. Contractor shall defend, indemnify and hold harmless County of, from and against all losses, claims, damages, liabilities, costs expenses and amounts (collectively, "Losses") arising out of or in connection with an assertion that any Contractor Products or the use thereof, infringe any patent, copyright or other proprietary right of any third party. County will: (1) notify Contractor promptly of such claim, suit, or assertion; (2) permit Contractor to defend, compromise, or settle the claim; and, (3) provide, on a reasonable basis, information to enable Contractor to do so. Contractor shall not agree without County's prior written consent, to any settlement, which would require County to pay money or perform some affirmative act in order to continue using the Contractor Products.

a. If Contractor is obligated to defend County pursuant to this Paragraph 33 and fails to do so after reasonable notice from County, County may defend itself and/or settle such proceeding, and Contractor shall pay to County any and all losses, damages and expenses (including attorney's fees and costs) incurred in relationship with County's defense and/or settlement of such proceeding.

b. In the case of any such claim of infringement, Contractor shall either, at its option, (1) procure for County the right to continue using the Contractor Products; or (2) replace or modify the Contractor Products so that that they become non-infringing, but equivalent in functionality and performance.

c. Notwithstanding this Paragraph 33, County retains the right and ability to defend itself, at its own expense, against any claims that Contractor Products infringe any patent, copyright, or other intellectual property right.

34. **OTHER AGENCIES:** Other tax supported agencies within the State of California who have not contracted for their own requirements may desire to participate in this contract. The Contractor is requested to service these agencies and will be given the opportunity to accept or reject the additional requirements. If the Contractor elects to supply other agencies, orders will be placed directly by the agency and payments made directly by the agency.

35. **EXTENSION:** This agreement may be extended for up to three years by mutual agreement of the County and the Contractor.

36. **SIGNATORY:** By signing this agreement, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

Contracting Department	Alameda County - Health Care Services Agency
Contractor Name	City of Newark dba City of Newark Resource Center
Contract Period	01/1/2023 through 8/31/2023
Type of Services	EV2026 Fund - D2 - Support Services through Education, Leadership, and Enrichment Activities For Families And Youth
Allocation Amount	$ 52,000

DEFINITION OF SERVICES

I. Program Name

City of Newark Resource Center in partnership with the Newark Recreation & Community Services Department's Promotores Program.

II. Contracted Services

The City of Newark Resource Center shall provide Alameda County Health Care Services Agency (HCSA) with services that conform to the Enhancing Vision 2026 Fund criteria, which are meant to support children, youth, and families living in Alameda County.

Contractor shall provide Alameda County Health Care Services Agency:
The City of Newark Resource Center in partnership with the Newark Recreation & Community Services Department's Promotores Program will provide an opportunity for children, youth, and families to experience the arts, science, learning, and cultural awareness to enrich their lives. In addition, these activities will enhance family ties and enjoyment to young people's lives. In the end, they will be more educated about things not necessarily envisioned in their day-to-day learning and elevate students and families where English is not their first language.

III. Program Information and Requirements

A. Program Goals

1. **Expansion of the Teen Leadership Program:** Provide field trips to museums and other educational and cultural venues. Youth and young adults will engage in experiences to boost community wellness (art and cultural activities) and participate in educational forums that provide information about public services available to teens and youth.

2. **Purchase of laptop computers for Promotores Families:** Approximately 30 computers will be distributed to Promotores families who do not have the means to purchase a computer. The computers will help the youth and families of Newark access educational information provided by the city and other community-based educational institutes and agencies, including the Promotores program and workforce development opportunities.

3. **Youth & Family Membership "Scholarships":** Scholarships will allow youth and families,

4. including Promotores' families, to participate in various community programs offered by the city that would typically be cost-prohibitive due to program price. Scholarships will provide families with the Silliman Activity & Family Aquatic Center membership to use the facility amenities such as the fitness center, gymnasium, and water park to help boost healthy lifestyles .
5. **Family Camp Sponsorship:** Sponsorships will allow families to experience outdoor camping opportunities. Promotores' families will have access to the established family youth camp located near the Bay Area and sponsored by the City of Newark.

B. Target Population

Contractor shall provide services to the following populations described below.

1. Service Groups

Contractor shall provide services to community members who are in the following categories:

a. Low-income individuals and at-risk youth
b. Predominantly Spanish-speaking youth, adults, and families
c. In need of community resources

2. Program Eligibility

Contractor shall only serve clients who:

a. Are Alameda County residents; and
b. Are income-qualified Newark families; and
c. Are part of the City of Newark Recreation & Community Services Department's Promotores network.

C. Program Requirements

Contractor shall maintain the following program services:

1. Program Services

The City of Newark operates two programs for individuals in need or seeking services within Newark. Low-income individuals who cannot afford programs offered by the Recreation & Community Services Department can apply through the Department's Scholarship Program, which covers 75% of program fees for participants who are income qualified. Additionally, the City of Newark Recreation & Community Services Department operates the Newark Promotores Network, which works closely with the Hispanic/Latinx population in the City of Newark. Services offered by this program primarily serve families and children who are economically disadvantaged, lack immigration status, and are unaware of public services available to them.

2. Hours of Operation

Contractor shall be available to provide services for the following hours of operation:

- 8:00 a.m. to 5:00 p.m. Monday – Thursday
- 6:00 p.m. to 8:30 p.m. Fridays for Teen Program

3. Service Delivery Sites

Contractor shall provide services at the following location(s):
Silliman Activity & Family Aquatic Center at 6800 Mowry Avenue, Newark Ca 94560

4. Additional Requirements

a. Contractor shall participate in any requested training sessions as requested by the County.
b. Alameda County reserves the right to request additional information. The approval of County to a requested change shall not release Contractor from its obligations under this Agreement.
c. Entirety of Agreement: Contractor shall abide by all provisions of the General Terms and Conditions, all Exhibits, and all Attachments that are associated with and included in this agreement and made part of the same by this reference.

IV. Contract Deliverables and Reporting Requirements

A. Process Objectives and Performance Measures

By August 31, 2023, Contractor shall meet the following objectives:

Process Objective	"How Much" Performance Measure	Data Source
By August 31, 2023, PP will provide at least 3 annual visits to local art and science-based museums and academies for a minimum of 20 program participants	Minimum of three field trips	Program registration list
By August 31, 2023, NRC in partnership with Promotores Program will provide at least 30 laptop computers for Promotores families to access training courses	Minimum of 30 laptops for families	Program registration list
By August 31, 2023, NRC in partnership with Promotores Program will provide at least 40 scholarships to cover youth and family classes and facility memberships.	Minimum of 40 family memberships	Program registration list
By August 31, 2023, NRC in partnership with Promotores Program will provide 25 families with at least 3 outdoor activities and camping opportunities	Minimum of 2 outdoor activities	Program registration list

B. Quality Objectives and Performance Measures

By August 31, 2023, Contractor shall meet the following outcomes:

Quality Objective	"How Well" Performance Measure	Data Source
By August 31, 2023, 70% of the total participants in the youth group shall attend at least one of our annual visits.	Youth participants will have to complete at least 50% of the attendance through the program.	Youth Group database and/or Sign-In sheets
By August 31, 2023, 30 out of the 42 City of Newark graduated Promotores shall get a laptop within the following months. Unless having received a laptop previously from a Newark Program. The laptop would go to the next person in the graduating class or another Promotores community member in need.	All the rest of the graduated Promotores that did not qualify to receive a laptop during the previous grant shall receive a laptop to keep their education and online training going or Promotores community members in need.	Promotores Database and/or Sign- In sheets
By August 31, 2023, 40 scholarships among the youth group and Promotores families and their network shall be provided to cover youth and family classes and facility memberships.	Participants with the highest attendance in at least 50% of the programs shall qualify to receive these scholarships.	Promotores Database and/or Sign- In sheets
By August 31, 2023, 25 families attending most of the Promotores Programs shall attend at least 2 outdoor activities and camping opportunities.	Families with the highest participation in the Promotores Programs shall attend these outdoor activities and camping opportunities.	Promotores Database and/or Sign- In sheets

C. Impact Objectives and Performance Measures

By **August 31, 2023** Contractor shall meet the following outcome(s):

Impact Objective	"Is Anyone Better Off" Performance Measure	Data Source
By August 31, 2023, 70% of the total participants in the youth group shall have the opportunity to explore at least 1 local art and science-based museum and academy to engage youth to boost their personal growth and wellness.	*Youth participants will have to be consistent and complete at least 50% of the attendance through the program*	*Youth Group database and/or Sign-In sheets*
By August 31, 2023, The 30 City of Newark graduated Promotores shall get a laptop to have access to educational training and to create workforce development opportunities.	*Graduated Promotores that receive a laptop shall participate in at least 10 online sessions or workshops using their laptops to participate.*	*Promotores Programs registration and/or Sign-In sheets*
By August 31, 2023, 40 scholarships among the youth group and Promotores families and their network shall be provided to cover youth and family classes and facility memberships to be exposed and engage families with less access to sports, arts, or other enrichment opportunities due to cost/budget limitations.	*Participants with the highest attendance in at least 50% of the programs shall qualify to receive these scholarships.*	*Promotores Programs registration and/or Sign-In sheets*
By August 31, 2023, 25 families attending most of the Promotores Programs shall attend at least 2 outdoor activities and camping opportunities to expose them to explore and experience family outdoor enrichment programs.	*Families with the highest participation in the Promotores Programs shall attend these outdoor activities and camping opportunities.*	*Promotores Database and/or Sign-In sheets*

D. Reporting Template

PROGRESS REPORT

From:	**Bill To:**
City of Newark dba City of Newark Resource Center ATTN: Nick Cuevas 6800 Mowry Avenue Newark, CA 94560	Alameda County Health Care Services Agency ATTN: Special Projects Office 1000 San Leandro Blvd, Suite 300 San Leandro, CA 94577 Email to: EV2026Fund@acgov.org

Procurement Contract Number: XXXXX

Reporting Period: 01/1/2023 – 8/31/2023

Process Objective	"How Much Are We Doing?" Process Measure	Data Source	Progress

Challenges/Successes in Meeting Process Objectives:

Quality Objective	"How Well Did We Do It?" Quality Measure	Data Source	Progress

Challenges/Successes in Meeting Quality Objectives:

Impact Objective	"Is Anyone Better Off?" Impact Measure	Data Source	Progress

Challenges/Successes in Meeting Impact Objectives:

Note: An electronic PDF version of this Reporting Template shall be provided to Contractor upon contract execution.

EXHIBIT B

PAYMENT TERMS

Contracting Department	Alameda County - Health Care Services Agency
Contractor Name	City of Newark dba City of Newark Resource Center
Contract Period	01/1/2023 through 8/31/2023
Type of Services	EV2026 Fund - D2 - City of Newark
Allocation Amount	$ 52,000

I. Budget Summary (10/1/22 – 9/30/23)

Service Description	Amount
Provide annual visits to local art and science-based museums and academies.	$3,000.00
Provide laptop computers for Promotores families to access training courses.	$15,000.00
Provide scholarships to cover youth and family classes and facility memberships.	$30,000.00
Provide families with outdoor activities and camping opportunities	$4,000.00
TOTAL AMOUNT NOT TO EXCEED	**$52,000.00**

II. Terms and Conditions of Payment

1. The total amount of reimbursement under the terms of this Agreement shall not exceed $52,000. Any changes will need to be authorized by the Health Care Services Agency Finance Director.

2. Contractor shall invoice the County monthly for actual expenses incurred based upon the services described in Exhibit A. The final invoice shall be for an amount not to exceed the remaining balance of the contract. **The final invoice and annual report must be received no later than 9/30/2023.**

3. Contractor shall submit invoices, with all required progress reports in accordance with the reporting requirements, to Alameda County Health Care Services Agency (HCSA).

4. Funds shall be used solely in support of the project's program budget and may not be used for any purpose other than those specified in this Agreement without prior written approval from the Alameda County Health Care Services Agency. Reimbursement is limited to actual expenses and in accordance to the items and costs as set forth in the Budget Summary.

5. County shall use best efforts to process invoices submitted by contractor within forty-five (45)

6. working days of receipt of invoice, required report and any other requested documentation. Invoices will be reviewed by and not paid until approved by the Alameda County Health Care Services Agency.

III. Invoicing Procedures

Contractor's omission of this information will result in a delay in payment.

1. Invoices shall include the following information:
   a. Remittance address
   b. Reporting period
   c. Procurement Contract Number
   d. Purchase Order Number
   e. Invoice number
   f. Invoice amount
   g. Detail of expenditures
   h. All required reports

2. Invoices accompanied by the required report(s), shall be sent via email to:
   - ***EV2026Fund@ACGOV.org***

EXHIBIT C

COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the Contractor, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements:

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	**Commercial General Liability** Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	**Commercial or Business Automobile Liability** All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities	$1,000,000 per occurrence (CSL) Any Auto Bodily Injury and Property Damage
C	**Workers' Compensation (WC) and Employers Liability (EL)** Required for all contractors with employees	WC: Statutory Limits EL: $100,000 per accident for bodily injury or disease

D **Endorsements and Conditions:**

1. **ADDITIONAL INSURED:** All insurance required above with the exception of Commercial or Business Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives. The Additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.
2. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until 3 years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.
3. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall include an endorsement and be primary and non-contributory and will not seek contribution from any other insurance (or self-insurance) available to the County. The primary and non-contributory endorsement shall be at least as broad as ISO Form 20 01 04 13. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.
4. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with a A.M. Best Rating of no less than A:VII or equivalent, shall be admitted to the State of California unless otherwise waived by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
5. **SUBCONTRACTORS:** Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit. The additional Insured endorsement shall be at least as broad as ISO Form Number CG 20 38 04 13.
6. **JOINT VENTURES:** If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
   - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
   - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".
7. **CANCELLATION OF INSURANCE:** All insurance shall be required to provide thirty (30) days advance written notice to the County of cancellation.
8. **CERTIFICATE OF INSURANCE:** Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to County, evidencing that all required insurance coverage is in effect. The County reserves the rights to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificate(s) and endorsements must be sent as set forth in the Notices provision.

CERTIFICATE OF COVERAGE

DATE (MM/DD/YYYY) 8/25/2022

PRODUCER

San Francisco-Alliant Insurance Services, Inc.
560 Mission Street, 6th Floor
San Francisco CA 94105

NAMED COVERED PARTY

City of Newark
c/o Pooled Liability Assurance Network JPA
1750 Creekside Oaks Drive, Suite 200
Sacramento CA 95833

THIS CERTIFICATE IS ISSUED AS A MATTER OF EVIDENCE ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE MEMORANDUM(S) OF COVERAGE BELOW.

THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING COVERAGE PROVIDER, AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: IF THE CERTIFICATE HOLDER IS AN ADDITIONAL COVERED PARTY, THE MEMORANDUM OF COVERAGE MUST BE ENDORSED. A STATEMENT ON THIS CERTIFICATE DOES NOT CONFER RIGHTS TO THE CERTIFICATE HOLDER IN LIEU OF SUCH ENDORSEMENT(S).

IMPORTANT: IF SUBROGATION IS WAIVED, SUBJECT TO THE TERMS AND CONDITIONS OF THE MEMORANDUM(S) OF COVERAGE AN ENDORSEMENT MAY BE REQUIRED. A STATEMENT ON THE CERTIFICATE DOES NOT CONFER RIGHTS TO THE CERTIFICATE HOLDER IN LIEU OF SUCH ENDORSEMENT(S).

PROGRAM AFFORDING COVERAGE

A: PLAN JPA

B:

C:

COVERAGES

THIS IS TO CERTIFY THAT THE COVERAGE IS AFFORDED TO THE ABOVE NAMED MEMBER, AS PROVIDED BY THE MEMORANDUM(S) OF COVERAGE, FOR THE PERIOD SHOWN BELOW, NOT WITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE PROGRAM DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUM(S) OF COVERAGE. THE FOLLOWING COVERAGE IS IN EFFECT.

JPA LTR	TYPE OF COVERAGE	MEMORANDUM NUMBER	COVERAGE EFFECTIVE DATE (MM/DD/YY)	COVERAGE EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	**GENERAL LIABILITY**	GAL 2022-23	7/1/2022	7/1/2023	EACH OCCURRENCE	$ 1,000,000
	[X] COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$
	[ ] CLAIMS MADE [X] OCCUR				MED EXPENSE (Any one person)	$
					PERSONAL & ADV INJURY	$
					GENERAL AGGREGATE	$
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS-COMP/OP AGG	$
	[ ] MEMORANDUM [ ] PROJECT [ ] LOC					
A	**AUTOMOBILE LIABILITY**	GAL 2022-23	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	[X] ANY AUTO					$
	[ ] ALL OWNED AUTOS					
	[ ] SCHEDULED AUTOS					
	[ ] HIRED AUTOS					
	[ ] NON-OWNED AUTOS					
	WORKERS' COMPENSATION AND EMPLOYERS LIABILITY				[ ] WC STATUTORY LIMITS [ ] OTHER	
	ANY PROPRIETOR/PARTNER/ EXECUTIVE/OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$
	IF YES, DESCRIBED UNDER SPECIAL PROVISION BELOW				E.L. DISEASE – EA EMPLOYEE	$
					E.L. DISEASE – POLICY LIMIT	$
	OTHER					
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Pursuant to the definition of Covered Party in the Liability Memorandum of Coverage, the certificate holder is an additional covered party for covered claims arising out of the covered activity stated below and is subject to the limits stated above.

As respects the Agreement between the Alameda County Health Care Services Agency and the City of Newark regarding services that conform to the Enhancing Vision 2026 Fund criteria, which are meant to support children, youth and families living in Alameda County; Alameda County Health Care Services Agency, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are additional insured parties with regard to any negligent acts or omissions of the City of Newark, its officers, employees, and volunteers.

CERTIFICATE HOLDER

Alameda County Health Care Services Agency
1000 Leandro Blvd., Suite 300
San Leandro CA 94577

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUM(S) OF COVERAGE BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUM(S) OF COVERAGE PROVISIONS.

AUTHORIZED REPRESENTATIVE

Local Agency Workers' Compensation Excess Joint Powers Authority

1750 Creekside Oaks Drive, Sacramento, CA 95833
916-244-1100

Workers' Compensation Certificate of Coverage

Certificate Number: 71408318

Certificate Holder: County of Alameda
Health Care Services Agency
Attn: Maria Smith

1000 San Leandro Blvd., 3rd Floor
San Leandro, CA 94577

Covered Party: City of Newark

Description of Covered Activity: As respects evidence of workers' compensation coverage for the City of Newark regarding the County of Alameda Standard Services agreement for support services through education, leadership, and enrichment activities for families and youth.

Memorandum of Coverage Number: LAWCX 22.23 **Effective Date:** 7/1/2022 **Expiration Date:** 7/1/2023

Limits: $5,000,000 (per occurrence)

Excess of: $350,000

The Following Coverage is in effect: Workers' Compensation coverage as defined in the Memorandum of Coverage on file with the covered party named above.

This is to certify that the coverage listed above has been issued to the Covered Party named above for the coverage period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain. The coverage afforded as described herein is subject to all the terms, exclusions, and conditions of the Memorandum of Coverage of the LAWCX, which is available for your review upon request.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the Workers' Compensation Memorandum of Coverage.

Coverage is in effect from 12:01 a.m. Pacific Time of effective date to 12:01 a.m. Pacific Time of expiration date as stated above and will not be canceled, limited, or allowed to expire except upon 30-day notice to the certificate holder.

Date Issued: 11/22/2022

Renewal: Yes **PRISM Certificate Issued:** Yes

Authorized Representative Signature:

71408318 | LAWCX | 22/23 WC $5MM LIMITS | Shelley Nguyen | 11/22/2022 3:38:11 PM (PST) | Page 1 of 3
This certificate cancels and supersedes ALL previously issued certificates.

CERTIFICATE NO. | ISSUE DATE

WC-5026	**CERTIFICATE OF COVERAGE**	11/22/2022

PUBLIC RISK INNOVATION, SOLUTIONS, AND MANAGEMENT

C/O ALLIANT INSURANCE SERVICES, INC.
18100 VON KARMAN AVENUE, 10TH FLOOR
IRVINE, CA 92612

PHONE (949) 756-0271 / FAX (619) 699-0901
LICENSE #0C36861

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BELOW. THIS CERTIFICATE OF COVERAGE DOES NOT CONSTITITUE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER

IMPORTANT: If the certificate holder is requesting a WAIVER OF SUBROGATION, the Memorandums of Coverage must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

COVERAGE AFFORDED BY: **A - See attached schedule of insurers**

Member:
LOCAL AGENCY WORKERS' COMPENSATION EXCESS JOINT POWERS AUTHORITY: A CALIFORNIA PUBLIC AGENCY (LAWCX) MEMBER AGENCIES (AS ENDORSED)
C/O JIM ELLEDGE
1750 CREEKSIDE OAKS DRIVE, SUITE 200
SACRAMENTO, CA 95833

COVERAGE AFFORDED BY: **B**

COVERAGE AFFORDED BY: **C**

COVERAGE AFFORDED BY: **D**

Coverages

THIS IS TO CERTIFY THAT THE MEMORANDUMS OF COVERAGE AND POLICIES LISTED BELOW HAVE BEEN ISSUED TO THE MEMBER NAMED ABOVE FOR THE PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE COVERAGE AFFORDED BY THE MEMORANDUMS AND POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS, AND CONDITIONS OF SUCH MEMORANDUMS AND POLICIES.

CO LTR	TYPE OF COVERAGE	MEMORANDUM/ POLICY NUMBER	COVERAGE EFFECTIVE DATE	COVERAGE EXPIRATION DATE	LIABILITY LIMITS
A	EXCESS WORKERS' COMPENSATION & EMPLOYER'S LIABILITY	See attached Schedule of Insurers for policy numbers	07/01/2022	07/01/2023	WORKERS' COMPENSATION: Difference between Statutory and Member's $5,000,000 Retention

LIMITS APPLY PER OCCURRENCE FOR ALL PROGRAM MEMBERS COMBINED.

Description of Operations/Locations/Vehicles/Special Items:

AS RESPECTS EVIDENCE OF COVERAGE BETWEEN CITY OF NEWARD AND ALAMEDA COUNTY FOR SERVICES AGREEMENT FOR EV2925 FUND-D2 SUPPORT SERVICES THROUGH EDUCATION, LEADERSHIP AND ENRICHMENT ACTIVITIES FOR FAMILIES AND YOUTH.

CITY OF NEWARK IS A MEMBER OF LOCAL AGENCY WORKERS' COMPENSATION EXCESS JOINT POWERS AUTHORITY: A CALIFORNIA PUBLIC AGENCY (LAWCX) MEMBER AGENCIES (AS ENDORSED)

Certificate Holder

ALAMEDA COUNTY
HEALTH CARE SERVICES AGENCY
ATTN: MARIA SMITH
1000 SAN LEANDRO BLVD, 3RD FL
SAN LEANDRO, CA 94577

Cancellation

SHOULD ANY OF THE ABOVE DESCRIBED MEMORANDUMS OF COVERAGE/POLICIES BE CANCELLED BEFORE THE EXPIRATION THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE MEMORANDUMS OF COVERAGE/POLICIES PROVISIONS.

AUTHORIZED REPRESENTATIVE

Gina Dean

Public Risk Innovation, Solutions, and Management

71408318 | LAWCX | 22/23 WC $5MM LIMITS | Shelley Nguyen | 11/22/2022 3:38:11 PM (PST) | Page 2 of 3
This certificate cancels and supersedes ALL previously issued certificates.

EXHIBIT D

COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION
(Applicable to all agreements funded in part or whole with federal funds and contracts over $25,000).

The contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named and unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space. For any exception noted, indicate to whom it applies, initiating agency, and dates of action. Exceptions will not necessarily result in denial of award but will be considered in determining Contractor responsibility.

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Standard Services Agreement. Signing this Standard Services Agreement on the signature portion thereof shall also constitute signature of this Certification.

CONTRACTOR: City of Newark dba City of Newark Resource Center

PRINCIPAL: David Benoun TITLE: City Manager

SIGNATURE: DocuSigned by: David Benoun 075767B2C2304C4... DATE: 1/31/2023

STAFF REPORT

Item D. 5.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Alex Tat, Senior Civil Engineer
SUBJECT	Adopt a resolution accepting work with Rosas Brothers Construction for FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279. Exempt from CEQA Review per CEQA Guidelines Section 15301 (Existing Facilities)

SUMMARY AND RECOMMENDATION

Rosas Brothers Construction completed the FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279 within an acceptable time and within the contract renewal budget of $350,000 allocated for the project. Staff recommends that the City Council, by resolution, accept the work with Rosas Brothers Construction for FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279, authorize the filing of a notice of completion with the County Recorder of Alameda County, and authorize the release of bonds guaranteeing completion of the work.

BACKGROUND

Pursuant to Resolution No. 11,169, adopted February 11, 2021, the City Council awarded a contract to Rosas Brothers Construction for 2021 Curb, Gutter, and Sidewalk Replacement, Project 1257. The overall project scope of work included replacement of curb, gutter and sidewalk throughout the City. The contract allowed for renewal of the contract annually for up to three (3) additional years if agreeable to both the City and Rosas Brothers Construction. FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279 was the first renewal of the original contract.

DISCUSSION/ANALYSIS

On August 22, 2022, the City executed an agreement renewing the contract with Rosas Brothers Construction in an amount not to exceed $350,000. Staff has reviewed and inspected the entire scope of work which has now been satisfactorily completed in accordance with the approved project specifications, all applicable standards and as directed by the City Engineer. Staff now recommends that the City Council formally accept the work pursuant to the California Public Contract Code. Once accepted, a notice of completion will be filed with the County Recorder of Alameda County and a release of retention payment issued.

FISCAL IMPACT

The project was completed within budget using Measure BB Direct Local Distribution funds.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The repair and maintenance of existing facilities is categorically exempt under the California Environmental Quality Act (CEQA) section 15301 (Existing Facilities).

REVIEW AND APPROVAL

Prepared by – Alex Tat, Senior Civil Engineer
Reviewed by – Jayson Imai, Assistant City Engineer
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution - Rosas Brothers

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE WORK WITH ROSAS BROTHERS CONSTRUCTION FOR FY 2021-2022 CURB, GUTTER, AND SIDEWALK REPLACEMENT, PROJECT 1279

WHEREAS, the City of Newark entered into a contract (C21003) with Rosas Brothers Construction pursuant to Resolution No. 11,169, adopted February 11, 2021, for 2021 Curb, Gutter & Sidewalk Replacement, Project 1257, in the City of Newark; and

WHEREAS, per the terms of the contract, the City is allowed to renew the contract with Rosas Brothers Construction annually for up to three (3) additional years if aggregable to both the City and Rosas Brothers Construction; and

WHEREAS, the City of Newark executed an agreement renewing the contract (C21003) with Rosas Brothers Construction on October 22, 2022, in an amount not to exceed $350,000 for FY 2021-2022 Curb, Gutter & Sidewalk Replacement, Project 1279; and

WHEREAS, Rosas Brothers Construction has successfully completed the improvements for FY 2021-2022 Curb, Gutter & Sidewalk Replacement, Project 1279, in accordance with specifications for the contract and as directed by the City Engineer; and

WHEREAS, said work has been completed to the satisfaction of the City Engineer.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby accept the improvements for FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby authorize the release of bonds guaranteeing completion of the work.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby authorize the filing of a Notice of Completion with the Office of the County Recorder of Alameda County, California.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby authorize the City to issue payment including the release of a final retention payment to Rosas Brothers Construction for the completion of FY 2021-2022 Curb, Gutter and Sidewalk Replacement, Project 1279, pursuant to the contract.

STAFF REPORT

Item D. 6.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Steven Turner, Community Development Director
SUBJECT	Adopt a Resolution authorizing the City Manager to execute the first amendments to the Contractual Services Agreements with Baird + Driskell Community Planning (Community Planning Collaborative) and Environmental Sciences Associates, Inc. and authorizing amendment of the 2022-2024 Biennial Budget for Fiscal Year 2023 to provide funding for consultant services related to the 2023-2031 Housing Element

SUMMARY AND RECOMMENDATION

In 2022, the City entered into Contractual Services Agreements with two firms to assist the City with the preparation of the 2023-2031 Housing Element, as well as updates to other General Plan elements, special studies and analysis, and environmental reports: Baird + Driskell Community Planning and Environmental Sciences Associates Inc. Both consultant teams have made significant progress on their respective scope of services. However, the consultants did not anticipate the extended amount of time necessary to complete certain tasks. Each consultant has requested a budget augmentation that is anticipated to cover the costs of the remaining tasks.

Staff recommends that the City Council approve resolutions authorizing the City Manager to execute the first amendments to the Contractual Services Agreements with Baird + Driskell Community Planning (Community Planning Collaborative) and Environmental Sciences Associates Inc. and authorize an amendment of the 2022-2024 Biennial Budget for Fiscal Year 2023 to provide funding for consultant services related to the 2023-2031 Housing Element.

BACKGROUND

The City has relied upon professional consultants to provide services and experience that city staff are unable to provide, such as technical traffic and circulation studies and environmental review services, as well as capacity during busy periods or when staff resources are low. For example, the city currently has several contractual services agreements with consultants for on-call professional city planning services, code enforcement services as well as Public Works construction inspection and civil engineering development plan review services. These consultant services agreements provide the City with flexibility to address service and experience needs while maintaining high customer service levels in an efficient manner.

The Community Development Department (CDD) requires technical assistance related to the update of the General Plan's Housing Element. The City Council has previously

approved Consultant Services Agreements (CSA) with two consulting firms that are assisting the city with the Housing Element update effort:

- *Baird + Driskell Community Planning* for preparation of the 2023-2031 Housing Element and project management services. The budget of the CSA is for a not-to-exceed amount of $182,974 City Council authorized the CSA by adopting Resolution 11,344 on April 14, 2022.
- *Environmental Sciences Associates, Inc.* (ESA) for preparation of an update to the General Plan's Environmental Hazards Element to be known as the "Safety Element", and a General Plan Health Wellness and Environmental Justice (HWEJ) Element. The CSA also includes an environmental assessment of the Housing and Safety Elements consistent with the California Environmental Quality Act (CEQA). The budget of the CSA is for a not-to-exceed amount of $252,740.00. City Council authorized the CSA by adopting Resolution 11,307 on January 27, 2022.

Both Baird + Driskell and ESA have worked with city staff throughout 2022 and early 2023 on each consultant's scope of services related to the Housing Element Update. Key accomplishments include:

- Community outreach and engagement including preparation of a dedicated Housing Element Update website (www.mewarkhousingupdate.org), a city-wide affordable housing survey, community meetings and stakeholder interviews, preparation of outreach materials (advertising flyers, poster boards, social media postings).
- Technical assistance and coordination of Newark-specific data related to population, demographics, housing needs, market conditions, 2020 Decennial Census data and other sources to produce an Affirmatively Furthering Fair Housing analysis that is requirement of the Housing Element Update.
- A detailed Newark-specific housing site analysis utilizing Geographical Information Systems.
- Preparation of Housing Element goals, policies, and quantified objectives.
- Preparation of an Environmental Hazards Element existing conditions report and a Draft General Plan Safety Element and coordination with city stakeholder groups.
- Preparation of an Environmental Justice existing conditions report, utilizing portions of the General Plan's Health and Wellness Element.
- Preparation and release of the Draft 2023-2031 Housing Element on February 27, 2023 for a 30-day public review period.

DISCUSSION/ANALYSIS

Although significant progress has been made to update the Housing Element and prepare related studies, reports, and draft documents, each consulting firm is requesting budget augmentation to complete the previously identified scope of services within each agreement:

Baird + Driskell

The process for updating the Housing Element has taken longer and been more time intensive than the consultant anticipated in the original budget. Three major categories of work required significantly more staff effort:

- Preparing GIS data and layers for a comprehensive spatial analysis of the proposed sites inventory, and related mapping of sites vis-à-vis Affirmatively Further Fair Housing (AFFH) variables.
- Preparing a comprehensive analysis related to AFFH in line with Housing and Community Development (HCD) guidelines and the evolving understanding of best practices per HCD, Association of Bay Area Governments (ABAG) and successful Housing Element updates from other California jurisdictions.
- Conducting and documenting an in-depth community engagement strategy that was deeply inclusive and deployed a variety of outreach methods and events that have not previously been utilized in Newark at the same scale. This effort has yielded a more robust and nuanced Draft Housing Element grounded in community values and a deep understanding of local housing needs and conditions.

The remaining scope of services includes preparing the Draft Housing Element for HCD review, responding to HCD comments, preparing the Final Housing Element and preparing for the Planning Commission and City Council review and adoption process. Baird + Driskell is requesting a budget augment to cover time and materials to complete a final adopted and certified Housing Element, in the amount of $97,750 which includes a 15% contingency.

Baird & Driskell has changed its name to Community Planning Collaborative, thus the proposed amendment will be with Community Planning Collaborative.

ESA
As discussed earlier in this report, ESA's scope of services includes preparation of an update to the General Plan's Environmental Hazards Element to be known as the "Safety Element". ESA's budget related to community engagement efforts has been expended. ESA anticipates that additional stakeholder outreach with State agencies on matters related to environmental hazards will be necessary to successfully inform the development of issues, goals, policies and actions for the Safety Element and HWEJ Element.

ESA's original scope of work did not include appropriate project management budget to account for ongoing internal and external coordination and administration of the project, which was originally scheduled to conclude in January 2023. As such, ESA has billed time spent on overall project management and team coordination to other tasks. The ongoing Housing Element preparation work results in additional project management costs that were not originally foreseen. ESA is requesting a budget augment for community and stakeholder outreach and project management activities, in the amount of $74,665 which includes a 15% contingency.

FISCAL IMPACT

The total not-to-exceed amount for the first amendments of each consultant's CSA would be:

- Baird + Driskell: increased by $97,750 for a total not-to-exceed amount of $280,724.
- ESA: increased by $74,665 for a total not-to-exceed amount of $327,405.

Staff requests authorization to amend the 2022-2024 Biannual Budget to appropriate $172,415 from the Community Development Maintenance Fund (Fund 625) for the Baird + Driskell and ESA Contractual Services Agreement amendments. The Community Development Maintenance Fund was established by Ordinance No. 441 in 2010 to establish a fee on development and improvement of properties in order to recover expenses for updating the General Plan and Zoning Ordinance. The update to the General Plan's Housing Element is consistent with Ordinance No. 441.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The staff recommendation is not a "Project" as defined by the California Environmental Quality Act and is therefore not subject to environmental review.

REVIEW AND APPROVAL

Prepared by - Steven Turner, Community Development Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assitant City Manager

Attachments

Resolution - Baird CSA Amendment No. 1

Amendment No. 1 to CSA with Baird + Driskell

Original CSA - Baird

Resolution - ESA Inc. CSA Amendment No. 1

Amendment No. 1 to CSA with ESA Inc.

Original CSA - ESA

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AMENDMENT NO.1 TO THE CONTRACTUAL SERVICES AGREEMENT WITH BAIRD + DRISKELL COMMUNITY PLANNING (COMMUNITY PLANNING COLLABORATIVE) AND AUTHORIZING AMENDMENT OF THE 2022-2024 BIENNIAL BUDGET FOR FISCAL YEAR 2023 TO PROVIDE FUNDING FOR GENERAL PLAN UPDATES RELATED TO THE 2023-2031 HOUSING ELEMENT

WHEREAS, the Community Development Department issued a Request for Proposal (RFP) for General Plan updates and related analysis related to the preparation of the 2023-2031 Housing Element (the "Project"); and

WHEREAS, based on staff's evaluation, Baird + Driskell Community Planning was determined to be a qualified firm for the Project and desired to enter into a Contractual Services Agreement for the Project; and

WHEREAS, on April 14, 2022, the City Council of the City of Newark adopted Resolution 11,334, approving a Contractual Service Agreement (the "Agreement") with Baird + Driskell Community Planning to perform work associated with the Project and a budget not-to-exceed $182,974; and

WHEREAS, subsequent to entering into the Agreement, Baird + Driskell Community Planning changed its name to Community Planning Collaborative; and

WHEREAS, Community Planning Collaborative has made substantial progress to complete the scope of services associated with the Project; and

WHEREAS, Community Planning Collaborative has requested a budget amendment ("Amendment No. 1") in the amount of $97,750 to complete the scope of work described in the Agreement; and

WHEREAS, staff recommends amending the 2022-2024 Biennial Budget for Fiscal Year 2023 appropriating $97,750 from the Development Maintenance Fund (625) to the Project.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves Amendment No. 1 to the Contractual Services Agreement with Community Planning Collaborative to increase the not to exceed amount of the Agreement by $97,750 for a total amount not to exceed $280,724.

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to execute Amendment No.1, attached hereto, in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is authorized to take any actions necessary to effectuate the intent of this Resolution.

BE IT FURTHER RESOLVED that the City Council does hereby amend the 2022-2024 Biennial Budget for the Fiscal Year 2023 assigning $97,750 from the Development Maintenance Fund (Fund 625) for the Project.

FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND BAIRD + DRISKELL COMMUNITY PLANNING

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Community Planning Collaborative, a California C Corporation ("Consultant") (sometimes referred to as "Parties") dated May 26, 2022 (the "Agreement"), is entered into as of _____ ___, 2023 for services related to the preparation of the City of Newark Housing Element Update.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of professional planning services to update the City's General Plan Housing Element; and

WHEREAS, Section 27, Modifications, of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount; and

WHEREAS, City staff is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation, of the Agreement, is amended to increase the not to exceed compensation by $97,750.00, for a total not to exceed amount of $280,724.00 (from a previous not to exceed amount of $182,974.00).

2. The Agreement's Exhibit B (Payment) is amended as outlined in the new Payment (Exhibit 1), attached hereto and incorporated herein by reference.

3. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark

_____

David J. Benoun
City Manager

Dated: _____

Consultant

_____

Joshua Abrams
Principal
Baird + Driskell Community Planning

Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

EXHIBIT 1

PAYMENT

The consultant team will charge for services according to the following hourly rates for an amount not to exceed $280,724.00. This does not include the optional task "Rezoning of Sites"

Baird + Driskell Community Planning Billing Rates

Clara Cheeves, Associate	$135.00
Josh Elsworth, GIS Specialist	$165.00
Bowen Close, Creative Director	$165.00
Community Planning Collaborative Principals	$230.00

Community Planning Collaborative Sub-consultant: Bay Area Economics (BAE)

Paul Peninger an amount not to exceed $50,000.00.

The not to exceed amount of $280,724.00 includes a contingency amount of $12,750.00.

C 22011
R11334

CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 26TH day of May, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and, BAIRD + DRISKELL COMMUNITY PLANNING, a California C Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: preparation of the City of Newark Housing Element update, Environmental Justice Element, Safety Element, related rezoning and all necessary environmental review as required under State law, in a manner consistent with the Regional Housing Needs Allocation 6 (RHNA 6) planning period (2023-2031)

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to perform the Services more particularly described in Exhibit "A" ("Services"), in return for the compensation described in this Agreement and Exhibit "B".

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C", City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. CONSULTANT'S SERVICES. Consultant shall perform Services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall control.

2. TIME FOR PERFORMANCE. Time is of the essence in the performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit "A"; provided, that City shall grant reasonable extensions of time for the performance of such Services occasioned by governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Consultant.

Consultant acknowledges the importance to City of City's performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound professional practices.

3. COMPENSATION.

A. "Not to Exceed" Compensation. City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One hundred eighty two thousand, nine hundred seventy four and No/100 Dollars ($182,974.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

B. Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

Consultant shall submit all billings for said Services to City in the manner specified in Exhibit "B"; or, if no manner is specified in Exhibit "B", then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Blvd.
Newark, CA 94560

Upon completion of Services, City shall sign off and acknowledge that all terms and conditions have been satisfactorily met; upon which, unless waived by City in writing, Consultant shall prepare an itemized statement, briefly describing by task and/or labor category the items billed.

C. Payment. Upon receipt of an invoice, City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit "B", for Services, which are performed in accordance with this Agreement to the satisfaction of City.

D. Consultant's Failure to Perform. In the event that Consultant performs Services that do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from City, re-perform the services (without additional compensation to Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to City, Consultant shall reimburse City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by

written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

5. **INDEPENDENT CONSULTANT.** At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement.

Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

6. **PERSONNEL.** Consultant understands that, in entering into this Agreement, City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of Consultant, including the qualifications of its Authorized Representative, its designated personnel, and its Subconsultants, if any, identified in Exhibit "C". Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or Subconsultants identified in Exhibit "C", without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

Consultant agrees to include with all Subconsultants in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of this Agreement's Indemnity and Insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all Sub-subconsultants to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any Services and will provide proof of compliance to the City.

In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any of Consultant's designated personnel or Subconsultants, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

7. **FACILITIES AND EQUIPMENT.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing Services.

8. **INFORMATION AND DOCUMENTATION.**

A. **Information from City.** City has made an effort to provide Consultant with all information necessary for Consultant's performance of Services. If Consultant believes additional information is required, Consultant shall promptly notify City and City will provide to Consultant all relevant non-privileged information in City's possession.

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

C. **Ownership of Work Product.** All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("Work Product"), whether complete or in progress, are the property of City and shall be given to City at the completion of Consultant's Services, or upon demand of City. Consultant shall have a right to make and keep copies of the Work Product except for any confidential information. Consultant shall not reveal the Work Product or the confidential information contained in the Work Product, or make it available, to any third party without the prior written consent of City.

9. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with City (including this Agreement) involving Consultant's conflicting interest may be terminated by City.

10. **NONDISCRIMINATION.** Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, age, or any other basis, as defined in California Civil Code Section 51.

11. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform Services using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

12. **RESERVED.**

13. RESERVED.

14. INSURANCE. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, subconsultants, or employees.

A. Verification of Coverage.

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

CITY OF NEWARK
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury; and

2. Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

C. Minimum Limits of Insurance.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: (including products and completed operations, property damage, bodily injury, and personal and advertising injury)	**$1,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, 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.
4. Errors and Omissions Liability:	**$1,000,000** per occurrence or claim; $2,000,000 aggregate.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers, or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

E. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant changes insurance carriers Consultant shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than five (5) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

F. **Wasting Policies.**

No policy required by this paragraph 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. **Remedies.**

In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

3. Terminate this Agreement.

H. **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 Risk Manager. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

I. **Other Insurance Provisions.**

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

1. Additional Insureds. City, its officers, officials, directors, employees and volunteers ("Additional Insureds") are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant; including materials, parts or equipment furnished in connection with such work or operations.

2. Primary Coverage. For any claims related to Services, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not be contribute with it. Consultant's policy will not seek contribution from the City's insurance or self-insurance.

3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled during the term of this Agreement without notice to City.

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

5. Deductibles and Self-Insured Retentions (SIR). All deductibles and self-insured retentions must be disclosed to the City Risk Manager for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

6. Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

15. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 19, herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

16. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful

act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of Services or the termination of this contract. The provisions of this paragraph are not limited by and do not affect the provisions of this contract relating to insurance.

Consultant/Subconsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

17. **LICENSES, PERMITS, ETC.** Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to

practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

18. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire upon completion of performance of Services hereunder by Consultant.

B. Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by **STEVEN TURNER, COMMUNITY DEVELOPMENT DIRECTOR** of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

20. NOTICES. Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent) postage prepaid and addressed, in the case of Consultant, to:

BAIRD + DRISKELL COMMUNITY PLANNING	**CITY OF NEWARK**
JOSHUA ABRAMS, PRINCIPAL **Consultant**	STEVEN TURNER **Administrator**
Address: 2635 Benvenue Street Berkeley, CA 94704	City of Newark Attn: Steven Turner 37101 Newark Boulevard Newark, CA 94560

21. PARAGRAPH HEADINGS. Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

22. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

24. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

25. ATTORNEY'S FEES. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

26. ASSIGNABILITY. Neither Consultant nor City shall subconsult, assign, sell, mortgage, hypothecate, or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party.

27. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

28. WAIVERS. Waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

29. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

30. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

31. COVENANT AGAINST CONTINGENT FEES. Consultant hereby warrants that Consultant has not employed or retained any company or person, other than a *bona fide* employee working for Consultant, to solicit or secure this Agreement, and Consultant has not paid or agreed to pay any company or person, other than a *bona fide* employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at City's discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

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

CITY OF NEWARK,

a municipal corporation

By _____
City of Newark

Date 5-25-22

Baird + Driskell Community Planning
a California C Corporation

By _____
Consultant

Date 5/19/22

Joshua Abrams
Printed Name

Attest:

Sheila Harrington
City Clerk

Date 5/26/2022

Approved as to form:

_____
City Attorney

Date 5/24/22

EXHIBIT A

SCOPE OF SERVICES

Project Management and Coordination

Led by Paul Peninger, the Consultant team will work hand in hand with City staff to manage all aspects of the Housing Element Update and will assume primary responsibility for overseeing the tasks to be completed simultaneously by ESA (i.e., the Safety Element, CEQA Analysis and Environmental Justice Element). This task will include communication and coordination between Consultant and Newark staff, including meetings, phone conferences, email exchanges, and other communications to ensure timely delivery and adoption of the City's updated Housing Element. In addition, Consultant and ESA will work with Newark staff to schedule regular communications with assigned HCD staff as needed throughout the term of the Housing Element update.

Community Outreach and Engagement

The Consultant team will develop a program that effectively reaches, educates and engages the community throughout the Housing Element update. This will include strategies to ensure broad inclusion, particularly of hard to reach groups and special needs populations, with special attention given to communicating information so it is accessible and easy to understand. Outreach is expected to begin early in the process and continue throughout for feedback on important topics such as draft ideas, site options, the draft Housing Element and environmental review.

Beyond traditional in-person community meetings and virtual Zoom workshops, the Consultant team will work with City staff to design an outreach plan which includes direct engagement at community events such as farmers markets, school events and other opportunities to provide citizens with the opportunity to learn about and provide feedback on the Housing Element update. Specific key components of the outreach and engagement strategy will include, but not be limited, to the following:

Designing and launching a Housing Element update website to be maintained by Consultant staff. The web site will be used to provide regular updates to the community on the Housing Element and to provide opportunities for ongoing virtual participation.

Designing and implementing surveys and questionnaires to gather community feedback. For this task we will also leverage the Balancing Act tool to elicit community feedback directly on different policy and program ideas for the Housing Element.

Up to two (2) community workshops to be held via zoom or in person.
Up to three (3) stakeholder focus groups for the development community, neighborhood groups, community-based organizations, and others.
Up to two (2) Planning Commission and (2) City Council presentations.

Throughout the community engagement process and in keeping with the need to be fully inclusive to all members of the community, every effort will be made to make meetings and materials available in Spanish and other languages as needed.

Review Existing Housing Element

Consultant will building on existing analysis already conducted by City staff to review the current Housing Element and identify Newark's success in accomplishing/implementing the identified goals, policies and programs; and provide explanations and updates where goals, policies or programs are in progress, have been abandoned or have not proven effective.

Housing and Special Housing Needs

ABAG's Regional Housing Technical Assistance Program has provided Newark -specific graphs and narratives for all required data, including population, demographic, housing, market conditions and regional comparisons. Although this document has been completed, Consultant will build on this data package by integrating recent data from the 2020 Decennial Census as well as State and local data. This will include data that addresses all AFFH requirements per AB 686 and guidance from HCD.

Housing Constraints

For this task, Consultant will identify and analyze potential and actual governmental and nongovernmental constraints for the preservation, protection or production of housing across income levels within the city. As viable, this task will draw on any relevant surveys and/or analyses prepared on comparative fee and permit processing times by the Alameda County Collaborative.

Sites Inventory

Leveraging the ABAG HESS tool and city resources, Consultant will prepare the sites inventory section of the Housing Element, demonstrating how Newark will satisfy its RHNA for each income category. This will include identifying safe assumptions, evaluating sites and analyzing potential policy strategies to increase site capacity, demonstrating development viability (per State law) and inputting the information into HCD's electronic form for submittal with the updated element. This will include consideration of the State requirement for maintaining an adequate housing sites inventory throughout the eight-year planning period.

Optional Task: Rezoning

Only as needed, Consultant and ESA will work with Newark staff to identify potential areas for rezoning. Rezoning and related environmental analysis will need to be fully scoped as needed building on the sites inventory analysis.

Goals, Policies, Programs and Quantified Objectives

Building on previous sections of the Housing Element, we will identify goals, policies, programs and quantified objectives to include in the Housing Element to ensure compliance with State law and effective response to the housing needs, constraints and key priorities identified through the update process. This task includes ensuring responsiveness to priorities articulated through the community engagement process as well as ensuring internal consistency with other elements of the General Plan. This task will include identification of other General Plan policy updates or revisions needed to ensure consistency.

Draft Housing Element and Public Hearings

This will task will include preparing and submitting an Administrative Draft Housing Element for Newark staff to review. Staff will provide a comprehensive set of desired changes. Once edits are complete, we will prepare a draft Housing Element that is made available to the public and presented to both the Planning Commission and City Council at public hearings. Based on Commission and Council input, prepare a HCD review draft and submit to HCD for the mandated review.

Final Draft Hearings, Final Adoption and Certification

The Consultant team will work closely with HCD and Newark staff to respond to any comments and produce a final draft Housing Element for adoption. This will include presenting to the Planning Commission and City Council at public hearings. Consultant will prepare the final Housing Element, including any changes from the public hearings, and submit to HCD for final certification as well as the water/sewer district and the California Office of Planning and Research.

Newark Housing Element Update Budget

	Hours by Staff Person				
	PP	KW	NHA	Total	$
Task 1: Project Management	60	20	60	140	$24,200
Task 2: Community Engagement	60	20	80	160	$27,200
Task 3: Review Existing Housing Element	40	-	40	80	$13,900
Task 4: Housing Needs	24	-	60	84	$13,680
Task 5: Housing Constraints	24	16	60	60	$16,480
Task 6: Sites Inventory	60	40	60	160	$27,700
Task 7: Goals, Policies	60	20	-	80	$15,200
Task 8: Draft and Public Hearings	32	24	24	80	$14,040
Task 9: Final Hearings, Adoption and Certification	32	24	24	80	$14,040
TOTAL	*392*	*164*	*408*	*924*	*$166,340*
Contingency (10%)					$16,634
Optional Task: Rezoning of Sites					$90,000

Billing Rates

Paul Peninger, Principal	$195
Kristy Wang, Senior Associate	$175
Hugo Hamlin Agosto, Associate	$150

EXHIBIT B

PAYMENT

The Consultant team will charge for our service according to the following hourly rates for an amount not to exceed $182,974 including a 10% contingency but not including the optional task "Rezoning of Sites"

Paul Peninger, Principal:	$195
Kristy Wang, Senior Associate:	$175
Hugo Hamlin Agosto, Associate:	$150

EXHIBIT C

QUALIFICATIONS

About Us

For over 25 years, Baird + Driskell Community Planning has been a national leader in developing and implementing housing policy. Headquartered in Alameda County, we are proud of our decades of experience in providing quality, innovative and thoughtful planning solutions. Our work has built stronger, more attractive and more vibrant communities through effective collaboration.

At Baird + Driskell, we combine a strong background in numerous fields – housing, land use, long-range planning, community design, environmental review and project management – with expertise in participatory processes and public information. Our extensive experience working with diverse communities is applied to every project, which often brings a fresh perspective to challenging issues. By collaborating closely with staff and community members we ensure that planning efforts support community-building as well as the development of responsive and responsible solutions.

Here are some key aspects of our approach to housing and to working with our clients:

Broad and Deep Expertise

We have worked in leading-edge communities around the country on designing and delivering housing solutions and are deeply engaged in state and regional housing policy initiatives. We are plugged-in to the evolving nature of state law, and interact almost daily with key staff at HCD and ABAG. We also know from experience that cookie-cutter approaches don't work. Every policy and program needs to be grounded in local realities and tailored to meeting local needs.

Meaningful Engagement

We are able to tailor solutions to local needs by ensuring meaningful engagement from those who will be served or impacted by policy and program decisions. We are skilled facilitators, listeners and communicators, able to translate complex technical informationinto accessible language and visuals that people can understand. We value partnering with local organizations and community members to ensure continued participation and we always welcome the involvement of local groups.

Focused on Outcomes

We keep our focus on delivering outcomes that matter to communities, avoiding endless studies and non-productive data-holes that distract from getting things done that move the needle on critical housing issues.

Consistently Collaborative

We believe that the most effective strategies and solutions are developed in close collaboration with those who will be responsible for carrying them out. We work as an extension of our clients' staff teams, getting to know them, how they work, and what they need. We enjoy working as a team and have fun doing it.

Responsive and Nimble

We listen to what's needed, and respond. We shift gears, redirect and adjust scopes as needed to make sure we remain focused on what's most important as situations, contexts and needs evolve.

Commitment of Senior Staff

Paul Peninger and David Driskell will serve as lead staff for this engagement, bringing their more than 50 years of experience in local government housing policy and program development and implementation. Joshua Abrams and Brandi Campbell Wood will also be available to assist as needed, leveraging their experience in working with dozens of Bay Area local governments on housing policies and programs. Our small, flexible and deeply

collaborative team will work together to ensure high quality and excellence of delivery in all aspects of our work for the City of Newark.

Experience Providing Similar Services

Baird + Driskell is known for our housing expertise. From our ongoing housing policy and program work with Bay Area jurisdictions through the 21 Elements collaborative, to specific engagements for individual cities and counties across California, we have deep experience across all of the types of potential policies and programs listed in the RFQ, including:

Regional and State Agency Engagement and Collaboration

Baird + Driskell was recently retained by ABAG/MTC to manage housing technical assistance and training programs under the Regional Early Action Planning (REAP) grants program. This builds on our extensive experience assisting Bay Area cities and counties to effectively engage with regional agencies as well as with the State HCD.

Inclusionary Housing

Paul is a recognized leader in the area of inclusionary housing policy having worked on dozens of feasibility studies and policy design projects across the US, including many Bay Area jurisdictions.

Renter Protections

Baird+Driskell staff have worked on numerous studies and projects in California and throughout the country looking at feasible options for local jurisdictions to protect existing renters of naturally occurring affordable housing.

Retention of Existing, Naturally Affordable Housing Within our Community

We have also assisted cities and counties with understanding feasible policy and program options for protecting and retaining existing "naturally" affordable housing through either direct homeowner and renter assistance programs to parenting with local community housing trusts to acquire and protect these critical resources.

Housing Impact Fee Program Design and Implantation

In San Mateo County through the 21 Elements process and in other jurisdictions statewide and nationally, we have assisted cities like Newark in structuring impact fee programs that can leverage city resources to achieve local housing preservation and production objectives.

Resumes

We are a mission-driven small firm that commits experienced senior-level staff to every project. Together, principals Joshua Abrams, David Driskell and Paul Peninger have decades of planning experience, and are involved in all aspects of the day-to-day management of projects.

Joshua Abrams
Principal

Josh has more than 15 years of professional planning experience working on a range of strategic planning issues. He has managed numerous projects in the areas of organizational development, housing, land use planning, long-range comprehensive planning, community design and transportation. In all of these projects, particular emphasis has been given to ensuring effective and meaningful participation of key stakeholders as well as the general public in the planning and

design process. Josh has a strong process- orientation and technical planning background.

He is a seasoned meeting facilitator, writer and editor with expertise in packaging technical information in a way that is accessible to a wide audience. He is also a certified mediator and has helped participants solve disputes in dozens of cases. He has served on the board of directors of the Northern California Land Trust for almost a decade and wrote an article for the Journal of the American Planning Association entitled "The Zoning Dispute Whisperer: Adding mediation to the planner's toolkit." Before coming to Baird + Driskell Community Planning, Josh founded the Community Planning Collaborative in Ithaca, New York.

Notable recent projects include 21 Elements Grand Nexus Study, San Mateo County ADU Workbook and Toolkit, Napa and Sonoma County ADU Workbook and Toolkit, and Marin Countywide Housing Workbook.

Education

Master of City and Regional Planning, Cornell University

Bachelor of Arts, Biology and Environmental Studies, Carleton College

Professional Experience

Principal, Baird + Driskell Community Planning, Berkeley, CA Planner, Moore Iacofano Goltsman, Inc., Berkeley, CA Principal, Community Planning Collaborative, Ithaca, NY

Professional Memberships

American Planning Association

David Driskell
Principal

David has over 30 years of experience in community planning, working with grassroots organizations, local governments and international agencies to develop and facilitate participatory processes that help groups define and

achieve their goals. As a local government executive, an academic and a consultant, he has facilitated dozens of planning processes.

After co-founding Baird + Driskell Community Planning in the 1990s and leading projects in the Bay Area, New York and New Jersey, David served as UNESCO Chair for Growing Up in Cities at Cornell University and subsequently as Executive Director for Planning, Housing and Sustainability for the City of Boulder, CO and Deputy Director for the Office of Planning and Community Development in

Seattle. In these capacities he has led and managed projects on a wide range of issues, including affordable housing, land use and zoning, equitable development, climate action and resilience,

energy systems, development review, transit-oriented development, long range planning and organizational change.

David is deeply committed to participation, sustainability and urban design. While at Cornell he led an international action research network to engage young people in very low-income areas around the world, with a particular focus in New York City and Nairobi. He authored the book Creating Better Cities with Children and Youth.

In Seattle he has led the city's Placemaking Team, created the department's "Leading with Equity" team, and guided development of a 20-year vision for downtown.

David has also taught classes on participatory planning at Cornell, Stanford, and UC Berkeley; led training courses in Canada, The Netherlands, Jordan, India, Kenya and the US. He is passionate about creating and sustaining community environments that are inclusive, healthy and inspiring.

Education

Master of City Planning, Massachusetts Institute of Technology Public Affairs Fellowship, Coro Foundation (San Francisco) Bachelor of Arts, Urban Studies, Stanford University

Professional Memberships

ICLEI-USA (Local Governments for Sustainability), Board member American Planning Association

Paul Peninger
Principal

Paul is an urban economist with more than 235 years of professional planning experience. He is a noted housing policy expert and

has successfully led affordable and workforce housing plans, implementation projects and policy studies for both large and small jurisdictions across the country. In addition to housing, Paul also specializes in real estate feasibility analysis and finance spanning the full range of land use and development types. As both an urban planner and economist, Paul focuses on the policy and planning

intersections between economic feasibility, planning and sustainable development.

Prior to joining the firm, Paul was a Vice President for AECOM's Design, Planning and Economics practice in the Pacific region of the United States, and also led economics projects relating to sustainability and resilience across the Americas. He has also been an appointed lecturer in land economics for the Master of Urban Design program at the University of California, Berkeley since 2002, and currently teaches a course on urban economics for Berkeley's graduate program in real estate development and design.

He currently serves as a member of the Housing Sub-Committee of the Association of Bay Area Governments Regional Planning Committee, and sits on the San Francisco Bay Area Planning and

Urban Research Association Urban Infrastructure Council. A native of California, Paul has lived and worked in Latin America and is fluent in Spanish.

Education

Master of City and Regional Planning, UC Berkeley Bachelor of Arts, UC Santa Cruz

Professional Experience

Principal, Baird + Driskell Community Planning, Berkeley, CA
Principal, Peninger Consulting, San Francisco, CA

Vice President, Economics, AECOM, San Francisco, CA Principal, BAE Urban Economics, Berkeley, CA

Co-Policy Director, NPH, San Francisco, CA

Program Officer, Local Initiatives Support Corporation, Oakland, CA

Professional Memberships

American Planning Association

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AMENDMENT NO.1 TO THE CONTRACTUAL SERVICES AGREEMENT WITH ENVIRONMENTAL SCIENCES ASSOCIATES INC. AND AUTHORIZING AMENDMENT OF THE 2022-2024 BIENNIAL BUDGET FOR FISCAL YEAR 2023 TO PROVIDE FUNDING FOR GENERAL PLAN UPDATES RELATED TO THE 2023-2031 HOUSING ELEMENT

WHEREAS, the Community Development Department issued a Request for Proposal (RFP) for General Plan updates and related analysis related to the preparation of the 2023-2031 Housing Element (the "Project"); and

WHEREAS, based on staff's evaluation, Environmental Sciences Associates, Inc. was determined to be a qualified firm for the Project; and

WHEREAS, on January 27, 2022, the City Council of the City of Newark adopted Resolution 11,307, approving a Contractual Service Agreement (the "Agreement") with Environmental Sciences Associates, Inc. to perform work associated with the Project and a budget not-to-exceed $252,740.00; and

WHEREAS, Environmental Sciences Associates, Inc. has made substantial progress to complete the scope of services associated with the Project; and

WHEREAS, Environmental Sciences Associates, Inc. has requested a budget amendment ("Amendment No. 1") in the amount of $74,665.00 to complete the scope of work described in the Agreement and add an additional task with deliverables; and

WHEREAS, staff recommends amending the 2022-2024 Biennial Budget for Fiscal Year 2023 appropriating $74,665.00 from the Development Maintenance Fund (625) to the Project.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves Amendment No. 1 to the Contractual Services Agreement with Environmental Sciences Associates, Inc. to increase the not to exceed amount of the Agreement by $74,665.00 for a total amount not to exceed $327,405.00.

BE IT FURTHER RESOLVED that the City Council hereby authorizes the City Manager to execute the Amendment No.1, attached hereto, in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is authorized to take any actions necessary to effectuate the intent of this Resolution.

BE IT FURTHER RESOLVED that the City Council does hereby amend the 2022-2024 Biennial Budget for the Fiscal Year 2022-2023 assigning $74,665.00 from the Development Maintenance Fund (Fund 625) for the Project.

FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND ENVIRONMENTAL SCIENCES ASSOCIATES, INC.

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Environmental Sciences Associates, Inc., a California C Corporation ("Consultant") (sometimes referred to as "Parties") dated December 1, 2021 (the "Agreement"), is entered into as of _____ ___, 2023 for services related to the preparation of the City of Newark Housing Element Update.

RECITALS

WHEREAS, the Parties executed the Agreement for the provision of professional planning services to update the City's General Plan Housing Element; and

WHEREAS, Section 27, Modifications, of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to amend the Agreement, Section 3.A to increase the "Not to Exceed" Compensation amount, and to amend Exhibit A (Scope of Services) and Exhibit B (Payment); and

WHEREAS, City staff is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation of the Agreement, is amended to increase the not to exceed compensation by $74,665.00, for a total not to exceed amount of $327,405.00 (from a previous not to exceed amount of $252,740.00).

2. The Agreement's Exhibit A (Scope of Services) is amended as outlined in Exhibit 1, attached hereto and incorporated herein by reference.

3. The Agreement's Exhibit B (Payment) is amended as outlined in Exhibit 2, attached hereto and incorporated herein by reference.

4. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark

_____

David J. Benoun
City Manager

Dated: _____

Consultant

_____

Daniel Dameron
Director
Environmental Sciences Associates, Inc.

Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

Task G: Stakeholder & Community Engagement

Due to the limited input received in previous outreach efforts that were heavily focused on the Housing Element update and recent experience with CAL FIRE coordination on Safety Element updates, ESA will conduct necessary stakeholder outreach and coordination with CAL FIRE. The additional outreach needed to successfully inform the development of issues, goals, policies and actions forthe Safety Element and HWEJ Element, includes the following:

1. Stakeholder interviews with City departments, local agencies and organizations that have an interest or jurisdiction in community health and safety. ESA would support Baird & Driskell to identify the appropriate agencies and develop a list of questions for the interviews. These would be virtual zoom/phone interviews, and ESA would ideally attend the interviews as we're most familiar with the issues and information needed. ESA will take stakeholder interview results and incorporate necessary information into the Safety Element and HWEJ Element.

2. Meetings and Coordination with CalFire and Board of Forestry (BOF): the BOF requires 90 days to review and coordinate revisions, as needed, to the Final Draft Safety Element with the consultant team before the BOF makes a final review of the document at a scheduled board meeting. They are now asking jurisdictions to review the Safety Element against a BOF checklist and to hold up to three meetings with CalFire to discuss the checklist, respond to questions and make revisions as needed.

Task G Deliverable(s):

- Coordination of stakeholder interview meetings with city departments and local agencies/organizations
- Safety Element and HWEJ Element edits post stakeholder interview meetings
- BOF checklist
- Meetings, coordination and Safety Element edits with BOF

Task H: Project Management and Coordination

The original scope of work executed on February 8, 2022, had failed to include a critical Project Management task to account for ongoing internal and external coordination and administration of the project, which was originally scheduled to conclude in January 2023. Additional project management funds are required in order to have enough budget remaining to successfully complete the Safety and HWEJ Elements. Based on the current status of the Housing Element, which is driving the schedule, we expect the original 12-month assumption to be exceeded. It is unknown at this time the duration of the Project as there are several factors affecting the schedule.

Task H Deliverable(s):

- Attendance at team meetings/conference calls with City staff and the project team
- Coordination with City staff and state agencies such as CAL FIRE and BOF
- Invoices, quality assurance, client correspondence, and budget and schedule management

EXHIBIT 2

PAYMENT

Amendment No. 1 increases the not to exceed compensation by $74,665.00, for a total not to exceed amount of $327,405.00 (from a previous not to exceed amount of $252,740.00).

All costs will be billed on a time and materials basis whichincludes a 15% contingency fee.
All costs will be based on actual hours and expenses incurred.

The following table provides a summary of the additional cost modifications for and the total amended budget.

Task Name	AmendmentNo. 1
Task G – Community Engagement	**$14,378**
G. 1 Stakeholder Meetings	*$6,468*
G.2 CAL FIRE & BOF Coordination	*$7,910*
Task H – Project Management	**$50,548**
Subtotal	**$64,926**
Contingency Fee (15%)	**$9,739**
TOTAL	**$74,665**
TOTAL AMENDED BUDGET	**$327,405**

C 22001
R 11307

CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 1ST day of DECEMBER, 2021 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and ENVIRONMENTAL SCIENCES ASSOCIATES, INC., a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: preparation of the City of Newark Housing Element update, Environmental Justice Element, Safety Element, related rezoning and all necessary environmental review as required under State law, in a manner consistent with the Regional Housing Needs Allocation 6 (RHNA 6) planning period (2023-2031).

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to perform the Services more particularly described in Exhibit "A" ("Services"), in return for the compensation described in this Agreement and Exhibit "B".

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C", City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. CONSULTANT'S SERVICES. Consultant shall perform Services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall control.

2. TIME FOR PERFORMANCE. Time is of the essence in the performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit "A"; provided, that City shall grant reasonable extensions of time for the performance of such Services occasioned by governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Consultant.

Consultant acknowledges the importance to City of City's performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound professional practices.

3. **COMPENSATION.**

A. **"Not to Exceed" Compensation.** City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Two hundred fifty-two thousand, seven hundred forty and No/100 Dollars ($252,740.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

B. **Method of Billing.** To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

Consultant shall submit all billings for said Services to City in the manner specified in Exhibit "B"; or, if no manner is specified in Exhibit "B", then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Blvd.
Newark, CA 94560

Upon completion of Services, City shall sign off and acknowledge that all terms and conditions have been satisfactorily met; upon which, unless waived by City in writing, Consultant shall prepare an itemized statement, briefly describing by task and/or labor category the items billed.

C. **Payment.** Upon receipt of an invoice, City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit "B", for Services, which are performed in accordance with this Agreement to the satisfaction of City.

D. **Consultant's Failure to Perform.** In the event that Consultant performs Services that do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from City, re-perform the services (without additional compensation to Consultant). If Consultant's failure to perform in accordance with this Agreement causes damages to City, Consultant shall reimburse City for the damages incurred (which may be charged as an offset to Consultant's payment).

4. **ADDITIONAL SERVICES.** In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by

written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

5. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement.

Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

6. PERSONNEL. Consultant understands that, in entering into this Agreement, City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of Consultant, including the qualifications of its Authorized Representative, its designated personnel, and its Subconsultants, if any, identified in Exhibit "C". Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or Subconsultants identified in Exhibit "C", without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

Consultant agrees to include with all Subconsultants in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of this Agreement's Indemnity and Insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all Sub-subconsultants to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any Services and will provide proof of compliance to the City.

In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any of Consultant's designated personnel or Subconsultants, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

7. FACILITIES AND EQUIPMENT. Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing Services.

8. INFORMATION AND DOCUMENTATION.

A. **Information from City.** City has made an effort to provide Consultant with all information necessary for Consultant's performance of Services. If Consultant believes additional information is required, Consultant shall promptly notify City and City will provide to Consultant all relevant non-privileged information in City's possession.

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

C. **Ownership of Work Product.** All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("Work Product"), whether complete or in progress, are the property of City and shall be given to City at the completion of Consultant's Services, or upon demand of City. Consultant shall have a right to make and keep copies of the Work Product except for any confidential information. Consultant shall not reveal the Work Product or the confidential information contained in the Work Product, or make it available, to any third party without the prior written consent of City.

9. **CONFLICTS OF INTEREST PROHIBITED.** Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with City (including this Agreement) involving Consultant's conflicting interest may be terminated by City.

10. **NONDISCRIMINATION.** Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, age, or any other basis, as defined in California Civil Code Section 51.

11. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform Services using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

12. **RESERVED.**

13. **RESERVED.**

14. **INSURANCE.** Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, subconsultants, or employees.

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

CITY OF NEWARK
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

B. **Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury; and

2. Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

C. Minimum Limits of Insurance.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: (including products and completed operations, property damage, bodily injury, and personal and advertising injury)	**$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, 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.
4. Errors and Omissions Liability:	**$2,000,000** per occurrence or claim; $4,000,000 aggregate.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers, or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

E. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant changes insurance carriers Consultant shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than five (5) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

F. Wasting Policies.

No policy required by this paragraph 14, except professional liability, shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

3. Terminate this Agreement.

H. 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 Risk Manager. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

I. Other Insurance Provisions.

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

1. Additional Insureds. City, its officers, officials, directors, employees and volunteers ("Additional Insureds") are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant; including materials, parts or equipment furnished in connection with such work or operations.

2. Primary Coverage. For any claims related to Services, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not be contribute with it. Consultant's policy will not seek contribution from the City's insurance or self-insurance.

3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled during the term of this Agreement without notice to City.

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

5. Deductibles and Self-Insured Retentions (SIR). All deductibles and self-insured retentions must be disclosed to the City Risk Manager for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

6. Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

15. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 19, herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

16. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful

act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of Services or the termination of this contract. The provisions of this paragraph are not limited by and do not affect the provisions of this contract relating to insurance.

Consultant/Subconsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

17. <u>LICENSES, PERMITS, ETC</u>. Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to

practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

18. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire upon completion of performance of Services hereunder by Consultant.

B. Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by **STEVEN TURNER, COMMUNITY DEVELOPMENT DIRECTOR** of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

20. NOTICES. Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent) postage prepaid and addressed, in the case of Consultant, to:

ENVIRONMENMTAL SCIENCES ASSOCIATES, INC.	**CITY OF NEWARK**
DANIEL DAMERON **Consultant**	STEVEN TURNER **Administrator**
Address: 550 Kearny Street, #800 San Francisco, CA 94108	City of Newark Attn: Steven Turner 37101 Newark Boulevard Newark, CA 94560

21. PARAGRAPH HEADINGS. Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

22. EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

24. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

25. ATTORNEY'S FEES. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

26. ASSIGNABILITY. Neither Consultant nor City shall subconsult, assign, sell, mortgage, hypothecate, or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party.

27. MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

28. WAIVERS. Waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

29. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

30. SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

31. COVENANT AGAINST CONTINGENT FEES. Consultant hereby warrants that Consultant has not employed or retained any company or person, other than a *bona fide* employee working for Consultant, to solicit or secure this Agreement, and Consultant has not paid or agreed to pay any company or person, other than a *bona fide* employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at City's discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

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

CITY OF NEWARK,

a municipal corporation

By _____
City of Newark

Date 2-7-22

Environmental Sciences Associates, Inc.
a California corporation

By Daniel Dameron
Consultant

Date 01/19/22

[Daniel Dameron]
Printed Name

Attest:

Sheila Harrington
City Clerk

Date 2/8/2022

Approved as to form:

K Kolstad
City Attorney

Date 2/3/22

CITY OF NEWARK,

a municipal corporation

By _____
City of Newark

Date _____

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

Environmental Sciences Associates, Inc.
a California corporation

By _____
Consultant

Date 2.3.2022

[Daniel Dameron]
Printed Name

EXHIBIT A

SCOPE OF SERVICES

The following provides Consultant's scope of work related to the City of Newark's 2023-2031 6th Cycle Housing Element including the targeted update of the Newark Environmental Hazards Element and Health and Wellness Element to comply with State laws pertaining to safety and environmental justice elements. Also included is a proposed scope of work from Fehr & Peers to conduct evacuation analysis planning consistent with Senate Bill (SB) 99 and Assembly Bill (AB) 747 legislation, as well as Consultant's scope of work to conduct CEQA environmental review in the form of an Initial Study/Mitigated Negative Declaration.

Consultant would update the Health and Wellness Element to include Environmental Justice as many required Environmental Justice topics are found within the Health and Wellness Element, to be renamed, "Heath, Wellness and Environmental Justice (HWEJ) Element". We will also update the City's Environmental Hazards element to address new State requirements pertaining to climate change and evacuation route planning. In 2017, the City adopted the Union City/Newark Multi-Jurisdictional Hazard Mitigation Plan, which contains most, if not all, of the information required to update the City's Environmental Hazards Element, with exception to the identification of evacuation routes in residential developments without at least two evacuation routes pursuant to Senate Bill 99; and the identification of evacuation routes and their capacity, safety, and viability under a range of emergency scenarios pursuant to Assembly Bill 747.

The Environmental Hazards update would not include updates to the noise component, unless the City requests that noise be included in the update, which would be an additional cost. Consultant assumes that the City's Housing Element Update lead (B+D Community Planning) will be responsible for conducting community engagement and will generate sufficient input and participation from Newark's disadvantaged communities to satisfy State requirements.

The following provides an outline of our scope of work.

Task A: Project Initiation and Data Collection
Task B: Existing Conditions Report
Task C: Environmental Hazard Element Update
Task D: Health, Wellness and Environmental Justice Element
Task E: Initial Study/Mitigated Negative Declaration
Task F: Public Hearings
Task G: Community Engagement

Task A: Project Kick-Off and Data Collection
Consultant will attend a kick-off meeting with the project team to understand needs and expectations, turnaround review schedule, and communication and workflow process protocol. Following the kick-off meeting, Consultant will prepare a detailed list of data needs for submittal to the client to support the preparation of background reports for the Safety and Environmental Justice (EJ) Elements.

Task A Deliverables:

- Kick-off Agenda
- Data needs list

Task B: Existing Conditions Report
Environmental Hazards Element Existing Conditions

Subtask B.1a Regulatory Crosswalk
For amending the Environmental Hazards Element with respect to climate change hazards, Consultant will identify the specific regulatory requirements of Senate Bill (SB) 379, SB 1241, and Assembly Bill (AB) 2140, as well as the recommendations included in the California Adaptation Planning Guide 2.0, and 2017 OPR General Plan Guidelines. This "regulatory crosswalk" will identify each section of the Environmental Hazards Element that requires updating, including policy changes and updated data for maps and/or tables. These changes will be listed in the crosswalk and include the page number and recommended updates.

As part of this task, Consultant will review existing City plans and policies relevant to the Environmental Hazards Element update, including the Environmental Hazards Element (2013), Union City/Newark Multi-Jurisdictional Local Hazard Mitigation Plan (2017), Climate Action Plan, the Emergency Operations Plan, and other plans identified by City staff during the kickoff meeting. Consultant will evaluate the existing data and implementation status of the various plans and identify additional data needs to fill any gaps in missing information. It is assumed that data will be collected from the City, outside agencies, and other relevant sources. If additional technical studies are required, Consultant will identify whether a change in the scope of work may be necessary and assist the City in addressing additional needs.

Subtask B.2b Hazard Profiles and Mapping
Consultant will compile the background information from the City's Environmental Hazards Element, MJHMP and other applicable plans, and graphically communicate the information on anticipated hazards and potential effects of climate change. Additionally, to meet the requirements of Government Code Section 65302(g)(4), Consultant will identify communities with high proportions of vulnerable populations, such as older adults, those with limited English proficiency, and those with underlying health conditions. Consultant will use the Healthy Places Index, CalEnviroScreen, and other supporting resources to provide a full assessment of the community and their specific vulnerabilities to each hazard. Consultant will organize each hazard to answer these questions:

What is the climate-related hazard?
When does the hazard occur and how often?
Where in the City is most at risk from this hazard?
Who in the City is the most vulnerable and most affected by this hazard?
How is the City already addressing this hazard?

Consultant will provide hazard profiles and mapping for the following hazards:

- Air quality deterioration
- Extreme weather (heat, drought, wind)
- Localized Flooding and Dam Failure
- Wildfires
- Human health and human-caused hazards
- Hazardous materials
- Earthquake and Geologic Hazards (including landslides)

In accordance with the latest OPR guidance, Consultant will update the climate projections based on the fourth California Climate Change assessment. Using data from the City's Local Hazard Mitigation Plan, Consultant will prepare a map of critical infrastructure, including gathering points, distribution centers, and emergency facilities. In conjunction with this emergency preparedness and disaster planning map, Consultant will prepare an exhibit of visible excavation routes.

For non-climate-related hazards, including earthquake and geologic hazards, landslides, hazardous materials and human-health and human- caused hazards, Consultant will review all new credible technical data and provide maps of the spatial extent of the hazard and historical risk. Specifically, to address seismic hazards, Consultant will review seismic hazard data (e.g., liquefaction areas, age of buildings) and create a qualitative assessment of geologic hazards across the City.

SB 99 Parcel Assessment

Fehr & Peers will map locations with only one point of access. Please note, preliminary discussions with the Office of Planning and Research (OPR) indicates that they are likely to develop 30-unit criteria for identifying these access areas (example: a one way in/out cul-de-sac with fewer than 30 dwelling units along its length would not represent an impact) but there is not currently a defined criterion. Therefore, for the sake of this study, subject to formal guidance being released by OPR, Fehr & Peers will map developed parcels with only one access and color code based on whether there are clusters of 30 or more such parcels along a single access route. To the extent that changes could be implemented to improve accessibility, these will be identified conceptually.

AB 747 Assessment

Fehr & Peers will conduct volume-to-capacity analysis of up to three evacuation scenarios where all Newark population would need to leave the City. This scope assumes up to six study roadway segments. Note that Fehr & Peers would not assess impacts of evacuation scenarios where Newark's population remained within the City as we qualitatively assess that there are enough network redundancies and roadway capacity that

transportation facilities are not likely to present a major constraint. This analysis would identify the likely durations of time to evacuate. Sub-elements of this work would include:

Segregate Newark into evacuation zones (likely based on the MTC or Alameda CTC Travel Demand Model Traffic Analysis Zone) quantifying jobs, households, and vehicle ownership for each. These data would be used to estimate peak hour vehicle trips seeking to evacuate.

Identify internal routes likely to be used for evacuation. This is likely to be synonymous with the arterial system. Fehr & Peers will develop an initial map of these transportation facilities and public and stakeholder outreach conducted by other team members should confirm.

Identify external routes likely to be used in evacuation scenarios. This is likely to be the five interchanges on the north and east edges of the City plus Cherry Street/Boyce Road to the south. These locations should be confirmed through stakeholder outreach.

Conduct peak period volume-to-capacity level analysis of up to six segments for up to three evacuation scenarios. Other team members or the City would be responsible for defining the evacuation scenarios.

This includes gathering (from existing sources) counts at up to six locations to identify current demand and peaking characteristics (the relationship of peak hour traffic to daily traffic).

Evacuation conditions would be assessed for current (2021) conditions (no cumulative analysis).

The Alameda CTC travel demand model socio-economic data (such as people per household, auto ownership, etc.) and engineering judgment would be used to estimate the number of trips and trip assignment/route selection under various evacuation scenarios, some of which could include assumed closures of transportation facilities.

Unless stakeholder outreach indicates otherwise, this analysis would assume that evacuation occurs in the weekday early morning peak, when most residents are home and background traffic is relatively high.

Fehr & Peers will prepare a stand-alone technical memo documenting the process described above for review by Consultant and City staff (one round of review each).

B.3. Environmental Justice Existing Conditions Analysis

Consultant will begin with mapping and data collection, including use of Cal EnviroScreen, followed by detailed analysis for each of the Environmental Justice pillars. The analysis, coupled with public outreach, will form the foundation for preparing goals, objectives, policies and actions to improve the health and well-being of the Newark community, prioritizing actions for those disproportionately burdened by pollution. Per Cal EnviroScreen 4.0, no census tracts in Newark are identified as having an overall pollution burden above the 75th percentile, which is the figure triggering the requirement for an EJ Element; however, there are certain communities with environmental threats that fall above the 75th percentile. For example, in Census Tract 4446, diesel particulate matter (PM), traffic, cleanup sites, groundwater threats, hazardous waste, solid waste, and low birth weights, all are high ranking indicators in that Census tract. In Census Tract 4445, asthma, groundwater threats, hazardous waste, traffic and Diesel PM are also very high. Consultant will rank all indicators and address those that are of concern in Newark.

Subtask B.3a: Data Collection and Mapping

Consultant will utilize multiple data sources to identify and confirm disadvantaged areas, including Cal EnviroScreen, other legislative thresholds, as well as conversations with City departments and community organizations. Consultant will work with the City and community leaders to identify communities and neighborhoods that are disproportionately burdened by pollutions (i.e., disadvantaged communities). This will help us understand the specific needs of the community at the City scale and target specific policy to address those needs. Consultant will work with the City to corroborate and further refine this data directly with the disadvantaged communities, during the public outreach process. Promoting civic engagement for those in disadvantaged communities is imperative if the City is to improve the conditions in their lives and neighborhoods.

All data Consultant collects will be compiled in a GIS database using Urban Footprint. Once this database is generated and initial data from state and federal sources is input into the database, Consultant will generate a list of data needs for City staff and other regional agencies as needed. Consultant will maintain both the data list and data request online in an Excel-based format so that this document can be updated as data is added. The final database and data list will be passed on to the City upon completion of the project.

Subtask B.3a Deliverables:

All background and base data, including any GIS maps and digital data files

Subtask B.3b: Pollution and Air Quality

Consultant will prepare a health risk assessment to analyze specific pollution and health hazards spatially using a combination of local data and data from CalEnviroScreen, the Healthy Places Index, and the Census Bureau. Pollution levels will be broken up and analyzed based on the substance polluted, including air, water, and soil pollution. Safe drinking water will be analyzed based on contaminants and water quality violations. Consultant's analysis of soil pollution will consider toxic releases and hazardous waste, as well as required cleanup sites.

Consultant will map each specific pollution exposure, as well as socioeconomic data that makes populations most susceptible to such hazards. For example, air pollution exposure can vary in response to both air pollution emissions and to population factors that keep people outside during periods of worse air pollution, such as taking transit to work or working outside.

Consultant will review land uses, infrastructure, and policies, including those in consideration as part of the current zoning code update, in order to recommend an equitable way forward. Such policies may include project siting specifications, the capping of densities for certain facilities and uses, and infrastructure development to improve air or water quality. We will discuss recommendations with the City and upon feedback, develop goals, objectives, policies, and action for inclusion in the HWEJ Element.

Subtask B.3c: Public Facilities

Consultant will obtain spatial data concerning public facilities from City Staff, including places such as public transportation, parks, green space, community centers, grocery stores, health care facilities, childcare, libraries, and cultural centers. Consultant will create graphic heat maps of access to public services to quickly visualize areas of the City that can access these services on foot, bike, or other active transportation. Additionally, Consultant will qualitatively analyze non-physical barriers to public facilities and services, such as the adequacy of programming and the availability of affordable or free programs that can help promote healthy lifestyles. Consultant will then evaluate public facility locations, types, programming, and accessibility using an equity lens. Consultant will outline recommended policies to ensure that new public facilities and services are sited equitably, and provide guidance on adding accessibility, if necessary, to public facilities already in use. We will discuss policy recommendations with the City and upon feedback, develop goals, objectives, policies, and action for inclusion in the HWEJ Element.

Subtask B.3d: Food Access

Consultant will assess current healthy food sources, identifying all supermarkets, green markets, farmers' markets, food co-ops, urban farming, edible street/path/landscaping, and other stores/pantries that offer affordable, fresh, healthy food. Census tracts will be assessed and prioritized for access to low-cost, fresh, healthy food within walking and biking distance. Consultant will also examine drinking water quality, assessing contaminants and water quality violations. Consultant will then develop a multi-pronged policy approach that addresses access, affordability, and education. Examples of policies include the promotion of urban agriculture, farmers' markets, healthy food supply within supermarkets, food assistance programs, and more. We will discuss policy recommendations with the City and upon feedback, develop goals, objectives, policies, and action for inclusion in the HWEJ Element.

Subtask B.3e: Safe and Sanitary Homes and Neighborhoods

Using existing and in-progress Housing Element data, census data, code requirements and enforcement, street and sidewalk condition and connectivity, and other health and housing data, the Consultant team will identify environmental justice issues related to housing and neighborhood safety. Factors impacting an individual's health and safety in a living situation will be assessed, including housing habitability, surrounding land uses and transportation infrastructure in relation to safety, lead-based paint, and air conditioning access. Each of these factors can inform Consultant on the current housing stock, and where the most vulnerable families might be located in terms of housing.

The Consultant team will also assess the cost of housing, including homeownership, low-income homeowner housing cost burden, and low-income renter housing cost burden. These factors can be used as indicators of displacement risk. After reviewing current policies, Consultant will recommend policies for affordable, safe, and sanitary living conditions and neighborhoods. We will discuss recommendations with the City and upon feedback, develop goals, objectives, policies, and action for inclusion in the HWEJ Element.

Subtask B.3f: Health and Physical Activity

Health and physical activity are related to all of the topics previously discussed. Healthy air, safe and convenient access to parks, schools and recreational facilities, and healthy food sources, as well as safe homes and neighborhoods all impact people's health and the amount that they exercise. In addition to the data gathered under previous subtasks, the Consultant team will obtain current information and data to analyze transit accessibility, walkability, and access to parks, schools and recreation. The layout and safety of the transportation network can have a significant impact on the travel choices people make, and thus on levels of physical activity, air pollution, and social capital in a community. Consultant will also examine the spatial distribution of asthma, cardiovascular disease, diabetes, and obesity rates. Each of these factors will be converted into long-term objectives for a healthier vision of the City.

Policy recommendations will be developed to facilitate the reaching of these objectives. We will discuss recommendations with the City and upon feedback, develop goals, objectives, policies, and action for inclusion in the HWEJ Element.

Subtask B.3g: Civic Engagement

Based on the public outreach conducted during the planning process and described in Task D, this task will focus on summarizing the results of the outreach effort and how it led to an understanding of the disadvantaged communities, their needs, concerns, and local issues, including issues of access and barriers to civic participation opportunities. Consultant will then recommend policies and programs to help promote civic engagement in public decision making in the disadvantaged communities moving forward to advocate and affect change in their community. The City can employ many actions and strategies to increase communication and it can empower the residents to speak up and get engaged in their local government. For example, the City can reach out specifically in the form of City Council visits, City- initiated community meetings, City Hall open houses, and focused appointments to boards and commissions. It is equally important to make sure that residents know how to reach their City officials and staff and what programs are available to them. These actions can increase inclusiveness, transparency, and participation in local affairs by those who can benefit the most. We will discuss recommendations with the City, and upon feedback, develop goals, objectives, policies, and action for inclusion in the HWEJ Element. This subtask will be completed once all community engagement has taken place.

Subtask B.3g Deliverables:

- Summary of public outreach process
- Draft policy recommendations

Task B Deliverables

- B.2: Environmental Hazards Element Regulatory Crosswalk and Existing Conditions Analysis
- B.2 SB 99 and AB 747 Evacuation Analysis Technical Memorandum
- B.3: HWEJ Existing Conditions Analysis

Task C: Environmental Hazards Element Update

Consultant will prepare the Environmental Hazards Element based on the hazard profiles, mapping and community outreach conducted in previous tasks. Consultant will provide a brief summary of each hazard followed by goals, policies and actions, with a focus on modification to existing policies and new policies that minimize risk associated with climate change. These goals and policies will be compared to the OPR guidelines, FEMA requirements, CalOES, and AB 2140 requirements to outline how the plan meets these requirements. Consultant will develop clear actions to implement the goals and policies. These actions will be included in an Implementation Action Table. This table will outline which hazards the actions address, the City or partner agency responsible for implementation, relative cost, timeframe, and future tracking. Future tracking will outline environmental or legislative changes that would support or inhibit implementation of the action.

Consultant will complete an Administrative Review Draft of the Environmental Hazards Element, and after receipt of City comments, prepare a Public Review Draft for review by City officials, agencies and the public. This draft will be a complete and formatted document that includes concise visuals and sidebars explaining relevant state statutes, infographics explaining complex scientific or planning concepts, and relevant maps. The document will follow a format that meets Cal OES-review and FEMA-approval requirements and guidance. Consultant will work closely with state and local staff to ensure the element is adequately addressing state comments and can be certified. This draft will be prepared for submission to the California Geological Survey. Upon positive notification, the document will be sent to Cal OES for review. Upon positive notification from Cal OES, the document will be sent to FEMA for comment, input, and approval. Consultant will incorporate and otherwise address FEMA's concerns and questions during this comment period.

Upon receipt of a collective set of comments from the City, agencies and public, Consultant will then prepare a final Environmental Hazards Element that responds to comments. Consultant will coordinate closely with the City to ensure the plan meets all state requirements as well as direction from City staff and officials. In conjunction with City staff, Consultant will time public hearings so that important meetings with decision makers serve as responses to comments from Cal OES to ensure timely and efficient adoption of a clear and legally defensible Environmental Hazards Element Update.

Task C Deliverables:

- Electronic copy of Administrative Draft Environmental Hazards Element in Microsoft Word format
- Electronic copy of Public Review Draft Environmental Hazards Element in Microsoft Word format and PDF
- Electronic copy of Final Environmental Hazards Element in Microsoft Word format and PDF

Task D: Health, Wellness and Environmental Justice Element
Using the data collected in the previous tasks, Consultant will draft the HWEJ Element. This Element will include goals around the six pillars of SB 1000 and use data-driven policy recommendations vetted by City staff to create targeted objectives, policies, and implementable actions. Consultant will work with local community organizations during policy development to ensure that the HWEJ Element meets the specific needs of the community members of Newark. Consultant will incorporate input from the City and Community Organizations into a draft for public review. Consultant will present the pre-final HWEJ Element, with changes from public review draft incorporated, at a Final Implementation Workshop, where Community Organizations, City officials, and the Newark community will offer any last comments on the HWEJ Element, confirm EJ commitments and procedures going forward, and memorialize lessons learned from the outreach and engagement process.

Task D Deliverables:

- Electronic copy of Administrative Draft HWEJ Element in Microsoft Word format
- Electronic copy of Public Review Draft HWEJ in Microsoft Word format and PDF
- Electronic copy of Final HWEJ in Microsoft Word format and PDF

Task E: IS/MND
This scope of work presents a proposed approach and work plan to conduct CEQA environmental review in the form of an Initial Study/Mitigated Negative Declaration (IS/MND) that tiers off of the certified environmental impact report (EIR) adopted for the City of Newark's 2013 General Plan EIR and subsequent environmental review documents that were prepared to analyze the City's 2015 Housing Element and subsequent projects. Per CEQA, agencies are encouraged to tier the environmental analyses which they prepare for separate but related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues that are ripe for decision at each level of environmental review.

Task E.1: CEQA Project Management and Project Initiation
Luke Evans from Consultant will function as CEQA lead for this project. Luke will oversee preparation of each component of the environmental analysis, coordinating with the consultant team and the City as the housing element update is prepared. Luke will be available to work with the City on the strategy and design of the CEQA process and documents and will provide internal quality control for the environmental document. Monthly invoicing and internal team coordination will occur regularly.

Consultant's CEQA project management team will be available for four (4) project team meetings or conference calls. Consultant assumes one (1) virtual CEQA Kick-off Meeting with the City, B&D, and Consultant to discuss and/or confirm the overall approach to the environmental review process, confirm the components of the proposed housing

element update and if future refinements are necessary, Consultant's scope of work, initial schedule milestones, and anticipated data needs from the City.

Task E.1 Deliverables:

- Participation in four (4) project team meetings or conference calls by Consultant's CEQA leads.
- Participation in one (1) virtual CEQA Kick-off Meeting with the City, B&D, and Consultant.

Task E.2: Draft Initial Study/Mitigated Negative Declaration

Consultant will prepare an Administrative Draft IS/MND for review by City staff. The IS/MND will include a project description based on information provided by B&D and the City and will include: the regional and local setting; housing element history; project objectives; housing element characteristics and components; and other information important to understanding the proposed project. The Administrative Draft IS/MND will include the project description, CEQA environmental checklist, and mandatory findings. The IS/MND will be based on the checklist provided in CEQA Guidelines Appendix G, unless directed otherwise by the City.

The Initial Study will analyze whether the proposed housing element update may cause significant effects on the environment that were not examined in the prior environmental documents prepared for the 2013 General Plan and 2015 Housing Element Update. Within the IS/MND, the discussion of each environmental topic will be framed by the applicable significance criteria and will include a summary of the impacts found in the previous environmental documents. The Initial Study will concisely discuss potential impacts (including cumulative impacts) of the proposed housing element update relative to that criteria's threshold, including a comparison of potential impacts to those found in the previous environmental documents. Where any new or updated information pertinent to a topic is available, it will be incorporated into the analysis and discussion. Applicable mitigation measures from the 2013 General Plan EIR, subsequent environmental documents, and applicable City Standard Conditions of Approval that reduce environmental impacts will be identified, as appropriate. If at any point during the analysis Consultant identifies findings that suggest a significant impact, it will promptly inform City staff.

The IS/MND will address all the environmental topics under CEQA, included in Appendix G of the CEQA Guidelines. The intent of addressing all topics is to fully inform the public and decision-makers of the comparative impacts and consistency with adopted General Plan policies. Overall, the IS/MND is intended to be a focused document that does not unnecessarily re-state or re-print setting information or exhibits from the previous EIRs unless it is directly relevant to changes anticipated as a result of the proposed housing element update.

With regard to Transportation, we note that the Alameda County Transportation Commission has developed a VMT Estimation Tool, a series of VMT maps and summary tables, and a VMT Reduction Calculator that can be used to analyze transportation impacts for CEQA documents. We propose to use these resources for purposes of analyzing transportation impacts, and do not propose an independent VMT analysis.

Consultant's scope includes the preparation of email correspondence for the purpose of contacting the Native American Heritage Commission (NAHC) to request a list of contacts for Native American tribes who may have an interest in the project. Under SB 18, consultation with Native American tribes is required when adoption or amendment of a general plan or specific plan is proposed; under AB 52, the City is also required to assess potential impacts to tribal cultural resources. Consultant's scope includes a provision for facilitating and assisting the City with this consultation, including the preparation and tracking of correspondence to the tribes identified by the NAHC pursuant to both SB 18 and AB 52. If a tribe requests consultation, that is considered government-to- government consultation, and our scope assumes this would be undertaken by the City.

Consultant will prepare an Administrative Draft IS/MND for review by City staff (electronic version). Following one (1) round of review and based on the level of effort established in the budget, Consultant will revise the Draft IS/MND and prepare a Draft IS/MND for public review. Consultant will also prepare the Notice of Completion (NOC). Consultant will deliver the Draft IS/MND and NOC to the State Clearinghouse. We have assumed that the City will distribute the Draft IS/MND to Responsible and Trustee Agencies and other interested parties and arrange for publication of the notice in a newspaper of general circulation. The Draft IS/MND will be circulated for public comment for 30 days, as required under CEQA. Consultant will produce electronic copies and printed copies of the final document.

Task E.2 Assumptions:
Consultant assumes that the County's VMT Evaluation information discussed above will be sufficient to analyze the Housing Element Update's transportation impacts. If the City desires a separate and project specific VMT analysis, scope can be provided for such an effort at additional cost through a transportation subconsultant to Consultant.

Task E.2 Deliverables:

- Administrative Draft IS/MND (electronic version) for City staff review.

Public Draft IS/MND (5 printed copies to the City, electronic submittal to State Clearinghouse) along with a web-ready PDF to post on the City's website.
Notice of Availability and Notice of Completion (electronic submittal to State Clearinghouse).

<u>Task E.3: Final Initial Study/Mitigated Negative Declaration</u>
Following the public review of the IS/MND, Consultant and City staff will coordinate to review and discuss any CEQA- related comments received and establish the appropriate approach and distribution of responsibility for preparing specific responses to comments (e.g., master responses, policy responses, etc.). If warranted, a Response to Comments memorandum may be published with a Final IS/MND in preparation for the Planning Commission and City Council hearings.

Given the uncertainty of the level of effort required for Responses to Comments, Consultant has assumed up to 24 hours for this task. If after review and discussion of all comments received, we estimate that the response effort will exceed the estimated labor cost of this task, Consultant will notify the City to determine any appropriate adjustments to the scope of work.

Consultant anticipates up to one (1) round of review prior to a Final IS/MND. Following the City's review of the Screencheck Draft Response to Comments Memorandum and Final IS/MND, Consultant will incorporate the City's revisions in redline edits (underline and strike-out) from the previous version into a Final IS/MND. Consultant will also prepare an Administrative Draft Notice of Decision (NOD) after approval of the proposed amendments.

Task E.3 Deliverables:

- Screencheck Draft Response to Comments Memorandum and Final IS/MND (electronically only, Word and PDF).
- Five (5) hardcopies of the Final IS/MND to the City along with a web-ready PDF to post on the City's website.
- Notice of Determination for use by the City (assume City will coordinate filing with County Clerk)

Task F: Public Hearings

The Consultant team will attend up to three public hearings held by the Planning Commission and City Council, to address any questions related to the Environmental Hazards and HWEJ Elements. To the extent that the Planning Commission or Council directs staff to make modifications to the documents as part of the adoption proceedings, the Consultant team will incorporate the changes into the documents and submit a final version of the adopted Elements.

Task G: Community Engagement Support

The Consultant team will provide assistance to the client team, as needed, in support of community engagement efforts to be billed on an hourly basis for a not to exceed amount of $10,000. Efforts may include, but are not limited to, assistance with an outreach plan, preparing necessary agendas, presentation materials, surveys, or questionnaires and/or assisting with virtual public meetings. The Consultant team will work with the client team in determining the level of effort required for select tasks related to community engagement.

Cost Estimate

Following is a cost estimate for each component of the scope of work. Factors that would increase the scope of work and estimated costs outlined in this proposal include, but are not necessarily limited to, any of the following:

- Preparation and attendance at community meetings
- Analysis of additional issues above those discussed in this proposal, or a more detailed level of analysis than described in this proposal
- Changes in the project requiring re-analysis or rewriting of General Plan elements
- Collection of additional data for the General Plan updates or environmental analyses
- Identification of new areas for development that are outside of areas already designated for residential development in the City's General Plan (particularly raw land sites where significant biological resources could occur)
- Changes in the project requiring re-analysis or rewriting of Initial Study.
- Identification of a significant and unavoidable impact that could trigger a requirement for an Environmental Impact Report.
- Unforeseen controversy that could trigger a requirement for additional environmental analysis and/or a substantial increase in the level of effort to respond to comments on the Draft Initial Study.

Task	**Cost**
Task A: Project Kick-Off and Data Collection	$2,500
Task B: Existing Conditions Report	
Environmental Hazards Existing Conditions	$25,000
HWEJ Existing Conditions	$43,000
SB 99/AB 747 Evacuation Analysis	$25,000
Task C: Environmental Hazards Element Update	$26,000
Task D: HWEJ Element Update	$48,000
Task E: IS/MND	$69,940
Task F: Public Hearings	$3,300
Task G: Community Engagement	$10,000
TOTAL	**$252,740**

EXHIBIT B

PAYMENT

The Consultant team will charge for our service according to the following hourly rates for an amount not to exceed $252,740:

Personnel Category Rates

Charges will be made at the Category hourly rates set forth below for time spent on project management, consultation or meetings related to the project, field work, report preparation and review, and travel time.

Labor Category	Level I	Level II	Level III
Senior Director	275	300	325
Director	225	245	260
Managing Associate	190	205	220
Senior Associate	160	170	185
Associate	115	135	145
Project Technicians	90	110	130

(a) The range of rates shown for each staff category reflects ESA staff qualifications, expertise and experience levels. These rate ranges allow our project managers to assemble the best project teams to meet the unique project requirements and client expectations for each opportunity.

(b) From time to time, ESA retains outside professional and technical labor on a temporary basis to meet peak workload demands. Such contract labor may be charged at regular Employee Category rates.

(c) ESA reserves the right to revise the Personnel Category Rates annually to reflect changes in its operating costs.

ESA Expenses

A. Travel Expenses

1. Transportation
   a. Company vehicle – IRS mileage reimbursement rate
   b. Common carrier or car rental – actual multiplied by 1.15
2. Lodging, meals and related travel expenses – direct expenses multiplied by 1.15

B. Communications and Project Support Fee

Non-travel expenses incurred for the duration of the agreement for project support but not itemized below, including document retention, delivery and communications. Project labor charges multiplied by 3%.

C. Subcontracts
Subcontract services will be invoiced at cost multiplied by 1.15.

D. Other
The fees above do not include sales tax. Any applicable or potential sales tax will be charged when appropriate.

E. Payment Terms
Unless otherwise agreed in writing, Consultant will submit invoices on a monthly basis. Any unpaid balances shall draw interest at one and one half percent (1.5%) per month or the highest rate allowed by law, whichever is lower, commencing thirty (30) days after date of invoice. All invoices not contested in writing within fifteen (15) business days of receipt are deemed accepted by City as true and accurate and City thereafter waives any objection to City invoices, which are payable in full.

EXHIBIT C

QUALIFICATIONS

Environmental Science Associates (ESA)

ESA is a multi-disciplinary community planning and environmental consulting firm that helps public and private sector clients understand, address, and solve their important policy, planning, and environmental issues. In addition to holding a roster of highly skilled community and environmental planners, ESA has extensive experience completing all phases of general plan updates, including housing, safety, and environmental justice (EJ) elements, from community engagement and housing needs assessments to environmental review and public hearings; all specialties that, combined with our local experience, make ESA particularly well-qualified to help the City of Newark efficiently and effectively undertake this project. **Mary C. Laux** will serve as Project Manager and **Shannon Wages, AICP**, will serve as lead planner. Combined, they bring nearly 40 years of experience specializing in leading long-range planning and environmental documents. Shannon has extensive combined housing, safety and EJ experience, including assisting four jurisdictions (Indio, Highland, Lomita, and Mountain View) in updating their Housing Elements during this sixth housing element planning period. She also brings award-winning EJ experience, having recently received an Award of Excellence for Placentia's Health, Wellness and EJ Element.

STAFF REPORT

Item D. 7.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Jayson Imai, Assistant City Engineer
SUBJECT	Approval of plans and specifications and adopt a resolution accepting the bid and awarding the contract for the Base Bid and Additive Alternate Bid No. 1 to VSS International, Inc. for Cherry Street Class IV Separated Bikeways, Project 1254 and amending the 2022-2024 Biennial Budget for Fiscal Year 2023; Exempt from CEQA Review per CEQA Guidelines Section 15301

SUMMARY AND RECOMMENDATION

Bids for Cherry Street Class IV Separated Bikeways, Project No. 1254 were opened on March 21, 2023. The low monetary bidder, VSS International, Inc., provided a responsive bid, is experienced in this type of project and is a responsible contractor. Staff recommends that the City Council, by motion, approve the plans and specifications and by resolution, accept the bid, and award the contract for the Base Bid and Additive Alternate Bid No. 1 to VSS International, Inc. in the amount of $1,630,303.32 for Cherry Street Class IV Separated Bikeways, Project No. 1254.

Staff also recommends including an additional $169,696.68 in construction contingency, bringing the recommended allocation for the project to $1,800,000 and amending the 2022-2024 Biennial Budget and Capital Improvement Plan for FY 2023.

BACKGROUND

In January 2021, City Council approved the submittal of an Alameda County Transportation Commission (ACTC) 2022 Comprehensive Investment Plan application for the Cherry Street Class IV Separated Bikeway Project. The Comprehensive Investment Plan (CIP) is ACTC's near-term strategic planning and programming document through which administered fund sources are programmed through a consolidated process to maximize investments towards critical transportation infrastructure and program operations needs that are essential for developing and maintaining the county's transportation system.

In July 2021, ACTC programmed $453,000 in Measure B and Transportation Fund for Clean Air (TFCA) funds as part of its 2022 CIP to the City of Newark for the Cherry Street Class IV Separated Bikeway Project. Subsequently, in October 2021, City Council approved the allocation of the $453,000 of Measure B and TFCA funds to Cherry Street Class IV Separated Bikeways, Project No. 1254 and authorized the City Manager to execute a Project Funding Agreement with ACTC.

Cherry Street Class IV Separated Bikeways, Project No. 1254 would upgrade existing Class II bike lanes to a Class IV Separated Bikeway in both directions on Cherry Street between Central Avenue and Stevenson Boulevard. Class IV separated bikeways differ from standard bicycle lanes in that they provide a horizontal separation between the bike lane and adjacent traffic lane while also introducing a vertical separation element to further minimize interactions between bicyclists and vehicles. Safety improvements would also be installed at various transition and conflict zones by incorporating high visibility “green” pavement markings per the latest guidelines and recommendations developed by Caltrans, National Association of City Transportation Officials (NACTO) and Federal Highway Administration (FHWA). Bicycle detection would also be installed at each signalized intersection on Cherry Street. The Project will add key bicycle safety improvements to Newark’s primary north-south corridor in the southern half of the City and upgrade a vital link in Newark’s bicycle network. In order to facilitate the establishment of the Class IV separated bikeways and shifting of existing traffic lanes, the project would also apply a slurry seal to Cherry Street between Central Avenue and Stevenson Boulevard. The current Pavement Condition Index (PCI) of this section of Cherry Street is 78, which would typically warrant preventative maintenance treatments such as slurry seal.

The Project was initially advertised for construction in August 2022. A total of two bids were received, with both bids coming in higher than the Engineer’s estimate and exceeding the total funding allocated to the project at that time. After an analysis of the bids received, staff concluded that the low number of bidders and high bid prices were most likely the result of the extremely competitive bidding climate and heightened material, oil, and construction costs observed at that time. Further analysis of the bids received revealed that the prices bid to reconstruct curb ramps was particularly high, with the average bid price for each curb ramp ($27,461.46) over 4½ times more than the Engineer’s estimated cost ($6,000). As a result, the decision was made to reject all bids received for the Project and re-advertise the Project for bid in early 2023, when the bidding environment is traditionally more competitive.

DISCUSSION/ANALYSIS

Cherry Street Class IV Separated Bikeways, Project No. 1254 was re-advertised for construction in February 2023. Bids for the project were opened on March 21, 2023. The City received a total of three bids as follows:

Bidder	Base Bid	Additive Alternate Bid No. 1	Total Base Bid + Additive Alt. Bid No. 1
VSS International, Inc.	$1,492,487.32	$137,816.00	$1,630,303.32
American Asphalt, Inc.	$1,538,548.00*	$168,000.00	$1,706,548.00*
Pavement Coatings Co.	$1,598,709.00	$154,000.00	$1,752,709.00

Engineer's Estimate	$1,499,852.50	$112,000.00	$1,611,852.50

* - corrected for mathematical errors

As stated in the Project Specifications, determination of the low monetary bidder was based on the Base Bid plus Additive Alternate Bid No. 1. The low monetary bidder, VSS International, Inc., provided a responsive bid, is experienced in this type of project and is a responsible contractor.

Additive Alternate Bid

The project included an Additive Alternate Bid Item for the upgrading of existing curb ramps within the project limits to comply with current ADA standards. Although not included in the City's original ACTC 2022 CIP application, upgrading of curb ramps was added to the Project scope during design development to maximize the use of project funding but is otherwise not a required part of the project.

Analysis of the bids received for Additive Alternate Bid No. 1 revealed that the average bid price to reconstruct curb ramps ($10,948) is now 60% less than the average bid price for each curb ramp in August 2022 ($27,461.46). Based on the bids submitted by VSS International, Inc., staff recommends that the City Council add Additive Alternate Bid Item No. 1 to the construction contract, bringing the total contract amount awarded to $1,630,303.32. As detailed below, there are sufficient funds budgeted for this project to include the recommended Additive Alternate Bid Item.

FISCAL IMPACT

The addition of Additive Alternate Bid Item No. 1 to VSS International's Base Bid of $1,492,487.32 would bring the total construction contract amount to $1,630,303.32. Staff recommends including an additional $169,696.68 in construction contingency, equivalent to approximately ten percent of the contract amount, to account for any unanticipated construction costs. The added contingency would bring the recommended allocation for the project to $1,800,000.

Per the Project Funding Agreement with ACTC for Cherry Street Class IV Separated Bikeways, Project No. 1254 approved by City Council in October 2021, the City was awarded $323,000 of Measure B Discretionary Funding (Fund 288) and $130,000 of Transportation for Clean Air (TFCA) funds (Fund 289) totaling $453,000 of ACTC Administered Funds allocated to the project. Staff recommends using a combination of $152,000 of Senate Bill 1 (SB1) Road Repair and Accountability Act (RMRA) funds previously allocated to the project (Resolution No. 11268) and $1,195,000 of Transportation Impact Fee funds for the remaining allocation balance of $1,347,000.

Transportation Impact Fees are collected with each new residential, commercial, and industrial project and must be used to fund the construction of transportation improvements identified in the City of Newark Transportation Impact Fee Nexus Study.

The Nexus Study concluded that upgrading of bicycle facilities along Cherry Street could lead to an increase in alternative mode use, thereby reducing the number of vehicle trips and mitigating increases in traffic congestion caused by new development.

Staff recommends amending the 2022-2024 Biennial Budget and Capital Improvement Plan to allocate an appropriation of $1,195,000 in Transportation Impact Fee funds to Cherry Street Class IV Separated Bikeways, Project No. 1254.

Staff further recommends re-appropriating $150,000 of Measure B Bike/Ped Direct Local Distribution (Fund 282) funds that were previously allocated to the project (Resolution No. 11268) to be used on other projects. Doing so would allow Transportation Impact Fees, which have more restrictions on use, to replace the less restrictive Measure B Bike/Ped Direct Local Distribution funds.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The repair and maintenance of existing facilities is categorically exempt under the California Environmental Quality Act (CEQA) section 15301 (Existing Facilities).

REVIEW AND APPROVAL

Prepared by - Jayson Imai, Assistant City Engineer
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution - VSS International

Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE BID AND AWARDING THE CONTRACT FOR THE BASE BID PLUS ADDITIVE ALTERNATE BID NO. 1 TO VSS INTERNATIONAL, INC. FOR CHERRY STREET CLASS IV SEPARATED BIKEWAYS, PROJECT 1254 AND AMENDMENT OF THE 2022-2024 BIENNIAL BIDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, the Public Works Department invited sealed bids for the construction of public improvements for Cherry Street Class IV Separated Bikeways, Project No. 1254 (the "Project"); and

WHEREAS, the City has upon due notice, received a total of three bids for the Project that were reviewed by staff for responsiveness and responsibility; and

WHEREAS, as stated in the Project Specifications, determination of the low monetary bidder was based on the Base Bid plus Additive Alternate Bid No. 1; and

WHEREAS, VSS International, Inc. was determined by staff to be the lowest responsive and responsible bidder with a Base Bid plus Additive Alternate Bid No. 1 of $1,630,303.32; and

WHEREAS, staff recommends, and the City Council seeks, to add Additive Alternate Bid Item No. 1 to the construction contract; and

WHEREAS, $453,000 in Alameda CTC administered funds ($323,000 Measure B Fund 289 plus $130,000 TFCA Fund 289) and $152,000 in SB1 RMRA funds (Fund 202) were previously allocated to this project pursuant to Resolution No. 11,268; and

WHEREAS, staff recommends allocating an additional $169,696.68 in construction contingency, which would bring the total allocation for the Project to $1,800,000.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby find that VSS International, Inc. is the lowest responsive and responsible bidder for Cherry Street Class IV Separated Bikeways, Project No. 1254, in the City of Newark.

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the City Manager to execute an agreement with VSS International Inc., in a form approved by the City Attorney, for the construction of Cherry Street Class IV Separated Bikeways, Project No. 1254, according to the plans, specifications, and terms of said bid for the Base Bid plus Additive Alternate Bid No. 1 in an amount not to exceed $1,630,303.32

BE IT FURTHER RESOLVED that the City Council does hereby approve a construction contingency in the amount of $169,696.68, resulting in a total allocation of $1,800,000 for the Project and authorizes the City Manager, or their designee, to execute any change orders necessary to account for unanticipated construction costs within the total allocation for the Project.

BE IT FURTHER RESOLVED that the City Council does hereby approve an amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan to allocate $1,195,000 of Transportation Impact Fee funds to CIP project 1254 as follows:

	Account	Description	Amount
To:	622.90.091.910.6220.CIP1254	Traffic Impact Fees	$1,195,000
From:	622.3000	Unappropriated Fund Balance	$1,195,000

and reappropriate $150,000 of Measure B Bicycle and Pedestrian direct local distribution (Measure B Bike/Ped DLD) from Cherry Street Class IV Separated Bikeways, Project No. 1254 as follows:

	Account	Description	Amount
To:	282.3000	Unappropriated Fund Balance	$150,000
From:	282.90.091.910.6221.CIP1254	Measure B Bike/Ped DLD	$150,000

BE IT FURTHER RESOLVED that the City Manager is authorized to take any actions necessary to effectuate the intent of this Resolution.

AGREEMENT (PUBLIC WORKS CONTRACT)

THIS AGREEMENT, made and entered into this ___ day, of _____, 2023, and between the CITY OF NEWARK, a municipal corporation and the General Law Class, State of California, hereinafter called the "CITY" and VSS INTERNATIONAL, INC., a California Corporation, hereinafter called the "CONTRACTOR":

WITNESSETH:

That the City and Contractor for the consideration, hereinafter named, agree as follows:

1. That complete Contract includes all of the Contract Documents as if set forth in full herein, to wit: the Notice to Contractors; the Proposal to the City of Newark; the Accepted Bid (Unit Price Schedule); the Bidder's Statement of Subcontractors'; the Performance Bond; the Payment Bond; the Plans and Specifications; this Agreement; and all Addenda setting forth any modifications or interpretations of any of said Documents.

2. The Contractor will furnish all materials except as otherwise provided in the Specifications and on the Plans and will perform all the work necessary to construct and complete in a good workmanlike and substantial manner, and to the satisfaction of the Engineer, public improvements in accordance with that certain document headed:

   CHERRY STREET CLASS IV SEPARATED BIKEWAYS, PROJECT 1254

   and the Standard Specifications and Plans of the Department of Transportation, State of California, dated May 2006.

   All of the above work is on City property, and under the direction of the Engineer or other official designated by the City to supervise said work, all as provided in and subject to the Contract Documents.

1. The Contractor shall comply with all applicable local, state, and federal regulations.

2. The Contractor shall maintain a valid Class A, Class C-12 or Class C-32 California Contractor License throughout the performance of work under this contract.

3. The Contractor shall submit a receipt copy or other evidence showing payment of the current City of Newark Business License fee.

4. The Contractor shall provide a Certificate of Insurance to show proof of Comprehensive General Liability Insurance of (minimum) $1,000,000 combined single limit per occurrence for bodily injury, personal injury, and bodily damage; and Workers Compensation and Employers Liability Insurance as required by the Labor Code of the State of California.

5. As of July 1, 2014, all contractors bidding on this project are required to register with the Department of Industrial Relations (DIR) and to pay the required annual fee. Under California Labor Code section 1771.1, as amended by SB 854, unless registered with the DIR, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public works projects on or after March 1, 2015. The Contractor will be required to submit certified payrolls during the course of this project. This project is subject to compliance enforcement and monitoring by the State of California DIR.

6. The City will pay the Contractor in current funds for the performance of the Contract on the basis of the accepted unit prices and the actual measured quantities of work done at such time as are stated in the Specifications, and will otherwise fulfill its obligations thereunder.

7. All time limits stated in the Contract Documents are of the essence of this Agreement.

8. The statement of prevailing wages appearing in the Equipment Rental Rates and General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of said terms of said proposal conflicting herewith.

9. By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

12. If any action shall be brought by the City for the enforcement of any of the conditions, covenants or agreements herein the prevailing party shall recover reasonable attorney's fees.

13. The Contractor hereby agrees to defend, indemnify, and save harmless City, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, injury, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, City, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of Contractor, its officers, employees or agents in the performance of any service or work pursuant to this Contract.

14. The duty of Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require Contractor to indemnify City, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

It shall be required under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in the Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

Approval of the insurance contracts does not relieve the Contractor or subcontractors from liability under this paragraph, including but not limited to the duty to indemnify City set forth herein. By execution of this Contract Contractor acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration.

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

CITY OF NEWARK
a Municipal Corporation

By_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

FOR THE CONTRACTOR:
VSS INTERNATIONAL, INC.
a California Corporation

By_____

STAFF REPORT

Item D. 8.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Alex Tat, Senior Civil Engineer
SUBJECT	Approval of the plans and specifications and adopt a resolution accepting the bid and awarding the contract for the total bid to Contract Decor, Inc. for Window Coverings for Newark Civic Center, Project 1353 and amending the 2022-2024 Biennial Budget for Fiscal Year 2024; Exempt from CEQA Review per CEQA Guidelines Section 15301 (Existing Facilities)

SUMMARY AND RECOMMENDATION

Window Coverings for Newark Civic Center, Project 1353 will furnish and install mechanical roller solar shades at David W. Smith City Hall, Alan L. Nagy Library and Newark Police Department buildings.

Bids for Window Coverings for Newark Civic Center, Project 1353 were opened on March 14, 2023. Because the apparent low monetary bidder, California Textiles, Inc., provided a non-responsive bid by failing to submit a bid proposal form, their bid was rejected. The next lowest monetary bidder, Contract Decor, Inc., provided a responsive bid, is experienced in this type of project and is a responsible contractor. Staff recommends that the City Council by motion, approve the plans and specifications and by resolution, accept the bid and award the contract to Contract Decor Inc. in the amount of $73,900. for Window Coverings for Newark Civic Center, Project 1353 and amend the 2022-2024 Biennial Budget and Capital Improvement Plan.

Staff also recommends including an additional $7,600 in construction contingency, bringing the recommended allocation for the project to $81,500.

BACKGROUND

Completed in fall 2021, the Newark Civic Center, consisting of David W. Smith City Hall, Alan L. Nagy Library and the Police Department building provide the community with upgraded and functional facilities. Certified as a LEED Silver project, the intent of the building designs was to allow natural light into offices and public spaces. However, the buildings were also designed to accommodate the installation of window coverings should they be needed, with plans to further evaluate the need for window coverings after the buildings were first occupied. Based on discussions with staff, including staff from the Alameda County Library, it was determined that the installation of window coverings in all three Civic Center buildings would be preferred to assist in daily operations. Window coverings were expected at the end of 2021/early 2022. However, the City was unable to identify a qualified bidder at the time.

Having now experienced all four seasons of natural lighting impacts in the Civic Center buildings, a new bid package was created in early 2023. The specific design and location of all new window coverings were selected based on coordination with affected staff and will be adjustable to allow natural light into public spaces as desired.

DISCUSSION/ANALYSIS

Bids for Window Coverings for Newark Civic Center, Project 1353 were opened on March 14, 2023. The City received a total of two bids as follows:

Bidder	Total Bid
California Textiles, Inc.*	$64,446
Contract Decor, Inc.	$73,900
Engineer's Estimate	$88,000

*Bidder's bid was determined to be non-responsive and therefore the bid was rejected.

After examination of the bids received, staff determined that the apparent low monetary bidder, California Textiles, Inc., provided a non-responsive bid by failing to submit a bid proposal form; therefore, their bid was rejected. The next lowest monetary bidder, Contract Decor, Inc., provided a responsive bid, is experienced in this type of project and is a responsible contractor. Staff recommends that the City Council accept the bid and award the contract to the lowest responsive and responsible bidder, Contract Decor, Inc., for the Total Bid in the amount of $73,900.

FISCAL IMPACT

In addition to the $73,900 contract amount, staff recommends including $7,600 in construction contingency, equivalent to approximately ten percent of the contract amount, to account for any unanticipated construction costs. The added contingency would bring the recommended allocation for the project to $81,500.

This action requires an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan to allocate $81,500 to Window Coverings for Newark Civic Center, Project 1353. While window coverings were part of the original design of the Civic Center, a specific project was not created and therefore funding needs to be reallocated from the New Civic Center, Project 1188 to Project 1353.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The minor alteration of existing facilities is categorically exempt under the California Environmental Quality Act (CEQA) section 15301 (Existing Facilities).

REVIEW AND APPROVAL

Prepared by - Alex Tat, Senior Civil Engineer
Reviewed by - Jayson Imai, Assistant City Engineer
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Resolution
Public Works Contract

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE BID AND AWARDING THE CONTRACT FOR THE TOTAL BID TO CONTRACT DECOR, INC. FOR WINDOW COVERINGS FOR NEWARK CIVIC CENTER, PROJECT 1353 AND AMENDMENT OF THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, the Public Works Department invited sealed bids for the construction of public improvements for Window Coverings for Newark Civic Center, Project 1353 (the "Project"); and

WHEREAS, the City has upon due notice, received a total of two bids for the Project that were reviewed by staff for responsiveness and responsibility; and

WHEREAS, the apparent low bidder, California Textiles, Inc., was determined by staff to be non-responsive for failure to submit the required bid proposal form; and

WHEREAS, Contract Decor, Inc. was determined by staff to be the lowest responsive and responsible bidder with a bid of $73,900; and

WHEREAS, staff recommends allocating an additional $7,600 in construction contingency, which would bring the total allocation for the Project to $81,500.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby find the apparent low bidder, California Textiles, Inc., non-responsive per the terms of the Invitation to Bid and Project Specifications for the Window Coverings for Newark Civic Center, Project 1353, in the City of Newark.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby find that Contract Decor, Inc. is the lowest responsive and responsible bidder for the Window Coverings for Newark Civic Center, Project 1353, in the City of Newark.

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the City Manager to execute an agreement, in a form approved by the City Attorney, with Contract Décor, Inc. for the construction of Window Coverings for Newark Civic Center, Project 1353, according to the plans, specifications, and terms of said bid in an amount not to exceed $73,900.

BE IT FURTHER RESOLVED that the City Council does hereby approve a construction contingency in the amount of $7,600, resulting in a total allocation of $81,500 for the Project and authorizes the City Manager, or their designee, to execute any change orders necessary to account for unanticipated construction costs within the total allocation for the Project.

BE IT FURTHER RESOLVED that the City Council does hereby approve an amendment of the 2022-2024 Biennial Budget and Capital Improvement Plan to reallocate $81,500 from New

Civic Center, Project 1188 to Window Coverings for Newark Civic Center, Project 1353 within Capital Projects Fund (610) as follows:

	Account	Description	Amount
To:	610.90.094.940.6221.CIP1353	Window Coverings for Newark Civic Center	$81,500
From:	610.90.094.940.6221.CIP1188	New Civic Center	$81,500

BE IT FURTHER RESOLVED that the City Manager is authorized to take any actions necessary to effectuate the intent of this Resolution.

AGREEMENT (PUBLIC WORKS CONTRACT)

THIS AGREEMENT, made and entered into this ___ day, of _____, 2023, and between the CITY OF NEWARK, a municipal corporation and the General Law Class, State of California, hereinafter called the "CITY" and CONTRACT DECOR, INC., a Oklahoma Corporation, hereinafter called the "CONTRACTOR":

WITNESSETH:

That the City and Contractor for the consideration, hereinafter named, agree as follows:

1. That complete Contract includes all of the Contract Documents as if set forth in full herein, to wit: the Invitation to Bid; the Bid Proposal Forms to the City of Newark; the Accepted Bid (Unit Price Schedule); the Bidder's Statement of Subcontractors'; the Performance Bond; the Payment Bond; the Plans and Specifications; this Agreement; and all Addenda setting forth any modifications or interpretations of any of said Documents.

2. The Contractor will furnish all materials except as otherwise provided in the Specifications and on the Plans and will perform all the work necessary to construct and complete in a good workmanlike and substantial manner, and to the satisfaction of the Engineer, public improvements in accordance with that certain document headed:

WINDOW COVERINGS FOR NEWARK CIVIC CENTER,
PROJECT NO. 1353

All of the above work is on City property, and under the direction of the Engineer or other official designated by the City to supervise said work, all as provided in and subject to the Contract Documents.

1. The Contractor shall comply with all applicable local, state, and federal regulations.

2. The Contractor shall maintain a valid Class C-61/D-62 California Contractor License throughout the performance of work under this contract.

3. The Contractor shall submit a receipt copy or other evidence showing payment of the current City of Newark Business License fee.

4. The Contractor shall provide a Certificate of Insurance to show proof of Comprehensive General Liability Insurance of (minimum) $1,000,000 combined single limit per occurrence for bodily injury, personal injury, and bodily damage; and Workers Compensation and Employers Liability Insurance as required by the Labor Code of the State of California.

5. As of July 1, 2014, all contractors bidding on this project are required to register with the Department of Industrial Relations (DIR) and to pay the required annual fee. Under

California Labor Code section 1771.1, as amended by SB 854, unless registered with the DIR, a contractor may not bid, nor be listed as a subcontractor, for any bid proposal submitted for public works projects on or after March 1, 2015. The Contractor will be required to submit certified payrolls during the course of this project. This project is subject to compliance enforcement and monitoring by the State of California DIR.

6. The City will pay the Contractor in current funds for the performance of the Contract on the basis of the accepted unit prices and the actual measured quantities of work done at such time as are stated in the Specifications, and will otherwise fulfill its obligations thereunder.

7. All time limits stated in the Contract Documents are of the essence of this Agreement.

8. The statement of prevailing wages appearing in the Equipment Rental Rates and General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this contract. It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of said terms of said proposal conflicting herewith.

9. By my signature hereunder, as Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

10. If any action shall be brought by the City for the enforcement of any of the conditions, covenants or agreements herein the prevailing party shall recover reasonable attorney's fees.

11. The Contractor hereby agrees to defend, indemnify, and save harmless City, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions liability, loss, damage, injury, expense, cost (including, without limitation, costs and fees of litigation) of every nature, kind or description, which may be brought against, or suffered or sustained by, City, its Council, boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of Contractor, its officers, employees or agents in the performance of any service or work pursuant to this Contract.

    The duty of Contractor to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein contained shall be construed to require Contractor to indemnify City, its Council, boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

It shall be required under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in the Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

Approval of the insurance contracts does not relieve the Contractor or subcontractors from liability under this paragraph, including but not limited to the duty to indemnify City set forth herein. By execution of this Contract Contractor acknowledges and agrees that it has read and understands the provisions hereof and that this paragraph is a material element of consideration.

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

CITY OF NEWARK
a Municipal Corporation

By_____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

FOR THE CONTRACTOR:

_____

_____

By_____

STAFF REPORT

Item D. 9.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Lenka Hovorka, Assistant City Manager
SUBJECT	Adopt a resolution authorizing the City Manager to execute an Agreement with Alameda County to restore library service hours and amend the Fiscal Year 2024 budget

SUMMARY AND RECOMMENDATION

The City previously funded library service hours on Sundays and is interested in restoring library services on Sundays. Staff recommends that the City Council, by resolution, authorize the City Manager to execute an agreement with Alameda County for additional library services and amend the Fiscal Year 2024 budget.

BACKGROUND

In 2016, the City of Newark and Alameda County entered into an agreement to add four hours of library service on Sundays, funded by the City. Annually, the City and County renewed the agreement, until expiration of the last agreement on June 30, 2020. Due to the COVID-19 pandemic, the library was forced to close, and the City made difficult budget cuts. The closure occurred just before the library was scheduled to close in preparation for moving to the new library, its current location in the Newark Civic Center. When the library reopened, it offered limited hours and Sunday library service hours were no longer funded. In fall 2022, the City contacted the County and requested a proposal to restore Sunday library service hours. The County recently provided a proposal and an agreement with terms and conditions that remain substantively the same as the prior agreements.

DISCUSSION/ANALYSIS

As illustrated during an annual report presentation to the City Council on September 22, 2022, the Newark Library provides a valuable service to the community. The report highlighted the numerous volunteers, the Learning Lab's adult education offerings, and the increases in visitors and checkouts since the new library opened in the Newark Civic Center. It also showed that the Newark library offered the most programs and had the highest attendance in comparison to all other Alameda County libraries. The Newark Library also consistently partners with local organizations to host programs and activities that celebrate diversity, discuss important topics, and educate visitors about many available community resources.

The library is currently open 39 hours per week. Alameda County shared the following July - November 2022 data:

1. Monthly checkouts averaged 22,876 per month, with a total of 114,382 for the five-month period (excluding electronic resources).
2. Monthly checkouts are 112% higher compared to the same months in 2018 (last months before COVID and construction began).
3. Newark is the only Alameda County library with higher checkouts in 2022 than pre-COVID.
4. Newark averaged as much as 556 visitors per month on Saturdays (79 visitors per hour).

Alameda County indicated that Sundays are generally the busiest day of the week for many public libraries. Sunday hours are estimated to generate an additional 26,000 checkouts per year based on pre-COVID data, typical Sunday activity and recent checkout experience at the new library. The County and City have a shared desire to add Sunday library service hours as soon as possible. Based on the current number of vacancies in the Alameda County library system, it is unlikely the Newark Library will be open on Sundays before July 1, 2023. However, should staffing become sufficient to open the library on Sundays prior to July 1, the County will make every effort to open sooner.

FISCAL IMPACT

The Fiscal Year 2024 estimated cost of funding four hours of library service every Sunday is $133,350, to be paid in four quarterly installments of $33,337.50. Any open Sundays prior to July 1, 2023 will be charged at $2,564 per Sunday and if needed, funding will be requested through an amendment to Fiscal Year 2023 budget. The requested not-to-exceed amount of $152,000 includes funding for eight (8) additional Sundays.

REVIEW AND APPROVAL

Prepared by - Lenka Hovorka, Assistant City Manager
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

FY 2024 Library Hours Resolution

Library Hours Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ALAMEDA COUNTY FOR ADDITIONAL LIBRARY SERVICES AND AMEND THE FISCAL YEAR 2024 BUDGET

WHEREAS, the City had entered into agreements with Alameda County for additional library services in the years 2016 - 2019; and

WHEREAS, current funding levels for County Library services limits the number of open hours per week at the Newark Branch Library; and

WHEREAS, the City Council of the City of Newark wish to continue having the Newark Branch Library open to the community for service on Sundays for four hours more than the County funded hours per week.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves and authorizes the City Manager to execute an agreement with Alameda County in an amount not to exceed $152,000, in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized to renew the aforementioned Agreement for up to three additional one-year terms upon mutual consent of the City and Alameda County, subject to available funding.

BE IT FURTHER RESOLVED that the City Manager is authorized to take all actions necessary to effectuate the intent of this Resolution.

BE IT FURTHER RESOLVED that the Fiscal Year 2024 budget be amended as follows:

To:	110.27.027.270.6221	Library Contractual Services	$152,000
From:	110.3000	Unappropriated Fund Balance	$152,000

AGREEMENT BETWEEN THE CITY OF NEWARK
AND THE
COUNTY OF ALAMEDA
FOR
ADDITIONAL LIBRARY SERVICES
FISCAL YEAR 2023-24

The County of Alameda and the City of Newark enter into this Agreement as follows:

WHEREAS current funding levels for County Library services limit the number of open hours per week at the Newark Branch of the Alameda County Library system; and

WHEREAS the citizens of Newark wish to have the Newark Branch Library open on Sundays for four hours more than the County funded hours per week, and wish to have additional services; and

The City of Newark and the County of Alameda agree to provide four additional hours on Sundays of library services at the Newark Branch of the Alameda County Library system subject to the following terms and conditions.

TERMS AND CONDITIONS

1) Time Period: This Agreement will be in effect from July 1, 2023, to June 30, 2024.

2) Services Described: During the time specified above, the County agrees to provide 4.00 additional open hours on Sunday per week of library service at the Newark Branch Library, excluding County-observed holidays, in order to maintain a total weekly schedule of open hours at the Newark Branch Library at 43 hours per week. The Newark library will be open on Sundays from 1.00 to 5.00PM.

3) Payments: The City agrees to pay the County $133,350 in four (4) quarterly installments as follows:

September 30, 2023:	$33,337.50
December 31, 2023:	$33,337.50
March 31, 2024:	$33,337.50
June 30, 2024:	$33,337.50

Payments shall be due and payable on the dates stated above. In addition to the amounts stated above interest of 5 percent / month shall be payable for any payment which is more than 30 days overdue.

4) Extension: All terms and conditions of this Agreement may be extended, by mutual written agreement on a year-to-year basis or as otherwise agreed to by the parties, provided the amount paid by the City of Newark to the County of Alameda is adjusted annually to reflect increases/decreases to the costs connected with providing the services.

5) Augmentation: The services provided through this Agreement and the amount to be paid by the City of Newark to the County of Alameda may be augmented during the year, by mutual agreement, to reflect additional City of Newark funds and monies donated to the City of Newark by groups, other public agencies, and individuals for this purpose.

6) Periodic Activity Reports: Activity Reports will be provided by the County Librarian to the Newark City Council. Newark City Council may request such reports at any time.

7) Option to Terminate or Renegotiate Agreement: In the event that either party determines that it no longer has sufficient funding or staffing to meet the obligations of this agreement, that party may terminate or renegotiate this Agreement by giving at least thirty (30) days written notice.

8) Liability:

a) No persons engaged in the performance of library services and functions under this Agreement shall be considered City employees or gain rights to City pension, Civil Service, or other City employment status or right by way of this Agreement.

b) The City shall not be called upon to assume any liability for the direct payment of any salary, wages, or other compensation to any County personnel performing services hereunder for the City, or any liability other than that provided for in this Agreement.

Except as herein otherwise specified, the City shall not be liable for compensation or indemnity to any County employee for injury or sickness arising out of his/her employment.

c) The County will assume liability and pay cost of defense and hold the City harmless from loss, costs or expenses caused by the negligent or wrongful act or omission of County officers, agents and employees occurring in the performance of agreements between the parties hereto to the extent that such liability is imposed on the City by the provisions of Section 895.2 of the Government Code of the State of California.

d) The City will assume liability and pay cost of defense and hold the County harmless from loss, costs or expenses caused by the negligent or wrongful act or omission of City officers, agents and employees occurring in the performance of agreements between the parties hereto to the extent that such liability is imposed on the County by the provisions of Section 895.2 of the Government Code of the State of California.

9) Notices: Notices pertaining to this agreement shall be sent to the following:

CITY:
City Administrator
CITY OF NEWARK
37101 Newark Blvd
Newark CA 94560

COUNTY:
President, Board of Supervisors
COUNTY OF ALAMEDA
Administration Building
1221 Oak Street
Oakland, CA 94612

County Librarian
ALAMEDA COUNTY LIBRARY
2450 Stevenson Blvd.
Fremont, CA 94538-2326

IN WITNESS WHEREOF:

The parties hereto have executed this Agreement the day and year first above written, and the County has hereunto caused its corporate name to be signed by its President of the Board of Supervisors, who is hereunto duly authorized the day and year first above written.

CITY OF NEWARK

By: _____
City Manager
City of Newark, County of Alameda
State of California

Date: _____

COUNTY OF ALAMEDA

By: _____
President
Board of Supervisors
State of California

Date: _____

ATTEST:

By: _____
City Clerk

By: _____
Clerk of the Board of Supervisors

APPROVED AS TO FORM

By: _____
Deputy County Counsel

NEWARK LIBRARY
FY 2023-24 Projected Budget

EXPENSES:

Branch Personnel (14.05 FTE)	$1,428,621
Services &Supplies	$450,000
*All other Direct Cost	$1,174,406
Total Direct Costs	$3,053,027
**Admin. Cost	$690,441
GRAND TOTAL	**$3,743,468**

*Direct Cost include share of Material costs, ITD cost and cost of Learning Group Services (Bookmobile: Literacy: Senior Services and Services to those with Disability)
**Admin. Cost includes the shared cost of Administration.

REVENUE:

County Library Property Tax	$3,019,829	(39 Base Hours)
City Contract	$133,350	(4.0 Add. Hours)
Other County Library Funds	$590,289	
GRAND TOTAL	**$3,743,468**	

STAFF REPORT

Item E. 1.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Roya Gonzalez, Administrative Analyst
SUBJECT	Public hearing pursuant to Government Code Sections 4217.10, et seq. to adopt certain findings and to adopt a resolution authorizing the City Manager to execute an energy services agreement with Syserco Energy Solutions (SES) in an amount not to exceed $1,598,265 and approving an amendment to the biennial budget and to adopt a resolution authorizing the City Manager to apply for the Energy Conservation Assistance Act (ECAA) loan from the California Energy Commission and to execute any necessary loan documents. Exempt from CEQA pursuant to Section 15301 of the CEQA Guidelines

SUMMARY AND RECOMMENDATION

The City of Newark currently owns and maintains approximately 2,800 streetlights, the majority of which consist of a high-pressure sodium (HPS) light source. Upgrading the City's streetlights to Light Emitting Diode (LED) luminaires will improve the light quality, reduce maintenance costs and reduce energy use.

Staff recommends that the City Council hold a Public Hearing pursuant to Government Code Sections 4217.10, et seq. to adopt certain findings and to adopt a resolution authorizing the City Manager to execute an energy services agreement with Syserco Energy Solutions (SES) in an amount not to exceed $1,598,265 and approving an amendment to the biennial budget and to adopt a resolution authorizing the City Manager to apply for the Energy Conservation Assistance Act (ECAA) loan from the California Energy Commission and to execute any necessary loan documents.

BACKGROUND

In an effort to reduce the City's carbon footprint and reduce streetlight energy consumption and maintenance costs, the City has considered the conversion of all high pressure sodium (HPS) streetlights to energy efficient Light Emitting Diode (LED) luminaires. The City owns and maintains approximately 2,800 streetlights, the majority being HPS. HPS is characterized as one of the poorest light quality lamp technologies still in use today with high operation and maintenance costs compared to modern LED luminaires. Currently, the City spends approximately $100,000 on maintenance.

In June 2022, the City issued a Request for Qualifications (RFQ) for the LED Street Lighting Upgrade Project. The City received seven Statements of Qualifications and interviewed the top five firms. Staff determined that SES was the most qualified for the LED Street Lighting Upgrade project 1354. Staff has worked with representatives of SES as they conduct a detailed streetlight audit and energy analysis at no cost. Based

on their streetlight audit findings, SES has provided an Energy Services Proposal to upgrade all HPS streetlights to LEDs (Attachment 1).

DISCUSSION/ANALYSIS

Procurement Method

California Government Code 4217, et seq. (the code) is a state law that allows public agencies to use future savings to pay for the upfront costs of energy efficient measures through anticipated savings. The code was enacted because of an energy crisis to assist public agencies in expediting and financing energy conservation measures. The code provides public agencies with an exception to the typical competitive bidding requirements for public projects. Under the code, the City can utilize any procurement process to contract for energy services if the City Council determines that the anticipated cost to the City for the energy services project will be less than the anticipated marginal cost to the City of electrical energy that would have been consumed in the absence of the energy services contract. The findings must be made at a public hearing with at least two weeks' notice. The proposed resolution includes the necessary findings pursuant to the code and authorizes the City Manager to execute an agreement with SES (a draft of which is attached), in a form approved by the City Attorney.

LED Lighting Technology

LED lighting provides a number of benefits. Converting the City's streetlights to modern LED technology would reduce power consumption by approximately 67%, increase life cycle and improve light quality. LED luminaries are specifically designed to deliver high quality light more efficiently, improve uniform illuminations across all roadway types and conditions, while operating at a lower cost for a longer period of time. The volume and color of the proposed LED luminaires will be significantly better than the currently installed HPS lights. The lumen (or volume of light) output will be greater than the existing fixture, in some cases significantly. HPS street lighting typically creates "hot spots" with more light than needed immediately beneath the fixture and "cold spots" further away from the fixture. LEDs provide a more uniform light distribution that improves visibility. LEDs also allow for better control over the amount of light projected on the back of the fixture and would thus be less bright on adjacent residences. The new fixtures will have a useful life of approximately 100,000 hours at a higher lumen output of the lifetime of the light, five times that of the current HPS lights. In addition to the energy savings, there will be significant maintenance and operational savings due to the longer lamp life. LED technology has been available for years and the City requires all new private development to install LED streetlights as part of all subdivision projects.

Below are the proposed energy savings using the City's actual existing HPS lights compared to the proposed LED luminaires respectively:

EXISTING		PROPOSED	LED Streetlight Energy Savings	
Cobra Streetlight HPS Watts	Cobra Sytem Watts	LED Streetlight Watts	Electrical Savings (Watts)	Electrical Savings (%)
70	95	34	61	64%
70	95	34	61	64%
100	138	44	94	68%
100	138	44	94	68%
150	188	54	134	71%
150	188	54	134	71%
200	250	85	165	66%
250	295	100	195	66%

Project Cost/Funding

Based on the streetlight audit findings, SES has provided an Energy Savings Proposal (Attachment 1), with a fixed price of $1,598,265. In summary, the proposal indicates that the first-year utility savings are estimated to be $218,757. Based on a 4% estimated annual utility cost increase, the 15-year (assumed useful life of the LED lamps) savings for these upgrades is projected to be $4,551,722. The estimated project payback is 7.3 years.

PROJECT COST SUMMARY	
Total Project Cost	$1,598,265
Estimated First Year Annual Savings	$218,757
Project Payback	7.3 yrs.
Projected 15-year Net Cumulative Savings	$4,551,722*

*Based on 4% estimated PG&E annual utility cost escalation

Staff recommends applying for an Energy Conservation Assistance Act (ECAA) loan offered by California Energy Commission in an amount not to exceed $1,598,265 to finance the conversion of the City's streetlights to LED technology. The ECAA loan program is specifically tailored to encourage cities to participate in energy efficient projects. The interest rate is fixed at 1% for the term of the loan. The loan payments will be paid for from energy cost savings. In other words, the cost savings in reduced power usage will be used to pay the loan instead of paying PG&E. The maximum loan term is 17 years, however staff's intention is to have a term equal to the payback period. There is no penalty for early repayment. ECAA loan template documents are attached for reference. The proposed resolution authorizes the City Manager to execute the necessary loan documents in a form approved by the City Attorney and take all necessary associated actions.

FISCAL IMPACT

The total project is $1,598,265. The cost of the project is designed to be offset with savings in energy costs to satisfy debt services. However, initial payments will be paid by the City to SES and subsequently reimbursed by the CEC. Staff is recommending initial costs be paid out of unallocated CIP fund 610, project 1354, which will later be reimbursed upon receipt of the loan disbursement. In addition, staff estimates a 75% reduction in streetlight maintenance costs (approximately $75,000).

Loan payments will be made twice a year, in June and December, after the project is complete. Debt payments will be paid out of the general fund using the energy costs savings. There will be no increase to the general fund budget.

Staff recommends amending the 2022-2024 Biennial Budget and Capital Improvement Plan to appropriate $1,598,265 from the unallocated Capital Improvement Fund 610, project 1354 to fund the initial payments made to Syserco Energy Solutions in FY 2023.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The project is exempt from the California Environmental Quality Act (CEQA) pursuant Section 15301 of the CEQA Guidelines, as the project consists of upgrades to existing streetlights.

REVIEW AND APPROVAL

Prepared by - Roya Gonzalez, Administrative Analyst
Reviewed by - Lenka Hovorka, Assistant City Manager
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Energy Services Proposal
ECAA Loan Template
SES LED reso
LED CEC reso
SES Agreement
LED Presentation

Energy Services Proposal – Exhibit 1

Prepared for the City of Newark, CA

Date Submitted: March 31, 2023

Presented by: Chad Olsen, PE, CEM
Gabe Johnson, CEM

Doc Revision: R03

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SECTION 0 – EXECUTIVE SUMMARY

The City of Newark (City) selected Syserco Energy Solutions (SES), a qualified Energy Services Company, to develop a City-Wide, streetlight replacement project. The process of developing the Energy Conservation Measures (ECMs) for the City involved performing an Investment Grade Audit (IGA) of the city owned streetlight assets. The IGA established a historical energy and utility baseline and identified a comprehensive list of retrofit recommendations that would provide the best overall value to the City.

SES is pleased to present the following energy efficiency and facility improvement project to the City of Newark. The proposed streetlight improvement project will provide significant value to the City through various methods. The first is that the volume and color of the new LED luminaries will be significantly better than the current installed technology. The lumen (or volume of light) output will also be greater than the existing fixture, in some cases significantly. The new fixtures will have a useful life of 100,000 hours at a higher lumen output over that lifetime than the current technology. Finally, there are significant operational and maintenance savings that the City will realize as a result. The significant energy cost savings are the key driver of the project, but there will also be reductions in streetlight service costs by upwards of 75% over the life of the new fixtures.

The primary goals of this Project are:

1. Reduce energy consumption across City-owned streetlight infrastructure
2. Reduce the City's ongoing Utility and Operational costs
3. Upgrade aging infrastructure by improving efficiencies of existing equipment and systems
4. Create safer and more illuminated conditions for City staff and the general public

The following table is the firm-fixed Project Cost and estimated utility and operational savings.

Total Project Cost	$1,598,265
Energy Cost Savings ($/yr)	$218,757
Project Payback	**7.3 yrs**

15-YEAR NET CUMULATIVE SAVINGS* = $4,551,722*

** - Based on 4% estimated PG&E annual utility cost escalation*

SECTION 1 – INTRODUCTION

SES is pleased to present this Energy Services Proposal (ESP) to the City of Newark for the purpose of implementing the recommended Energy Conservation Measures (ECMs) for the City of Newark's streetlight assets.

The intent of this ESP is to summarize the project Scope of Work, Cost, and Savings for a comprehensive Energy Services project. The project will result in updated existing systems, reduced utility consumption and ongoing operational costs. By implementing this "self-funding" project, the City will avoid future capital cost requirements and minimize the impact on the City's future CIP budgeting requirements.

This Proposal marks the culmination of a detailed energy and operational audit of the City's facilities, where existing systems and equipment were analyzed to understand the potential for energy savings, infrastructure improvements, and overall cost reductions. To develop the recommended project, experienced Energy Engineers, Project Managers and Project Developers from SES have assessed and analyzed energy efficiency opportunities. SES has investigated multiple means for accomplishing this goal, including retrofitting equipment or installation of new devices and/or employing enhanced strategies to improve operational efficiency.

1.1 TEAM EFFORT

SES would like to thank members of City Staff and Facilities personnel who worked closely with our team throughout this process. Without their assistance, this project would not have been possible.

1.2 APPROACH

The Project Development process involved numerous site visits, interaction with City Administration and Facilities Staff, as well as a detailed analysis of existing equipment and systems, current utility consumption and any available logs and profiles of equipment. Studies of the energy usage, operating conditions and interviews with facility personnel were valuable sources of information that contributed greatly to this effort. SES has taken into consideration the input provided by staff and has integrated the various infrastructure needs of the City through the proposed ECMs.

SECTION 2 – SCOPE OF WORK

2.1 ENERGY CONSERVATION MEASURE (ECM) SUMMARY

For the detailed scope of work descriptions please refer to the "2.6 ECM DESCRIPTIONS & DETAILED SCOPES OF WORK" section.

The following table shows the Existing Lamp type, Proposed Lamp Code, the quantity of fixtures, energy savings, percentage of energy saved, and cost savings for each lamp type.

Luminarie Type	Existing Lamp Type	Proposed Code	Quantity (#)	Enery Savings (kWh/yr)	Energy Savings (%)	Cost Savings ($/yr)
COBRA	High Pressure - 70W 5800L SL	34W-30K-2R	1,259	270,433	61.7%	$71,405
COBRA	High Pressure - 70W 5800L SL	34W-30K-3R	472	101,386	61.7%	$26,770
COBRA	High Pressure - 70W 5800L SL	34W-40K-2R	25	5,370	61.7%	$1,418
COBRA	High Pressure - 70W 5800L SL	34W-40K-3R	65	13,962	61.7%	$3,687
COBRA	High Pressure- 100W 9500L SL	44W-30K-2R	90	28,620	64.6%	$7,557
COBRA	High Pressure- 100W 9500L SL	44W-30K-3R	22	6,996	64.6%	$1,847
COBRA	High Pressure- 100W 9500L SL	44W-40K-2R	29	9,222	64.6%	$2,435
COBRA	High Pressure- 100W 9500L SL	44W-40K-3R	216	68,688	64.6%	$18,136
COBRA	High Pressure- 150W 16000L SL	54W-30K-2R	3	1,516	70.2%	$400
COBRA	High Pressure- 150W 16000L SL	54W-30K-3R	233	117,712	70.2%	$31,081
COBRA	240V-High Pressure-200W 22000L	85W-40K-3R	174	110,246	65.2%	$29,111
COBRA	240V-High Pressure-250W 25500L	100W-40K-3R	80	64,032	66.7%	$16,907
Post Top	High Pressure- 150W 16000L SL	53W-40K-PT	60	30,312	70.2%	$8,004
--	--	--	**2,728**	**828,494**	**64.3%**	**$218,757**

Projected energy reduction and cost avoidance figures are calculated based upon stipulated lighting burn hours in PG&E's most **current LS-2 Rate Tariff as of March 1, 2023**. All calculations are based upon industry best practices and methodologies.

2.2 ENERGY SERVICES

SES will include the following services related to this project:

1. **SERVICES**: SES shall provide a detailed engineering design as needed to obtain the City's review and approval. In addition, SES will also provide Project / Construction management services, start-up, testing, as-built line-by-line audit of systems designed, and provide relevant operations and maintenance manuals.

2. **CONSTRUCTION**: SES shall provide all material, labor, and equipment, including paying for fees, bonds, and insurance, as required for complete working installation of the proposed equipment.
    a. SES will provide a Site Superintendent who will be responsible for the onsite supervision and coordination of trades and subcontractors. This individual's responsibilities will include regular work observations, quality control, enforcement of site-specific safety plan, as well as coordinating with City staff.
    b. At the conclusion of the project, SES will submit a "Certificate of Final Completion" to the City.

3. **CONSTRUCTION MANAGEMENT**: SES shall provide an experienced Construction Manager who will provide contract administration services for the Project.

4. **OPERATION TRAINING**: SES shall provide training to Facilities Staff during the construction and close out period. In addition, the manufacturer recommended training for all new and upgraded systems will be provided upon completion.

5. **WARRANTY**: SES shall warrant equipment and workmanship for (1) year following Notice of Substantial Completion. Specific information regarding equipment warranties will be passed on to Owner.

6. **EQUIPMENT MAINTENANCE**: SES shall provide no equipment repairs after the warranty period. SES will provide no maintenance on the new equipment installed. Following the completion of the installation and Owner acceptance of the equipment, the Owner shall provide all necessary service, repairs, and adjustments to the equipment so that the equipment will perform in the manner and to the extent set forth in the proposal. SES shall have no obligation to service or maintain the equipment after the warranty period.

7. **HAZARDOUS WASTE**: The Work and Services expressly exclude any work of any nature associated or connected with the identification, abatement, cleanup, control, removal, or disposal of hazardous materials or substances, including but not limited to asbestos, lead, or PCBs. Owner represents that, to the best of its knowledge, there is no hazardous material on the premises that may in any way relate to the Work or affect the ability of SES to deliver the Work or Services. Prior to the Commencement Date, Owner shall provide to SES a comprehensive good faith survey that at a minimum complies with applicable regulatory requirements, and identifies all actual or suspected hazardous materials, quantities, and specific locations of such materials on the premises. Failure to timely provide such good faith survey shall result in an equitable adjustment to project completion schedule. If SES becomes aware of or suspects the presence of hazardous materials on the premises during the Work or Services, SES shall notify Owner. Owner shall investigate and correct the suspected hazardous materials in accordance with all applicable laws. SES shall have the right to stop work in the affected area until the suspected hazardous materials are investigated and remediated by Owner, and the project completion schedule shall be equitably adjusted relative to the duration of Owner's investigation and remediation of the suspected hazardous materials.

2.3 CLARIFICATIONS & EXCLUSIONS

2.3.1 CLARIFICATIONS

- All work to be performed during regular work hours, unless otherwise stated. SES will review project schedule with City staff so that mutual agreement is reached for known conflicts on streets.
- All field craft labor will comply with prevailing wage requirements and current California DIR.
- **City of Newark shall waive all permit fees for this project.**
- City shall provide a laydown and storage area during the construction period.
- Proposal is based on reusing existing electrical circuits unless specifically stated.
- Assumes proper grounding exists for all electrical equipment.
- Pricing is based on a single-phase project, multiple phases or extensions to schedule may constitute a change in scope.
- A one-year warranty from date of ECM Acceptance is included.

2.3.2 EXCLUSIONS

- Work or other performance requirements shown in any other documents not stated in this proposal.
- Repair of non-functioning streetlight circuitry
- Replacement of existing blown streetlight fuses
- Removal of obstructions of any nature preventing safe bucket truck access to fixtures
- Removal, trimming or pruning of any trees or vegetation around fixtures
- Furnishing or installing any light shields other than replacing existing equipment
- Repairs or modifications to existing electrical, mechanical, controls, structural or other systems associated with existing code violations, unless specifically stated.

2.4 EXTENT OF SUBCONTRACTING

SES may subcontract portions of the final M/E/P design, equipment installation, start-up, and training of this contract to qualified firms.

2.5 PROJECT SCHEDULE

Initial Construction Schedule start date shall be based upon execution of Contract as the predecessor milestone. Excluding holidays, owner directed work stoppages and weather events, the projected overall project implementation schedule shall be developed by Construction Manager and reviewed with City staff at Construction Kickoff Meeting.

2.6 ECM DESCRIPTIONS & DETAILED SCOPE OF WORK

2.6.1 INTRODUCTION

ECM identification and selection is the result of SES detailed audit of the streetlight assets, and specification. The ECM is intended to improve the efficiency of the streetlights through new equipment.

The following is the detailed description of each proposed ECM. Each description includes general intent of each measure, the benefits of each ECM, the impacted equipment and the detailed scope of work.

2.6.2 DETAILED SCOPE OF WORK FOR ENERGY EFFICIENCY PROJECT

5.0 – Lighting ECMs

ECM 5.02 – Streetlight Retrofit & BRIO Update

General Intent

The existing street lighting systems from the BRIO report have high pressure sodium or metal halide luminaries. This measure will replace the existing lighting systems identified in the lighting audit with new LED fixtures or lamps. There are additional discrepancies in the BRIO that indicate the City is being charged for street light systems that are no longer physically installed or have already been upgraded to LED. These discrepancies will be resolved, and PG&E will be updated for billing purposes.

ECM Benefits

By replacing the exiting lighting systems with LED, a full round of maintenance will be realized as well as longer lamp life with reduced energy consumption and increased light production. New photocells will also ensure that the streetlight assets operate from dusk to dawn daily. The City will also realize bill savings from the correction of discrepancies.

Impacted Equipment

City streetlights as identified in the line-by-line audit, see attachment A.

Street Lighting

- Project per SES streetlight line by line audit
- Remove and properly dispose of existing fixture head and photocell
- Provide and install new LED cobra head in accordance with SES designed solution
- Provide and install new photocell for each installed fixture
- Includes all crew, trucks, rigging, deployment equipment needed for installation
- Prior to commencing implementation, SES shall meet with LABOR INSTALLER, CITY project staff, Public Works, Police and other CITY departments having responsibility for traffic control. SES shall develop and submit for approval a traffic control plan in accordance with the current version of the State of California, Business, Transportation and Housing, Department of Transportation Traffic Manual; Traffic Controls for Construction and Maintenance Work Zones for streets and/or areas identified as requiring traffic control. Upon acceptance of traffic control plan, SES shall provide all necessary traffic control equipment and labor for traffic control Work as required on roadways in accordance with approved plan.
    - Excludes costs associated with the use of City personnel (police, staff, etc.) or any CalTrans right of way encroachment as part of the implementation of any traffic control plan.
- Collection, storage, disposal and/or recycling of Universal Waste generated by this project in full accordance with California Code of Regulations, Title 22, division 4.5, chapter 23. Examples of universal waste generated by this project include fixtures, lamps, ballasts and other electronic components, and cardboard.
    - ALL EXISTING LED FIXTURES REMOVED UNDER THIS CONTRACT SHALL BE RETURNED TO THE CITY CORPORATION YARD
- Update GIS dataset with as built data and forward to City for their system update
- Update PG&E BRIO / streetlight inventory with as built data for accurate billing
    - Excluded corrections for badge numbers, addresses, item codes, SAID references between PG&E BRIO and actual as-built audit

- Conduct a night audit of fixtures to identify non-functional fixtures
    - Repairs other than faulty fixture or photocell to be addressed by City
- Provide necessary engineering and project management for complete turnkey system
- Provide as built line-by-line audit, updated GIS as-built dataset for streetlight assets, cut sheets/submittal package, O&M manual
- Provide owner/operator training
- Provide post construction photos as part of As-Built line-by-line audit

SECTION 3 – PROJECT FINANCIALS

3.1 LUMP SUM PROJECT COST

Costs presented in this proposal are valid until **May 31, 2023**. If the Notice to Proceed is issued after this date, SES reserves the right to re-evaluate the project and make necessary modifications to the construction cost. Other factors that SES does not have direct control may affect the ability to complete the project in the time proposed. In the event of delay that SES could not control, we reserve the right to request schedule extensions and reasonable adjustments to Project Costs to cover additional costs associated with the delay.

3.2 ITEMS INCLUDED IN PROJECT COST

Project costs include the following:

1. Engineering audit / Project Development, including the cost for preparation of this proposal.
2. Engineering design.
3. Construction/Project management and Site Supervision services.
4. Installation of SES equipment including the following as specified in the scope of work:
    a. All costs paid by SES for the installation of the equipment. This includes costs paid to subcontractors or directly to SES personnel, when related to installation or system verification of equipment.
    b. The portion of reasonable travel, lodging, and meal expenses incurred while traveling in discharge of duties connected with the Work.
    c. Cost of all equipment, materials, supplies, and equipment incorporated in the Work, including costs of transportation thereof.
    d. Cost or rental charges, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers.
    e. Cost of premiums for all bonds and insurance.
    f. Demolition cost and cost of removal of all debris.
    g. Cost of equipment startup, training, and system verification performed by SES
5. SES shall provide a Schedule of Values. The schedule of values will include all costs related to the installation of the equipment. The Schedule of Values will be presented during the Project Construction Kickoff Meeting, at the initiation of the project implementation phase.

3.3 ONGOING SERVICES / WARRANTY

Project includes 1-year warranty for material and labor. Additional warranty services may be available by product manufacturers and shall be “passed on” to District. Extended warranty beyond 1-year is not included in this proposal.

3.4 SES COMPENSATION

1. **Terms:** Net 30 days from the date of invoice, monthly billing as the job progresses.
2. **Payments:** Please see Section 3 of the Energy Services Contract for payment details.
3. **Mobilization / Project Development / Engineering Fee** invoice will be presented upon mutual execution of the Contract and will be in the amount of 25% of the Project's total value.
4. **Timely Disbursement of Progress Payments:** Payments will be made by the City in compliance with Public Contract Code §20104.50.
5. **Untimely Disbursement of Progress Payments:** In accordance with Public Contract Code §20104.50, in the event that the City shall fail to make any Progress Payment within thirty (30) days after receipt of an undisputed and properly submitted Application for Progress Payment, the City shall pay Provider interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a).

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STATE OF CALIFORNIA

LOAN AGREEMENT

CEC-142 (05/10)

CALIFORNIA ENERGY COMMISSION

BORROWER	AGREEMENT NUMBER
Recipient Name	XXX-XX-XXX
ADDRESS	AGREEMENT TERM / / to / / The effective date of this Agreement is the date the California Energy Commission signs the Agreement. No work is authorized, or shall begin until the California Energy Commission signs the Agreement. See the signature date below for effective start date.

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – Energy Conservation Assistance Act Loan Agreement	Page(s): 09
Exhibit A – Attachment 1 – Budget Detail/Project Cost and Savings	Page(s): 02
Exhibit B – Promissory Note	Page(s): 03
Exhibit B – Attachment 1 – Estimated Amortization Schedule	Page(s): 01
Exhibit C – Contacts	Page(s): 01

REIMBURSABLE AMOUNT
$ 0.00
MATCH SHARE
$ 0.00
TOTAL
$ 0.00

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE	DATE	AUTHORIZED SIGNATURE	DATE
NAME Rachel L. Grant Kiley	PHONE (916) 654-4379	NAME	PHONE
TITLE Contracts, Grants and Loans Office Manager			
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS-18, Sacramento, CA 95814			

EXHIBIT A

ENERGY CONSERVATION ASSISTANCE ACT LOAN AGREEMENT

This Loan Agreement (the "Agreement") is entered into as of the date it is executed by both parties hereto, between the California Energy Resources Conservation and Development Commission (the "Energy Commission") and the [Insert Recipient Name] (the "Borrower") located in [Insert Recipient County], CA.

1. STATUTORY AUTHORITY AND LOAN

A. Pursuant to the purposes authorized by section 25410, et seq., of the California Public Resources Code (the "Energy Conservation Assistance Act"), the Energy Commission has approved the Borrower's loan application dated [Insert Loan Application Date], which is not attached but is expressly incorporated by reference herein.

B. Subject to the terms, covenants, conditions, and including Special Conditions (if applicable) contained herein, and the Budget Detail/Summary of Project Cost and Savings attached as Exhibit A, Attachment 1 hereto to the extent it modifies the Borrower's loan application, the Energy Commission shall make a loan to the Borrower (the "Loan") in the amount of [Spell Out Loan Amount] dollars ($[Insert Loan Amount]) evidenced by a Promissory Note (the "Promissory Note") for loan number [Insert Loan Number] attached hereto as Exhibit B.

2. PURPOSE

The Borrower agrees to expend all funds disbursed pursuant to this Agreement only for the purposes and in the amounts set forth in Exhibit A, Attachment 1 (the "Project"). Any other use of funds disbursed hereunder shall require prior written approval by the Energy Commission.

3. LOAN DISBURSEMENT SCHEDULE

A. The Energy Commission agrees to disburse funds to the Borrower upon the Borrower's execution of the attached Promissory Note and required supplemental documents, including invoices as required in Section 3.B below.

B. Loan funds shall be disbursed on a reimbursement basis based on invoices submitted by Borrower in a form approved by the Energy Commission. Backup documentation for actual expenditures (such as timecards, vendor invoices, etc) and proof of payment must be provided to substantiate the request. Energy Commission staff will approve invoices

only after verifying requested amounts against backup billings and determining that expenses are appropriate and used for the authorized purposes of this Loan. For executed Agreements, invoices for expenses incurred during the Agreement Term are eligible for reimbursement.

C. All invoices must be submitted within sixty (60) days after Project completion.

D. The final ten percent (10%) of the Loan amount will be withheld as retention until the final report is received from the Borrower and the Commission's Project Manager determines the Project has been satisfactorily completed.

4. LOAN REPAYMENT AND INTEREST

All funds disbursed hereunder, together with all interest payable thereon, shall be repaid to the Energy Commission in accordance with the terms of the Promissory Note. The Loan shall bear simple interest at the annual rate set forth in the attached Promissory Note on the principal balance of Loan funds disbursed to the Borrower. Payment of said interest shall be due at the time of semiannual scheduled Loan repayment installments to the Energy Commission, and interest shall accrue from the time of disbursal of funds to the Borrower until receipt of full Loan repayment to the Energy Commission.

5. TERM

A. The effective date of this Agreement shall be the date on which it has been executed by both parties hereto. No work is authorized, or shall begin until the Energy Commission signs the Agreement.

B. The Borrower agrees to complete performance of its obligations under this Agreement within the applicable periods stated in this Agreement.

6. PREPAYMENT

The Borrower shall have the right to prepay all or any part of the amount of this Loan at any time without penalty.

7. PROMISSORY NOTE

In order to evidence its debt to the Energy Commission hereunder, the Borrower agrees to, contemporaneously with the execution of this Agreement, execute and deliver to the Energy Commission the Promissory Note (attached as Exhibit B hereto).

8. ACCOUNTS, AUDITS, AND RECORDS

A. The Borrower agrees to establish on its books a separate account for this Loan. This account shall be maintained as long as the Loan obligation remains unsatisfied.

B. The Borrower further agrees to maintain records that accurately and fully show the date, amount, purpose, and payee of all expenditures drawn on said account for three (3) years after this Loan is repaid in full unless the Energy Commission requests a longer retention period.

C. The Borrower further agrees to utilize a voucher system by which all expenditures from said account will be authorized and authenticated.

D. The Borrower further agrees to allow the Energy Commission or any other agency of the State of California (the "State") or their designated representatives, on written request, to have reasonable access to, and the right of inspection of, all records that pertain to said account or the Project. The Borrower also agrees to submit to an independent audit, if requested by the Energy Commission, at the expense of the Borrower. Borrower agrees to maintain all such records for a minimum of three years after this Loan is repaid in full unless the Energy Commission notifies the Borrower, prior to the expiration of such three-year period, that a longer period of record retention is necessary.

9. SOURCE OF REPAYMENT; OPERATION OF PROJECT

A. Semiannual payments due to the Energy Commission under this Agreement shall be made from savings in energy costs or other legally available funds as the Borrower chooses. If the Borrower is a county, city, town, township, board of education, or school district, the Borrower agrees that the amount of the semiannual Loan repayment shall not be raised by the levy of additional taxes and shall not be an obligation against tax revenues, but shall be obtained either from savings in energy costs resulting from the subject energy conservation projects or other legally available funds as the Borrower chooses.

B. Energy cost savings as determined by the Energy Commission are based on energy usage and serving utility rate schedules at the time the Loan application is submitted, except as specified in Special Conditions, if any, as detailed in this Agreement, and the information and data contained in the Borrower's loan application and technical study. The following will not affect the Energy Commission's initial finding of energy cost savings, and are not a basis for claiming a lack of energy savings: a) changes in energy use and/or rate schedules which occur after submittal of the Loan

application, except as specified in Special Conditions, if any, as detailed in this Agreement, b) deviations in the Project work scope from what was approved by the Energy Commission, c) changes in the Borrower's facility and/or equipment which occur after submittal of the Loan application, including, but not limited to maintenance, operations, schedules, employees and facility alterations and expansions, d) deviations, omissions or errors found in the loan application and technical study after submittal of the Loan application. The Borrower is responsible for ensuring the accuracy of the information contained in its loan application and technical study. In the event annual energy cost savings resulting from the Project, as determined by the Energy Commission, fail to equal or exceed the amount due under this Agreement, this Agreement may be renegotiated to assure that the repayment amount does not exceed the actual energy savings or avoided costs resulting from the Project, and the Promissory Note will be revised accordingly. In no event, however, will the number of semiannual installments payable hereunder and under the Promissory Note exceed forty.

C. The Borrower shall obtain and maintain in its records any and all permits and licenses required to install or operate the Project and shall comply with all local, state, and federal laws, rules and codes concerning the Project. The Borrower shall maintain the Project in good working order for the duration of the Loan and shall insure that staff members are provided appropriate training on the operation and maintenance of the Project. The Borrower shall maintain insurance on the Project and**,** in the event of any casualty loss covered by such insurance policy, apply the proceeds to the repair of the Project or, with the approval of the Energy Commission, may use the insurance proceeds to install alternate projects to generate alternative energy cost savings to repay the Loan.

D. The Borrower agrees to provide the Energy Commission with the following information for three years following completion of the Project, unless the Energy Commission requests a longer period: (1) the annual computation, required by Section 25414 of the Energy Conservation Assistance Act, of energy cost savings for the most recent fiscal year, calculated in the manner and provided in the format prescribed by the Energy Commission; and (2) any information or change in assumptions or operations which might affect the Energy Commission's initial determination of energy savings.

E. The Borrower authorizes any official or agent of the Energy Commission or the State to conduct physical inspections of the Project before the commencement; during construction, installation and implementation of the Project; and at any time prior to the complete repayment of the Loan. In each contract entered into with suppliers of goods and services to

install, conduct, or operate the Project, including management services, the Borrower shall include terms which allow any officer or agent of the Energy Commission or the State access to the Project site and to any books, documents, or records directly relevant to the Project.

F. If, prior to final repayment of the Loan, the Borrower sells the equipment or material installed with the proceeds of the Loan or sells the building, facility or system in which the Project has been implemented, then the Borrower shall apply the sale proceeds to repay any remaining balance due under this Agreement in full at the time of such sale. The Borrower shall notify the Energy Commission within five business days of the date on which the Borrower enters into an agreement to effect such transaction. The Borrower shall repay the Energy Commission within 30 calendar days of receiving an invoice from the Energy Commission for the balance due.

G. In accordance with Section 25415 of the Energy Conservation Assistance Act, the Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

10. DEFAULT

A. The Borrower's failure to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and an event of default. In such case, the Energy Commission may declare this Agreement to have been breached and be released from any further performance hereunder.

B. In the event of any default or breach of this Agreement by the Borrower, the Energy Commission, without limiting any of its other legal rights or remedies, may, to the extent permitted by law, declare the Promissory Note evidencing this Loan to be immediately due and payable.

11. TERMINATION

A. With Cause

The Energy Commission may, at its option, terminate this Agreement with cause in whole or in part, at any time prior to the funding of the Loan, upon giving five (5) days advance notice in writing to the Borrower. "Cause" includes without limitation:

1) Failure to perform or breach of any of the terms or covenants at the time and in the manner provided in this Agreement; or

2) Significant change in Energy Commission or State policy such that the work or product being funded would not be supported by the Energy Commission; or

3) Reorganization to a business entity unsatisfactory to the Energy Commission.

B. Without Cause

The Energy Commission may, at its option, terminate this Agreement without cause in whole or in part, at any time prior to the funding of the Loan, upon giving thirty (30) days advance notice in writing to the Borrower.

12. **REPORTING**

A. Progress reports are due each calendar quarter until Project completion. At a minimum, Borrower shall submit progress reports in accordance with the following schedule:

PROGRESS REPORT SCHEDULE	
For the Period Covering	**Report Due Date**
January 1 through March 31	April 5th
April 1 through June 30	July 5th
July 1 through September 30	October 5th
October 1 through December 31	January 5th

B. A final report is due no later than (sixty) 60 days after Project completion.

C. The Energy Commission will not process an invoice unless the Borrower's report submittals are up to date.

D. If requested by the Energy Commission, Borrower shall submit, within ten (10) days after the Energy Commission's written request, a status report on its activities to date, pursuant to this Agreement.

E. Reports shall be in a format as determined by the Energy Commission.

F. The Borrower shall submit reports regarding energy savings as described in Section 9.D above.

13. GENERAL TERMS

A. Indemnification by the Borrower. The Borrower agrees to indemnify, defend, and save harmless the Energy Commission, the State, and their officers, agents, and employees from any and all claims, losses, or costs (including reasonable attorney fees) arising out of, resulting from, or in any way connected with the Loan or this Agreement, or the financing or the operation of the facilities financed with the Loan.

B. Ownership of Equipment and Material. All equipment and material acquired under this Agreement shall become the property of the Borrower at time of purchase. The Borrower shall obtain and maintain in its records a written waiver of all claims, other than those previously made in writing and still unsettled, from each contractor who supplies goods and services, including management services, in connection with the Project.

C. Independent Capacity. The Borrower, and the agents and employees of the Borrower, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission or the State of California.

D. Assignment. Without the written consent of the Energy Commission, this Agreement is not assignable or transferable by the Borrower either in whole or in part. The Energy Commission may assign its rights under this Agreement for security purposes, and in such event the assignee of this Loan Agreement, including the bond trustee of any bonds which may be secured by repayment of this Loan**,** shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Agreement.

E. Time of the Essence. Time is of the essence in this Agreement. Borrower is required to take timely actions which, taken collectively, move to completion of the purpose for which this Loan was awarded. The Commission Project Manager will periodically evaluate the progress toward completion. If the Commission Project Manager determines that the Borrower is not progressing toward completion within one (1) year after the effective date of this Agreement, the Commission Project Manager may, without penalty or prejudice to any of the Energy Commission's other remedies, terminate this Agreement.

F. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

G. Severability. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

H. Governing Law and Venue. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California. Venue shall be in Sacramento County.

I. Non-discrimination. During the performance of this Agreement, the Borrower and its contractors and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and family care leave. The Borrower and its contractors and subcontractors shall insure the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Borrower and its contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this agreement by reference and made a part hereof as if set forth in full. The Borrower and its contractors and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Borrower and its contractors shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

J. Incorporation of Energy Conservation Assistance Act. The Energy Conservation Assistance Act, together with any applicable rules, regulations or procedures authorized by such statute, is incorporated by reference in this Agreement.

K. Borrower Authorization. The Borrower certifies it has full power and authority to enter into this Agreement, and this Agreement has been duly authorized, executed and delivered by the Borrower. The Borrower acknowledges the resolution of its governing body or other official action authorizing it to enter into this Agreement. The Borrower also authorizes such further acts as are necessary, including execution of the Promissory Note, to implement and further the intent of this Agreement.

L. Prevailing Wage. The Borrower shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code relating to the payment of prevailing wage for work performed on the Project financed in whole or in part with the proceeds of the Loan.

M. Funding Eligibility. By signing this Agreement, Borrower certifies it is eligible to receive state funding under all applicable laws, including but not limited to Chapter 2.8 "Project Labor Agreements", of Part 1, of Division 2 of the Public Contract Code.

14. **NOTICE**

Any notice required to be given to the Energy Commission hereunder shall be sent to the person and address listed under Legal Notices in Exhibit G, Contacts, or at such other address as the Energy Commission may designate in writing to the Borrower. Any notice required to be given to the Borrower hereunder shall be sent to the address shown for Borrower in this Agreement, or at such other address as the Borrower shall designate in writing to the Energy Commission. Notice to either party may be given using the following delivery methods: U.S. mail, overnight mail, or personal delivery, providing evidence of receipt, to the respective parties identified in this Agreement. Delivery by fax or e-mail is not considered notice for the purposes of this Agreement. Notice shall be effective when received, unless a legal holiday for the State commences on the date of the attempted delivery in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.

EXHIBIT A
ATTACHMENT 1
BUDGET DETAIL/PROJECT COST AND SAVINGS

This Loan is made to the [Insert Recipient Name] ("Borrower") for an energy savings Project. The Project consists of the energy efficiency measures listed in Table 1 below to be installed at the [Describe Facilities] in the [Insert City(ies) and County(ies) Where Measures to be Installed], CA.

The Table below summarizes the estimated Project cost(s), saving(s) and simple payback(s) for the Project.

TABLE 1: Summary of Project Cost and Savings:

Energy Efficiency Measures	Estimated Total Project Cost	Energy Commission Loan	Estimated Annual Energy Cost Savings	Simple Payback* (Years)
[Insert EEM #1. Add additional rows as necessary]	[Insert EEM Cost]	$00.00	[Insert Cost Savings]	[Insert EEM Payback]
TOTALS:	[Insert Total Project Cost]	[Insert Loan Amount]	[Insert Total Annual Energy Cost Savings]	[Insert Overall Payback]

*The simple payback is based on the Loan amount.

The Borrower shall implement each measure listed in Table 1.

If Borrower does not complete one or more of the measures or deviates from the quantities and specifications listed in Table 1, the Commission Project Manager will calculate the maximum Loan amount supported by the Project. The Loan amount will be determined by the lesser of: 1) multiplying the annual energy cost savings by [Insert Maximum Simple Payback Period]; 2) total Project costs; or 3) approved Loan amount.

Borrower shall notify the Commission Project Manager in writing if Borrower expects any information in Table 1 to change. Energy Commission staff will advise Borrower of the procedure to approve any changes. Written documentation is required for any changes to the information included in this Attachment.

If the Borrower has received disbursements exceeding the maximum Loan amount supported by the Project, the Borrower shall refund the difference to the Energy Commission within 30 days of notification.

EXHIBIT B

PROMISSORY NOTE

LOAN NUMBER:	**[Insert Loan #]**
PRINCIPAL AMOUNT:	**$[Insert Loan Amt]**
INTEREST RATE:	**[Interest Rate]%**

1. For value received, the undersigned, (hereinafter referred to as the "Borrower"), promises to pay to the order of the State of California, Energy Resources Conservation and Development Commission (hereinafter referred to as the "Energy Commission"), at its principal place of business at 1516 Ninth Street, Sacramento, California 95814, or at such other place as the Energy Commission may designate the principal sum of [Spell Out Loan Amount] dollars ($[Insert Loan Amount]) or such lesser amount as shall equal the aggregate amount disbursed to the Borrower by the Energy Commission pursuant to the above-referenced Energy Conservation Assistance Act Loan Agreement (the "Loan Agreement") between the Borrower and the Energy Commission, together with interest thereon at the rate of Insert Interest Rate]% percent per annum on the unpaid principal, computed from the date of each disbursement to the Borrower. Principal, together with interest thereon, is due and payable in semiannual installments as specified in the Estimated Amortization Schedule, attached hereto as Exhibit B, Attachment 1 and as amended in the Final Amortization Schedule, beginning on or before December 22 of the fiscal year following the year in which the Project is completed and continuing thereafter on each June 22 and December 22 until said principal and interest shall be paid in full. The Final Amortization Schedule, and any amended Final Amortization Schedule(s), are not attached but are expressly incorporated by reference herein.

2. Payments received will be first applied to billed interest, if any, and the balance, if any, to principal. If all principal is repaid, the balance is applied to accrued interest.

3. Payment of any scheduled installment received within thirty (30) days of the due date shall be considered to have been received on the due date. Interest on the principal portion of the payment accrues through the due date.

4. Payment of any scheduled installment received more than thirty (30) days after the due date shall be considered late. Interest on the principal portion of the payment accrues through the actual date payment is received.

5. The Borrower may prepay this Promissory Note in full or in part, without penalty.

6. In accordance with Section 25415 of the Energy Conservation Assistance Act, the Borrower covenants to take such action as may be necessary to include all payments due hereunder in its annual budget and to make the necessary annual appropriations for all such payments. The obligation of the Borrower to make

such payments shall be limited to the savings realized by the Borrower as a result of implementing the Project funded by the Loan.

7. If any installment is not paid within thirty (30) days after its due date, the Energy Commission, at its option, may require the Borrower to pay a late charge equal to five percent (5%) of the amount of the installment or Five Dollars ($5.00), whichever is greater.

8. On the occurrence of any event of default, the Energy Commission, at its sole election and without limiting any of its other legal rights or remedies, may, to the extent permitted by law, declare all or any portion of the principal and accrued interest on this Promissory Note to be immediately due and payable and may proceed at once without further notice to enforce this Promissory Note according to law.

9. Each of the following occurrences shall constitute an event of default:

   A. Failure of the Borrower to repay any principal or interest when due under the terms of this Promissory Note;

   B. Termination of the Loan Agreement pursuant to the terms thereof or breach by the Borrower of any terms of said Loan Agreement;

   C. Failure of the Borrower to undertake in a timely way the express and implied activities for which said Loan Agreement has been executed;

   D. Failure of the Borrower to obtain prior written Energy Commission approval before undertaking a change in the scope of the activities for which said Loan Agreement has been executed; or

   E. Occurrence of: (1) the Borrower becoming insolvent or bankrupt or being unable or admitting in writing its inability to pay its debts as they mature or making a general assignment for the benefit of or entering into any composition or arrangement with creditors; (2) proceedings for the appointment of a receiver, trustee, or liquidator of the assets of the Borrower or a substantial part thereof, being authorized or instituted by or against the Borrower; or (3) proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law, or any jurisdiction being authorized or instituted against the Borrower.

10. No delay or failure of the Energy Commission in the exercise of any right or remedy hereunder or under any other agreement which secures or is related hereto shall affect any such right or remedy, and no single or partial exercise of any such right or remedy shall preclude any further exercise thereof, and no action taken or omitted by the Energy Commission shall be deemed a waiver of any such right or remedy.

11. Any notice to the Borrower provided for in this Promissory Note shall be given by mailing such notice by certified mail, return receipt requested, addressed to the Borrower at the address stated in the Loan Agreement, or to such other address as the Borrower may designate by notice to the Energy Commission. Any notice to the Energy Commission shall be given by mailing such notice by certified mail, return receipt requested, to the Energy Commission at the address stated in the Loan Agreement, or at such other address as may have been designated by notice to the Borrower.

12. If suit is brought to collect any part of this Promissory Note, the Energy Commission shall be entitled to collect all reasonable costs and expenses of said suit and any appeal therefrom, including reasonable attorney's fees.

13. This Promissory Note shall be binding upon the Borrower and its permitted successors and assigns and upon the Energy Commission and its permitted successors and assigns. Without the written consent of the Energy Commission, this Promissory Note is not assignable or transferable by the Borrower either in whole or in part. The Energy Commission may assign its rights under this Promissory Note for security purposes, and in such event the assignee of this Promissory Note, including the bond trustee of any bonds which may be secured by repayments of this Promissory Note, shall be entitled to enforce the provisions hereof and shall be a third party beneficiary of this Promissory Note.

14. This Promissory Note shall be construed and enforced in accordance with the laws of the State of California.

Insert Recipient Name _____
BORROWER

_____
PRINTED NAME OF AUTHORIZED REPRESENTATIVE

_____
AUTHORIZED SIGNATURE

_____
TITLE

_____
DATE

EXHIBIT B

ATTACHMENT 1

ESTIMATED AMORTIZATION SCHEDULE

EXHIBIT C

CONTACTS

Energy Commission Project Manager: (Name) California Energy Commission 1516 Ninth Street, MS - 23 Sacramento, CA 95814 Phone: (916) Fax: (916) e-mail:	**Borrower Project Manager:** (Name) (Contractor Name) Address Phone: Fax: e-mail:
Energy Commission Loan Officer: Gordon Kashiwagi California Energy Commission 1516 Ninth Street, MS - 18 Sacramento, CA 95814 Phone: (916) 654-5131 Fax: (916) 654-4423 e-mail: Gordon.Kashiwagi@energy.ca.gov	**Borrower Administrator:** (Name) (Contractor Name) Address Phone: Fax: e-mail:
Energy Commission Accounting Officer: Molly Zhong California Energy Commission 1516 Ninth Street, MS - 2 Sacramento, CA 95814 Phone: (916) 653-8555 Fax: (916) 653-1435 e-mail: Molly.Zhong@energy.ca.gov	**Borrower Accounting Officer:** (Name) (Contractor Name) Address Phone: Fax: e-mail:
Energy Commission Legal Notice: Rachel Grant Kiley Grants and Loans Manager 1516 9th Street, MS-18 Sacramento, CA 95814-5512 Phone: (916) 654-4379 Fax: (916) 654-4076 e-mail: Rachel.Grant-Kiley@energy.ca.gov	

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE AN ENERGY SERVICES CONTRACT WITH SYSERCO ENERGY SOLUTIONS FOR THE FOR ENERGY EFFICIENCY IMPROVEMENTS TO CITY-OWNED STREETLIGHTS PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 4217.10 ET SEQ. AND AUTHORIZING AN AMENDMENT TO BIENNIAL BUDGET

WHEREAS, it is the policy of the State of California and the intent of the State Legislature to promote all feasible means of energy conservation and all feasible uses of alternative energy supply sources; and

WHEREAS, California Government Code Section 4217.10 *et seq*. authorizes a public agency to utilize any procurement process to contract for energy services if its governing body determines, at a regularly scheduled public hearing, public notice of which is given at least two weeks in advance, that the contract is in the best interests of the agency and that anticipated cost to the agency for the energy services project will be less than the anticipated marginal cost to the agency of electrical energy that would have been consumed by the agency in the absence of the energy services contract; and

WHEREAS, the City of Newark desires to reduce energy consumption on City-owned streetlights; and

WHEREAS, in June 2022, staff issued a Request for Qualifications (RFQ) for an energy services contractor; and

WHEREAS, as a result of the RFQ, the City received seven proposals; and

WHEREAS, based on staff's evaluation Syserco Energy Solutions was determined to be the most qualified firm for the project; and

WHEREAS, Syserco Energy Solutions has conducted a detailed streetlight audit and energy analysis; and

WHEREAS, based on the streetlight audit and energy analysis SES developed an energy services proposal for an amount not-to-exceed $1,598,265 to upgrade the City's existing high-pressure sodium (HPS) streetlights to light emitting diode (LED) technology; and

WHEREAS, the first year annual utility savings are estimated to be $218,757 and based on a 4% estimated annual utility cost increase, the 15-year net savings for these upgrades is projected to be $4,551,722; and

WHEREAS, staff recommends amending the 2022-2024 Biennial Budget and Capital Improvement Plan to appropriate $1,598,265 to Project 1354, which will later be reimbursed upon receipt of the loan disbursement; and

WHEREAS, the debt payments for the loan will be paid from the general fund using the energy cost savings realized from Project 1354; and

WHEREAS, the City conducted a noticed public hearing on April 13, 2023 pursuant to California Government Code Section 4217.12 to consider entering into an energy service contract with Syserco Energy Solutions with public notice of this hearing being provided at least two weeks prior to the date of the hearing;

WHEREAS, the proposed agreement is exempt from the California Environmental Quality Act (CEQA), pursuant to 15301 of the CEQA Guidelines, because the project consists of upgrades to existing lights. .

NOW THEREFORE, BE IT RESOLVED that the City Council hereby finds, pursuant to California Government Code Section 4217.12, that the terms of the contract with Syserco Energy Solutions are in the best interests of the City and that anticipated cost of the conservation services provided by the alternative energy equipment will be less than the anticipated marginal cost of energy that would have been consumed in the absence of the project.

BE IT FURTHER RESOLVED that the City Council herby authorizes the City Manager to execute the Energy Services Contract with Syserco Energy Solutions in an amount not-to-exceed $1,598,265 in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby authorizes an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan by appropriating $1,598,265 as follows:

FROM:

Description	Account	Amount
CIP Fund Balance	610.3000	$1,598,265

TO:

Description	Account	Amount
CIP Project 001354 – LED Streetlight Upgrade	610.90.094.6221.CIP001354	$1,598,265

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO APPLY FOR AN ENERGY EFFICIENCY LOAN FROM THE CALIFORNIA ENERGY COMMISSION TO IMPLEMENT ENERGY EFFICIENCY MEASURES; AND SHOULD THE LOAN BE APPROVED EXECUTE ANY RELATED LOAN DOCUMENTS

WHEREAS, The California Energy Commission provides loans to schools, hospitals, local governments, special districts, and public care institutions to finance energy efficiency improvements.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark herby authorizes the City Manager to apply for energy efficiency loan from the California Energy Commission to implement energy efficiency measures.

BE IT FURTHER RESOLVED that in compliance with the California Environmental Quality Act (CEQA), the City Council finds that the activity funded by the loan is exempt under 15301 because the project consists of upgrades to existing lights.

BE IT FURTHER RESOLVED that if recommended for funding by the California Energy Commission, the City Council authorizes the City of Newark to accept a loan up to $1,598,265.

BE IT FURTHER RESOLVED that the amount of the loan will be paid in full, plus interest, under the terms and conditions of the Loan Agreement, Promissory Note and Tax Certificate of the California Energy Commission.

BE IT FURTHER RESOLVED that the City Manager or his designee is hereby authorized and empowered to execute in the name of the City of Newark all necessary documents to implement and carry out the purpose of this resolution, and to undertake all actions necessary to undertake and complete the energy efficiency projects.

ENERGY SERVICES CONTRACT

This Energy Services Contract ("**Contract**" or "**Agreement**") is made and entered into as of DATE ("**Effective Date**"), between Syserco Energy Solutions, Inc., a California company ("**Energy Services Contractor**" or "**Consultant**"), having its principal offices at 215 Fourier Ave, Fremont, CA 94539, and CUSTOMER, having its principal office at ADDRESS ("**Customer**"), who are collectively referred to as the "**Parties**", or individually as a "**Party**".

WHEREAS, Energy Services Contractor is a company with experience and technical and management capabilities to provide for the discovery, engineering, procurement, installation, financing, maintenance and monitoring of energy saving measures, solar power generation measures, and/or operations and maintenance cost reductions at facilities similar to Customer's facilities; and

WHEREAS, Energy Services Contractor has prepared a project proposal in the form of an Energy Services Contract, ("**Proposal**") for Customer; and

WHEREAS, Customer desires for Energy Services Contractor to perform certain work as identified in this Contract, and Energy Services Contractor desires to perform such work; and

WHEREAS, this Contract is procured pursuant to the following procurement statute or other authority: Government Code Section 4217.10 et seq.

NOW THEREFORE, the parties agree as follows:

1. Contacts. As of the Effective Date, and subject to change from time to time, the following persons are the primary representatives of each party as related to execution of this project:

For Energy Services Contractor:

Name:	Scott Meinzen
Title:	General Manager
Address:	215 Fourier Ave., Suite 140, Fremont, CA 94539
Telephone:	510-737-1583
Email:	s.meinzen@syserco-es.com

For Customer:

Name:	_____
Title:	_____
Address:	_____
Telephone:	_____
Email:	_____

2. Scope of Work. Energy Services Contractor agrees to perform the work set forth in the proposal described as Energy Services Proposal ("**Work**") and attached hereto as Exhibit A. Customer agrees to take all actions identified in this Contract that are necessary to achieve the project benefits identified. Energy Services Contractor will provide all labor, materials, equipment, and supervision, including subcontractors, necessary to perform the Work. If included in the Proposal or other exhibit to this Contract, Energy Services Contractor also agrees to perform post-construction services, which may include monitoring, measurement and verification services, following Substantial Completion of the Work ("**Services**").

3. Compensation. Customer shall pay Energy Services Contractor SELL PRICE IN WORDS **($ENTER) ("Price")** as compensation for Energy Services Contractor's performance of the Work and Services as provided herein. Customer shall pay Energy Services Contractor in accordance with the Schedule

of Values that shall be reviewed and approved by Customer prior to beginning the Work. Customer shall pay Energy Services Contractor within thirty (30) days of receiving an invoice. Pursuant to Public Contract Code section 20104.50, Customer shall review each invoice as soon as practicable and return any invoice determined not proper for payment. Energy Services Contract will be entitled to interest pursuant to Public Contract Code section 20104.50 for failure to pay any invoices that are undisputed and overdue. Additional project financial information including total compensation and payment terms is as set forth in the Proposal, or other attached exhibits, as applicable.

4. **Time**. The Work to be performed under this Contract shall begin within 30 days of the date of an Executed Contract or Letter of Award ("**Commencement Date**") and is anticipated to end by the earlier of the dates set forth in Section 4.a. or 4.b., below ("**Time**"). If the Work is divided into phases or individual projects, each phase or project will start in accordance with the timeline included as part of this Contract. The Work, but not the Services, shall be completed by the date that is the earlier of:

a. The date on which Energy Services Contractor is substantially complete with the Work. Substantial completion means that Energy Services Contractor has performed enough of the Work so that Customer may use the Work for its intended purpose or realize an intended benefit from the Work. If the Work is divided into phases or individual projects for which individual prices have been negotiated **("Phase")**, then substantial completion dates shall apply to each phase or individual project as indicated in this Contract. Substantial completion should be demonstrated via execution by Customer of a certificate of substantial completion.

b. (____) days after the Commencement Date, subject to equitable extensions of Time, or pursuant to this Contract.

Any Services shall commence on the substantial completion date, unless a different date is specified herein, and shall continue for a 1-year period unless a different period is specified herein. The conditions of all utility cost savings as set forth in the Energy Services Proposal shall coincide with the term of the Services. If for any reason Customer terminates or breaches this Contract including but not limited to its obligations pursuant to the Services portion of the Contract or other separate agreement, the utility cost conditions of this agreement shall automatically terminate.

5. **Permits, Approvals, Taxes.** Unless obtained by Customer or otherwise specified in this Contract, Energy Services Contractor shall obtain all permits, licenses, and inspections that are required for the Work. Customer shall be responsible for securing all other necessary approvals, easements, zoning changes, or similar entitlements. An equitable adjustment in the Time and Price of the Contract shall be made to account for any time Customer spends securing any of these items after the Commencement Date, and reasonable costs incurred by Energy Services Contractor as a result. Customer shall pay all taxes associated with the Work including, sales, use, real estate, and personal property taxes.

6. **Safety.** Energy Services Contractor shall be responsible for initiating, maintaining, and supervising safe performance of the Work. Energy Services Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities related to safety of persons or property.

7. **Cleanup.** Energy Services Contractor shall keep the premises and the surrounding area free from accumulation of waste materials or rubbish caused by the Work. Upon completion of the Work, Energy Services Contractor shall remove all waste materials, rubbish, tools, construction equipment, machinery, and surplus materials.

8. **Subcontractors**. Energy Services Contractor may hire subcontractors to perform any portion of the Work or Services under this Contract. Energy Services Contractor is entirely and ultimately responsible for compliance with the provisions of this Contract and for any part of work that is performed by a subcontractor.

9. **Borrowed Equipment**. If requested by Energy Services Contractor and if permitted by Customer's

representative, Energy Services Contractor may use Customer's equipment in performing the Work or Services. Energy Services Contractor assumes full and complete responsibility for the use of the equipment, will ensure that only a competent operator will be permitted to use the equipment and only after fully inspecting the equipment, shall not modify the equipment, shall be solely responsible for all claims, demands, lawsuits, losses, expenses and/or liabilities that arise from its use of the equipment to the extent of Energy Services Contractor's negligence, and agrees that Customer makes no representation or warranty regarding the condition or suitability of equipment for any intended use.

10. Insurance. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, subconsultants, or employees.

a. Verification of Coverage.

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

CITY OF NEWARK
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

b. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury; and

2. Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

4. Errors and Omissions Liability insurance appropriate to the Consultant's profession.

Architects' and Engineers' coverage is to be endorsed to include contractual liability.

c. Minimum Limits of Insurance.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: (including products and completed operations, property damage, bodily injury, and personal and advertising injury)	**$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, 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.
4. Errors and Omissions Liability:	**$1,000,000** per occurrence or claim; $2,000,000 aggregate.

d. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers, or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

e. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant changes insurance carriers Consultant shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this

Agreement and not less than five (5) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

f. Wasting Policies.

No policy required by this paragraph 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

g. Remedies.

In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;

Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

Terminate this Agreement.

h. 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 Risk Manager. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

i. Other Insurance Provisions.

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

1. Additional Insureds. City, its officers, officials, directors, employees and volunteers ("Additional Insureds") are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant; including materials, parts or equipment furnished in connection with such work or operations.

2. Primary Coverage. For any claims related to Services, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant's insurance and shall not be contribute with it. Consultant's policy will not

seek contribution from the City's insurance or self-insurance.

3. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled during the term of this Agreement without notice to City.

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

5. Deductibles and Self-Insured Retentions (SIR). All deductibles and self-insured retentions must be disclosed to the City Risk Manager for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

6. Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

11. 9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

12. **Bonds**. Energy Services Contractor shall furnish, at the time of the execution of a contract for the work, and at his/her own expense, separate Performance and Payment Bonds in the following amounts and in a form approved by the City.

- A Performance Bond in the amount of one hundred percent (100%) of the contract price
- A Payment Bond in the amount of fifty percent (50%) of the contract price.

The performance bond shall cover completion of the physical work per the approved design. The bonds shall not guarantee or warranty the efficiency or performance of any aspect of the Work or Services, and shall not cover any obligation of Energy Services Contractor to ensure that the Work as constructed, or Services, will result in any particular level of energy savings. Any suit on the Bonds must be brought within the period of one (1) year after substantial completion; provided, however, that if this suit limitation is void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. **Prevailing Wage Requirements and Public Works Contractor Registration.** Because the Work and Services described in Exhibit A include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the Work and Services constitute

a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, Consultant is required to comply with the provisions of the California Labor Code applicable to public works, to the extent set forth in Exhibit "B". Consultant agrees, in accordance with Section 1771.1 of the California Labor Code, that Consultant or any subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in Chapter 1 of Part 7 of Division 2 of the California Labor Code, unless currently registered and qualified to perform public work pursuant to California Labor Code section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the Consultant is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Consultant agrees, in accordance with Section 1771.4 of the California Labor Code, that if the work under this Agreement qualifies as public work, it is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

14. Delays. If Energy Services Contractor is delayed in the commencement or completion of the Work or Services by causes beyond its control, including but not limited to fire, flood, theft, vandalism, labor disputes, abnormal adverse weather conditions, acts of God, acts of the public enemy, riot, war, unavailability of equipment or supplies, or supply chain delays caused by any of the foregoing, then Energy Services Contractor shall provide written notice to the Customer of the existence, extent of, and reason for such delays, and an equitable adjustment in the Time of the Contract shall be made as a result. If a delay is attributable to failure by Customer to perform its obligations under the Contract or failure to cooperate with Energy Services Contractor in the timely completion of the Work, an equitable adjustment to Time and Price shall be made as a result.

15. Certificate of Substantial Completion. Upon Substantial Completion of any Phase of the Work, Customer shall execute a certificate of substantial completion acknowledging:

- **a.** The portion of the Work substantially completed, and the date of substantial completion.
- **b.** Receipt of any manuals and training provided by Energy Services Contractor under this Contract.
- **c.** Any warranty start date and warranty period.
- **d.** A punchlist of items remaining to be completed by Energy Services Contractor.

Timing of Substantial Completion does not depend on Customer's timely executing a certificate of substantial completion, and failure by Customer to timely execute a certificate of substantial completion shall not operate to extend the date of Substantial Completion.

16. Customer Use. Upon substantial completion or start of beneficial use, whichever occurs first, Customer is responsible for use, operation, and maintenance of all aspects of the Work and Services. Energy Services Contractor shall not be responsible for improper use, operation, or maintenance of any aspect of the Work or Services by Customer or others at any time.

17. Warranty. Energy Services Contractor warrants that the Work will be of good quality and new; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to this Contract. Energy Services Contractor warrants that the Work shall be free from defects in material and workmanship arising from normal usage for a period of one (1) year from the date of substantial completion, or start of beneficial use by Customer, whichever is earlier. This warranty does not cover any improper use, operation, or maintenance of any aspect of the Work, or if the Work has been abused, altered, or repaired by the Customer or third parties without supervision by or prior written approval from Energy Services Contractor, or if serial numbers or warranty date decals have been removed or altered. Customer must report any warranty claims to Energy Services Contractor in writing, and such claims must be presented immediately upon having reason to know that a warranty issue exists. Failure by Customer to notify Energy Services Contractor of

the need for warranty service within ten days of discovery of a warranty claim will void this warranty. Additionally, Customer shall not hire or direct others to repair any warranty item without Energy Services Contractor's written consent. Customer's repair of any warranty item without the written consent of Energy Services Contractor shall void this warranty with respect to such item, and the cost of such repair shall not be reimbursable to Customer by Energy Services Contractor. Energy Services Contractor makes no warranty whatsoever regarding materials or products provided by third parties that are incorporated into the Work. THE WARRANTIES CONTAINED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATIN ANY WARRANTIES OF MERCHANTABILITY, HABITABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE.

18. Indemnity. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the active negligence or sole misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of Services or the termination of this contract. The provisions of this paragraph are not limited by and do not affect the provisions of this contract relating to insurance.

Consultant/Subconsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

19. Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR SIMILAR DAMAGES OR LOSSES, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR RELATING TO THIS CONTRACT, WHETHER BASED IN CONTRACT OR TORT OR ANY OTHER THEORY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. Force Majeure. Energy Services Contractor shall not be liable to Customer for damages, loss, injury, or delay caused by conditions that are beyond the reasonable control of Energy Services Contractor. Such conditions include, but are not limited to fire, flood, theft, vandalism, labor disputes, abnormal adverse weather conditions, acts of God, acts of the public enemy, riot, war, unavailability of equipment or supplies, or supply chain delays caused by any of the foregoing.

21. Fire Safety and Security Equipment. If this Contract covers fire safety or security equipment, Customer acknowledges that Energy Services Contractor is not an insurer regarding those services, and Energy Services Contractor shall not be responsible for any damage or loss that may result from fire safety or security equipment that fails to perform properly or fails to prevent a casualty loss.

22. Changes. The Work or Services may be changed pursuant to a written change order executed by an authorized Energy Services Contractor signer and Customer signer ("**Change Order**"). A Change Order is valid only to the extent that it changes the scope of Work or Services, Price, and/or Time. Any invalid portions of a Change Order shall be disregarded. The Parties contemplate that Change Orders may include scope changes such as installation of additional utility conservation measures, facility improvement measures, and operational efficiency improvements or the furnishing of additional services within the identified facilities, as well as other facilities owned or operated by Customer. Energy Services Contractor shall be entitled to a Change Order for additional or extra work or services provided by Energy Services Contractor to Customer at Customer's request, without regard to whether such request is verbal or in writing.

Conflicts of Interest Prohibited. Consultant (including its employees, agents, and subcontractors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with City (including this Agreement) involving Consultant's conflicting interest may be terminated by City.

23. Termination. This Contract may be terminated at any time as described below:

> **Termination for Cause.** If Energy Services Contractor materially fails to perform under this Contract, Customer may notify Energy Services Contractor in writing of Customer's intent to terminate this Contract along with a description of the alleged failure. If Energy Services Contractor does not in good faith take reasonable steps to correct such failure within fifteen (15) days after receipt of such notice, Customer may terminate this Contract, and Energy Services Contractor shall be entitled to receive payment for all amounts earned prior to termination. If it is

determined for any reason that termination was improper, the termination shall be treated as a termination for convenience.

b. **Termination for Convenience.** Customer may terminate this Contract in whole or in part for any reason by providing written notice of termination to Energy Services Contractor and specifying the date on when the termination becomes effective. Upon receipt of such notice, Energy Services Contractor shall incur no further obligations in connection with the terminated work and will stop work to the extent specified. Energy Services Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Energy Services Contractor shall settle liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work, and Customer shall pay Energy Services Contractor for such expensees, demobilization costs incured by Energy Services Contractor due to the termination, and overhead through the end of work performed due to termination of the Contract. Such amounts shall be paid by Customer to Energy Services Contractor within fifteen (15) days of Energy Services Contractor's delivery to Customer of a request for payment. In addition, Energy Services Contractor may terminate this Contract in whole or in part for any reason by providing written notice of termination to Customer and specifying when termination becomes effective. In such case, Energy Services Contractor shall refund to Customer all amounts prepaid by Customer and unearned by Energy Services Contractor as of the date of termination, and Customer shall have no payment obligation to Energy Services Contractor for unperformed Work.

Disputes. This Agreement requires the Parties to work together in good faith to achieve the intent of this Agreement. In the event that a dispute arises as to the proper interpretation of the respective obligations and responsibilities of the parties under this Agreement, or as to any other aspect of this Agreement, the Parties agree that they each will assign the appropriate individuals to meet and make good faith efforts in order to arrive at a resolution of the dispute. If after employing the informal resolution process above, the Parties are unable to resolve a dispute arising under this Agreement, any Party may request an independent mediator, agreeable to all Parties, to facilitate further negotiation with the costs shared equally between and among the Parties. However, nothing herein will prevent any Party from exercising any rights it may have to enforce the terms of this Agreement at law or in equity**.**

24. Nondiscrimination. Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, age, or any other basis, as defined in California Civil Code Section 51.

25. **Notices.** All notices to Energy Services Contractor shall be written, shall be sent via certified mail or a national courier service or personally delivered, shall consist of one original to Attn: General Counsel, Energy Services Contractor, 215 Fourier Ave, Ste.140, Fremont, CA 94539, and one original to the primary Energy Services Contractor contact for the Work, and shall be deemed delivered when received by the General Counsel.

26. **Reserved.**

27. **Choice of Law/Venue.** This Agreement shall be governed and construed under the laws of the State of California, notwithstanding any choice of law provision whether statutory, common law, or contractual. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent

jurisdiction in the County of Alameda.

28. Assignment. Neither Party may assign or transfer its rights and/or obligations under this Contract without the prior written consent of the other Party which shall not be unreasonably withheld, unless the assignment is to an affiliate of the Party.

29. No Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Contract shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver.

30. No Third Party Beneficiaries. There are no third party beneficiaries under this Contract or any portion thereof.

31. Severability, Survival. If any portion of this Contract shall be held invalid in whole or in part under any law, rule, regulation, or order, then such portion shall remain in effect only to the extent permitted, and the remaining portions of the Contract shall remain in full force and effect. Any invalid portions shall be substituted with an interpretation that most accurately reflects the Parties' intentions.

32. Tax Benefits. Unless otherwise specified in this Contract, Energy Services Contractor is solely entitled to claim tax benefits available under section 179D of the Internal Revenue Code (EPAct), or its successor.

33. Attorney's Fees. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

34. Amendment. This Contract may not be amended except pursuant to a written amendment signed by an authorized signer of each Party.

35. Headings. The headings of this Contract are for purposes of reference only and shall not limit or define the meaning of the provisions of this Contract.

36. Complete Agreement. This Contract, including the exhibits attached hereto, is a fully integrated agreement and contains the entire understanding between Energy Services Contractor and Customer with respect to the subject matter hereof. Any legal terms and conditions appearing in any attachment to this Contract shall be ignored to the extent they contradict or are inconsistent with the terms and conditions contained in the foregoing numbered paragraphs. All previous agreements between Energy Services Contractor and Customer as to the Work are superseded by this Contract.

37. Contract Documents. By this reference, the following exhibits are attached hereto and made a part of this Contract:

Exhibit A: Energy Services Proposal, dated (insert date)
Exhibit B: Provisions Required for Public Works Contracts

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the Effective Date.

ENERGY SERVICES CONTRACTOR	**CUSTOMER**
By:_____	By:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date Signed:_____	Date Signed:_____

EXHIBIT "B"

PROVISIONS REQUIRED FOR PUBLIC WORKS CONTRACTS

PURSUANT TO CALIFORNIA LABOR CODE SECTION 1720 ET SEQ.

HOURS OF WORK:

A. In accordance with California Labor Code Section 1810, 8 hours of labor in performance of the services described in Exhibit A shall constitute a legal day's work under this contract.

B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the services described in Exhibit A is limited to 8 hours during any one calendar day, and 40 hours during any one calendar week, except in accordance with California Labor Code Section 1815, which provides that work in excess of 8 hours during any one calendar day and 40 hours during any one calendar week is permitted upon compensation for all hours worked in excess of 8 hours during any one calendar day and 40 hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.

C. The Consultant and its subcontractors shall forfeit as a penalty to the City $25 for each worker employed in the performance of the services described in Exhibit A for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day, or more than 40 hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the services described in Exhibit A are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file in the City Public Works Office and shall be made available on request. The Consultant and subcontractors engaged in the performance of the services described in Exhibit A shall pay no less than these rates to all persons engaged in performance of the services described in Exhibit A.

B. In accordance with California Labor Code Section 1775, the Consultant and any subcontractors engaged in performance of the services described in Exhibit A shall comply with California Labor Code Section 1775, which establishes a penalty for each worker engaged in the performance of the services described in Exhibit A that the Consultant or any subcontractor pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subcontractor in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subcontractor

had knowledge of their obligations under the California Labor Code. The Consultant or subcontractor shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subcontractor worker engaged in performance of the services described in Exhibit A is not paid the general prevailing per diem wages by the subcontractor, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The contract executed between the Consultant and the subcontractor for the performance of part of the services described in Exhibit A shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subcontractor by periodic review of the subcontractor's certified payroll records.

3. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for performance of the services described in Exhibit A.

4. Prior to making final payment to the subcontractor, the Consultant shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages for employees engaged in the performance of the services described in Exhibit A and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subcontractor engaged in performance of the services described in Exhibit A shall keep accurate payroll records showing the name, address, social security number, work, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the services described in Exhibit A. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.

2. The employer has complied with the requirements of California Labor Code Sections 1771, 1811, and 1815 for any work performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be submitted directly to the Labor Commission, and available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subcontractors engaged in performance of the services described in Exhibit A, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

E. In case it becomes necessary for the Consultant or any subcontractor engaged in performance of the services described in Exhibit A to employ for the services described in Exhibit A any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non-manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant or subcontractor shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to services described in Exhibit A to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

LED Streetlight Upgrade

City Council: April 13, 2023

Background – Existing Infrastructure

- City owns and maintains approximately 2800 streetlights
- Majority are high-pressure sodium (HPS)
- HPS are characterized as one of the poorest light quality lamp technologies still being used
- All new developments are required to install LED streetlights

LED Technology Benefits

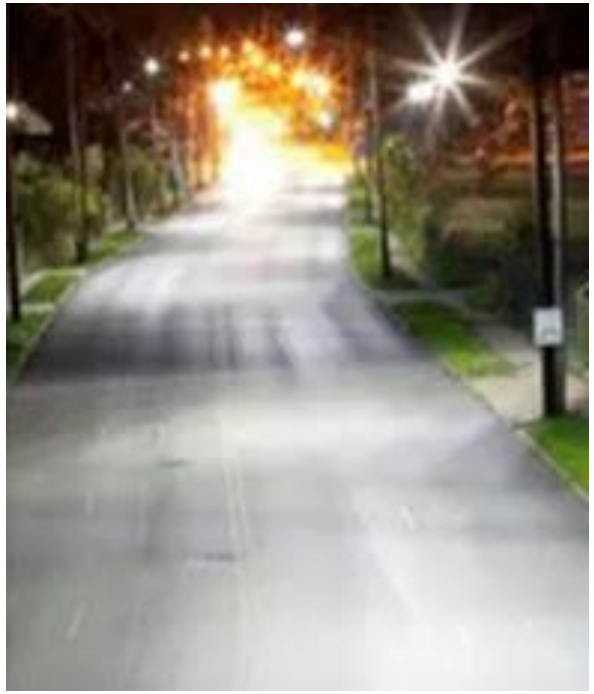
- Upgrading to LED is anticipated to reduce power by 67%
- Significant energy and maintenance cost savings
- Improved volume of color
- Uniform light distribution
- Longer useful life

LED Streetlight Upgrade

City Council: April 13, 2023

LED Technology

HPS



LED

LED Streetlight Upgrade

City Council: April 13, 2023

LED Technology

HPS

LED

LED Streetlight Upgrade

City Council: April 13, 2023

Cost Savings

PROJECT COST SUMMARY	
Total Project Cost	$1,598,265
Estimated First Year Annual Savings	$218,757
Project Payback	7.3 yrs
Projected 15-year Net Cumulative Savings	$4,551,722*

*Based on 4% estimated PG&E annual utility cost escalation

Procurement Method

- California Government Code 4217
  - Enacted because of energy crisis
  - Allows alternatives to typical competitive bidding requirements
    - Energy project is less than energy costs in absence of the project
    - Public hearing with two weeks notice
    - Best interest of the City

Funding Recommendation

- Energy Conservation Assistance Act (ECAA) by the California Energy Commission
  - Designed to encourage energy efficient projects
  - 1% interest for the term of the loan
  - Loan payments will be made from energy savings

LED Streetlight Upgrade

City Council: April 13, 2023

SCHEDULE

April 2023

- Council Action
- ECAA Application

May/June 2023

- Loan approval
- Contract Execution

Fall 2023

- Installation begins

(pending material lead time)

EOY 2023

Project Completion

LED Streetlight Upgrade

City Council: April 13, 2023

Thank you!

Questions?

STAFF REPORT

Item F. 1.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Brett Oeverndiek, Administrative Analyst
SUBJECT	Adopt a Resolution amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023 for Capital Improvement Plan budget rollovers

SUMMARY AND RECOMMENDATION

Staff annually reviews the previously approved Capital Improvement Plan projects' budgets and expenses to identify projects that remain in progress at the fiscal year-end and must have unspent funds rolled over to the following fiscal year. Staff recommends that the City Council, by Resolution, amend the 2022-2024 Biennial Budget and Capital Improvement Plan for the Fiscal Year 2023 Capital Improvement Plan Rollover.

BACKGROUND

As part of the previous fiscal year-end process, staff reviews the City's unspent appropriations, along with the City's upcoming spending plans. With each new budget year, it is necessary to bring forward the unspent appropriations in the approved Capital Improvement Plan once all prior fiscal year transactions have been finalized. It is then necessary to formally amend the 2022-2024 Biennial Budget and Capital Improvement Plan to re-appropriate the FY 2022 unspent appropriations to FY 2023.

DISCUSSION/ANALYSIS

The capital budget amendments include rollovers totaling $21,196,876 of previously approved capital project appropriations, including streets and roadway projects, street trees and landscape maintenance projects, building maintenance projects, final costs on the New Civic Center project and other projects. The amount is projected based on the estimated costs to complete the approved capital projects being carried over from the previous year. It is now necessary to amend the 2022-2024 Biennial Budget and Capital Improvement Plan to re-appropriate the FY 2022 unspent appropriations to FY 2023.

The attached Exhibit A outlines all capital projects that require rollover of appropriations from FY 2022 and re-appropriated to FY 2023.

FISCAL IMPACT

The capital budget amendments include rollovers totaling $21,196,876 of previously approved capital project appropriations,

REVIEW AND APPROVAL

Prepared by – Brett Oeverndiek, Administrative Analyst
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Resolution

Exhibit A

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMRPOVEMENT PLAN FOR FISCAL YEAR 2022-2023 CAPITAL IMPROVEMENT PLAN ROLLOVERS

WHEREAS, during the annual review of capital projects for the Fiscal Year 2022-2023, a need has been identified to amend the 2022-2024 Biennial Budget and Capital Improvement Plan; and

WHEREAS, the Fiscal Year 2021-2022 appropriations have lapsed at year-end and projects that are ongoing or works in progress need to be re-appropriated for the Fiscal Year 2022-2023; and

WHEREAS, the capital budget amendments include rollovers totaling $21,196,836 of previously approved capital project appropriations, including streets and roadway projects, street trees and landscape maintenance projects, building maintenance projects, final costs associated with the New Civic Center project and other projects; and

WHEREAS, the rollover amount is projected based on estimated costs to complete the approved capital projects.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby amend that certain document entitled "2022-2024 Biennial Budget and Capital Improvement Plan of the City of Newark," adopted by Resolution No. 11,379 on June 23, 2022, for Fiscal Year 2022-2023 for Capital Improvement Plan rollovers as set forth in Exhibit A attached.

(062217 jir1)

City of Newark
Capital Projects Budget Rollover
Fiscal Year 2022-2023

Exhibit A

Fund	Fund/Project Description	Project	Capital Rollovers	Transfer From	Transfer Amount	Total by Fund
	Park Construction (624.90.093.930.6221)					
624	City Wide Parks Signage	1272	80,000			
	Sportsfield Outfield Net Replacement	1273	30,000			110,000
	Street Construction (XXX-90.091.910.6221)					
201	Citywide Traffic Signal Street Name Signs	1201	63,441			
	Lindsay Tract Street and Storm Drain Improvements	1238	1,305,612			
	Mowry Avenue Median Landscaping	1239	260,000			
	2021 Asphalt Concrete Overlay	1250	215,050			
	Arterial Bike Lanes	1254	91,475			
	Citywide Crosswalk Evaluation	1256	150,000			
	Old Town PDA Streetscape Design	1258	490,371			
	Citywide Accessible Pedestrian Ramps	1277	189,560			
	Notes: Reapproriating CIP Prj. # 1167 ($59,950) 1200 ($20,000) 1255 ($50,000)					
	Citywide Crosswalk Evaluation and Modifications	1278	91,946			
	Curb, Gutter and Sidewalk Replacement	1279	350,000			
	Safe Route to Schools Improvements - Various Locations	1280	249,950			
	2022 Asphalt Concrete Overlay	1281	945,750			
	Street Tree Maintenance	1282	28,037			
	Thermoplastic Street Striping	1283	23,960			
	Notes: Reapproriating CIP Prj. # 1261 ($15,000)					
	Thornton Avenue Complete Streets - Design	1284	676,000			
	Traffic Calming Measure	1285	272,984			
	Notes: Reapproriating CIP Prj. # 1160 ($17,984) 1182 ($28,500) 1224 ($23,000) 1243 ($43,500) 1262 ($80,000)					
	Traffic Signals - LED Lamp/Accessory Replacement	1286	57,639			
	Notes: Reapproriating CIP Prj. # 1225 ($7,639) 1263 ($25,000)					
				202	2,600,000	
				281	495,312	
				284	1,700,000	5,461,775
202	Lindsay Tract Street and Storm Drain Improvements	1238	658,000			658,000
211	Citywide Accessible Pedestrian Ramps (Ongoing)	1234	40,000			40,000
214	Park Pathways Resurfacing for ADA Access	1232	77,386			
	Park Pathways Resurfacing for ADA Access	1297	203,500			280,886
280	Central Ave Overpass Project Development - Phase I	1014	474,874			474,874
281	2021 Asphalt Concrete Overlay	1250	290,815			290,815
282	Lindsay Tract Street and Storm Drain Improvements	1238	188,132			
	2021 Curb, Gutter & Sidewalk	1257	23,768			211,900
284	Citywide Accessible Pedestrian Ramps (Ongoing)	1234	20,000			
	Lindsay Tract Street and Storm Drain Improvements	1238	90,000			
	2020 Curb, Gutter & Sidewalk	1247	199,950			
	2021 Asphalt Concrete Overlay	1250	129,015			438,965
285	2020 Curb, Gutter & Sidewalk	1247	182,176			
	2021 Curb, Gutter & Sidewalk	1257	91,003			
				282	230,000	
				284	15,044	273,179
287	2021 Asphalt Concrete Overlay	1285	80,000			80,000
288	Arterial Bike Lanes	1254	323,000			323,000
	Arterial Bike Lanes (TFCA)	1254	130,000			130,000
	Capital Improvements (XXX.90.094.940.6221)					
625	Citywide Building Needs Assessment	1274	100,000			
	Citywide Rail Station Alternatives Study	1275	80,000			
	Railroad Quiet Zone Study	1276	39,613			219,613
610	Disaster Recovery Infrastructure	747	100,000			
	Surplus Property Disposal - Old FS No. 1	845	16,800			
	Document Retention	884	71,129			
	Crystal Springs Storm Drain Pump Repairs	933	25,000			
	Lakeshore Park Lake Dredging Needs Scoping Analysis	935	25,000			
	Service Center Clean Water Requirements	1058	95,000			
	Finance System Replacement (Part 2)	1086	685,305			
	Irrigation Main Line Partial Replacement at Community Park	1088	198,053			
	Transition to Paperless Documents	1090	8,122			
	Silliman Activity Center Improvements	1114	254,593			

City of Newark
Capital Projects Budget Rollover
Fiscal Year 2022-2023

Exhibit A

Fund	Fund/Project Description	Project	Capital Rollovers	Transfer From	Transfer Amount	Total by Fund
	Trash Capture Devices	1122	67,608			
	Web Site Upgrade	1185	77,660			
	Citywide HVAC Replacements	1144	26,824			
	Lakeshore Park Landscape Restoration	1146	300,564			
	Silliman Activity Center - Light Control Board	1153	50,000			
	Silliman Aquatic Center - Variable Frequency Drive Unit	1157	45,000			
	Citywide Building Painting	1164	77,631			
	Citywide Building Roof Repairs	1165	121,055			
	Citywide Building Upgrades	1166	11,091			
	Citywide Parking Lot Repair and Resealing	1168	37,213			
	Citywide Parks/City Facilities Fence Repairs	1169	9,069			
	Citywide Parks Furniture Installation/Replacement	1170	10,000			
	Citywide Parks Irrigation Systems Upgrade/Modification	1171	170,000			
	Park Pathways Repair and Resealing	1175	77,120			
	Park Renovation	1176	3,950			
	New Civic Center	1188	6,320,516			
	Silliman Aquatic Center Activity Pool Play Structure Replacement	1190	27,535			
	Silliman Aquatic Center Pool Slide Replacement	1191	7,599			
	2018 Park Tree Grid Pruning	1195	6,495			
	Birch Grove Park Tree Maintenance	1196	7,526			
	Bayside TOD Transit Station and Overcrossing (Design)	1197	700,000			
	Birch Grove Park Tennis Court Resurfacing	1198	38,413			
	Citywide Trash Capture Devices (Phase 3)	1202	229,705			
	Citywide Work Station Replacement	1203	35,341			
	Jerry Raber Ash Street Park Basketball Court Resurfacing	1209	40,000			
	Lakeshore Park Well Rehabilitation and Pump Replacement	1211	75,000			
	Newark Community Park Restroom Restoration	1215	60,000			
	Silliman Activity Center - Carpet Replacement	1219	15,842			
	Virtual History Museum	1226	60,000			
	Fire Station No. 27 Painting	1235	32,000			
	Fire Station No. 27 Roofing	1236	55,000			
	Fire Station No. 29 Painting	1237	23,000			
	Service Center Rear Garage Repairs	1240	75,000			
	Service Center Buildings, Painting	1241	80,000			
	Fire Station No. 27 - Fencing	1264	8,000			
	Fire Station No. 29 - Fencing	1265	20,000			
	PD Department Bar Car Patrol Vehicle	1266	84,000			
	PD Patrol Vehicle	1267	84,000			
	PD Replacement Scheduling and Workforce Management Software	1268	78,867			
	PW Maintenance Vehicle	1269	60,000			
	Silliman Center Water Heater Replacement	1271	100,000			
	Newark Civic Center Technology	1292	37,355			
	PD vehicles - Sergeant & Vehicle Abatement	1223	16,126			
	Permit Tracking System Software Upgrades	1296	147,763			
	Public Works Maintenance Spray Truck	1287	80,000			
	Public Works Maintenance Vehicle	1288	60,000			
	Silliman Center - Air Handler #2 Replacement	1289	350,000			
	Silliman Aquatic Center - Hot Tub Replacement	1290	300,000			
	Silliman Aquatic Center - Partial Roof Replacement	1291	325,000			12,203,869
			21,196,876			

STAFF REPORT

Item F. 2.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	James Scanlin, Environmental Services Manager
SUBJECT	Adopt a resolution approving a ten-year extension to the Franchise Agreement with Allied Waste Services of North America LLC (Republic Services) for collection of solid waste and collection and processing of source separated recyclable material, organic materials, and construction and demolition debris and revising the maximum limit for rates for solid waste collection, recycling, organics, and construction and demolition debris services starting on June 1, 2023

SUMMARY AND RECOMMENDATION

After an extensive RFP process in 2012, the City selected Allied Waste Services of North America LLC (Republic Services) and entered into a ten-year exclusive franchise agreement for collection of solid waste and collection and processing of source separated recyclable materials, organic materials, and construction and demolition debris. The agreement expires on May 31, 2023 and allows for an extension with the mutual consent of both parties. The proposed amended and restated agreement is for a ten-year extension with a 7.36% rate increase. The proposed rate increase is primarily related to the additional cost of implementing SB 1383 requirements and other program enhancements. Even with the proposed increase, the rates in Newark are generally more favorable than other neighboring jurisdictions.

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute the proposed amended and restated agreement with Republic Services and approve a revised rate schedule (Exhibit L).

BACKGROUND

On January 24, 2013, the City entered into an exclusive franchise agreement with Allied Waste Services of North America LLC (Republic Services) for collection of solid waste and collection and processing of source separated recyclable materials, organic materials, and construction and demolition debris (Agreement). The Agreement expires on May 31, 2023. The City has a separate agreement with BLT Enterprises of Fremont, LLC (BLT) for the transfer of solid waste to landfill. The BLT agreement has a 30-year term that expires on June 30, 2037.

In September 2016, Governor Brown signed Senate Bill 1383 (SB 1383) into law, which directs the Department of Resources Recycling & Recovery (CalRecycle) to adopt regulations and requirements to achieve statewide goals of reducing organic waste disposal by 75% and to recover at least 20% of surplus food currently being

disposed by 2025. CalRecycle has established numerous organic waste disposal program requirements impacting municipal jurisdictions, solid waste generators, processors, and organic waste haulers. While the City and Republic Services have made significant progress towards achieving SB 1383 goals and CalRecycle requirements, amendments to the Agreement are necessary for full compliance.

SB 1383 is California's most significant waste reduction mandate in the last 30 years. The City must expand commercial and residential organics waste collection programs, develop edible food recovery programs, and instill procurement mechanisms for SB 1383 qualifying recycled content products. The City will also be expected to enforce, track, and report on organic waste diversion goals.

In July 2022, the City hired R3 Consulting Group, Inc. (R3) to assist staff with developing a new franchise agreement. On November 10, 2022, staff made a presentation to Council and recommended pursuing an extension of the Agreement with Republic Services. Council authorized R3 to begin negotiations with Republic Services regarding an extension of the existing Agreement.

DISCUSSION/ANALYSIS

SB 1383 compliance

Methane is a potent greenhouse gas (GHG) that results from the anaerobic decomposition of organic material, and emissions from landfills are a significant source of methane to the atmosphere. Senate Bill 1383 (SB 1383) requires municipalities to reduce the volume of organic material being disposed of in landfills and thereby reduce GHG emissions. Significant changes to current waste management practices must be implemented to accomplish this.

Some residents and many businesses do not currently have separate bins for the collection of organic material (i.e., food scraps, food soiled paper, and yard waste). SB 1383 requires all residents and businesses to have bins for the separate collection and disposal of organic material unless they receive a waiver. Residents will receive this service at no additional cost. The additional cost for the collection and processing of organic material from residents will be borne by Republic Services.

In addition to providing for the separate collection and processing of organic material, Republic Services will be required to promote and enforce proper sorting of organic material. These efforts will include inspecting waste bins for contamination (e.g., trash in an organics container), notifying customers of contamination issues, and promoting proper sorting to Newark residents and businesses through public outreach and technical assistance. The proposed agreement requires Republic Services to inspect at least 15% of accounts annually. Republic Services will also be required to provide detailed tracking and reporting on these activities. To accomplish this, Republic Services will hire a full-time Recycling Coordinator/Route Auditor to work exclusively on SB 1383 implementation in Newark. Republic Services will also pay Newark $75,000 towards the purchase of new material sorting labels for residential carts and will provide up to 400 tons of SB 1383 compliant compost to the City annually.

Additional Service Enhancements
In addition to the enhancements related to SB 1383 implementation, the proposed agreement includes the following:

- Bulky Item Pickup: In addition to retaining the free bulky pickup service at three times per year for each customer, the proposed agreement includes additional free roll-off bin service for multi-family properties.
- Construction and Demolition (C&D) Debris: To improve diversion rates for C&D debris, the proposed agreement includes requirements for additional assistance to C&D customers and third-party certification of the C&D debris recycling process at the Newby Island facility.

Analysis
In reviewing Republic's request for a 10-year extension, staff evaluated the following:

1. The City's level of satisfaction with Republic Service's current provision of services.
2. The current market environment for solid waste collection and hauling operations.
3. The current regulatory environment and upcoming regulations.
4. Customer rates including a comparison to other local cities.
5. Term of agreement.

1) Level of Satisfaction
Based upon a 2021 survey of residents, residents are generally satisfied with the service they are receiving: 77% of residents surveyed said they were "Satisfied" or "Very Satisfied" with their waste management services.

At the November 10, 2022 Council meeting, the following concerns were expressed:

- **Long Hold Times for Customer Service Calls:** Council expressed concerns regarding instances of exceedingly long hold times for customer service calls. This issue seems to have been resolved. Republic Services reported that the average hold time is now less than 90 seconds, and they will be implementing an option for call-backs if there is an extended hold time. Staff have called the customer service line several times and the calls were answered immediately, and excellent customer service was provided.
- **Charges for Services Not Rendered:** Council expressed concerns regarding instances of customers being charged for services not rendered. The proposed extension includes a requirement for Republic Services to reimburse customers if waste is not picked up within a day of the scheduled pickup or if bins at accounts with lock service are not replaced in the enclosure and locked. (The lock fee will be revised to be consistent with the City of Fremont's fee.)
- **Overflowing Bins/Graffiti:** Council expressed concerns regarding bins at some commercial properties that were overflowing or were covered with graffiti. Republic Services has been and will continue to address the graffiti issue through repainting or replacement of bins. Republic Services will provide photo documentation and charge a fee for carts or bins that are overfilled.
- **Senior/Low-Income Discounts:** Council expressed support for continued or enhanced senior and low-income discounts. Staff analyzed the City's current discount program and compared it to other jurisdictions within the county. Newark's current senior/low-income discount is above average for jurisdictions within the county as some other jurisdictions do not offer discounts. Newark's

franchise agreement provides for a 15% discount on monthly garbage rates for seniors and low income residents. This discount is similar to several other jurisdictions that offer similar discounts. The City of Fremont is an outlier, offering a 30% discount for low-income residents. There are currently 254 Newark households receiving the low-income discount and 1,171 receiving the senior discount. The proposed agreement maintains the current discounts.

City staff's experience with Republic Services has been positive. Republic Services staff have been very responsive when customer complaints have arisen, and Republic Services has been working closely and effectively with staff to meet SB 1383 requirements including increasing the level of organics service participation at commercial properties.

2) Market Analysis

Given the anticipated impact of SB 1383 requirements, uncertainty in recycling markets due to changes in international trade policy for recyclables (the China National Sword), and limited capacity for processing organic materials, the solid waste hauling market's appetite for competitive bidding on new contracts is low, and going out to competitive bid may result in high rate increases.

Republic Services currently collects garbage, recyclables, organics and construction and demolition debris in Newark, Fremont, and Union City. The Republic Services regional office is located in Fremont. The garbage for all three cities is transferred to BLT in Fremont. The organic materials, recyclables, and C&D debris from Newark and Union City are transferred to Newby Island Recycling (Newby) in Milpitas while all collected material in Fremont is sent to BLT. Newby is owned and operated by Republic Services. Due to the joint ownership of, and close proximity to the Newby facility, and the franchise agreements for collection services in Fremont and Union City, Republic Services has the benefit of economies of scale and can offer more competitive rates than other providers. Republic Services also has the advantage, as the incumbent hauler, of unique knowledge about the service needs and geography of the City. For these reasons, as well as the relatively low requested cost increase for SB 1383 compliance, staff believes it is in the City's best interests to exercise the 10-year extension of Republic's agreement, with the stated negotiated terms.

3) Regulatory Analysis

The State continues to set ambitious recycling goals via new legislation which primarily places responsibility for implementing new recycling programs on local jurisdictions. The significant State laws that apply to the City include:

- AB 939, which set a statewide diversion goal of 50% from 1990 levels by 2000.
- AB 341, which set a goal of 75% diversion statewide by the year 2020 and requires businesses that generate more than four cubic yards of commercial solid waste per week and multifamily residential dwellings of five units or more to arrange for recycling services, on and after July 1, 2012.
- AB 1826, which set a goal of reducing organic waste by 50% by 2020, and required local jurisdictions to arrange a commercial organics collection program that includes food scraps on and after July 1, 2016.
- SB 1383, which sets a statewide goal to reduce organic waste by 50% from the

2014 level by 2020 and 75% from the 2014 level by 2025 and introduces numerous other requirements, including residential food waste collection. SB 1383 also establishes a target of recovering 20% of currently disposed edible food for human consumption by 2025.

Republic Services has already demonstrated significant value to the City by assisting in AB 939 and AB 1826 compliance under the City's current contract. Under the terms of the new contract, Republic Services will assist the City in achieving compliance with State regulations under SB 1383, which requires significant changes to collection operations to facilitate universal participation in organics diversion from the landfill. The proposed Amended and Restated Agreement places most of the requirements for SB 1383 implementation on Republic Services.

4) Rate Analysis

R3 conducted a comparison analysis around Republic Services proposed rates, rate structure and solid waste services to those of neighboring or other similar jurisdictions in the Bay Area. A graph illustrating the rate comparison for the 32-gallon residential size is provided in Figure 1, below. The 32 gallon cart is by far the most popular size with approximately 70% of residents choosing that cart size. The comparison of rates for other residential cart sizes and for a 3 cubic yard commercial bin follow. Newark's commercial rates are generally lower than the average of the surveyed jurisdictions across all rate categories.

Figure 1: Residential Rate Comparison: 32-Gallon, Updated for June 2023

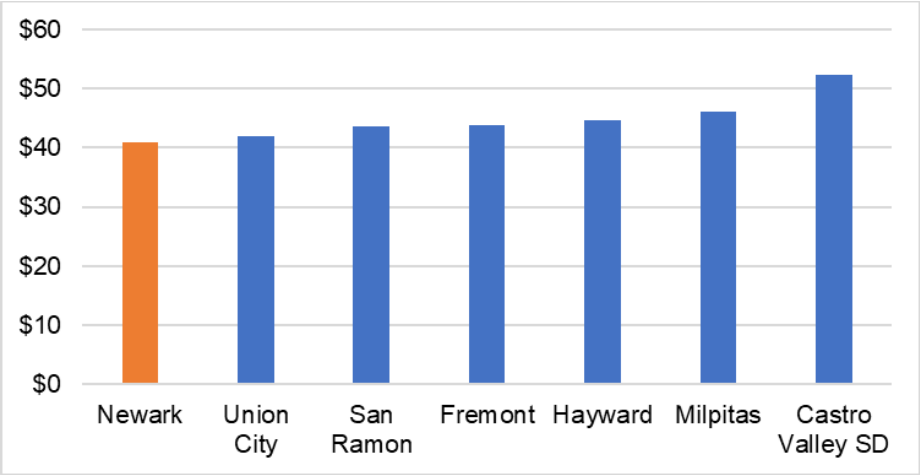


Figure 2: Residential Rate Comparison: 20-Gallon, Updated for June 2023

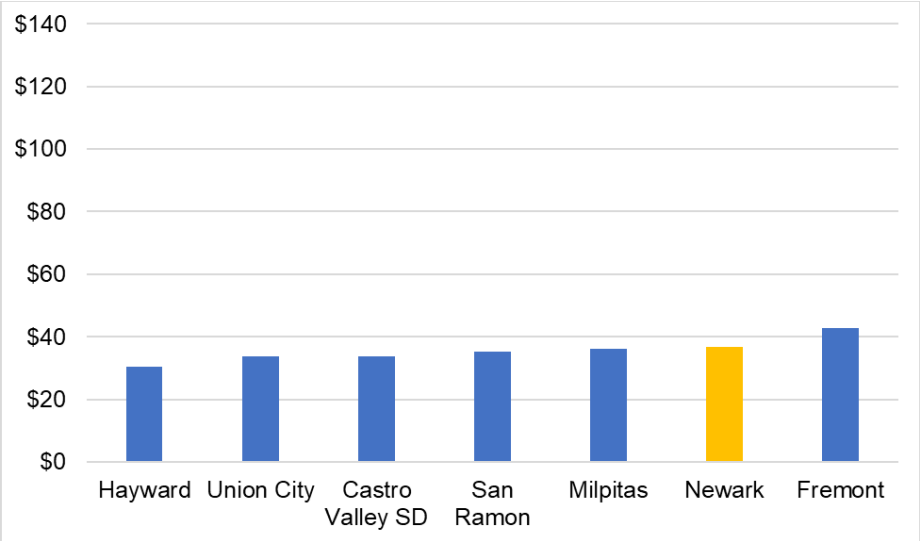


Figure 3: Residential Rate Comparison: 64-Gallon, Updated for June 2023

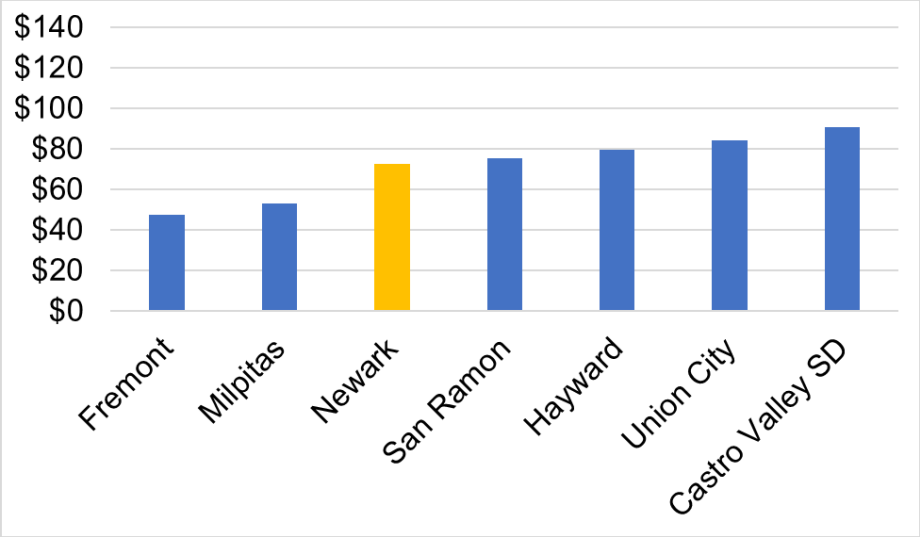


Figure 4: Residential Rate Comparison: 96-Gallon, Updated for June 2023

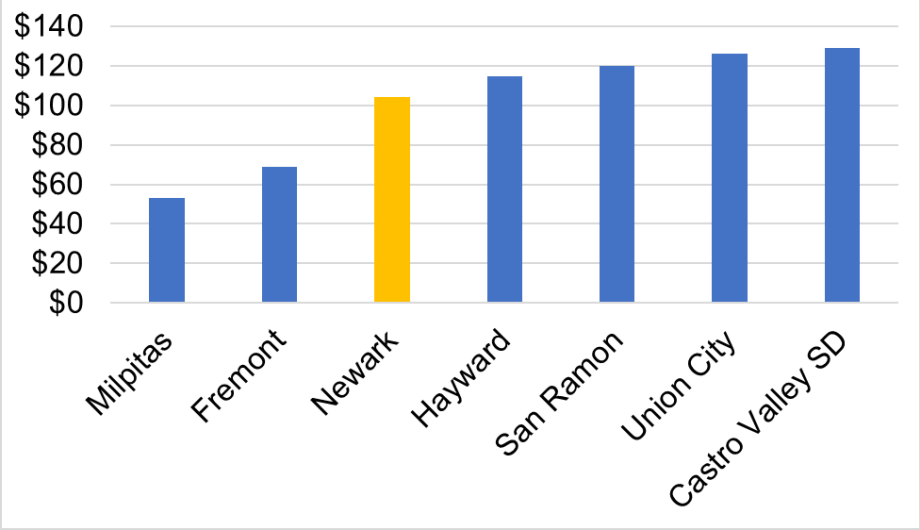
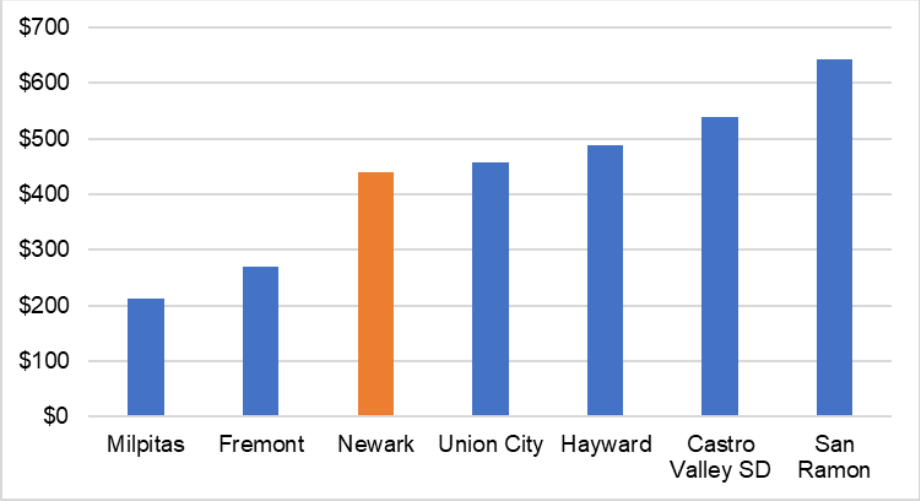


Figure 5: 3 Cubic Yard Commercial Rate Comparison, Updated for June 2023



* R3 increased all the surveyed rates of the other jurisdictions from 2022 by an assumed CPI increase. Tables above, are therefore projected rates and may not match actual current rates.

Table 1, below, shows the rate increase that would be effective June 1, 2023 for residential customers (increase in actual dollars).

Table 1: Dollar Amount of Monthly Rate Increase for Residential Customers

20 Gallon	$2.53
30-35 Gallon	$2.81
60-64 Gallon	$4.98
90-96 Gallon	$7.15

The proposed agreement changes the index for annual rate adjustments from the All Urban Consumer Index (CPI-U) to the Water, Sewer, Trash (WST) index. This index aligns more closely with actual costs for waste management. Over the last five years the CPI-U has increased more rapidly than the WST (See Table 2). The proposed agreement includes a cap of 5% on annual rate increases. The proposed agreement also provides for up to two detailed rate reviews that can be initiated by the City or Republic Services.

Table 2: Comparison of Water Sewer Trash (WST) vs All Consumers (CPI-U)

	WST	CPI-U
2019	3.62%	4.51%
2020	3.09%	2.97%
2021	3.27%	3.68%
2022	3.66%	4.65%
2023	4.66%	5.66%
Average	3.66%	4.29%

5) Term Analysis
A 10-year extension term would align with the industry standard, and the City would benefit from adjusting contract terms to meet upcoming regulatory requirements. Although the City's current contract is generally comprehensive, the additional provisions negotiated in the contract extension would facilitate SB 1383 compliance. These revisions include the provision of route audits for contamination monitoring, container color and labeling adjustments, assistance in meeting compost procurement requirements, increased outreach and education to all organic waste generators, and increased reporting requirements. While other term lengths are possible, the most common length for solid waste collection contracts is 10 years. Given the adjustments to meet SB 1383 that are described above, a longer-term length allows some of the up-front immediate costs of compliance to be recovered in later years, providing rate increase "smoothing" that is not possible with shorter term lengths.

Staff recommends the City execute an amended and restated agreement with Republic Services for a 10-year extension to the solid waste agreement in a form approved by the City Attorney and in substantially the same form as the attached draft amended and restated agreement. The negotiated agreement modifications will result in approved service levels and ensure full compliance with existing and new state mandates.

FISCAL IMPACT

The City collects a franchise fee based upon Republic's collected revenue; that franchise fee payment is anticipated to increase by an amount equivalent to the approved rate increase.

REVIEW AND APPROVAL

Prepared by - James Scanlin, Environmental Services Manager
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - Lenka Hovorka, Assistant City Manager

Attachments

Amended and Restated Franchise Agreement

Exhibit L-Rate Sheet

Republic Resolution

Franchise Agreement Presentation

AMENDED AND RESTATED FRANCHISE AGREEMENT

BETWEEN

THE CITY OF NEWARK

AND

ALLIED WASTE SERVICES OF NORTH AMERICA LLC

FOR

COLLECTION OF SOLID WASTE

AND

COLLECTION AND PROCESSING OF

SOURCE SEPARATED RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND C&D

JUNE 1, 2023

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Franchise Agreement
between
City of Newark
and
Allied Waste Services of North America LLC
for
Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D

THIS FRANCHISE AGREEMENT is made and entered into as of _____, 2023, between the City of Newark, California, a political subdivision of the State of California (hereinafter "City"), and Allied Waste Services of North America LLC, dba Allied Waste Services of Alameda County, (hereinafter referred to as the "Contractor").

RECITALS

This Agreement is entered into with reference to the following facts and circumstances:

WHEREAS; the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (AB 939) (California Public Resources Code Section 40000 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Collection within their jurisdiction;

WHEREAS; the State of California has found and declared that the amount of refuse generated in California, coupled with diminishing disposal capacity and potential adverse environmental impacts from landfilling and the need to conserve natural resources, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. The State has, through enactment of the AB 939, directed the responsible State agency, and all local agencies, to promote Diversion and to maximize the use of feasible waste reduction, re-use, Recycling, and Composting options in order to reduce the amount of refuse that must be disposed;

WHEREAS; pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an Exclusive Right be awarded to a qualified Contractor to provide for the Collection, transportation, and Processing (where permitted under this Agreement) of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, Residue or Equivalent Residue, C&D, and other Discarded Materials, excluding Excluded Waste, and other services related to meeting the City's integrated waste management goals;

WHEREAS; the City further declares its intent to approve and maintain reasonable Maximum Rates for the Collection, Recycling, Processing, Composting, transfer, and/or disposal of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D; and,

WHEREAS; the City has determined that Contractor, by demonstrated experience, reputation and capacity is qualified to provide for both the Collection of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D within the corporate limits of the City and the transportation of such material to appropriate places of Processing, Recycling, Composting, transfer, and/or disposal; and, therefore, desires that Contractor be engaged to perform such services on the basis

set forth in this Agreement.

WHEREAS; the City and Contractor have attempted to address conditions affecting their performance of services under this Agreement but recognize that reasonably unanticipated conditions may occur during the Term of this Agreement that will require the Parties to meet and confer to reasonably respond to such changed conditions;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement and for other good and valuable consideration, the Parties agree as follows:

ARTICLE 1. GRANT AND ACCEPTANCE OF FRANCHISE

1.1 GRANT AND ACCEPTANCE OF FRANCHISE

By the signing of this Agreement, City grants to Contractor and Contractor accepts an exclusive franchise within the corporate limits of the City. The franchise granted to Contractor shall be for the Exclusive Right (pursuant to the definition in Article 1) including the scope of services described in Articles 3 and 4 of this Agreement, subject to the limitations to Contractor's Exclusive Right described in Section 1.2 and except where otherwise precluded by Federal, State, and local laws and regulations.

1.2 LIMITATIONS TO THE FRANCHISE

The award of this Agreement shall not preclude the categories of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D listed below from being delivered to and Collected and transported by others to the extent described in the following limitations, and further provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from City which is otherwise required by law.

A. **Recyclable and Organic Materials**. Other Persons shall maintain the right to: (1) accept Source Separated Recyclable Materials and Source Separated Organic Materials donated from the service recipient, or (2) to pay the service recipient for Source Separated Recyclable Materials and Source Separated Organic Materials so long as there is no net payment made by the service recipient to such other Person;

B. **Self-Hauled Materials**. A Commercial business Owner, Occupant or Resident may transport Solid Waste, Recyclable Materials, Organic Materials, and C&D generated in or on their own Premises by their own Person and transported with their own vehicle for the purposes of delivery to transfer, Processing, or disposal facilities;

C. **Donated Materials**. Any items which are separated from other materials at any Premises by the Customer or Generator and donated to youth, civic, or charitable organizations;

D. **Beverage Containers**. Containers delivered for Recycling under the California Beverage Container Recycling and Litter Reduction Act, Section 14500, et seq. California Public Resources Code;

E. **Materials Removed by Owner's or Occupant's Contractor as Incidental Part of Services**. Solid Waste, Recyclable Materials, Organic Materials, and/or C&D removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, demolition contractor,) as an incidental part of the service being performed and such contractor is providing a service which is not included in the scope of this Agreement;

F. **Animal, Grease Waste, and Used Cooking Oil**. Animal waste and remains from slaughterhouse or butcher shops, grease, or used cooking oil;

G. **Sewage Treatment By-Product**. By-products of sewage treatment, including sludge, sludge ash, grit, and screenings;

H. **Excluded Waste**. Excluded Waste regardless of its source; and,

I. **Materials Generated by State, County, and Federal Facilities**. Materials generated by State, County, and Federal facilities located in the City provided that the Customer or Generator has arranged services with other Persons or has arranged services with the Contractor through a separate agreement.

Contractor acknowledges and agrees that the City may permit other Persons besides the Contractor to Collect any and all types of materials excluded from the scope of this Franchise, as set forth above, without seeking or obtaining approval of Contractor. If Contractor can produce evidence that other Persons are servicing Collection Containers or are Collecting and transporting Solid Waste, Recyclable Materials, Organic Materials, and/or C&D (collectively "Franchised Materials") in a manner that is not consistent with this Agreement or the City's Municipal Code, it shall report the location, the name and phone number of the Person or company to the City's Contract Manager along with Contractor's evidence. In such case, Contractor shall place a sticker on the Container, notify the Customer, Generator and Person providing service by letter (with copy to the City) of Contractor's rights under this Agreement, explain the infringement including location, date and time of infringement, and provide a specified date and time (not less than 48 hours for the first infringement by the Person providing services nor less than 24 hours for the second infringement by the same Person) by which the illegal provision of service must cease (i.e., illegal container removed). In the event that other Persons continue servicing materials included in the exclusive scope of the Agreement, or encroaching on Contractor's Exclusive Rights under this Agreement in other ways, Contractor shall notify City.

This Agreement and scope of this franchise shall be interpreted to be consistent with Applicable Law, now and during the Term of the Agreement. If future judicial interpretations of current law or new laws, regulations, or judicial interpretations limit the ability of the City to lawfully contract for the scope of services in the manner and consistent with all provisions as specifically set forth herein, Contractor agrees that the scope of the Agreement will be limited to those services and materials which may be lawfully included herein and that the City shall not be responsible for any lost profits or losses claimed by Contractor to arise out of limitations to the scope or provisions of the Agreement set forth herein. In such an event, it shall be the responsibility of Contractor to minimize the financial impact of such future judicial interpretations or new laws and the Contractor may meet and confer with City and may petition for a Maximum Rate adjustment pursuant to Section 8.4.

1.3 OBLIGATIONS OF PARTIES

In addition to the specific performance required under the Agreement, City and Contractor shall:

1. Use their reasonable commercial efforts to enforce the exclusiveness of the franchise by the Contractor's identification and documentation of violations of the Agreement and the City's notification of Customers, Generators and collection companies reasonably believed to be violating the exclusive rights of the franchise regarding the terms of this Agreement.

2. Provide timely notice to one another of a perceived failure to perform any obligations under this

Agreement and access to information demonstrating the Party's failure to perform.

3. Provide timely access to the City Contract Manager and the Contractor's designated representative and complete and timely responses to requests of the other Party.

4. Provide timely notice of matters which may affect either Party's ability to perform under the Agreement.

ARTICLE 2. TERM OF AGREEMENT

2.1 TERM AND OPTION TO EXTEND

The Term of this Agreement shall commence June 1, 2023 (Commencement Date) and continue in full force for a period of ten (10) years, through and including June 30, 2033. unless the Agreement is extended in accordance with this Section or terminated in pursuant to Section 10.2.

Extension of Term. Contractor may request up to two five (5) year extensions to the Term, and at City's sole discretion, City may grant Contractor's request to extend the Term, with a new termination date of June 30, 2038, for the first extension and June 30, 2043, for the second extension. Under no circumstance will City be obligated to extend the Term. The Term of this Agreement shall only be extended with the prior written consent of both Parties. Should the Parties choose to extend this Agreement, both Parties shall meet and confer no later than one (1) year prior to the expiration of this Agreement to determine and specify the duration and terms of such extension. Between the Effective Date and Commencement Date, Contractor shall perform all activities necessary to prepare itself to start providing services required by this Agreement on the Commencement Date.

The City may, at the end of the Term or optional extended Term, as appropriate, either renegotiate the terms and conditions of the Agreement with Contractor or request proposals from qualified contractors to provide Collection Services.

2.2 CONDITIONS TO EFFECTIVENESS OF AGREEMENT

The obligation of City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of all the conditions below, each of which may be waived, in written form, in whole or in part by City.

A. **Accuracy of Representations.** The Contractor's representations and warranties made in Contractor's Proposal and Article 11 of this Agreement are true and correct on and as of the Effective Date.

B. **Furnishings of Insurance and Performance Bond.** Contractor has furnished evidence of the insurance and performance bond required by Article 9 that is satisfactory to the City.

C. **Absence of Litigation**. To the best of Contractor's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

1. Materially adversely affect the performance by Contractor of its obligations hereunder;
2. Adversely affect the validity or enforceability of this Agreement; or,
3. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

ARTICLE 3. SCOPE OF AGREEMENT

3.1 SUMMARY SCOPE OF SERVICES

The Contractor or its Subcontractor(s) shall be responsible for the following:

A. Collecting Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D generated by and placed for Collection by Customers or Generator that are subscribers of Contractor's services pursuant to requirements of Article 4;

B. Transporting Collected Solid Waste, and materials Collected through the on-call bulky clean-up program (other than Reusable Materials collected at no cost by a third party) to the Approved Transfer Facility pursuant to requirements of Article 4;

C. Transporting to and Processing Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D at the appropriate Approved Facilities;

D. Performing all other services required by this Agreement including, but not limited to, Customer billing, public education, Customer service, record keeping, and reporting pursuant to Articles 4 and 6 and Exhibits B (Public Education and Outreach) and C (Reporting);

E. Furnishing all labor, supervision, vehicles, Containers, other equipment, materials, supplies, and all other items and services necessary to perform its obligations under this Agreement;

F. Paying all expenses related to provision of services required by this Agreement including, but not limited to, taxes, regulatory fees, City fees, and utilities;

G. Performing or providing all services necessary to fulfill its obligations in full accordance with this Agreement at all times using best industry practice for comparable operations; and,

H. Complying with all Applicable Laws.

The enumeration and specification of particular aspects of service, labor, or equipment requirements shall not relieve Contractor of the duty to perform all other tasks and activities necessary to fulfill its obligations under this Agreement, regardless of whether such requirements are enumerated elsewhere in the Agreement, unless excused in accordance with Section 10.7.

3.2 USE OF APPROVED FACILITIES

The Contractor, without constraint and as a free-market business decision in accepting this Agreement, agrees to use the Approved Facilities for the purposes of Processing and/or Disposing of all Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and other materials Collected in the City. Such decision by Contractor in no way constitutes a restraint of trade notwithstanding any Change in Law regarding flow control limitations or any definition thereof.

Contractor shall maintain accurate records of the quantities of Solid Waste, Source Separated Recyclable

Materials, Source Separated Organic Materials, and C&D transported to the transfer, Disposal, Processing, or Composting Facilities and will cooperate with City in any audits or investigations of such quantities.

Contractor shall pay all tipping fees and other costs associated with transporting to and Processing and/or Disposing Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and other materials Collected in the City at the Approved Facilities.

Contractor shall observe and comply with all regulations in effect at the Approved Facilities, and shall cooperate with and take direction from the operators thereof with respect to delivery of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and other materials Collected in the City. Contractor shall actively work with the Approved Facilities operators throughout the Term of this Agreement to minimize contamination of the Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D Collected under this Agreement and delivered to the Approved Facilities.

3.3 SUBCONTRACTING

Contractor shall not engage any Subcontractors for Collection, transportation, or Processing of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D services without the prior written consent of City Contract Manager. As of the Effective Date of this Agreement, City has approved Contractor's use of those subcontractors included in Exhibit M. If the Contractor plans to engage other Affiliate or related party entities in the provision of services, Contractor shall obtain written approval from City Contract Manager thirty (30) days prior to its plans to use party. Contractor shall submit written request to the City seeking approval of other Affiliate or related party entities. Such request shall include a description of its plans, name and qualifications of party, and an explanation of any potential impacts related to the quality, timeliness, or cost of providing services under this Agreement.

3.4 RESPONSIBILITY FOR MATERIALS

Once Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D are placed in the Contractor's Containers and at the Collection location, the responsibility for their proper handling shall transfer directly from the Customer or Generator to Contractor, with the exception of Excluded Waste if the Contractor can identify the Customer or Generator pursuant to Section 5.7.B. Once Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D are deposited by Contractor at the appropriate Approved Facility, such materials shall become the responsibility of the Owner or operator of the Approved Facility with the exception of Excluded Waste pursuant to Section 5.7.C.

Responsibility for Excluded Waste that has been inadvertently Collected by the Contractor shall remain with the Contractor if it cannot identify the Customer or Generator, and Contractor shall assume all responsibility for its proper disposal.

3.5 CITY-DIRECTED CHANGES TO SCOPE

City may meet and confer with Contractor to establish the scope of any additional services or modification to existing services (which may include modifications regarding use of Approved Facilities) to be provided under this Agreement. In such case, Contractor shall present, within thirty (30) calendar days of City's request, a written proposal to provide such modified or additional services.

City shall review the Contractor's proposal for the change in scope of services. City and Contractor may meet and confer to negotiate Contractor's proposed revisions and costs and shall amend this Agreement, as appropriate, to reflect the mutually agreed-upon changes in scope.

ARTICLE 4. SCOPE OF SERVICES

A. Contractor shall perform the services described in this Article 4. Failure to specifically require an act necessary to perform the service does not relieve Contractor of its obligation to perform such act.

B. Three-Container Organic Materials Collection Services. Phased Implementation. Beginning on the Effective Date, all new customers will be provided collection service including Recycling Container, Organics Container and Garbage Container collection service, except for those new customers who are exempt or who obtain waivers from the City. Between the Effective Date and December 31, 2023, Contractor shall continue to expand its Organic Materials collection service to existing customers within City, with at least two customer contact attempts (phone call or site visit) per customer that is out of compliance. By January, 2024, Contractor shall deliver Organic Materials collection service to all of its residential customers within City who are subscribed to and pay for Solid Waste collection service, except for those customers who are exempt or who obtain waivers from the City. By January, 2024, Contractor shall deliver Organic Materials collection service to all of its customers within City who are subscribed to and pay for Solid Waste collection service, unless (i) the customer is categorically exempted under City's municipal code from the requirement to subscribe for Organic Materials collection service, (ii) the customer qualifies for and is granted a State- or City-issued waiver, or (iii) the customer refuses service (Contractor will notify City of any commercial customers that refuse service). Contractor will work with customers to appropriately size collection containers such that source-separation of all materials is possible without any overflow of material, and if any disputes arise or overages occur, the City will make the final determination on proper container size.

C. Contractor acknowledges that City is committed to Diverting materials from disposal through the implementation of source reduction, reuse, Recycling, Composting, and other programs, and that City may implement new programs in accordance with Section 3.5 that may impact the overall quantity or composition of materials to be Collected by Contractor, subject to Contractor's right to petition for a change in City-approved Maximum Rates pursuant to Section 8.4.

D. **Container Overage and Correction Procedures.** If a Customer is found to habitually overflow their Collection Container(s), i.e., lid will not close, and/or material not contained within Container, Contractor may take the steps as listed below to correct Customers' on-going overflow of material. All customers will be notified of Collection Overages. Contractor shall notify the City regarding Commercial and MFD customers that habitually overflow their Containers.

a. Contractor shall provide the Service Recipients the correct combination of Collection Containers and collection frequency that matches each Service Recipient's unique service needs to enable clean, efficient, and cost-effective collection of Solid Waste, Recyclable Materials, and Organic Waste. City and Contractor agree that overflow of Solid Waste that is not properly in the Service Recipient's Solid Waste Collection Containers negatively impacts public health and safety. Contractor has also agreed to conduct recycling audits and provide outreach and support to Service Recipient accounts receiving the correct service level. However, if Service Recipients are found to habitually overflow their Solid

Waste Collection Containers, Contractor may take the steps as listed below to correct Service Recipient's on-going overflow of Solid Waste.

b. If the Service Recipient has made prior arrangements with Contractor for Collection of Solid Waste Overages, Contractor must collect such Overages as arranged, and may charge the Service Recipient the Solid Waste Overage fee (prior arrangement) rate set forth in Exhibit L.

c. If the Service Recipient has not made prior arrangements with Contractor for Collection of Solid Waste Overage, (i) Contractor may collect such Solid Waste Overage at no additional charge as a courtesy, (ii) Contractor may not Collect the Solid Waste Overage and leave a Non-Collection Notice explaining the reason for non-collection of the Solid Waste Overage, or (iii) Contractor may Collect the Solid Waste Overage (up to two lifts) and charge the Service Recipient the Solid Waste Overage fee (no prior arrangement) set forth in Exhibit L as provided below, and increase the capacity or frequency of Collection of the existing Collection Container(s) to match documented service needs as provided below. In managing Solid Waste Overages, the following apply:

i. SFD Service Recipients – Each Occurrence. For each occurrence Contractor will not collect the Solid Waste Overage if the Collection Container could not be serviced by normal operating procedures or cause spillage upon servicing, and Contractor must provide the following written notice via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient: (i) the date, description and photograph (if possible) of the Solid Waste Overage and document in the Implementation Record. Contractor's Non-Collection Notice for SFD Service Recipients shall also contain instructions on (a) how to schedule a Large Item Collection or (b) request an additional or larger Collection Container to eliminate future Overages.

ii. Commercial and MFD Service Recipients – Each Occurrence. Contractor must provide a written notice on the Container and may provide a copy of the notice via e-mail, U.S. mail, or in person (which may be by Non-Collection Notice) to the Service Recipient with the date, description and photograph (if possible) of the Solid Waste Overage. After one warning notice, Contractor may collect the Solid Waste Overage and may charge the Service Recipient a Solid Waste Overage fee as set forth in Exhibit L. After three Occurrences, Contractor may request that the City direct an increase in the capacity, or collection frequency of the Collection Container to match documented service needs. At least ten (10) Business Days prior to increasing the Collection Container size, or frequency of Collection, Contractor's representative must also contact the Service Recipient by phone, U.S. mail, e-mail or in person (which may be by Non-Collection Notice) to ensure that Service Recipient has the appropriate level of service. The increased capacity or collection frequency will remain in effect until Contractor and City determines that it is no longer needed to prevent overages.

iii. For all overflow surcharges:

1. Any overflow collected and charged shall be adequately documented, and such documentation shall be made available to customer and City, upon request, to substantiate any additional charge related to overflowing containers.

2. No overflow charges may be assessed unless there is significant overflow from a container, the container lids are open 30 degrees or more and the overflow has actually been collected by the Contractor.

3. No overflow charge may be assessed for overflow that is caused by a prior collection being missed or by containers being repositioned by the Contractor after collection.

d. After twelve (12) months have passed from the last applicable Solid Waste Overage occurrence, the next Solid Waste Overage occurrence will be deemed a first Solid Waste Overage occurrence.

e. If a Service Recipient disputes a Solid Waste Overage charge or container size or collection frequency change within 30 days of the disputed action, Contractor may request a ruling by the City Manager to resolve the dispute. A request by Contractor to the City Manager to rule on any such dispute should be filed within ten (10) Business Days of Contractor's halting of a Solid Waste Overage charge, or increased Maximum Rate, and must include written documentation and digital/visual evidence of ongoing overall problems. The City Manager may request a meeting (in person or phone) with both the Service Recipient and Contractor to resolve the dispute. Following such a meeting, the City Manager will rule on the dispute within ten (10) Business Days, and the City Manager's decision on resolving the dispute between and Service Recipient will be final. If the City Manager rules in favor of the Service Recipient, Contractor must credit the disputed charge or increased Maximum Service Rate. If the City Manager rules in favor of Contractor, Contractor may charge Service Recipient any prior halted Solid Waste Overage charge and/or increased Maximum Service Rate resulting from increasing the Solid Waste Collection Container size or collection frequency and may follow the steps in Section 4.11.F for collection of delinquent accounts.

4.1 SINGLE-FAMILY RESIDENTIAL SERVICES

A. Solid Waste Collection. Contractor shall Collect Solid Waste in Contractor-provided Carts one (1) time per week from Single-Family Customers and transport all Solid Waste to the Approved Transfer Facility.

Containers:	Carts
Container Sizes:	20-, 35-, 64-, and 96-gallons (as requested by Customer)
Service Frequency:	One (1) time per week
Service Location:	Curbside standard; side- or back-yard upon Customer request at additional charge with the exception that side- or back-yard service provided at no charge to disabled Customers in accordance with Section 4.1.G
Acceptable Materials:	Solid Waste
Prohibited Materials:	Source Separated Recyclable Materials, Source Separated Organic Materials, Excluded Waste
Additional Service:	• Contractor shall provide additional Solid Waste Carts to Single-Family Customers upon request and may charge an "Additional Solid Waste Cart" Rate not to exceed the Maximum Rate approved by the City. • Contractor shall establish an "overages" program that allows Single-Family Customers to place additional Solid Waste Curbside (in pre-purchased bags placed adjacent to the Solid Waste Cart) on their regularly-scheduled

Collection day. Pre-purchase bags shall be sold by Contractor at a Rate not to exceed the City-approved Maximum Rate. Bags can be purchased at Contractor's Fremont office, located at 42600 Boyce Road. Contractor shall also make pre-paid overages bags available for purchase by mail by Customers that make a request by phone or via Contractor's website, provided that Contractor may charge the Customer for actual mailing expenses. Contractor shall Collect the pre-purchased overage bags on Customers' regularly scheduled Collection day at no additional charge for Collection. The Solid Waste overage bags shall be different in appearance than the Yard Waste overage bag so that Customers and Collection vehicle drivers can easily determine the difference.

Other Requirements: None

B. Source Separated Recyclable Materials Collection. Contractor shall Collect Source Separated Recyclable Materials in Contractor-provided Containers one (1) time per week from Single-Family Customers and transport all Source Separated Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing or, if Residue Levels are ten percent (10%) or greater, Contractor may be directed to transport Source Separated Recyclable Materials to the Approved Transfer Facility.

The lists of Acceptable Materials below shall be accepted in the program and not be categorized as residuals for the purpose of Residue Level measurement and Exhibit Q or contractor's route reviews per 4.17.2. Contractor and City mutually agree that some of the listed materials may lack end markets, and as such Contractor shall make best efforts to divert all listed materials, and may request that the City waive the obligation to recover materials if end markets do not exist. If Contractor requests a waiver from that obligation, and City approves, Contractor may remove those materials from educational material distributed to Customers.

Containers: Carts

Container Sizes: 64-gallon standard Cart size; 35-gallon and 96-gallon Carts upon Customer request in lieu of 64-gallon Cart at no additional charge

Service Frequency: One (1) time per week; scheduled so that Collection occurs on the same day as Solid Waste Collection

Service Location: Curbside standard; side- or back-yard upon Customer request at additional charge with the exception that side- or back-yard service provided at no charge to disabled Customers in accordance with Section 4.1.G

Acceptable Materials: Source Separated Recyclable Materials

- Paper including cardboard, office paper, junk mail, envelopes, paper bags, catalogs, egg cartons (cardboard), magazines, packing, craft paper, newspaper, phone books, soft cover books, post-it, wrapping paper (non-metallic), greeting cards,
- Metal including aluminum cans, aluminum trays, aluminum foil, bottle caps, jar lids, steel (tin) cans, empty aerosol cans, empty paint cans, small scrap metal (less than 24 inches)
- Plastic including polylactic acid (PLA) bioplastic bottles, bottles, jars, tubs, trays containers, buckets, milk crates, small hard plastic toys (less than 24 inches), items numbered 1 to 7, plastic bags and expanded polystyrene (EPS) block
- Glass including bottles and jars
- Untreated wood

- E-waste that does not require special handling due to its size
- Annually, City and Contractor shall meet to discuss adding additional materials for which a viable market can be found

Prohibited Materials: Solid Waste, Source Separated Organic Materials, C&D, Excluded Waste
Additional Service: None
Other Requirements: Contractor shall accept household batteries in the Source Separated Recyclable Materials program, provided that those batteries have been separately packaged in a sealed, clear plastic bag and are Recycled.

C. Source Separated Organic Materials Collection. Contractor shall Collect Source Separated Organic Materials in Contractor-provided Carts one (1) time per week from Single-Family Customers and transport all Source Separated Organic Materials to the Approved Organic Materials Processing Facility for Processing or, if Residue Levels are ten percent (10%) or greater, Contractor may be directed to transport all Source Separated Organic Materials to the Approved Transfer Facility.

Containers: Carts
Container Sizes: 64-gallon standard Cart size; 35-gallon and 96-gallon Carts upon Customer request in lieu of 64-gallon Cart at no additional charge
Service Frequency: One (1) time per week; scheduled so that Collection occurs on the same day as Solid Waste Collection
Service Location: Curbside standard; side- or back-yard upon Customer request at additional charge with the exception that side- or back-yard service provided at no charge to disabled Customers in accordance with Section 4.1.G
Acceptable Materials: Source Separated Organic Materials

- Plant trimmings, branches, grass, dead plants, weeds, brush, leaves, tree trimmings, fruits and vegetables, breads and pastas, meat and poultry, seafood, dairy products, waxed cardboard and paper, napkins, paper towels, paper plates and cups, tissue paper, untreated wood
- Annually, City and Contractor shall meet to discuss adding additional materials for which a viable market can be found

Prohibited Materials: Solid Waste, Source Separated Recyclable Materials, C&D, Excluded Waste.
Additional Service: Contractor shall establish an "overages" program that allows Single-Family Customers to place additional Yard Waste Curbside (in pre-purchased bags placed adjacent to the Organic Materials Cart) on their regularly-scheduled Collection day. Pre-purchase bags shall be sold by Contractor at a Rate not to exceed the City-approved Maximum Rate. Bags can be purchased at Contractor's Fremont office, located at 42600 Boyce Road. Contractor shall also make pre-paid overages bags available for purchase by mail by Customers that make a request by phone or via Contractor's website, provided that Contractor may charge the Customer for actual mailing expenses. Contractor shall Collect the pre-purchased overage bags on Customers' regularly scheduled Collection day at no additional charge for Collection. The Yard Waste overage bags shall be different in appearance than the Solid Waste overage bag so that Customers and Collection vehicle drivers can easily determine the difference.

Other Requirements: Contractor shall offer to each Single-Family Customer Curbside Collection of Christmas trees beginning on the second Monday following New Year's Day. In the event New Year's Day is a Monday, Christmas tree Collection shall commence on the second Tuesday following New Year's Day and continue for ten (10) Business Days. Christmas trees shall be Collected on the Customer's regular Collection day during the designated week(s). Customer notification requirements are specified in the public education plan, Exhibit B.

D. Used Motor Oil and Filter Collection. Contractor shall Collect Used Motor Oil and Filters in a Contractor-provided Used Oil Recovery Kit from Single-Family Customers and properly dispose of or Recycle the Used Motor Oil and Filter. If Used Motor Oil and Filters are not Recycled by Contractor, Contractor shall deliver such material to the Approved Transfer Facility.

Containers: Used Oil Recovery Kit
Container Sizes: Various (as provided by Contractor)
Service Frequency: Up to one (1) time per week (as requested by Customer); scheduled so that Collection occurs on the same day as Solid Waste Collection
Service Location: Curbside (adjacent to Recyclable Materials Cart)
Acceptable Materials: Used Motor Oil and Filter
Prohibited Materials: Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, Excluded Waste
Additional Service: Not applicable
Other Requirements: Contractor shall provide a Used Oil Recovery Kit to a Customer on the next scheduled service day after such request is made by Customer at no additional cost to Customer. Upon Collection of Used Motor Oil and Filter from a Customer, Contractor shall leave a Used Oil Recovery Kit adjacent to the Recyclables Cart. Contractor shall not be required to Collect more than one (1) Used Oil Recovery Kit per individual dwelling unit per week from Single-Family Customers who request it.

E. Curbside Bulky Item/Reusable Materials Collection. Contractor shall Collect Bulky Items and other materials listed below from Single-Family Customers and transport all Collected materials to the Approved Transfer Facility (with the exception of Reusable Materials Collected at no cost by a third party).

Containers: Not applicable
Service Level: Up to three (3) cubic yards of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, Reusable Materials, C&D, and E-Waste or up to one (1) Appliance or Bulky Item
Service Frequency: Up to three (3) times per year (as requested by Customer)
Service Location: Curbside
Acceptable Materials: Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials (including small tree stumps not to exceed 16 inches in diameter and length), Reusable Materials, Appliances, Bulky Items, E-Waste, C&D (excluding concrete)
Prohibited Materials: Excluded Waste or any single item that exceeds five (5) feet in length or seventy-five (75) pounds.

Additional Service:

- Contractor shall Collect additional items that exceed the required Service Level and may charge an "Additional Bulky Item" Rate not to exceed the Maximum Rate approved by the City (as requested by Customer).
- Contractor shall provide additional Collection events for a Customer beyond three (3) per year and may charge an "Additional Bulky Item Collection" Rate not to exceed the Maximum Rate approved by the City.

Other Requirements:

- The Contractor shall provide the service to the Customer on the Customer's regularly scheduled Solid Waste Collection day within seven (7) Business Days of the Customer's requested service date, and such date shall be mutually agreed upon by the Customer and Contractor.
- Contractor shall notify Customers that materials shall not be placed Curbside more than twenty-four (24) hours in advance of the scheduled bulky Collection day.
- Contractor shall tag any items not Collected and such tag shall indicate the reason the item(s) were not Collected and how to arrange for proper disposal. Within twenty-four (24) hours of tagging item(s), the Contractor shall notify the City Contract Manager via email of Premises where materials were not picked up, describing the type of material(s) and reason.

F. Seasonal Programs. Contractor shall develop and educate Customers about the availability of and participation requirements for programs dealing with seasonal or periodic waste management demands that exceed regularly scheduled Collection including, without limitation: inclusion of Halloween pumpkins in the Organic Materials Carts, holiday tree Collection instructions, and handling of materials from spring cleaning, and fall leaves through on-call Curbside bulky clean-up collections and/or the overages program.

G. Alternative Service Location for Seniors and Disabled Single-Family Customers. Contractor shall allow for Seniors and Persons that have a disability as defined by the Americans with Disabilities Act (which means Public Law 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 27 U.S.C. 225 and 611, and all Federal rules and regulations relating thereto) that are Occupants of Single-Family Premises to receive Collection services at a location other than Curbside at no extra charge to the Customer for the alternative location. Contractor shall review all applications made by Senior Customers (which shall include a driver's license or birth certificate) and by disabled Customers (which shall include statements from physicians) to determine conformance with this exemption provision and shall grant exemptions, if applicable. Contractor shall make reasonable accommodations with regard to provision of and servicing of Containers (e.g., Container size and type, placement of Containers for Collection, etc.) at no additional cost to the Customer.

H. Vacation Holds. Contractor shall provide temporary vacation holds at no cost to the Customer. In such case, Customer may suspend Collection service for up to four (4) weeks annually and Contractor shall not charge the Customer for service during that period.

I. Low Income (Life-Line) Rates. Contractor shall provide Residential Collection of Solid Waste at a Rate that is 15% less than the Rate it charges other Single-Family Customers for comparable level of service for eligible, low income subscribers demonstrating that they receive assistance under PG&E's California Alternate Rates for Energy ("CARE") ratepayer assistance program. Contractor shall determine who is eligible for this Rate. Contractor shall require that life-line Customers submit applications annually to Contractor, and Contractor shall verify continued eligibility each year by review of applications. The Contractor's Life-Line Rate shall not exceed the Maximum Rate approved by the City.

J. Discounted Rates.

1. Senior Rates. Contractor shall bill Customers whose heads of household qualify as Seniors (meaning that they are 65 or more years of age) at a Rate that is fifteen percent (15%) less than the Rate it charges other Single-Family Customers for comparable level of service. Contractor shall verify Customer's eligibility for the Senior discount using driver's license or birth certificate. Contractor shall require that Customers with Senior discounts submit verification of eligibility every two (2) years to Contractor for review.

K. Landfill Passes. Contractor shall provide two (2) passes per year to each Single-Family Customer to dispose of up to four (4) cubic yards of material per trip at the Newby Island landfill. Customer shall provide proof of residence. Passes shall not be transferrable to any Person other than the Customer to whom they were issued. Contractor shall make passes available for pick-up at its Fremont office at 42600 Boyce Road, as well as via mail. Contractor shall promote this service in each newsletter. The landfill passes shall be provided to Residential units of a duplex, tri-plex, or four-plex provided that each unit is separately billed for their specific service level.

L. Sharps Disposal by Mail. Contractor shall maintain a mail-back sharps disposal program that shall be available to Single-Family Customers at all times throughout the Term. Contractor shall not be required to offer this service for free or at a discounted rate to City residents. Customer payment for this service shall be a direct transaction between Customer and Contractor and shall not appear on regular Customer billing statements. The costs for this program are not included in Contractor's Cost Proposal, and are not reflected in Customer Rates. Contractor shall set rates for the mail-back sharps disposal program, and such rates are not subject to City approval.

4.2 MULTI-FAMILY RESIDENTIAL SERVICES

A. Solid Waste Collection. Contractor shall Collect Solid Waste in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and transport all Solid Waste to the Approved Transfer Facility.

Containers:	Carts, Bins, Drop Boxes, Compactors
Container Sizes:	35-, 64-, and 96-gallon Carts; 1- to 7-cubic yard Bins; and, 6-, 14-, 20-, 30-, and 40-cubic yard Drop Boxes or Compactors (as requested by Customer)
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer
Service Location:	Curbside or other Customer-selected service location at the Multi-Family Premises
Acceptable Materials:	Solid Waste
Prohibited Materials:	Source Separated Recyclable Materials, Source Separated Organic Materials, Excluded Waste
Additional Service:	Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide Collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum Service Level and Contractor may charge an appropriate Rate for the higher Service Level at a Rate not to exceed the Maximum Rate approved by the City.

Other Requirements: Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers. In instances where the performance of push/pull services pose a significant safety risk to the contractor's employees, the City shall work with the Customer and/or Contractor to promptly resolve such issues. If containers for which customers are subscribed to Push/Pull or Lock/Unlock services are not re-locked and placed at the same location that they were retrieved from, and Contractor fails to correct customer complaints within the time period specified in Exhibit E, by the end of the Business Day following the receipt of the Customer Complaint, Contractor shall provide a refund for the charge for such services to Customer in the next Customer invoice.

B. Source Separated Recyclable Materials Collection. Contractor shall Collect Source Separated Recyclable Materials in Contractor-provided Containers not less than one (1) time per week from Multi-Family Customers and transport all Source Separated Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing or, if Residue Levels are ten percent (10%) or greater, Contractor may be directed to transport all Source Separated Recyclable Materials to the Approved Transfer Facility.

The lists of Acceptable Materials below shall be accepted in the program and not be categorized as residuals for the purpose of Residue Level measurement and Exhibit Q or contractor's route reviews per 4.17.2. Contractor and City mutually agree that some of the listed materials may lack end markets, and as such Contractor shall make best efforts to divert all listed materials, and may request that the City waive the obligation to recover materials if end markets do not exist. If Contractor requests a waiver from that obligation, and City approves, Contractor may remove those materials from educational material distributed to Customers.

Containers: Carts, Bins, Drop Boxes, Compactors

Container Sizes: 35-, 64- and 96-gallon Carts;
1- to 7-cubic yard Bins; and,
6- , 14-, 20-, 30-,and 40-cubic yard Drop Boxes or Compactors
(as requested by Customer)

Service Frequency: Up to six (6) times per week but not less than one (1) time per week (as requested by Customer)

Service Location: Curbside or other Customer-selected service location at the Multi-Family Premises

Acceptable Materials: Source Separated Recyclable Materials

- Paper including cardboard, office paper, junk mail, envelopes, paper bags, catalogs, egg cartons (cardboard), magazines, packing, craft paper, newspaper, phone books, soft cover books, post-it, wrapping paper (non-metallic), greeting cards
- Metal including aluminum cans, aluminum trays, aluminum foil, bottle caps, jar lids, steel (tin) cans, empty aerosol cans, empty paint cans, small scrap metal (less than 24 inches)
- Plastic including polylactic acid (PLA) bioplastic bottles, bottles, jars, tubs, trays containers, buckets, milk crates, small hard plastic toys (less than 24 inches), items numbered 1 to 7, plastic bags and expanded polystyrene (EPS)

block

- Glass including bottles and jars
- Carpet and carpet padding that does not require special handling due to its size
- Untreated wood
- E-waste that does not require special handling due to its size
- Annually, City and Contractor shall meet to discuss adding additional materials for which a viable market can be found

Prohibited Materials: Solid Waste, Source Separated Organic Materials, C&D, Excluded Waste

Additional Service: Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide Collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum service frequency and Contractor may charge an appropriate Rate for the higher Service Level not to exceed the Maximum Rate approved by the City.

Other Requirements: Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers. In instances where the performance of push/pull services pose a significant safety risk to the contractor's employees, the City shall work with the Customer and/or Contractor to promptly resolve such issues. . If containers for which customers are subscribed to Push/Pull or Lock/Unlock services are not re-locked and placed at the same location that they were retrieved from, and Contractor fails to correct customer complaints within the time period specified in Exhibit E, by the end of the Business Day following the receipt of the Customer Complaint, Contractor shall provide a refund for the charge for such services to Customer in the next Customer invoice.

C. Source Separated Organic Materials Collection. Contractor shall Collect Yard Waste in Contractor-provided Containers one (1) time per week from Multi-Family Customers and transport all Yard Waste to the Approved Organic Materials Processing Facility for Processing or, if Residue Levels are ten percent (10%) or greater, Contractor may be directed to transport all Source Separated Organic Materials to the Approved Transfer Facility.

Containers: Carts, Bins

Container Sizes: 35-, 64- and 96-gallon Carts
1-, 2-, and 3-cubic yard Bins
(as requested by Customer)

Service Frequency: Up to five (5) days per week but not less than one (1) day per week, as requested by Customer

Service Location: Curbside or other Customer-selected service location at the Multi-Family Premises

Acceptable Materials: Yard Waste

Prohibited Materials: Solid Waste, Source Separated Recyclable Materials, Food Scraps, C&D, Excluded Waste

Additional Service: Contractor shall provide additional Organic Materials Carts or Bins to Multi-

Family Customers upon request and may charge an "Additional Organics Cart or Bin" not to exceed the Maximum Rate approved by the City.

Other Requirements:

- Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers. In instances where the performance of push/pull services pose a significant safety risk to the contractor's employees, the City shall work with the Customer and/or Contractor to promptly resolve such issues. . If containers for which customers are subscribed to Push/Pull or Lock/Unlock services are not re-locked and placed at the same location that they were retrieved from, and Contractor fails to correct customer complaints within the time period specified in Exhibit E, by the end of the Business Day following the receipt of the Customer Complaint, Contractor shall provide a refund for the charge for such services to Customer in the next Customer invoice.
- Contractor shall offer Collection of Christmas trees from Multi-Family Premises beginning on the second Monday following New Year's Day. In the event New Year's Day is a Monday, Christmas tree Collection shall commence on the second Tuesday following New Year's Day and continue for ten (10) Business Days. Christmas trees shall be Collected on the Customer's regular Collection day during the designated week(s). Customer notification requirements are specified in the public education plan, Exhibit B.

D. Food Scrap Collection. City Contract Manager has required Contractor to expand this program to include all Organic Materials including Food Scraps.

E. Used Motor Oil and Filter Collection. Contractor shall Collect Used Motor Oil and Filters in a Contractor-provided Used Oil Recovery Kit from Multi-Family Customers and properly dispose of or Recycle the Used Motor Oil and Filter. The requirements of the program shall be the same as that provided for Single-Family Customers as described in Section 4.1.D; however, Contractor shall coordinate with property managers as needed to address any concerns or requests property managers may have.

F. Bulky Item/Reusable Materials Collection. Contractor shall Collect Bulky Items and other materials listed below from Multi-Family Customers and transport all Collected materials to the Approved Transfer Facility with the exception of Reusable Materials Collected at no cost by a third party.

Containers: Not applicable

Service Level: Up to three (3) cubic yards of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, Reusable Materials, C&D, and E-Waste or up to one (1) Appliance or Bulky Item. Additionally, Multi-Family Customers with fifteen (15) yards of weekly Solid Waste service or greater will be eligible for four (4) 20-yard bulky debris boxes annually. Customers with ten (10) to fourteen (14) yards of weekly Solid Waste service will be eligible for two (2) 20-yard bulky debris boxes annually. Customers with five (5) to nine (9) yards of weekly Solid Waste service will be eligible for one (1) 20-yard bulky debris box annually. Multi-Family Customer debris boxes shall be delivered within seven (7) Business Days of the date of the request and shall remain on site for a maximum of five (5) Business Days before they are removed. Material shall not

	be loaded over the top of the Bulky debris box.
Service Frequency:	Up to three (3) times per year (as requested by Customer)
Service Location:	Curbside or other Customer-selected service location at the Multi-Family Premises which is immediately accessible by Contractor's vehicle
Acceptable Materials:	Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, Reusable Materials, C&D (excluding concrete), Appliances, Bulky Items, E-Waste
Prohibited Materials:	Excluded Waste or any single item that exceeds seventy-five (75) pounds.
Additional Service:	• Upon Customer request, Contractor shall Collect additional items which exceed the required Service Level and may charge an "Additional Bulky Item" Rate not to exceed the Maximum Rate approved by the City. • Contractor shall provide additional Collection events for a Customer beyond three (3) per year and may charge an "Additional Bulky Item Collection" Rate not to exceed the Maximum Rate approved by the City.
Other Requirements:	• The Contractor shall provide the service to the Customer on the Customer's regularly scheduled Solid Waste Collection day within seven (7) Business Days of the Customer's requested service date, and such date shall be mutually agreed upon by the Customer and Contractor. • Contractor shall notify Customers that materials shall not be placed adjacent to Containers more than twenty-four (24) hours in advance of the scheduled bulky Collection day. • Contractor shall tag any items not Collected and such tag shall indicate the reason the item(s) were not Collected and describe how to arrange for proper disposal. Within twenty-four (24) hours of tagging item(s), the Contractor shall notify the City Contract Manager via email of Premises where materials were not picked up, describing the type of material(s) and reason.

G. Seasonal Programs. Contractor shall develop and educate Customers about the availability of and participation requirements for programs dealing with seasonal or periodic waste management demands that exceed regularly scheduled Collection including, without limitation: inclusion of Halloween pumpkins in the Organics Carts and holiday tree Collection instructions.

H. Sharps Disposal by Mail. Contractor shall maintain a mail-back sharps disposal program that shall be available to Multi-Family residents at all times throughout the Term. Contractor shall not be required to offer this service for free or at a discounted rate to City residents. Customer payment for this service shall be a direct transaction between Customer and Contractor and shall not appear on regular Customer billing statements. The costs for this program are not included in Contractor's Cost Proposal, and are not reflected in Customer Rates.

4.3 COMMERCIAL SERVICES

A. Solid Waste Collection. Contractor shall Collect Solid Waste in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and transport all Solid Waste to the Approved Transfer Facility.

Containers:	Carts, Bins, Drop Boxes, Compactors
Container Sizes:	35-, 64-, and 96-gallon Carts;

	1- to 7-cubic yard Bins; and, 6-, 14-, 20-, 30-, and 40-cubic yard Drop Boxes or Compactors (as requested by Customer)
Service Frequency:	Up to six (6) times per week but not less than one (1) time per week, as requested by Customer
Service Location:	Curbside; or other Customer-selected service location at the Commercial Premises
Acceptable Materials:	Solid Waste
Prohibited Materials:	Source Separated Recyclable Materials, Source Separated Organic Materials, Excluded Waste
Additional Service:	Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide Collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum Service Level and Contractor may charge an appropriate Rate for the higher Service Level at a Rate not to exceed the Maximum Rate approved by the City.
Other Requirements:	Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers. In instances where the performance of push/pull services pose a significant safety risk to the contractor's employees, the City shall work with the Customer and/or Contractor to promptly resolve such issues. If containers for which customers are subscribed to Push/Pull or Lock/Unlock services are not re-locked and placed at the same location that they were retrieved from, and Contractor fails to correct customer complaints within the time period specified in Exhibit E, by the end of the Business Day following the receipt of the Customer Complaint, Contractor shall provide a refund for the charge for such services to Customer in the next Customer invoice.

B. Source Separated Recyclable Materials Collection. Contractor shall Collect Source Separated Recyclable Materials in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and transport all Source Separated Recyclable Materials to the Approved Recyclable Materials Processing Facility for Processing or, if Residue Levels are ten percent (10%) or greater, Contractor may be directed to transport all Source Separated Recyclable Materials to the Approved Transfer Facility.

The lists of Acceptable Materials below shall be accepted in the program and not be categorized as residuals for the purpose of Residue Level measurement and Exhibit Q or contractor's route reviews per 4.17.2. Contractor and City mutually agree that some of the listed materials may lack end markets, and as such Contractor shall make best efforts to divert all listed materials, and may request that the City waive the obligation to recover materials if end markets do not exist. If Contractor requests a waiver from that obligation, and City approves, Contractor may remove those materials from educational material distributed to Customers.

Containers:	Carts, Bins, Drop Boxes, Compactors
Container Sizes:	35-, 64- and 96-gallon Carts; 1-, 2-, 3-, 4-, 6-, and 7-cubic yard Bins; and, 6-, 14-, 20-, 30-, and 40-cubic yard Drop Boxes or Compactors (as requested by Customer)

Service Frequency: Up to six (6) times per week but not less than one (1) time per week, as requested by Customer

Service Location: Curbside or other Customer-selected service location at the Commercial Premises

Acceptable Materials: Source Separated Recyclable Materials

- Paper including cardboard, office paper, junk mail, envelopes, paper bags, catalogs, egg cartons (cardboard), magazines, packing, craft paper, newspaper, phone books, soft cover books, post-it, wrapping paper (non-metallic), greeting cards
- Metal including aluminum cans, aluminum trays, aluminum foil, bottle caps, jar lids, steel (tin) cans, empty aerosol cans, empty paint cans, small scrap metal (less than 24 inches)
- Plastic including polylactic acid (PLA) bioplastic bottles, bottles, jars, tubs, trays containers, buckets, milk crates, small hard plastic toys (less than 24 inches), items numbered 1 to 7, plastic bags and expanded polystyrene (EPS) block
- Glass including bottles and jars
- Carpet and carpet padding that does not require special handling due to its size
- Untreated wood
- E-waste that does not require special handling due to its size
- Annually, City and Contractor shall meet to discuss adding additional materials for which a viable market can be found

Prohibited Materials: Solid Waste, Source Separated Organic Materials, C&D, Excluded Waste

Additional Service: Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide Collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum Service Level and Contractor may charge the appropriate Rate for the higher Service Level at a Rate not to exceed the Maximum Rate approved by the City.

Other Requirements: Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers. In instances where the performance of push/pull services pose a significant safety risk to the contractor's employees, the City shall work with the Customer and/or Contractor to promptly resolve such issues. If containers for which customers are subscribed to Push/Pull or Lock/Unlock services are not re-locked and placed at the same location that they were retrieved from, and Contractor fails to correct customer complaints within the time period specified in Exhibit E, by the end of the Business Day following the receipt of the Customer Complaint, Contractor shall provide a refund for the charge for such services to Customer in the next Customer invoice.

C. Source Separated Organic Materials Collection. Customers may elect for this service. Contractor shall Collect Yard Waste in Contractor-provided Containers not less than one (1) time per week from Commercial Customers and transport all Yard Waste to the Approved Transfer Facility.

Containers: Carts, Bins, Drop Boxes, Compactors

Container Sizes: 35-, 64-, and 96-gallon Carts;

	1-, 2-, and 3-cubic yard Bins; and, 6-, 14-, 20-, 30-,and 40-cubic yard Drop Boxes or Compactors (as requested by Customer)
Service Frequency:	Up to five (5) times per week but not less than one (1) time per week, as requested by Customer
Service Location:	Curbside or other Customer-selected service location at the Commercial Premises
Acceptable Materials:	Organic Materials (Yard Waste, Food Scraps, Food Soiled Paper)
Prohibited Materials:	Solid Waste, Source Separated Recyclable Materials, C&D, Excluded Waste
Additional Service:	Upon Customer request and to accommodate periodic additional service needs, Contractor shall provide Collection service at a greater frequency than the Customer's regularly scheduled service, up to the maximum Service Level and Contractor may charge the appropriate Rate for the higher Service Level at a Rate not to exceed the Maximum Rate approved by the City.
Other Requirements:	Contractor shall open and close gates, push and/or pull Containers, lock and unlock Containers, or perform other services as reasonably necessary to access and empty Containers. In instances where the performance of push/pull services pose a significant safety risk to the contractor's employees, the City shall work with the Customer and/or Contractor to promptly resolve such issues. If containers for which customers are subscribed to Push/Pull or Lock/Unlock services are not re-locked and placed at the same location that they were retrieved from, and Contractor fails to correct customer complaints within the time period specified in Exhibit E, by the end of the Business Day following the receipt of the Customer Complaint, Contractor shall provide a refund for the charge for such services to Customer in the next Customer invoice.

4.4 CONSTRUCTION AND DEMOLITION DEBRIS (C&D)

Contractor shall offer Source Separated Recyclable C&D Collection services. C&D Collection service shall be a temporary service, provided only at sites where construction, alteration, remodeling, repair, or demolition operations are being performed. C&D Collection services shall be provided to any Customer upon request. Contractor shall work with the Customer to provide Collection services that result in a minimum of sixty-five percent (65%) of the C&D being Collected and Processed as Source Separated Recyclable C&D to comply with C&D Diversion requirements established by the City's Green Building and Construction and Demolition Debris Recycling Ordinance (Municipal Code Chapter 15.44). Contractor billings to C&D Customers shall include two components: a "per-pull" charge to transport the Drop Box to an Approved Facility, and a charge for the cost of disposal or Processing calculated on a per-Ton basis for actual Tons delivered to the Approved Facility. Such billing shall be at Rates not to exceed City-approved Maximum Rates.

Contractor shall transport all Source Separated Recyclable C&D Collected under this Agreement to the Approved C&D Processing Facility. Contractor shall ensure that all Source Separated Recyclable C&D regardless of residue level collected from job sites in the City is processed as C&D and not disposed. Contractor may place garbage carts at job sites for Garbage disposal to reduce potential contamination of C&D loads; and shall provide such outreach and education to Contractors as described in this Section 4.4 and Section 4.8.5. Contractor shall pay all tipping fees and other costs associated with transporting,

Processing, and disposal of C&D.

Contractor shall observe and comply with all regulations in effect at the Approved C&D Processing Facility and Approved Transfer Facility and cooperate with and take direction from the operator thereof with respect to delivery of C&D.

A. Source-Separated Recyclable C&D Collection. Contractor shall Collect Source-Separated Recyclable C&D as homogeneous material types (e.g., all metals, all inert materials, all wood waste, etc.) or as mixed Recyclable C&D in Contractor-provided Containers at the frequency requested by C&D Customers. Contractor shall transport all Source-Separated Recyclable C&D to the Approved C&D Processing Facility for Processing or, at Contractor's discretion, to any Person who will make a net payment to Contractor for the delivery of the Source-Separated Recyclable C&D.

Containers:	Drop Boxes
Container Sizes:	6-, 14-, 20-, 30-, and 40-cubic yard Drop Boxes (as requested by Customer)
Service Frequency:	Up to five (5) times per week but not less than one (1) time per month, as requested by Customer
Service Location:	Curbside or other Customer-selected service location at the construction site
Acceptable Materials:	Source-Separated Recyclable C&D, Source Separated Recyclable Materials • Acceptable materials includes discarded building materials, packaging (cardboard, pallets and film plastic), debris and rubble resulting from constructions, alteration, remodeling (including appliances) repair or demolition operations on any houses, Residential and Commercial buildings, pavements, excavation projects, or any other structures, excluding Excluded Waste. Recyclable or Reusable items include, but are not limited to: appliances, asphalt product, brick, ceramics, concrete, dirt, flooring materials (carpet, carpet padding, hardwood, and tile), landscaping materials, lumber, plaster, plastic products, porcelain, roofing materials (tiles and both asphalt and wood shingles), scrap metals, scrap wood, stucco, sheet rock (dry wall), tile, and windows • Annually, City and Contractor shall meet to discuss adding additional materials for which a viable market can be found
Prohibited Materials:	Solid Waste, Source Separated Organic Materials, Excluded Waste
Additional Service:	Not applicable
Other Requirements:	Contractor shall document and report to the City Contract Manager each instance where Contractor delivers Source Separated Recyclable C&D to a Person other than the Approved C&D Processing Facility. Such report shall include the Person to whom the materials were delivered, the specific type of materials delivered (e.g., metals, wood, etc.), the number of Tons, and the amount received in payment for the delivery. Contractor shall be responsible for informing C&D Customers or Generators on the proper separation of C&D materials to provide Source Separated Recyclable C&D with Residue Levels acceptable to the Contractor.

4.5 SERVICES FOR CITY FACILITIES AND SCHOOLS

A. Collection Services to City Facilities and Schools. Contractor shall Collect Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, Bulky Items, and Reusable Materials from City and Newark Unified School District facilities in the same manner as those services are provided to Commercial Customers. Contractor shall provide service to all City and Newark Unified School District facilities identified in Exhibit F as well as any future City facilities. Contractor shall provide these services at no cost to the City or Newark Unified School District with the exception that Contractor may charge the Newark Unified School District for Collection of C&D at Rates not to exceed City-approved Maximum Rates. Contractor may charge the City for major public works projects (i.e., projects involving C&D tonnage in excess of 100 tons per project) at Rates not to exceed City-approved Maximum Rates. Contractor shall provide recycling technical assistance to City facilities and schools to assist with implementation and/or expansion of Source Separated Recyclable Materials and Source Separated Organic Materials Collection services.

B. Community Clean-Up Events. Contractor shall provide up to four (4) twenty (20) cubic yard Drop Boxes upon request of the City Code Enforcement Department, for use at each City-sponsored community clean-up event, not to exceed four (4) events per year. Contractor shall Collect Solid Waste, Source Separated Recyclable Materials, and/or Source Separated Organic Materials and transport materials to Approved Facilities for Processing or disposal. Contractor shall provide these services at no cost to the City. Contractor shall provide confidential document shredding service at one Community Clean-Up Event annually, and shall divert the shredded materials from disposal. Contractor shall provide these services at no cost to the City.

C. Building Plan Review. Contractor shall provide staff with the expertise to review building plans for new Residential and Commercial development projects during the City's permit review process to verify the reasonableness of the space allocation and enclosure design for Solid Waste, Source Separated Recyclable Materials, and Source Separated Organic Materials Containers and the accessibility of such areas. For these plan reviews, the Contractor may be requested to visit the site and submit written recommendations for improvements to the design. Plan reviews shall be completed within two (2) weeks of the City's request for such review. The City anticipates approximately five (5) to ten (10) reviews may be requested annually.

D. E-Waste Clean-Up from City Facilities. Contractor shall provide on-call E-Waste Collection from City Facility offices up to three (3) times per year. Contractor shall provide this service at no cost to City.

4.6 SPECIAL EVENTS

Contractor shall provide Solid Waste, Source Separated Recyclable Materials, and Source Separated Organic Materials services to the special events identified in Exhibit F at no cost to the event or City. Special event services include:

A. Containers. Contractor shall provide Containers for the aggregation of material removed from event collection stations during the course of the event. Contractor shall provide Containers in sufficient number of appropriate type(s) for the needs of the event as determined by Contractor in cooperation with the event organizer. Contractor shall service Containers, as agreed-upon with the event organizer, and deliver Collected materials to the appropriate Approved Facility for Processing and disposal.

B. Public Education Booth. Upon request of either the City Contract Manager or the event organizer,

Contractor shall staff a booth or exhibit at the event for the purpose of educating the public about the services and programs provided by Contractor under this Agreement and the benefits of source reduction, reuse, Recycling, and Composting.

C. **Reporting.** Within fourteen (14) calendar days of the end of the event, Contractor shall submit a report to the City Contract Manager and event organizer. The report should include, at a minimum: the number of event collection stations deployed at the event, the number of collection station monitors, the Tonnage of each material type (i.e., Solid Waste, Source Separated Recyclable Materials, and Source Separated Organic Materials) Collected, and a description of the public education provided at the event.

D. **Sponsorships.** Contractor shall provide a minimum of $15,000 (fifteen thousand) dollars annually in cash sponsorships and complimentary services to community events within the City.

E. **Charitable Organizations.** Contractor shall provide a minimum of $5,000 (five thousand) dollars annually in complimentary services beyond regularly scheduled Collection services to local charitable organizations.

Contractor may, at its sole discretion and expense, coordinate with local youth, community, or charitable organizations to provide some or all of the required services. Regardless of Contractor's use of such an organization, Contractor shall be responsible for ensuring that service is provided at the event in a professional and timely manner.

For special events not identified in Exhibit F, Contractor shall provide the above-described special event services at the request of the event organizer and may negotiate the charges for such services with the event organizer based on the specific needs of the event.

4.7 TRANSPORTATION OF COLLECTED MATERIALS

Contractor shall transport all Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and other materials Collected in the City to the Approved Facilities for the purposes of Processing and/or disposing such materials. Contractor shall maintain accurate records of the quantities of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and other materials transported to the Approved Facilities and will cooperate with City in any audits or investigations of such quantities.

4.8 DISPOSAL AND PROCESSING OF COLLECTED MATERIALS

4.8.1 Delivery of Materials to Approved Transfer Facility

Contractor shall transport all Solid Waste, and materials Collected through the on-call bulky clean-up program (other than Reusable Materials collected at no cost by a third party) Collected under this Agreement to the Approved Transfer Facility, which is selected and approved by City. Unless and until City otherwise approves, the Approved Transfer Facility shall be the Fremont Recycling and Transfer Station in Fremont, California. All costs associated with transporting and Disposing Solid Waste, and materials Collected through the on-call bulky clean-up program (other than Reusable Materials collected at no cost by a third party) shall be paid by Contractor and may be recovered through Contractor's Compensation in accordance with Article 8. The per-Ton fees Contractor shall pay the Approved Transfer Facility operator shall be determined pursuant to an agreement between the City and the Approved Transfer Facility operator.

If the Contractor expects, during the Term of this Agreement, to be prevented from delivering Solid Waste, and materials Collected through the on-call bulky clean-up program (other than Reusable Materials collected at no cost by a third party) to the Approved Transfer Facility, it shall notify the City immediately. Contractor shall then identify alternative transfer and/or disposal facilities and evaluate each. Such evaluation shall include the Disposal fee, transportation cost, permit status, any known permit enforcement proceedings and any other criteria used by the Contractor in recommending alternative transfer and/or disposal facilities. Contractor shall then present its recommendation and evaluation of alternatives described above to City. City shall either approve the Contractor's recommended transfer and/or disposal facility or identify an alternative transfer and/or disposal facility. Contractor will thereafter Dispose of Solid Waste, and materials Collected through the on-call bulky clean-up program (other than Reusable Materials collected at no cost by a third party) at the alternative site approved by the City.

Contractor shall cooperate with the operator of the Approved Transfer Facility and comply with the operator's requirements such as how and where to unload Collection vehicles, respecting operations and construction of new facilities, cooperating with the operator's Hazardous Waste Exclusion Program, following scale house weighing and recording keeping processes, and other guidelines established for facility users. Contractor shall plan its Collection routes to be compatible with the Approved Transfer Facility's operating hours, which shall be, at a minimum, Monday through Friday from 5:00 a.m. to 5:00 p.m. and Saturday from 8:00 a.m. to 5:00 p.m.

4.8.2 General Processing Requirements

A. Overview. Contractor agrees to transport and deliver all Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D it Collects in the City to the Approved Recyclables Processing Facility, Approved Composting Facility, and Approved C&D Processing Facility, respectively. Contractor shall pay all costs associated with transfer (if applicable), transporting, Processing, Composting and marketing Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D. Contractor or its Subcontractor(s) may be required to Dispose of Equivalent Residue from the Processing and Composting activities at the Approved Transfer Facility. Exhibit Q describes the protocol for management of Residue.

2. Contractor shall annually provide a letter from organics facilities they deliver organics waste to stating whether that facility accepts and recovers compostable plastics or can accept and remove plastic bags when it recovers source separated organic waste as specified in CCR 18994.2 (b) (4) (5).

B. Processing Capacity, Residue, and Facility Permits. Contractor shall secure sufficient capacity to Process all Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D Collected under this Agreement and shall cause the Approved Facilities to Process and/or Compost, and market the Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D. Contractor shall provide the City, upon request, with:

1. Documentation demonstrating the availability of such capacity; and,
2. Name, address and owner/operator of any transfer station used to deliver

materials to such site.

Contractor shall use commercially reasonable efforts to achieve a Residue Level of less than ten percent (10%) for Source Separated Recyclable Materials, less than ten percent (10%) for Residential Source Separated Organic Materials, and less than ten percent (10%) for Source Separated Recyclable C&D. The Residue Level shall be determined by Characterizations in accordance with Exhibit Q attached hereto and incorporated herein by reference. The consequence and procedures for a Residue Level equal to or greater than ten percent (10%) shall be implemented as required in Exhibit Q.

Contractor shall keep all existing permits and approvals necessary for use of the Approved Facility(ies) in full regulatory compliance or confirm that the owner or operator of such facility does so. Contractor shall, upon request, provide copies of permits and/or notices of violation of permits to the City.

C. **Contractor-Initiated Change in Facility**. Contractor may change its selection of one or more of the Approved Facility(ies) following City's written approval, but Contractor shall not be compensated for any increased transportation and Processing costs. Contractor will bear any increased transportation and Processing costs associated with a Contractor-initiated change in the Approved Facility(ies). In such case, Contractor shall guarantee the same net Processing Cost specified in Exhibit D-2 or shall increase the net Processing Costs (if the amount is a net revenue) associated with the use of Processing and/or Composting facility(ies) different from the Approved Facilities. If Contractor elects to use a Processing and/or Composting facility(ies) that is different than Approved Facility(ies), it shall request written approval from the City sixty (60) calendar days prior to use of the site and obtain the City's written approval no later than ten (10) calendar days prior to use of the site.

D. **Inability to Use Approved Facility**. If Contractor is unable to use an Approved Facility due to an emergency or sudden unforeseen closure of the Approved Facility, Contractor may use an alternative Processing or Composting facility provided that the Contractor provides verbal and written notice to the City and receives written approval from the City at least twenty-four (24) hours prior to the use of an alternative Processing or Composting facility. The Contractor's written notice shall include a description of the reasons the Approved Facility is not feasible and the period of time Contractor proposes to use the alternative facility. Contractor shall not be compensated for any increased transportation and Processing costs and shall guarantee the net Processing Cost specified in Exhibit N or shall increase the net Processing Costs (if net revenues) associated with the use of Processing or Composting facility(ies) different from the Approved Facility.

E. **Transport.** The Contractor is responsible for transporting Collected Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D to the Approved Facility(ies) by direct haul. If the Contractor plans to change its transport method, Contractor shall obtain written approval from the City prior to making the change; pay all costs; and shall not be reimbursed for any additional costs. The City shall approve the transport method, and the duration the transport method is expected to remain in use.

F. **Marketing.** The Contractor shall be responsible for marketing materials it Collects in the City including: (i) Source Separated Recyclable Materials, (ii) Source Separated Organic Materials, and (iii) Source Separated Recyclable C&D. Contractor shall be compensated by the end users/market place for such materials at no less than fair market value. With regard to Organic Materials, Contractor shall market the resulting Compost Product to agricultural growers or other interested

parties. Organic Materials shall be used for Compost or mulch. No Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D Collected shall be deposited for disposal or used as Alternative Daily Cover or Alternative Intermediate Cover with the exception of Residue delivered to the Approved Transfer Facility.

Upon request, Contractor shall provide proof to the City that all Source Separated Recyclable Materials, Source Separated Organic Materials generated at Residential Premises, and Source Separated Recyclable C&D (less Residue) Collected by Contractor are Recycled or reused in such a manner that materials shall be considered as Diverted in accordance with the State regulations established by the AB 939 and AB 341. All Residual material from the Processing and Composting activities that is not marketed for use shall be accounted for as Disposal Tonnage at the Approved Transfer Facility. No Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D shall be transported to a domestic or foreign location if Solid Waste disposal of such material is its intended use.

Upon request, Contractor shall provide a summary of its marketing plan and end markets for Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separate Recyclable C&D and submit it to the City for review and approval. Contractor shall provide City with a list of broker/buyers it has used during the preceding twelve (12) months, if requested by City. If Contractor becomes aware that a broker or buyer has illegally handled or disposed of material generated by the City or elsewhere, Contractor shall immediately inform the City and terminate its contract or working relationship with such party.

G. **Allocation Method**. Contractor shall develop a method of allocating Source Separated Recyclable Materials, Organic Materials, and Source Separated Recyclable C&D Diverted by material type and Processing Residue to Contractor and the City. The allocation method may be the same as that used to report Solid Waste disposal to the State as appropriate, and the allocation method and results shall be certified by an authorized personnel or officer of that Approved Facility owner or operator. Contractor shall Collect materials generated in the City in Collection Vehicles separately from other materials generated outside the City and shall weigh each vehicle so that the Tonnage of materials Collected in the City can be documented on a per-load basis with supporting documentation (such as a certified weight ticket or tag).

Periodically, the Contractor shall review its marketing records to calculate the volume of Source Separated Recyclable Materials received at the Approved Recyclable Materials Processing Facility and marketed to determine the percentage of various Source Separated Recyclable Materials (e.g., glass, newspaper, cardboard, PET, HDPE, aluminum, etc.) Collected. The percentages determined from the review of marketing records shall be used to allocate the total Tonnage of Source Separated Recyclable Materials Collected in the City into various categories of Recyclable Materials. This same review of marketing records and allocation of Tonnage by material type shall be performed for Source Separated Organic Materials and Source Separated Recyclable C&D.

H. **Residue**. In accordance with the procedures set forth in Exhibit Q, Contractor shall determine the average amount of Residue resulting from the Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D at the Approved Recyclable Materials Processing Facility, Approved Organic Materials Processing Facility, and the Approved C&D Facility. Exhibit Q describes the Characterization process and reporting process related to the Residue testing as well as corrective actions and consequences if the Residue Level is equal to ten percent (10%) or more. It also describes that the City reserves the right to direct Residue to the Approved Transfer Facility.

4.8.3 Recyclables Processing

Below is information about the Approved Recyclables Processing Facility selected by the Contractor:

- Facility Name: Newby Island Resource Recovery Park
- Owner: Republic Services
- Operator: Republic Services
- Address: 1601 Dixon Landing Rd, San Jose, CA 95035

4.8.4 Organic Materials Processing

A. Approved Facility. Below is information about the Approved Composting Facility selected by the Contractor for Processing of Source Separated Organic Materials generated at Residential Premises:

- Facility Name: Newby Island Resource Recovery Park
- Owner: Republic Services
- Operator: Republic Services
- Address: 1601 Dixon Landing Road, San Jose, CA 95035

B. Organic Materials Processing Standards. The following Processing standards shall be met by the Approved Composting Facility:

1. Pre-processing activities shall include, at a minimum, the inspection for and removal of Hazardous Waste and removal of plastic bags which Commercial Customers used to store Organic Materials.
2. Composting shall be accomplished by the use of recognized Composting methods, which have been demonstrated to be able to consistently produce stable, mature Compost Product that is suitable for general purpose use, similar to the U.S. Composting Council's Class 1 rating.
3. Post-composting processing activities shall include screening to remove plastics and other contaminants from the Compost Product.
4. The Organic Materials Processing and Composting activities shall use commercially reasonable efforts to achieve and maintain a Residue Level less than ten percent (10%) where the Residue Level shall be determined in accordance with Exhibit Q. If Contractor is unable to maintain this Residue Level, Contractor will follow the procedures in Exhibit Q.
5. All Organic Materials shall be Processed and marketed for use as Compost, mulch, or soil amendment and none shall be disposed, used as Alternative Daily Cover or Alternative Intermediate Cover, or used for Beneficial Reuse purposes.

C. Product Use by City.

1. Contractor shall offer Compost Products to the City at a price that is limited to the cost

incurred by the Contractor to purchase and transport of such material to the City.

2. Contractor shall provide up to 400 tons of landscaping-grade compost to the City annually to assist City with its annual SB 1383 recovered organic waste product procurement requirements. City shall be responsible for arranging for the pickup of the compost at 601 Dixon Landing Rd. Milpitas, CA and shall inform Contractor six months in advance of the quantities to be picked up. If Contractor opens an area of the landfill site for residential customer pick-up of compost or mulch materials, access to that pick-up area shall be granted to residents of the City that provide adequate proof of residency, of up to 10 cubic yards of compost per resident per day. The compost picked up by residents shall be accounted for as a part of the 400 annual tons of compost described herein.

3. During annual rate-setting, City may request, and Contractor may accept, an increase in the available compost for pick-up, at the same cost that members of the public pay, with direct costs for the increase included as a pass-through cost in the rate adjustment.

D. **Compost Give-Away.** Contractor shall host one (1) Annual Compost Give-Away event per year, at which each Single-Family Customer in City may pick-up two (2) one (1) cubic foot bags of Compost at no charge upon presenting proof of residency. At Contractor's option, a single-use coupon or other ticket-type method may be implemented, subject to City approval, to prevent residents from receiving more bags than allotted. The Annual Compost Give-Away shall be held at Contractor's property at 42600 Boyce Road in Fremont, CA or at a site selected by City.

4.8.5 C&D Processing

A. **Approved Facility.** Below is information about the Approved C&D Processing Facility selected by the Contractor for Processing of Source Separated Recyclable C&D:

- Facility Name: Newby Island Resource Recovery Park
- Owner: Republic Services
- Operator: Republic Services
- Address: 1601 Dixon Landing Road, San Jose, CA 95035
-

B. **C&D Materials Processing Standards.** Contractor shall deliver Source Separated Recyclable C&D to the Approved C&D Processing Facility for sorting and Diversion and shall provide all services necessary to support Customer compliance with all CalGreen Diversion requirements and all requirements of Applicable Laws, including but not limited to those in SB 1383, CalRecycle requirements for C&D Diversion, requirements of the Newark Municipal Code and all reporting and record-keeping requirements in said Applicable Laws. Such services shall include, but not be limited to:

1. Informing all Customers requesting temporary Roll Off Boxes of the requirements of CalGreen including the Diversion percentage required;

2. Preparation of a Diversion plan for the job site and discussion with the job site superintendent or owner regarding same;

3. Upon request of Customer, providing comprehensive training on the job site to all construction personnel about how to implement the Diversion plan for the job site, including explaining what material(s) are to be placed in each of the Roll Off Box for source separated Recyclable Materials (e.g. metal, glass, cardboard, sheetrock, concrete, asphalt), what materials are to be placed in the Organic Materials Roll Off Boxes, Yard Waste and wood, what materials are to be placed in the mixed C&D Roll Off Boxes, and what materials are to be placed in the Solid Waste Roll Off Boxes;

4. Providing Roll-Off Boxes, as needed for storage and transport of Source-Separated Construction and Demolition Debris, Organic Materials and mixed Construction and Demolition Debris, as well as appropriate size Roll Off Boxes for Solid Waste;

5. Providing Collection service for all Roll Off Boxes on a timely basis:

6. Delivering all Recyclable Materials, any Organic Materials, and all mixed C&D materials to the appropriate Processing Facility for Diversion and delivering all Solid Waste to a Disposal site;

7. Tracking and maintaining records of all tonnages of each type of material delivered to said Processing Facilities and of the tonnage of Solid Waste delivered for Disposal;

8. Working and coordinating with Customer's job site superintendent to ensure a smooth and effective Diversion program in compliance with all Applicable Laws; and

9. Making modifications to the Diversion plan, services or other aspects of the C&D Diversion as directed by the City.

Contractor shall inform Customers utilizing Containers, Bins and and/or Roll Off Boxes that Discarded Materials being Generated must be Diverted pursuant to the requirements of all Applicable Laws. Contractor shall develop, produce, and distribute to such Customers, at Contractor's sole expense, a color brochure highlighting the requirements for Diversion of C&D Debris, describing methods of Diversion that will fulfill such requirements and describing the services. Contractor shall provide as enumerated in this Section. Contractor shall submit the brochure to City for final approval before printing and distribution to Customers.

C. **Third-Party Verification Required.** "Third-Party Verification" refers to the process by which a Third-Party Verifier approved by the City reviews and verifies the facility recovery rates and evaluates the Approved Facility fitness relative to the minimum Construction and Demolition Debris Recovery requirements set forth by the City. The Approved Facility must engage the services of a Qualified Third-Party Verifier (a verifier that has been approved by the City) to conduct Third-Party Verification of Recovery rates for Recoverable Materials on an annual basis, or on a scheduled mutually agreed upon by the City and the Contractor, beginning July 1, 2023, with a report of findings to be delivered by December 1, 2023 and annually thereafter. The Approved Facility is responsible for the cost of their own Third-Party Verification and obligated to provide access to records sufficient, according to the City and the Third-Party Verifier's determination, to make a finding as to the facility recovery rates.

4.8.6 Insurance, Indemnifications and Performance Standards

If Contractor uses an Affiliate Subcontractor to provide transfer, Processing, and/or Composting services, or enters into any contract, agreement or understanding with a party for services related to Source Separated Recyclable Materials Processing and marketing, Source Separated Organic Materials Processing and marketing, Composting, C&D Processing and marketing, and marketing, or transfer Station services,

Contractor shall provide that terms and conditions (such as insurance requirements, indemnifications, and Processing, Composting, marketing performance, and Residue guarantees) of any contract, agreement, or other understanding Contractor has with such party can be enforced by the City as an additional insured or third party beneficiary thereof in the same manner provided in Article 9 and in a manner reasonably satisfactory to City.

If Contractor, an Affiliate, or Subcontractor owns or operates the Approved Recyclable Materials Processing Facility, Approved Composting Facility, or Approved C&D Processing Facility, Contractor shall include City as an additional insured on liability policies and defend and indemnify City in a manner satisfactory to City, and provide that any materials recovery and marketing performance standards or guarantees made to any other facility customers are made to City as well, including obligations such as recovered product and Compost Product quality guarantees and limits on the Residue Level.

Contractor shall demonstrate compliance with the requirements of this paragraph on or before the Commencement Date of this Agreement.

4.8.7 Compliance with Applicable Law

Contractor (or its Affiliate or Subcontractor(s)) warrants throughout the Term that the Approved Facilities (excluding the Approved Transfer Facility) selected by Contractor are respectively authorized and permitted to accept Recyclable Materials, Organic Materials, and C&D in accordance with Applicable Law and is in full compliance with Applicable Law. Contractor shall: (1) verify compliance for the Approved Facilities (that neither it nor its Affiliates own) by contacting the local enforcement agency and other regulatory agencies having jurisdiction over the Approved Facilities at least quarterly; and (2) upon City direction, shall promptly provide City with copies of the Approved Facilities' permits or notice of violations to City.

4.8.8 Compliance with Facility Rules

Contractor (or its Subcontractor(s)) shall observe and comply with all regulations in effect at the Approved Facilities and cooperate with the operators thereof with respect to delivery of Solid Waste, Recyclable Materials, Organic Materials, and C&D including directions to unload Collection vehicles in designated areas, accommodating operations and maintenance activities, and complying with Hazardous Waste exclusion programs.

4.8.9 Transportation and Processing Costs

All costs associated with transporting to and Processing Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D at the Approved Facilities shall be paid by Contractor.

4.8.10 Weighing and Record Requirements

Contractor shall ensure that all Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D are weighed upon delivery to the Approved Facilities, and all weight and related delivery information (including date, time, material type, route and truck number) ("Delivery Data") is recorded. The Delivery Data shall allow for separate tracking by material type, customer type,

container type, day, month, etc. Contractor shall provide City the name of any driver of any identified delivery promptly upon request by City. If vehicle receiving and unloading operations are recorded on video cameras at any Approved Facility, Contractor shall make, or shall use its best efforts to arrange with the facility operator if other than Contractor to make, those videos available for City review during the facility's operating hours, upon request of the City.

4.8.11 Disposal of Recyclable, Organic Materials, C&D Prohibited

With the exception of Processing and Composting Residue which shall be less than ten percent (10%) for Source Separated Organic Materials, less than ten percent (10%) for Source Separated Recyclable Materials, and less than ten percent (10%) for Source Separated Recyclable C&D, Recyclable, Organic Materials, and C&D may not be disposed of in lieu of Recycling or Composting the material, without the expressed written approval of the City. If for reasons beyond its reasonable control, Contractor (or its Subcontractor(s)) believes that it cannot Divert the Source Separated Recyclable Materials, Source Separated Organic Materials generated at Residential Premises, or Source Separate Recyclable C&D from disposal, then it shall prepare a written request for approval to dispose of such material. Such request shall contain the basis for Contractor's belief (including, but not limited to, supporting documentation), describe the Contractor's efforts to arrange for the Diversion from disposal of such material, the period required for such disposal, the incremental net cost increases or net cost savings (giving account to the value from the sale of the Recyclable Material, Organic Materials, or Recyclable C&D) resulting from such disposal, and any additional information supporting the Contractor's request. In addition, the request shall describe the Contractor's proposed interim plans for implementation while the City is evaluating its request. If the City objects to the interim plans, the City shall provide written notice to the Contractor and request an alternative arrangement. The City shall consider the Contractor's request and inform Contractor in writing of its decision within sixty (60) calendar days. If the City approves such request, any difference in the net cost of such disposal compared to Diversion shall be adjusted in accordance with Section 8.4. Depending on the nature of the Contractor's request, the City may extend the sixty (60) day calendar period, at its own discretion, to provide more time for evaluation of the request and negotiation of an acceptable arrangement with the Contractor.

4.8.12 Alternative Facility Designation by City

The City reserves the right to direct Contractor to transport and deliver: (i) all Organic Materials generated at Residential Premises and Collected pursuant to this Agreement to a Composting Facility other than the Composting Facility selected by the Contractor, or (ii) all Source Separated Recyclable Materials or Source Separated Recyclable C&D Collected pursuant to this Agreement to a Processing Facility other than the Processing Facility selected by the Contractor. If the City exercises its right under this provision for any reason other than the Contractor is not achieving less than ten percent (10%) Residue Levels, and specifies use of a Composting or Processing Facility that is different from the Contractor-selected Approved Facilities, the City shall provide written notice to Contractor one (1) year before the date the Contractor shall commence use of the City-designated site, and shall in no case require use of the City-selected Processing or Composting Facility prior to June 1, 2025. Furthermore, if City exercises its right under this Section to designate an alternate facility for any reason, the Contractor's Compensation and Maximum Rates will be adjusted for increases or decreases in transportation, Processing, and/or Composting costs and/or incremental profit directly related to cost increases or decreases, if any, in accordance with Sections 3.5 and 8.4.

4.8.13 Option to Direct Contractor to Transport Equivalent Residue to Approved Transfer Facility

Upon execution of this Agreement, the City reserves the option to direct Contractor to haul Equivalent Residue from any of the Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Source Separated Recyclable C&D, or any subset thereof such as materials generated by Multi-Family, Residential, or Commercial Customers, to the Approved Transfer Facility as Solid Waste. City may exercise this option for Contractor to transport Equivalent Residue to the Approved Transfer Facility at any time during the Term of this Agreement, provided Contractor receives thirty (30) days written notice. City also reserves the right to rescind this option at any time, provided Contractor receives seven (7) days written notice. If at any time City exercises this option, but then subsequently rescinds said option, this rescission shall not be construed as a waiver of any future right by the City to re-exercise said option and the costs described above shall be reinstated.

This option is more particularly described in Section 4 of Exhibit Q, attached hereto and incorporated herein by reference.

4.9 PUBLIC EDUCATION AND OUTREACH

The public education and outreach activities included in the scope of services provided by Contractor under this Agreement are described in Exhibit B. Contractor shall allow the City Contract Manager a reasonable opportunity to review, request modifications to, and approve all public education materials including, but not limited to: print, radio, television, or internet media before publication, distribution, and/or release.

Contractor's public education and outreach strategy shall focus on improving Customer understanding of the benefits of and opportunities for source reduction, reuse, Recycling, and Composting. In general, Contractor-provided public education and outreach should: (i) inform Customers about the services that are provided under this Agreement with specific focus on describing the methods and benefits of source reduction, reuse, Recycling, and Composting; (ii) instruct Customers on the proper method for placing materials in Containers for Collection and setting Containers out for Collection with specific focus on minimizing contamination of Recyclable and Organic Materials; and, (iii) clearly define the Excluded Waste and educate Customers about the hazards of such materials and their opportunities for proper handling.

Contractor, and its Subcontractors, shall cooperate and coordinate with the City Contract Manager and the StopWaste staff on public education activities to minimize duplicative, inconsistent, or inappropriately timed education campaigns. Contractor is aware that StopWaste conducts regional public education and outreach for schools, self-hauled waste, home composting, Food Scraps programs, etc.

City shall have the right to review and approve when the Contractor includes the City and/or StopWaste name, other form of identification, and contact information on public education materials. City may request inclusion of City information on public education materials (subject to City review and approval) and such request shall not be unreasonably withheld.

As part of the Contractor's third quarterly report (required by Section 6.2 of this Agreement) for the Rate Period, Contractor shall submit a plan outlining its public education efforts for the coming Rate Period. The plan shall list each public education piece (e.g., newsletters, bill inserts, flyers, newspaper advertisements, etc.) to be prepared, the purpose of the piece, the key subject(s) to be covered, and the anticipated date of issuance. In addition, the plan shall list all events the Contractor plans to attend and the public education it intends to provide at such event (e.g., exhibit at Newark Days, etc.). The City shall

review and approve the public education plan.

Contractor shall dedicate a budget of no less than $162,000 (one hundred and sixty-two thousand) dollars in Year 1, and $90,000 (ninety thousand) dollars for each year thereafter to conduct public education related activities.

4.10 MULTI-FAMILY/COMMERCIAL TECHNICAL ASSISTANCE

Contractor shall provide comprehensive recycling technical assistance to Multi-Family and Commercial Customers with the primary purpose of helping Customers increase Recycling and Organics Collection services and reducing Solid Waste Collection service. The technical assistance services shall conform with the following performance expectations per quarter:

Task	Minimum Number of related actions taken
Phone Calls	20
In-Person Site Visits (i.e. customer contact)	40

Site visits shall include on-site assessments of the Multi-Family and Commercial premises to improve Recycling and Organics Collection program participation. During the site visits, Contractor will be required to provide and/or restock posters, "how to" guides, personal recycling baskets/bags for Multi-Family tenants, and any other appropriate materials and provide new signage for the Recycling and Organics Containers if necessary. This program shall also involve preparation and presentation of reports to the City on the Contractor's efforts and results of the technical assistance efforts.

4.10.1 Informational Flyers

Contractor shall develop detailed information flyers specifically targeted at Multi-Family complex managers, and following business types: a) retail; b) business office; c) restaurant and bar; and d) manufacturing. Each flyer shall provide a brief synopsis of available programs and corresponding contact information. This flyer will include information on regular service features: Solid Waste, Source Separated Recyclable Material, Source Separated Organic Materials Collection services, but will also include information on special services such as holiday tree and Bulky Item Collection services, State and County mandatory Recycling requirements; and proper handling of Hazardous Waste, E-Waste and universal waste. Contractor shall also distribute or, subject to Multi-Family and Commercial Customer Occupant approval, post "Collection Point Posters", for the purpose of providing education and assistance at the point of materials discard.

4.10.2 Multi-Family Tenant Collection Tote Bags

Within three (3) months of the Commencement Date, Contractor shall distribute to Multi-Family Customers tote bags (one tote bag per tenant unit) made of woven polypropylene, which shall be rigid enough to stand on their own or hang on a wall or door hook for the purpose of promoting tenant in-unit Source Separation of Recyclable Materials. Contractor shall instruct residents on how to use the bags for interior storage of Source Separated Recyclable Materials and transport to Collection points within their complex. During the Term of the Agreement, Contractor shall provide tote bags to Multi-Family property

managers as needed to replace lost, damage, or stolen tote bags.

4.10.3 Recycling Workshops

Contractor's Recycling Coordinator shall assist in the establishment and maintenance of Multi-Family and Commercial Source Separated Recyclable Materials programs and will conduct Recycling technical assistance and workshops at Customers' premises. In addition to following up with Multi-Family managers to address their questions, concerns, and any real or perceived obstacles to full participation in Contractor's Multi-Family Recycling program, the Recycling Coordinator will also offer workshops at the Multi-Family premises for interested residents to instruct them on how to use the Recycling program, relay the benefits of Recycling, and answer questions.

4.11 BILLING

A. **General**. Contractor shall bill all Customers at Rates not to exceed Maximum Rates approved by City, and Contractor shall be solely responsible for collecting billings. Maximum Rates shall be set by the City in accordance with Article 8. Billing shall be performed on the basis of services rendered and this Agreement shall create no obligation on the part of any Person on the sole basis of the ownership of property. Contractor shall bill Single-Family Customers quarterly, in advance of services rendered. Contractor shall bill Multi-Family and Commercial Customers monthly, in advance of services rendered. Contractor shall bill Drop-Box and Compactor Customers monthly, in arrears of services rendered. Contractor shall separately identify the amount of the Alameda County Waste Management Authority Benchmark Service Information Fee on the bills (as discussed in Section 4.15).

B. **Change to Billing in Advance**. Contractor shall send a letter in early May, 2013 to all Commercial Customers who were billed in arrears by the previous contractor, notifying the Customer of a change in billing practices to bill in advance. During the five (5) months following the Commencement Date, Contractor shall relax billing enforcement policies for all Customers impacted by the billing change. Upon Customer request, Contractor shall allow impacted Customers to enter into a three to four (3 to 4) month payment plan to "catch-up" on the additional invoice (since Customers will receive two (2) bills at approximately same time, one from previous contractor for the arrears billing and one from Contractor for the advanced billing). No late service or interruption fees shall be charged against any Customer who has applied for and complied with such a payment plan.

C. **Payment Methods**. Contractor's website shall provide Customers with the ability to pay their bills through an electronic check or credit card and include the ability for Customer billings to be automatically charged on a recurring basis. Contractor shall prepare, mail, and collect bills from Customers who decline to use such internet-based billing system. Contractor shall make arrangements to allow Customers to pay bills by cash, check, electronic check, money order, and credit card.

D. **Billing Adjustment for Change in Service Level**. If Customer requests a change in Service Level that results in a lower Rate, Contractor shall adjust Customer's billing amount within seven (7) days of the date Customer requested the change regardless of whether or not Contractor delivers the appropriate Containers or modifies the Service Level within that timeframe. However, If Customer requests change in Service Level that results in a higher Rate, Contractor shall adjust the Customer's billing amount within seven (7) days of the effective date of the actual change in

Service Level.

E. **Billing Records**. Contractor shall maintain copies of all billings and receipts, each in chronological order, for the Term of this Agreement, for inspection and verification by the City Contract Manager at any reasonable time but in no case more than thirty (30) calendar days after receiving a request to do so.

F. **Collection of Past Due Accounts**. Contractor shall be responsible for collection of payment from Customers with past due accounts ("bad debt"). Contractor shall make reasonable efforts to obtain payment from delinquent accounts through issuance of late payment notices, making at least 3 telephone requests for payments to customer and property owner (if the owner is a different Person or entity than the customer), offering a customer payment plan, and suspension of service in accordance with the following.

If a Customer's payment becomes more than one hundred twenty (120) days past due, Contractor may request approval from the City, which will not be unreasonably denied, to suspend service to that account until payment is received, providing written evidence for each account that the required collection steps have been taken. If the City approves such request, the Contractor shall provide the Customer and property owner (if the owner is different from the customer) written notice of service suspension which includes a description of potential penalties from the City for nuisance, should it occur. All notifications and correspondence issued by Contractor shall be directed to the Customer and the owner of the property if the owner is a different Person or entity than the Customer.

At its option, Contractor may charge Customers a late payment fee for accounts that are over sixty (60) days past due provided that Contractor provides each Customer thirty (30) days written notice of its intent to assess the late fee. The maximum late fee is subject to the City approval and reflected in Exhibit L.

G. **Life-Line and Senior Rates**. Annually, Contractor shall verify Customers' eligibility for life-line Rates by reviewing subscribers' documentation that they receive assistance under PG&E's California Alternate Rates for Energy ("CARE") ratepayer assistance program. Every two (2) years, Contractor shall verify Customers' eligibility for Senior Rates by reviewing subscribers' driver's license or birth certificate. Contractor shall also assist the City with administration of any other special Rate programs such as zero waste Generator or low waste Generator Rate programs.

4.12 CUSTOMER SERVICE PROGRAM

4.12.1 Program Requirements

A. Availability of Representatives. Contractor shall retain one (1) full-time Customer service representatives, additional staff for reporting, and one (1) Municipal Sales Manager in its Fremont office at 42600 Boyce Road to provide increased staffing to handle inquiries and complaints from City Customers. In addition, the contractor shall retain one (1) full-time dedicated Compliance Monitor. A representative of the Contractor who is knowledgeable of the service area, services, and Rates shall be available from 8:00 a.m. to 5:00 p.m. Monday through Friday to communicate with the public in person and by telephone. Contractor shall maintain a local or toll-free telephone number which it shall publicize. Contractor shall also maintain an after-hours telephone number allowing twenty-four (24) hour per day access to Contractor management by City Contract Manager in the event of an emergency involving Contractor's equipment or services including,

but not necessarily limited to, fires, blocked access, or property damage.

B. Telephone. Contractor shall maintain a telephone system sufficient to meet performance standards listed in this Section 4.12 and Exhibit E in operation from 8:00 a.m. to 5:00 p.m. and shall have sufficient equipment in place and staff available to handle the volume of calls experienced on the busiest days and such telephone equipment shall be capable of recording the responsiveness to calls. Recording of Contractor's responsiveness to calls shall include, at a minimum, all items included in the "Service Quality and Reliability" and "Customer Service" performance standards listed in Exhibit E. An answering machine or voicemail service shall record Customer calls and voice messages between 5:00 p.m. and 8:00 a.m. Starting at 8:00 a.m. and continuing throughout the day until 5:00 p.m., Contractor shall check voice messages and respond the same day if the message is received before noon and respond no later than noon of the following day for messages received after noon. If call wait time is expected to exceed two minutes, customer shall upon calling have the option to receive a "call-back" rather than waiting on hold. The call-back will occur within 2 hours of the initial customer call during regular business hours (8:00 a.m. to 5:00 p.m.).

C. Website. Contractor shall develop and maintain a website (or webpage) that is specifically dedicated to the City to provide customers with detailed service information and Rates. The website or webpage shall be accessible by the public. In addition, Contractor's website shall include all public education and outreach materials described in Exhibit B and provide the public the ability to e-mail Contractor questions, service requests, or complaints. Contractor shall update the website regularly so that information provided is current.

D. Training. All Persons involved in providing Customer service and/or billing support to Customers shall be well educated on and knowledgeable of all aspects of the City's Collection services, Rates, and other relevant information.

4.12.2 Service Requests, Compliments, Complaints

Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all Customer service requests and complaints. Contractor shall record in a separate log, approved as to form by City Contract Manager, all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint, and nature and date of resolution. The Contractor shall retain this complaint log for the Term. Upon request by the City Contract Manager, Contractor shall compile and submit a summary statistical table of the complaint log.

Contractor shall respond to all complaints received within twenty-four (24) hours, weekends and Holidays excluded. In particular, if a complaint involves a failure to Collect Solid Waste, Source Separated Recyclable Materials or Source Separated Organic Materials from a Premises in the City, Contractor shall Collect the material in question within twenty-four (24) hours of receipt of the Complaint, provided that Customer or Generator has properly placed materials for Collection.

4.13 CITY WEB-BASED ACCESS TO INFORMATION

Contractor shall establish a web-based system that enables the City to twenty-four (24) hour access to Contractor's customer service and billing system to view Customer records including service information, Rate, call history, etc. Contractor shall comply with this requirement by June 1, 2013. Example web-based reports that the City will be able to access are provided in Exhibit P.

4.14 AB 939, AB 341, AB 1826, SB 1383, AND COUNTY ORGANICS REDUCTION & RECYCLING ORDINANCE COMPLIANCE

Contractor shall perform all education, outreach, monitoring, and reporting for all Commercial and Multi-Family properties as required by AB 939, AB 341, AB 1826, SB 1383, and the Alameda County Waste Management Authority Organics Reduction & Recycling Ordinance (ORRO)(adopted July 28, 2021). These activities shall include educating Multi-Family and Commercial Customers regarding the mandatory Recycling and Organics Recycling requirements of AB 341, SB 1383 and the County ordinance; notifying non-compliant Multi-Family and Commercial Customers at least semi-annually. Contractor shall develop and implement a Recycling plan that supports and educates Multi-Family and Commercial Customers on both the State and County requirements. The Recycling plan will include updating Contractor's website and print materials with information pertaining to both mandatory requirements. On a monthly basis, the Contractor shall provide all necessary reporting data requested by the City relating to the City's compliance requirements pertaining to AB 939, AB 341, and SB 1383 as it affects the County's Integrated Waste Management Plan and the City's SRRE and pertaining to the Alameda County Waste Management Authority Organics Reduction & Recycling Ordinance (ORRO) (adopted July 29, 2021).

The Contractor shall cooperate in activities requested by the City to measure diversion of Solid Waste from landfills including, but not limited to, providing a location for conducting waste sorting at the Contractor's facility, and re-routing trucks on a temporary basis to facilitate composition analysis. Such reports shall include, but not necessarily be limited to, throughput, recovery rates per material type, Residue Level by material type, costs, Recyclable Material commodity values, and final disposition of Source Separated Recyclable Materials and Source Separated Organic Materials. The Contractor shall also supply any other information reasonably requested by the City Contract Manager to meet State, Federal, or County regulatory requirements as those requirements may be amended from time to time.

4.15 ACWMA BENCHMARK SERVICE INFORMATION FEE

Contractor shall comply with requirements of the Alameda County Waste Management Authority's June 27, 2012 Resolution regarding implementation of a Benchmark Service Information Fee effective July 1, 2013. Requirements include, but are not limited to, charging Customers the Benchmark Service Information Fee, collecting the fees from Customers, remitting fees to the County, and reporting. Contractor shall provide the City with copies of all reports it submits to the Authority concurrent with submittal to the Authority. The Benchmark Service Information Fee is not included in the Contractor's cost proposal (Exhibit N) or in the Maximum Rates (Exhibit L) approved by the City. Contractor shall identify the Benchmark Service Information Fee separately on Customer bills.

4.16 COMMUNITY SUPPORT

Contractor shall implement its "True Blue Looking Out for You" neighborhood watch program. Contractor shall train drivers to assist law enforcement officials in identifying and reporting suspicious behavior through Contractor's dispatch department. Contractor shall also train drivers to identify situations where they can provide assistance to the public during extreme weather events.

Contractor shall donate a half percent (0.5%) of Gross Receipts collected from provision of all C&D Collection services to Newark Unified School District, Newark Education Foundation, or other organization mutually agreed to by the Parties for the purpose of providing grant funds to support the Newark Unified School District or to provide scholarships to students. Contractor shall remit the funds to the selected

organization two (2) times annually on or before January 15 for the most-recently completed six (6) months and on or before July 15 for the most-recently completed six (6) months, and shall report the amount remitted as stated in Exhibit C.

Contractor shall organize and publicize an annual food and toy drive to benefit a Newark-based charity. Contractor shall instruct Single-Family Customers to set non-perishable food and new, unwrapped toys at the Curbside for two (2) weeks during the holiday season (beginning directly after Thanksgiving) and Contractor shall Collect the items and deliver them to a Newark-based charity.

4.17 ROUTE REVIEWS AND COMPLIANCE REVIEWS

4.17.1 Compliance Reviews.

A. General Requirement. At least once annually, beginning in 2023, Contractor shall review the records of its Commercial and Multi-Family customers in City that are subscribed for at least two (2) cubic yards per week of combined Solid Waste, Organic Materials and Recyclables service, to determine whether such customers are subscribed for Organic Materials collection service or have an applicable waiver. Contractor shall include the results of each Compliance Review in its next regularly scheduled report to City.

B. Site Visit Requirement. Contractor shall conduct a site visit to each Commercial and Multi-Family customer in City that is determined to (a) not be enrolled in 3-container collection service, and (b) not be eligible for a waiver based on the City determination. Contractor shall conduct in-person site visits (i.e. direct customer contact) to provide educational material about the law's requirements to Commercial and Multi-Family customers, at least one time every 3 years. All Commercial and Multi-Family customers in the City shall receive a site visit from Contractor to affirm proper sorting procedures and sizing of containers at least one time every 5 years.

4.17.2 Route Reviews.

A. General Requirement. At least once annually, beginning in 2023, Contractor or its approved designee shall conduct a Route Review for each Hauler Route. The number of Containers to review per Hauler Route shall be calculated on the basis of the number of garbage accounts provided service by a specific Hauler Route for one week, at least 15% of customers in each route. For example, "Route A" collects garbage from 250 accounts, 4 days per week for a total of 1,000 accounts per week; include a minimum of 25 accounts for Route Review of "Route A". For each Route Review of a Hauler Route, Contractor shall inspect at least the following minimum number of Containers, but may inspect more if Contractor deems necessary; and shall inspect all Containers placed for collection (including Recycling Containers, Organics Containers, and Garbage Containers). Each inspection shall involve lifting the Container lid and observing the contents, but shall not require Contractor to disturb the contents or open any bags. Contractor may select the Containers to be inspected at random, or (if mutually agreed with City) by any other method not prohibited under the SB 1383 Regulations. For the avoidance of doubt, Contractor shall not be required to annually inspect every Container on a Hauler Route. Contractor shall include the results of each Route Review in its next regularly scheduled report to

City.

B. Notice of Contamination. For purposes of determining if Recyclable Materials or Organic Waste are deemed to be contaminated, if, by visual or digital inspection, Recyclable Materials are commingled with ten percent (10%) by weight or volume of Prohibited Container Contaminants, or if, by visual inspection, Organic Waste is commingled with three percent (3%) by volume of Prohibited Container Contaminants, then Recyclable Materials and/or Organic Waste will be deemed to be contaminated, Contractor shall notify the customer of the violation in writing. The written notice shall include information regarding the requirement to properly separate materials into the appropriate Containers. The notice may be left on the customer's Container, gate, or door at the time the violation is discovered, and/or be mailed, e-mailed, electronically messaged or delivered personally to the customer within 30 days. Contractor may dispose of the contents of any Container found to contain Prohibited Container Contaminants and may charge a contamination fee not to exceed the fee approved by the City. The notice shall be provided in English and Spanish.

ARTICLE 5. STANDARD OF PERFORMANCE

5.1 GENERAL

Contractor shall at all times comply with Applicable Laws and provide services in a manner that is safe to the public and the Contractor's employees. Except to the extent that a higher performance standard is specified in this Agreement, Contractor shall perform services in accordance with Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D management practices common to Northern California.

5.2 OPERATING HOURS AND SCHEDULES

A. Hours of Collection. Unless otherwise authorized by the City Contract Manager, Contractor's days and hours for Collection operations shall be as follows:

1. **Residential Premises.** Collection from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday.

2. **Commercial Premises.** Collection from Commercial Premises that are <u>two hundred (200) feet or less</u> from Residential Premises shall only occur between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. Collection from Commercial Premises <u>more than</u> two hundred (200) feet from Residential Premises shall only occur between the hours of 4:00 a.m. and 6:00 p.m., Monday through Saturday. Contractor is encouraged to schedule Collection from Commercial Customers in close proximity to any Residential Customers after 6:00 a.m. by focusing early morning Collection service in Commercial areas away from Residential neighborhoods. Upon complaints from Residential Customers about Collection noise, the Contractor shall re-route its Collection vehicles to the extent practical and shall meet and confer with the City to agree on a proposed solution.

B. Holiday Collection Schedule. Contractor, at its sole discretion, may choose not to provide Collection services on a Holiday. In such event, Contractor shall provide Collection services on the day following the Holiday thereby adjusting subsequent work that week; however, Customer service days shall be returned to the normal schedule within one (1) week of the Holiday. The

Contractor shall provide Customers notice of Holiday-related changes in Collection schedules at least two (2) weeks prior to the change.

5.3 COLLECTION STANDARDS

A. Servicing Containers. Contractor shall pick up and return each Container to the location where the Occupant properly placed the Container for Collection. Contractor shall place the Containers upright with lids properly secured.

Contractor, at the request of Customers, shall provide special services including: (i) unlocking Containers; (ii) accessing Container enclosures with a key; or, (iii) pulling or pushing Containers to the Collection vehicle and may charge Customers Rates for special services not to exceed City-approved Maximum Rates.

B. Litter Abatement. Contractor shall use due care to prevent spills or leaks of material placed for Collection, Used Motor Oil, fuel, and fluids while providing services under this Agreement. If any materials are spilled or leaked during Collection and transportation, the Contractor shall clean up all spills or leaks before leaving the site of the spill.

Contractor shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, hot load (combustion of material in the truck), or accidental damage to a vehicle.

Contractor shall cover all open Drop Boxes at the pickup location before transporting materials to the Approved Facility.

C. Clean-Up. During the Collection or transportation process, the Contractor shall clean-up litter in the immediate vicinity of any Container storage area (including the areas where Collection Bins and Drop Boxes are delivered for Collection) whether or not Contractor has caused the litter. The Contractor shall discuss instances of repeated spillage not caused by it directly with the Customer or Generator responsible and will report such instances to City. City will attempt to rectify such situations with the Customer or Generator if Contractor has already attempted to do so without success.

D. Noise. All Collection operations shall be conducted as quietly as possible and shall conform to applicable Federal, State, County and City noise level regulations, including the requirement that the noise level during the stationary compaction process not exceed seventy-five (75) decibels at a distance of twenty-five (25) at a height of five (5) feet from the Collection vehicle. The City may conduct random checks of noise emission levels to ensure such compliance.

E. Routes. Upon City request, Contractor shall provide City with route information and maps of the Single-Family Collection routes in sufficient detail that allows the City to plan its street sweeping routes. Route maps shall be provided in Adobe Acrobat PDF format or other format agreed upon by the City Contract Manager. Contractor shall meet and confer with the City Contractor Manager to amend the route schedule, and Contractor shall not modify scheduled Collection routes or scheduled Collection days without prior written notification to and approval of City. Contractor's Collection vehicles shall only be driven on residential or private streets at the times necessary to service the accounts on those streets.

Contractor shall Collect materials generated in the City in Collection Vehicles separately from

other materials generated outside the City.

5.4 VEHICLE REQUIREMENTS

Contractor shall provide a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by the Agreement in strict accordance with its terms. Contractor shall have available sufficient back-up vehicles for each type of Collection vehicle used to respond to scheduled and unscheduled maintenance, service requests, complaints, and emergencies. All such vehicles shall have watertight bodies designed to prevent leakage, spillage, or overflow. All such vehicles shall meet On-Road Heavy Duty Vehicle emissions requirements for model year 2011, regardless of the actual model year of Contractor's vehicles, and generally comply with all Federal, State, and local laws and regulations. On or before January 1, 2014, Contractor shall provide all new Collection vehicles. Prior to the operation of new Collection vehicles, Contractor may operate used vehicles.

All Collection vehicles shall operate on renewable natural gas (RNG). Vehicles shall be fueled at the Union City corporation yard, located at 34650 Seventh Street, Union City, CA; the Contractor's Newby Island fueling facility at 1601 Dixon Landing Road, San Jose, CA; or the Contractor's vehicle maintenance facility at 42600 Boyce Road, Fremont, CA if a RNG fueling station is installed there.

Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles. Collection vehicles shall present a clean appearance while providing service under this Agreement. Collection vehicles shall be thoroughly washed and steam cleaned on a regular basis so as to present a clean appearance. City may inspect vehicles at any time to determine compliance with sanitation requirements. Contractor shall make vehicles available to the Alameda County Health Department for inspection, at any frequency it requests.

Contractor's name and local telephone number shall be displayed on all vehicles in at least four (4) inch characters. Vehicles shall be equipped with sign board holders or other hardware to allow public education signage of no less than thirty-six (36) by forty-eight (48) inches to be displayed on both sides of the vehicle.

Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall be taken out of service until they are repaired and operate properly. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. City Contract Manager may inspect vehicles at any reasonable time, and within three (3) calendar days of such a request, to determine compliance with sanitation requirements.

Contractor shall furnish the City a written inventory of all vehicles, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all vehicles by manufacturer, identification number, date of acquisition, type, capacity and decibel rating.

5.5 CONTAINER REQUIREMENTS

A. **General**. Contractor shall provide Customers with Collection Containers as requested by the Customer to meet its desired Service Level. All Contractor-provided Containers shall be new as of the Commencement Date and shall be designed and constructed to be watertight and prevent the leakage of liquids. Contractor shall purchase Containers with a useful life of ten (10) years or more and shall depreciate the Containers over a ten-year (10-year) period. New Container

purchases shall comply with the requirements of Sections 5.5.B, C and F and Exhibit H.

Contractor shall make Compactors available to Customers for purchase or lease and shall allow Customers to purchase or lease Compactor's through an outside vendor.

B. **Carts.** Solid Waste Container sizes for Customers subscribing to Cart service shall be twenty (20), thirty-five (35), sixty-four (64), and ninety-six (96)-gallons. Contractor shall provide "true" twenty (20) gallon carts in which the molded cart body has a capacity of twenty (20) gallons. For Single-Family Customers, sixty-four (64)-gallon Recycling Carts and Organic Carts shall be the standard Container provided by Contractor with Contractor providing ninety-six (96-) or thirty-five (35-) gallon Carts in lieu of sixty-four (64-) gallon Carts upon Customer request at no additional charge to the Customer.

Upon request, specially designed one-gallon plastic jugs shall also be given, free of charge to each Single-Family Resident and Multi-Family Residential Premises when subscribing to Residential Cart service for Used Motor Oil Collection. Collection of Used Oil Filters shall be accomplished by placing the Used Oil Filter in a Customer-provided zip-locked plastic bag(s) next to the Recycling Cart.

C. **Bins, Drop Boxes and Compactors.** Contractor shall provide Bins, Drop Boxes and/or Compactors for storage and Collection of Solid Waste, Recyclables, Organic Materials, and C&D. Contractor shall install plastic lids on all Bin Containers owned and serviced by the Contractor that conform to the following color scheme: For collection of Garbage, bin bodies shall be white with black lids, for collection of Recyclables, bin bodies shall be blue; and for collection of Organic Materials, the bin bodies shall be green. In addition, Contractor shall ensure that all Containers it uses to provide such services to customers serviced under the Agreement conform to such color scheme by January 1, 2036. Hardware such as hinges and wheels may be any color. All Containers with the capacity of one cubic yard or more shall meet applicable Federal regulations and Solid Waste Bin safety. All Bins, Drop Boxes and Compactors shall be painted the Contractor's standard color (subject to approval by the City Contract Manager). Contractor shall steam clean and repaint all Bins, Drop Boxes and Compactors as requested by Customer or as deemed necessary by Contractor to present a clean appearance. If Customer requests steam cleaning more frequently than one (1) time per year, Contractor may charge the Customer at Rates not to exceed City-approved Maximum Rates for such service.

D. **Repair and Replacement of Containers; Inventory**. Contractor shall be responsible for repairing or replacing Containers when Contractor determines the Container is no longer suitable for service; or when the City or Customer requests replacement of Customer's Container that does not properly function, leaks, is damaged, or is otherwise not fit for service. Contractor shall be responsible for acquiring the replacement Containers. Contractor shall maintain a sufficient inventory of Containers to accommodate new Customer requests for service, requests for change in Service Levels (size, type, or number of Containers) from current Customers, and requests for replacement due to damage. All such Containers shall be provided within one (1) week of request. Contractor's failure may request in assessment of Liquidated Damages pursuant to Section 10.6.

Contractor shall repair or replace all damaged or broken Containers within a one (1) week period. If the repair or replacement cannot be completed within a week, the Customer shall be notified by Contractor and a larger Container shall be made available until the proper Container can be replaced.

E. **City Ownership of Containers at End of Term**. Upon expiration or early termination of Agreement, all Carts and Bins (for permanent Customers) purchased and put into service at Customers' Premises during the Term of the Agreement shall become property of the City at no cost to the City if such Containers are fully depreciated. All Carts and Bins (for permanent Customers) purchased and put into service at Customers' Premises during the Term of the Agreement that have not been fully depreciated shall be available to the City, at the City's option, at a cost reflecting the net book value.

At its sole discretion, the City may elect not to exercise its rights with regards to this Section and, in such case; the Containers shall remain the property of the Contractor upon the expiration date of this Agreement or date of its earlier termination of this Agreement. In such case, Contractor shall be responsible for outstanding depreciation and for removing all Containers in service from premises within fourteen (14) Business Days of the expiration date or early termination date of this Agreement.

F. **New Container Standards**. Contractor shall provide Containers for storage and Collection of Solid Waste, Recyclable Materials, Organic Materials, and C&D which shall be designed and constructed to be watertight and prevent the leakage of liquids.

When purchasing plastic Collection Containers, Contractor shall purchase Containers that contain a minimum of 30% post-consumer recycled plastic content. All such Containers shall be 100% recyclable.

All new Carts shall be manufactured by injection or rotational molding methods and shall meet the Cart design, color, and performance requirements provided in Attachment N. Contractor shall obtain the City's written approval of Cart specifications before acquisition. Carts provided to Customers shall have a useful life of ten (10) or more years as evidenced by a manufacturer's warranty or other documentation acceptable to the City.

All Containers with a capacity of one (1) cubic yard or more shall meet applicable federal regulations for Bin safety and be covered with attached lids. All Bins, Drop Boxes, and Compactors shall be painted the Contractor's standard color and shall prominently display the name and telephone number of the Contractor.

Contractor shall differentiate Solid Waste Containers, Source Separated Recyclable Materials Containers, Source Separated Organic Materials, and Source Separated Recyclable C&D from each other by: (i) providing Containers of different colors, or (ii) adhering clearly-visible labels to each Container identifying the allowable material type. The second option is not acceptable for Carts purchased at the Commencement of the Agreement and during the Term; any new Carts shall have bodies in colors that differentiate the different material types to be Collected and such colors shall be approved by the City.

G. **Container Labeling**. For each new or replacement container deployed on or after Effective Date, Contractor shall label with adhesive label or in-mold graphics, or white, hot-stamped lettering, with language and graphics, that clearly lists the acceptable materials (e.g., Solid Waste, Recyclable Materials, cardboard, mixed paper, Yard Waste, Food Scraps and Other Targeted Organic Materials, Source Separated Recyclable C&D, , wood waste, metal, etc.) to be placed in

the Container for Collection and the primary items that are Prohibited Container Contaminants for that Container type. The labeling shall be positioned on each Container so it is visible to the Customer at all times.

All Containers shall display the Contractor's name, local telephone number, and some identifying inventory or serial number.

Contractor shall pay the City by September 1, 2023 a fee of $75,000 to be used by the City to print and label residential collection containers.

H. **Maintenance, Cleaning, Painting**. All Containers shall be maintained in a safe, serviceable, and functional condition and present a clean appearance. Contractor shall repair or replace all Containers damaged by Collection operations, unless damage is caused by Customer's gross negligence, in which case, the Customer will be billed for repair or replacement of Container. All Containers shall be maintained in a functional condition.

Contractor shall steam clean and repaint all Containers as needed (other than Carts) so as to present a clean appearance. Contractor shall offer steam cleaning service (or clean Container exchange) to Customers requesting such service, and shall charge Customers for such cleaning (or Container exchange) at a Rate not to exceed City-approved Maximum Rates.

Contractor shall remove graffiti from Containers within forty-eight (48) hours of identification by Contractor or notice by City or Customer if such graffiti includes any written or pictorial obscenities and otherwise within five (5) Business Days. Contractor staff including drivers shall be responsible for promptly reporting graffiti to maintain a clean appearance for all containers.

At the City's request, Contractor shall provide City with a list of Containers and the date each Container was painted and maintained.

5.6 PERSONNEL

A. **General.** Contractor shall furnish such qualified personnel as may be necessary to provide the services required by this Agreement in a safe and efficient manner. Contractor shall designate at least one (1) qualified employee as City's primary point of contact with Contractor who is principally responsible for Collection operations and resolution of service requests and complaints.

Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Contractor shall not permit its employees to accept, demand, or solicit, directly or indirectly, any additional compensation, or gratuity from members of the public.

B. **Driver Qualifications.** All drivers must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles. Contractor shall use the Class II California Department of Motor Vehicles employer "Pull Notice Program" to monitor its drivers for safety.

C. **Safety Training.** Contractor shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment. Contractor shall train its employees involved in Collection to identify, and not to collect, Excluded Waste. Upon the City Contract

Manager'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 its trainings.

D. **Provision of Field Supervision**. Contractor shall designate one, qualified employee as supervisor of field operations. The field supervisor will devote at least fifty percent (50%) of his or her time in the field checking on Collection operations, including responding to complaints.

E. **Identification.** All representatives of the Contractor shall display and/or provide proper identification or documentation exhibiting their association with the Contractor while operating in the field.

F. **Wage and Benefits**. Wages and benefits applicable to employees performing work under the Agreement shall be commensurate with current compensation or in accordance with existing agreements with represented labor groups. Labor agreements for drivers and mechanics shall be included as Exhibit K and future modification shall be submitted to the City. The Contractor shall provide full copies of the labor agreements including any and all amendments, extensions, renewals, or other forms of modification.

G. **Subcontractor Obligations**. Subcontractors shall be required to comply with the obligations stated in this Section 5.6.

5.7 HAZARDOUS WASTE INSPECTION AND HANDLING

A. **Inspection Program and Training.** Contractor shall develop a load inspection program that includes the following components: (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and, (iv) record keeping and emergency procedures.

Contractor's load checking personnel, including its Collection vehicle drivers, shall be trained in: (i) the effects of Hazardous Substances on human health and the environment; (ii) identification of prohibited materials; and, (iii) emergency notification and response procedures. Collection vehicle drivers shall inspect Containers before Collection when practical.

B. **Response to Excluded Waste Identified During Collection.** If Contractor determines that material placed in any Container for Collection is Excluded Waste or presents a hazard to Contractor's employees, the Contractor shall have the right to refuse to accept such material. The Customer or Generator shall be contacted by the Contractor and requested to arrange proper disposal. If the Customer or Generator cannot be reached immediately, the Contractor shall, before leaving the Premises, leave a tag at least two (2) inches by six (6) inches in size, which indicates the reason for refusing to Collect the material and lists the phone number of a facility that accepts the Excluded Waste or a phone number of an entity that can provide information on proper disposal of the Excluded Waste. Under no circumstances shall Contractor's employees knowingly Collect Excluded Waste or remove unsafe or poorly containerized Excluded Waste from a Collection Container. Prior to Commencement of this Agreement, the tag that will be used to notice Customers of reason for non-Collection shall be reviewed and approved by the City Contract Manager.

If Excluded Waste is found in a Collection Container or Collection area that could possibly result in imminent danger to people or property, the Contractor shall immediately notify the Fire Department.

C. Response to Excluded Waste Identified At Disposal or Processing Facility. Materials Collected by Contractor will be delivered to the Approved Facilities for purposes of Processing or disposal. In the event that load checkers and/or equipment operators at such facility identify Excluded Waste in the loads delivered by Contractor, such personnel shall remove these materials for storage in approved, on-site, Excluded Waste storage Container(s). Contractor shall arrange for removal of the Excluded Wastes at its cost by permitted haulers in accordance with Applicable Laws and regulatory requirements. The Contractor may at its sole expense attempt to identify and recover the cost of disposal from the Customer or Generator. If the Customer or Generator can be successfully identified, the cost of this effort, as well as the cost of disposal shall be chargeable to the Customer or Generator.

5.8 CITY CONTRACT MANAGER

City has designated staff, the City Contract Manager, to be responsible for the monitoring and administration of this Agreement. Contractor shall meet and confer with the City Contract Manager to resolve differences of interpretation and implement and execute the requirements of this Agreement in an efficient, effective, manner that is consistent with the stated objectives of this Agreement.

From time to time the City Contract Manager may designate other agents of City to work with Contractor on specific matters. In such cases, those individuals should be considered designates of the City Contract Manager for those matters to which they have been engaged. Such designates shall be afforded all of the rights and access granted thereto. In the event of a dispute between the City Contract Manager's designate and Contractor, the City Contract Manager's determination shall be conclusive.

In the event of dispute between the City Contract Manager and the Contractor regarding the interpretation of or the performance of services under this Agreement, the City Contract Manager's determination shall be conclusive except where such determination results in a material impact to the Contractor's revenue and/or cost of operations. In the event of a dispute between the City Contract Manager and the Contractor results in such material impact to the Contractor, Contractor may appeal the determination of the City Contract Manager to the City Council, whose determination shall be conclusive. For the purposes of this Section, "material impact" is an amount equal to or greater than one-quarter (1/4) of one (1) percent of Contractor's annual Gross Receipts under this Agreement.

City Contract Manager or their designate shall have the right to observe and review Contractor operations and Processing Facilities and enter Premises for the purposes of such observation and review, including review of Contractor's records, during reasonable hours with reasonable notice. In no event shall Contractor prevent access to such Premises for a period of more than three (3) calendar days after receiving such a request.

5.9 COOPERATION WITH CITY AND STOPWASTE

The Contractor shall cooperate with the City, its agent, and/or StopWaste (also known as the Alameda County Waste Management Authority and Alameda Source Reduction and Recycling Board) and its agent if the City or StopWaste want to collect data, perform field work, and/or evaluate and monitor program results related to Collection, Processing, and disposal services performed under the terms of this Agreement. Contractor shall provide requested data, allow site visits, etc. to support the efforts of the City and StopWaste.

5.10 BILLING AUDIT AND PERFORMANCE REVIEW

A. Selection and Cost. The City may conduct one (1) billing audit and performance review ("review") of the Contractor's performance during the extended term of this Agreement, and one (1) additional review if Term is further extended in accordance with Section 2.1 (C). The reviews will be performed by a qualified firm under contract to the City. The City shall have the final responsibility for the selection of the firm but shall seek and accept comments and recommendations from the Contractor. The Contractor shall be responsible for the cost of the review up to a maximum of Eighty Thousand Dollars ($80,000.00) for the initial term, and Eighty-Five Thousand Dollars ($85,000) for the Extended Term; with the cost being applied as a pass-through during the next annual rate adjustment.

B. Purpose. The Performance Reviews may be designed to address all appropriate areas which may include, but are not limited to the following.

a) Compliance with the terms of this Amended Agreement and Applicable Laws.

b) Overall operational structure and management systems and procedures.

c) Efficiency of collection operations, including an analysis of routes, schedules and the impact of Franchise requirements.

d) Staffing practices, including the deployment of management and supervisory personnel.

e) Financial management practices, including the Contractor's billing and collection system and its policies with regard to uncollected Customer accounts.

f) Employee job and safety training, and management of Hazardous Waste.

g) Procedures for receiving and resolving Customer and Service Recipient complaints and concerns.

h) Procedures for the acquisition, maintenance, safety check, and replacement of equipment.

i) Utilization and management of facilities, equipment, and personnel.

j) Comparison with practices of businesses deemed similar to the Contractor.

C. Customer Service Review. City (or its designated consultant) may also review the customer service functions and structure utilized by Contractor. This may include Contractor's protocol for addressing Service Recipient complaints and service interruption procedures. Complaint logs may be reviewed, along with procedures and systems for tracking and addressing complaints. On-site and field observations by City (or its designated consultant) may include, but are not necessarily limited to:

i. Interviews and discussions with Contractor's administration and management personnel;

ii. Interviews and discussions with Contractor's financial and accounting personnel;

iii. Interviews and discussions with route dispatchers, route drivers, vehicle maintenance staff, field and service supervisors, and managers;

iv. Review and observation of Contractor's customer service functions and structure, and vehicle maintenance practices;

v. Review of public education and outreach materials;

vi. Review of on-route collection services, including observation of driver performance and collection productivity and visual inspection of residential routes before and after collection to evaluate Cart placement and cleanliness of streets;

vii. Review of vehicle and equipment maintenance log and accident or vehicle incident records, if any.

D. Contractor's Cooperation. Contractor shall cooperate fully with the review and provide all requested data, including operational data, financial data and other data requested by the City within thirty (30) Work Days. Failure of the Contractor to cooperate or provide the requested documents in the required time shall be considered an event of default.

E. Additional Billing Audit and Performance Review. In the event that the Billing Audit and Performance Review concludes that Contractor is not in compliance with all terms and conditions of this Amended Agreement and such non-compliance is material, the City may conduct an Additional Billing Audit and Performance Review to ensure that Contractor has cured any such area of non-compliance. Contractor shall be responsible for the cost of any such Additional Billing Audit and Performance Review.

F. City Requested Program Review. The City reserves the right to require the Contractor to periodically conduct reviews of the SFD and MFD and Commercial Garbage, Recyclable Materials, and Organic Waste collection programs to assess one or more of the following performance indicators: average volume of recyclable materials per setout per customer, average volume of green waste and or food scraps per setout per customer, participation level, contamination levels, etc. Prior to the program evaluation review, City and Contractor shall meet and discuss the purpose of the review and agree on the method, scope, and data to be provided by the Contractor.

G. Cooperation with Other Program Reviews. If the City wants to collect program data, perform field work, conduct route audits to investigate customer participation levels and setout volumes and/or evaluate and monitor program results related to Garbage, Recyclable Materials and Organic Waste collected in the City by the Contractor, the Contractor shall cooperate with the City or its agent(s). Contractor shall also cooperate with any waste generation studies conducted by the City or its agent(s).

H. Changes to Operations. In conjunction with the review of a particular Performance Review, the City reserves the right to require changes to the Contractor's operations, which the City determines to be necessary or appropriate by reason of the findings or results of the Performance Review to carry out the intent of the terms and conditions of this Amended Agreement, and subject to the modifications to the Contractor's Charges and Rates. When such requirements are placed on Contractor, the City and the Contractor shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the Contractor. The City and the Contractor shall not unreasonably withhold agreement to such compensation adjustment.

5.11 DIVERSION REQUIREMENT

A. Diversion Rate Calculation. CalRecycle Diversion Requirement Calculation. For purpose of determining whether Contractor has met its CalRecycle diversion requirements under this Agreement, City and Contractor agree the CalRecycle diversion requirement rate will be calculated using the following formula: "Disposal Rate = City's Pounds Per Person Per Day

generated disposal divided by two times CalRecycle's Target disposal rate for the City (Pounds Per Person Per Day). CalRecycle's Diversion Rate = 1 – Disposal Rate."

B. **Contractor's Diversion Requirements**. Contractor's CalRecycle Diversion requirements are:

a) For the term of the agreement, the minimum annual CalRecycle Diversion standard will be fifty percent (50%).

F. **Failure to Meet Diversion Requirements.** If Contractor fails to meet its CalRecycle diversion standards, and Contractor has implemented all required Contractor diversion programs, the City may direct Contractor to modify its programs or implement new diversion programs. Any such modification of Contractor's existing diversion programs or addition of new diversion programs done at the City's request would be in accordance with Section 3.5. (Change in scope)

Notwithstanding any other provision of this Agreement to the contrary, where CalRecycle has determined that there are no commercially viable markets for a specific type of Recyclable Material(s), or with written notice to City, Contractor is unable to identify a market for one or more Recyclable Material(s) despite the exercise of commercially reasonable efforts to process and market the material, and determines, in the interest of safeguarding public health, to dispose of the Recyclable Material(s), such a determination shall not constitute a failure to implement service, a failure to implement a program, or an event of default hereunder.

ARTICLE 6. RECORD KEEPING AND REPORTING

6.1 RECORD KEEPING AND AUDIT OF RECORDS

Contractor shall maintain accounting, statistical, operational, and other records related to its performance as necessary to provide reporting under AB 939, AB 341, AB 1826 and SB 1383 and to demonstrate compliance with this Agreement. Contractor shall maintain, in form and format satisfactory to the City, an Implementation Record meeting the requirements of the SB 1383 Regulations and CalRecycle. Contractor shall be responsible for requesting information from the City for City-related activities such as procurement and outreach and education for maintenance of the Implementation Record; and shall obtain such information as appropriate from StopWaste. The Contractor shall maintain complete financial statements and accounting records for operations under this Agreement. Contractor shall account for revenues received and expenses incurred as a result of this Agreement separately from the accounting for other operations performed by Contractor or its Affiliates. The Gross Receipts derived from the Collection Services under this Agreement, whether such services are performed by the Contractor, by an Affiliate, or by a Subcontractor, shall be recorded as revenues in the accounts of the Contractor. Upon demand, the Contractor shall permit the City Contract Manager to examine and audit the books of account of the Contractor at any and all reasonable times for the purpose of verifying Contractor's performance under this Agreement. Upon request, the Contractor shall allow the City Contract Manager to examine the reports of Gross Receipts and the invoices pertaining to any fee or charge approved by the City Council for Services provided under this Agreement. Such request shall be made at reasonable times and with reasonable notice.

In the event of an extraordinary Rate adjustment pursuant to Section 8.4, such records shall be subject to review in accordance with appropriate professional standards, and inspection, for the primary purpose of reviewing changes in costs to the Contractor attributable to the extraordinary Rate adjustment request, at any reasonable time by an independent third party. The selection of the independent third party as well as the scope of work for such review shall be approved in advance by the City Contract Manager. The independent reviewer shall provide any and all drafts of its review to the City and the Contractor. The Party requesting the extraordinary Rate adjustment review shall bear the cost of the review.

Unless otherwise required in this Article, Contractor shall retain all records and data required to be maintained by this Agreement for the Term of this Agreement plus three (3) years after its expiration or earlier termination. Records and data shall be in chronological and organized form and readily and easily interpreted. Upon request, any such records shall be retrieved in a timely manner by Contractor and made available to the City Contract Manager. Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and records shall be protected and backed-up. The Contractor shall obtain, within one hundred twenty (120) days of a request by the City Contract Manager, complete independently audited financial statements for the prior calendar year, including its balance sheet, statement of revenues and expenses, and statement of changes in cash position, and provide such financial statements to the City Contract Manager.

City views its ability to defend itself against Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and related litigation as a matter of great importance. For this reason, City regards its ability to prove where Collected Solid Waste is taken for transfer or disposal. Contractor shall maintain records which can establish where Solid Waste Collected was disposed. This provision shall survive the expiration or earlier termination of this Agreement. Contractor shall maintain these records for a minimum of ten (10) years beyond expiration or earlier termination of the Agreement. Contractor shall provide these records to City (upon request or at the end of the record retention period) in an organized and indexed manner rather than destroying or disposing of them.

6.2 REPORT SUBMITTAL REQUIREMENTS

Contractor shall submit monthly and quarterly reports within thirty (30) calendar days after the end of the calendar month or quarter, as applicable. Contractor shall submit annual reports no later than forty-five (45) calendar days after the end of each calendar year. Monthly, quarterly, and annual reports shall, at a minimum, include all data and information as described in Exhibit C.

Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by the City Contract Manager and such approval shall not be unreasonably withheld. City Contract Manager may, from time to time during the Term, review and request changes to Contractor's report formats and content and Contractor shall not unreasonably deny such requests. Upon City request, Contractor shall enable City to work with Contractor to develop custom reports in addition to the regularly scheduled reports.

Contractor shall submit (via mail and e-mail) all reports to the City Contract Manager.

City reserves the right to require Contractor to provide additional reports or documents as City Contract Manager reasonably determines to be required for the administration of this Agreement or compliance with Applicable Law.

ARTICLE 7. FRANCHISE FEES AND OTHER FEES

7.1 FRANCHISE FEE

In consideration of the rights provided Contractor herein, Contractor shall pay Franchise Fees to City each month equal to twenty percent (20%) of Gross Receipts for all services performed under this Agreement. This fee may be adjusted by mutual agreement of the City and Contractor through a written amendment to this Agreement. In the event that the City and Contractor agree to an adjustment to the amount of the Franchise Fee during the terms of this Agreement, Contractor shall include an amount equal to the adjustment in Contractor's Compensation.

7.2 ADJUSTMENT TO FEES

City may set other fees or adjust the fees established in this Article from time to time during the Term of this Agreement and such adjustments and any Franchise Fee adjustments shall be included in the adjustment of Maximum Rates as described in Exhibit D.

7.3 PAYMENT SCHEDULE AND LATE FEES

At the end of each month, during the Term of this Agreement, Contractor shall remit to City all fees for the previously completed month as described in this Article. Such fees shall be remitted to City and sent or delivered to the City Contract Manager. If such remittance is not paid to City on or before the last day of the month, all fees due shall be subject to a delinquency penalty of two percent (2%), which attaches on the first day of delinquency. The delinquency penalty shall be increased an additional two percent (2%) for each additional month the payment remains delinquent.

Each monthly remittance to City shall be accompanied by a statement listing the amount of each fee paid; calculation of each fee; and, statement of Gross Receipts, by Customer Type for the period collected from all operations conducted or permitted by this Agreement. City Contract Manager may, at any time during the Term, request a detailed calculation of Gross Receipts which may include, but is not necessarily limited to, the number of Customers charged at each Service Level and Rate for each billing period.

City Contract Manager may, at any time during the Term, perform an audit of Contractor's billings and payment of fees. Contractor shall cooperate with the City Contract Manager in any such audit. Should City or its agent perform this review and identify billing errors or other errors in payment of fees valued at one (1) percent or more of Gross Receipts, Contractor shall, in addition to compensating City for lost fees, reimburse the City's cost of the review.

7.4 ONE-TIME NEGOTIATIONS PAYMENT

Within (5) Business Day of the Effective Date of this Agreement, Contractor shall pay the City thirty-one thousand, one hundred and twenty-three dollars ($31,123). The Contractor may recover this payment through Contractor's Compensation if the expense is amortized over ten (10) years.

7.5 SB 1383 FEE

In consideration of the administrative costs of managing the City's solid waste program, including but not limited to implementation of SB 1383, Contractor shall pay City an annual SB 1383 Fee in an amount adopted by a resolution of the City Council or by City Manager if City Council has delegated such authority to the City Manager by resolution. Such fee shall be treated as a Pass-Through Cost during Indexed and Cost-Based Rate Adjustments and not subject to profit.

ARTICLE 8. CONTRACTOR'S COMPENSATION AND RATE SETTING

8.1 GENERAL

The Contractor's Compensation for performance of all its obligations under this Agreement shall be Gross Receipts. Contractor's Compensation provided for in this Article shall be the full, entire and complete compensation due to Contractor pursuant to this Agreement for all labor, equipment, materials and supplies, Processing and disposal fees, fees due to City, taxes, insurance, bonds, overhead, operations, profit, and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Nothing herein shall obligate City to provide any compensation to Contractor beyond Gross Receipts.

If Contractor's actual costs, including fees due to City, are more than Gross Receipts, Contractor shall not be compensated for the difference in actual costs and actual Gross Receipts. If Contractor's actual costs are less than the actual Gross Receipts, Contractor shall retain the difference provided that Contractor has paid City fees pursuant to Article 7.

Under this Agreement, Contractor shall have the right and obligation to charge and collect from Customers, Rates that shall not exceed the Maximum Rates in Exhibit L that are approved by the City for provision of services to Customers. The Maximum Rates for Rate Period One are based on the Contractor's Proposal. Contractor's proposed costs and operating assumptions for Rate Period One are presented in Exhibit N.

The Contractor or its Subcontractor(s) that operates the Approved Facilities shall retain revenues received for the sale of Source Separated Recyclable Materials including California Redemption Value revenues, Source Separated Organic Materials, and Source Separated Recyclable C&D. Such revenues have been considered in the establishment of Maximum Rates for services provided under this Agreement. Neither Contractor nor its Affiliates or Subcontractor(s) that operates the Approved Facilities are entitled to grant funds available through the Department of Resources Recycling and Recovery (CalRecycle) through its "Curbside Supplemental Payments" for registered Curbside Recycling programs or "City/County Payment Program" pursuant to Section 14581(a)(5)(A) of the California Beverage Container Recycling and Litter Reduction Act.

8.2 RATES AND ANNUAL ADJUSTMENTS

A. General. The City shall be responsible for approving Maximum Rates as described in this Article.

A Maximum Rate has been established for each individual Service Level and the initial Rates for Rate Period One are presented in Exhibit L. Contractor may, in its sole discretion, charge Customers any amount up to and including the Maximum Rate approved by the City, but in no case exceeding the Maximum Rate. Contractor shall charge all Customers that have the same Service Level at the same Rate except as provided herein for seniors and life-line customers so that Customers are treated equitably. The comparability of Service Levels and related Rates shall be considered separately for Solid Waste, Source Separated Recyclable Materials, Source Separated Organics Materials, and C&D services.

If at any time during the Term of the Agreement, the Contractor determines the need for a Maximum Rate that does not appear on the City-approved Maximum Rate schedule in Exhibit L, Contractor shall immediately notify the City and request establishment of such Maximum Rate. For example, if a Customer requires Collection of Organic Materials in a fifteen (15) cubic yard Compactor five (5) times per week and the City-approved Maximum Rate schedule does not include this level of service, the Contractor must request that the City approve a Maximum Rate for this level of service.

B. **Rates for Rate Period One.** Maximum Rates for Rate Period One, which are presented in Exhibit L, were determined by Contractor and City and were approved by City resolution on or before the execution of the Agreement. The Maximum Rates for Rate Period One shall be effective from the Commencement Date of this Agreement through December 31, 2023.

C. **Rates for Subsequent Rate Periods.** Maximum Rates for subsequent Rate Periods shall be adjusted annually commencing January 1, 2024 in accordance with this Section 8.2 and Exhibit D.

The index-based adjustment, which is described in Exhibit D1, involves applying the percentage change in the All Urban Consumers Index (CPI-U) – Water and Sewer and Trash Collection (as published by the U.S. Department of Labor, Bureau of Labor Statistics, Series CUSR0000SEHG to calculate adjusted Maximum Rates. Such Rate adjustment calculations shall be performed in strict conformance to the procedures described in Exhibit D1.

The City may request one cost-based Rate adjustment (using the methodology described in Exhibit D2) to set Maximum Rates for Rate Periods Three, Four or Five, Contractor may request one cost-based Rate adjustment to set Maximum Rates for Rate Period Four or Five, and Contractor and City may each request one cost-based Rate adjustment to set Maximum Rates for Rate Periods Six, Seven, Eight, Nine, or Ten provided that there are at least two (2) years between the cost-based Rate adjustments requested by Contractor. For example, if Contractor requests a cost-based Rate adjustment to set Rate Period Five Maximum Rates, Rate Period Seven is the earliest Rate Period that Contractor may request the next cost-based adjustment. In summary, up to four (4) cost-based Rate adjustments may be performed if the City and Contractor both exercise their rights pursuant to this paragraph. In the event that all businesses within the Newpark Planning Area close, Contractor can request an additional cost-based analysis.

A cost-based Rate adjustment, if requested by either Party, will be performed instead of the index-based Rate adjustment for that Rate Period. The option to request a cost-based adjustment process during the Term of the Agreement is intended to provide the Parties an opportunity to adjust Maximum Rates to more accurately reflect actual revenues and costs of operations if the revenue and cost indices are not tracking with actual changes. Such Rate adjustment calculations shall be performed in strict conformance to the procedures described in Exhibit D2.

D. **Rate Structure.** The City and Contractor shall meet and confer to change the relationship of individual Rates in comparison with other Rates. Any such changes would occur in conjunction

with the annual Rate adjustment process described in Section 8.2.C or in conjunction with a Rate adjustment resulting from an extraordinary Rate adjustment in accordance with Section 8.4.

8.3 APPROVED TRANSFER FACILITY COST RECONCILIATION

Parties recognize that the timing of the adjustment to Maximum Rates herein and the City's adjustment of the Tipping Fee(s) at the Approved Transfer Facility are not concurrent. As a result, the Approved Transfer Facility Tipping Fee(s) used in the calculation of adjusted Maximum Rates relies on an estimate of the Tipping Fee(s). At the end of each Rate Period, the City agrees to reconcile the actual Tipping Fee(s) and the estimated Tipping Fee(s) and calculate the net additional Approved Transfer Facility cost or net Approved Transfer Facility cost savings based on the Tonnage of material Contractor delivered to the Approved Transfer Facility. If Contractor incurred an additional Approved Transfer Facility cost, City shall pay the difference to Contractor or reflect the amount as an adjustment in the next annual Rate adjustment. If Contractor realized an Approved Transfer Facility cost savings, the savings shall be reflected as an adjustment in the next annual Rate adjustment.

8.4 EXTRAORDINARY RATE ADJUSTMENTS

It is understood that the Contractor accepts the risk for changes in cost of providing services and the service levels requested by Customers and therefore the extraordinary adjustments to Maximum Rates shall be limited to a Change in Law, or Force Majeure event that materially affects Contractor's costs of performance, or a City-directed change in scope. If a Change in Law, Force Majeure event or City-directed change in scope (pursuant to Section 3.5) occurs, the Contractor may petition City for an adjustment to the Maximum Rates in excess of the annual adjustment described in Section 8.2.

Contractor shall prepare an application for the extraordinary Rate adjustment calculating the net financial effect on its operations (both increases and decreases of costs and revenues) resulting from the Change in Law or City Directed Change in Scope (but not resulting from unrelated changes in costs and revenues), clearly identifying all assumptions related to such calculations and providing the underlying documentation supporting the assumptions. The application shall be prepared in compliance with the procedures described in Exhibit D2 and shall provide all information requested by City Contract Manager specific to the nature of the request being made. City Contract Manager shall evaluate the application for reasonableness. As part of that review, the City Contract Manager may request access to the financial statements and accounting records required to be maintained by the Contractor (pursuant to Article 6) in order to determine the reasonableness of the Contractor's application. Should the Contractor not grant such access, then the City may rely on the Contractor's Proposal and other information available to it as the basis for making reasonable assumptions regarding what those accounting and financial records would have shown and therefore the reasonableness of the Contractor's application. Contractor shall pay all reasonable costs incurred by the City, including the costs of outside accountants, attorneys, and/or consultants, in order to make a determination of the reasonableness of the requested Rate adjustment.

In the event of such an application for extraordinary Rate adjustment, it is understood that the City or Contractor, as the case may be, shall have the burden of demonstrating the reasonableness of the requested adjustment. Consent to any City or Contractor rate adjustment request that is reasonable and that is supported by the requesting Party's documentation shall not be unreasonably withheld by the other Party.

The Contractor may appeal the decision of the City Contract Manager to the City Council, which shall then

make the final determination as to whether an adjustment to the Maximum Rates will be made, and if a Rate adjustment is permitted, the amount of the Rate adjustment. With respect to an extraordinary Rate adjustment requested by the City Contract Manager, the City Council shall then make the final determination as to whether an adjustment to the Maximum Rates will be made, and if a Rate adjustment is permitted, the amount of the Rate adjustment.

ARTICLE 9. INDEMNITY, INSURANCE, AND PERFORMANCE BOND

9.1 INDEMNIFICATION

A. General. Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless (to the full extent permitted by law) City and its officers, officials, employees, volunteers, and agents from and against any and all claims, liability, loss, injuries, damage, expense, and costs (including without limitation costs and fees of litigation, including attorneys' and expert witness fees) (collectively, "Damages") of every nature arising out of or in connection with Contractor's performance under this Agreement, or its failure to comply with any of its obligations contained in the Agreement, except to the extent such loss or damage was caused by the negligence or willful misconduct of City.

B. Excluded Waste. Contractor acknowledges that it is responsible for compliance during the entire Term of this Agreement with all Applicable Laws. Contractor shall not store, transport, use, or dispose of any Excluded Waste except in strict compliance with all Applicable Laws.

In the event that Contractor negligently or willfully mishandles Excluded Waste in the course of carrying out its activities under this Agreement, Contractor shall at its sole expense promptly take all investigatory and/or remedial action reasonably required for the remediation of such environmental contamination. Prior to undertaking any investigatory or remedial action, however, Contractor shall first obtain City's approval of any proposed investigatory or remedial action. Should Contractor fail at any time to promptly take such action, City may undertake such action at Contractor's sole cost and expense, and Contractor shall reimburse City for all such expenses within thirty (30) calendar days of being billed for those expenses, and any amount not paid within that thirty (30) calendar day period shall thereafter be deemed delinquent and subject to the delinquent fee payment provision of Section 7.3. These obligations are in addition to any defense and indemnity obligations that Contractor may have under this Agreement. The provisions of this Section shall survive the termination or expiration of this Agreement.

Notwithstanding the foregoing, Contractor's duties under this subsection shall not extend to any claims arising from the disposal of Solid Waste at the Approved Transfer Facility or disposal facility that accepted Solid Waste from the Approved Transfer Facility, including, but not limited to, claims arising under Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) unless such claim is a direct result of Contractor's negligence or willful misconduct.

C. Environmental Indemnity. Contractor shall defend, indemnify, and hold City harmless against and from any and all claims, suits, losses, penalties, damages, and liability for damages of every name, kind and description, including attorneys' fees and costs incurred, attributable to the negligence or willful misconduct of Contractor in handling Excluded Waste.

D. **Related to AB 939, AB 341, AB 1826, and SB 1383.** Contractor's duty to defend and indemnify herein includes all fines and/or penalties imposed by CalRecycle if the requirements of AB 939, AB 341 AB 1826 and/or SB 1383 are not met by the Contractor with respect to the materials Collected under this Agreement and/or Contractor's other obligations under this Agreement, and such failure is: (i) due to the failure of Contractor to meet its obligations under this Agreement; or, (ii) due to Contractor delays in providing information that prevents Contractor or the City from submitting reports to regulators in a timely manner.

E. **Related to Proposition 218.** Should there be a Change in Law or a new judicial interpretation of Applicable Law, including, but not limited to, Article XIII C and D of the California Constitution (Commonly Proposition 218), which impacts the Maximum Rates for the Collection services established in accordance with this Agreement, Contractor agrees to meet and confer with City to discuss the impact of such Change in Law on either Party's ability to perform under this Agreement.

If, at any time, an adjustment to Maximum Rates determined to be appropriate by both City (which determination shall not be unreasonably withheld) and Contractor to compensate Contractor for increases in costs as described in this Agreement cannot be implemented for any reason, Contractor shall be granted the option to negotiate with City, in good faith, a reduction of services equal to the value of the Maximum Rate adjustment that cannot be implemented. If City and Contractor are unable to reach agreement about such a reduction in services, then Contractor may terminate this Agreement upon one hundred eighty (180) calendar days prior written notice to City, in which case the Contractor and City shall each be entitled to payment of amounts due for contract performance through the date of termination but otherwise will have no further obligation to one another pursuant to this Agreement after the date of such termination.

Should a court of competent jurisdiction determine that the Contractor cannot charge and/or increase its Rates for charges related to Franchise Fees and governmental fees and charges, Contractor shall reduce the Rates it charges Customers a corresponding amount, providing said fees, Rates and/or charges disallowed by the court are not related to the cost of providing service hereunder and had been incorporated in the Rates charged by Contractor to its Customers.

Nothing herein is intended to imply that California Constitution, Articles XIIIC or XIIID, apply to the Maximum Rates established for services provided under this Agreement; rather this Section is provided merely to allocate risk of an adverse judicial interpretation between the Parties.

This provision (Section 9.1) will survive the expiration or earlier termination of this Agreement and shall not be construed as a waiver of rights by City to contribution or indemnity from third parties.

9.2 INSURANCE

A. **General Requirements.** Contractor shall, at its sole cost and expense, maintain in effect at all times during the Term of this Agreement not less than the following coverage and limits of insurance:

B. **Coverages and Requirements.** During the Term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages. Insurance coverage shall be with limits not less than the following:

Comprehensive General Liability – $10,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage.

Automobile Liability – $10,000,000 combined single limit per accident for bodily injury and property damage (include coverage for hired and non-owned vehicles).

Workers' Compensation – **Statutory Limits/Employers' Liability** - $1,000,000/accident for bodily injury or disease.

Employee Blanket Fidelity Bond – $500,000 per employee covering dishonesty, forgery, alteration, theft, disappearance, and destruction (inside or outside).

2. Additional Insured. City, its officers, agents, employees, and volunteers shall be named as additional insured on all but the workers' compensation coverages. 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 and CG 20 37 for completed operations).

3. Said policies shall remain in force through the life of this Agreement and shall be payable on a "claims made" basis. For all "claims made" coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase "tail" coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than three (3) years thereafter. Proof of such "tail" or other continuous coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.

4. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and City's Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. The deductibles or self-insured retentions are for the account of Contractor and shall be the sole responsibility of the Contractor.

6. Each insurance policy shall provide or be endorsed to state that coverage shall not be suspended, voided, canceled by either Party, reduced in coverage or in limits except after thirty (30) calendar days prior written notice by certified mail, return receipt requested, has been given to City Contract Manager ten (10) Business Days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VII, unless otherwise approved by City Risk Manager.

8. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects City, its officers, agents, employees, and volunteers. Any insurance maintained by City shall apply in excess of, and not contribute to, coverage provided by Contractor's liability insurance policy.

10. To the extent legally enforceable, the Contractor shall waive all rights of subrogation against City, its officers, employees, agents, and volunteers.

C. **Endorsements.** Prior to the Effective Date pursuant to this Agreement, Contractor shall furnish City Contract Manager with certificates or original endorsements reflecting coverage required by this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf. All certificates or endorsements are to be received by, and are subject to the approval of, City Risk Manager before work commences.

D. **Renewals.** During the Term of this Agreement, Contractor shall furnish City Contract Manager with certificates or original endorsements reflecting renewals, changes in insurance companies, and any other documents reflecting the maintenance of the required coverage throughout the entire Term of this Agreement. The certificates or endorsements are to be signed by a Person authorized by that insurer to bind coverage on its behalf.

E. **Workers' Compensation.** Contractor shall provide workers' compensation coverage as required by State law, and prior to the Effective Date pursuant to this Agreement, Contractor shall file the following statement with City.

"I am aware of the provisions of Paragraph 3700 of the Labor Code that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement.

The Person executing this Certificate on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to do so on behalf of Contractor, and both the Person executing this Agreement on behalf of Contractor and Contractor understand that City is relying on this representation in entering into this Agreement."

9.3 PERFORMANCE BOND

Within seven (7) calendar days of the City's notification to Contractor that the City has executed this Agreement, Contractor shall file with the City a bond, payable to the City, securing the Contractor's performance of its obligations under this Agreement and such bond shall be renewed annually if necessary so that the performance bond is maintained at all times during the Term. The principal sum of the bond shall be Two Million Three Hundred Thousand Dollars ($2,300,000) and shall be adjusted every three (3) years, commencing with Rate Period Three, to equal three (3) months of the prior Rate Period's annual Gross Receipts. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California that has a rating of A or better in the most recent edition of Best's Key Rating Guide, and that has a record of service and financial condition satisfactory to the City. The bond shall be in the form attached as Exhibit J.

9.4 GUARANTY

Concurrently with execution of this Agreement, Contractor shall furnish a Guaranty of its performance under this Agreement, in the form of Exhibit G, properly executed by Republic Services, a Delaware corporation which owns all of the issued and outstanding common stock of Contractor.

ARTICLE 10. DEFAULT AND REMEDIES

10.1 EVENTS OF DEFAULT

All provisions of the Agreement are considered material. Each of the following shall constitute an event of default.

A. Fraud or Deceit. Contractor practices, or attempts to practice, any fraud or deceit upon the City.

B. Insolvency or Bankruptcy. Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

C. Failure to Maintain Coverage. Contractor fails to provide or maintain in full force and affect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.

D. Violations of Regulation. Contractor violates any orders or filings of any regulatory body having authority over Contractor relative to this Agreement that reasonably may materially interfere with Contractor's performance of this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach or default of this Agreement shall be deemed to have occurred.

E. Violations of Applicable Law. Contractor violates Applicable Law relative to this Agreement that reasonably may materially interfere with Contractor's performance of this Agreement.

F. Failure to Perform Direct Services. Contractor ceases to provide Collection, transportation, or Processing services as required under this Agreement for a period of two (2) consecutive calendar days or more, for any reason within the control of Contractor.

G. Failure to Pay or Report. Contractor fails to make any payments to City required under this Agreement including payment of City fees or Liquidated Damages and/or refuses to provide City with required information, reports, and/or records in a timely manner as provided for in the Agreement.

H. Acts or Omissions. Any other act or omission by Contractor which violates the terms, conditions, or requirements of this Agreement, AB 939, as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued there under and which is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

I. False, Misleading, or Inaccurate Statements. Any representation or disclosure made to the City by Contractor in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement; and, any Contractor-provided report containing a misstatement, misrepresentation, data manipulation, or an omission of fact or content explicitly defined by the Agreement, excepting non-numerical typographical and grammatical errors.

J. Seizure or Attachment. There is a seizure of, attachment of, or levy on, some or all of Contractor's operating equipment, including without limits its equipment, maintenance or office facilities, Approved Facility(ies), or any part thereof.

K. **Suspension or Termination of Service.** There is any termination or suspension of the transaction of business by Contractor related to this Agreement, including without limit, due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action lasting more than two (2) calendar days.

L. **Criminal Activity.** Contractor, its officers, managers, or employees are found guilty of criminal activity related directly or indirectly to performance of this Agreement or any other agreement held with the City.

M. **Assignment without Approval.** Contractor transfers or assigns this Agreement without the expressed written approval of the City unless the assignment is permitted without City approval pursuant to Section 12.6.

N. **Failure to Provide Proposal or Implement Change in Service.** Contractor fails to provide a proposal for new services or changes to services or fails to implement a change in service as requested by the City as specified in Section 3.5.

O. **Failure to Perform Any Obligation.** Contractor fails to perform any obligation established under this Agreement.

City shall provide Contractor written notice of default within seven (7) calendar days of the occurrence of default or within seven (7) calendar days of the City's first knowledge of the Contractor's default, whichever occurs first.

10.2 RIGHT TO TERMINATE UPON EVENT OF DEFAULT

Contractor shall be given ten (10) Business Days from written notification by City to cure any default which, in the City Contract Manager's sole opinion, creates a potential public health and safety threat.

Contractor shall be given ten (10) Business Days from written notification by City to cure any default arising under subsections C, F, I, J, and K in Section 10.1 provided, however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period.

Contractor shall be given thirty (30) calendar days from written notification by City to cure any other default (which is not required to be cured within ten (10) Business Days); however, that the City shall not be obligated to provide Contractor with a notice and cure opportunity if the Contractor has committed the same or similar breach/default within a twenty-four (24) month period.

10.3 CITY'S REMEDIES IN THE EVENT OF DEFAULT

In the event of Contractor's default, City maintains following remedies:

A. **Waiver of Default.** City may waive any event of default or may waive Contractor's requirement to cure a default event if City determines that such waiver would be in the best interest of the City. City's waiver of an event of default is not a waiver of future events of default that may have the same or similar conditions.

B. **Suspension of Contractor's Obligation.** City may suspend Contractor's performance of its obligations if Contractor fails to cure default in the time frame specified in Section 10.2 until such time the Contractor can provide assurance of performance in accordance with Section 10.8.

C. **Liquidated Damages.** City may assess Liquidated Damages for Contractor's failure to meet

specific performance standards pursuant to Section 10.6 and Exhibit E.

D. Termination. In the event that Contractor should default and subject to the right of the Contractor to cure, in the performance of any provisions of this contract, and the default is not cured for any default within ten (10) calendar days if the default creates a potential public health and safety threat or arises under Section 10.1.C., E, F, I, J, or K, or otherwise thirty (30) calendar days after receipt of written notice of default from the City, then the City may, at its option, terminate this Agreement and/or hold a hearing at its City Council meeting to determine whether this Agreement should be terminated. In the event City decides to terminate this Agreement, the City shall serve twenty (20) calendar days written notice of its intention to terminate upon Contractor. In the event City exercises its right to terminate this Agreement, the City may, at its option, upon such termination, either directly undertake performance of the services or arrange with other Persons to perform the services with or without a written agreement. This right of termination is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

Contractor shall not be entitled to any further Gross Receipts or other revenues from Collection operations authorized hereunder from and after the date of termination.

E. Other Available Remedies. City's election of one (1) or more remedies described herein shall not limit the City from any and all other remedies at law and in equity including injunctive relief, etc.

10.4 POSSESSION OF RECORDS UPON TERMINATION

In the event of termination for an event of default, the Contractor shall furnish City Contract Manager with immediate access to all of its business records, including without limitation, proprietary Contractor computer systems, related to its Customers, Collection routes, and billing of accounts for Collection services.

10.5 CITY'S REMEDIES CUMULATIVE; SPECIFIC PERFORMANCE

City's rights to terminate the Agreement under Section 10.2 and to take possession of the Contractor's records under Section 10.4 are not exclusive, and City's termination of the Agreement and/or the imposition of Liquidated Damages shall not constitute an election of remedies. Instead, these rights shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely, continuous, and high quality service; the lead time required to effect alternative service; and, the rights granted by City to the Contractor, the remedy of damages for a breach hereof by Contractor is inadequate and City shall be entitled to injunctive relief (including but not limited to specific performance).

10.6 PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

A. General. The Parties find that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of

the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that exclusive services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and, (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Collection services are of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in awarding the Agreement to it. The Parties recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents and businesses will suffer damages, and that it is, and will be, impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the Parties agree that the Liquidated Damages amounts established in Exhibit E of this Agreement and the Liquidated Damage amounts therein represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the Effective Date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical.

Contractor agrees to pay (as Liquidated Damages and not as a penalty) the amounts set forth in the Performance Standards and Liquidated Damages, Exhibit E.

Before assessing Liquidated Damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s) and non-performance.

If the City determines that Contractor has failed to meet the performance standard established for any "Service Performance Standard," the City shall notify Contractor in writing. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level beginning with the first date of Contractor failing to perform after its receipt of notice from the City.

City may review (and make copies at its own expense) all information in the possession of Contractor relating to incident(s) and/or non-performance. City or Contractor may, within ten (10) Business Days after issuing the notice, request a meeting with Contractor. City may present evidence of non-performance in writing and through testimony of its employees and others relevant to the incident(s) and non-performance. City Contract Manager will provide Contractor with a written explanation of their determination on each incident(s) and non-performance prior to authorizing the assessment of Liquidated Damages under this Section 10.6. The decision of City Contract Manager shall be final and Contractor shall not be subject to, or required to exhaust, any further administrative remedies.

C. Reprieve during First Three-Months. The City will not assess Liquidated Damages during the first three-months of Rate Period One unless the Contractor fails to implement or conduct services or obligations of this Agreement in a manner consistent with reasonable industry standards.

D. Amount. City may assess Liquidated Damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement in the amounts specified in Exhibit E subject to annual adjustment described below.

E. Timing of Payment. Contractor shall pay any Liquidated Damages assessed by City within ten (10) Business Days of the date the Liquidated Damages are assessed. If they are not paid within the ten (10) Business Day period, City may proceed against the performance bond required by the Agreement, order the termination of the rights or "franchise" granted by this Agreement, or all of the above.

10.7 EXCUSE FROM PERFORMANCE ("Force Majeure")

The Parties shall be excused from performing their respective obligations hereunder and from any obligation to pay Liquidated Damages if they are prevented from so performing by reason of floods, earthquakes, other acts of nature, war, terrorist activity, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the Party claiming excuse from performance hereunder ("Force Majeure event"). In the case of labor unrest or job action directed at a third party over whom Contractor has no control, the inability of Contractor to provide services in accordance with this Agreement due to the unwillingness or failure of the third party to: (i) provide reasonable assurance of the safety of Contractor's employees while providing such services; or, (ii) make reasonable accommodations with respect to Container placement and point of Delivery, time of Collection, or other operating circumstances to minimize any confrontation with pickets or the number of Persons necessary to make Collections shall, to that limited extent, excuse performance. The foregoing excuse shall be conditioned on Contractor's cooperation in performing Collection services at different times and in different locations. Further, in the event of labor unrest, including but not limited to strike, work stoppage or slowdown, sickout, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor, or a subsidiary, the Contractor shall not be excused from performance. In such case, Contractor shall continue to provide a reasonably satisfactory level of performance during the pendency thereof, but the Contractor shall not be required to adhere strictly to the specific requirements of this Agreement regarding routes, Collection times or similar matters; provided, however, that in no event shall more than seven (7) calendar days elapse between pickups for Residential and Commercial Customers.

The Party claiming excuse from performance shall, within two (2) calendar days after such Party has notice of such cause, give the other Party notice of the facts constituting such cause and asserting its claim to excuse under this Section.

If either Party validly exercises its rights under this Section, the Parties hereby waive any claim against each other for any damages sustained thereby.

The partial or complete interruption or discontinuance of Contractor's services caused by one (1) or more of the events described in this Article shall not constitute a default by Contractor under this Agreement. Notwithstanding the foregoing, however, if Contractor is excused from performing its obligations hereunder for any of the causes listed in this Section for a period of thirty (30) calendar days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) Business Days' notice to Contractor, in which case the provisions of Section 10.4 shall apply.

10.8 RIGHT TO DEMAND ASSURANCES OF PERFORMANCE

The Parties acknowledge that it is of the utmost importance to City and the health and safety of all those

members of the public residing or doing business within City who will be adversely affected by interrupted waste management service, that there be no material interruption in services provided under this Agreement.

If Contractor: (i) is the subject of any labor unrest including work stoppage or slowdown, sick-out, picketing or other concerted job action; (ii) appears in the reasonable judgment of City to be unable to regularly pay its bills as they become due; or, (iii) is the subject of a civil or criminal judgment or order entered by a Federal, State, regional or local agency for violation of an Applicable Law, and City believes in good faith that Contractor's ability to perform under the Agreement has thereby been placed in substantial jeopardy, City may, at its sole option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City believes in good faith is reasonably necessary in the circumstances to evidence continued ability to perform under the Agreement. If Contractor fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default for purposes of Section 10.1.

ARTICLE 11. REPRESENTATIONS AND WARRANTIES OF THE PARTIES

The Parties, by acceptance of this Agreement, represent and warrant the conditions presented in this Article.

11.1 CONTRACTOR'S CORPORATE STATUS

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State. It is qualified to transact business in the State and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

11.2 CONTRACTOR'S CORPORATE AUTHORIZATION

Contractor has the authority to enter this Agreement and perform its obligations under this Agreement. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The Person signing this Agreement on behalf of Contractor represents and warrants that they have authority to do so. This Agreement constitutes the legal, valid, and binding obligation of the Contractor.

11.3 AGREEMENT WILL NOT CAUSE BREACH

To the best of Contractor's and City's knowledge after reasonable investigation, the execution or delivery of this Agreement or the performance by either Party of their obligations hereunder does not conflict with, violate, or result in a breach: (i) of any Applicable Law; or, (ii) any term or condition of any judgment, order, or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Contractor or City is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default hereunder.

11.4 NO LITIGATION

To the best of Contractor's and City's knowledge after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, or pending against either Party wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would:

A. Materially adversely affect the performance by Party of its obligations hereunder;

B. Adversely affect the validity or enforceability of this Agreement; or,

C. Have a material adverse effect on the financial condition of Contractor, or any surety or entity guaranteeing Contractor's performance under this Agreement.

11.5 NO ADVERSE JUDICIAL DECISIONS

To the best of Contractor's and City's knowledge after reasonable investigation, there is no judicial decision that would prohibit this Agreement or subject this Agreement to legal challenge.

11.6 NO LEGAL PROHIBITION

To the best of each Party's knowledge, after reasonable investigation, there is no Applicable Law in effect on the date that Party signed this Agreement that would prohibit the performance of either their obligations under this Agreement and the transactions contemplated hereby.

11.7 CONTRACTOR'S ABILITY TO PERFORM

Contractor possesses the business, professional, and technical expertise to perform all services, obligations, and duties as described in and required by this Agreement including all Exhibits thereto. Contractor possesses the ability to secure equipment, facility, and employee resources required to perform its obligations under this Agreement.

11.8 Iran Contracting Act Certification

Contractor represents and warrants that it is in compliance with and has completed all requirements necessary to become certified under the Iran Contracting Act (Public Contract Code Sec. 2200). Proof of certification shall be included as Exhibit R of this Agreement.

ARTICLE 12. OTHER AGREEMENTS OF THE PARTIES

12.1 RELATIONSHIP OF PARTIES

The Parties intend that Contractor shall perform the services required by this Agreement as an independent Contractor engaged by City and neither as an officer nor employee of City, nor as a partner or agent of, or joint venturer with, City. No employee or agent of Contractor shall be, or shall be deemed to be, an employee or agent of City. Contractor shall have the exclusive control over the manner and means of performing services under this Agreement, except as expressly provided herein. Contractor shall

be solely responsible for the acts and omissions of its officers, employees, Subcontractors, and agents. Neither Contractor nor its officers, employees, Subcontractors, or agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

12.2 COMPLIANCE WITH LAW

Contractor shall at all times, at its sole cost, comply with all Applicable Laws, permits and licenses of the United States, the State, County of Alameda, and City and with all applicable regulations promulgated by Federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

12.3 GOVERNING LAW

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State.

12.4 JURISDICTION

Any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of Alameda County in the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the Parties agree that this Agreement is made in and will be performed in Alameda County. Nothing in this Agreement shall be construed to prevent Contractor or City from seeking judicial review of any dispute arising under this Agreement, except to those matters that are determined conclusive by the City Council pursuant to Section 5.8.

12.5 BINDING ON SUCCESSORS

The provisions of this Agreement shall inure to the benefit to and be binding on the successors and permitted assigns of the Parties.

12.6 ASSIGNMENT

Neither Party shall assign its rights nor delegate or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other Party. Any such assignment made without the consent of the other Party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this Section, "assignment" shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of ten (10) percent or more of the outstanding common stock of Contractor; (iii) any reorganization, consolidation, merger, recapitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which Contractor or any of its shareholders is a party which results in a change of ownership or control of thirty (30) percent or more of the value or voting rights in the stock of Contractor; and, (iv) any combination of the foregoing (whether or not in related, contemporaneous or sequential transactions) which has the effect of any such transfer or change of ownership and/or control of Contractor. For purposes of this

Section, the term "proposed assignee" shall refer to the proposed transferee(s) or other successor(s) in interest pursuant to the assignment. Assignment may exclude a change in ownership of Contractor's assets or stocks which occurs for interfamilial planning purposes only and does not involve a change in the management of the Agreement or services performed hereunder. Reorganizations, mergers, consolidations, sales of equity or assets or similar transactions between or among entities owned by the same ultimate parent, including but not limited to Contractor and regardless of which entity is the survivor, do not constitute an assignment; however, Contractor shall provide City with thirty (30) days written notification of its plans and provide an explanation of any potential impacts related to the provision of services under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole discretion, the standard for City's consent to any assignment shall be whether the Contractor (or, if applicable, a new entity succeeding to the rights, duties and obligations of Contractor under this Agreement), after the assignment, has sufficient financial and operational capability to adequately and faithfully render the services called for in this Agreement for the remaining Term of the Agreement. In no event shall City's consent be unreasonably withheld, conditioned or delayed. Contractor shall undertake to pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment.

12.7 NO THIRD PARTY BENEFICIARIES

This Agreement is not intended to, and will not be construed to, create any right on the part of any third party to bring an action to enforce any of its terms.

12.8 WAIVER

The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach of violation of the same or any other provision. The subsequent acceptance by either Party of any monies which become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

12.9 NOTICE PROCEDURES

All notices, demands, requests, proposals, approvals, consents, and other communications, which this Agreement requires, authorizes or contemplates, shall be in writing and shall either be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid, addressed as follows:

If communications to the City are notices of legal action or request for public information, such communication shall be directed to:

City Clerk
City of Newark
City Administration Building
37101 Newark Boulevard

Newark, CA 94560
(510) 578-4000

With a copy to the Administrative Services Director at the address below.

All other communications shall be directed to:

Administrative Services Director
City of Newark
City Administration Building
37101 Newark Boulevard
Newark, CA 94560
(510) 578-4000

If to Contractor:

General Manager
Allied Waste Services of Alameda County
42600 Boyce Road
Fremont, CA 94538

The address to which communications may be delivered may be changed from time to time by a notice given in accordance with this Section. Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) calendar days from the date it is deposited in the mail.

12.10 REPRESENTATIVES OF THE PARTIES

References in this Agreement to the "City" shall mean the City's elected body and all actions to be taken by City except as provided below. The City may delegate, in writing, authority to the City Contract Manager and/or to other City officials and may permit such officials, in turn, to delegate in writing some or all of such authority to subordinate officers. The Contractor may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Contractor shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of the Contractor in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind the Contractor. City may rely upon action taken by such designated representative as actions of the Contractor unless they are outside the scope of the authority delegated to him/her by the Contractor as communicated to City.

ARTICLE 13. MISCELLANEOUS AGREEMENTS

13.1 ENTIRE AGREEMENT

This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. Each Party has cooperated in the drafting and preparation of this Agreement and this Agreement shall not be construed against any Party on the basis of drafting. This Agreement may be amended only by an

agreement in writing, signed by each of the Parties hereto.

13.2 SECTION HEADINGS

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

13.3 REFERENCES TO LAWS

All references in this Agreement to laws and regulations shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided herein.

13.4 AMENDMENTS

This Agreement may not be modified or amended in any respect except in writing signed by the Parties.

13.5 SEVERABILITY

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement, which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

13.6 COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be considered an original.

13.7 EXHIBITS

Each of the Exhibits identified as Exhibit “A” through “R” is attached hereto and incorporated herein and made a part hereof by this reference. In the event of a conflict between the terms of this Agreement and the terms of an Exhibit, the terms of this Agreement shall control.

{Remainder of this page intentionally left blank}

IN WITNESS WHEREOF, City and Contractor have executed this Agreement as of the day and year first above written.

ATTEST:

City CLERK

By _____
City Clerk

Date: _____

City of Newark ("City")

By _____
City Manager

Date: _____

APPROVED AS TO FORM:

_____
City Attorney

Date: _____

APPROVED AS TO FORM:

_____

Contractor Attorney

Date: _____

Allied Waste Services of North America, LLC

By: _____

_____ {Printed Name}

_____{Title}

Date: _____

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EXHIBIT A

DEFINITIONS

EXHIBIT A
DEFINITIONS

For purposes of this Agreement, unless a different meaning is clearly required, the following words and phrases shall have the following meanings respectively ascribed to them by this Exhibit and shall be capitalized throughout this Agreement:

"AB 341" means the California Jobs and Recycling Act of 2011 (Chapter 476, Statues of 2011 [Chesbro, AB 341]), also commonly referred to as "AB 341", as amended, supplemented, superseded, and replaced from time to time.

"AB 939" means the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), also commonly referred to as "AB 939," as amended, supplemented, superseded, and replaced from time to time.

"AB 1826" means State of California Assembly Bill No. 1826 approved September 28, 2014. AB 1826 requires each jurisdiction, on and after January 1, 2016, to implement an organic waste recycling program to divert from the landfill organic waste from businesses. Each business meeting specific organic waste or solid waste generation thresholds phased in from April 1, 2016 to January 1, 2020, is required to arrange for organic waste recycling services.

"**Affiliate**" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect Ownership interest or common management. They shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include: (i) a business in which Contractor has a direct or indirect Ownership interest, (ii) a business, which has a direct or indirect Ownership interest in Contractor and/or (iii) a business, which is also Owned, controlled or managed by any business or individual which has a direct or indirect Ownership interest in Contractor. For the purposes of this definition, "Ownership" means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided that ten percent (10%) shall be substituted for fifty percent (50%) in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest of value which the ownership interest represents.

"Agreement" means this Agreement between City and Contractor, including all exhibits, and any future amendments hereto.

"**Alternative Daily Cover**" means CalRecycle-approved materials other than soil used as a temporary overlay on an exposed landfill face. Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide breeding grounds for insects and vermin.

"**Alternative Intermediate Cover (AIC)**" means CalRecycle-approved materials other than soil used at a landfill on all surfaces of the fill where no additional Solid Waste will be deposited within one hundred eighty (180) days. Generally, these materials must be processed so that they do not allow gaps in the face surface, which would provide breeding grounds for insects and vermin.

"Applicable Law" means all Federal, State, County, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over

the Collection, transportation, and Processing of Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D that are in force on the Effective Date and as may be enacted, issued or amended during the Term of this Agreement.

"Approved C&D Processing Facility" means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, San Jose, CA 95035, which is owned and operated by Republic Services, which may be used for Processing of Source Separated Recyclable C&D.

"Approved Facility(ies)" means any one of or any combination of the: Approved C&D Processing Facility; Approved Transfer Facility; Approved Organic Materials Processing Facility; Approved Recyclable Materials Processing Facility; and/or, Approved Reusable Materials Processing Facility.

"Approved Organic Materials Processing Facility" means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, San Jose, CA, 95035 which is owned by Republic Services, which may be used for Processing of Source Separated Organic Materials generated at Residential Premises.

"**Approved Processing Facility(ies)"** means any one of or any combination of the: Approved C&D Processing Facility, Approved Organic Materials Processing Facility; Approved Recyclable Materials Processing Facility; and/or Approved Reuseable Materials Processing Facility.

"Approved Recyclable Materials Processing Facility" means the Newby Island Resource Recovery Park at 1601 Dixon Landing Road, San Jose, CA, 95035 which is owned and operated by Republic Services

"Approved Reusable Materials Processing Facility" means the Newby Island Resource Recovery Park, at 1601 Dixon Landing Road, San Jose, CA, 95035 which is owned and operated by Republic Services.

"Approved Transfer Facility" means the Fremont Recycling and Transfer Station at 41099 Boyce Road, Fremont, CA, which is owned and operated by the BLT Enterprises of Fremont, LLC. The Approved Transfer Facility shall serve as the transfer and/or Processing Facility for all Solid Waste, Commercial Source Separated Organic Materials, and Residue or Equivalent Residue Collected by Contractor.

"Beneficial Reuse" means use of material for beneficial reuse which shall include, but not be limited to, the following: Alternative Daily Cover, Alternative Intermediate Cover, final cover foundation layer, liner operations layer, leachate and landfill gas collection system, construction fill, road base, wet weather operations pads and access roads, and soil amendments for erosion control and landscaping.

"Bin" means a Container with capacity of approximately one (1) to seven (7) cubic yards, with a hinged lid, and with wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

"**Bulky Item**" means discarded appliances (including, but not limited to, refrigerators, freezers, dishwashers, washers and dryers, and hot water heaters), electronic equipment and other small appliances (including, but not limited to, audio equipment, televisions, computers, and microwave ovens), furniture, tires, carpets, mattresses, fencing, cabinetry, household fixtures, tree trunks and similar large items that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. It does not include abandoned automobiles, large auto parts, or trees.

"Business Days" mean days during which the City offices are open to do business with the public.

"C&D" means Construction and Demolition Debris.

"Cart" means a plastic Container with a hinged lid and wheels that is serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64 or 96 gallons (or similar volumes).

"Change in Law" means any of the following events or conditions that has a material and adverse effect on the performance by the Parties of their respective obligations under this Agreement (except for

payment obligations):

a. The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law on or after the Effective Date; or,

b. The order or judgment of any governmental body, on or after the Effective Date, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or of the Contractor, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

"Characterization" means a process of manually and/or mechanically sorting by material type samples of Source Separated Recyclable Materials, Source Separated Organic Materials, or Source Separate Recyclable Construction and Demolition Debris to determine the types and amounts of various material types in the sample and the Residue Level of the sample.

"City" means the City of Newark, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as such boundaries may be modified during the Term.

"City Contract Manager" means City's Administrative Services Manager who is responsible for the administrative management of this Agreement.

"Collect or Collection (or any variation thereof)**"** means the act of collecting Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, Bulky Items, and other Discarded Material, excluding Excluded Waste, at the place of generation in City.

"Commencement Date" means the date specified in Section 2.1 when Collection, transportation, Processing, and Composting services required by this Agreement shall be provided.

"Commercial" shall mean of, from or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing, and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property.

"Compactor" means a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to eight (8) cubic yard Bin Compactors serviced by front-end loader Collection vehicles and ten (10) to fifty (50) cubic yard Drop Box Compactors serviced by roll-off Collection vehicles.

"Composting or Compost (or any variation thereof)**"** includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.

"Construction and Demolition Debris (C&D)" means building materials resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations, Title 22 section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe and steel. The material may be commingled with rock, soil, tree stumps, and other vegetative matter resulting from land clearing and landscaping for construction or land development projects, excluding Excluded Waste. Loads consistently primarily of soil and/or vegetative matter shall not be considered C&D.

"Container(s)" mean Bins, Carts, Compactors, and Drop Boxes.

"Contractor" means Allied Waste Services of North America, LLC organized and operating under the laws of the State and its officers, directors, employees, agents, companies, related-parties, affiliates, subsidiaries, and Subcontractors.

"Contractor's Compensation" means the monetary compensation received by Contractor in return for providing services in accordance with this Agreement as described in Article 8.

"Contractor's Proposal" means the proposal submitted to City by Contractor on September 12, 2012 for the Collection of Solid Waste, and Commercial Source Separated Organic Materials and the Collection and Processing of Source Separated Recyclable Materials, Residential Source Separated Organic Materials, and Source Separated Recyclable C&D and certain supplemental written materials, which are included as Exhibit I to this Agreement and are incorporated by reference.

"Curb or Curbside (or any variation thereof)**"** means the location of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb, or where no Curb exists, the Container is placed not more than five (5) feet from the outside edge of the street or alley nearest the property's entrance.

"Customer" means the Person whom Contractor submits its billing invoice to and collects payment from for Collection services provided to a Premises. The Customer may be either the Occupant or Owner of the Premises provided that the Owner of the Premises shall be responsible for payment of Collection services if an Occupant of a Premises, which is identified as the Customer of Owner's Premises, fails to make such payment.

"Customer Type" means the Customer's sector category including, but not limited to, Single-Family, Multi-Family, Commercial, C&D, Drop Box, and City.

"Designated Waste" means non-Hazardous Waste which may pose special disposal problems because of its potential to contaminate the environment and which may be disposed of only in Class II disposal facilities or Class III disposal facilities pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as Designated Waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

"Discarded Materials" means Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, C&D, and any combination of these material types placed by a Customer or Generator in a receptacle and/or at a location for the purposes of Collection by Contractor, excluding Excluded Waste.

"Disposal or Dispose (or any variation thereof)**"** means the final disposition of Solid Waste, and possibly Residue or Equivalent Residue at the Approved Transfer Facility.

"**Divert** or **Diversion** (or any variation thereof)" means to prevent Recyclable Materials and Organic Materials from disposal at landfill or transformation facilities, (including facilities using incineration, pyrolosis, distillation, gasification, or biological conversion methods) through source reduction, reuse, Recycling, and Composting, as provided in Section 41780-41786 of AB 939, as AB 939 may be hereafter amended or superseded. Diversion is a broad concept that is to be inclusive of material handling and Processing changes that may occur over the Term including, but not limited to, changes in standard industry practice or implementation of innovative (but not necessarily fully proven) techniques or technology that reduce disposal risk, decrease costs and/or are for other reasons deemed desirable by the City.

"Drop Box" means an open-top Container with a capacity of ten (10) to fifty (50) cubic yards that is

serviced by a roll-off Collection vehicle.

"Effective Date" means the date on which the latter of the two Parties signs this Agreement.

"**Equivalent Residue**" means Residue that is produced in the Approved Processing Facility from Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D Collected under the terms of this Agreement. Where the actual Residue from Processing materials Collected in the City at the Approved Processing Facility(ies) cannot be specifically segregated from Residue from other parties, an equivalent amount of Residue by Tonnage will be segregated in its place and thereafter handled in accordance with the terms of this Agreement.

"Excluded Waste" means Hazardous Substance, Hazardous Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be disposed of in Class III landfills, waste that in Contractor's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

"Exclusive Right" is the right and privilege granted by City to Contractor to be the only Franchisee that Collects, transports, and/or Processes (where permitted under this Agreement) Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, Residue or Equivalent Residue, C&D, and any combination of these material types, and other Discarded Materials, excluding Excluded Waste, in the City.

"E-Waste" means discarded electronic equipment including, but not limited to, televisions, computer monitors, central processing units (CPUs), laptop computers, computer peripherals (including external hard drives, keyboards, scanners, and mice), printers, copiers, facsimile machines, radios, stereos, stereo speakers, VCRs, DVDs, camcorders, microwaves, telephones, cellular telephones, and other electronic devices. Some E-Waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or disposal.

"Federal" means belonging to or pertaining to the Federal government of the United States.

"Food Scraps" means those Discarded Materials that are Recyclable Organic Materials.

"Franchise Fee" means a payment that the Contractor has voluntarily agreed to pay to City in consideration of the exclusive rights granted by the City under this Agreement. City and Contractor acknowledge and agree that the amount of the Franchise Fee is the result of bona fide, arms-length negotiations between City and Contractor. Contractor further acknowledges and agrees that the amount of the Franchise Fee represents Contractor's independent determination of the market value of the exclusive rights granted by City under this Agreement. Contractor is not required by this Agreement or any City ordinance, resolution, or regulation to charge the Franchise Fee to Customers. Because the Franchise Fee represents a cost to Contractor in performing services pursuant to this Agreement, Contractor may, in its sole discretion, include an amount equal to the Franchise Fee in Contractor's Compensation..

"Generator" means any Person whose act or process produces Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Materials, or C&D as defined in the Public Resources Code, or whose act first causes any of these items to become subject to regulation.

"Gross Receipts" shall mean total cash receipts collected from Customers by the Contractor for the provision of services pursuant to this Agreement, net of cash received through assessment of the Alameda County Benchmark Service Information Fee (described in Section 4.15). Gross Receipts do not include revenues from the sale of Source Separated Recyclable Materials, Source Separated Organic Materials, or Source Separate Recyclable C&D.

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other Applicable Law currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

"Holidays" are defined as New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

"Household Hazardous Waste" or **"HHW"** means Hazardous Waste generated at Residential Premises within the City. HHW includes, but is not limited to: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, batteries, household batteries, fluorescent bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

"Infectious Waste" means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

"Liquidated Damages" means the amounts due by Contractor for failure to meet specific quantifiable standards of performance as described in Section 10.6 and Exhibit E.

"Maximum Rate" means the maximum amount, expressed as a dollar unit, approved by the City that the Contractor may bill a Customer for providing services under this Agreement.

"Multi-Family" means any Residential Premises, other than a Single-Family Premises, with five (5) or more dwelling units used for Residential purposes (excluding units used for temporary residential purposes such as hotels) that receive centralized Collection service for all units on the Premises which are billed to one (1) Customer at one (1) address.

"Occupant" means the Person who occupies a Premises.

"Organic Materials" means Yard Waste and Food Scraps. No Discarded Material shall be considered to be Organic Materials, however, unless it is separated from Solid Waste, Recyclable Material, and C&D.

"Overage" means Solid Waste, Source Separated Recyclable Materials, Source Separated Organic Material, set out for Collection either on top of or outside of a Container or in any manner that prevents the Container lid from completely closing or potentially cause materials to spill during Collection by Contractor's vehicles.

"Owner" means the Person(s) holding legal title to real property and/or any improvements thereon, and shall include the Person(s) listed on the latest equalized assessment roll of the County Assessor.

"Party or Parties" refers to the City and Contractor, individually or together.

"Person(s)" means any individual, firm, association, organization, partnership, corporation, trust, joint venture, or public entity.

"Personal Recycling Bin" or **"PRB"** refers to a small easily portable Container with a capacity of at least three (3) gallons to be included by Contractor in the Multi-Family Move-in kit to facilitate convenient accumulation of Source Separated Recyclable Materials within a Multi-Family dwelling unit.

"Premises" means any land or building in the City where Solid Waste, Recyclable Materials, Organic Materials, or C&D are generated or accumulated.

"Processing" means to prepare, treat, or convert through some special method, including, but not limited to, baling, crushing, shredding, chipping, grinding, extracting, mechanical or hand classification and any other method of handling Source Separated Recyclable Materials, Source Separated Organic Material, and Source Separated Recyclable C&D by the Contractor at the Approved Facility(ies).

"Processing Facility" means any plant or site used for the purpose of sorting, cleansing, treating or reconstituting Source Separated Recyclable Materials, Source Separated Organic Materials, or Source Separated Recyclable C&D for the purpose of making such material available for Recycling or reuse or the facility for the Processing and/or Composting of Organic Materials.

"Prohibited Container Contaminants" means any of the following:

a. Non-Organic Materials placed in the Organics Container, including but not limited to textiles and carpets, manure, biosolids, digestate, sludges, non-compostable paper, Construction & Demolition Debris, and Hazardous Waste;
b. Organic Materials placed in the Garbage Container that is specifically identified under the Agreement for collection in the Organics Container or Recycling Container;
c. Organic Materials placed in the Recycling Container that is specifically identified under the Agreement for collection in the Organics Container. Paper products and printing and writing paper may be considered acceptable and not considered Prohibited Container Contaminants if they are placed in the Recycling Container.

"Rate" means the amount, expressed as a dollar unit, that the Contractor bills a Customer for providing services under this Agreement. Contractor may, in its sole discretion, charge any amount up to and including the Maximum Rate approved by the City, but in no case exceeding the Maximum Rate.

"Rate Period" means a twelve (12) month period, commencing January 1 and concluding December 31, with the exceptions that Rate Period One shall be a nineteen (19) month period, commencing June 1, 2013 and concluding December 31, 2014 and Rate Period Ten shall be a five (5) month period, commencing January 1, 2023 and concluding May 31, 2023.

"Recyclable Materials" means materials having a potential for reuse or reprocessing or other materials having value.

"**Recyclable Rich Materials**" are a type of material that are comprised primarily of Recyclable Materials, Recyclable C&D, and Organic Materials such that loads are composed of less than thirty (30) percent Residue but more than ten (10) percent Residue by weight.

"Recycle (or **Recycling** or variation thereof**)"** means the process of sorting, cleansing, treating, and reconstituting at a Processing Facility materials that would otherwise be disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products.

"Residential" shall mean of, from, or pertaining to a Single-Family Premises or Multi-Family Premises including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, and yacht harbors and marinas where residents live aboard boats.

"Residue (or **Residual** or a variation thereof**)"** means materials remaining after delivery to and Processing at the Approved Processing Facility(ies), if any, thereof that require disposal rather than Recycling due to either the lack of markets for materials or the inability of the Approved Processing Facility(ies) to capture and recover the materials. Residue does not include Source Separated Recyclable Materials, Source Separated Recyclable C&D and/or Residential Source Separated Organic Materials recovered at the Approved Processing Facility(ies).

"Residue Level" means the percentage of Residue, which shall be calculated as the Tonnage of Processing Residue requiring disposal divided by the total Tonnage of Materials Collected.

"Reusable Materials" means items that are capable of being used again with no or minimal Processing.

"Route Review" means a visual inspection of Containers along a Hauler Route for the purpose of identifying Prohibited Container Contaminants, which may include mechanical inspection methods such as use of cameras; as well as maintaining applicable documentation and reporting of inspections and results.

"SB 1383 Regulations" means the Short-lived Climate Pollutants (SLCP): Organic Waste Reductions regulations adopted by the California Department of Resources Recycling and Recovery ("CalRecycle") in 2020. "**Senior**" means a Person sixty-five years of age or older.

"Service Level" refers to the size of a Customer's Container and the frequency of Collection service.

"**Sharps**" means home-generated sharps waste such as hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications derived generated by Residential households.

"Single-Family" means, notwithstanding any contrary definition in City Code, any detached or attached house or residence designed or used for occupancy by one (1) family, provided that Collection service feasibly can be provided to such Premises as an independent unit, and the Owner or Occupant of such independent unit is billed directly for the Collection service. Single-Family includes Residential units of a duplex, tri-plex, or four-plex Residential structure provided that each unit is separately billed for their specific service level.

"Solid Waste" means solid waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder as may be amended from time to time, and either Residue or Equivalent Residue from Recycling, Processing, and similar processes. Excluded from the definition of Solid Waste are Source Separated Recyclable Materials, Source Separated Organic

Material, Source Separated Recyclable C&D, and Excluded Waste, in addition to those items specifically excluded under California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated thereunder as may be amended from time to time. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time.

"**Source Separated Organic Materials**" are a type of Yard Waste or other Recyclable, Organic Materials that are commingled and/or presorted and that are segregated prior to Collection from other materials Collected as Solid Waste, other types of Source Separated Recyclable Materials, or C&D; are designated by the Customer or Generator for purposes of Diversion; are Delivered separately to the Approved Transfer Facility (if the Customer or Generator is Commercial) or to the Approved Processing Facility(ies) or Processing Facility(ies) (if the Customer or Generator is Residential) from other materials; and are delivered in loads composed of less ten (10) percent Residue by weight. The types of Source Separated Organic Material may change over time. To the extent the Source Separated Organic Materials are delivered in loads composed of greater than or equal to ten (10) percent Residue by weight, the loads are to be handled in accordance with the Protocol for Management of Residue set forth in Exhibit Q to this Agreement.

"**Source Separated Recyclable C&D**" are presorted C&D Recyclable Materials that are segregated prior to Collection from other materials Collected as Solid Waste or Source Separated Yard Waste; are designated by the Generator or Customer for purposes of Diversion; are Delivered separately to an Approved Processing Facility(ies) from other materials; and are delivered in loads composed of less ten (10) percent Residue by weight. The types of Source Separated Recyclable C&D may change over time. To the extent the Source Separated Recyclable C&D are delivered in loads composed of greater than or equal to ten (10) percent Residue by weight, the loads are to be handled in accordance with the Protocol for Management of Residue set forth in Exhibit Q to this Agreement.

"**Source Separated Recyclable Materials**" are a type of Recyclable Material that are commingled and/or presorted Recyclable Materials including high grade paper, glass, metal, plastic, aluminum, newspaper, corrugated paper or other Recyclable Materials that are segregated prior to Collection from other materials collected as Solid Waste, Organic Materials, or C&D; are designated by the Customer or Generator for the purposes of Diversion; are delivered separately to an Approved Facility from other materials; and are delivered in loads composed of less than ten (10) percent Residue by weight. The types of Source Separated Recyclable Materials may change over time. To the extent the Source Separated Recyclable Materials are delivered in loads composed of greater than or equal to ten (10) percent Residue by weight, the loads are to be handled in accordance with the Protocol for Management of Residue set forth in Exhibit Q to this Agreement.

"State" means the State of California.

"Subcontractor" means a Party who has entered into a contract, express or implied, with the Contractor for the performance of an act that is necessary for the Contractor's fulfillment of its obligations for providing service under this Agreement. Vendors providing materials and supplies to Contractor shall not be considered Subcontractors.

"Term" means the Term of this Agreement, including extension periods if granted, as provided for in Article 2.

"Ton" or "**Tonnage"** means a unit of measure for weight equivalent to two thousand (2,000) standard pounds where each pound contains sixteen (16) ounces.

“Used Motor Oil and Filter” means motor oil and the subsequent oil filter that has been used in a vehicle.

“Used Oil Recovery Kit” means a kit containing: one (1) reusable plastic jug of at least one (1) gallon capacity with a watertight screw-on top to contain Used Motor Oil; one (1) plastic disposable resealable bag of sufficient capacity to accommodate one (1) Used Motor Oil Filter; and, a flyer, brochure, or other informational media approved by the City intended to educate Customers about the Used Motor Oil and Filter Collection program and the benefits resulting from the proper handling of Used Motor Oil and Filters. The Used Oil Recovery Kit is to be provided to Customers by Contractor to recover Used Motor Oil and Filters from Single-Family and Multi-Family residents.

“**Yard Waste**” means those Discarded Materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste. Yard Waste is a subset of Organic Materials. Yard Waste placed for Collection may not exceed six (6) inches in diameter and three (3) feet in length and must fit within the Contractor-provided Container.

For purposes of this Agreement, the following terms (whether or not capitalized) shall have the meanings given to them in the SB 1383 Regulations, unless the context indicates a different meaning was intended: biosolids, digestate, food, non-compostable paper, paper products, printing and writing paper, sludges.

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EXHIBIT B

PUBLIC EDUCATION AND OUTREACH PLAN

EXHIBIT B
PUBLIC EDUCATION & OUTREACH PLAN

Contractor understands and recognizes the importance of effective public education and promotion as the key to helping residents and businesses understand more about source reduction, reuse, Recycling, and Composting. Contractor shall include, **at a minimum**, the following services as part of its public education program. All public education materials shall be approved by the City prior to distribution to Customers, publication, or issuance.

1. STAFFING PLAN AND STAFF ROLES

To best achieve the highest possible level of public education and awareness, Contractor shall designate a Public Education Manager to supervise, coordinate and implement all public education and outreach activities in the City. The Public Education Manager (Recycling Manager) shall be assigned to support the City for a minimum of 10 hours per week. The Public Education Manager shall perform the following tasks in his/her four principal areas of responsibility:

A. Government and Community Relations

1. Serve as a liaison between the City and Contractor
2. Represent Contractor at City Council, City staff, and City strategy development meetings
3. Work with the City in partnership to develop and incorporate municipal activities into Contractor activities, and vice versa
4. Participate and represent Contractor in community activities
5. Oversee customer satisfaction of all program services
6. Ensure compliance with City and regulatory agencies
7. Support local community service organizations

B. Media Relations

1. Develop relationships with television, radio, and newspapers reports
2. Track media coverage

C. Contract Compliance

1. Coordinate and produce annual education plan required by Section 4.9 of the Agreement
2. Coordinate implementation of the annual public education plan

The Public Education Manager will be assisted in the public education and outreach efforts by 1 full-time recycling coordinator assigned to the City for a minimum of 40 hours per week in total.

2. SINGLE-FAMILY EDUCATION PROGRAMS

A. Public Education Activities

1. Prepare a "how-to" flyer describing how to prepare Source Separated Recyclable and Source Separated Organic Materials for Collection and describe the acceptable materials that can be included in the Recyclable and Organic Materials Containers. The flyer should emphasize any new Recyclable Materials to be included in Single-Stream Collection and the Food Scraps Collection program.
2. Prepare a "how-to" flyer describing the proper set out procedures for Collection Containers.
3. Prepare an instructional packet identifying key transition dates and verifying the Customer's specific current service level.
4. Prepare and distribute public service announcements (PSA) for local newspapers.
5. Visit homeowner associations or other groups to promote and explain the program, as requested by the associations or as scheduled by the City.
6. Prepare and distribute quarterly newsletters that creatively inform residents about topics such as availability of free on-call curbside Bulky Item/clean-up events, Bulky Item pick-ups, home Composting, proper handling of Household Hazardous Waste, E-Waste, and U-Waste, and environmental conservation.
7. Prepare and distribute annually a bill insert, brochure, and/or feature quarterly newsletter article describing how to prepare Source Separated Recyclable and Source Separated Organic Materials for Collection. Contractor shall inform residents as to the acceptable materials that can be included in the Recyclable Materials and Organic Materials Containers and any common contaminants to be excluded from Collection to customers.
8. Prepare Correct Action Notices (Oops Tags) for drivers to use in the event of set-out problems. Tags shall be tailored to residential generator types, and may be used as a courtesy notice, or a notice of non-Collection. When used as a courtesy notice, the materials in question shall be Collected, but Customers are informed of the improper element of the set-out and advised of how to ensure proper set-out in the future. When used as a non-Collection notice, the Container in question is not Collected, and the tag shall advise Customer of the specific problem.
9. Two weeks prior to Christmas tree Collection events provide written notification to each Single-Family Customer specifying event details and tree Collection schedule as provided by Section 4.1.C of this Agreement.
10. On each bill, Contractor shall include a brief statement to Customers providing service-related announcements such as messages about new services, the on-call clean-up and Bulky Item pick-up services, proper handling of Household Hazardous Waste, Food Scraps Collection, Christmas tree Collection, etc.
11. Prepare and make available through Contractor's website "how-to" information on Recycling, Composting, and proper Container set-outs in Adobe Acrobat PDF and provide Single-Family Customers with links for additional resources.

12. Enable Single-Family Customers to access information regarding Collection days by address, as well as other Customer- or City-specific information, through its website including access to Adobe Acrobat PDF copies of newsletters and other outreach materials required herein.

3. MULTI-FAMILY EDUCATION PROGRAMS

A. Public Education Activities

1. Prepare a "how-to" flyer describing how to prepare Source Separated Recyclable and Source Separated Organic Materials for Collection and describe the acceptable materials that can be included in the Recyclable and Organic Materials Containers. The flyer should emphasize the State and County mandatory Recycling requirements and how to comply as well as identify any new Recyclable Materials to be included in Single-Stream Collection.
2. Prepare a "how-to" flyer describing the Recyclables Collection program for distribution to tenants and distribute to Multi-Family property managers for distribution to tenants.
3. Prepare posters describing Collection programs and distribute to Multi-Family property managers for on-site use.
4. Prepare an instructional packet identifying key transition dates and verifying the Customer's specific current service level.
5. Visit apartment managers or home owners' association meetings or other groups to promote and explain the Contractor's Collection programs and the State and County mandatory Recycling requirements throughout the Term of the Agreement, as requested by the associations or as scheduled by the City.
6. Prepare annual public education material on Recycling, the State and County mandatory Recycling requirements and how to comply, and proper handling of Household Hazardous Waste, E-Waste, and U-Waste and distribute (or arrange for distribution of) materials directly to tenants of Multi-family Premises.
7. Conduct site visits and provide technical assistance as specified in Section 4.10 of this Agreement.
8. Offer and respond to requests for on-site meetings and workshops. Contractor will conduct workshops (when requested) that will show property managers and residents, in a hands-on interactive format, how to use the Recycling and Organics program and will provide resources for additional information and support.
9. Prepare and distribute "move-in" kits for property managers and owners of Multi-Family complexes to provide new tenants. Move-in kits shall provide Recycling information and Contractor's Customer service phone number where questions can be answered.
10. Prepare and distribute at least two bill inserts annually for Multi-Family Owners and Property Managers that are each focused on a key subject (e.g. Recycling procedures, State and County mandatory Recycling requirements, Recycling technical assistance, on-call Bulky Item collection, etc.).

11. Two weeks prior to Christmas tree Collection event, provide written notification to each Multi-Family Customer specifying event details and schedule as provided by Section 4.2.C of this Agreement.
12. On each bill, include a brief statement to Customers providing service-related announcements such as messages about new services, State and County mandatory Recycling requirements, the on-call Bulky Item pick-up services, proper handling of Household Hazardous Waste, Christmas tree Collection, etc.
13. As part of Contractor's website, provide tenants and property managers with access to a dedicated multi-family page which will present "how-to" information in Adobe Acrobat PDF and for tenants and property managers as well as links to other resources.
14. Prepare Correct Action Notices (Oops Tags) for drivers to use in the event of set-out problems. Tags shall be tailored to residential generator types, and may be used as a courtesy notice, or a notice of non-Collection. When used as a courtesy notice, the materials in question shall be Collected, but Customers are informed of the improper element of the set-out and advised of how to ensure proper set-out in the future. When used as a non-Collection notice, the Container in question is not Collected, and the tag shall advise Customer of the specific problem.
15. Implement a Recycling plan that supports and educates both the State and County requirements for Multi-Family Customers. This Recycling plan shall include updating Contractor's website and print materials with information pertaining to all mandatory requirements. Distribute outreach materials describing mandatory Recycling requirements of AB 341 and Alameda County Waste Management Authority Mandatory Commercial Recycling Ordinance.
16. At least semi-annually, prepare and distribute notices to Customers that are not compliant with mandatory requirements of AB 341, AB 1826, SB 1383 and Alameda County Waste Management Authority Organics Reduction & Recycling Ordinance (ORRO), which identify why the Customer is not compliant and what actions Customer can take to be compliant.
17. Multi-family/Commercial Food Scraps program: conduct the following activities, at a minimum:
    - Provide a starter kit to educate property managers on the Food Scraps Collection program;
    - Conduct site visits to all Multi-Family premises to encourage participation in the program and customize the program to fit the Customer's needs; and,
    - Produce and distribute periodically, but at Contractor's discretion not more than quarterly, newsletters or bill inserts that inform customers about the Multi-Family/Commercial Food Scrap Collection program.

4. COMMERCIAL EDUCATION PROGRAMS

A. Public Education Activities

1. Prepare and distribute a flyer and/or "how-to" brochure to businesses explaining the Recycling services provided to each general business type (restaurants, office/commercial buildings, strip malls, and large commercial businesses). The brochure should emphasize the State and County mandatory Recycling requirements and how to comply.
2. Prepare and distribute a flyer and/or "how-to" brochure describing the Source Separated Organic Materials Collection services available to each business type and how to prepare Organic Materials for Collection.
3. Meet with up to four (4) business associations (Chamber of Commerce, Rotary Club, etc.) in separate venues to educate businesses on the Recycling and Organics Collection programs, the State and County mandatory Recycling requirements, answer questions, and provide service and Rate information.
4. Prepare an instructional packet identifying key transition dates and verifying Customer's specific current service level.

5. Prepare and distribute a quarterly newsletter to all Commercial Customers promoting and explaining Source Separated Recyclable Materials and Source Separated Organic Materials Collection programs and the State and County mandatory Recycling requirements. The newsletter shall be distributed to Commercial Customers at the same time bills are issued.

6. Prepare brochures, flyers, and articles for the quarterly newsletter related to non-franchise-related programs such as source reduction, reuse and non-Contractor Recyclable Materials programs (e.g., the State and County mandatory Recycling requirements, green business recognition, Hazardous Waste management, buy-recycled policies, etc.). These materials shall be available upon request, and articles shall be published annually in the quarterly newsletter.
7. Conduct site visits and provide technical assistance as specified in Section 4.10 of this Agreement.
8. Commercial Food Scraps program: conduct the following activities, at a minimum:
   - Provide a starter kit to educate businesses on the Commercial Food Scraps Collection program;
   - Conduct site visits to all schools, institutions, restaurants, bakeries, grocery stores, and other food scrap generators in the City to encourage participation in the program and customize the program to fit the Customer's needs;
   - Place Food Scraps presentation posters in highly trafficked areas in the City; and,
   - Produce and distribute periodically, but at Contractor's discretion not more than quarterly, newsletters or bill inserts that inform customers about the Commercial Food Scrap Collection program.
9. Attend business associations' meetings to promote and explain the Collection programs and the State and County mandatory Recycling requirements throughout

the Term of the Agreement, as requested by the associations or as scheduled by the City.

10. Provide employee training to businesses that participate in Source Separated Recyclable Materials and/or Source Separated Organic Materials Collection programs, annually upon the Customer's request.
11. Prepare Correct Action Notices (Oops Tags) for drivers to use in the event of set-out problems. Tags shall be tailored to Commercial generator types, and may be used as a courtesy notice, or a notice of non-Collection. When used as a courtesy notice, the materials in question shall be Collected, but Customers are informed of the improper element of the set-out and advised of how to ensure proper set-out in the future. When used as a non-Collection notice, the Container in question is not Collected, and the tag shall advise Customer of the specific problem.
12. On each bill, Contractor shall include a brief statement to Customers providing service-related announcements such as messages about new services, Source Separated Recyclables and Source Separated Organics Collection services, the State and County mandatory Recycling requirements, proper handling of Hazardous Waste, etc.
13. Prepare and make available through Contractor's website "how-to" information for Commercial Generators on Recycling, Composting, and disposal in Adobe Acrobat PDF.
14. Implement a Recycling plan that supports and educates both the State and County requirements for Commercial Customers. This Recycling plan shall include updating Contractor's website and print materials with information pertaining to all mandatory requirements. Distribute outreach materials describing mandatory Recycling requirements of AB 341, AB 1826, SB 1383 and Alameda County Waste Management Authority Organics Reduction & Recycling Ordinance (ORRO).
15. At least semi-annually, prepare and distribute notices to Customers that are not compliant with mandatory Recycling requirements of AB 341 and Alameda County Waste Management Authority Mandatory Commercial Recycling Ordinance, which identify why the Customer is not compliant and what actions Customer can take to be compliant.
16. Contractor shall reach out to various community organizations such as the Chamber of Commerce, Rotary, business associations and other appropriate groups to provide detailed Recycling outreach education and offer tools and support for successful programs.

5. SCHOOL OUTREACH

Contractor shall develop and implement a public school education curriculum to teach children how to Recycle and Compost at school and at home. At a minimum, the program shall include the following:

A. Contractor shall work with Grades of Green to introduce green measures to the Newark Unified School District. The web-based program covers all aspects of environmental stewardship including trash, electricity, water, paper, chemical, and emissions reductions, as well as empowering kids to utilize what they have learned in their school communities about environmental sustainability to

make a global impact. Contractor will work closely with Grades of Green to develop environmental education for delivery to students, staff, and community members in the City. Contractor will utilize Grades of Green to showcase school accomplishments and help develop and/or refine the curriculum and activities.

B. Contractor shall communicate the availability of its educational resources to each school's administrators through a variety of media prior to the opening of school each fall, and its Recycling coordinator will follow up and respond to school/teacher requests for educational materials, resources, and presentations throughout the year.

C. Contractor shall meet with administrators, faculty, facilities personnel, and parents (through PTA meetings and other means) initially and as needed to establish and provide training on internal materials capture systems. Contractor shall provide educational curriculum and program how-to information in a fun format—such as through story-telling, Recycling relays, competitions, waste audits, and via video. Educational curriculum, activities, and presentations are geared toward grade level/age group.

D. Contractor shall work with all schools within the District to identify a Recycling champion within each school who will act as the school's Recycling coordinator to monitor faculty, staff, and administrators for optimal, proper Recycling program participation, know of and utilize educational resources provided by Contractor and other sources, and communicate Recycling program results to students.

E. Contractor shall establish a District Recycling committee that shall be comprised of the identified recycling champions named in Item C, above, and headed by a District administrator and Contractor's Recycling Coordinator. The Recycling committee would meet according to need and District preference until Recycling programs are functional in all schools.

F. All educational materials will be provided in the primary languages represented in the student body of the District overall. Contractor shall, at a minimum, provide the educational components enumerated throughout this section.

G. Contract shall conduct a minimum of thirteen (13) presentations to schools in the City or provide on-site tours for classes from schools in the City to promote Recycling and Composting and provide age appropriate materials pertaining to Recycling and Composting.

6. SPECIAL EVENTS

A. Arrange for and staff a booth or table at City events to promote source reduction, reuse, Recycling, Composting, and proper handling of E-Waste, U-Waste, and Hazardous Waste and answer questions about Collection services. Contractor will develop a stand-alone and table-top professional display for use at the City events and will provide corresponding educational components that can be used to educate Customers and the general public about Recycling in general, and Newark Source Separated Recycling and Source Separated Organics programs. At a minimum, Contractor shall provide this outreach service at up to four (4) events annually to be determined with input from the City.

B. Educate any event sponsor or venue organizer on the requirements of AB 2176 for large events and venues, which are required to comply with AB 2176, and assist the sponsor or organizer in preparation of a recycling plan, which shall include all information required by AB 2176.

7. ALL SECTORS

A. Produce press releases and advertisements tied to specific community events at intervals determined by the City. Press releases shall be developed and reviewed by the City regarding new or enhanced services as needed. Advertisements shall be developed in conjunction with workshops, training programs, etc.

B. Conduct educational tours of the Approved Recyclables Processing Facility to familiarize residents, businesses, and school children with the facility's activities.

C. Provide public education materials that address the multi-lingual diversity of the City through use of visual images and/or other techniques. At a minimum, all materials shall be available in English and Spanish.

D. Attend community workshops as requested by City to explain Collection services and respond to questions from the community.

E. Develop and maintain a website describing services provided in the City as required by Section 4.12.1.C of the Agreement. Contractor's website shall enable Customers to view their Collection schedule by typing in the service address; securely pay their bill online; and identify who to contact with service requests (such as Drop Box orders and Curbside Bulky Item pick-up scheduling). The website shall also include a "Kids' Place" section featuring activities designed for children to learn more about the environment and Recycling through the use of puzzles, games, and word searches.

F. Contractor shall provide the following to all its customers under the Agreement annually:

- Information on the customer's requirements to properly separate materials in appropriate Containers.
- Information on methods for: the prevention of Organic Materials generation, recycling Organic Materials on-site, sending Organic Materials to community composting, and any other local requirements regarding Organic Materials.
- Information regarding the methane reduction benefits of reducing the landfill disposal of Organic Materials, and the methods of Organic Materials recovery contemplated by the Agreement.
- Information regarding how to recover Organic Materials.
- Information related to the public health and safety and environmental impacts associated with the landfill disposal of Organic Materials.
- The above information will be provided, at a minimum, through print and/or electronic media, and may also be provided through workshops, meetings and/or on-site visits. All information that SB 1383 requires the City to distribute shall be posted on Contractor's website.
- Contractor shall provide an educational webpage which includes downloadable copies of all the materials described in this Section.
- Contractor shall provide educational materials to customers discovered to be out of compliance with the requirements of the SB 1383 Regulations, and shall report a list of such customers as well as actions taken to the City on a periodic basis as required by City.
- The information and materials described in this Section shall be provided in English, Spanish, Mandarin, and Vietnamese.

8. EDUCATION FOR PUBLIC EVENTS

Contractor shall partner with the City to develop and launch a sustainability-themed outreach schedule for public events. The program would involve creating a family of “green” Recycling-specific educational hand-outs, and a common, customizable booth design that could be used at Newark Days, Music on the Grove and other local street fairs, art festivals and concerts to highlight local environmental initiatives. Contractor shall set-up and staff the booth at a minimum of four (4) events each year. Contractor will work with City staff on publicity to increase awareness and foot traffic. Contractor shall not only provide service and assistance to all of the community events named in Exhibit F and more, it will also work with event planners to bring additional value. This would include upfront planning for logistics detail, such as placement of Containers, providing a full contingent of Containers at each Collection point with clear messaging to encourage Recycling participation, clean up services, sponsorships, and educational materials.

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EXHIBIT C

REPORTING REQUIREMENTS

EXHIBIT C
REPORTING REQUIREMENTS

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

1. Determine and set Maximum Rates and evaluate the financial efficacy of operations.
2. Evaluate past and expected progress towards achieving the City's seventy-five percent (75%) Diversion goals and objectives.
3. Provide concise and comprehensive program information and metrics for use in fulfilling reporting requirements under AB 939 and AB 341 and Alameda County Waste Management Authority Mandatory Commercial Recycling Ordinance.
4. Provide program information in a format compatible with Alameda County Waste Management Authority franchise reporting recommendations.
5. Determine needs for adjustment to programs.
6. Evaluate Customer service and complaints.
7. Tracking C&D Collection and Diversion activities and allocating C&D Collection and Processing costs and separately reporting Gross Receipts from C&D services.

At City's request, Contractor shall use standardized reporting forms provided by City or Alameda County Waste Management Authority (StopWaste).

Monthly Report Content

The monthly tonnage reports shall be presented by Contractor to show the following information for each month. In addition, each monthly report shall show the monthly data for the past twelve (12) months.

1. Tonnage Report

- Tonnage delivered to each Approved Facility by Customer and Material Type, subtotaling and clearly identifying those Tons that are disposed and those that are Diverted.
- Total Units of Used Oil, Used Oil Filters, E-Waste, U-Waste, and Bulky Items Collected by Customer Type and Units Recycled and disposed.
- Tonnage of Recyclable Materials Marketed (by commodity and including average commodity value for each) and Processing Residue Tonnage disposed.
- Tonnage of Source Separated Organic Materials Marketed and Processing Residue Tonnage disposed.

- Tonnage of Source Separated Recyclable C&D Marketed and Processing Residue Tonnage disposed.
- Contamination and Residue Levels (At Contractor's option, Contractor may provide contamination and Residue Levels on a quarterly basis) and the date of the most-recently completed Characterizations.

2. Mandatory Recycling and Organics Recycling Compliance Report

Listing of Multi-Family and Commercial Customers that are not in compliance with the mandatory requirements of AB 341, AB 1826, SB 1383 and/or Alameda County Waste Management Authority Organics Reduction & Recycling Ordinance (ORRO). Such list shall include, at a minimum, Customer name, service location address, Solid Waste, Recycling, and Organics Service Level information, contact name, address, and phone number, and the date(s) Contractor provided a notice of non-compliance, actions taken to educate the Customer and the type of violation (including not providing Containers for customer use, and other compliance violations).

Quarterly Report Content

Quarterly reports shall be presented by Contractor to showing the monthly information requested above plus the following information for each quarter.

1. Customer Report

- Number of Customers by Customer Type.
- Number of Containers at each Service Level by Customer Type and program summarizing the type of material Collected, total gallons of Cart service, cubic yards of Bin service, and pulls and cubic yards or Tons of Drop Box and Compactor service by Customer Type. Report should calculate the average volume of service received per: Single-Family Customer; Multi-Family dwelling unit; Commercial Customer; and, C&D Customer.
- Number of Bulky Item/Reusable Materials Collection events by Customer Type.
- Participation percentage by program and Customer Type where the participation percentage is calculated as the number of Customers who have subscribed to or requested service under the program relative to the number of Customers of that Customer Type subscribing to Solid Waste service. Contractor shall not be required to submit participant Customer names and addresses as part of the regular reporting; however, such information shall be provided to the City Contract Manager upon request.
- Detailed Customer account data in Microsoft Excel format including, but not limited to: customer name, service location address, Solid Waste, Recycling, Organics, and C&D Service Level information, contact name, address, and phone number. Such detail shall be sufficient for the City to verify Customers' compliance/non-compliance with the mandatory Recycling requirements of AB 341, AB 1826, SB 1383 and/or Alameda County Waste Management Authority Mandatory Organics Reduction & Recycling Ordinance (ORRO). If necessary for compliance purposes, information shall be submitted on a monthly basis at the City's request.

- Other reports required by the State or Alameda County Waste Management Authority related to the mandatory Recycling requirements of AB 341, AB 1826, SB 1383 and/or Alameda County Waste Management Authority Organics Reduction & Recycling Ordinance (ORRO). If necessary for compliance purposes, information shall be submitted on a monthly basis at the City's request.

2. Customer Service Report

- Number of Customer calls listed separately by complaints and inquiries (where inquiries include requests for Recycling information, Rate information, etc.) listed separately by month. For complaints, list the number of calls separately by category (e.g., missed pickups, scheduled cleanups, billing concerns, damage claims, etc.) and provide details regarding complaint resolution.
- Number of new service requests and Service Level changes for each Customer Type and program listed separately by month.
- Number of technical assistance requests and/or onsite services provided listed by month.
- Number of events of Discarded Materials being tagged for non-Collection summarized by the reason for tagging (e.g., inclusion of non-Recyclable or non-Compostable materials, improper setout, Hazardous Waste, etc.) listed by month.
- Call center and web analytics such as hold times, number of hits and unique visitors to the Contractor's website listed by month.

3. Education and Outreach Report

- Provide a status report of Contractor's actual activities completed compared to the annual public education plan. For each completed item, document the results including what date the activity was performed, how many Customers were targeted or participated, and what methods were used to accomplish the task, if different from the plan.
- Summarize the Recycling opportunity assessments/on-site meetings provided to Customers (reporting Multi-Family separately from Commercial) by identifying the number of Recycling opportunity assessments conducted each month in the most-recently completed quarter, and contact information including address, contact names, telephone number of Persons contacted, number of units (for Multi-Family), and the Solid Waste, Recyclable Materials, and Organic Materials Service Level. Include any Service Level changes resulting from such site visits.
- Dates, times, and group names of meetings and events attended.

4. Pilot and New Programs Report (If applicable)

For each pilot and/or new program, provide activity related and narrative reports on goals, milestones, and accomplishments. Describe problems encountered, actions taken and any recommendations to facilitate progress. Describe vehicles, personnel, and equipment utilized for each program.

5. Revenue Report

Provide a statement detailing Gross Receipts from all operations conducted or permitted pursuant to this Agreement as required by Section 7.3. Gross Receipts shall be separately reported by Customer type and material type.

Maintain a list of Customers that are forty five (45) or more calendar days past due and include the following information for each delinquent account: name; service address; contact information; number of days the account is delinquent; method(s) the Contractor has used to attempt collection of the bad debt including date of such attempt(s); and, identification, if, and when the Contractor plans to or did stop service to a delinquent account. Provide this list only upon request of the City.

6. Public Education Plan

Pursuant to Section 4.9, as part of the Contractor's third quarterly report for the Rate Period, Contractor shall submit a plan outlining its public education efforts for the coming Rate Period.

7. Charitable Donations

Contractor shall clearly identify all charitable donations and report amounts donated by organization, including funds donated to the Newark Unified School District, Newark Education Foundation, or other organization mutually agreed to by the Parties, per Section 4.16. The report on funds donated to the Newark Unified School District, Newark Education Foundation, or other organization shall be accompanied by documentation of the calculation of the ten (10) percent donation.

Annual Report Content

The annual report shall include all the monthly and quarterly report information plus the following additional information.

1. Summary Assessment

Provide a summary assessment of the programs performed under this Agreement from Contractor's perspective relative to the financial and physical status of the program. The physical status assessment shall reflect how well the program is operating in terms of efficiency, economy, and effectiveness in meeting all the goals and objectives of this Agreement, particularly the Contractor's Diversion goals. Provide recommendations and plans to improve. Highlight significant accomplishments and problems. Results shall be compared to other similar size communities served by the Contactor in the State, if applicable.

2. Vehicle Inventory

Provide a listing of all vehicles used in performing services under this Agreement including the license plate number, VIN, make, model, model year, purchase date, engine overhaul/rebuild date (if applicable), and mileage at December 31.

3. Recyclables, Organics, and C&D Markets

Contractor shall include a listing of markets for Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D and the end use of these materials. This type of information is intended to help the City gauge the sustainability of Recycling and Organics markets and the ultimate disposal of all types of materials Collected.

4. Cost-Based Rate Adjustment Data

Provide the following information **only if Maximum Rates are to be determined for the upcoming Rate Period using a cost-based adjustment process** pursuant to Exhibit D2. With the exception of the "Financial Information" listed below, all other items listed may be requested by the City Contract Manager at any time during the Term of the Agreement and Contractor shall comply with that request in a timely

fashion.

A. **Financial Information.** Within one hundred twenty (120) calendar days after the close of the Rate Period, Contractor shall deliver to the City four (4) hard copies and one (1) electronic copy of the audited consolidated financial statements and profit and loss statements of Contractor for the preceding Rate Period. Financial statements shall include a supplemental combining schedule showing Contractor's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP) consistently applied and fairly reflecting the results of operation and Contractor's financial condition. Annual financial statements shall be audited, in accordance with Generally Accepted Auditing Standards (GAAS) by a Certified Public Accountant (CPA) licensed (in good standing) to practice public accounting in the State as determined by the State Department of Consumer Affairs Board of Accountancy, and that the CPA's opinion on Contractor's annual financial statements shall be unqualified, and shall contain the CPA's conclusions regarding the Contractor's accounting policies and procedures, internal controls, and operating policies. The CPA shall perform an evaluation and, if necessary, shall cite recommendations for improvement.

B. **Related Party Entities.** As part of the annual reporting requirement, Contractor shall provide the City with a copy of each related party entity's (whose cost of services are not pre-determined in this Agreement on a unit price basis or by a governmental contractor) audited annual financial statements and management letter for that fiscal year, or within ninety (90) calendar days of each related party entity's fiscal year-end, if timing does not coincide with the annual report date. Financial statements shall be prepared in accordance with GAAP and audited, in accordance with GAAS, by a CPA licensed in the State, and that the CPA's opinion on each related party entity's annual financial statements shall be unqualified, and that the CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit.

Contractor agrees that all financial transactions with all related party entities shall be approved in advance in writing and disclosed in a separate disclosure letter to the City, upon request. This letter shall include, but not be limited to, the following information:

- A general description of the nature of each related party entity transaction, or type of transaction (if many similar transactions exist) shall be provided, as applicable. Such description shall include for each (or similar) transaction, amounts, specific related party entity, basis of amount (how amount was determined), description of the allocation methodology used to allocate any common costs, and profit amount. Amounts shall be reconciled to the related party entity disclosures made in Contractor's annual audited financial statements referred to in this Exhibit.
- At the City's request, Contractor shall provide the City with copies of working papers or other documentation deemed relevant by the Contractor relating to information shown in the annual disclosure letter.

C. **Operational Information:** Provide the following operational information upon request of the City:

1. **Routes by Customer Type**
    a. Number of routes per day for each line of business.
    b. Types of vehicles.
    c. Crew size per route.
    d. Number of full time equivalent (FTE) routes.
    e. Number of accounts and cubic yards scheduled per route.
    f. Total route hours per Customer Type per year.
    g. Average cost per route.
    h. Percentage of Drop Box routes attributable to C&D Collection
2. **Personnel**
    a. Organizational chart.
    b. Job classifications and number of employees (e.g., administrative, Customer service representatives, drivers, supervisors, educational staff).
    c. Wages by job classification.
    d. Number of FTE positions for each job classification.
    e. Number of hours per job classification per year.
3. **Productivity Statistics**
    a. Average number of accounts per route per day by Customer Type.
    b. Average number of setouts per route per day by Customer Type.
    c. Average Tons per route per day by vehicle type (i.e. side-loader, front-loader, roll-off).
    d. Average cubic yards of Collection scheduled per route.
    e. Analysis of Drop Box Collection service and calculation of the percentage of Drop Box route time attributable to C&D Collection.
4. **Vehicles**
    a. List of collection vehicles including year purchased and mileage.
    b. Average age of mobile equipment with oldest and newest.
    c. List of major maintenance and/or replacement events, including costs.
5. **Operational Changes**
    a. Number of routes.
    b. Staffing.
    c. Supervision.
    d. Collection services.
    e. Other data as applicable related to any programmatic or operational changes implemented within the Agreement.

D. **Variance Analysis.** Provide the following variance analysis for each Customer Type. For any variances greater than five (5) percent annually, Contractor shall provide sufficient rationale to support variance:

1. Variance analysis comparing the current Rate Period to each of the prior Rate Periods of Agreement.
2. Variance analysis comparing the current Rate Period to each of the future projected Rate Periods.

E. **Allocations.** Provide the following allocation data:

1. Provide a concise general explanation of the various allocation methodologies used for each Rate application line item.

2. Provide specific examples of each type of allocation used showing how an entry is reported in the general ledger and ties to the Rate application
3. Provide a statement indicating whether there have been any changes in allocation methods used since the last Rate application. If any allocation methods have changed clearly identify those changes.

F. **Projections.** Provide the following projection data:

1. Provide support for the basis for projected Gross Receipts and line item expenses, clearly indicate the supporting calculations and assumptions
2. Provide support for the most-recent twelve (12) months of Tonnage data for the Rate Period. Clearly indicate the supporting calculations and assumptions.

5. Reporting for Enforcement and CalRecycle

Contractor shall report on all activities as required by CalRecycle in advance of the City's reports to CalRecycle on August 1.

A. **For public education.** Provide the following information:

1. Copies of all such information (including flyers, brochures, newsletters, invoice messaging, website and social media postings, emails, and other electronic messages).
2. The date the information was disseminated or the direct contact made. For website and social media postings, this shall be the date posted.
3. To whom the information was disseminated or the direct contact made. For mass distributions such as mailings or bill inserts, Contractor may provide the type and number of accounts receiving the information, rather than listing each recipient individually.

B. **For Route Reviews and Compliance Reviews.** Provide the following information:

1. The date the review was conducted.
2. The name and title of each person conducting the review.
3. A list of the addresses covered by the review.
4. For Route Reviews, a description of each Hauler Route reviewed, including Contractor's route number and a description of the Hauler Route area.
5. For Route Reviews, the results of such review (i.e. the addresses where any Prohibited Container Contaminants were found), and any photographs taken.
6. For compliance reviews that Contractor performs pursuant to Section 5(e) of this Amendment, the results of such review (i.e., Contractor's findings as to whether the customers reviewed are subscribed for Organic Materials collection service, have an applicable waiver, or neither), and any relevant evidence supporting such findings (e.g. account records).
7. Copies of any educational materials issued pursuant to such reviews.

C. **Prohibited Container Contaminants.** Provide the following documentation relating to observed Prohibited Container Contaminants, whether observed during Route Reviews or otherwise:

1. Copies of the form of each notice issued to customers for Prohibited Container Contaminants, as well as, for each such form, a list of the customers to which such

notice was issued, the date of issuance, the customer's name and service address, and the reason for issuance (if the form is used for multiple reasons).

2. The number of times notices were issued to customers for Prohibited Container Contaminants.
3. The number of Containers where the contents were disposed due to observation of Prohibited Container Contaminants.
4. A description of Contractor's process for determining the level of Container contamination under the Agreement.

Event-Specific Requirements

A. **Special Events**. Pursuant to Section 4.6.C, within fourteen (14) calendar days of the end of a special event, Contractor shall submit a report to the City Contract Manager and event organizer documenting at a minimum: the number of event collection stations deployed at the event, the number of collection station monitors, the Tonnage of each material type (i.e., Solid Waste, Recyclable Materials, and Organic Materials) Collected, and a description of the public education provided at the event.

B. **Litter/Spillage of Materials**. Pursuant to Section 5.3.C, Contractor shall discuss instances of repeated spillage not caused by it directly with the Generator responsible and report such instances to City.

C. **Notice of Non-Collection**. Pursuant to Sections 4.1.E and 4.2.E, Contractor notify the City Contract Manager via email of Premises where materials are tagged by Contractor and not picked up, describing the type of material(s) and reason.

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EXHIBIT D

RATE ADJUSTMENT METHODOLOGY

D1. Index Rate Adjustment Methodology

D2. Cost-Based Rate Adjustment Methodology

EXHIBIT D
RATE ADJUSTMENT METHODOLOGY

General

Subject to the terms herein, the City agrees to an annual adjustment of all Maximum Rates subject to review and approval by City. All annual Rate adjustments shall be performed using an indexed based Rate adjustment approach described in Exhibit D1 with the exception that in place of the index adjustment to set Maximum Rates , the Contractor and/or the City may each request one cost-based Rate adjustment (using the methodology described in Exhibit D2) to set Maximum Rates for Rate Periods Two, Three, Four or Five and may each request one cost-based Rate adjustment to set Maximum Rates for Rate Periods Six, Seven, Eight, Nine, or Ten provided that there are at least two (2) years between the cost-based Rate adjustments requested by Contractor. For example, if Contractor requests a cost-based Rate adjustment to set Rate Period Five Maximum Rates, Rate Period Seven is the earliest Rate Period that Contractor may request the next cost-based adjustment. In summary, up to four (4) cost-based Rate adjustments may be performed if the City and Contractor both exercise their rights pursuant to this paragraph.

For the index Rate adjustment process, the basis for the Maximum Rate adjustment shall be adjustment of the Total Annual Cost, which includes an "Operating Component", "Disposal Component", and "City Fee Component." Each annual cost component shall be adjusted annually to calculate a new Total Annual Cost. The annual percentage change in the Total Annual Costs shall be applied to each Maximum Rate to determine the Maximum Rate for the coming Rate Period. For the cost-based Rate adjustment, actual costs are reviewed and used to project Total Annual Costs, which are divided by Gross Receipts (excluding those from Customers for the provision of C&D services) for the prior twelve (12) months to determine the rate adjustment factor by which Maximum Rates are adjusted.

Contractor shall submit its application for a Maximum Rate adjustment to the City Contract Manager on or before October 1 of each Rate Period when Maximum Rates for the coming Rate Period are to be adjusted using the index-based methodology. If either Party requests a cost-based adjustment, the requesting Party shall notify the other Party by March 1 of the Rate Period prior to the Rate Period for which Rates will be set through the cost-based adjustment. Contractor shall submit its application for the cost-based adjustment on or before July 1 of the Rate Period prior to the Rate Period for which Rates will be set through the cost-based adjustment (i.e., by July 1, 2016 if a cost-based adjustment has been requested for Rate Period Four, or July 1, 2020 for Rate Period Eight). Contractor's Rate application shall document all calculations and include all supporting schedules, calculations of adjusted annual cost components, and any other documentation or evidence determined by the City Contract Manager to be reasonably necessary to ensure that the calculation of adjustments to Maximum Rates has been performed in strict conformance to the requirements of this Exhibit D.

The City Council shall make a good faith effort to approve Maximum Rates by December 1 of each year, and such Maximum Rates shall be effective on each subsequent January 1. If Maximum Rates are not effective by January 1 due to a delay caused solely by City, City may allow Contractor to retroactively bill Customers for the amount of the Maximum Rate increase for any period of said delay that is solely caused by City or the City may compensate the Contractor for lost Gross Receipts. If Maximum Rates are not effective by January 1 as a result of Contractor's delay in submitting the Rate application in a complete and accurate form, then prior Maximum Rates remain in effect until such adjustment is made.

Contractor shall not be requested and did not include costs associated with C&D Collection and Processing

services in its Total Annual Cost; however, Maximum Rates for C&D services shall be adjusted by the Rate Adjustment Factor calculated in accordance with Exhibits D1 and D2 and shall be adjusted at the same time other Rates are adjusted.

Definitions

Certain terms which are specific to this Exhibit (including Exhibits D1 and D2) are defined below:

1. **City Fees** shall mean those fees described in Article 7 of this Agreement.
2. **Annual Cost Component** means each component of the Annual Cost including the operating, Disposal, and City fee components.
3. **Annual Percentage Change** means the average value of an index for the 12-month period ending August of the then-current Rate Period minus the average index value for the 12-month period ending August of the most-recently completed Rate Period, divided by the average index value for the 12-month period ending August of the most-recently completed Rate Period. The Annual Percentage Change shall be expressed as a percentage rounded to the nearest hundredth (e.g., X.XX%).

   For example, if the Contractor is preparing its Rate application for Maximum Rates to be effective for Rate Period 2, the Annual Percentage Change in CPI shall be calculated as follows: [(Average CPI for September 2013 through August 2014) – (Average CPI for September 2012 through August 2013)] / (Average CPI for September 2012 through August 2013).
4. **Bureau of Labor Statistics (BLS)** shall mean the U.S. Department of Labor, Bureau of Labor Statistics or its successor agency.
5. **Consumer Price Index (CPI)** shall mean the Water and sewer and trash collection services in U.S. city average, all urban consumers, seasonally adjusted, U.S. city average, compiled and published by the BLS, using the following parameters:
   - Area – U.S. city average
   - Item – Water and sewer and trash collection services
   - Series Identification Number – CUSR0000SEHG
6. **Fuel Index** shall mean the PG&E Compressed Natural Gas Index, Schedule G- NGV2.
7. **Pass-Through Cost** shall mean those City Fees, Tipping Fees, and other costs, as specifically identified below, that Contractor may include in the determination of the Total Annual Cost but which are not included in the calculation of Contractor's allowable profit.
8. **Rate Adjustment Factor** shall mean the amount, expressed as a percentage, by which each Maximum Rate is adjusted.
9. **Tipping Fee** shall mean the rate or tipping fee charged for each Ton or unit of material delivered to an Approved Facility. The Parties acknowledge that the timing of changes to the Tipping Fees at Approved Facilities that are not owned or operated by Contractor or their subcontractor may not align with the review and adjustment of Maximum Rates under this Agreement. In the event that the Contractor begins to pay a new Tipping Fee at an Approved Facility, other than one owned and operated by Contractor or their Subcontractor, prior to the adjustment of Maximum Rates under this Agreement, the adjustment to the Rate Adjustment Factor shall consider that period. Alternatively, the City reserves the right to adjust Maximum Rates at any time during the year in order to address changes in Tipping Fees alone without adjusting any other component of Maximum Rates. The

"Current Approved" Tipping Fee for any Approved Facility shall be the Tipping Fee in place as the Rate Application date with the exception that the Tipping Fee for the Approved Transfer Facility shall be the average of the Tipping Fee in effect on the Rate Application Date and the Tipping Fee the City has calculated to take effective on July 1 of the coming Rate Period.

10. **Total Annual Cost** shall mean the total amount to be used as a basis for determining the Rate Adjustment Factor. The Total Annual Cost does not reflect or in any way guarantee the Gross Receipts that are to be generated by Rates or retained by the Contractor.

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EXHIBIT D1
INDEX RATE ADJUSTMENT METHODOLOGY

D.1.1 General

The index Rate adjustment methodology involves adjusting: (1) the operating component of the Total Annual Cost for the current Rate Period by the change in the CPI and Fuel Indices; and, (2) the Disposal and City fee components of the Total Annual Cost by the actual changes to those components, to determine the Maximum Rates for the coming Rate Period. The intent of performing the index based adjustment is to allow Maximum Rates and resulting Annual Cost to be adjusted throughout the Term of this Agreement (giving consideration to the specific cost category of "fuel" that may be more volatile than the CPI) using simple, readily available indicators of changes in Contractor's costs for providing service.

If the CPI or Fuel Index is discontinued or revised during the Term by the BLS, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if said index had not been discontinued or revised.

For the purpose of determining Maximum Rates for Rate Period Two, the Total Annual Cost and its Operating Component, Disposal Component, and City Fee Component, shall be the proposed annual costs for the last 12 months of Rate Period One (January 1, 2014 through December 31, 2014) as shown in Attachment L.

D.1.2 Rate Adjustment Methodology

Contractor shall calculate the adjustment to Maximum Rates using the following methodology:

Step 1: Calculate the "Operating Component Factor" or "OCF", which shall be rounded to the nearest hundredth (100th) percent.

> **Step 1a:** Calculate the Annual Percentage Change in the CPI using one-hundred percent (100%) of the twelve (12) month average percentage change in the CPI between September of the current year to September of the prior year.
>
> **Step 1b:** Calculate the Annual Percentage Change in the Fuel Index.
>
> **Step 1c:** Calculate the OCF, rounded to the nearest hundredth (100th) percent, as follows:
>
> OCF = (95% x Annual Percentage Change in CPI calculated in Step 1a above) + (5% x Annual Percentage Change in the Fuel Index calculated in Step 1b above)
>
> For example, assuming:
>
> 1. Proposed annual operating costs less fuel are 95% of proposed total annual operating costs.
> 2. Proposed fuel costs are 5% of proposed annual operating costs.
> 3. Annual Percentage Change in CPI = 1.23%
> 4. Annual Percentage Change in Fuel Index = 1.17%
> 5. OCF = (95% x 1.23%) + (5% x 1.17%) = 0.0123 = 1.23%

If the OCF is greater than five percent (5%), the OCF shall be set equal to five percent (5%) and the remaining increase shall be reflected ("carried forward") to the following Rate Period. If the adjustment to the Operating Component for the prior Rate Period resulted in a "carry over" to limit the amount of the Operating Component increase to five percent (5%), then the carry over amount may be added to the OCF.

Step 2: Calculate the adjusted Operating Component, rounded to the nearest dollar, as follows:

Adjusted Operating Component = Then-current Operating Component x (1 + OCF)

For example, assuming:

1. Then-current Operating Component = $4,000,000
2. OCF = 1.23% (as calculated in Step 1c)
3. Adjusted Operating Component = $4,000,000 x (1 + 0.0123) = $4,049,000

Step 3: Calculate the adjusted Disposal and City Pass-Through Fees Component, rounded to the nearest dollar, to reflect any percentage change in the Average Tipping Fee charge at the Approved Transfer Facility. The calculations rely on an averaging of the Tipping Fees because the Tipping Fee at the Approved Transfer Facility is adjusted annually on July 1 of each year in the middle of each Rate Period. The adjustment shall be calculated as follows:

Disposal and City Pass-Through Fees Component = Adjusted Disposal Component + City Pass-Through Fees Component

Adjusted Average Approved Transfer Facility Tipping Fee = (Then-Current Approved Transfer Facility Tipping Fee + Projected Approved Transfer Facility Tipping Fee for the coming Rate Period) / 2 where the following applies:

- The then-current Approved Transfer Facility Tipping Fee is the Tipping Fee that is effective as of the Rate Application Date through June 30 of the coming Rate Period; and,
- The projected Approved Transfer Facility Tipping Fee for the coming Rate Period is the Tipping Fee that the City has calculated to be effective July 1 through December 31 of the coming Rate Period.

Adjusted Disposal Component = Then-current Disposal Component x (Adjusted Average Approved Transfer Facility Tipping Fee / Prior Average Approved Transfer Facility Tipping Fee)

City Pass-Through Fees Component = SB 1383 Fee (set per Section 7.5) + Compost Purchase Cost (set per Section 4.8.4.C.3)

For example, assuming:

1. Then-current Disposal Component = $1,500,000
2. Then-Current Approved Transfer Facility Tipping Fee (effective on the Rate Application Date through June 30 of the coming Rate Period) = $38.00 per Ton
3. Projected Approved Transfer Facility Tipping Fee for the coming Rate Period = $39.14 per Ton
4. Adjusted Average Approved Transfer Facility Tipping Fee = ($38.00 + $39.14) / 2 = $38.57
5. Prior Average Approved Transfer Facility Tipping Fee = $37.45 per Ton
6. Adjusted Disposal Component = $1,500,000 x ($38.57 / $37.45) = $1,544,859

Step 4: Calculate the City Fee Component, rounded to the nearest dollar. The City Fee Component of the

Annual Cost Component shall be calculated as follows:

Adjusted City Fee Component = [(Adjusted Operating Component + Adjusted Disposal Component) / (1- Franchise Fee)] – (Adjusted Operating Component + Adjusted Disposal Component);

In simplified form, the Adjusted City Fee Component = 0.25 x (Adjusted Operating Component + Adjusted Disposal Component)

For example, assuming:

1. Adjusted Operating Component = $4,049,000 (as calculated in Step 2)
2. Adjusted Disposal Component = $1,544,859 (as calculated in Step 3)
3. Franchise Fee = 20% of Gross Receipts
4. Adjusted City Fee Component = 0.25 x ($4,084,000 + $1,544,859) = $1,398,465

Step 5: Calculate the adjusted Total Annual Cost.

Adjusted Total Annual Cost = Adjusted Operating Component + Adjusted Disposal Component + Adjusted City Fee Component

For example, assuming:

1. Adjusted Operating Component = $4,049,000 (as calculated in Step 2)
2. Adjusted Disposal Component = $1,544,859 (as calculated in Step 3)
3. Adjusted City Fee Component = $1,398,465 (as calculated in Step 4)
4. Adjusted Total Annual Cost = $4,049,000 + $1,544,859 + $1,398,465 = $6,992,324

Step 6: Calculate the Rate Adjustment Factor, which shall be rounded to the nearest thousandth.

Rate Adjustment Factor = Adjusted Total Annual Cost / Then-Current Total Annual Cost

For example, when calculating Rate Period Two, assuming:

1. Then-current Total Annual Cost for Rate Period One= $6,875,000
2. Adjusted Total Annual Cost = $6,992,324 (as calculated in Step 5)
3. Rate Adjustment Factor = $6,992,324 / $6,875,000 = 1.017

Step 7: Calculate the new Maximum Rates for All Rates except C&D Rates.

Multiply each then-current Maximum Rate by the Rate Adjustment Factor to calculate the effective Maximum Rate for the coming Rate Period, rounded to the nearest cent.

For example, assuming:

1. Then-current Maximum 20-gallon Single-Family Rate = $20.00
2. Rate Adjustment Factor = 1.017 (as calculated in Step 6)
3. Adjusted Maximum 20-gallon Single-Family Rate for coming Rate Period = $20.00 x 1.017= $20.34

Step 8: Calculate the new Maximum Rates for C&D Services, rounded to the nearest cent, as follows:

Adjusted Maximum C&D Rate = Then-current Maximum C&D Rate x (1 + OCF)

For example, assuming:

1. Then-current Maximum Rate for a 14 cubic yard C&D drop box = $400.00

2. OCF = 1.23% (from Step 1)

3. Adjusted Maximum Rate for a 14 cubic yard C&D drop box = $400.00 x (1 + 0.0123) = $404.92

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EXHIBIT D2
COST-BASED RATE ADJUSTMENT METHODOLOGY

General

The cost-based adjustment involves review of the Contractor's actual cost of operations and operational statistics (staffing levels, routes, route hours, Customers and their service levels, etc.) to determine the Total Annual Cost for the current Rate Period and to forecast the Total Annual Cost for the coming Rate Period. The difference (measured as a percentage) between the Total Annual Cost for the coming Rate Period and the Gross Receipts most-recently reported calendar year is the "Rate Adjustment Factor". The Rate Adjustment Factor is applied to the then-current Maximum Rates to determine the Maximum Rates for the coming Rate Period.

The intent of performing the cost-based adjustment is to examine the actual impact of changes in inflation or deflation, the number of Customers, and the Service Level of Customers.

The City may incur costs, including consulting and legal fees, when determining adjustments to the Maximum Rates in accordance with this Exhibit and may require the Contractor to pay for such costs within sixty (60) calendar days of receipt of the City's invoice for such costs. The Contractor may recover such costs through the Maximum Rates by treating the costs as an allowable Pass-Through Cost. Regardless of Contractor's payment of costs associated with said review, City shall retain full and unimpeded discretion in selection of its agents to ensure, at a minimum, that no conflict of interest arises in the review of Contractor's request. City retains the right to select its agents on the basis of their qualifications and experience and without regard to cost.

Forecasting Total Annual Cost

The Total Annual Cost for the coming Rate Period shall be forecasted in the manner described in this Section.

A. Forecasting Total Annual Cost of Operations

1. Determine Actual Total Annual Cost of Operations. Contractor's financial statement, books, and records shall be reviewed to determine Contractor's "Actual Total Annual Cost of Operations" for the most-recently completed Rate Period to perform all the services in the manner required by this Agreement for each of the following cost categories:

a. Labor-related costs
b. Vehicle-related costs (excluding fuel)
c. Fuel costs
d. Other costs
e. Depreciation costs

2. Calculate Allowable Costs. Contractor shall calculate "Allowable Total Annual Cost of Operations" for the most-recently completed Rate Period by adjusting "Actual Total Annual Cost of Operations" for the most-recently completed Rate Period (determined in accordance with A.1 above) to deduct non-allowable costs. The Allowable Total Annual Cost of Operations shall be

reported in the cost categories identified in A.1 above. Non-allowable costs that shall be deducted from actual costs include the following:

a. Labor and equipment costs for personnel and vehicles that are not specified in the proposal forms contained in Exhibit N.

b. Payments to directors and/or owners of Contractor unless the amount paid is reasonable compensation for services actually rendered. Reasonableness shall be determined based on available market pricing for similar services and shall be in the sole discretion of the City.

c. Travel expenses and entertainment (above five thousand dollars ($5,000) annually in total) expenses, unless authorized in advance by the City.

d. Payments to repair damage to public or private property for which Contractor is legally liable.

e. Fines or penalties of any nature.

f. Liquidated Damages assessed under this Agreement.

g. Federal or State income taxes.

h. Charitable or political donations unless such donation is to a youth, civic, or charitable organization and has been previously approved in writing as an allowable expense by the City Contract Manager.

i. Depreciation or interest expense for Collection vehicles, Containers, other equipment, offices and other facilities if such items are leased as specified in Exhibit N.

j. Attorney's fees and other expenses incurred by Contractor in any court proceeding in which the City and Contractor are adverse Parties.

k. Attorney's fees and other expenses incurred by Contractor arising from any act or omission in violation of this Agreement.

l. Attorneys' fees and other expenses incurred by Contractor in any court proceeding in which Contractor's own negligence, violation of law or regulation, or wrong doing are in issue and occasion, in whole or in part, the attorneys' fees and expenses claimed; and attorneys' fees and expenses incurred by Contractor in a court proceeding in which the legal theory or statute providing a basis of liability against Contractor also provides for separate potential liability for the City derived from the action of its citizens or Rate payers (such as in a CERCLA lawsuit) unless the Contractor is found not liable in such claims and such claims arise from acts or occurrences within the Term of the Agreement.

m. Payments to Related-Party Entities for products or services, in excess of the cost to the Related-Party Entities for those products or services.

n. Goodwill.

o. Unreasonable profit sharing distributions.

p. Replacement costs for Containers that need to be replaced because the useful life of such Container was less than the ten- (10-) year Term.

q. Administrative costs greater than the administrative costs presented in Contractor's Proposal (Exhibit I) adjusted annually by the Annual Percentage Change in the CPI.

r. Bad debt write-offs in excess of two percent (2%) of Gross Receipts. Bad debt compensation to Contractor in Rate Period 1 is $204,191.

s. C&D Collection and Processing costs including disposal of Processing Residue. C&D Collection costs shall be allocated based on the percentage of the total Drop Boxes services that were used for the Collection of Source Separated Recyclable C&D. The C&D Collection costs will then be calculated as the percentage of C&D Drop Box service multiplied by the total Collection costs for all Drop Box service. For example, if Source Separated C&D Drop Boxes were twenty-five percent of the total Drop Box pulls, twenty-five percent (25%) of the total Drop Box Collection costs would be allocated to the C&D service. Disposal, Processing, and franchise fees will be allocated to C&D services on an actual cost basis.

t. Increased route costs if route productivity at the time of review is lower than shown on Form 2 of Exhibit N, Operating Statistics.

3. Forecast Total Annual Cost of Operations. Forecasted Total Annual Cost of Operations for the coming Rate Period shall be calculated based on Allowed Total Cost of Operations for the most-recently completed Rate Period determined in accordance with A.2 above. The forecasts shall be performed in the following manner:

a. **Forecasted labor-related costs** shall be calculated for the coming Rate Period by multiplying the allowed labor-related costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in the CPI. The result of this calculation shall be multiplied once more by one (1) plus the Annual Percentage Change in the CPI.

b. **Forecasted vehicle-related costs** (excluding fuel and depreciation costs) shall be calculated for the coming Rate Period by multiplying the allowed vehicle-related costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in the CPI. The result of this calculation shall be multiplied once more by one (1) plus the Annual Percentage Change in the CPI.

c. **Forecasted fuel costs** shall be calculated for the coming Rate Period by multiplying the allowed fuel costs, both direct and allocated, for the most-recently completed Rate Period by one (1) plus the Annual Percentage Change in the Fuel Index. The result of this calculation shall be multiplied once more by one (1) plus the Annual Percentage Change in the Fuel Index.

d. **Forecasted Source Separated Recyclable Materials Processing Cost** shall be calculated for the coming Rate Period as follows: Annual Forecasted Recyclable Materials Processing Cost = (Projected Per-Ton Processing Fee at Approved Recyclable Materials Processing Facility) x (total Tons of Source Separated Recyclable Materials Collected for the most-recently completed twelve- (12-) month period). For the purposes of this calculation the Projected Per-Ton Processing Fee shall be $110.57 per ton (set in Rate Period 1) multiplied by the total amount of the annual rate adjustments thereafter per year; or mutually

agreed upon market rate for Processing Recyclable Material.

e. **Forecasted Source Separated Organic Materials Processing Cost** shall be calculated for the coming Rate Period as follows: Annual Forecasted Organic Materials Processing Cost = (Projected Per-Ton Processing Fee at Approved Organic Materials Processing Facility) x (total Tons of Source Separated Organic Materials Collected for the most-recently completed twelve- (12-) month period). For this calculation, the Projected Per-Ton Processing Fee shall be calculated in the same manner as described in Item d above for Recyclable Materials Processing, except that the Rate Period 1 per-ton amount shall be $120.00.

f. **Forecasted other costs** shall be calculated for the coming Rate Period by multiplying the allowed other-related costs, both direct and allocated, for most-recently completed Rate Period by one (1) plus the Annual Percentage Change in CPI. The result of this calculation shall be multiplied once more by one (1) plus the Annual Percentage Change in the CPI.

g. **Forecasted direct depreciation expense** shall be the amount specified in Exhibit N for vehicles, Containers, and facilities. Direct depreciation expense is a fixed cost and is not subject to inflation.

h. **Forecasted allocated depreciation expense** shall be the amount specified in Exhibit N for vehicles, Containers, and facilities. Allocated depreciation expense is a fixed cost and not subject to inflation.

i. **Forecasted Total Annual Cost of Operations** for the coming Rate Period shall equal the sum of the forecasted costs in items a through h above.

B. Forecast Profit

Contractor shall be entitled to Profit on Forecasted Total Annual Cost of Operations. Profit shall be calculated using an operating ratio of eighty-eight (88%). Forecasted Profit shall be calculated using the following formula:

Forecasted Profit = (Forecasted Total Annual Cost of Operations / Operating Ratio) - Forecasted Total Annual Cost of Operations

For example:

1. Assuming an operating ratio of 88%
2. Assuming a Forecasted Total Annual Cost of Operations of $4,000,000
3. Forecasted Profit = (4,000,000 / 0.88) - 4,000,000= $545,454

C. Forecasted Pass-Through Costs

Pass-Through Costs for the coming Rate Period shall be forecasted in the following manner:

1. Forecasted Disposal Cost. Annual Forecasted Disposal Cost = Average Approved Transfer Facility Tipping Fee x (total Tons of Solid Waste Collected for the most-recently completed twelve (12) months). For the purposes of this calculation, the Average Approved Transfer

Facility Tipping Fee = (Then-Current Approved Transfer Facility Tipping Fee + Projected Approved Transfer Facility Tipping Fee to be effective July 1 of the coming Rate Period) / 2.

2. **Forecasted Interest Expense.** Interest Expense is $137,723 per year and shall not be adjusted over the Term of the Agreement.

3. **Forecasted Direct Lease Costs.** Direct Lease Costs are $0.00 per year and shall not be adjusted over the Term of the Agreement

4. **Forecasted Allocated Lease Costs.** Allocated Lease Costs are $0.00 per year and shall not be adjusted over the Term of the Agreement.

5. **Rate Application Review Costs.** An amount determined by the City to reimburse the Contractor for payment of the City's costs, including consulting and legal fees associated with determination of Maximum Rates under this Exhibit.

6. **Carry Over from Prior Rate Period**. If the adjustment to the Operating Component for the prior Rate Period resulted in a "carry over" to limit the amount of the Operating Component increase to five percent (5%), then the carry over amount may be included as a pass-through cost.

7. SB 1383 Fee. An amount determined by the City per Section 7.5

8. Compost Purchase Cost. The costs of purchasing additional compost, set per Section 4.8.4.C.3.

9. **Forecasted Pass-Through Costs**. Forecasted Pass-Through Costs shall equal the sum of the forecasted costs calculated for items 1 through 8 above.

D. Forecast City Fees

1. **Adjusted Operating Component**. First forecast the Adjusted Operating Component. It equals the Forecasted Total Annual Cost of Operations plus Forecasted Profit and Forecasted Interest Expense; however, if the Adjusted Operating Components is more than five percent (5%) greater than the then-current Operating Component, the Adjusted Operating Component shall be equal the then-current Operating Component plus five percent (5%) and the remaining increase shall be reflected ("carried forward") to the Operating Component for the following Rate Period.

2. Forecasted City Fees. Forecasted City Fee (i.e., Franchise Fees) shall equal twenty percent (20.0%) of the Forecasted Total Annual Cost = 0.25 x (Adjusted Operating Component + (Forecasted Pass-Through Costs – Forecasted Interest Expense)).

E. Forecasted Total Annual Cost

Forecasted Total Annual Cost = Adjusted Operating Component + Forecasted Pass-Through Costs – Forecasted Interest Expense) + Forecasted City Fees.

RATE ADJUSTMENT FACTOR

Calculate the Rate Adjustment Factor equal to the Adjusted Total Annual Cost divided by Gross Receipts for the most-recently completed twelve- (12-) month period, which shall be rounded to the nearest

thousandth (X.XXX). For the purpose of calculating the Rate Adjustment Factor, Gross Receipts shall not include Gross Receipts from Customers for the provision of C&D services.

ADJUSTMENT OF MAXIMUM RATES EXCEPT FOR C&D RATES

Calculate the new Maximum Rates by multiplying each then-current Maximum Rate by the Rate Adjustment Factor to calculate the effective Maximum Rate for the coming Rate Period, rounded to the nearest cent. For example, assuming:

1. Then-current Maximum 20-gallon Single-Family Rate = $20.00
2. Rate Adjustment Factor = 1.050
3. Adjusted Maximum 20-gallon Single-Family Rate for coming Rate Period = $20.00 x 1.050= $21.00

ADJUSTMENT OF ANNUAL COST COMPONENTS

Calculate adjusted Annual Cost Components that will serve as the basis for the next Index Rate Adjustment process. Calculations shall be performed as follows:

A. Adjusted Operating Component equals the amount calculated when determining the Forecasted City Fees in accordance with Section D above;

B. Adjusted Disposal Component equals the Forecasted Disposal Cost; and,

C. Adjusted City Fee Component equals the Forecasted City Fees in accordance with Section D above.

ADJUSTMENT OF MAXIMUM RATES FOR C&D SERVICES

Maximum Rates for C&D services shall be adjusted in accordance with the Index Rate Adjustment Methodology described in Exhibit D1 rather than the Cost-Based Rate Adjustment Methodology of this Exhibit D2.

EXHIBIT E

PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

EXHIBIT E
PERFORMANCE STANDARDS AND LIQUIDATED DAMAGES

City wishes to establish standards of performance under the Agreement in each of the five (5) "Performance Areas" listed below. Contractor may be assessed Liquidated Damages in the event Contractor fails to fulfill its obligations with regards to the events listed in this Exhibit in accordance with the terms and conditions of the Agreement with regards to the time frame for accomplishing each event and nature of the responsibility associated with the event unless otherwise stated in this Exhibit. Refer to Section 10.6 of the Agreement for procedures for assessing Liquidated Damages. Liquidated Damages, if assessed, shall only be assessed for the number of events, days, or other measure in excess of the acceptable performance level.

Defined Terms

Certain terms that are specific to this Exhibit are defined below:

"Complaint" shall mean each written or orally communicated statement made by any Person, whether to City or Contractor, alleging: (1) non-performance, or deficiencies in Contractor's performance, of its duties under this Agreement; or, (2) a violation by Contractor of this Agreement.

"Service Opportunity" shall mean each individual scheduled opportunity the Contractor has to Collect from a Container at a Customer's location. For example, a Multi-Family or Commercial Customer receiving Solid Waste Collection service three (3) times per week from two (2) Containers and Recyclable Materials Collection service two (2) times per week from two (2) Containers would have a total of ten (10) Service Opportunities each week. Service Opportunities shall be calculated based on the subscription levels presented in Contractor's most recent Quarterly Report to City. For a Single-Family Customer with three Carts for Collection of Solid Waste, Recyclable Materials, and Organic Materials, the Customer would have a total of three (3) Service Opportunities each week.

Performance Area No. 1: Service Quality and Reliability

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Missed Collections	Each Service Opportunity where Contractor fails to Collect a Container from a Customer who properly placed said Container for Collection.	Less than 6 per day	$50/Event
Failure to Correct Missed Collections	Each "Missed Collection" as defined above; or Containers not being re-locked; or Containers not being returned to the service location, which is not corrected by the end of the Business Day following the receipt of the Customer Complaint, or City notification, about the Missed Collection or other deficiency.	Less than 2 per day	$100/Event
Failure to Clean-Up Spillage	Each failure by Contractor to clean up: (1) any items or materials spilled during the Collection of a Container; or, (2) any fluids spilled or leaked from a Container or Collection vehicle prior to leaving the Collection location.	Less than 12 per month	$50/Event
Damage to Property	Each event of damage to either public or private property as a result of Collection activity, including without limitation curbs, sidewalks, landscapes, Container enclosures and gates, signs, light fixtures, and overhead wires and cables.	Less than 6 per month	$150/Event
Excessive Noise or Discourteous Behavior	Each Complaint received that is related to either noise during Collection activity or the behavior of Contractor's employees.	Less than 12 per month	$200/Event

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Inaccurate Billing	Each Complaint received where the Contractor billed a Customer in error. Inaccurate billing may include, but is not limited to: (i) either over- or under-charging of the Customer relative to the approved Maximum Rates for services, (ii) charging the Customer a Rate that is not the same as other Customers with the same Service Level; (iii) charging a Customer for an increased Service Level prior to providing the service; (iv) not charging a Customer for reduced Service Level within seven (7) of the date Customer requested the change regardless of whether or not Contractor delivers the appropriate Containers or modifies the Service Level within that timeframe.	Less than 12 per month	$50/Event
Failure to Perform Other Requirement	Each failure to perform any obligation of the Agreement not specifically stated above.	No acceptable failure level	$100/Event

Performance Area No. 2: Customer Service

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Commence Service	Any failure by Contractor to deliver a Container and begin providing Collection to a Customer, at the Service Level requested by said Customer, within seven (7) calendar days of receiving such request. This may include a new Customer receiving new service or an existing Customer requesting a change in or addition to existing Service Levels. This may also include delivering Used Oil Recovery Kits to Customers upon request.	Less than 12 per month	$50/Event

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Replace Container or Remove Graffiti	Any failure by Contractor to replace or repair a damaged Container within seven (7) calendar days of receiving such a request from a Customer, or any failure by Contractor shall remove graffiti from Containers within forty-eight (48) hours of identification by Contractor or notice by City or Customer if such graffiti includes any written or pictorial obscenities and otherwise within five (5) Business Days.	No acceptable failure level	$50/Event
Failure to Resolve Complaint	Any failure by Contractor to resolve or remedy a Complaint within seven (7) calendar days of receiving such Complaint.	Less than 12 per month	$100/Event
Failure to Answer Phones	Any failure by Contractor to answer a telephone call from a Customer during normal business hours. A call is not considered to be answered if the Customer does not speak with a live operator. A call is considered to be answered if the Customer hangs-up or abandons the call following a hold time of less than three (3) minutes.	Less than 12 per month	$50/Event
Excessive Call Center Hold Time	Each occurrence of a call being placed "on hold" for more than two (2) minutes.	Less than 12 per month	$50/Event
Unauthorized Hours of Operation	Each occurrence of Contractor Collecting from Customers during unauthorized hours.	Less than 12 per month	$50/Event

Performance Area No. 3: Diversion

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Perform Education and Outreach Activities	Each individual failure by Contractor to develop, produce, and distribute public education material or perform community outreach activities in the form and manner required under Exhibit B to this Agreement.	No acceptable failure level	$300/Activity
Failure to Provide Targeted Technical Assistance	Each individual failure to provide targeted technical assistance to a Commercial or Multi-Family Customer in the manner required under Exhibit B to this Agreement.	No acceptable failure level	$25/Customer

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Meet Performance Standards for Phone Calls or Site Visits	Each phone call or site visit not conducted to a Commercial or Multi-Family Customer.	80 Phone Calls annually 160 Site Visits annually	$100/Event

Performance Area No. 4: Facilities

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Delivery to Non-Approved Facility	Each individual occurrence of delivering materials to a facility other than the Approved Facility designated for each material type under Sections 4.7 and 4.8 of this Agreement.	No acceptable failure level	$50/Ton
Disposal of Material Targeted Diversion	Each individual occurrence of disposal rather than Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, Source Separated Recyclable C&D, or Reusable Materials set out for Collection by the Customer.	No acceptable failure level	$300/Ton
Mixing Material Types During Collection	Each individual Container that is Collected by Contractor in a vehicle intended or designated for the purpose of Collecting a different material type (e.g. Recyclable Materials Collected in Solid Waste vehicle, Solid Waste Collected in Organic Materials vehicle, etc.)	No acceptable failure level	$100/Container

Performance Area No. 5: Reporting

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Late Report	Each occurrence of a report, as required under Exhibit C to this Agreement, being submitted after the due date and after notification by City of late report. Reports shall be considered late until they are submitted in a complete and accurate format.	Less than seven (7) calendar days after report due date	$250/Day

Specific Performance Measure	Definition	Acceptable Performance Level	Liquidated Damage Amount
Failure to Maintain or Provide Access to Records	Each occurrence of City Contract Manager requesting information required to be maintained by Contractor where Contractor fails to provide such information.	Less than seven (7) calendar days after report due date	$500/Event
Misleading/ Inaccurate Reporting	Each occurrence of Contractor providing misleading or otherwise inaccurate information or reporting to City under or in regard to this Agreement. Typographical, cell reference, mathematical, and/or logic errors shall not be considered legitimate excuses from this requirement, nor shall ignorance.	No acceptable failure level	$200/Event

By placing Designee's initials at the places provided, each Party specifically confirms the accuracy of the statements made above and the fact that each Party has had ample opportunity to consult with legal counsel and obtain an explanation of Liquidated Damage provisions of the time that the Agreement was made.

Contractor

Initial Here:_____

City

Initial Here: _____

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EXHIBIT F

LIST OF CITY AND NEWARK UNIFIED SCHOOL DISTRICT FACILITIES AND SPECIAL EVENTS

EXHIBIT F
LIST OF CITY AND NEWARK UNIFIED SCHOOL DISTRICT FACILITIES AND SPECIAL EVENTS

City Facilities

- Ash Street Park
- Birch Grove Park
- City Hall
- Community Center
- Community Center Park
- Fire Stations (3)
- Silliman Center
- Second Chance Shelter
- Senior Center
- Service Center
- Future City Facilities as needed

Newark Unified School District Facilities

- Birch Grove Primary School
- Graham Elementary School
- Kennedy Elementary School
- Lincoln Elementary School
- Birch Grove Secondary School
- Musick Elementary School
- Schilling Elementary School
- Snow Elementary School
- Whiteford School
- MacGregor School Campus
- Newark Junior High School
- Newark Memorial High School
- Corporation Yard
- Kitchen/Warehouse
- District Office

Special Events

- Newark Days – This event requires a minimum of two thirty- (30-) yard Drop Boxes for Solid Waste and one thirty- (30-) yard covered, locking Drop Box for cardboard Recycling)
- Music at the Grove Series
- Five other events per year as determined by City

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EXHIBIT G

GUARANTY AGREEMENT

EXHIBIT G
GUARANTY AGREEMENT

THIS GUARANTY (the "Guaranty") is given as of the _____ day of _____, 2013, by Republic Services, ("Guarantor"), to the CITY OF NEWARK, a California municipal corporation ("City").

THIS GUARANTY is made with reference to the following facts and circumstances:

A. Allied Waste Services of North America, LLC ("Contractor") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Guarantor.

B. Guarantor is a corporation organized under the laws of the State of California.

C. Contractor and City have negotiated an Agreement for Collection of Solid Waste and Collection and Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, and C&D (such agreement, as it may be amended, modified or waived from time to time, the "Agreement"), under which Contractor is to provide specified services to City. A copy of this Agreement is attached hereto and incorporated herein by this reference.

D. It is a requirement of the Agreement, and a condition to City's entering into the Agreement, that Guarantor guaranty Contractor's performance of the Agreement.

E. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement**. Guarantor hereby irrevocably and unconditionally guarantees to City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Agreement which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms or conditions of the Agreement, Guarantor will promptly and fully perform, satisfy or observe them in the place of the Contractor. Guarantor hereby guarantees prompt payment to City of each and every sum due from Contractor to City under the Agreement, as and when due from time to time, and the prompt performance of every other task and duty required to be performed by the Contractor under the Agreement.

2. **Guarantor's Obligations Are Absolute**. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited and, with respect to any payment obligation of Contractor under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditioned upon the genuineness, validity, regularity or enforceability of the Agreement.

3. **Waivers and Subordination**. The Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under Section 1 hereof for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Contractor; (2) any amendment, modification or waiver of any provision of the Agreement or the extension of its Term; (3) the actual or purported rejection of the Agreement by a trustee in bankruptcy, or any limitation on any claim in bankruptcy resulting from the actual or purported

termination of the Agreement; (4) any waiver, extension, release or modification with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of City's rights or remedies against Contractor; or (5) any merger or consolidation of the Contractor with any other organization, or any sale, lease or transfer of any or all the assets of the Contractor.

The Guarantor hereby waives any and all rights, benefits and defenses under California Civil Code Sections 2809, 2815, 2819, 2845, 2849 and 2850, and all other rights permitted to be waived by Section 2856(a) including, without limitation, the right to require City to (a) proceed against Contractor, (b) proceed against or exhaust any security or collateral City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agree that City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Contractor or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Contractor or any other guarantor or pledgor without impairing City's rights and remedies in enforcing this Guarantee.

The Guarantor hereby waives and agrees to waive at any future time at the request of City, to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not affect the liability of the Guarantor hereunder: (a) at any time or from time to time, without notice to the Guarantor, the time for Contractor's performance of or compliance with any of its obligations under the Agreement is extended, or such performance or compliance is waived; (b) the Agreement is modified or amended in any respect; (c) any other indemnification with respect to Contractor's obligations under the Agreement or any security therefore is released or exchanged in whole or in part or otherwise dealt with; (d) any assignment of the Agreement is effected which does not require City's approval; or (e) any termination or suspension of the Agreement arising by reason of a default by Contractor.

The Guarantor hereby expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Contractor prior to such avoidance or recovery, or (b) payment in full of any obligations then outstanding.

The Guarantor expressly subordinates and waives its rights to subrogation, reimbursement, contribution or indemnity with respect to performance by Guarantor of the obligations of Contractor guaranteed hereby, until such time as City receives payment or performance in full of all such obligations.

4. **Term**. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed by Contractor, and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Contractor's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any

claim by City against Contractor arising out of the Agreement based on Contractor's failure to perform which has not been settled or discharged.

5. **No Waivers by City**. No delay on the part of City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of City to take other or further action without notice or demand. No modification or waiver by City of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by City and by Guarantor, nor shall any waiver by City be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees**. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual attorney's fees and all other costs and expenses incurred by City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law; Jurisdiction**. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following person as its agent for service of process in California:

Insert Guarantor's contact person and address

_____

_____

_____

_____

8. **Severability**. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding on Successors**. This Guaranty shall inure to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including a successor entity formed by a merger or consolidation, a transferee of substantially all of its assets, and its shareholders in the event of its dissolution or insolvency.

10. **Authority**. Guarantor represents and warrants that it has the corporate power to give this guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Articles of Incorporation and by-laws, and that the person signing this Guaranty on its behalf has authority to do so.

11. **Notices**. Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To City: City Clerk
City of Newark
City Administration Building
37101 Newark Boulevard
Newark, CA 94560
(510) 578-4000

With a copy to City Contract Manager and City Attorney at the same address.

To Guarantor: Insert Guarantor's name, address, and contact person

_____

_____

_____

_____

The parties may change the address to which notice is to be sent by giving the other party notice of the change as provided in this Section.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty on the day and year first above written.

Republic Services

By:_____

_____{Insert name}

_____ {Insert title}

By:_____

_____ {Insert name}
Corporate Secretary

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EXHIBIT H

CART SPECIFICATIONS

EXHIBIT H
CART SPECIFICATIONS

The Cart specifications provided in this Exhibit H shall pertain to all Carts provided by the Contractor to Customers on the Commencement Date of this Agreement and during the Term of the Agreement.

1. CART DESIGN REQUIREMENTS

A. General

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. Contractor shall purchase Carts that contain a minimum of 30% post-consumer recycled plastic content. Contractor must submit Cart orders (including material and design specifications, colors and identification marks) to City for City's written approval prior to submitting the order to the manufacturer.

B. Materials Identification and Decals

Carts or their lids must be in bright, readily identifiable colors to facilitate Customer's ready recognition of Solid Waste, Recyclable Materials, and Organic Materials, subject to City's written approval as described in this Exhibit. Subject to City approval, Contractor shall display Contractor's name and telephone number using labels, decals, or other acceptable method. Contractor shall provide and attach decals or emboss the Cart number and information describing correct materials and methods for Collection; forbidding disposal therein of Hazardous Waste and describing proper disposal thereof; and forbidding scavenging (through words and international symbols) and describing the penalties therefore under California law or City Municipal Code.

C. Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles shall provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

D. Cart Lid

Each Cart shall be provided with a lid that continuously overlaps and comes in contact with the Cart body or otherwise causes an interface with the Cart body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Cart during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Cart to conveniently and easily open and shut the lid throughout the serviceable

life of the Cart;

- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Cart from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Cart body.

E. Cart Colors

The Solid Waste, Recyclable Materials, and Organic Materials Carts shall be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color of lids and Cart bodies must be uniform for each Cart type (i.e., Solid Waste, Recyclable Materials, and Organic Materials). Solid Waste Cart bodies and lids shall be black. Recyclable Materials Cart bodies and lids shall be blue. Organic Materials Cart bodies and lids shall be green. Contractor may propose other colors for Cart lids or Cart bodies, which are subject to written approval by the City. For all colors including those prescribed in this paragraph, the Contractor shall obtain written approval from the City for the Cart colors before Contractor's purchase of the Carts.

F. Identification Markings

All markings on the Carts shall be approved by the City in advance of ordering Carts. An arrow (at least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction of Cart placement. Prior to ordering Carts, Contractor may suggest alternative identification markings for the City's review and approval.

In character size of no less than 3/16 inches, the phrase:

PLACE CART WITH ARROW FACING
STREET FOR COLLECTION
COLOQUE EL RECIPIENTE CON LAS FLECHAS
HACIA LA CALLE

Additionally, the SOLID WASTE, RECYCABLES or ORGANIC MATERIALS must be hot stamped in white on the front or sides of the Cart in characters no less than one inch.

2. CART PERFORMANCE REQUIREMENTS

A. General

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

B. Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted on the following table without Cart distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (Pounds)
96	200
64	130
32/35	70
20	40

C. Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the Term of this Agreement:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that shall interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt, or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

D. Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

E. Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or an open position. The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction. The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

F. Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;

- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.

G. Repairability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Cart to its full functionality to meet the design and performance requirements as set for herein.

EXHIBIT I

CONTRACTOR'S PROPOSAL

Contractor's Proposal is on file with the City Clerk

EXHIBIT J

CONTRACTOR’S FAITHFUL PERFORMANCE BOND

CITY OF NEWARK
CONTRACTOR'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, ALLIED WASTE SERVICES OF NORTH AMERICA LLC, a California Corporation, as PRINCIPAL, and ____ _____, a Corporation organized and doing business by virtue of the laws of the State of California, and authorized for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to the CITY OF NEWARK, a municipal corporation of the State of California, hereinafter called OBLIGEE, in the penal sum of Two Million, Three Hundred Thousand and No/100 Dollars ($2,300,000.00) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract on _____, 2013, entitled " COLLECTION OF SOLID WASTE AND COLLECTION AND PROCESSING OF SOURCE SEPARATED RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND C&D" with the OBLIGEE, to do and perform the following work, to wit: Collect and Transport of Solid Waste, and Collect, Transport, Process, and Dispose of Recyclable Materials, Organic Materials, and C&D generated within the CITY OF NEWARK, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise, it shall remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the

specifications accompanying the same shall in any way affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ day of _____, 2013.

By: _____ By: _____
(PRINCIPAL) (SURETY)

(SEAL) (SEAL)

By: _____ By: _____

By: _____ By: _____
(ATTORNEY IN FACT) (ATTORNEY IN FACT)

(SEAL) (SEAL)

(Signatures of Principal and Surety must be acknowledged by a Notary Public)

ENDORSEMENT "A"
TO CONTRACTOR'S FAITHFUL PERFORMANCE BOND

Provided, however, that the Obligee accepts the bond subject to the following conditions and provisions:

1. The bond is for the term beginning June 1, 2023 and ending on June 30, 2033.
2. The bond may be extended for additional term(s) of twelve (12) months at the option of the Surety, by continuation certificate executed by the Surety. At no time will the period of exposure under the bonds exceed twelve (12) months. Notification of Non-Renewal shall be given by Certified Mail to the Obligee no later than one hundred twenty (120) days prior to the expiration date of the bonds. Failure of the Surety to issue a Continuation Certificate or otherwise extend the term, shall not constitute a default under the Performance Bond.
3. In the event of default by the Principal in performance of the contract during the term of the bond, the Surety shall be liable only for the loss to the Obligee due to actual excess costs of performance of the contract up to the termination of the term of the bonds. Maximum aggregate liability of the Surety is limited to the penal sum of the bond.
4. Any suit under the Performance Bond must be instituted before the expiration of two (2) years from the last day of the term of the Performance Bond and any continuation thereof. If this limitation is made void by any law controlling the contract hereof, such limitation is made void by any law controlling the contract hereof, such limitation shall be deemed to be amended to equal the minimum period of limitation permitted by law.

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EXHIBIT L

MAXIMUM RATES APPROVED BY CITY FOR RATE PERIOD ONE

EXHIBIT L
Maximum Rates Approved by City for Rate Period One
(Effective June 1, 2023)

All references to Contractor and the Maximum Rates established herein are as a result of City's contract for collection of garbage, recyclables, and organic materials and shall be deemed Maximum Rates as established by City effective June 1, 2023.

A. SINGLE-FAMILY CART SERVICE

Single-Family Customers include single-family premises and each unit of a duplex, triplex, townhouse or condominium which receives individual Cart collection services.

CURBSIDE SERVICES	CONTAINER SIZE			
	20 GAL	32 GAL	64 GAL	96 GAL
(A) Basic Service	$36.90	$41.00	$72.62	$104.23
(B) Lifeline/Senior Rate	$31.36	$34.87	$61.72	$88.57
(C) Extra Solid Waste Cart	n/a	$24.61	$43.55	$62.48
(D) Extra Yardwaste Cart	n/a	n/a	$10.25	n/a
(E) Extra Recyclables Cart	n/a	n/a	$6.16	n/a

*BACKYARD SERVICES	CONTAINER SIZE			
	20 GAL	32 GAL	64 GAL	96 GAL
(A) Basic Service	$55.34	$61.50	$108.94	$156.33
(B) Lifeline/Senior Rate	$47.03	$52.26	$92.60	$132.87
(C) Extra Solid Waste Cart	n/a	$36.91	$65.33	$93.74
(D) Extra Yardwaste Cart	n/a	n/a	$36.91	n/a
(E) Extra Recyclables Cart	n/a	n/a	$36.91	n/a

(A) Basic Service

Weekly curbside collection of refuse, recyclables and yard waste in containers provided by the Contractor. Customers may select their level of refuse service according to the container options available. All customers will be issued a 64-gallon container for yardwaste and food scraps collection and a 64-gallon container for recyclables collection.

(B) Lifeline and Senior Rates

Weekly curbside collection of refuse, recyclables and yard waste in containers provided by the Contractor. Customers may select their level of refuse service according to the container options available. All customers will be issued a 64-gallon container for yardwaste and food scraps collection and a 64-gallon container for recyclables collection. These rates will be available for eligible, low-income customers demonstrating that they receive assistance under PG&E's Low Income Rate Payer Assistance program. These rates will also be available for senior citizens, age 65 and above.

(C,D,E) Additional Containers

Customers may subscribe to additional weekly refuse, yard waste or recycling service by requesting one or more extra Carts in the sizes listed above.

*Backyard services are available for an additional cost. Drivers cannot services containers behind locked gates or structures. Disabled residents may apply for an exemption from the additional fee.

EXHIBIT L

Maximum Rates Approved by City for Rate Period One

B. MULTI-FAMILY CART SERVICE

Multi-Family Customers include any Residential premises (other than Single-Family Premises), which have centralized collection services. Each unit of a duplex, triplex, townhouse or condominium that receives individual collection services is considered a Single-Family Premises and charged Single-Family Rates.

CART SIZE	MATERIAL	COLLECTIONS PER WEEK					
		1X	2X	3X	4X	5X	6X
32-Gallons	Refuse	$31.22	$63.69	$97.39	$132.34	$168.57	$206.02
64-Gallons	Refuse	$55.26	$112.72	$172.38	$234.28	$298.39	$364.66
96-Gallons	Refuse	$79.30	$161.75	$247.39	$336.19	$428.15	$523.30
32-Gallons	Recyclables	$15.60	$31.83	$48.72	$66.18	$84.29	$103.02
64-Gallons	Recyclables	$27.61	$56.35	$86.20	$117.13	$149.19	$182.35
96-Gallons	Recyclables	$39.66	$80.89	$123.71	$168.10	$214.07	$261.66
32-Gallons	Yardwaste	$23.42	$47.76	$73.05	$99.28	$126.42	n/a
64-Gallons	Yardwaste	$41.43	$84.55	$129.28	$175.71	$223.77	n/a
96-Gallons	Yardwaste	$59.48	$121.32	$185.53	$252.12	$321.14	n/a

C. MULTI-FAMILY FRONT-LOAD BIN AND COMPACTOR SERVICE

Multi-Family Customers include any Residential premises (other than Single-Family Premises), which have centralized collection services. Each unit of a duplex, triplex, townhouse or condominium that receives individual collection services is considered a Single-Family Premises and charged Single-Family Rates.

REFUSE BINS*	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$166.16	$338.87	$518.43	$704.31	$897.25	$1,096.39
2 cubic yard container	$310.94	$634.29	$849.78	$1,318.35	$1,679.05	$2,052.15
3 cubic yard container	$439.60	$819.11	$1,198.82	$1,758.33	$2,197.92	$2,637.47
4 cubic yard container	$576.02	$1,082.17	$1,588.53	$2,304.07	$2,880.10	$3,456.09
6 cubic yard container	$860.77	$1,620.20	$2,379.49	$3,443.00	$4,303.77	$5,164.52
7 cubic yard container	$987.42	$1,873.36	$2,962.22	$3,949.62	$4,937.00	$5,924.43

RECYCLING BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$66.47	$135.56	$207.37	$281.73	$358.90	$438.57
2 cubic yard container	$124.40	$253.72	$339.90	$527.34	$671.61	$820.85
3 cubic yard container	$175.82	$327.64	$479.53	$703.33	$879.15	$1,054.98
4 cubic yard container	$230.42	$432.88	$635.42	$921.64	$1,152.05	$1,382.43
6 cubic yard container	$344.30	$648.08	$951.79	$1,377.20	$1,721.52	$2,065.81
7 cubic yard container	$394.98	$749.33	$1,184.89	$1,579.85	$1,974.81	$2,369.77

YARD WASTE BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$124.61	$254.16	$388.80	$528.25	$672.93	$0.00
2 cubic yard container	$233.21	$475.72	$637.32	$988.76	$1,259.26	$0.00
3 cubic yard container	$329.69	$614.37	$899.11	$1,318.75	$1,648.42	$0.00

*Customer owned front-load refuse compactors will be charged 2 times the refuse bin rates listed in the above table.

**Customer owned front-load recycling compactors will be charged 50% of the refuse bin rates listed the above table.

EXHIBIT L
Maximum Rates Approved by City for Rate Period One

D. COMMERCIAL CART SERVICE

CART SIZE	MATERIAL	COLLECTIONS PER WEEK					
		1X	2X	3X	4X	5X	6X
32-Gallons	Refuse	$31.22	$63.69	$97.39	$132.34	$168.57	$206.02
64-Gallons	Refuse	$55.26	$112.72	$172.38	$234.28	$298.39	$364.66
96-Gallons	Refuse	$79.30	$161.75	$247.39	$336.19	$428.15	$523.30
32-Gallons	Recyclables	$15.60	$31.83	$48.72	$66.18	$84.29	$103.02
64-Gallons	Recyclables	$27.61	$56.35	$86.20	$117.13	$149.19	$182.35
96-Gallons	Recyclables	$39.66	$80.89	$123.71	$168.10	$214.07	$261.66
32-Gallons	Yardwaste	$23.42	$47.76	$73.05	$99.28	$126.42	n/a
64-Gallons	Yardwaste	$41.43	$84.55	$129.28	$175.71	$223.77	n/a
96-Gallons	Yardwaste	$59.48	$121.32	$185.53	$252.12	$321.14	n/a

E. COMMERCIAL FRONT-LOAD BIN AND COMPACTOR SERVICE

REFUSE BINS*	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$166.16	$338.87	$518.43	$704.31	$897.25	$1,096.39
2 cubic yard container	$310.94	$634.29	$849.78	$1,318.35	$1,679.05	$2,052.15
3 cubic yard container	$439.60	$819.11	$1,198.82	$1,758.33	$2,197.92	$2,637.47
4 cubic yard container	$576.02	$1,082.17	$1,588.53	$2,304.07	$2,880.10	$3,456.09
6 cubic yard container	$860.77	$1,620.20	$2,379.49	$3,443.00	$4,303.77	$5,164.52
7 cubic yard container	$987.42	$1,873.36	$2,962.22	$3,949.62	$4,937.00	$5,924.43

RECYCLING BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$66.47	$135.56	$207.37	$281.73	$358.90	$438.57
2 cubic yard container	$124.38	$253.72	$339.90	$527.34	$671.61	$820.85
3 cubic yard container	$175.82	$327.64	$479.53	$703.33	$879.15	$1,054.98
4 cubic yard container	$230.42	$397.40	$635.42	$921.64	$1,152.05	$1,382.43
6 cubic yard container	$344.30	$648.08	$951.79	$1,377.20	$1,721.52	$2,065.81
7 cubic yard container	$394.98	$749.33	$1,184.89	$1,579.85	$1,974.81	$2,369.77

YARD WASTE BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$124.61	$254.16	$388.80	$528.25	$672.93	$0.00
2 cubic yard container	$233.21	$475.72	$637.32	$988.76	$1,259.26	$0.00
3 cubic yard container	$329.69	$614.37	$899.11	$1,318.75	$1,648.42	$0.00

*Customer owned front-load refuse compactors will be charged 2 times the refuse bin rates listed in the above table.
**Customer owned front-load recycling compactors will be charged 50% of the refuse bin rates listed the above table.

EXHIBIT L

Maximum Rates Approved by City for Rate Period One

F. COMMERCIAL ORGANIC SERVICES & RATES

REFUSE BINS*	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$159.96	$326.21	$499.06	$678.00	$863.71	$1,055.42
2 cubic yard container	$299.32	$610.60	$818.02	$1,269.11	$1,616.32	$1,975.51
32 or 64 Gallon Commercial	$53.19	$108.50	$165.94	$225.53	$287.22	$351.03

G. DROP BOX CONTAINERS AND COMPACTOR SERVICES

DROP BOX SIZES	Tonnage Limit Per Pick-Up*	REFUSE	RECYCLING	YARDWASTE
6 cubic yard Drop Box	2.0	$584.31	n/a	n/a
14 cubic yard Drop Box	2.0	$584.31	$292.14	$438.20
20 cubic yard Drop Box	3.0	$738.53	$369.28	$553.91
30 cubic yard Drop Box	5.0	$1,047.04	$523.53	$785.28
40 cubic yard Drop Box	6.0	$1,201.28	$600.66	$900.98
Excess Tonnage Rate	n.a.	$154.28	$92.47	$92.47

CUSTOMER-OWNED COMPACTORS	Tonnage Limit Per Pick-Up*	REFUSE	RECYCLING	YARDWASTE
6 cubic yard Compactor	1.2	$508.70	$254.36	$381.51
15 cubic yard Compactor	3.0	$1,017.41	$508.70	$763.06
20 cubic yard Compactor	4.0	$1,356.53	$678.25	$1,017.41
25 cubic yard Compactor	5.0	$1,695.65	$847.84	$1,271.75
30 cubic yard Compactor	6.0	$2,034.79	$1,017.41	$1,526.10
35 cubic yard Compactor	7.0	$2,373.94	$1,186.99	$1,780.45
40 cubic yard Compactor	8.0	$2,713.07	$1,356.53	$2,034.79
Excess Tonnage Rate	n.a.	$154.28	$92.47	$92.47

If tonnage collected is greater than the tonnage limit listed in the above table, contractor may charge for tonnage in excess of the tonnage limit at the per-ton rate specified.

H. CONSTRUCTION AND DEMOLITION DEBRIS BOX SERVICE

DROP BOX SIZES	MATERIAL	BASE RATE PER PICK-UP	PER TON RATE*
6 cubic yard Drop Box	Dirt	$362.45	$60.26
6 cubic yard Drop Box	Concrete	$362.45	$60.26
14 cubic yard Drop Box	Wood	$362.45	$86.08
20 cubic yard Drop Box	Wood	$362.45	$86.08
30 cubic yard Drop Box	Wood	$362.45	$86.08
40 cubic yard Drop Box	Wood	$362.45	$86.08
14 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24
20 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24
30 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24
40 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24

*Contractor will charge customer for actual tonnage collected at the per-ton rate listed in the above table.

EXHIBIT L
Maximum Rates Approved by City for Rate Period One

I. ADDITIONAL SERVICES & RATES

ADDITIONAL SERVICES	RATE
Cost of pre-paid solid waste overage bags	$14.77
Cost of pre-paid yardwaste overage bags	$14.77
Extra On-Call Bulky Cleanup (more than three per year)	$110.97
Cart replacement cost (more than once per year)	$110.97
Cart delivery/pick-up (more than once per year)	$73.96
Lost lock per container, per occurrence	$44.36
Steam cleaning Bin/Cart (charge per visit)	$184.94
Hourly Trip Charge (if driver must return due to Customer/Generator error, such as failure to place Container at point of Collection before Collection time, overfilled Container, incorrect Container placement, contaminated materials)	$125.76
Push/pull charge (Per- Mo, Per-50 Ft, Per Cart, Per Pick-up)	$29.59
Lock/unlock charge (Per- Mo, Per Bin, Per Pick-up)	$8.57
Extra refuse bin collection (per cubic yard rate per pick-up)	$36.84
Extra recycling bin collections (per cubic yard rate per pick-up)	$18.41
Extra yard waste bin collections (per cubic yard rate per pick-up)	$27.62
Bin Lock Installation (new lock) per container, per occurrence	$44.36
Overage charges Per-Cubic-Yard Rate, per occurrence	$14.77
Container relocation charge per container, per occurrence	$125.76
Daily drop box demurrage charge (rental charge if customer keeps Box longer than 7-days without pick-up or return)	$34.89
Drop box placement charge	$96.18
Drop box relocation charge	$125.76
Drop box cancellation service	$125.76
Drop box overage charge - Refuse (For Each Ton In Excess of Limits)	$154.28
Drop box overage charge - Recyclables (For Each Ton In Excess of Limits)	$92.47
Drop box overage charge - Yardwaste (For Each Ton In Excess of Limits)	$92.47
Restart charge after 120-days late and service reduction	$44.36
Late charge after 60-days past due	1.50%
Insufficient funds charge	$44.36
Overflow extra yard charge	$45.19
Contamination charge (after issuance of warning notices)	$22.61
Contamination charge (after issuance of warning notices) for regular bin service - 1 cubic yard container	$30.87
Contamination charge (after issuance of warning notices) for regular bin service - 2 cubic yard container	$61.66
Contamination charge (after issuance of warning notices) for regular bin service - 3 cubic yard container	$91.49
Contamination charge (after issuance of warning notices) for regular bin service - 4 cubic yard container	$120.54
Contamination charge (after issuance of warning notices) for regular bin service - 6 cubic yard container	$180.70
Contamination charge (after issuance of warning notices) for regular bin service - 7 cubic yard container	$210.89
Contamination charge (after issuance of warning notices) for regular bin service - 8 cubic yard container	$241.01

EXHIBIT M

APPROVED SUBCONTRACTORS

EXHIBIT M
APPROVED SUBCONTRACTORS

As of the Effective Date, Contractor does not currently intend to use Subcontractors. Should Contractor wish to use Subcontractors at any time during the Term of this Agreement, it may do so only in accordance with Section 3.3.

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EXHIBIT N

OPERATING ASSUMTIONS AND COST BASIS FOR CONTRACTOR'S ORIGINAL PROPOSAL

General Proposer Information **City of Newark**

Proposer Name: Allied Waste of Alameda County Note to proposer: Input data in yellow shaded areas only.

A. Primary Contact Information		
1.	Name	Kris Braunschweig
2.	Title	General Manger
3.	Phone	510.354.2417
4.	Fax	510.252.4661
5.	E-mail	Kris.Braunschweig@republicservices.com
B. Support Facilities		
1.	Address of collection vehicle parking, maintenance, washing, and route staff parking facility(ies)	42600 Boyce Rd. Fremont, CA 94538
2.	Address of administrative office	42600 Boyce Rd. Fremont, CA 94538
3.	Address of billing office	42600 Boyce Rd. Fremont, CA 94538
4.	Address of customer service office	42600 Boyce Rd. Fremont, CA 94538
C. Vehicle Manufacturer and Specifications (Body Capacity, GVWR, Load Capacity)		
1.	Residential Collection Vehicles	Autocar ACX64, McNeilus 38 yd Pacific LoPro, Curotto Can, 62,000lbs GVW, 22,800lbs Max Load
2.	Commercial Collection Vehicles	Autocar ACX64, McNeilus 38 yd Pacific LoPro, 58,000lbs GVW, 22,000lbs Max Load
3.	Drop Box Vehicles	Autocar ACX42, Galbreath 20'-24' Tandem Axle Cable Hoist, 51,000lbs GVW, 23,600lbs Max Load
D. Container Manufacturer, Sizes Offered, and Specifications		
1.	Carts	Schaefer/Otto, 20gal (insert), 35gal, 64gal, 96gal
2.	Bins	Wastequip/Consolidated, 1yd, 2yd, 3yd, 4yd, 6yd, 7yd
3.	Drop Boxes	Wastequip/Consolidated, 6yd, 14yd, 20yd, 30yd, 40yd
E. Recyclable Materials Processing and Handling		
1.	Name of processing site	Newby Island Resource Recovery Park
2.	Owner's name	Republic Services
3.	Operator's name	Republic Services
4.	Address of processing location	1601 Dixon Landing Rd. Milpitas, CA 95035
5.	Hauling method (e.g. direct haul, transfer haul, Pod haul)	Direct Haul
6.	Name and address of transfer location (if applicable)	n/a
F. Organic Materials Processing and Handling		
1.	Name of processing site	Newby Island Resource Recovery Park
2.	Owner's name	Republic Services
3.	Operator's name	Republic Services
4.	Address of processing location	1601 Dixon Landing Rd. Milpitas, CA 95035
5.	Hauling method (e.g. direct haul, transfer haul, Pod haul)	Direct Haul
6.	Name and address of transfer location (if applicable)	n/a
G. C&D Processing and Handling		
1.	Name of processing site	Newby Island Resource Recovery Park
2.	Owner's name	Republic Services
3.	Operator's name	Republic Services
4.	Address of processing location	1601 Dixon Landing Rd. Milpitas, CA 95035
5.	Hauling method (e.g. direct haul, transfer haul, Pod haul)	Direct Haul
6.	Name and address of transfer location (if applicable)	n/a

Note to proposer: Input data in yellow shaded areas only. | Show statistics for one-year period

	REPORT FOR 12-MONTH PERIOD	Single-Family (Form 6A)				Commercial / Multi-Family (Form 6B)			Drop Box (Form 6C)			
	From June 1, 2013 to May 31, 2014	Solid Waste	Recyclable Materials	Organic Materials	Bulky Waste Program	Solid Waste	Recyclable Materials	Yard Trimmings	Solid Waste	Recyclable Materials	Yard Trimmings	TOTAL
1	**Account Information**											
	# of weekly accounts (customers)	9,591	9,591	9,591		795	351		92	5		
	Labor Information											
2	# of regular route personnel	2.0	2.0	2.0	0.5	1.8	0.4		1.4	0.3		10.4
3	Labor hours/day/person	9.4	9.4	9.5	8.0	9.5	10.0		9.1	9.1		
4	**Total labor hours/year**	4,865	4,895	4,927	1,040	4,429	1,100		3,432	664		25,352
	Route Information											
	# of routes per											
5	Weekday	2.00	2.00	2.00	0.50	1.7	0.4		1.4	0.3		10.3
6	Saturday					0.1						0.1
7	Sunday											
	# of persons per route per											
8	Weekday	1.0	1.0	1.0	1.0	1.0	1.0		1.0	1.0		
9	Saturday					1.0						
10	Sunday											
	# of route hours/day/route per											
11	Weekday	8.5	8.6	8.6	7.2	8.7	9.2		8.3	8.3		
12	Saturday					0.9						
13	Sunday											
	# of route hours per year per:											
14	Weekday	4,432	4,462	4,494	932	3,815	1,009		3,119	603		22,865
15	Saturday					451						451
16	Sunday											
17	Total Route Hours per Year (all routes)	4,432	4,462	4,494	932	4,266	1,009		3,119	603		23,316
18	# of FTE routes	2.13	2.15	2.16	0.45	2.05	0.48		1.50	0.29		11.21
19	Total # of cart setouts per day for all routes	1,918	1,726	1,630								
20	# of cart setouts/day/FTE route	900	805	755								
21	# of cart setouts per week for all routes	9,591	8,632	8,152								
22	# of household drive-bys per wk for all routes		959	1,439								
23	Set out rate (%)		90%	85%								
24	# of lifts or pulls per week for all routes					1,194	444		51	2		
25	# of lifts or pulls per year for all routes					62,088	23,088		2,672	98		
26	# of lifts or pulls per route hour					14.6	22.89		0.86	0.16		
	Vehicle Information											
27	# of regular collection vehicles (from Form 4)	2.0	2.0	2.0		1.5	0.5		1.5	0.5		10.0
28	# of spare collection vehicles (from Form 4)	1.0										1.0
29	**Total # of collection vehicles**	3.0	2.0	2.0		1.5	0.5		1.5	0.5		11.0
	Tonnage Information (annual)											
30	Solid waste collected	6,429			647	10,772			9,256			27,103
31	Recyclable materials collected		4,222				1,692					5,914
32	Organic Materials collected			5,122						367		5,489
33	**Total Collected**	6,429	4,222	5,122	647	10,772	1,692		9,255	367		38,506
34	Processing residue disposed		338	205			135			15		693
35	**Net Diverted (Line 31 + 32 - 35)**		3,884	4,917			1,557			352		10,710
											Projected Diversion Rate	27.8%

Notes for Form 2:

Line 1 - Should equal the number of customer serviced on a weekly basis

Line 2 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 3 - Identify number of hours per day each regular route employee will work each day (including breaks, pre- and post-route checks, etc., excludes casual/pool personnel).

Line 4 - Should equal Line 2 * Line 3 * 260 days

Lines 5, 6, and 7 - Information is to be reported for collection routes only and does not include any support (e.g., container delivery routes, cleanup routes, missed pickup routes etc.)

Line 8, 9, and 10 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Lines 11, 12, and 13 - Identify number of hours per day each route will take to complete (including collection time and hauling time to transfer station, landfill, or processing site).

Line 14 - Should equal Line 5 * Line 11* 260 days

Line 15 - Should equal Line 6 * Line 12 * 52 weeks

Line 16 - Should equal Line 7 * Line 13 * 52 weeks

Line 17 - Should equal Line 14 + Line 15 + Line 16

Line 18 - Should equal Line 17 / 2,080 hours

Line 19 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 20 - Should equal Line 19 / Line 18

Line 21 - Should equal Line 19 * 5 days

Line 22 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 23 - Should equal Line 21 / Line 22

Line 24 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 25 - Data to be input by proposer and should equal Line 24 * 52 weeks. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 26 - Should equal Line 25/ Line 17

Line 27 - No input needed by proposer, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 28 - No input needed by proposer, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 29 - Should equal Line 28 + Line 29

Lines 30 - 32 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 33 - Should equal Line 30 + Line 31 + Line 32

Line 34 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 35 - Should equal Line 31 + Line 32 - Line 35

Pulls = pull and return etc.
Full Time Equivalent (FTE) = 40 hours per week, 2,080 hours per year

Proposed Labor Requirements **City of Newark Base Services w/CNG Trucks**
Proposer Name: Allied Waste of Alameda County

Note to proposer: Input data in yellow shaded areas only.

Route Personnel Headcount (include fraction of employee)	**# of Regular Personnel**	**# of Casual/Pool**	**Total**
Single-family Solid Waste	2.0	0.2	2.2
Single-family Recyclable Materials	2.0	0.2	2.2
Single-family Organic Materials	2.0	0.2	2.2
Single-family Bulky Waste Program	0.5	0.1	0.6
Commercial / Multi-family Solid Waste	1.8	0.2	2.0
Commercial / Multi-family Recyclable Materials	0.4	0.0	0.5
Commercial / Multi-family Yard Trimmings	0.0	0.0	0.0
Drop Box Solid Waste	1.4	0.1	1.6
Drop Box Recyclable Materials	0.3	0.0	0.3
Drop Box Yard Trimmings	0.0	0.0	0.0
Subtotal Route Personnel	10.4	1.0	11.5

Other Personnel Headcount (include fraction of employee)	**Notes**	**# of Employees**
Executive Management (CEO, CFO, COO, etc.)		
General Manager		0.25
Operations Manager		0.25
Route Supervisor		1.0
Dispatcher		
Container Distribution		0.5
Container Maintenance/Welder		
Maintenance Supervisor		
Maintenance Personnel		1.0
Controller		0.25
Staff Accountant		
Office Manager		
Accounting Clerk		1.0
Customer Service Supervisor		
Customer Service Representatives		2.0
Recycling Manager		0.1
Recycling/Public Education Coordinator		1.0
Other (specify): _____		
Other (specify): _____		
Other (specify): _____		
Subtotal Other Personnel		7.4
	Total All Personnel	18.8

Form 4

Capital Requirements — **City of Newark Base Services w/CNG Trucks**

Proposer Name: Allied Waste of Alameda County

Note to proposer: Input data in yellow shaded areas only.

	Quantity									Total Capital Cost Over Contract Term (in 2013 dollars)
	New			Used			Total			
	Actual	Spare	Total	Actual	Spare	Total	Actual	Spare	Total	
Vehicles										
Collection Vehicles										
Single-family Solid Waste	2	1	3			0	2	1	3	$1,070,184
Single-family Recyclable Materials	2		2			0	2	0	2	$713,456
Single-family Organic Materials	2		2			0	2	0	2	$713,456
Single-family Bulky Waste Program			0			0	0	0	0	
Commercial / Multi-family Solid Waste	1.5		1.5			0	1.5	0	1.5	$485,730
Commercial / Multi-family Recyclable Materials	0.5		0.5			0	0.5	0	0.5	$161,910
Commercial / Multi-family Organic Materials			0			0	0	0	0	
Drop Box Solid Waste	1.5		1.5			0	1.5	0	1.5	$455,747
Drop Box Recyclable Materials	0.5		0.5			0	0.5	0	0.5	$151,916
Drop Box Yard Trimmings			0			0	0	0	0	
Subtotal	10	1	11	0	0	0	10	1	11	$3,752,398
Other Vehicles										
Pickup Trucks	1		1			0	1	0	1	$24,996
Container Distribution	1		1			0	1	0	1	$81,937
Mobile Service Truck			0			0	0	0	0	
Other (specify): _____			0			0	0	0	0	
Other (specify): _____			0			0	0	0	0	
Subtotal	2	0	2	0	0	0	2	0	2	$106,933
									Total Vehicle Cost	**$3,859,331**
Containers										
Carts										
Solid Waste 20-gallon	766	24	790			-	766	24	790	$42,864
Solid Waste 32/35-gallon	7,094	213	7,307			-	7,094	213	7,307	$246,313
Solid Waste 64-gallon	1,791	54	1,845			-	1,791	54	1,845	$78,715
Solid Waste 96-gallon	225	7	232			-	225	7	232	$11,998
Recyclable Material 64-gallon	9,591	288	9,879			-	9,591	288	9,879	$421,525
Organic Materials 64-gallon	9,623	289	9,912			-	9,623	289	9,912	$422,932
Subtotal	29,090	874	29,964	-	-	-	29,090	874	29,964	$1,224,347
Bins										
1 cubic yard	158	5	163			-	158	5	163	$75,308
2 cubic yards	178	5	183			-	178	5	183	$93,526
3 cubic yards	281	8	289			-	281	8	289	$164,455
4 cubic yards	145	4	149			-	145	4	149	$82,515
5 cubic yards			-			-	-	-	-	
6 cubic yards	47	1	48			-	47	1	48	$40,962
7 cubic yard	47	1	48			-	47	1	48	$47,789
Subtotal	856	26	882	-	-	-	856	26	882	$504,554
Drop Boxes										
7 cubic yards	5		5			-	5	-	5	$14,241
10 cubic yards	5		5			-	5	-	5	$18,389
15 cubic yards	5		5			-	5	-	5	$18,389
20 cubic yards	15		15			-	15	-	15	$55,468
30 cubic yards	15		15			-	15	-	15	$61,690
40 cubic yards	10		10			-	10	-	10	$49,311
Subtotal	55	-	55	-	-	-	55	-	55	$217,488
Other (specify): Kitchen Pails	9,591	288	9,879			-	9,591	288	9,879	$53,828
Other (specify): _____			-			-	-	-	-	
Subtotal	9,591	288	9,879	-	-	-	9,591	288	9,879	$53,828
									Total Container Cost	**$2,000,217**
Other	Description									
Offices										
Processing Site(s)										
Transfer Station										
Corporation Yard/Maintenance	CNG Shop Upgrades									$190,000
Container Storage Yard										
Shop Equipment										
Fueling Equipment										
Computer and Office Equipment										
Other (specify): _____	Container delivery fees									$232,905
Other (specify): _____										
									Total Other Cost	**$422,905**
Total Capital Cost										**$6,282,452**

Summary of Proposed Costs
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: No data input required on this Form 5; costs are pulled automatically from Forms 6A through 6C.

RATE PERIOD 1	Single-Family (Form 6A)				Commercial / Multi-Family (Form 6B)			Drop Box (Form 6C)			
From June 1, 2013 to December 31, 2014	Solid Waste	Recyclable Materials	Organic Materials	Bulky Waste Program	Solid Waste	Recyclable Materials	Yard Trimmings	Solid Waste	Recyclable Materials	Yard Trimmings	TOTAL
Cost of Operations											
Labor-Related Costs	$545,233	$549,348	$553,694	$224,714	$459,070	$142,137	$0	$380,739	$81,587	$0	$2,936,520
Vehicle-Related Costs	$28,769	$19,180	$19,180	$9,590	$14,384	$4,794	$0	$14,384	$4,794	$0	$115,073
Fuel Costs	$76,966	$75,319	$75,811	$32,336	$50,353	$15,629	$0	$63,786	$12,621	$0	$402,819
Net Processing Costs	$0	$0	$405,492	$0	$0	$0	$0	$0	$29,054	$0	$434,546
Other Costs	$30,642	$30,642	$30,642	$14,834	$26,144	$7,588	$0	$24,800	$5,285	$0	$170,575
Direct Depreciation	$237,017	$187,130	$195,875	$12,974	$145,283	$45,364	$0	$105,874	$31,167	$0	$960,684
Total Allocated Costs - Labor, Vehicle, Fuel & Other	$412,418	$412,418	$412,418	$103,104	$344,378	$95,514	$0	$285,978	$57,524	$0	$2,123,751
Total Allocated Costs - Depreciation & Start-Up	$10,454	$10,454	$10,454	$2,613	$8,729	$2,421	$0	$7,249	$1,458	$0	$53,832
Total Cost of Operations	$1,341,498	$1,284,489	$1,703,564	$400,166	$1,048,340	$313,448	$0	$882,809	$223,489	$0	$7,197,802
Profit	$143,758	$137,648	$182,557	$42,883	$112,342	$33,590	$0	$94,604	$23,950	$0	$771,331
Pass-Through Costs											
Disposal Cost	$848,999	$0	$0	$86,498	$1,422,614	$0	$0	$1,222,270	$0	$0	$3,579,380
Interest Expense	$53,162	$42,440	$44,319	$3,342	$33,212	$10,220	$0	$23,812	$7,553	$0	$218,060
Direct Lease Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Costs - Lease	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Pass-Through Costs	$902,161	$42,440	$44,319	$88,840	$1,455,826	$10,220	$0	$1,246,082	$7,553	$0	$3,797,440
Total Costs before City Fees*	$2,387,416	$1,464,577	$1,930,440	$531,888	$2,616,508	$357,257	$0	$2,223,495	$254,992	$0	$11,766,574
City Fees											
Franchise Fee	---	---	---	---	---	---	---	---	---	---	$2,941,643
Other	---	---	---	---	---	---	---	---	---	---	$0
Total City Fees	---	---	---	---	---	---	---	---	---	---	$2,941,643
Total Proposed Costs	---	---	---	---	---	---	---	---	---	---	$14,708,217

*Amounts to tie to Forms 6A through 6C.

Form 6

Collection Cost Proposal
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: No data input required on Form 6; costs are pulled automatically from Forms 6A through 6C.

SUMMARY (Total Costs from Forms 6A through 6C)	First 7 Months of Rate Period One June 1, 2013 through December 31, 2013	Last 12 Months of Rate Period One January 1, 2014 through December 31, 2014	Total Rate Period One June 1, 2013 through December 31, 2014
Labor-Related Costs (include regular & pool personnel)			
Regular Wages	$429,286	$735,919	$1,165,205
Overtime Wages	$166,519	$285,461	$451,980
Holiday Wages	$19,812	$33,965	$53,777
Vacation Wages	$45,406	$77,837	$123,243
Sick Leave Wages	$19,812	$33,965	$53,777
Workers Compensation Insurance Premiums	$37,311	$63,963	$101,274
Workers Compensation Claims	$28,981	$49,679	$78,660
Health & Welfare	$152,059	$260,672	$412,731
Pension/ Retirement Benefits	$126,507	$216,868	$343,375
Payroll Taxes	$54,593	$93,590	$148,183
Other (Boot Allowance)	$1,591	$2,725	$4,316
Total Labor Related-Costs	$1,081,877	$1,854,643	$2,936,520
Vehicle-Related Costs (do **not** include depreciation)			
Tires & Tubes	$0	$0	$0
Parts & Supplies (fluid, oil, etc,)	$0	$0	$0
Taxes & Licenses	$42,394	$72,679	$115,073
Other (Please List)	$0	$0	$0
Total Vehicle-Related Costs	$42,394	$72,679	$115,073
Fuel Costs	$148,407	$254,412	$402,819
Net Processing Costs			
Recyclables Processing Costs	$0	$0	$0
Commodity Revenue from Recyclables (including CRV revenue)	$0	$0	$0
Composting Costs	$160,096	$274,450	$434,546
Other Processing Costs: _____ (specify)	$0	$0	$0
Total Net Processing Costs	$160,096	$274,450	$434,546
Other Costs			
Liability & Property Damage Insurance	$24,570	$42,122	$66,692
Equipment Insurance	$30,712	$52,649	$83,361
Training & Safety Programs	$3,815	$6,540	$10,355
Uniforms	$3,746	$6,421	$10,167
Other (Please List)	$0	$0	$0
Total Other Costs	$62,843	$107,732	$170,575
Direct Depreciation			
Container Depreciation	$116,679	$200,022	$316,701
Route Vehicle Depreciation	$223,671	$383,434	$607,105
Other Depreciation	$13,587	$23,291	$36,878
Total Direct Depreciation	$353,937	$606,747	$960,684

Form 6

Collection Cost Proposal

Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: No data input required on Form 6; costs are pulled automatically from Forms 6A through 6C.

SUMMARY (Total Costs from Forms 6A through 6C)		First 7 Months of Rate Period One June 1, 2013 through December 31, 2013	Last 12 Months of Rate Period One January 1, 2014 through December 31, 2014	Total Rate Period One June 1, 2013 through December 31, 2014
Allocated Costs - **Labor, Vehicle, Fuel & Other Costs**				
From General and Administrative (6D)		$528,823	$906,551	$1,435,374
From Vehicle Maintenance (6D)		$240,696	$412,621	$653,317
From Container Maintenance (6D)		$12,917	$22,143	$35,060
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs		$782,436	$1,341,315	$2,123,751
Allocated Costs - **Depreciation and Start-Up Costs**				
From General and Administrative (6D)		$8,750	$15,000	$23,749
From Vehicle Maintenance (6D)		$11,083	$19,000	$30,083
From Container Maintenance (6D)		$0	$0	$0
Total Allocated Costs - Depreciation and Start-Up Costs		$19,833	$34,000	$53,832
Total Cost of Operations		$2,651,823	$4,545,980	$7,197,802
Profit (% Operating Ratio; i.e. 95%):	90.321 %	$284,175	$487,156	$771,331
Pass-Through Costs				
Disposal Cost	$ 83.41 /ton	$1,318,719	$2,260,661	$3,579,380
Interest Expense		$80,338	$137,722	$218,060
Direct Lease Costs				
Route Vehicles		$0	$0	$0
Other (Please List)		$0	$0	$0
Total Direct Lease Costs		$0	$0	$0
Allocated Lease Costs				
From General and Administrative (6D)		$0	$0	$0
From Vehicle Maintenance (6D)		$0	$0	$0
From Container Maintenance (6D)		$0	$0	$0
Total Allocated Lease Costs		$0	$0	$0
Total Pass-Through Costs		$1,399,057	$2,398,383	$3,797,440
Total Cost Before City Fees		**$4,335,054**	**$7,431,519**	**$11,766,574**
City Fees				
Franchise Fee	20%	$1,083,764	$1,857,880	$2,941,643
Other		$0	$0	$0
Total City Fees		$1,083,764	$1,857,880	$2,941,643
Total Proposed Cost		**$5,418,818**	**$9,289,399**	**$14,708,217**

Basis For Rate Period Two Rate Adjustment Process	Annual Cost
Operating Component	$5,170,858
Disposal Component	$2,260,661
City Fee Component	$1,857,880
Total Annual Cost	$9,289,399

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks
Note to proposer: Input data in yellow shaded areas only.

	First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013					Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014					Total Rate Period One
SINGLE-FAMILY COSTS	Solid Waste	Recyclable Materials	Organic Materials	Bulky Item Program	Subtotal	Solid Waste	Recyclable Materials	Organic Materials	Bulky Item Program	Subtotal	Total
Labor-Related Costs (include regular & pool personnel)											
Regular Wages	$78,768	$78,768	$78,768	$39,384	$275,688	$135,031	$135,031	$135,031	$67,515	$472,608	$748,296
Overtime Wages	$32,682	$34,085	$35,568	$0	$102,335	$56,026	$58,432	$60,974	$0	$175,432	$277,767
Holiday Wages	$3,635	$3,635	$3,635	$1,818	$12,723	$6,232	$6,232	$6,232	$3,116	$21,812	$34,535
Vacation Wages	$8,331	$8,331	$8,331	$4,166	$29,159	$14,282	$14,282	$14,282	$7,141	$49,987	$79,146
Sick Leave Wages	$3,635	$3,635	$3,635	$1,818	$12,723	$6,232	$6,232	$6,232	$3,116	$21,812	$34,535
Workers Compensation Insurance Premiums	$6,816	$6,816	$6,816	$3,408	$23,856	$11,685	$11,685	$11,685	$5,842	$40,897	$64,753
Workers Compensation Claims	$5,416	$5,416	$5,416	$2,708	$18,956	$9,284	$9,284	$9,284	$4,642	$32,493	$51,449
Health & Welfare	$27,901	$27,901	$27,901	$13,950	$97,653	$47,830	$47,830	$47,830	$23,915	$167,405	$265,058
Pension/ Retirement Benefits	$23,212	$23,212	$23,212	$11,606	$81,242	$39,792	$39,792	$39,792	$19,896	$139,272	$220,514
Payroll Taxes	$10,187	$10,300	$10,418	$3,786	$34,691	$17,464	$17,657	$17,860	$6,491	$59,472	$94,163
Other (Boot Allowance)	$292	$292	$292	$146	$1,022	$500	$500	$500	$250	$1,750	$2,772
Total Labor Related-Costs	$200,875	$202,391	$203,992	$82,790	$690,048	$344,358	$346,957	$349,702	$141,924	$1,182,940	$1,872,988
Vehicle-Related Costs (do not include depreciation)											
Tires & Tubes	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Parts & Supplies (fluid, oil, etc.)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Taxes & Licenses	$10,599	$7,066	$7,066	$3,533	$28,264	$18,170	$12,114	$12,114	$6,057	$48,455	$76,719
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Vehicle-Related Costs	$10,599	$7,066	$7,066	$3,533	$28,264	$18,170	$12,114	$12,114	$6,057	$48,455	$76,719
Fuel Costs	$28,356	$27,749	$27,930	$11,913	$95,948	$48,610	$47,570	$47,881	$20,423	$164,483	$260,431
Net Processing Costs											
Recyclables Processing Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revenue from Sale of Recyclables (incl. CRV revenue)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Composting Costs	$0	$0	$149,392	$0	$149,392	$0	$0	$256,100	$0	$256,100	$405,492
Other Processing Costs: _____ (specify)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Net Processing Costs	$0	$0	$149,392	$0	$149,392	$0	$0	$256,100	$0	$256,100	$405,492
Other Costs											
Liability & Property Damage Insurance	$4,410	$4,410	$4,410	$2,205	$15,435	$7,560	$7,560	$7,560	$3,780	$26,460	$41,895
Equipment Insurance	$5,461	$5,461	$5,461	$2,731	$19,114	$9,362	$9,362	$9,362	$4,681	$32,767	$51,881
Training & Safety Programs	$700	$700	$700	$350	$2,450	$1,200	$1,200	$1,200	$600	$4,200	$6,650
Uniforms	$718	$718	$718	$179	$2,333	$1,231	$1,231	$1,231	$308	$3,999	$6,332
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Other Costs	$11,289	$11,289	$11,289	$5,465	$39,332	$19,353	$19,353	$19,353	$9,369	$67,426	$106,758
Direct Depreciation											
Container Depreciation	$22,160	$24,589	$27,811	$0	$74,560	$37,989	$42,153	$47,676	$0	$127,818	$202,378
Route Vehicle Depreciation	$62,427	$41,619	$41,619	$4,780	$150,445	$107,018	$71,346	$71,346	$8,194	$257,904	$408,349
Other Depreciation	$2,735	$2,735	$2,735	$0	$8,205	$4,688	$4,688	$4,688	$0	$14,064	$22,269
Total Direct Depreciation	$87,322	$68,943	$72,165	$4,780	$233,210	$149,695	$118,187	$123,710	$8,194	$399,786	$632,996

Form 6A

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.

		First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013					Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014					Total Rate Period One
SINGLE-FAMILY COSTS		Solid Waste	Recyclable Materials	Organic Materials	Bulky Item Program	Subtotal	Solid Waste	Recyclable Materials	Organic Materials	Bulky Item Program	Subtotal	Total
Allocated Costs - **Labor, Vehicle, Fuel & Other Costs**												
From General and Administrative (6D)		$102,694	$102,694	$102,694	$25,673	$333,755	$176,046	$176,046	$176,046	$44,011	$572,149	$905,904
From Vehicle Maintenance (6D)		$46,741	$46,741	$46,741	$11,685	$151,910	$80,128	$80,128	$80,128	$20,032	$260,416	$412,326
From Container Maintenance (6D)		$2,508	$2,508	$2,508	$627	$8,152	$4,300	$4,300	$4,300	$1,075	$13,975	$22,128
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs		$151,944	$151,944	$151,944	$37,986	$493,817	$260,474	$260,474	$260,474	$65,119	$846,541	$1,340,357
Allocated Costs - **Depreciation and Start-Up Costs**												
From General and Administrative (6D)		$1,699	$1,699	$1,699	$425	$5,522	$2,913	$2,913	$2,913	$728	$9,467	$14,989
From Vehicle Maintenance (6D)		$2,152	$2,152	$2,152	$538	$6,995	$3,690	$3,690	$3,690	$922	$11,991	$18,986
From Container Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Costs - Depreciation and Start-Up Costs		$3,851	$3,851	$3,851	$963	$12,517	$6,602	$6,602	$6,602	$1,651	$21,458	$33,975
Total Cost of Operations		$494,236	$473,233	$627,629	$147,430	$1,742,528	$847,262	$811,256	$1,075,935	$252,736	$2,987,188	$4,729,716
Profit (Enter % Operating Ratio; i.e. 95%):	90.321 %	$52,963	$50,713	$67,258	$15,799	$186,733	$90,794	$86,936	$115,299	$27,084	$320,113	$506,846
Pass-Through Costs												
Disposal Cost	$ 83.41 per ton	$312,789	$0	$0	$31,499	$344,288	$536,210	$0	$0	$53,999	$590,209	$934,497
Interest Expense		$19,586	$15,636	$16,328	$1,231	$52,781	$33,576	$26,804	$27,991	$2,111	$90,482	$143,263
Direct Lease Costs												
Route Vehicles		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other (Please List)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Direct Lease Costs		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Allocated Lease Costs												
From General and Administrative (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
From Vehicle Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
From Container Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Lease Costs		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Pass-Through Costs		$332,375	$15,636	$16,328	$32,730	$397,069	$569,786	$26,804	$27,991	$56,110	$680,691	$1,077,760
Total Cost		$879,574	$839,582	$711,215	$195,959	$2,326,329	$1,507,642	$924,996	$1,219,225	$335,930	$3,987,992	$6,314,322

Form 6B

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.

	First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013				Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014				Total Rate Period One
COMMERCIAL / MULTI-FAMILY COSTS	Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Total
Labor-Related Costs (include regular & pool personnel)									
Regular Wages	$66,953	$19,692	$0	$86,645	$114,776	$33,758	$0	$148,534	$235,179
Overtime Wages	$26,227	$10,142	$0	$36,369	$44,960	$17,386	$0	$62,346	$98,715
Holiday Wages	$3,090	$909	$0	$3,999	$5,297	$1,558	$0	$6,855	$10,854
Vacation Wages	$7,082	$2,083	$0	$9,165	$12,140	$3,571	$0	$15,711	$24,876
Sick Leave Wages	$3,090	$909	$0	$3,999	$5,297	$1,558	$0	$6,855	$10,854
Workers Compensation Insurance Premiums	$5,986	$1,760	$0	$7,746	$10,261	$3,018	$0	$13,279	$21,025
Workers Compensation Claims	$4,475	$1,316	$0	$5,791	$7,671	$2,256	$0	$9,927	$15,718
Health & Welfare	$23,715	$6,975	$0	$30,690	$40,655	$11,957	$0	$52,612	$83,302
Pension/ Retirement Benefits	$19,731	$5,803	$0	$25,534	$33,824	$9,948	$0	$43,772	$69,306
Payroll Taxes	$8,535	$2,704	$0	$11,239	$14,632	$4,636	$0	$19,268	$30,507
Other (Boot Allowance)	$248	$73	$0	$321	$425	$125	$0	$550	$871
Total Labor Related-Costs	$169,132	$52,366	$0	$221,498	$289,938	$89,771	$0	$379,708	$601,206
Vehicle-Related Costs (do not include depreciation)									
Tires & Tubes	$0	$0	$0	$0	$0	$0	$0	$0	$0
Parts & Supplies (fluid, oil, etc,)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Taxes & Licenses	$5,299	$1,766	$0	$7,065	$9,085	$3,028	$0	$12,112	$19,177
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Vehicle-Related Costs	$5,299	$1,766	$0	$7,065	$9,085	$3,028	$0	$12,112	$19,177
Fuel Costs	$18,551	$5,758	$0	$24,309	$31,802	$9,871	$0	$41,673	$65,982
Net Processing Costs									
Recyclables Processing Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revenue from Sale of Recyclables (incl. CRV revenue)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Composting Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other Processing Costs: _____ (specify)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Net Processing Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0
Other Costs									
Liability & Property Damage Insurance	$3,551	$1,044	$0	$4,595	$6,088	$1,790	$0	$7,878	$12,473
Equipment Insurance	$4,843	$1,424	$0	$6,267	$8,303	$2,442	$0	$10,745	$17,012
Training & Safety Programs	$595	$175	$0	$770	$1,020	$300	$0	$1,320	$2,090
Uniforms	$643	$152	$0	$795	$1,102	$261	$0	$1,362	$2,157
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Other Costs	$9,632	$2,795	$0	$12,427	$16,512	$4,793	$0	$21,305	$33,732
Direct Depreciation									
Container Depreciation	$22,743	$6,689	$0	$29,432	$38,988	$11,467	$0	$50,455	$79,887
Route Vehicle Depreciation	$28,334	$9,445	$0	$37,779	$48,573	$16,191	$0	$64,764	$102,543
Other Depreciation	$2,448	$579	$0	$3,027	$4,197	$993	$0	$5,190	$8,217
Total Direct Depreciation	$53,525	$16,713	$0	$70,238	$91,758	$28,651	$0	$120,409	$190,647

Form 6B

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.

		First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013				Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014				Total Rate Period One
COMMERCIAL/ MULTI-FAMILY COSTS		Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Total
Allocated Costs - **Labor, Vehicle, Fuel & Other Costs**										
From General and Administrative (6D)		$85,752	$23,783	$0	$109,535	$147,002	$40,771	$0	$187,774	$297,309
From Vehicle Maintenance (6D)		$39,030	$10,825	$0	$49,855	$66,909	$18,557	$0	$85,466	$135,321
From Container Maintenance (6D)		$2,095	$581	$0	$2,675	$3,591	$996	$0	$4,587	$7,262
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs		$126,876	$35,189	$0	$162,066	$217,502	$60,325	$0	$277,826	$439,892
Allocated Costs - **Depreciation and Start-Up Costs**										
From General and Administrative (6D)		$1,419	$394	$0	$1,812	$2,432	$675	$0	$3,107	$4,919
From Vehicle Maintenance (6D)		$1,797	$498	$0	$2,296	$3,081	$855	$0	$3,935	$6,231
From Container Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Costs - Depreciation and Start-Up Costs		$3,216	$892	$0	$4,108	$5,513	$1,529	$0	$7,042	$11,150
Total Cost of Operations		$386,231	$115,479	$0	$501,711	$662,109	$197,968	$0	$860,077	$1,361,788
Profit (Enter % Operating Ratio; i.e. 95%):	90.321 %	$41,389	$12,375	$0	$53,764	$70,953	$21,215	$0	$92,168	$145,932
Pass-Through Costs										
Disposal Cost	$ 83.41 per ton	$524,121	$0	$0	$524,121	$898,493	$0	$0	$898,493	$1,422,614
Interest Expense		$12,236	$3,765	$0	$16,001	$20,976	$6,455	$0	$27,431	$43,432
Direct Lease Costs										
Route Vehicles		$0	$0	$0	$0	$0	$0	$0	$0	$0
Other (Please List)		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Direct Lease Costs		$0	$0	$0	$0	$0	$0	$0	$0	$0
Allocated Lease Costs										
From General and Administrative (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
From Vehicle Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
From Container Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Lease Costs		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Pass-Through Costs		$536,357	$3,765	$0	$540,122	$919,469	$6,455	$0	$925,924	$1,466,046
Total Cost		$963,978	$131,619	$0	$1,095,597	$1,652,530	$225,638	$0	$1,878,168	$2,973,765

Form 6C

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.

Note to proposer: Do not include costs for on-call C&D collection.

	First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013				Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014				Total Rate Period One
DROP-BOX COSTS	Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Total
Labor-Related Costs (include regular & pool personnel)									
Regular Wages	$55,138	$11,815	$0	$66,953	$94,522	$20,255	$0	$114,777	$181,730
Overtime Wages	$22,906	$4,909	$0	$27,815	$39,268	$8,415	$0	$47,683	$75,498
Holiday Wages	$2,545	$545	$0	$3,090	$4,363	$935	$0	$5,298	$8,388
Vacation Wages	$5,832	$1,250	$0	$7,082	$9,997	$2,142	$0	$12,139	$19,221
Sick Leave Wages	$2,545	$545	$0	$3,090	$4,363	$935	$0	$5,298	$8,388
Workers Compensation Insurance Premiums	$4,702	$1,007	$0	$5,709	$8,060	$1,727	$0	$9,787	$15,496
Workers Compensation Claims	$3,487	$747	$0	$4,234	$5,978	$1,281	$0	$7,259	$11,493
Health & Welfare	$19,531	$4,185	$0	$23,716	$33,481	$7,174	$0	$40,655	$64,371
Pension/ Retirement Benefits	$16,249	$3,482	$0	$19,731	$27,855	$5,969	$0	$33,824	$53,555
Payroll Taxes	$7,134	$1,529	$0	$8,663	$12,229	$2,621	$0	$14,850	$23,513
Other (Boot Allowance)	$204	$44	$0	$248	$350	$75	$0	$425	$673
Total Labor Related-Costs	$140,273	$30,058	$0	$170,331	$240,466	$51,529	$0	$291,995	$462,326
Vehicle-Related Costs (do not include depreciation)									
Tires & Tubes	$0	$0	$0	$0	$0	$0	$0	$0	$0
Parts & Supplies (fluid, oil, etc,)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Taxes & Licenses	$5,299	$1,766	$0	$7,065	$9,085	$3,028	$0	$12,112	$19,177
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Vehicle-Related Costs	$5,299	$1,766	$0	$7,065	$9,085	$3,028	$0	$12,112	$19,177
Fuel Costs	$23,500	$4,650	$0	$28,150	$40,286	$7,971	$0	$48,256	$76,406
Net Processing Costs									
Recyclables Processing Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0
Revenue from Sale of Recyclables (incl. CRV revenue)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Composting Costs	$0	$10,704	$0	$10,704	$0	$18,350	$0	$18,350	$29,054
Other Processing Costs: _____ (specify)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Net Processing Costs	$0	$10,704	$0	$10,704	$0	$18,350	$0	$18,350	$29,054
Other Costs									
Liability & Property Damage Insurance	$3,739	$801	$0	$4,540	$6,410	$1,374	$0	$7,784	$12,324
Equipment Insurance	$4,390	$941	$0	$5,331	$7,525	$1,612	$0	$9,137	$14,468
Training & Safety Programs	$490	$105	$0	$595	$840	$180	$0	$1,020	$1,615
Uniforms	$518	$100	$0	$618	$888	$172	$0	$1,060	$1,678
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Other Costs	$9,137	$1,947	$0	$11,084	$15,663	$3,338	$0	$19,001	$30,085
Direct Depreciation									
Container Depreciation	$10,448	$2,239	$0	$12,687	$17,911	$3,838	$0	$21,749	$34,436
Route Vehicle Depreciation	$26,585	$8,862	$0	$35,447	$45,575	$15,192	$0	$60,766	$96,213
Other Depreciation	$1,973	$382	$0	$2,355	$3,383	$654	$0	$4,037	$6,392
Total Direct Depreciation	$39,006	$11,483	$0	$50,489	$66,868	$19,684	$0	$86,552	$137,041

Form 6C

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.
Note to proposer: Do not include costs for on-call C&D collection.

		First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013				Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014				Total Rate Period One
DROP-BOX COSTS		Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Solid Waste	Recyclable Materials	Organic Materials	Subtotal	Total
Allocated Costs - **Labor, Vehicle, Fuel & Other Costs**										
From General and Administrative (6D)		$71,210	$14,324	$0	$85,534	$122,074	$24,555	$0	$146,629	$232,162
From Vehicle Maintenance (6D)		$32,411	$6,520	$0	$38,931	$55,562	$11,176	$0	$66,739	$105,670
From Container Maintenance (6D)		$1,739	$350	$0	$2,089	$2,982	$600	$0	$3,582	$5,671
Total Allocated Costs - Labor, Vehicle, Fuel & Other Costs		$105,361	$21,193	$0	$126,554	$180,618	$36,331	$0	$216,949	$343,502
Allocated Costs - **Depreciation and Start-Up Costs**										
From General and Administrative (6D)		$1,178	$237	$0	$1,415	$2,020	$406	$0	$2,426	$3,841
From Vehicle Maintenance (6D)		$1,492	$300	$0	$1,793	$2,558	$515	$0	$3,073	$4,866
From Container Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Costs - Depreciation and Start-Up Costs		$2,671	$537	$0	$3,208	$4,578	$921	$0	$5,499	$8,707
Total Cost of Operations		$325,246	$82,338	$0	$407,585	$557,563	$141,151	$0	$698,714	$1,106,299
Profit (Enter % Operating Ratio; i.e. 95%):	90.321 %	$34,854	$8,824	$0	$43,678	$59,750	$15,126	$0	$74,876	$118,553
Pass-Through Costs										
Disposal Cost	$ 83.41 per ton	$450,310	$0	$0	$450,310	$771,960	$0	$0	$771,960	$1,222,270
Interest Expense		$8,773	$2,783	$0	$11,556	$15,039	$4,770	$0	$19,809	$31,365
Direct Lease Costs										
Route Vehicles		$0	$0	$0	$0	$0	$0	$0	$0	$0
Other (Please List)		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Direct Lease Costs		$0	$0	$0	$0	$0	$0	$0	$0	$0
Allocated Lease Costs										
From General and Administrative (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
From Vehicle Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
From Container Maintenance (6D)		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Lease Costs		$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Pass-Through Costs		$459,083	$2,783	$0	$461,866	$786,999	$4,770	$0	$791,769	$1,253,635
Total Cost		$819,183	$93,945	$0	$913,128	$1,404,311	$161,047	$0	$1,565,359	$2,478,487

Form 6D

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.

	First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013				Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014				Total Rate Period One
PROPOSED ALLOCATED COST	General and Administrative	Vehicle Maintenance	Container Maintenance	Subtotal	General and Administrative	Vehicle Maintenance	Container Maintenance	Subtotal	Total
Labor-Related Costs (include non-route personnel only)									
Regular Wages	$128,835	$43,322	$0	$172,157	$220,859	$74,267	$0	$295,126	$467,283
Overtime Wages	$0	$17,975	$0	$17,975	$0	$30,814	$0	$30,814	$48,789
Holiday Wages	$5,602	$1,818	$0	$7,420	$9,603	$3,116	$0	$12,719	$20,139
Vacation Wages	$5,602	$4,166	$0	$9,768	$9,603	$7,141	$0	$16,744	$26,512
Sick Leave Wages	$5,602	$1,818	$0	$7,420	$9,603	$3,116	$0	$12,719	$20,139
Workers Compensation Insurance Premiums	$2,913	$3,408	$0	$6,321	$4,993	$5,842	$0	$10,836	$17,157
Workers Compensation Claims	$2,913	$2,708	$0	$5,621	$4,993	$4,642	$0	$9,635	$15,256
Pension/ Retirement Benefits	$3,641	$11,606	$0	$15,247	$6,242	$19,896	$0	$26,138	$41,385
Payroll Taxes	$12,379	$5,528	$0	$17,907	$21,222	$9,476	$0	$30,698	$48,605
Other (Health Ins)	$39,375	$13,950	$0	$53,325	$67,500	$23,915	$0	$91,415	$144,740
Total Labor Related-Costs	$206,862	$106,299	$0	$313,161	$354,617	$182,226	$0	$536,843	$850,004
Vehicle-Related Costs									
Tires & Tubes	$233	$35,130	$0	$35,363	$400	60,223	$0	$60,623	$95,986
Parts	$700	$63,821	$9,688	$74,209	$1,200	109,408	$16,608	$127,216	$201,425
Parts & Supplies (fluid, oil, etc,)	$58	$16,429	$3,229	$19,716	$100	28,164	$5,536	$33,800	$53,516
Total Vehicle-Related Costs	$991	$115,380	$12,917	$129,288	$1,700	$197,795	$22,143	$221,638	$350,926
Fuel Costs	$778	$0	$0	$778	$1,334	$0	$0	$1,334	$2,112
Other Costs									
Liability & Property Damage Insurance	$0	$0	$0	$0	$0	$0	$0	$0	$0
Equipment Insurance	$0			$0	$0			$0	$0
Rent	$0	$0	$0	$0	$0	$0	$0	$0	$0
Utilities	$0	$0	$0	$0	$0	$0	$0	$0	$0
Telephone/Fleetmind/GPS	$3,150	$17,500	$0	$20,650	$5,400	$30,000	$0	$35,400	$56,050
Non-vehicle Related Supplies	$9,735	$0	$0	$9,735	$16,689	$0	$0	$16,689	$26,424
Non-vehicle Related Taxes & Licenses	$11,354	$292	$0	$11,646	$19,464	$500	$0	$19,964	$31,610
Training & Safety Programs	$0	$350	$0	$350	$0	$600	$0	$600	$950
Initial Public Education & Outreach Efforts	$59,443			$59,443	$101,903			$101,903	$161,346
Ongoing, Annual Public Education & Outreach Efforts	$52,706			$52,706	$90,353			$90,353	$143,059
Uniforms	$0	$875	$0	$875	$0	$1,500	$0	$1,500	$2,375
Bad Debt	$37,819			$37,819	$64,832			$64,832	$102,651
Performance Bond	$10,515			$10,515	$18,025			$18,025	$28,540
Corporate Overhead Charge (Please List)	$135,470			$135,470	$232,235			$232,235	$367,705
Other (Please List)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Other Costs	$320,192	$19,017	$0	$339,209	$548,900	$32,600	$0	$581,500	$920,709
Total Labor, Vehicle, Fuel, and Other Costs	$528,823	$240,696	$12,917	$782,436	$906,551	$412,621	$22,143	$1,341,315	$2,123,751
Depreciation (non-route specific) and Start-Up Costs									
Vehicle Depreciation (non-route vehicles)	$1,458	$0	$0	$1,458	$2,500	$0	$0	$2,500	$3,958
Other Depreciation	$0	$11,083	$0	$11,083	$0	$19,000	$0	$19,000	$30,083
Procurement Cost Reimbursement ($12,500 allowable per year)	$7,292			$7,292	$12,500			$12,500	$19,792
Start-up Costs	$0			$0	$0			$0	$0
Total Depreciation and Start-Up Costs	$8,750	$11,083	$0	$19,833	$15,000	$19,000	$0	$34,000	$53,832
Lease Costs									
Facility Costs: _____ (describe)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Lease Costs: _____ (describe)	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Lease Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Costs to be Allocated	$537,573	$251,779	$12,917	$802,269	$921,551	$431,621	$22,143	$1,375,315	$2,177,584

Form 6D

Detailed Collection Cost Proposal Information
Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Note to proposer: Input data in yellow shaded areas only.

		First 7 Months of Rate Period One From June 1, 2013 through December 31, 2013				Last 12 Months of Rate Period One From January 1, 2014 through December 31, 2014				Total Rate Period One
PROPOSED ALLOCATED COST		General and Administrative	Vehicle Maintenance	Container Maintenance	Subtotal	General and Administrative	Vehicle Maintenance	Container Maintenance	Subtotal	Total
Labor, Vehicle, Fuel, & Other Costs Allocated Out	Percentage									
To Single-family Solid Waste (6A)	19.42%	$102,694	$46,741	$2,508	$151,944	$176,046	$80,128	$4,300	$260,474	$412,418
To Single-family Recyclable Materials (6A)	19.42%	$102,694	$46,741	$2,508	$151,944	$176,046	$80,128	$4,300	$260,474	$412,418
To Single-family Organic Materials (6A)	19.42%	$102,694	$46,741	$2,508	$151,944	$176,046	$80,128	$4,300	$260,474	$412,418
To Single-family Annual Clean-Up Program (6A)	4.85%	$25,673	$11,685	$627	$37,986	$44,011	$20,032	$1,075	$65,119	$103,104
To Commercial / Multi-family Solid Waste (6B)	16.22%	$85,752	$39,030	$2,095	$126,876	$147,002	$66,909	$3,591	$217,502	$344,378
To Commercial / Multi-family Recyclable Materials (6B)	4.50%	$23,783	$10,825	$581	$35,189	$40,771	$18,557	$996	$60,325	$95,514
To Commercial / Multi-family Organic Materials (6B)	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Drop Box Solid Waste (6C)	13.47%	$71,210	$32,411	$1,739	$105,361	$122,074	$55,562	$2,982	$180,618	$285,978
To Drop Box Recyclable Materials (6C)	2.71%	$14,324	$6,520	$350	$21,193	$24,555	$11,176	$600	$36,331	$57,524
To Drop Box Yard Trimmings (6C)	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Labor, Vehicle, Fuel & Other Costs Allocated Out	100.00%	$528,823	$240,696	$12,917	$782,436	$906,551	$412,621	$22,143	$1,341,315	$2,123,751
Depreciation and Start-Up Costs Allocated Out										
To Single-family Solid Waste (6A)	19.42%	$1,699	$2,152	$0	$3,851	$2,913	$3,690	$0	$6,602	$10,454
To Single-family Recyclable Materials (6A)	19.42%	$1,699	$2,152	$0	$3,851	$2,913	$3,690	$0	$6,602	$10,454
To Single-family Organic Materials (6A)	19.42%	$1,699	$2,152	$0	$3,851	$2,913	$3,690	$0	$6,602	$10,454
To Single-family Annual Clean-Up Program (6A)	4.85%	$425	$538	$0	$963	$728	$922	$0	$1,651	$2,613
To Commercial / Multi-family Solid Waste (6B)	16.22%	$1,419	$1,797	$0	$3,216	$2,432	$3,081	$0	$5,513	$8,729
To Commercial / Multi-family Recyclable Materials (6B)	4.50%	$394	$498	$0	$892	$675	$855	$0	$1,529	$2,421
To Commercial / Multi-family Organic Materials (6B)	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Drop Box Solid Waste (6C)	13.47%	$1,178	$1,492	$0	$2,671	$2,020	$2,558	$0	$4,578	$7,249
To Drop Box Recyclable Materials (6C)	2.71%	$237	$300	$0	$537	$406	$515	$0	$921	$1,458
To Drop Box Yard Trimmings (6C)	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Depreciation and Start-Up Costs Allocated Out	100.00%	$8,750	$11,083	$0	$19,833	$15,000	$19,000	$0	$34,000	$53,832
Lease Costs Allocated Out										
To Single-family Solid Waste (6A)	19.42%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Single-family Recyclable Materials (6A)	19.42%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Single-family Organic Materials (6A)	19.42%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Single-family Annual Clean-Up Program (6A)	4.85%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Commercial / Multi-family Solid Waste (6B)	16.22%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Commercial / Multi-family Recyclable Materials (6B)	4.50%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Commercial / Multi-family Organic Materials (6B)	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Drop Box Solid Waste (6C)	13.47%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Drop Box Recyclable Materials (6C)	2.71%	$0	$0	$0	$0	$0	$0	$0	$0	$0
To Drop Box Yard Trimmings (6C)	0.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Lease Costs Allocated Out	100.00%	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Out		$537,573	$251,779	$12,917	$802,269	$921,551	$431,621	$22,143	$1,375,315	$2,177,584

Processing Cost Proposal **City of Newark Base Services w/CNG Trucks**

Proposer Name: Allied Waste of Alameda Cou Note to proposer: Input data in yellow shaded areas only.

Please provide all costs as $/Ton effective for Rate Period One (June 1, 2013 to December 31, 2014).

Processing Costs

	Rate Period One (June 1, 2013 through December 31, 2014)		
	Recyclable Materials	**Composting**	**Construction and Demolition**
Processing Cost ($/ton)	$0.00	$48.71	$60.63
Processing Facility Regulatory Fees & Taxes (list separately)			
City of San Jose LEA Fee	$1.29	$1.29	$1.29
Alameda Cnty Facility Fee	$0.00	$0.00	$4.34
Total Regulatory Fees ($/ton)	$1.29	$1.29	$5.63
Total Processing Cost ($/ton)	$1.29	$50.00	$66.26
Revenues from the Sale of Materials ($/ton) (show as a negative value)	($1.29)	$0.00	$0.00
Net Processing Cost ($/Ton)*	$0.00	$50.00	$66.26

* If the net is a revenue, net processing cost/ton is to show as a negative amount.

Transfer Costs (if applicable)

	Rate Period One (June 1, 2013 through December 31, 2014)		
	Recyclable Materials	**Composting**	**Construction and Demolition**
Transfer Station Cost ($/Ton)**			
Transfer Station Regulatory Fees & Taxes (list separately)			
Total Regulatory Fees ($/ton)	$0.00	$0.00	$0.00
Total Transfer Cost ($/ton)	$0.00	$0.00	$0.00

** Transfer station fee to include all transfer facility-related costs and the long-haul transportation costs from the transfer station to the processing facility.

Form 6
Single-Family Rate Proposal

Instructions to Proposer: Only enter rates and/or service level estimates into cells shaded yellow. Other rates and estimated revenues will be calculated based on these inputs.

Proposer Name: Allied Waste of Alameda County

Note that Single-Family Customers include single-family premises and each unit of a duplex, triplex, townhouse or condominium which receives individual Cart collection services.

Rates for Regularly Scheduled Curbside Cart Service

Basic Service (Monthly Rate includes Solid Waste, Recyclable Materials, and Organic Materials Collection Services)

					June 1, 2013 to December 31, 2014 Rate Period One		
Size of Solid Waste Container	Service Frequency	Current No. of Containers	Current Monthly Rate	Rate Factor	Proposed Maximum Rate	Estimated Number of Containers	Estimated Rate Period One Revenues
20-gal Cart	1 pick-up/week	591	$24.23	0.90	$24.93	766	$362,895
32/35-gal Cart	1 pick-up/week	6,989	$26.93	1.00	$27.72	6,314	$3,325,137
64-gal Cart	1 pick-up/week	1,895	$47.70	1.77	$49.09	1,717	$1,601,474
96-gal Cart	1 pick-up/week	116	$68.48	2.54	$70.44	104	$139,187
20-gal Cart (Lifeline and Senior)*	1 pick-up/week	Included above	$20.58	0.90	$21.19	0	$0
32/35-gal Cart (Lifeline and Senior)*	1 pick-up/week	Included above	$22.92	1.00	$23.56	690	$308,855
64-gal Cart (Lifeline and Senior)*	1 pick-up/week	Included above	$40.56	1.77	$41.73	0	$0
96-gal Cart (Lifeline and Senior)*	1 pick-up/week	Included above	$58.19	2.54	$59.87	0	$0

* 15% discount

Additional Cart(s) for Solid Waste, Organic Materials and Recyclable Materials (Monthly Rate)

Extra 32/35-gal Solid Waste Cart	1 pick-up/wk	Not Available	---	1.00	$16.53	0	$0
Extra 64-gal Solid Waste Cart	1 pick-up/wk	Not Available	---	1.77	$29.43	0	$0
Extra 96-gal Solid Waste Cart	1 pick-up/wk	Not Available	---	2.54	$42.23	0	$0
Extra Organic Materials Cart	1 pick-up/wk	Not Available	---	---	$6.93	0	$0
Extra Recyclable Materials Cart	1 pick-up/wk	Not Available	---	---	$4.16	0	$0

Form 8
Single-Family Rate Proposal

Proposer Name: Allied Waste of Alameda County

Note that Single-Family Customers include single-family premises and each unit of a duplex, triplex, townhouse or condominium which receives individual Cart collection services.

Rates for Regularly Schedule Backyard or Sideyard Cart Service

Basic Service (Monthly Rate for Basic Service includes Solid Waste, Recyclable Materials, Organic Materials and Backyard Collection Services for all Containers)

Size of Solid Waste Container	Service Frequency	Current No. of Containers*	Current Monthly Rate	Rate Factor	Rate Period One: Proposed Maximum Rate	Rate Period One: Estimated Number of Containers	Rate Period One: Estimated Rate Period One Revenues
20-gal Cart	1 pick-up/wk	Included above	$36.84	1.50	$37.40	0	$0
32/35-gal Cart	1 pick-up/wk	Included above	$39.56	1.50	$41.57	0	$0
64-gal Cart	1 pick-up/wk	Included above	$60.31	1.50	$73.64	0	$0
96-gal Cart	1 pick-up/wk	Included above	$81.08	1.50	$105.66	0	$0

* Data not available to quantify how many customers currently pay.

Additional Cart(s) for Solid Waste, Organic Materials and Recyclable Materials with Backyard Service (Monthly Rate)

Extra 32/35-gal Solid Waste Cart	1 pick-up/wk	Not Available	---	1.00	$24.94	0	$0
Extra 64-gal Solid Waste Cart	1 pick-up/wk	Not Available	---	1.77	$44.15	0	$0
Extra 96-gal Solid Waste Cart	1 pick-up/wk	Not Available	---	2.54	$63.35	0	$0
Extra Organic Materials Cart	1 pick-up/wk	Not Available	---	---	$24.94	0	$0
Extra Recyclable Materials Cart	1 pick-up/wk	Not Available	---	---	$24.94	0	$0

Rates for Miscellaneous Services (Per Occurrence)

Type of Service	Receptacle	Current No. of Occurrences	Current Rate per Pick-Up	Rate Factor	Rate Period One: Proposed Maximum Rate per Pick-Up	Rate Period One: Est. # of Occurrences per Month	Rate Period One: Estimated Rate Period One Revenues
Cost of pre-paid overage bags (includes bag and collection service)	Solid waste overage bag	Not Available	$5.33	0.20	$10.00	0	$0
	Organics overage bag	Not Available	---	---	$10.00	0	$0
Extra On-Call Bulky Cleanup (charge if Customer requests more than 3 cleanups per year at no cost)	Not Applicable	Not Available	---	---	$75.00	0	$0
Cart replacement (charge if Customer requires Cart replacement in excess of one replacement per year at no cost for damage or theft)	Not Applicable	Per-Occurrence Rate	---	---	$75.00	0	$0
Cart delivery/pick-up (charge if Customer requests a change in Cart size more than once per year)	Not Applicable	Per-Occurrence Rate	---	---	$50.00	0	$0
Restart Fee after 120-days late and service reduction		Per-Occurrence Rate			$30.00	0	$0
Late Fee		After 60-days past due			1.50%	0	$0
Insufficient Funds Fee		Per-Occurrence Rate			$30.00	0	$0

Estimated Single-Family Revenue for Rate Period One $5,737,540

Estimated Annual Revenue $3,823,715

Form 9

Commercial and Multi-Family Rate Proposal - Cart Service

Instructions to Proposer: Only enter rates and/or service level estimates into cells shaded yellow. Other rates and estimated revenues will be calculated based on these inputs.

Proposer Name: Allied Waste of Alameda County

Note that Multi-Family Customers include any Residential premises (other than Single-Family Premises), which have centralized collection services. Each unit of a duplex, triplex, townhouse or condominium that receives individual collection services is considered a Single-Family Premises and charged Single-Family Rates.

							June 1, 2013 to December 31, 2014 Rate Period One		
Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Current No. of Containers	Current Monthly Rate	Rate Factor	Frequency Factor	Proposed Maximum Monthly Rate	Estimated Number of Containers	Estimated Rate Period One Revenues
Rates for Regularly Scheduled Cart (Monthly Rate for Customers)									
Solid Waste	32/35-gallon cart	1	96	$19.84	1.00	1.00	$21.10	86	$34,477
		2	0	$39.68	2.00	1.02	$43.04	0	$0
		3	0	$59.52	3.00	1.04	$65.83	0	$0
		4	0	$79.36	4.00	1.06	$89.46	0	$0
		5	0	$99.20	5.00	1.08	$113.94	0	$0
		6	0	$119.04	6.00	1.10	$139.26	0	$0
Solid Waste	64-gallon cart	1	25	---	1.77	1.00	$37.35	22	$15,611
		2	0	---	3.54	1.02	$76.19	0	$0
		3	0	---	5.31	1.04	$116.52	0	$0
		4	0	---	7.08	1.06	$158.35	0	$0
		5	0	---	8.85	1.08	$201.67	0	$0
		6	0	---	10.62	1.10	$246.49	0	$0
Solid Waste	96-gallon cart	1	14	---	2.54	1.00	$53.59	13	$13,238
		2	0	---	5.08	1.02	$109.33	0	$0
		3	3	---	7.62	1.04	$167.21	0	$0
		4	0	---	10.16	1.06	$227.24	0	$0
		5	0	---	12.70	1.08	$289.41	0	$0
		6	0	---	15.24	1.10	$353.72	0	$0
Recyclables	32/35-gallon cart	1	1	---	All Recycling Rates = 50% of Solid Waste Rate		$10.55	4	$802
		2	0	---			$21.82	0	$0
		3	0	---			$32.92	0	$0
		4	0	---			$44.73	0	$0
		5	0	---			$56.87	0	$0
		6	0	---			$89.83	0	$0
Recyclables	64-gallon cart	1	49	$40.21			$18.67	50	$17,737
		2	0	$80.43			$38.09	0	$0
		3	0	$120.65			$58.26	0	$0
		4	0	$160.87			$79.18	0	$0
		5	0	$201.08			$100.84	0	$0
		6	0	---			$123.25	0	$0
Recyclables	96-gallon cart	1	105	$40.21			$26.80	105	$53,466
		2	0	$80.43			$54.67	0	$0
		3	0	$120.65			$83.61	0	$0
		4	0	$160.87			$113.62	0	$0
		5	0	$201.08			$144.70	0	$0
		6	0	---			$176.86	0	$0

Form 9

Commercial and Multi-Family Rate Proposal - Cart Service

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Current No. of Containers	Current Monthly Rate	Cubic Yard Rate Factor	Frequency Factor	June 1, 2013 to December 31, 2014 — Rate Period One: Proposed Maximum Monthly Rate	Estimated Number of Containers	Estimated Rate Period One Revenues
Organic Materials	32/35-gallon cart	1	0	---			$18.63	0	$0
		2	0	---			$32.28	0	$0
		3	0	---			$49.37	0	$0
		4	0	---			$87.10	0	$0
		5	0	---			$85.46	0	$0
		6	0	---	Maximum 5 Times Week		n/a	n/a	$0
Organic Materials	64-gallon cart	1	11	---	All Organic Material Rates = 75% of Solid Waste Rate		$28.01	11	$5,854
		2	0	---			$57.34	0	$0
		3	0	---			$87.39	0	$0
		4	0	---			$118.76	0	$0
		5	0	---			$151.26	0	$0
		6	0	---	Maximum 5 Times Week		n/a	n/a	$0
Organic Materials	96-gallon cart	1	9	---			$40.20	9	$6,874
		2	0	---			$82.00	0	$0
		3	0	---			$125.41	0	$0
		4	0	---			$170.43	0	$0
		5	0	---			$217.08	0	$0
		6	0	---			n/a	n/a	$0

Type of Service	Receptacle	Rate Information	Monthly # of Occurrences	Current Rate	Rate Period One: Proposed Maximum Rate	Est. # of Occurrences per Month	Estimated Rate Period One Revenues
Rates for Miscellaneous Services (Per Occurrence)							
Extra can or bag of Solid Waste or Organic Materials collected on customer's regularly scheduled collection day	Extra 32/35-gal bag of solid waste	Per-Occurrence Rate	Not Available	---	$10.00	0	$0
	Extra 32/35-gal bag of organics	Per-Occurrence Rate	Not Available	---	$10.00	0	$0
Lost Lock	Not Applicable	Per-Occurrence Rate	Not Available	$29.75	$30.00	0	$0
Steam cleaning Cart (charge per visit)	Not Applicable	Per-Occurrence Rate	Not Available	$132.68	$125.00	0	$0
Cart replacement (charge if customer requires Cart replacement in excess of one replacement per year at no cost for damage or theft)	Not Applicable	Per-Occurrence Rate	Not Available	---	$75.00	0	$0
Trip Charge (if driver must return due to Customer/Generator error, such as failure to place Cart at point of Collection before Collection time, overfilled Cart, incorrect Cart placement, contaminated materials)	Not Applicable	Per-Hour Rate	Not Available	$162.48	$85.00	0	$0
Push/pull charge (per increment of 50 ft.)	Not Applicable	Per- Mo, Per-50 ft, Per Bin, Per P/U			$20.00	0	$0
Lock/unlock charge	Not Applicable	Per-Mo, Per-Bin, Per P/U			$20.00	0	$0
Restart Fee after 120-days late and service reduction		Per- Occurrence Rate			$30.00	0	$0
Late Fee		After 60-days past due			1.50%	0	$0
Insufficient Funds Fee		Per- Occurrence Rate			$30.00	0	$0

Estimated Multi-Family and Commercial Revenue - Cart Service - Rate Period One $148,059

Estimated Annual Revenue $93,511

Form 18

Commercial and Multi-Family Rate Proposal - Bin Service

Instructions to Proposer: Enter only rates and/or account estimates into cells shaded yellow only. Other rates and estimated revenues will be calculated based on these inputs.

Proposer Name: Allied Waste of Alameda County

Note that Multi-Family Customers include any Residential premises (other than Single-Family Premises), which have centralized collection services. Each unit of a duplex, triplex, townhouse or condominium that receives individual collection services is considered a Single-Family Premises and charged Single-Family Rates.

Rates for Regularly Scheduled Solid Waste Bin (Monthly Rate)

									June 1, 2013 to December 31, 2014 Rate Period One		
Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Cubic Yards per Week	Current No. of Bins in Service	Current Monthly Rate Per Yard	Current Monthly Rate	Cubic Yard Rate Factor	Frequency Factor	Proposed Maximum Monthly Rate	Estimated Number of Bins in Service	Estimated Rate Period One Revenues
Monthly Per-Cubic-Yard Rate									$112.31		
Solid Waste	1 cubic yard container	1	1	128	$105.61	$105.61	1.000	1.00	$112.31	128	$273,138
		2	2	1	$105.59	$211.17	1.000	1.02	$229.06	1	$4,352
		3	3	0	$97.23	$291.70	1.000	1.04	$350.41	0	$0
		4	4	0	$93.01	$372.02	1.000	1.06	$476.08	0	$0
		5	5	0	$90.51	$452.53	1.000	1.08	$606.47	0	$0
		6	6	0	$88.82	$532.90	1.000	1.10	$741.07	0	$0
Solid Waste	2 cubic yard container	1	2	102	$98.82	$197.63	0.936	1.00	$210.17	92	$367,377
		2	4	16	$89.63	$358.51	0.936	1.02	$428.74	14	$114,045
		3	6	3	$86.56	$519.34	0.820	1.04	$574.38	3	$32,740
		4	8	0	$85.03	$680.20	0.936	1.06	$891.11	0	$0
		5	10	0	$84.11	$841.06	0.936	1.08	$1,134.91	0	$0
		6	12	0	$83.51	$1,002.08	0.936	1.10	$1,387.11	0	$0
Solid Waste	3 cubic yard container	1	3	107	$93.13	$279.40	0.882	1.00	$297.13	96	$541,865
		2	6	98	$86.77	$520.64	0.822	1.00	$363.67	88	$925,736
		3	9	28	$84.66	$761.96	0.802	1.00	$810.32	25	$384,902
		4	12	7	$83.61	$1,003.37	0.882	1.00	$1,188.50	6	$135,499
		5	15	2	$82.97	$1,244.61	0.882	1.00	$1,485.63	1	$28,227
		6	18	1	$82.56	$1,485.93	0.882	1.00	$1,782.75	1	$33,872
Solid Waste	4 cubic yard container	1	4	64	$91.53	$366.12	0.867	1.00	$389.35	58	$429,064
		2	8	24	$85.98	$687.83	0.814	1.00	$731.47	22	$305,754
		3	12	20	$84.14	$1,008.68	0.797	1.00	$1,073.74	18	$367,219
		4	16	8	$83.22	$1,331.45	0.867	1.00	$1,567.39	7	$207,133
		5	20	1	$82.66	$1,653.14	0.867	1.00	$1,946.74	1	$36,988
		6	24	4	$82.29	$1,974.92	0.867	1.00	$2,336.08	4	$177,542
Solid Waste	6 cubic yard container	1	6	13	$91.18	$547.10	0.863	1.00	$531.81	12	$132,653
		2	12	4	$85.82	$1,029.80	0.813	1.00	$1,095.13	4	$83,230
		3	18	2	$84.02	$1,512.42	0.796	1.00	$1,608.37	2	$61,118
		4	24	0	$83.13	$1,995.01	0.863	1.00	$2,327.23	0	$0
		5	30	2	$82.59	$2,477.61	0.863	1.00	$2,909.04	2	$110,544
		6	36	1	$82.23	$2,960.33	0.863	1.00	$3,490.85	1	$66,326
Solid Waste	7 cubic yard container	1	7	12	$89.66	$627.60	0.849	1.00	$667.42	11	$139,491
		2	14	3	$85.05	$1,190.72	0.805	1.00	$1,266.26	3	$72,177
		3	21	1	$83.51	$1,753.77	0.849	1.00	$2,002.25	1	$38,043
		4	28	1	$82.74	$2,316.69	0.849	1.00	$2,669.66	1	$50,724
		5	35	0	$82.28	$2,879.88	0.849	1.00	$3,337.06	0	$0
		6	42	0	$81.97	$3,442.92	0.849	1.00	$4,004.49	0	$0

Form 10
Commercial and Multi-Family Rate Proposal - Bin Service

Rates for Regularly Scheduled Recyclable Materials Bins (Monthly Rate)

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Cubic Yards per Week	Current No. of Bins in Service*	Current Rate	Rate Factor (Compared to Comparable SW Rate)	Frequency Surcharge	Rate Period One: Proposed Maximum Monthly Rate	Rate Period One: Estimated Number of Bins in Service	Rate Period One: Estimated Rate Period One Revenues
Recyclable Materials	1 cubic yard container	1	1	15	$40.21	All Recyclable Material Rates = 40% of Solid Waste Rate		$44.92	25	$21,337
		2	2	1	$80.43			$81.82	3	$5,222
		3	3	0	$120.65			$140.16	0	$0
		4	4	0	$160.87			$190.43	0	$0
		5	5	0	$201.08			$242.58	0	$0
		6	6	0	---			$298.43	0	$0
Recyclable Materials	2 cubic yard container	1	2	30	$80.43			$84.07	41	$65,491
		2	4	7	$160.87			$171.50	17	$55,395
		3	6	2	$241.29			$229.75	5	$21,826
		4	8	0	$321.72			$356.44	1	$6,772
		5	10	0	$402.16			$453.96	0	$0
		6	12	0	---			$554.84	0	$0
Recyclable Materials	3 cubic yard container	1	3	26	$120.65			$118.85	32	$72,261
		2	6	11	$241.29			$221.47	13	$54,703
		3	9	2	$361.94			$324.13	4	$24,634
		4	12	1	$482.58			$478.40	2	$18,065
		5	15	2	$603.24			$584.25	2	$22,382
		6	18	0	---			$713.10	0	$0
Recyclable Materials	4 cubic yard container	1	4	13	$160.87			$155.74	14	$41,427
		2	8	5	$321.72			$292.59	5	$27,796
		3	12	5	$482.58			$429.50	5	$40,803
		4	16	0	$643.45			$622.96	0	$0
		5	20	2	$804.30			$778.70	2	$29,591
		6	24	0	---			$934.43	0	$0
Recyclable Materials	6 cubic yard container	1	6	7	$241.29			$232.72	8	$35,373
		2	12	2	$482.58			$438.05	2	$16,646
		3	18	0	$723.87			$643.35	0	$0
		4	24	0	$965.17			$930.89	0	$0
		5	30	0	$1,206.46			$1,163.62	0	$0
		6	36	0	---			$1,396.34	0	$0
Recyclable Materials	7 cubic yard container	1	7	1	$281.52			$266.97	11	$55,797
		2	14	0	$563.01			$506.50	0	$0
		3	21	0	$844.53			$800.90	0	$0
		4	28	0	$1,126.03			$1,067.86	0	$0
		5	35	0	$1,407.54			$1,334.83	0	$0
		6	42	0	---			$1,601.80	0	$0

Form 10
Commercial and Multi-Family Rate Proposal - Bin Service

Rates for Regularly Scheduled Organic Materials Bin (Monthly Rate) — **75% of SOLID WASTE RATES**

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Cubic Yards per Week	Current No. of Bins in Service	Current Monthly Rate	Rate Factor	Frequency Surcharge	Rate Period One: Proposed Maximum Monthly Rate	Rate Period One: Estimated Number of Bins in Service	Rate Period One: Estimated Rate Period One Revenues
Organic Materials	1 cubic yard container	1	1	0	---	Maximum 5 Times Week		$84.23	0	$0
		2	2	0	---			$171.80	0	$0
		3	3	0	---			$262.81	0	$0
		4	4	0	---			$357.06	0	$0
		5	5	0	---			$454.85	0	$0
		6	6	0	---			n/a	n/a	$0
Organic Materials	2 cubic yard container	1	2	0	---			$157.83	0	$0
		2	4	0	---			$321.56	0	$0
		3	6	0	---			$430.79	0	$0
		4	8	0	---			$668.33	0	$0
		5	10	0	---			$851.18	0	$0
		6	12	0	---			n/a	n/a	$0
Organic Materials	3 cubic yard container	1	3	0	---			$222.85	0	$0
		2	6	0	---			$415.25	0	$0
		3	9	0	---			$607.74	0	$0
		4	12	0	---			$891.38	0	$0
		5	15	0	---			$1,114.22	0	$0
		6	18	0	---			n/a	n/a	$0
Organic Materials	4 cubic yard container	1	4	0	---	All Organic Material Rates = 75% of Solid Waste Rate Maximum Size = 3yds		n/a	n/a	$0
		2	8	0	---			n/a	n/a	$0
		3	12	0	---			n/a	n/a	$0
		4	16	0	---			n/a	n/a	$0
		5	20	0	---			n/a	n/a	$0
		6	24	0	---			n/a	n/a	$0
Organic Materials	6 cubic yard container	1	6	0	---			n/a	n/a	$0
		2	12	0	---			n/a	n/a	$0
		3	18	0	---			n/a	n/a	$0
		4	24	0	---			n/a	n/a	$0
		5	30	0	---			n/a	n/a	$0
		6	36	0	---			n/a	n/a	$0
Organic Materials	7 cubic yard container	1	7	0	---			n/a	n/a	$0
		2	14	0	---			n/a	n/a	$0
		3	21	0	---			n/a	n/a	$0
		4	28	0	---			n/a	n/a	$0
		5	35	0	---			n/a	n/a	$0
		6	42	0	---			n/a	n/a	$0

Form 10
Commercial and Multi-Family Rate Proposal - Bin Service

Rates for Regularly Schedule Bin Compactor Service (Monthly Rate per Cubic Yard Rate per Pick-up; Recycling Service provided at No Cost)

Type of Service	Receptacle	Service Frequency (Pick-Ups/Week)	Cubic Yards per Week	Current No. of Bins in Service	Current Per-Yard Rate	Current Monthly Rate	Rate Factor	Frequency Factor	Rate Period One: Proposed Maximum Monthly Rate	Rate Period One: Estimated Number of Bins in Service	Rate Period One: Estimated Rate Period One Revenues
Solid waste (Compactor Bins)	1 cubic yard Compactor	1	1	0	$211.22	$211.22			$224.62	0	$0
		2	2	0	$211.17	$422.34			$458.12	0	$0
		3	3	0	$194.47	$583.40			$700.82	0	$0
		4	4	0	$186.01	$744.04			$952.16	0	$0
		5	5	0	$181.01	$905.06			$1,212.94	0	$0
		6	6	0	$177.63	$1,065.80			$1,482.14	0	$0
Solid waste (Compactor Bins)	2 cubic yard Compactor	1	2	0	$197.63	$395.26			$420.34	0	$0
		2	4	1	$179.26	$717.02			$887.48	2	$32,584
		3	6	0	$173.11	$1,038.66			$1,148.76	0	$0
		4	8	0	$170.06	$1,360.40			$1,782.22	0	$0
		5	10	0	$168.22	$1,682.16			$2,269.82	0	$0
		6	12	0	$167.01	$2,004.16			$2,774.22	0	$0
Solid waste (Compactor Bins)	3 cubic yard Compactor	1	3	0	$186.27	$558.80			$594.26	0	$0
		2	6	0	$173.66	$1,041.28			$1,107.34	0	$0
		3	9	0	$169.33	$1,523.96			$1,620.64	0	$0
		4	12	0	$167.23	$2,006.74			$2,377.00	0	$0
		5	15	0	$165.95	$2,489.22			$2,971.26	0	$0
		6	18	0	$165.19	$2,971.86			$3,565.50	0	$0
Solid waste (Compactor Bins)	4 cubic yard Compactor	1	4	3	$183.06	$732.24	All SW Compactor Rates = 2 x Solid Waste Rate		$778.70	3	$44,386
		2	8	0	$171.96	$1,375.66			$1,462.94	0	$0
		3	12	0	$168.28	$2,019.36			$2,147.48	0	$0
		4	16	0	$166.43	$2,662.90			$3,114.78	0	$0
		5	20	0	$165.31	$3,306.28			$3,893.49	0	$0
		6	24	0	$164.58	$3,949.84			$4,672.16	0	$0
Solid waste (Compactor Bins)	6 cubic yard Compactor	1	6	0	$182.37	$1,094.20			$1,163.62	0	$0
		2	12	0	$171.63	$2,059.60			$2,190.26	0	$0
		3	18	0	$168.05	$3,024.84			$3,216.74	0	$0
		4	24	0	$166.25	$3,990.02			$4,654.46	0	$0
		5	30	0	$165.17	$4,955.22			$5,818.08	0	$0
		6	36	0	$164.46	$5,920.66			$6,981.70	0	$0
Solid waste (Compactor Bins)	7 cubic yard Compactor	1	7	0	$179.31	$1,255.20			$1,334.84	0	$0
		2	14	0	$170.10	$2,381.44			$2,532.52	0	$0
		3	21	0	$167.03	$3,507.54			$4,004.50	0	$0
		4	28	0	$165.48	$4,633.38			$5,339.32	0	$0
		5	35	0	$164.56	$5,759.76			$6,674.16	0	$0
		6	42	0	$163.95	$6,885.84			$8,008.98	0	$0
Recyclables (Compactor Bins)	1 to 7 cubic yard Compactors	1 - 7		0	---	---	50% of solid waste rates			0	$0
Organic Materials (Compactor Bins)	1 to 7 cubic yard Compactors	1 - 7		0	---	---	75% of solid waste rates			0	$0

Form 10
Commercial and Multi-Family Rate Proposal - Bin Service

Rates for Miscellaneous Services (Per Occurrence)

Type of Service	Receptacle	Rate Information	Average # of Occurrences per Month	Current Rate	Rate Factor	Rate Period One: Proposed Maximum Rate	Rate Period One: Est. # of Occurrences per Month	Rate Period One: Estimated Rate Period One Revenues
Extra pick-up (per cubic yard rate per pick-up)	Solid waste container	Per-Occurrence Rate	Not Available	$23.72		$24.91	0	$0
	Recyclable materials container	Per-Occurrence Rate	Not Available	---	50% of solid waste rates	$12.45	0	$0
	Organic materials container	Per-Occurrence Rate	Not Available	---	75% of solid waste rates	$186.8	0	$0
Bin Lock Installation (new lock)	Not Applicable	Per-Occurrence Rate	Not Available	$130.68		$30.00	0	$0
Lost Lock	Not Applicable	Per-Occurrence Rate	Not Available	$29.75		$30.00	0	$0
Steam cleaning Bin	Not Applicable	Per-Occurrence Rate	Not Available	$132.68		$125.00	0	$0
Overage charges	Not Applicable	Per-Cubic-Yard Rate	Not Available	---		$10.00	0	$0
Container relocation charge	Not Applicable	Per-Cubic-Yard Rate	Not Available	$162.45		$85.00	0	$0
Trip Charge (if driver must return due to Customer/Generator error, such as failure to place Cart at point of Collection before Collection time, overfilled Cart, incorrect Cart placement, contaminated materials)	Not Applicable	Per-Hour Rate	Not Available	$162.48		$85.00	0	$0
Push/pull charge (per increment of 50 ft.)	Not Applicable	Per- Mo, Per-50 Ft, Per Bin, Per P/U				$20.00	0	$0
Lock/unlock charge	Not Applicable	Per-Mo, Per-Bin, Per P/U				$20.00	0	$0
Restart Fee after 120-days late and service reduction		Per-Occurrence Rate				$30.00	0	$0
Late Fee		After 60-days past due				1.50%	0	$0
Insufficient Funds Fee		Per-Occurrence Rate				$30.00	0	$0
Estimated Multi-Family Commercial Revenue - Bin Service - Rate Period One								$3,812,537
Estimated Annual Revenue								$3,671,076

Instructions to Proposer: Enter only rates and/or account estimates into cells shaded yellow only. Other rates and estimated revenues will be calculated based on these inputs.

Proposer Name: Allied Waste of Alameda County

City of Newark Base Services w/CNG Trucks

Rates for Drop Box and Compactor Service

Type of Service	Receptacle	Rate Information	Cubic Yards per Pull	Total Pulls Jan - May 2012	Current Rate per Cubic Yard per Pick-Up	Current Rate per Pull	Tonnage Limit Per PU	June 1, 2013 to December 31, 2014 Rate Period One: Proposed Maximum Rate per Pull	Estimated Number of Monthly Pulls	Estimated Rate Period One Revenues
Solid waste (Drop Box)	6 cubic yard Drop Box	Per-pull Rate	6	31	---	---	2	$394.94	6	$46,273
	14 cubic yard Drop Box	Per-pull Rate	14	239	$21.56	$301.75	2	$394.94	49	$366,438
	20 cubic yard Drop Box	Per-pull Rate	20	191	$21.56	$431.16	3	$499.20	38	$384,373
	30 cubic yard Drop Box	Per-pull Rate	30	89	$21.56	$646.72	5	$707.73	21	$276,778
	40 cubic yard Drop Box	Per-pull Rate	40	122	$21.56	$862.29	6	$811.99	24	$376,693
Recyclables (Drop Box)	6 cubic yard Drop Box	Per-pull Rate	6	0	---	---	n/a	n/a	n/a	$0
	14 cubic yard Drop Box	Per-pull Rate	14	0	---	---	2	$197.47	0	$0
	20 cubic yard Drop Box	Per-pull Rate	20	0	---	---	3	$249.60	0	$0
	30 cubic yard Drop Box	Per-pull Rate	30	0	$18.46	$484.51	4	$353.86	0	$0
	40 cubic yard Drop Box	Per-pull Rate	40	0	$12.92	$504.68	5	$406.00	0	$0
Green Waste (Drop Box)	6 cubic yard Drop Box	Per-pull Rate	6	0	---	---	n/a	n/a	n/a	$0
	14 cubic yard Drop Box	Per-pull Rate	14	0	---	---	2	$296.21	1	$8,442
	20 cubic yard Drop Box	Per-pull Rate	20	0	---	---	3	$374.40	2	$14,227
	30 cubic yard Drop Box	Per-pull Rate	30	1	---	---	4	$530.80	2	$20,170
	40 cubic yard Drop Box	Per-pull Rate	40	0	---	---	5	$608.99	3	$30,855
Solid waste (Compactor)	6 cubic yard Compactor	Per-pull Rate	6	0	---	---	1.2	$343.85	0	$0
	15 cubic yard Compactor	Per-pull Rate	14	11	$43.11	$603.56	3.0	$687.69	2	$28,310
	20 cubic yard Compactor	Per-pull Rate	20	80	$43.12	$862.32	4.0	$916.92	16	$278,742
	25 cubic yard Compactor	Per-pull Rate	25	43	---	---	5.0	$1,146.15	9	$186,917
	30 cubic yard Compactor	Per-pull Rate	30	139	$43.11	$1,293.44	6.0	$1,375.38	28	$727,341
	40 cubic yard Compactor	Per-pull Rate	40	41	$43.11	$1,724.58	8.0	$1,833.84	8	$284,529
Recyclables (Compactor)	6 cubic yard Compactor	Per-pull Rate	6	0	---	---	1.2	$171.92	0	$0
	14 cubic yard Compactor	Per-pull Rate	14	0	---	---	3.0	$343.85	0	$0
	20 cubic yard Compactor	Per-pull Rate	20	0	---	---	4.0	$458.46	0	$0
	25 cubic yard Compactor	Per-pull Rate	25	0	---	---	5.0	$573.08	0	$0
	30 cubic yard Compactor	Per-pull Rate	30	0	$32.97	$989.02	6.0	$687.69	0	$0
	40 cubic yard Compactor	Per-pull Rate	40	0	$25.23	$1,009.36	8.0	$916.92	0	$0
Green Waste (Compactor)	6 cubic yard Compactor	Per-pull Rate	6	0	---	---	1.2	$257.88	0	$0
	14 cubic yard Compactor	Per-pull Rate	14	0	---	---	3.0	$515.77	0	$0
	20 cubic yard Compactor	Per-pull Rate	20	0	---	---	4.0	$687.69	0	$0
	25 cubic yard Compactor	Per-pull Rate	25	0	---	---	5.0	$859.61	0	$0
	30 cubic yard Compactor	Per-pull Rate	30	0	---	---	6.0	$1,031.54	0	$0
	40 cubic yard Compactor	Per-pull Rate	40	0	---	---	8.0	$1,375.38	0	$0

Instructions to Proposer: Enter only rates and/or account estimates into cells shaded yellow only. Other rates and estimated revenues will be calculated based on these inputs.

Proposer Name: Allied Waste of Alameda County | **City of Newark Base Services w/CNG Trucks**

Rates for Miscellaneous Services (Per Occurrence)

Type of Service	Service Details	Rate Information	Average # of Occurrences per Month	Current Rate	Rate Period One: Proposed Maximum Rate	Rate Period One: Est. # of Occurrences per Month	Rate Period One: Estimated Rate Period One Revenues
Demurrage charge (rental charge if customer keeps Box longer than 7 days without pick-up or return)	All box sizes	Daily Rate per Drop Box or Compactor Box	---	$9.87	$23.57	0	$0
Placement charge	All box sizes	Per-Placement Rate	---	---	$65.00	0	$0
Relocation charge	All box sizes	Per-Relocation Rate	---	---	$85.00	0	$0
Cancellation service	All box sizes	Per Occurrence Rate	---	---	$55.00	0	$0
Overage charge - Solid Waste	All roll off & Compactors Sizes	Per-Ton Rate For Each Ton In Excess of Limits			$104.26	0	$0
Overage charge - Recyclables	All roll off & Compactors Sizes	Per-Ton Rate For Each Ton In Excess of Limits			$62.50	0	$0
Overage charge - GreenWaste	All roll off & Compactors Sizes	Per-Ton Rate For Each Ton In Excess of Limits			$62.50	0	$0
Restart Fee after 120-days late and service reduction		Per-Occurrence Rate			$30.00	0	$0
Late Fee		After 60-days past due			1.50%	0	$0
Insufficient Funds Fee		Per-Occurrence Rate			$30.00	0	$0

Estimated Drop Box Revenue for Rate Period One $3,010,086

Estimated Annual Revenue $1,901,107

Summary: Estimated Total Rate Period One Revenue

Single-family service (Form 8)	$5,737,549
Multi-family and Commercial Cart service (Form 9)	$148,059
Multi-family and Commercial Bin service (Form 10)	$5,812,537
Drop Box service (Form 11)	$3,010,086
Total	$14,708,231

Rates for Construction and Demolition Debris Service (Not Included in Rate Period One Revenue Estimate)

Type of Service	Receptacle	Rate Period One: Proposed Maximum Rate per Pull	Rate Period One: Proposed Maximum Per-Ton Processing or Disposal Charge
Dirt (drop box)	6 cubic yard Drop Box	$263.16	$43.75
Concrete (drop box)	6 cubic yard Drop Box	$263.16	$43.75
Wood (drop box)	14 cubic yard Drop Box	$263.16	$62.50
	20 cubic yard Drop Box	$263.16	$62.50
	30 cubic yard Drop Box	$263.16	$62.50
	40 cubic yard Drop Box	$263.16	$62.50
Mixed C&D (drop box)	14 cubic yard Drop Box	$263.16	$82.83
	20 cubic yard Drop Box	$263.16	$82.83
	30 cubic yard Drop Box	$263.16	$82.83
	40 cubic yard Drop Box	$263.16	$82.83

Note:
Contractor shall charge customers a per-pull rate to service the drop box and charge customers for actual tonnage in the drop box at a rate not-to-exceed the maximum per-ton rate.

Note to proposer: Input data in yellow shaded areas only.

Show statistics for one-year period

Note to proposer: Provide operating statistics (if applicable) for Alternative Services as incremental increases or decreases compared to Base Services.

REPORT FOR 12-MONTH PERIOD From June 1, 2013 to May 31, 2014	Required Proposals			Optional Proposals				
	Expanded Single Stream	Commercial Food Scraps Collection	Alternative Fuel	Used Vechicles	Used Containers	Commercial Wet/Dry	Other (Proposer to specify)	Other (Proposer to specify)
1 Account Information	**Included No Charge**		**Adds 20min/day/rt**					
# of weekly accounts (customers)		33			n/a	No overall change		
Labor Information								
2 # of regular route personnel		Same		n/a	n/a	0.1		
3 Labor hours/day/person		Same	0.33	n/a	n/a	10.10		
4 **Total labor hours/year**			0			10		
Route Information								
# of routes per								
5 Weekday				n/a		0.10		
6 Saturday				n/a				
7 Sunday				n/a				
# of persons per route per								
8 Weekday				n/a		1.00		
9 Saturday				n/a				
10 Sunday				n/a				
# of route hours/day/route per								
11 Weekday				n/a		10.10		
12 Saturday				n/a				
13 Sunday				n/a				
# of route hours/year per								
14 Weekday				n/a		592.80		
15 Saturday				n/a				
16 Sunday				n/a				
17 Total						593		
18 # of FTE routes						0.28		
19 Total # of cart setouts per day for all routes				n/a				
20 # of cart setouts/day/FTE route								
21 # of cart setouts per week for all routes								
22 # of household drive-bys per wk for all routes				n/a				
23 Set out rate (%)								
24 # of lifts/pulls per week for all routes		66		n/a				
25 # of lifts/pulls per year for all routes		3,432						
26 # of lifts/pulls per route hour								
Vehicle Information								
27 # of regular collection vehicles								
28 # of spare collection vehicles								
29 **Total # of collection vehicles**								
Tonnage Information (annual)								
30 Solid waste collected (reduction)		-588		n/a		-10,776		
31 Recyclable materials collected				n/a		6,322		
32 Organic Materials collected		588		n/a		4,454		
33 **Total Collected**								
34 Processing residue disposed		71		n/a		2,694		
35 **Net Diverted (Line 31 + 32 - 35)**		517				8,082		

Notes for Form 12:

Line 1 - Should equal the number of customer serviced on a weekly basis

Line 2 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 3 - Identify number of hours per day each regular route employee will work each day (including breaks, pre- and post-route checks, etc., excludes casual/pool personnel).

Line 4 - Should equal Line 2 * Line 3 * 260 days

Lines 5, 6, and 7 - Information is to be reported for collection routes only and does not include any support (e.g., container delivery routes, cleanup routes, missed pickup routes etc.)

Line 8, 9, and 10 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Lines 11, 12, and 13 - Identify number of hours per day each route will take to complete (including collection time and hauling time to transfer station, landfill, or processing site).

Line 14 - Should equal Line 5 * Line 11* 260 days

Line 15 - Should equal Line 6 * Line 12 * 52 weeks

Line 16 - Should equal Line 7 * Line 13 * 52 weeks

Line 17 - Should equal Line 14 + Line 15 + Line 16

Line 18 - Should equal Line 17 / 2,080 hours

Line 19 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 20 - Should equal Line 19 / Line 18

Line 21 - Should equal Line 19 * 5 days

Line 22 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 23 - Should equal Line 21 / Line 22

Line 24 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 25 - Data to be input by proposer and should equal Line 24 * 52 weeks. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 26 - Should equal Line 25/ Line 17

Line 27 - No input needed by proposer, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 28 - No input needed by proposer, data linked to Form 4 - Capital. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 29 - Should equal Line 28 + Line 29

Lines 30 - 32 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

For Line 30, "solid waste collected", input a negative value the equates to the estimated reduction in tonnage of solid waste collected under the base proposal due to the diversion impact of the alternative service(s).

Line 33 - Should equal Line 30 + Line 31 + Line 32

Line 34 - Data to be input by proposer. Data should reflect the assumptions used for the basis of the costs proposed in Forms 6A - 6C.

Line 35 - Should equal Line 31 + Line 32 - Line 35

Pulls = pull and return etc.
Full Time Equivalent (FTE) = 40 hours per week, 2,080 hours per year

Summary of Contractor's Compensation
Proposer Name: Allied Waste of Alameda County

City of Newark Alternative Services

Note to proposer: Provide costs for Alternative Services for Rate Period One (19 months) as incremental cost increases or decreases compared to Base Services.

RATE PERIOD 1 From June 1, 2013 to December 31, 2014	Required Proposals			Optional Proposals					TOTAL
	Expanded Single Stream	Multi-Family/ Commercial Food Scraps	Alternative Fuel	Used Vechicles	Used Containers	Commercial Wet/Dry	Other (Proposer to specify)	Other (Proposer to specify)	
	Included			n/a	n/a				
Cost of Operations	No Charge								
Labor-Related Costs	$0	($8,368)	$186,116	$0	$0	$169,243	$0	$0	$346,991
Vehicle-Related Costs	$0	$177	$29,684	$0	$0	$17,355	$0	$0	$47,215
Fuel Costs	$0	$173	($200,917)	$0	$0	$13,375	$0	$0	($187,369)
Net Processing Costs	$0	$77,606	$0	$0	$0	$1,719,273	$0	$0	$1,796,879
Other Costs	$0	$1,104	$11,287	$0	$0	$25,707	$0	$0	$38,098
Direct Depreciation	$0	$2,727	$106,701	$0	$0	$0	$0	$0	$109,428
Total Allocated Costs - Labor, Vehicle, Fuel & Other	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Costs - Depreciation & Start-Up	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Cost of Operations	$0	$73,419	$132,871	$0	$0	$1,944,953	$0	$0	$2,151,243
Profit Varies %	$0	$27,050	($37,422)	$0	$0	($277,919)	$0	$0	($288,291)
Pass-Through Costs									
Disposal Cost	$0	($77,606)	$0	$0	$0	($1,192,814)	$0	$0	($1,270,420)
Interest Expense	$0	$586	$22,935	$0	$0	$0	$0	$0	$23,521
Direct Lease Costs	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Allocated Costs - Lease	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Pass-Through Costs	$0	($77,020)	$22,935	$0	$0	($1,192,814)	$0	$0	($1,246,899)
Total Costs before City Fees*	$0	$23,449	$118,384	$0	$0	$474,220	$0	$0	$616,054
City Fees									
Franchise Fee 20%	$0	$5,862	$29,596	$0	$0	$118,555	$0	$0	$154,013
Other	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total City Fees	$0	$5,862	$29,596	$0	$0	$118,555	$0	$0	$154,013
Total Proposed Incremental Costs (Savings) Above (or Below) Cost of Base Services	$0	$29,312	$147,980	$0	$0	$592,775	$0	$0	$770,067

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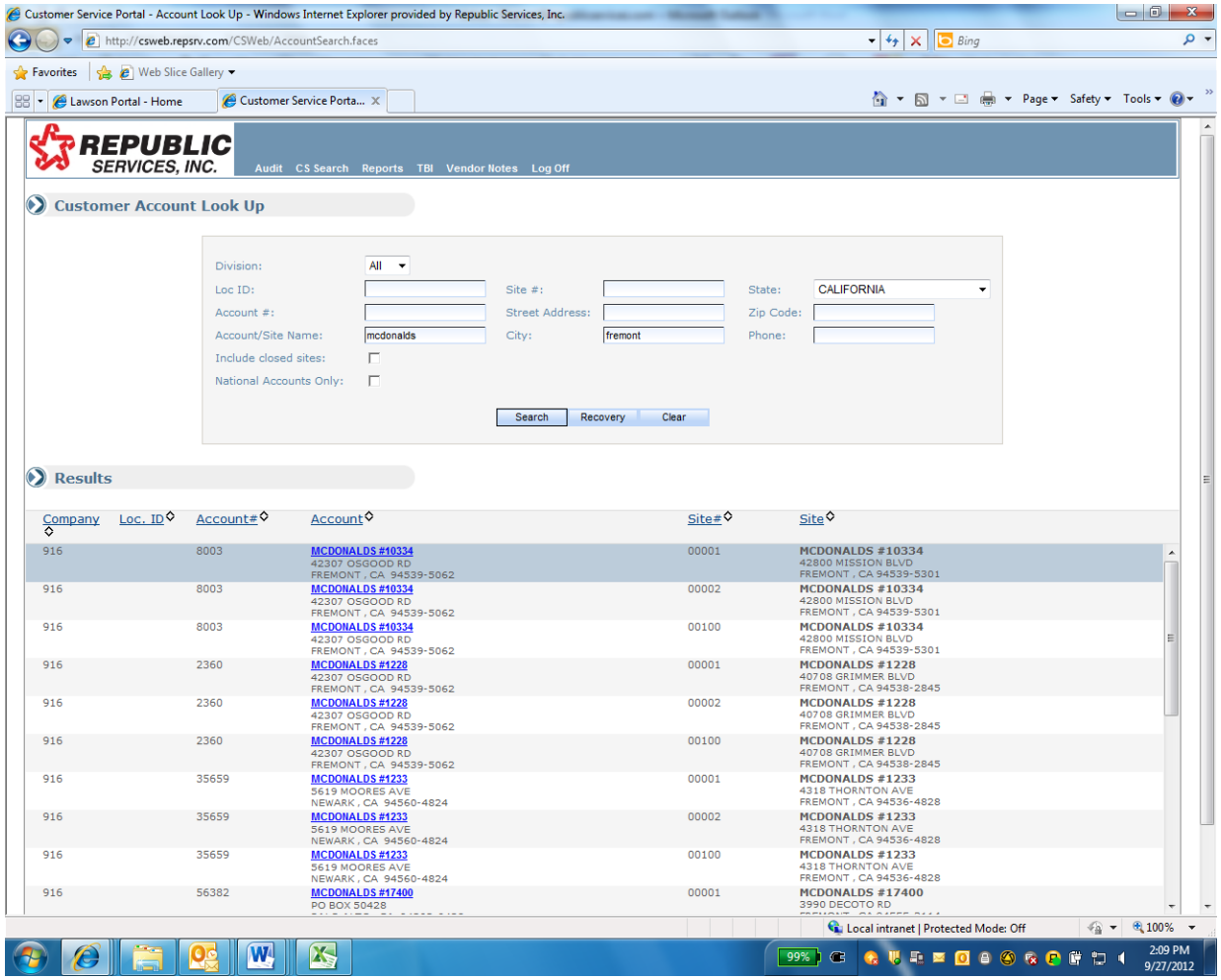
EXHIBIT O

RESERVED

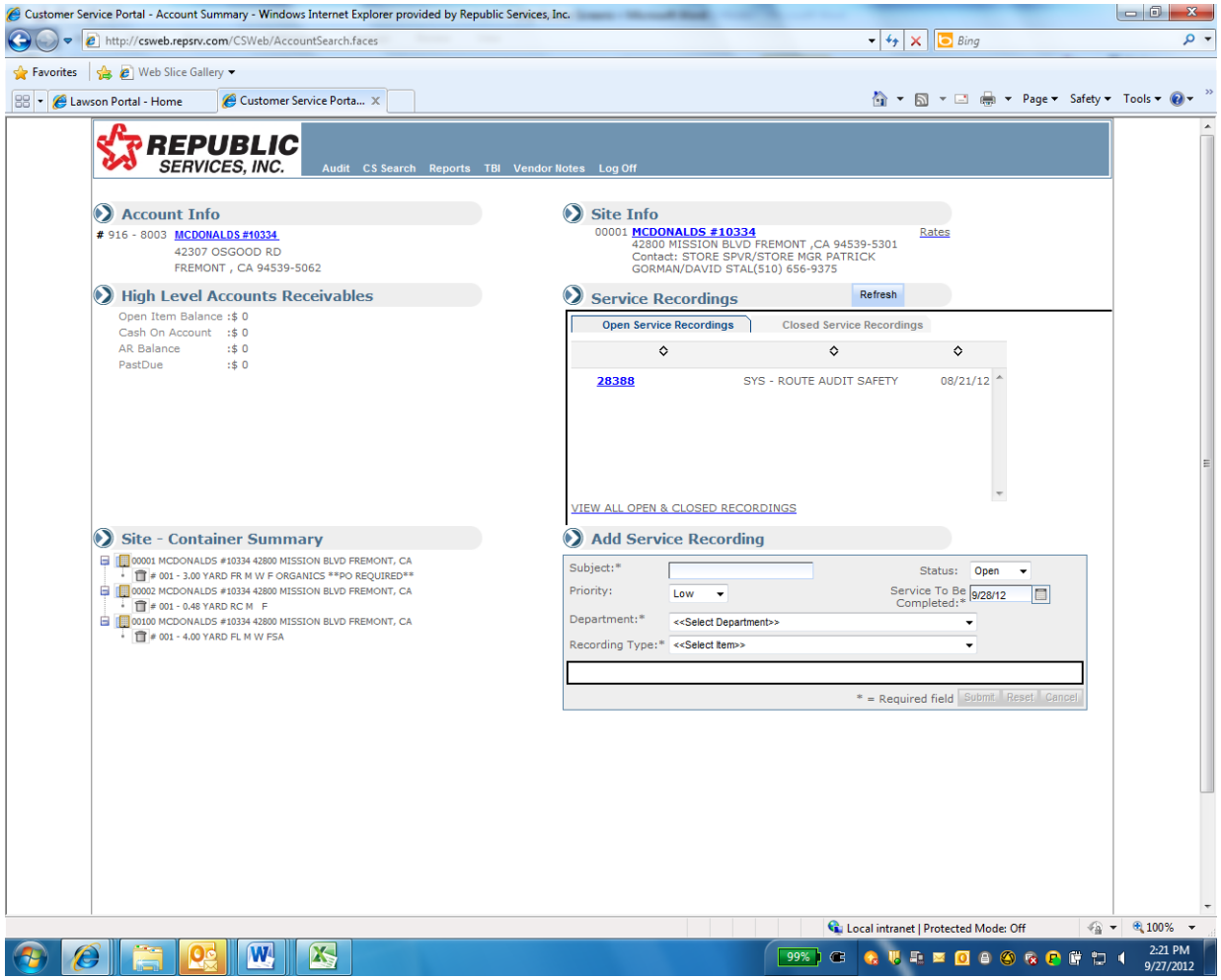
EXHIBIT P

EXAMPLE WEB-BASED REPORTS

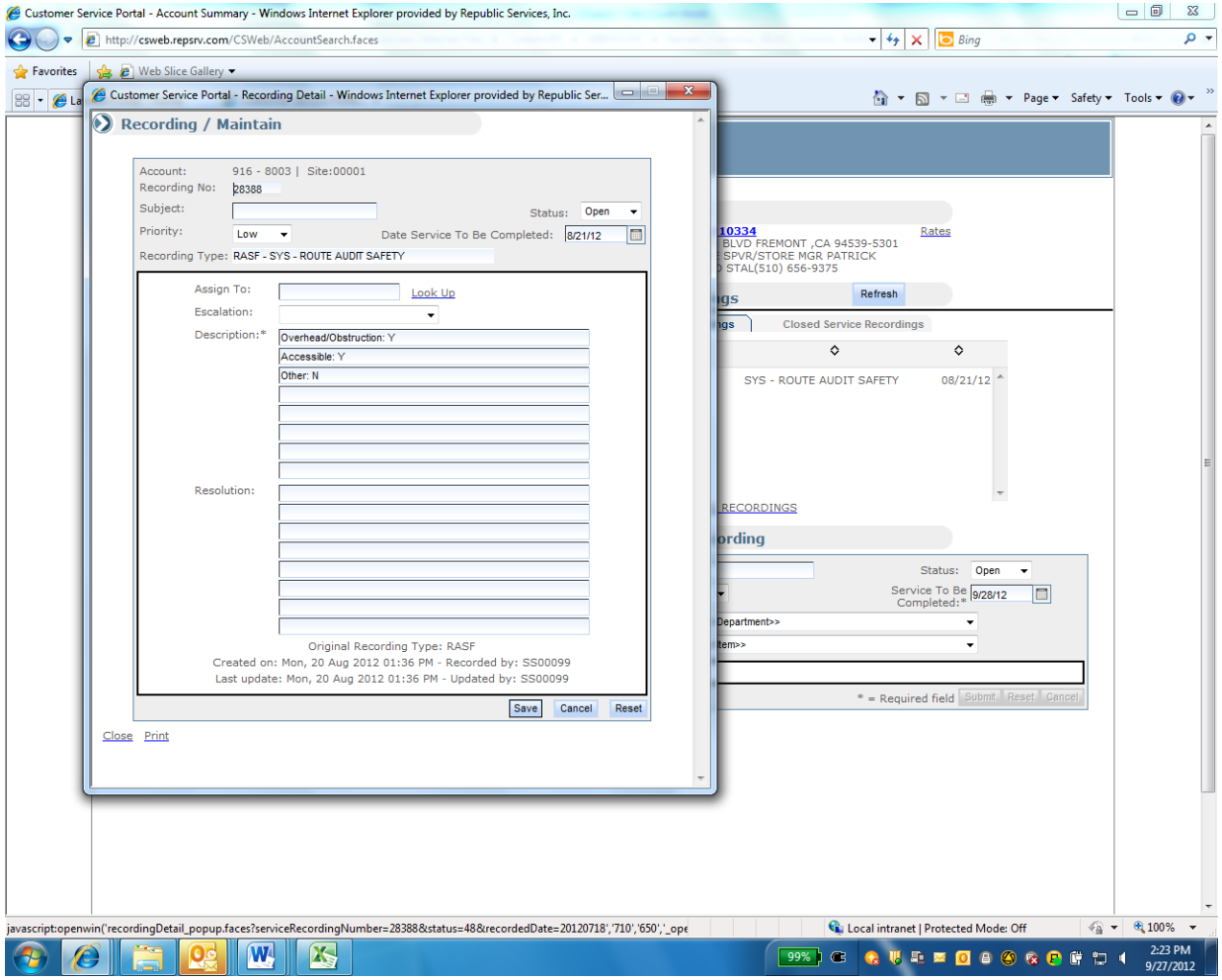
Main Customer Lookup Screen:



Main Customer Information Screen:



Sample Open Service Ticket:



Sample Closed Service Ticket:

Customer Service Portal - Account Summary - Windows Internet Explorer provided by Republic Services, Inc.

http://csweb.repsrv.com/CSWeb/AccountSearch.faces

Customer Service Portal - Recording Detail - Windows Internet Explorer provided by Republic Ser...

Recording / Maintain

Account: 916 - 8003 | Site:00001
Recording No: 44193
Subject: SERVICE INCREASE
Status: Closed
Priority: Low
Date Service To Be Completed: 9/7/12
Recording Type: SASC - SA - SERVICE CHANGE REQUEST

Assign To: Look Up
Escalation:
Description:* cust rqst fw incr from 1x/wk to 2x/wk. approved by COF. eff 8/30/12...SW

Resolution:

Original Recording Type: SASC
Created on: Thu, 6 Sep 2012 11:13 AM - Recorded by: SS00099
Last update: Fri, 7 Sep 2012 11:13 AM - Updated by: SS00099

Save Cancel Reset

Close Print

Closed Service Recordings

DESC NOT FOUND:CCO-SCNS-BNN	09/20/12
DD - SALES	09/20/12
DD - CUSTOMER SERVICE	09/18/12
DESC NOT FOUND:CCO-SCNS-BNN	09/15/12
SA - SERVICE CHANGE REQUEST	09/07/12

Status: Open
Service To Be Completed:* 9/28/12

* = Required field Submit Reset Cancel

javascript:openwin('recordingDetail_popup.faces?serviceRecordingNumber=44193&status=49&recordedDate=20120906','710','650')

Local intranet | Protected Mode: Off

Sample Container Information Screen:

Customer Service Portal - Container Group Detail - Windows Internet Explorer provided by Republic Services, Inc.

http://csweb.repsrv.com/CSWeb/containerDetail.faces?container= 001

REPUBLIC SERVICES, INC.

Audit CS Search Reports TBI Vendor Notes Log Off

Container Group Detail

Return to the Account Summary page

Account: 916 - 8003 | Site: 00001- MCDONALDS #10334
Account Type: P - PERMANENT
Contract Group #: 1

Municipal Franchise Contract: 9916001
Original Start Date: 06/28/2012
Last Service Change Date: 09/17/2012

Container:

Notes

Container Group	001
Container Type/Size/Description	FR / 3.00
Compactor	N
Customer Owned	N
On Call	N
Quantity Ordered	1
Quantity on Site	1

Service Info:

Service History

Disposal Code/Price Code/Description	NR / 10 / NEWBY RECYCLERY FOODWASTE						
Grid Number/Description	C35WHC WEDNESDAY / WEDNESDAY						
	MO	TU	WE	TH	FR	SA	SU
Required Days	N	N	N	N	N	N	N
Service Days	1		1		1		
Estimated Lifts per Period	0						
Lifts per Cycle	3 / 1 W WEEKS						
Special Handling	Q ORGANICS						
Weight Limit	0.00 Tons						

Rate Info:

Rates

Receipt Required	N NO
P.O. Required	Y
Bill To Date	10/31/2012
Close Date	00/00/0000
Revenue Distribution	72
Recurring Charge Frequency	12 MONTHLY
Months in Advance Recurring	1
Remote Monitor	N
Disposal Rate Restriction	00/00/0000
Operational Rate Restriction	00/00/0000

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EXHIBIT Q

PROTOCOL FOR MANAGEMENT OF RESIDUE

EXHIBIT Q
PROTOCOL FOR MANAGEMENT OF RESIDUE

1. Characterization Process

Contractor shall, at the time integrals required and further specified herein, conduct Characterizations of Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D to determine the Residue Level. At the Contractor's discretion, the Characterizations may be conducted using either Contractor's "magic table method or a method that uses the Contractor's Processing line to sort the materials (hereinafter "Characterization"). The Characterizations shall be conducted for three (3) material streams: Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D, and each stream may, at the Contractor's discretion, be analyzed in subsets, including, with limitation, commercial, residential, and/or multi-family. A Characterization for a material stream and/or any such subset thereof must be a representative sample of the material stream and/or any such subset thereof, which means that a representative sample shall include materials from multiple loads, on varying days or routes. Each Characterization shall be certified by authorized personnel or officer of the Approved Facility.

Contractor shall provide the City written notice three (3) Business Days in advance of the Characterizations and the City shall be allowed to attend and observe the Characterizations. The results of the Characterizations shall be delivered to the City within one (1) week of the date the Characterization was performed. The results of the Characterizations shall be used to determine the Residue Level for each material stream, and/or any such subset thereof, until the next Characterization is performed.

The first set of Characterizations shall be performed by September 30, 2013. At a minimum, Contractor shall conduct Characterizations of each material stream every six (6) months. The Contractor may, at its discretion, perform Characterizations more frequently and at any time, notwithstanding any potential defaults described in paragraph 3 herein.

2. Residue Level Less than Ten Percent

Contractor shall begin Processing all Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D it Collects in the City upon the Commencement Date. The Residue Level is required to be less than ten percent (10%) for all material streams.

3. Consequence of Residue Level Equal to or Greater than Ten Percent

Although the City does not construe the agreement between the City and the Approved Transfer Facility, dated September 27, 2007, to mean that any Source Separated Recyclable Material load, Source Separated Recyclable C&D load, Source Separated Organic Material load or any other recyclable material load composed of ten percent (10%) or greater Residue by weight shall be considered Mixed Municipal Waste and/or Solid Waste, the City and Contractor agree that in the event any material stream as further described above results in a Residue Level equal to or greater than ten percent (10%) by weight, Contractor shall abide by the following provisions:

If a Characterization of any material stream results in a Residue Level equal to or greater than ten percent (10%), the Contractor shall automatically be deemed on notice of its potential failure to meet Residue requirements stated in the Agreement as of the date the Characterization is performed. The Contractor shall have one hundred eighty (180) days from the date of said Characterization to use commercially reasonable efforts to modify its Processing methods, perform outreach to Customers, take other corrective measures, and/or conduct other public relations acts all with the goal of reducing the Residue Level(s) to less than ten percent (10%). If at any time during this one hundred eighty (180) day period, the Contractor performs a Characterization that indicates the Residue Level is less than ten percent (10%), the one hundred eighty (180) day default notice is automatically rescinded and the results of that Characterization study shall be used to determine the Residue Level for that stream, or any subset thereof, and such Residue Level shall be effective for the next six (6) month period.

The Contractor shall develop a procedure for warning residents or businesses that are contaminating the Recyclable Materials, Organic Materials, and/or C&D, or any subset thereof, and for charging these Customers an "additional handling" Rate not to exceed the Maximum Rate approved by the City. Any and all such procedures require City approval prior to implementation by Contractor.

The Contractor shall perform a Characterization within one (1) week of the expiration of the one hundred eighty (180) day automatic notice period. If said Characterization results in a Residue Level equal to or greater than ten percent (10%) for any material stream, or any subset thereof, the Contractor may, at the City's discretion and direction, be required to haul Equivalent Residue to the Approved Transfer Facility and/or be required to direct specified Collection vehicles to deposit loads of Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Source Separated Recyclable C&D at the Approved Transfer Facility. The Contractor shall perform both of these tasks at its own cost but will be allowed to charge Customer's with excessive contamination an "additional handling" Rate not to exceed the Maximum Rate approved by the City.

4. City's Option to Direct Equivalent Residue to Approved Transfer Facility

Upon execution of this Agreement, the City reserves the right to exercise the option to direct Contractor to haul Equivalent Residue from any of the Processing of Source Separated Recyclable Materials, Source Separated Organic Materials, and/or Source Separated Recyclable C&D, or any subset thereof such as multi-family, residential, or commercial, to the Approved Transfer Facility as Solid Waste. The Contractor shall comply within one week upon receipt of the City's direction to transport Equivalent Residue to the Approved transfer Facility. The Equivalent Residue shall be hauled on a monthly basis and shall be calculated on a monthly basis. The Equivalent Residue shall be equal to the Residue Level for each material stream Processed by Contractor (i.e., , Source Separated Recyclable Materials, Source Separated Organic Materials, and Source Separated Recyclable C&D, or any subset thereof as directed by the City.) multiplied by the monthly Tonnage of material Processed. For example, if the Residue Level for Single-Family Source Separated Recyclable Materials is 6.5% and 80 Tons of Single-Family Source Separated Recyclable Materials were Processed in a particular month, the amount of Residue to be transported to the Approved Transfer Facility would equal 5.2 Tons (e.g., 6.5% x 80 Tons). The Contractor shall pay the cost of transporting and Disposing of the Residue as calculated below. The City and Contractor agree that the Contractor's compensation for Equivalent Residue transportation and Disposal Costs shall equal the per-Ton amount specified in the table below subject to annual CPI adjustment(s) using the methodology described in Exhibit D1. In the event the City exercises this option, this shall not be construed as either Party's request for a Cost-Based Rate Adjustment Methodology as described in Exhibit D2. Any request

for compensation for Equivalent Residue transportation and Disposal Costs shall be processed in a timely manner by the City.

Residue Transport and Disposal Cost (Valid for Rate Period One)

	$ per Ton
Transport cost	$19.33
Disposal cost at Approved Transfer Facility (e.g., Fremont Recycling and Transfer Station)	$83.41
Avoided Disposal cost at Approved Processing Facility (e.g., Newby Island landfill)	($31.00)
Total	$71.74

The supporting assumptions and calculations that served as the basis for the agreed upon per-Ton cost adjustment is presented in the following table.

Description	Single-Family Recyclables	Single-Family Organics	Commercial/ Multi-Family Recyclables	Roll-Off Recyclables	Totals	$ per Ton
Gross Tonnage per Year	4,222	5,122	1,692	367	11,403	
Estimated Residual %	8%	4%	8%	4%	6%	
Estimated Residual Tons	338	205	135	15	693	
Backhaul Tons Per Load	15	15	15	15		
Backhaul Loads Required	22.52	13.66	9.02	0.98		
Transport Hrs Per Load	2	2	2	2		
Transport Hourly Cost	$ 145.00	$ 145.00	$ 145.00	$ 145.00		
Annual Transport Cost	**$ 6,530**	**$ 3,961**	**$ 2,617**	**$ 284**	**$ 13,392**	**$ 19.33**
Annual Residue Tonnage	338	205	135	15	693	
BLT Tip Fee	$ 83.41	$ 83.41	$ 83.41	$ 83.41		**$ 83.41**
Newby Tip Fee	$ (31.00)	$ (31.00)	$ (31.00)	$ (31.00)		**$ (31.00)**
Differential	$ 52.41	$ 52.41	$ 52.41	$ 52.41		
Added Disposal Cost	**$ 17,702**	**$ 10,738**	**$ 7,094**	**$ 769**	**$ 36,303**	**$ 52.41**
Total Additional Cost					$ 49,695	**$ 71.74**

City may exercise this option for Contractor to transport Equivalent Residue to the Approved Transfer Facility at any time during the Term of this Agreement, provided Contractor receives thirty (30) days written notice. City also reserves the right to rescind this Option at any time, provided Contractor receives seven (7) days written notice. If at any time City exercises this option, but then subsequently rescinds said option, this rescission shall not be construed as a waiver of any future right by the City to re-exercise said option at which point the costs described above shall be reinstated pursuant to the above terms.

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EXHIBIT R

CONTRACTOR’S IRAN CONTRACTING CERTIFICATION

EXHIBIT R
CONTRACTOR'S IRAN CONTRACTING CERTIFICATION

CONTRACTOR'S IRAN CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code Section 2200 et seq., ("Iran Contracting Act of 2010"), Contractor certifies that:

(1) Contractor is not identified on the list created by the California Department of General Services ("DGS") pursuant to California Public Contract Code Section 2203(b) as a Person engaging in investment activities in Iran; and

(2) Contractor is not a financial institution that extends twenty million dollars ($20,000,000) or more in credit to another Person, for 45 days or more, if that Person will use the credit to provide goods or services in the energy sector in Iran and is identified on the DGS list made pursuant to Section 2203(b).

As used herein, "Person" shall mean a "Person" as defined in Public Contract Code Section 2202(e).

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the Contractor to this Certification, which is made under the laws of the State of California.

Allied Waste Services of North America, LLC dba Allied Waste Services of Alameda County ("Contractor")

By:_____

Print Name:_____

Title:_____

Date:_____

EXHIBIT L
Maximum Rates Approved by City for Rate Period One
(Effective June 1, 2023)

All references to Contractor and the Maximum Rates established herein are as a result of City's contract for collection of garbage, recyclables, and organic materials and shall be deemed Maximum Rates as established by City effective June 1, 2023.

A. SINGLE-FAMILY CART SERVICE

Single-Family Customers include single-family premises and each unit of a duplex, triplex, townhouse or condominium which receives individual Cart collection services.

CURBSIDE SERVICES	CONTAINER SIZE			
	20 GAL	32 GAL	64 GAL	96 GAL
(A) Basic Service	$36.90	$41.00	$72.62	$104.23
(B) Lifeline/Senior Rate	$31.36	$34.87	$61.72	$88.57
(C) Extra Solid Waste Cart	n/a	$24.61	$43.55	$62.48
(D) Extra Yardwaste Cart	n/a	n/a	$10.25	n/a
(E) Extra Recyclables Cart	n/a	n/a	$6.16	n/a

*BACKYARD SERVICES	CONTAINER SIZE			
	20 GAL	32 GAL	64 GAL	96 GAL
(A) Basic Service	$55.34	$61.50	$108.94	$156.33
(B) Lifeline/Senior Rate	$47.03	$52.26	$92.60	$132.87
(C) Extra Solid Waste Cart	n/a	$36.91	$65.33	$93.74
(D) Extra Yardwaste Cart	n/a	n/a	$36.91	n/a
(E) Extra Recyclables Cart	n/a	n/a	$36.91	n/a

(A) Basic Service

Weekly curbside collection of refuse, recyclables and yard waste in containers provided by the Contractor. Customers may select their level of refuse service according to the container options available. All customers will be issued a 64-gallon container for yardwaste and food scraps collection and a 64-gallon container for recyclables collection.

(B) Lifeline and Senior Rates

Weekly curbside collection of refuse, recyclables and yard waste in containers provided by the Contractor. Customers may select their level of refuse service according to the container options available. All customers will be issued a 64-gallon container for yardwaste and food scraps collection and a 64-gallon container for recyclables collection. These rates will be available for eligible, low-income customers demonstrating that they receive assistance under PG&E's Low Income Rate Payer Assistance program. These rates will also be available for senior citizens, age 65 and above.

(C,D,E) Additional Containers

Customers may subscribe to additional weekly refuse, yard waste or recycling service by requesting one or more extra Carts in the sizes listed above.

*Backyard services are available for an additional cost. Drivers cannot services containers behind locked gates or structures. Disabled residents may apply for an exemption from the additional fee.

EXHIBIT L

Maximum Rates Approved by City for Rate Period One

B. MULTI-FAMILY CART SERVICE

Multi-Family Customers include any Residential premises (other than Single-Family Premises), which have centralized collection services. Each unit of a duplex, triplex, townhouse or condominium that receives individual collection services is considered a Single-Family Premises and charged Single-Family Rates.

CART SIZE	MATERIAL	COLLECTIONS PER WEEK					
		1X	2X	3X	4X	5X	6X
32-Gallons	Refuse	$31.22	$63.69	$97.39	$132.34	$168.57	$206.02
64-Gallons	Refuse	$55.26	$112.72	$172.38	$234.28	$298.39	$364.66
96-Gallons	Refuse	$79.30	$161.75	$247.39	$336.19	$428.15	$523.30
32-Gallons	Recyclables	$15.60	$31.83	$48.72	$66.18	$84.29	$103.02
64-Gallons	Recyclables	$27.61	$56.35	$86.20	$117.13	$149.19	$182.35
96-Gallons	Recyclables	$39.66	$80.89	$123.71	$168.10	$214.07	$261.66
32-Gallons	Yardwaste	$23.42	$47.76	$73.05	$99.28	$126.42	n/a
64-Gallons	Yardwaste	$41.43	$84.55	$129.28	$175.71	$223.77	n/a
96-Gallons	Yardwaste	$59.48	$121.32	$185.53	$252.12	$321.14	n/a

C. MULTI-FAMILY FRONT-LOAD BIN AND COMPACTOR SERVICE

Multi-Family Customers include any Residential premises (other than Single-Family Premises), which have centralized collection services. Each unit of a duplex, triplex, townhouse or condominium that receives individual collection services is considered a Single-Family Premises and charged Single-Family Rates.

REFUSE BINS*	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$166.16	$338.87	$518.43	$704.31	$897.25	$1,096.39
2 cubic yard container	$310.94	$634.29	$849.78	$1,318.35	$1,679.05	$2,052.15
3 cubic yard container	$439.60	$819.11	$1,198.82	$1,758.33	$2,197.92	$2,637.47
4 cubic yard container	$576.02	$1,082.17	$1,588.53	$2,304.07	$2,880.10	$3,456.09
6 cubic yard container	$860.77	$1,620.20	$2,379.49	$3,443.00	$4,303.77	$5,164.52
7 cubic yard container	$987.42	$1,873.36	$2,962.22	$3,949.62	$4,937.00	$5,924.43

RECYCLING BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$66.47	$135.56	$207.37	$281.73	$358.90	$438.57
2 cubic yard container	$124.40	$253.72	$339.90	$527.34	$671.61	$820.85
3 cubic yard container	$175.82	$327.64	$479.53	$703.33	$879.15	$1,054.98
4 cubic yard container	$230.42	$432.88	$635.42	$921.64	$1,152.05	$1,382.43
6 cubic yard container	$344.30	$648.08	$951.79	$1,377.20	$1,721.52	$2,065.81
7 cubic yard container	$394.98	$749.33	$1,184.89	$1,579.85	$1,974.81	$2,369.77

YARD WASTE BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$124.61	$254.16	$388.80	$528.25	$672.93	$0.00
2 cubic yard container	$233.21	$475.72	$637.32	$988.76	$1,259.26	$0.00
3 cubic yard container	$329.69	$614.37	$899.11	$1,318.75	$1,648.42	$0.00

*Customer owned front-load refuse compactors will be charged 2 times the refuse bin rates listed in the above table.

**Customer owned front-load recycling compactors will be charged 50% of the refuse bin rates listed the above table.

EXHIBIT L
Maximum Rates Approved by City for Rate Period One

D. COMMERCIAL CART SERVICE

CART SIZE	MATERIAL	COLLECTIONS PER WEEK					
		1X	2X	3X	4X	5X	6X
32-Gallons	Refuse	$31.22	$63.69	$97.39	$132.34	$168.57	$206.02
64-Gallons	Refuse	$55.26	$112.72	$172.38	$234.28	$298.39	$364.66
96-Gallons	Refuse	$79.30	$161.75	$247.39	$336.19	$428.15	$523.30
32-Gallons	Recyclables	$15.60	$31.83	$48.72	$66.18	$84.29	$103.02
64-Gallons	Recyclables	$27.61	$56.35	$86.20	$117.13	$149.19	$182.35
96-Gallons	Recyclables	$39.66	$80.89	$123.71	$168.10	$214.07	$261.66
32-Gallons	Yardwaste	$23.42	$47.76	$73.05	$99.28	$126.42	n/a
64-Gallons	Yardwaste	$41.43	$84.55	$129.28	$175.71	$223.77	n/a
96-Gallons	Yardwaste	$59.48	$121.32	$185.53	$252.12	$321.14	n/a

E. COMMERCIAL FRONT-LOAD BIN AND COMPACTOR SERVICE

REFUSE BINS*	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$166.16	$338.87	$518.43	$704.31	$897.25	$1,096.39
2 cubic yard container	$310.94	$634.29	$849.78	$1,318.35	$1,679.05	$2,052.15
3 cubic yard container	$439.60	$819.11	$1,198.82	$1,758.33	$2,197.92	$2,637.47
4 cubic yard container	$576.02	$1,082.17	$1,588.53	$2,304.07	$2,880.10	$3,456.09
6 cubic yard container	$860.77	$1,620.20	$2,379.49	$3,443.00	$4,303.77	$5,164.52
7 cubic yard container	$987.42	$1,873.36	$2,962.22	$3,949.62	$4,937.00	$5,924.43

RECYCLING BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$66.47	$135.56	$207.37	$281.73	$358.90	$438.57
2 cubic yard container	$124.38	$253.72	$339.90	$527.34	$671.61	$820.85
3 cubic yard container	$175.82	$327.64	$479.53	$703.33	$879.15	$1,054.98
4 cubic yard container	$230.42	$397.40	$635.42	$921.64	$1,152.05	$1,382.43
6 cubic yard container	$344.30	$648.08	$951.79	$1,377.20	$1,721.52	$2,065.81
7 cubic yard container	$394.98	$749.33	$1,184.89	$1,579.85	$1,974.81	$2,369.77

YARD WASTE BINS**	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$124.61	$254.16	$388.80	$528.25	$672.93	$0.00
2 cubic yard container	$233.21	$475.72	$637.32	$988.76	$1,259.26	$0.00
3 cubic yard container	$329.69	$614.37	$899.11	$1,318.75	$1,648.42	$0.00

*Customer owned front-load refuse compactors will be charged 2 times the refuse bin rates listed in the above table.
**Customer owned front-load recycling compactors will be charged 50% of the refuse bin rates listed the above table.

EXHIBIT L

Maximum Rates Approved by City for Rate Period One

F. COMMERCIAL ORGANIC SERVICES & RATES

REFUSE BINS*	COLLECTIONS PER WEEK					
	1X	2X	3X	4X	5X	6X
1 cubic yard container	$159.96	$326.21	$499.06	$678.00	$863.71	$1,055.42
2 cubic yard container	$299.32	$610.60	$818.02	$1,269.11	$1,616.32	$1,975.51
32 or 64 Gallon Commercial	$53.19	$108.50	$165.94	$225.53	$287.22	$351.03

G. DROP BOX CONTAINERS AND COMPACTOR SERVICES

DROP BOX SIZES	Tonnage Limit Per Pick-Up*	REFUSE	RECYCLING	YARDWASTE
6 cubic yard Drop Box	2.0	$584.31	n/a	n/a
14 cubic yard Drop Box	2.0	$584.31	$292.14	$438.20
20 cubic yard Drop Box	3.0	$738.53	$369.28	$553.91
30 cubic yard Drop Box	5.0	$1,047.04	$523.53	$785.28
40 cubic yard Drop Box	6.0	$1,201.28	$600.66	$900.98
Excess Tonnage Rate	n.a.	$154.28	$92.47	$92.47

CUSTOMER-OWNED COMPACTORS	Tonnage Limit Per Pick-Up*	REFUSE	RECYCLING	YARDWASTE
6 cubic yard Compactor	1.2	$508.70	$254.36	$381.51
15 cubic yard Compactor	3.0	$1,017.41	$508.70	$763.06
20 cubic yard Compactor	4.0	$1,356.53	$678.25	$1,017.41
25 cubic yard Compactor	5.0	$1,695.65	$847.84	$1,271.75
30 cubic yard Compactor	6.0	$2,034.79	$1,017.41	$1,526.10
35 cubic yard Compactor	7.0	$2,373.94	$1,186.99	$1,780.45
40 cubic yard Compactor	8.0	$2,713.07	$1,356.53	$2,034.79
Excess Tonnage Rate	n.a.	$154.28	$92.47	$92.47

If tonnage collected is greater than the tonnage limit listed in the above table, contractor may charge for tonnage in excess of the tonnage limit at the per-ton rate specified.

H. CONSTRUCTION AND DEMOLITION DEBRIS BOX SERVICE

DROP BOX SIZES	MATERIAL	BASE RATE PER PICK-UP	PER TON RATE*
6 cubic yard Drop Box	Dirt	$362.45	$60.26
6 cubic yard Drop Box	Concrete	$362.45	$60.26
14 cubic yard Drop Box	Wood	$362.45	$86.08
20 cubic yard Drop Box	Wood	$362.45	$86.08
30 cubic yard Drop Box	Wood	$362.45	$86.08
40 cubic yard Drop Box	Wood	$362.45	$86.08
14 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24
20 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24
30 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24
40 cubic yard Drop Box	Recyclable C&D	$362.45	$113.24

*Contractor will charge customer for actual tonnage collected at the per-ton rate listed in the above table.

EXHIBIT L
Maximum Rates Approved by City for Rate Period One

I. ADDITIONAL SERVICES & RATES

ADDITIONAL SERVICES	RATE
Cost of pre-paid solid waste overage bags	$14.77
Cost of pre-paid yardwaste overage bags	$14.77
Extra On-Call Bulky Cleanup (more than three per year)	$110.97
Cart replacement cost (more than once per year)	$110.97
Cart delivery/pick-up (more than once per year)	$73.96
Lost lock per container, per occurrence	$44.36
Steam cleaning Bin/Cart (charge per visit)	$184.94
Hourly Trip Charge (if driver must return due to Customer/Generator error, such as failure to place Container at point of Collection before Collection time, overfilled Container, incorrect Container placement, contaminated materials)	$125.76
Push/pull charge (Per- Mo, Per-50 Ft, Per Cart, Per Pick-up)	$29.59
Lock/unlock charge (Per- Mo, Per Bin, Per Pick-up)	$8.57
Extra refuse bin collection (per cubic yard rate per pick-up)	$36.84
Extra recycling bin collections (per cubic yard rate per pick-up)	$18.41
Extra yard waste bin collections (per cubic yard rate per pick-up)	$27.62
Bin Lock Installation (new lock) per container, per occurrence	$44.36
Overage charges Per-Cubic-Yard Rate, per occurrence	$14.77
Container relocation charge per container, per occurrence	$125.76
Daily drop box demurrage charge (rental charge if customer keeps Box longer than 7-days without pick-up or return)	$34.89
Drop box placement charge	$96.18
Drop box relocation charge	$125.76
Drop box cancellation service	$125.76
Drop box overage charge - Refuse (For Each Ton In Excess of Limits)	$154.28
Drop box overage charge - Recyclables (For Each Ton In Excess of Limits)	$92.47
Drop box overage charge - Yardwaste (For Each Ton In Excess of Limits)	$92.47
Restart charge after 120-days late and service reduction	$44.36
Late charge after 60-days past due	1.50%
Insufficient funds charge	$44.36
Overflow extra yard charge	$45.19
Contamination charge (after issuance of warning notices)	$22.61
Contamination charge (after issuance of warning notices) for regular bin service - 1 cubic yard container	$30.87
Contamination charge (after issuance of warning notices) for regular bin service - 2 cubic yard container	$61.66
Contamination charge (after issuance of warning notices) for regular bin service - 3 cubic yard container	$91.49
Contamination charge (after issuance of warning notices) for regular bin service - 4 cubic yard container	$120.54
Contamination charge (after issuance of warning notices) for regular bin service - 6 cubic yard container	$180.70
Contamination charge (after issuance of warning notices) for regular bin service - 7 cubic yard container	$210.89
Contamination charge (after issuance of warning notices) for regular bin service - 8 cubic yard container	$241.01

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF NEWARK AND ALLIED WASTE SERVICES OF NORTH AMERICA LLC DBA REPUBLIC SERVICES OF ALAMEDA COUNTY FOR A 10-YEAR EXTENSION FOR THE COLLECTION OF SOLID WASTE AND COLLECTION AND PROCESSING OF SOURCE SEPARATED RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND CONSTRUCTION AND DEMOLITION DEBRIS AND REVISING THE MAXIMUM LIMIT FOR RATES FOR SOLID WASTE COLLECTION, RECYCLING, ORGANICS, AND CONSTRUCTION AND DEMOLITION DEBRIS SERVICES STARTING ON JUNE 1, 2023

WHEREAS, the City entered into a franchise agreement with Allied Waste Services of North America (dba Republic Services) in 2013 to provide refuse, recycling, and organics collection and processing services to Newark residents and businesses; and

WHEREAS, the franchise agreement is set to expire on May 31, 2023; and

WHEREAS, the franchise agreement provides for an extension upon the mutual agreement of both parties; and

WHEREAS, Republic Services has requested a 10-year extension and amendment to the franchise agreement; and

WHEREAS, staff evaluated Republic Services' request for an extension and entered into negotiations with Republic Services; and

WHEREAS, Republic Services' performance of its responsibilities under the current franchise agreement has been satisfactory and staff believes it is in the City's best interests to execute a 10-year extension to Republic's agreement for the term of June 1, 2023 to June 30, 2033, with the stated negotiated terms.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Council approves and authorizes the City Manager to execute an amended and restated agreement, in a form approved by the City Attorney and in substantially the same form as the attached draft, with Allied Waste Services of North America dba Republic Services of Alameda County for a 10-year extension for the collection of solid waste and collection and processing of source separated recyclable materials, organic materials, and construction and demolition debris.

BE IT FURTHER RESOLVED that, in accordance with the amended and restated agreement fees and rates for solid waste collection, recycling and organics services shall not exceed that established in New Exhibit L, attached hereto and incorporated herein by reference, which is made a part hereof as though set forth at length.

City of Newark

Republic Franchise Agreement Extension

April 13, 2023

R3 CONSULTING GROUP, INC.

RESOURCES · RESPECT · RESPONSIBILITY

AGENDA

- Background
- Rate Survey
- Franchise Agreement
- Financial Evaluation
- Next Steps

R3

BACKGROUND

- StopWaste Joint Powers Authority member
- Separate agreement with BLT for transfer of garbage
- 2012/2013 competitive bidding process
- Current Agreement expires May 31, 2023
- 2020 rate adjustment based upon hauler's actual costs of providing service
- September 2021 survey of residents
  - 77% satisfied or very satisfied

NEWARK california R3

BACKGROUND – Republic Services

- Base service
  - Residential garbage, recycling and organics
  - Commercial garbage and recycling, with the ability to request organics
- Full-time recycling coordinator
- Guaranteed capacity for organics & recycling
- Annual compost giveaway
- 3 bulky item pickups per year
- CNG trucks

NEWARK california R3

BACKGROUND – Discount Rates

- Seniors
  - 15% discount
  - No fee for backyard service
  - Apply using driver license or birth certificate
- Low-Income Households
  - 15% discount
  - Apply based on CARE enrollment
- Persons with disabilities can receive backyard service at no additional cost

NEWARK california R3

BACKGROUND – Senate Bill (SB) 1383

- Sets **statewide mandates** for organics recovery efforts
- Builds on prior law to **incrementally reduce disposal** of organic waste
- Requires **all generators** to be provided organic waste recycling services
- **Edible food recovery**

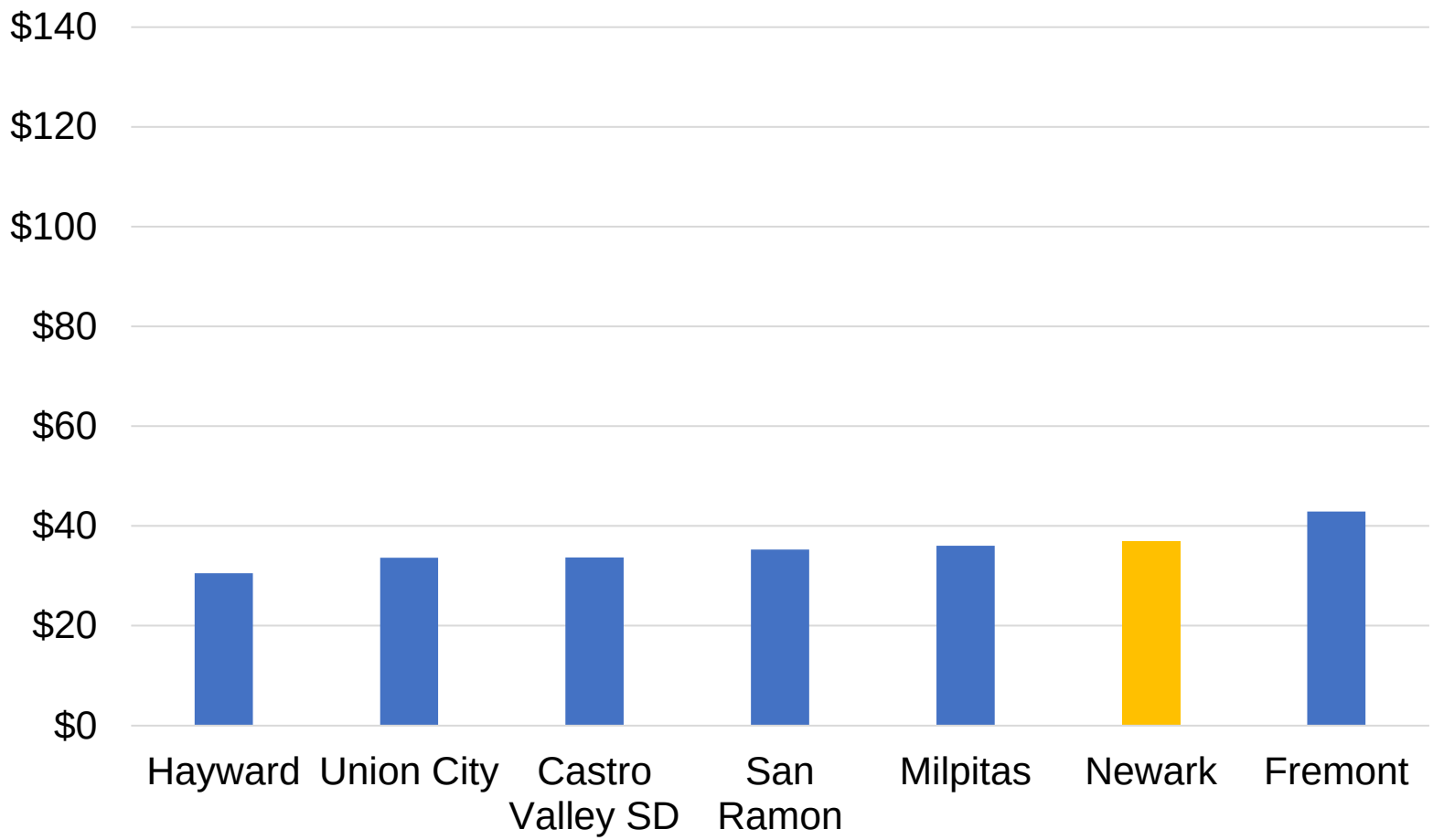
NEWARK california R3

BACKGROUND – Extension Rationale

- City's level of satisfaction
- Current market environment
  - Recent proposals resulted in high cost increases
  - Rate increase of 7.36% is competitive
- Current and upcoming regulations
- Term of agreement
- Republic Services desires to remain Newark's solid waste management company

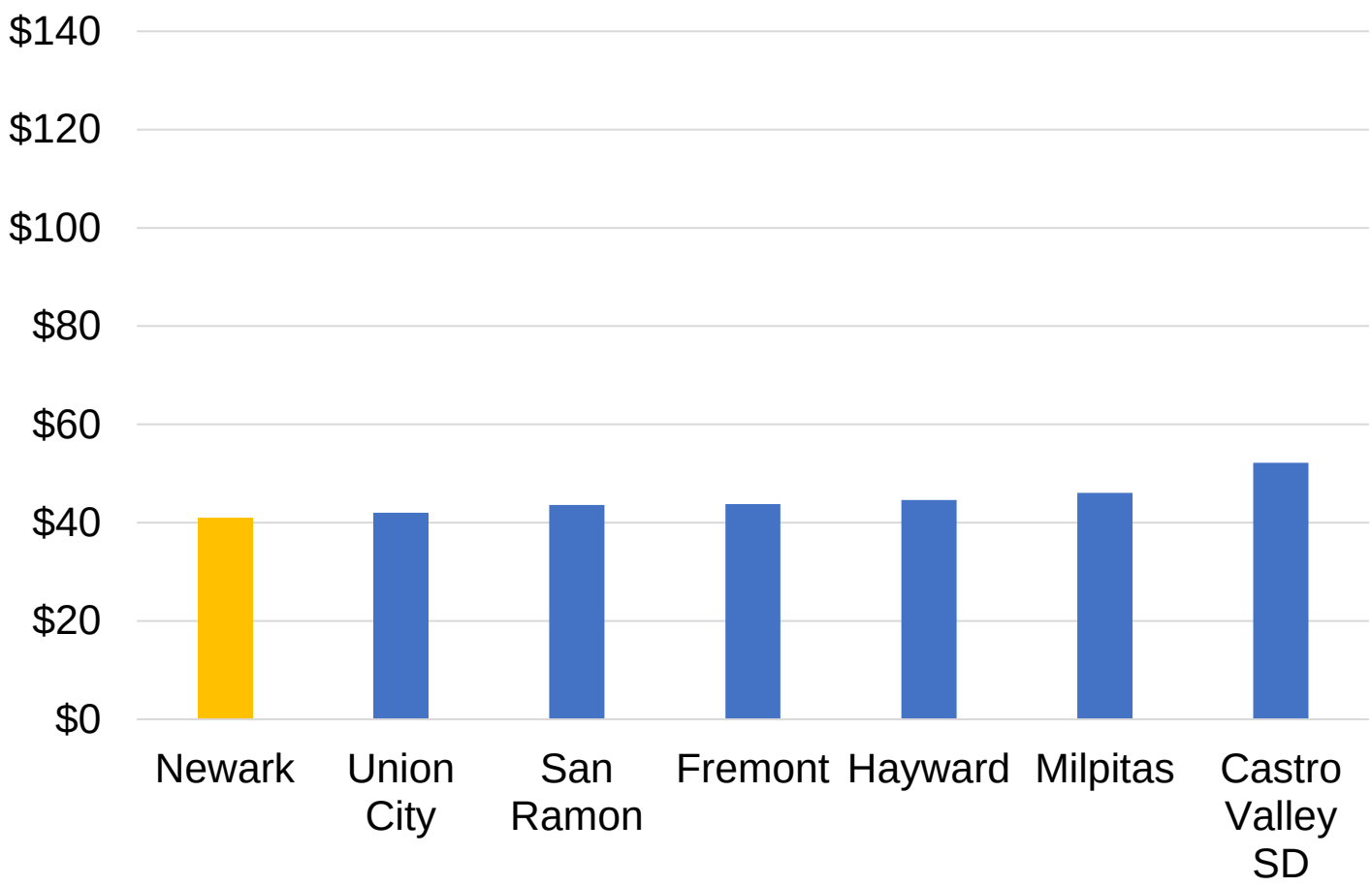
NEWARK
california
R3

RATE SURVEY – Residential 20 gallon



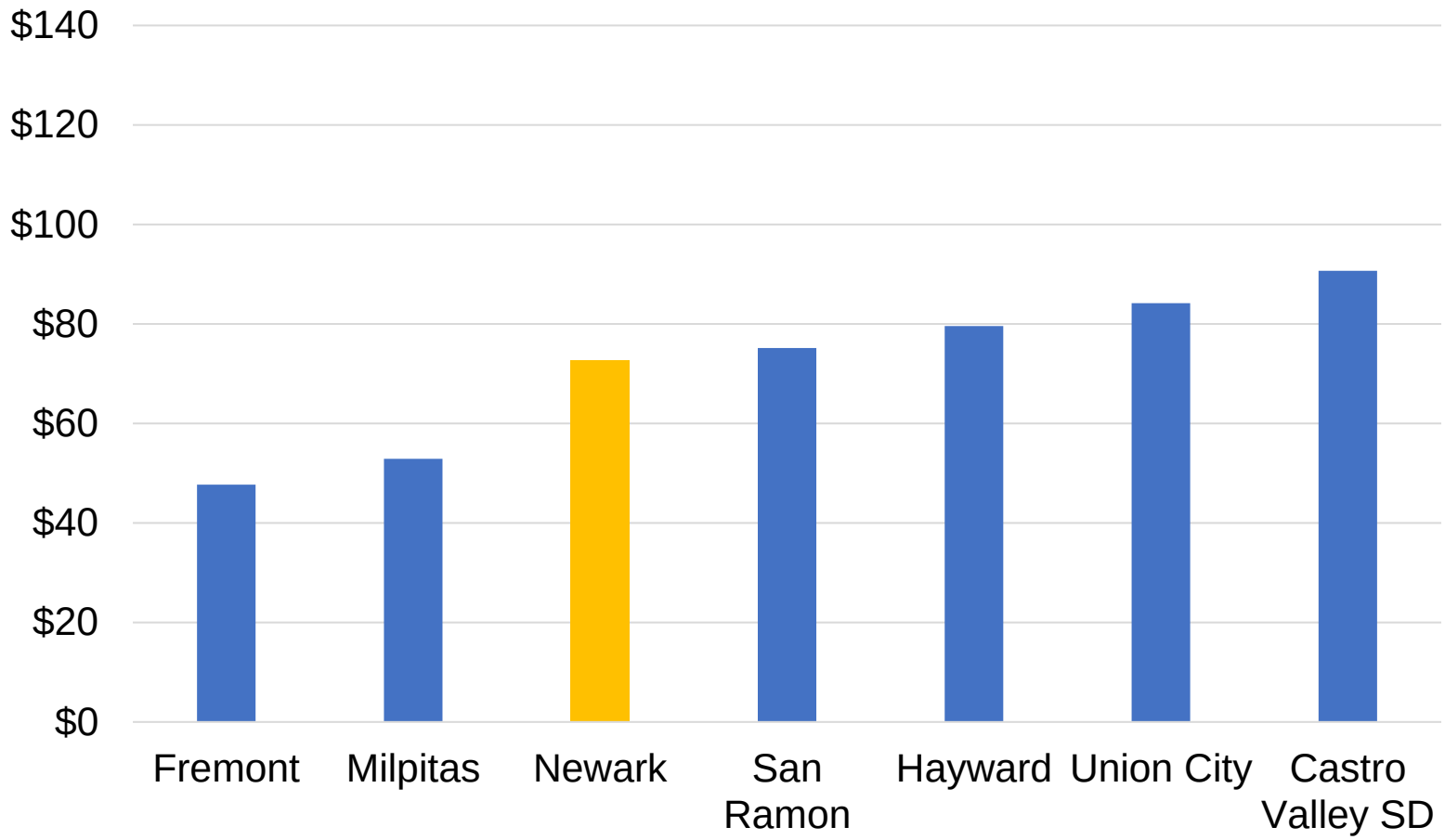
Updated using assumptions about cost-of-living increases for other cities

RATE SURVEY – Residential 32 gallon



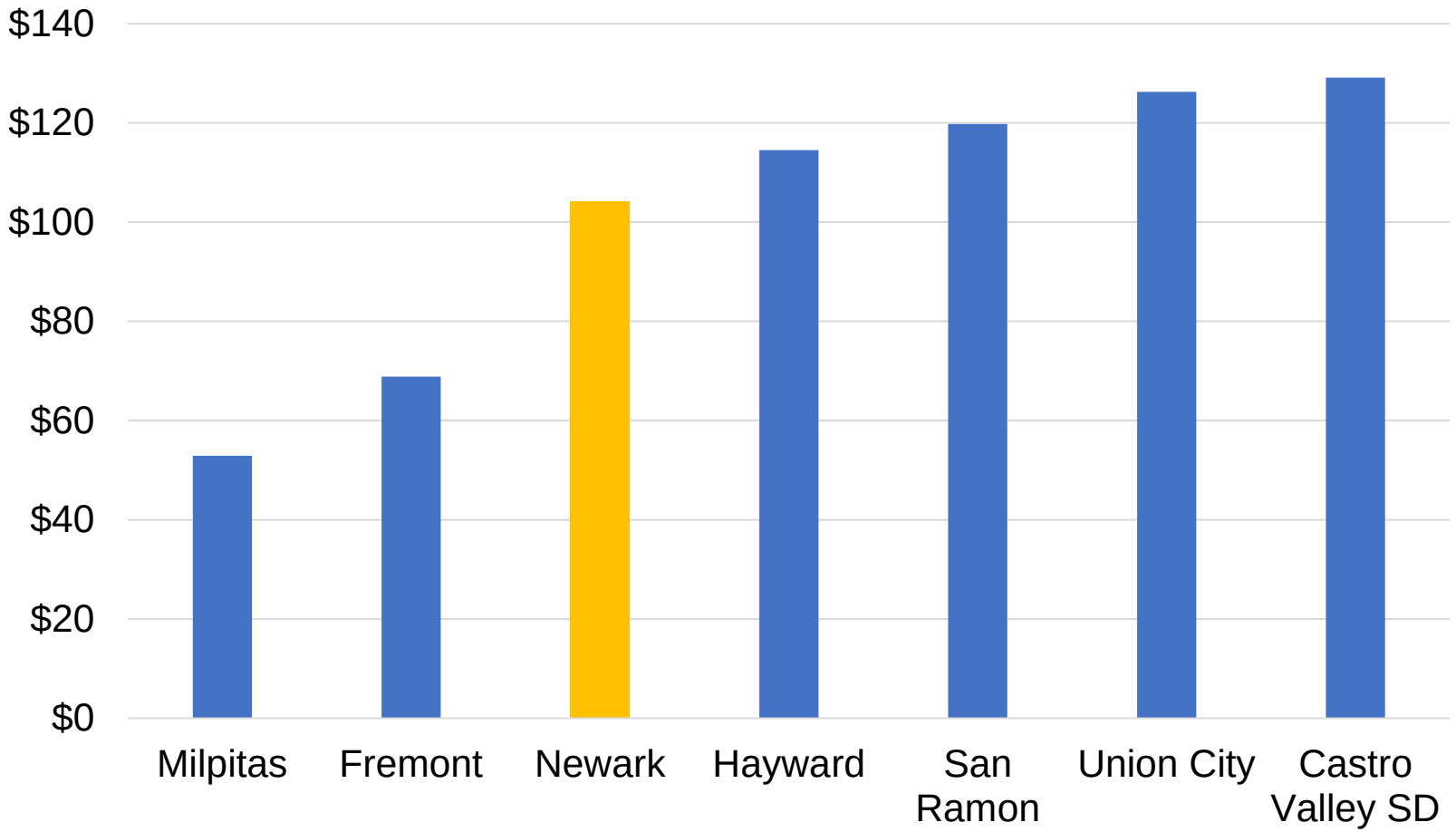
Updated using assumptions about cost-of-living increases for other cities

RATE SURVEY – Residential 64 gallon



Updated using assumptions about cost-of-living increases for other cities

RATE SURVEY – Residential 96 gallon



Updated using assumptions about cost-of-living increases for other cities

Residential Rate Increase in $/Month

20 Gallon	$2.53
30-35 Gallon	$2.81
60-64 Gallon	$4.98
90-96 Gallon	$7.15

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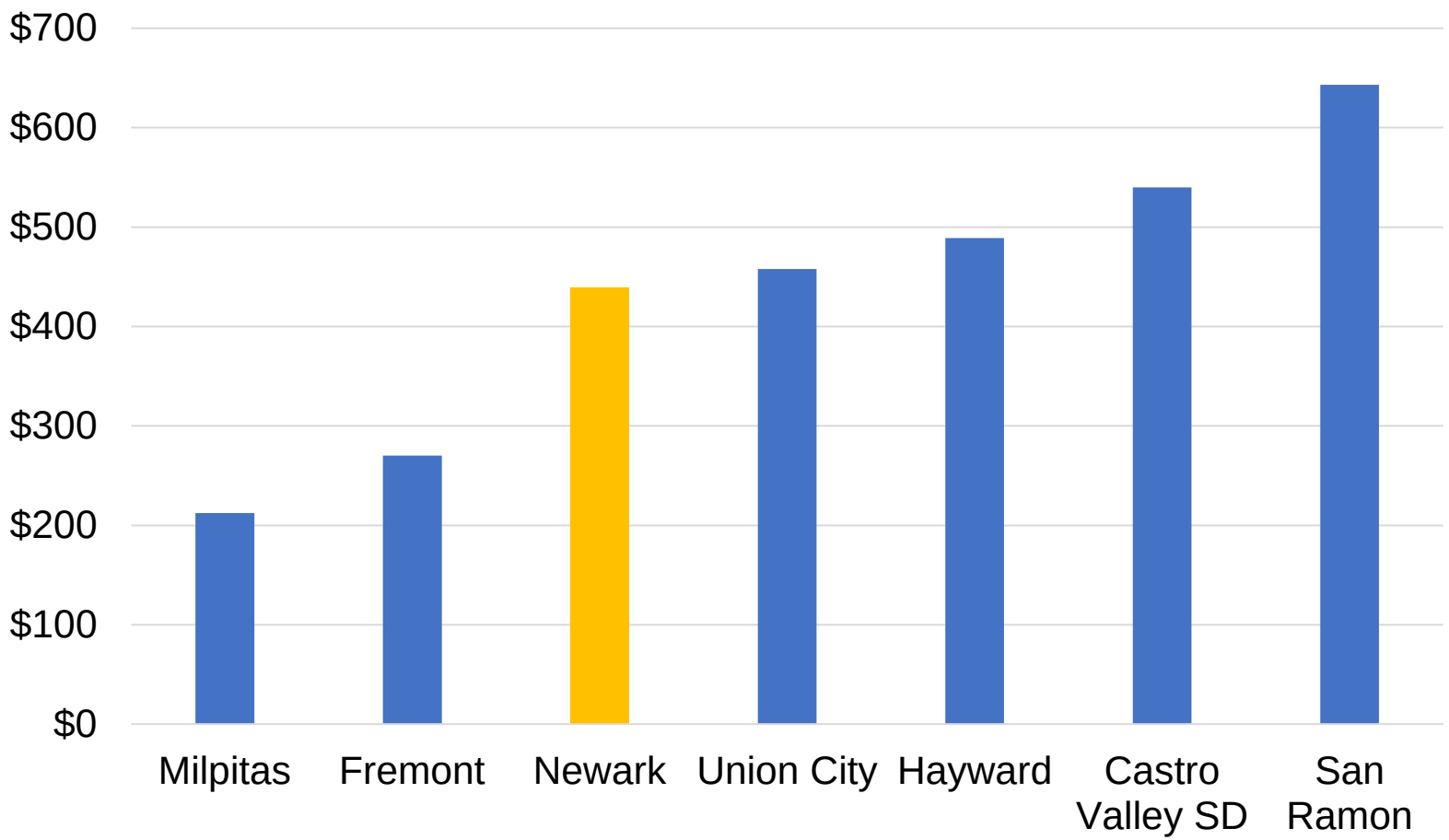
RATE SURVEY – Commercial 3 Cubic Yards



Updated using assumptions about cost-of-living increases for other cities

PROPOSED AGREEMENT

- 10-year term
  - Annual increases from Bay Area CPI
  - All current services would continue
- For compliance with SB 1383:
  - Organic collection service for all customers
  - Full-time recycling coordinator/route auditor
  - Payment to City residential cart labels
  - 400 tons of compliant compost/year
  - Color-compliant bins
  - Annual collection service notice

NEWARK california R3

PROPOPSED AGREEMENT

- Additional benefits to City:
  - Customer service standards & call-back
  - Multi-family bulky item pickup program
  - Enhanced C&D program
  - Performance standards for technical assistance
  - Overflow collection & contamination monitoring
  - Payment to City for part of negotiations cost

- Cost savings for
  - Standard vehicle model
  - Service hold for past-due accounts

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FINANCIAL & MARKET EVALUATION

- Reasonable rate increase
  - 7.36%
  - Based upon only increases to Republic's costs of operation
  - City-requested program adjustments, including hiring additional staff & legislative compliance
- Cost savings for economies of scale & geography
- Costs of full Request for Proposals (RFP) process

NEWARK california R3

NEXT STEPS

- Staff recommends that City Council adopt a resolution authorizing the City Manager to execute the proposed amended and restated agreement with Allied Waste Services of North America LLC (Republic Services) and approve a revised rate schedule

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Questions & Comments

R3

STAFF REPORT

Item H. 1.

DATE	04/13/2023
TO	Honorable Mayor and City Council Members
FROM	Kristopher Kokotaylo, City Attorney
SUBJECT	Conference with legal counsel - Existing Litigation Pursuant to California Government Code Section 54956.9(d)(1) Name of Case: In re National Prescription Opiate Litigation, Northern District of Ohio (National opioid litigation involving Teva, Allergan, CVS, Walgreens, and Walmart) Case No. 1:17-MD-2804