

FIRST AMENDMENT TO THE AMENDED AND RESTATED AGREEMENT FOR THE COLLECTION, PROCESSING, AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLES, AND ORGANICS

This FIRST AMENDMENT to the AMENDED AND RESTATED AGREEMENT FOR THE COLLECTION, PROCESSING, AND DISPOSAL OF MUNICIPAL SOLID WASTE, RECYCLABLES, AND ORGANICS (hereinafter referred to as the "Restated Agreement") is made and entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter "City"), and ALLIED WASTE SERVICES OF NORTH AMERICA, LLC, a Delaware limited liability company (hereinafter "Contractor"), whose parent company is Republic Services, Inc. City and Contractor may collectively be referred to herein as the "Parties".

RECITALS

- A. The City and Contractor entered into the Amended and Restated Agreement dated April 12, 2017.
- B. Contractor proposed a ten (10) year extension to this Restated Agreement, which included adjustments to the rates, services, terms and conditions; as described in Exhibit J to the Restated Agreement.
- C. The term of this Amended and Restated Agreement is scheduled to expire on June 30, 2019. After evaluation and a public meeting on July 11, 2017, the City has accepted the business terms proposed by Contractor, and exercised City's option to extend the Restated Agreement.
- D. The disposal component identified in Exhibit B includes \$4.31 per ton related to the redirection of commercial recycling from Republic Services' Newby Island Facility to the Fremont Transfer Station, which was approved by the Council in June 2013. The City wishes to revise Exhibit B to move the compensation associated with the redirection of commercial recycling from the disposal component to the fixed component of the rates.

E The City Council has directed City staff to negotiate with Contractor and prepare a First Amendment to the Amended and Restated Agreement which will incorporate all of the business terms outlined in Exhibit J for execution by all parties.

NOW, THEREFORE, for the reasons stated above and in consideration of the provisions and mutual covenants contained herein, City and Contractor agree as follows:

1. ARTICLE 1.00 – DEFINITIONS

1.1.52.1 Initial Term *is hereby added as follows:* means the first ten-year period of this contract extension, from July 1, 2019 until June 30, 2029.

1.1.58 Fuel Index / OPIS (Oil Price Information Service) Diesel Fuel Index *is hereby revised to read as follows:*

Fuel Index- OPIS and CNG

Fuel Index shall mean the diesel fuel rack pricing index used for Fuel Index adjustment (Oil Price Information Service (**OPIS**) CARB Diesel Fuel ALL Racks Gross average- Sacramento, Ca, San Francisco, Ca, San Jose, Ca, Stockton Ca) for the rate setting periods from January 1, 2018 until January 1, 2022; and then effective on January 1, 2022 the Fuel Index shall be the **CNG PGE Natural Gas Vehicle Rates- Schedule G-NGV2.**

2. Article 3.00-Term, Scope of Agreement; Representatives

3.1 Term *is hereby replaced to read as follows:*

The term (“Term”) of this Agreement originally commenced on January 1, 2003, and was set to expire on June 30, 2019. Pursuant to this First Amendment, the Term is hereby extended for a ten-year period from July 1, 2019 until midnight on June 30, 2029 (“Initial Term”). Contractor agrees that City has the right to exercise two additional five-year options (July 1, 2029 to June 30, 2034, and July 1, 2034 to June 30, 2039) upon mutual agreement of both Parties by providing Notice to Contractor of City’s intent to extend for one or both 5-year extension periods, no later than six (6) months prior to the end of the Term, specifically January 1, 2029, and January 1, 2034 respectively.

The unexcused failure or refusal of Contractor to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, to terminate this agreement for cause in accordance with the procedures described in Article 13 Defaults and Remedies. Upon termination of this Agreement for any reason, or expiration of the Term, the indemnity provisions set forth in this Agreement including this First Amendment, and any other provision which is expressly stated to survive the Term, shall remain in full force and effect.

3. Article 3.1.1- Extensions *is hereby revised to read as follows:* The Initial Term or the Term of this Amended and Restated Agreement as extended through options may be additionally extended up to twelve (12) months, on a month to month basis at the sole discretion of City. The cost shall be no more than the Rates effective the final January before the expiration of either the Initial Term, or the Term as extended by option. In no case, however, shall this extension cause Contractor to provide services under this Agreement longer than twenty-four (24) months without an adjustment as specified in Article 12.

4. Article 4.3.4- Bulky Goods *is hereby revised to add the following after the first paragraph.*

Batteries and Textiles

Contractor agrees as part of the expanded services in the Initial Term to include curbside pick-up of batteries and textiles at no additional cost to Customer or to City. The curbside pick-up of batteries and textiles will be included as part of the Bulky Goods Program. Costs associated with Recycling, Disposal or reuse of batteries and textiles after collection by Contractor would not be the responsibility of Contractor. Curbside pickup of batteries and textiles will be addressed initially through a pilot program with parameters to be agreed upon between City and Contractor. The details, timing and feasibility of this program will be then be agreed upon by the Contractor and City Representatives.

5. Article 4.5.6- Commercial Facilities Diversion Tools *is hereby added to read as follows:*

Contractor shall encourage meaningful waste diversion practices at all commercial facilities by providing appropriately sized containers and utilization of Eco Diversion Calculator tools and other educational tools.

6. Article 4.6.3 *is hereby added to read as follows:*

City Special Request Service- Debris Removal

Upon special request from the City, Contractor shall collect all materials from homeless encampments or other illegally dumped debris, including other special requests. These services shall be performed on call. City Special Request Services shall be charged the service rates described in Exhibit A, which exclude any Franchise or Integrated Waste Management Fees.

7. Article 5.12 -Vehicles and Equipment

is hereby deleted in its entirety, and completely replaced to read as follows:

Contractor shall provide and maintain a fleet of Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor shall have available on Collection days sufficient back-up vehicles and qualified operators for each type of Collection vehicle used (i.e. Residential, Commercial, special and Bulky Goods Collection vehicles) to respond to complaints and emergencies.

Upon City request, Contractor will arrange for the use of other vehicles and equipment for those Residential and mixed-use areas that may be hard to serve, including the inability to accommodate an automated vehicle. The Parties agree to meet in good faith to determine the best vehicles and equipment to custom service those areas, consistent with reasonable Customer costs and the rates described in Article 12 and Exhibit A. Contractor shall furnish City a written inventory of all vehicles, including Collection vehicles by manufacturer, ID number, date of acquisition, type, capacity and decibel rating.

Contractor shall arrange to store all vehicles and other equipment in safe and secure locations in accordance with City's applicable zoning regulations. City reserves the right to inspect any and all of Contractor's vehicles and equipment at any time, without prior notice, to determine compliance with sanitation requirements, Applicable Law and this Agreement.

8. Article 5.12.1 CNG replacement vehicles *is hereby added to read as follows:*

Contractor agrees to convert the entire fleet of Contractor's collection vehicles to Compressed Natural Gas (CNG) vehicles. This phase in of CNG vehicle

replacement shall begin no later than the fourth quarter of the year 2020, and shall be completed within a three-year phase in period. Contractor's entire fleet of collection vehicles shall all be fueled by CNG no later than December 31, 2023, unless the City Representative agrees in writing to a revised schedule.

9. CART AND CONTAINER REPLACEMENT

Article 5.18.6 Residential and Commercial Cart Replacement and Color *is hereby replaced to read as follows:*

StopWaste has expressed intent to transition Container color for consistency throughout the county. City and Contractor agree that Collection Carts will be transitioned to green for Organics (Compostables), blue for Recycling, and black for Municipal Solid Waste.

Contractor agrees to convert all Carts to the colors identified by the City. All Carts will be hot stamped per City specification. This replacement of new Carts will be initiated prior to April 1, 2019 and will be completed within a nine-month period. Contractor shall deliver new carts of the same size and capacity to individual customers for Organics, Recycling and Municipal Solid Waste as they are currently subscribing to immediately prior to the exchange. This exchange process will include simultaneous delivery and removal in an efficient manner to minimize disruption to the Customers. City reserves the right to purchase all Carts in use at the end of the Term, and the purchase price will be based on standard depreciation schedules to be agreed upon by City and Contractor.

Article 5.18.7-Commercial Facility Containers *is hereby replaced to read as follows:*

Containers provided to Commercial Facilities for MSW Collection shall include 32 to 96 gallon Carts, 1 to 8 cubic yard Bins, and Roll-Off Containers 6 to 40 cubic yards. Contractor agrees to replace all metal Commercial Containers during the Initial Term. In Year One (1) through Five (5) the metal Containers shall be replaced at a rate of 15% per year. In Year Six (6) through Ten (10) the metal Containers shall be replaced at a rate of 5% per year. This simultaneous delivery and removal process will be accomplished so as to minimize disruption to the Customers. Contractor shall deliver new Carts, Bins and Roll Off Containers of the same size and capacity to individual customers for Organics, Recycling and Municipal Solid Waste. Frequency of service will be the same as

the customers are subscribing to immediately prior to the exchange.

10. Article 5.30-Certain Required Employees *shall be revised to read as follows:*

In addition to the Field Supervisors specified in Section 5.23, Contractor shall designate, and maintain throughout the term, the following employees: (a) a Business Recycling Representative; (b) a MFD Recycling Representative; (c) a Recycling Coordinator; (d) a General Manager; (e) an Operations Manager; and (f) an Accounting Manager. The Contractor may combine the two Recycling Representatives into a single more senior position with written authorization from the City. The Recycling Representatives, Recycling Coordinator, General Manager, Route Supervisors, Accounting Manager and Operations Manager shall be full time and dedicated to their respective positions in order to ensure that the Customer service levels are maintained and shall be located at the Contractor's Fremont office. Contractor agrees that City may rely on the General Manager as one of the Contractor Representatives in accordance with Section 3.6.1 of this Agreement. The minimum number of Customer Services representatives available for the Fremont call center will be nine (9) representatives plus one manager, and this will be maintained in order to provide the required service levels throughout the term of this Agreement. The Contractor's Customer Service representatives must be located in the Contractor's Fremont office. Contractor agrees that Customer Services representatives will not be relocated to regional offices during the term of this Agreement.

11. Article 5.34 Public Education *is hereby amended to add the following:*

Compost Give-Away: Annually, Contractor shall coordinate a Compost Give-Away Event for residential customers, including provision of event staffing and bagged Compost to serve approximately 4000 households.

Mail in Sharps Program: Contractor shall provide and do appropriate customer outreach for an online Mail in Sharps Program, including education on potential public safety hazards. This service will be provided to all residents at a cost as specified on the Contractor's website.

12. Article 5.36.3 Service Complaints and Customer Service Call Summary

Report *is hereby revised to read as follows:*

Contractor shall maintain a computer-based log ("Complaint Log") of all oral and written service complaints registered with Contractor from Customers or the public within the City. The Complaint Log shall be maintained in a computerized database format acceptable to the City Representative. Contractor shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of all Customer complaints. Customer complaints that cannot be reasonably resolved may be appealed to the City Manager or his designee for final resolution. Contractor will maintain staffing levels that are adequate to ensure maximum telephone hold times of twenty (20) minutes during peak times. Contractor shall respond to all complaints from Customers within one business day. The Complaint Log shall be maintained so that representatives of City upon request may conveniently inspect it. In addition to the Complaint Log, Contractor shall provide a monthly Customer Service Call Summary Report which itemizes customer calls in sufficient detail so that City Representative has necessary and adequate information to know the specific nature of customer calls to Contractor. City may request, but is not limited to the following call summary categories: Bulky Goods pick-up inquiries, Bulky Goods pick-up appointments scheduled, missed pick-ups, billing inquiries, new account start-ups, container exchange, container repair, courtesy pick-up, driver reported unable to service, noise complaints, litter or fluid spills, property damage claims, service time inquiry, and service center drop-off information.

13. Article 5.39 Emergency Services and Transportation *is hereby revised to read as follows:*

Contractor shall provide emergency services (i.e. special Collection, Transfer, Processing) at City's request in the event of an emergency (that is, major accidents, major disruptions of municipal services, or natural calamities), or other events which make the City Designated Transfer Facility or City Designated Disposal Facility inoperable. Contractor shall be capable of providing emergency services within 24 hours of notification by City or as soon thereafter as is reasonably practical in light of the circumstances.

Contractor guarantees use of Newby Island Landfill, at City's sole option, for a maximum period of thirty (30) days, (which days need not be consecutive) during the Term or longer if capacity is available, for Transfer and Disposal of City of Fremont waste in situations where the City Designated Disposal Facility, or City Designated Transfer Facility are unable to Accept materials. In addition,

Contractor guarantees use of Newby Island Landfill, at City's sole option, for an additional period of sixty (60) days, (which days need not be consecutive) for a total period of ninety (90) days for Disposal of City of Fremont waste or Receipt of Direct Haul Organics. The Disposal Fee in such emergency service situations shall be as reflected in Exhibit A, and adjusted biennially in accordance with Article 12. (*the rest of Article 5.39 remains the same*).

14. Article 6.4.1 Designated Organics Processing Facility *is hereby revised to read as follows:*

City and Contractor agree that the Newby Island Recyclery (1601 Dixon Landing Road, Milpitas, California) which is owned or Controlled by Contractor, shall be the City Designated Organics Processing Facility throughout the term of this Agreement. Residential Organics shall be Transferred through the City's Designated Transfer Facility while Commercial Food Waste will be direct hauled by the Contractor. In the event that the Newby Island Recyclery is not available to Accept Residential Organics or Commercial Food Waste for any reason, City and Contractor agree that these materials will be Delivered to the Alternate Facility. The Alternate Processing Facility for Commercial Food Waste and Residential Organics is hereby designated to be the Forward Landfill Composting Facility in Manteca, CA.

15. Article 6.4.2 Organics Processing Obligations *is hereby replaced in its entirety to read as follows:*

For so long as the City Designated Organics Processing Facility is a facility owned or Controlled by Contractor, Contractor shall provide the following Organics Processing and marketing services:

a. Commercial Food Waste Tonnage Capacity.

Contractor shall provide the following Commercial Food Waste Processing and marketing services. These services will be provided at the City Designated Organics Processing Facility with a guaranteed Processing capacity sufficient to receive and Process, at the City's option, one hundred percent (100%) of all Commercial Food Collected or Delivered from City or City's Designated Contractor. This capacity commitment from Contractor shall remain in effect throughout the term of this Agreement, including any term extension options exercised by City. City and Contractor agree that this capacity guarantee will not be affected by price or contract opportunities offered to or available to

Contractor by other Customers.

Articles 6.4.2 (b), (c), (d), (e), (f), and (g) remain the same.

16. Article 10.5 Insurance

10.5.1 Environmental Impairment Insurance *is hereby added to read as follows:*

Contractor, at its own expense, shall carry and maintain Environmental Impairment Insurance with limits not less than Three Million Dollars per accident. Such insurance shall be with insurers rated A-VIII (or higher by AM Best) and under forms of policies reasonably satisfactory in all respects to City, unless Contractor is self-insured and complies with the requirements of Section 10.9. Such policies shall provide that written Notice must be given to City thirty (30) days prior to cancellation. Contractor shall Notify City within ten (10) days of its knowledge of any actual or impending material change in coverage under insurance policies or self-insurance programs.

10.6 Commercial General Liability Insurance *is hereby revised to read as follows:*

Contractor, at its own expense, shall maintain liability and property damage insurance for the period covered by this agreement in the amount of Five Million Dollars per occurrence combined single limit coverage. Such coverage shall include, but not be limited to, protection against claims arising from: bodily and personal injury, including death resulting therefrom; damage to property resulting from activities contemplated under this Agreement; product liability; and claims relating to completed operations. City, its officers, employees, appointed and elected officials, agents and volunteers (collectively "Insured Parties") shall be named as additional insureds for all liability arising out of: activities performed by or on behalf of Contractor; products and completed operations of Contractor; premises owned, occupied or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Any failure to comply with reporting or other provisions of the policies including breaches of warranties, shall not affect coverage provided to the Insured Parties. The policy shall stipulate that this insurance is primary insurance and that no other insurance carried by City will be called upon to contribute to a loss suffered by Contractor hereunder. Such insurance shall be

with insurers rated A-VIII (or higher) by A.M. Best and under standard ISO forms of policies reasonably satisfactory in all respects to City and shall provide that written Notice must be given to City thirty (30) days prior to policy cancellation as described in Article 15.1. Contractor shall Notify City within ten (10) days of its knowledge of any material change in coverage.

10.7 Automobile Liability Insurance *is hereby revised to read as follows:*

Contractor, at its own expense, shall maintain automobile liability insurance for the period covered by this Agreement in the amount of Five Million Dollars per occurrence combined single limit coverage for personal and bodily injury and property damage. Contractor shall provide an MCS90 endorsement to the policy. Such coverage shall include, but shall not be limited to, the use of owned and non-owned automobiles. Such insurance shall be with insurers rated A-VIII (or higher) by AM Best and under standard ISO forms of policies and shall provide that written Notice must be given to City thirty (30) calendar days prior to policy cancellation. Contractor shall Notify City within ten (10) calendar days of its knowledge of any material change in coverage.

10.8 Workers Compensation Insurance

Contractor, at its own expense, shall carry and maintain full Workers' Compensation Insurance, as required by the California Labor Code and Employer's Liability insurance with limits not less than One Million Dollars per accident. Such insurance shall be with insurers rated A-VIII (or higher) by AM Best and under standard ISO forms of policies, unless Contractor is self-insured and complies with the requirements of Section 10.9. Such policies shall provide that written Notice must be given to City thirty (30) days prior to cancellation. Contractor shall Notify City within ten (10) days of its knowledge of any actual or impending material change in coverage under insurance policies or self-insurance programs.

10.13 Performance Bond or Alternative Performance Security *is hereby revised to read as follows:*

Contractor shall provide City with a fully prepaid surety bond (Performance Bond) in the amount of the Security Amount, payable to City, assuring Contractor's prompt and faithful performance of its obligations under this First Amendment and Restated Agreement. The Performance Bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California and which corporation is reasonably acceptable to City.

Upon mutual agreement by the City and Contractor, Contractor shall provide as Alternative Performance Security (i) a fully prepaid irrevocable letter of credit issued by a financial institution acceptable to City; (ii) a certificate of deposit in the name of City with a financial institution acceptable to City; (iii) a trust account established for the benefit of City; or (iv) an alternate instrument securing Contractor's performance which is acceptable to City at its sole discretion. In all events the Performance Bond or Alternative Performance Security, alone or in combination, shall secure an amount at least equal to the Security Amount. Nothing in this subsection shall in any way obligate City to accept an Alternative Performance Security in lieu of the Performance Bond.

Such Performance Bond or Alternative Performance Security shall be either (i) expressly provided for the full Initial Term of the Agreement, or (ii) provided for consecutive annual terms, provided that Contractor shall deliver to City an annual Performance Bond or Alternative Performance Security in a form acceptable to City no less than thirty (30) days prior to the expiration of the preceding Performance Bond or Alternative Performance Security.

For purposes of this Section 10.13, the "Security Amount" shall be Ten Million Dollars (\$10,000,000.00). City may in the future require that Contractor increase or decrease the face amount of the Performance Bond or Alternative Performance Security beyond this current Ten Million Dollar amount at any time; however, such increase or decrease that is a Significant Change as defined shall result in a Rate adjustment in accordance with Section 12.4. Contractor shall pay the premium for the bond, and the costs of providing the Alternative Performance Security, if any.

City has right to request new or increased bonds; a new or revised financial guaranty, or increased insurance levels at the end of the Initial Term. In addition, at the time any extensions are agreed upon by the Parties, City reserves the right to increase the amount of the performance bond, the insurance, or the terms of the financial guaranty. Such increase or decrease that is a Significant Change as defined shall result in a Rate adjustment in accordance with Section 12.4.

17. Article 11.6 Franchise Fee; Regulatory Fees *is hereby revised to read as follows:*

Exclusive of rates charged to Fremont Unified School District, Ohlone College, and to the City for City Special Request services, the Collection Rates include the

following franchise and regulatory fees: *(the rest of the first paragraph remains the same).*

The third paragraph of 11.6 is revised to read as follows:

All of the foregoing fees shall be remitted to City monthly. The percentage and per ton amounts of the fees may be adjusted at City's option, provided that such adjustments shall be made in accordance with Article 12. For the purposes of calculating franchise and regulatory fees, gross receipts shall include all revenue collected from billings, excluding bad debt write-offs, Fremont Unified School District Billings, Ohlone College Billings and City Special Request services, but including bad debt recoveries. *The rest of that paragraph remains the same.*

18. Article 12.2 Biennial Rate Adjustment is hereby revised to read as follows:

12.2.1 Biennial Adjustment Methodology. The Rates in this Agreement, with the exception of special services as described in section 12.2.4, will be adjusted biennially every other year during even numbered years. Rate adjustments will be calculated by applying the appropriate index to the various components of each unit price reflected in Exhibit B. The biennial increase will reflect:

- a) Changes in the CPI and its effect on the Variable Rate components that are subject to the CPI. The CPI change will be calculated using the most recent issued June CPI and CPI index twenty-four (24) months prior.
- b) Changes in the Health Insurance Index for the most recent 24-month period and its effect on the associated variable components. The health insurance change will be calculated using the most recently issued June Health Insurance Index and the Health Insurance Index twenty-four (24) months prior.
- c) Biennial changes to the variable component will be calculated using a weighted index of 12% of the Health Insurance Index and 88% of the CPI index change with a minimum increase of 5% for the twenty-four (24) month period.
- d) Changes in the twelve-month average Fuel Index and its effect on the fuel cost component. The biennial change to the fuel component shall be calculated using the average of the most recent 12 months Fuel Index ending in June, compared to the same average twelve-month index used for the prior adjustment period.

e) Changes in the Per-Ton Disposal Fee established by the City Council and its effect on the Disposal component, and changes in Pass Through Costs that have occurred since the prior adjustment.

f) There will be no biennial adjustment to the fixed component of the unit prices except as described in section 12.2.2

g) In addition to the biennial adjustments described above, the following increases will be made to the Contractor Compensation Unit Prices as reflected in Exhibit B: 2% January 2018; 2% January 2020; and 2.2% January 2022.

12.2.2 Biennial Adjustment Formula. The following example illustrates how the biennial adjustment to the unit prices is calculated:

Contractor Compensation = Fixed unit price + Disposal unit price X (current Disposal Rate/previous Disposal Rate) + Variable unit price X (total percentage change of weighted indexes or minimum, if applicable) + Fuel unit price X (current Fuel Index/prior Fuel Index)

Total Unit Price = Contractor Compensation / (1 minus applicable franchise fee and Integrated Waste Management Fee percentage)

Franchise/Integrated Waste Management Fee = Total Unit Price X applicable franchise/Integrated Waste Management Fee percentage

The additional adjustment for the 2018, 2020 and 2022 rate setting years described in section 12.2.2g will be calculated as follows:

Total Unit Price – Integrated Waste Management Fee – Franchise Fee = Contractor Compensation

Contractor Compensation X Additional Adjustment Percentage = Total Additional Unit Price Adjustment

Total Additional Unit Price Adjustment X 45% = unit price adjustment applied to Fixed Unit Price rate component

Total Additional Unit Price Adjustment X 55% = unit price adjustment applied to Variable Unit Price rate component

Exhibit B will be revised whenever the fees are adjusted. For purposes of

calculating the biennial adjustment, any approved Extraordinary Rate Review adjustments will be categorized as fixed, disposal, variable, or fuel depending upon the nature of the cost and incorporated into the unit price break down reflected in Exhibit B.

19. Article 13.6 - Mediation *is hereby replaced to read as follows:*

Without limiting the rights of City under this Article 13, the parties agree as follows:

13.6.1 Notice

In the event that any dispute arises between the Parties concerning the interpretation, enforcement or any other matter related to or in connection with this Amended and Restated Agreement, the Parties shall comply with the following procedures in an attempt to resolve such dispute and shall work in good faith to comply with their respective obligations pending resolution of such dispute.

This dispute resolution procedure may be initiated by either Party upon providing Notice to the other specifying the matter in dispute. Upon receipt of such Notice, both Parties shall, within five (5) Working Days of receipt of such Notice, meet and confer in good faith to resolve such dispute. Each Party shall, in good faith and in writing, promptly provide to the other Party any and all information and documentation reasonably related to the dispute requested by the other Party.

20. Article 13.6.2 -Mediation

In the event that any dispute, other than those specified in Section 13.6.3, cannot be resolved satisfactorily between the Parties within thirty (30) calendar days, then the City and Contractor agree that such disputes shall be submitted to mandatory, non-binding mediation by a mutually agreed upon independent third party.

21. Article 13.6.3 - Limitation

Contractor agrees that it shall not dispute any Rate adjustment (including but not limited to a denial of a request for a Rate adjustment) where the aggregate

annual amount in dispute is less than a Significant Change, as defined.

In the event the non-binding mediation is unsuccessful, then the Parties may mutually agree to pursue other dispute resolution processes, including litigation.

22. Article 13.7- Arbitration *is hereby deleted in its entirety.*

23. Article 15.3 Transition to Next Contractor *is hereby revised to read as follows:*

At the expiration of the Term, including any exercised options to extend, or earlier termination of this Agreement, Contractor, at its own expense, shall cooperate fully with City to ensure an orderly transition to any and all new service providers. City shall have no continuing obligations to Contractor other than those expressly provided for under this Agreement. Upon request of City, Contractor shall provide City with such information as may reasonably be requested, including, but not limited to, current route maps, account names and phone numbers, and level of service provided. Contractor shall also provide City with data, including Customer information in a format that can be analyzed and managed by City. Failure to provide full cooperation may at City's sole discretion may preclude Contractor from participating in any competitive procurement process. As part of the transition process to a new service provider, City may require Contractor to leave in place some or all Customer Containers for up to thirty (30) days after the expiration of the Term, in order to facilitate the transition for all Customers.

24. Headings

The heading titles for each paragraph of this First Amendment are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

25. Modifications

This Restated Agreement and First Amendment may not be modified orally or in any manner other than by an amendment in writing signed by both parties.

26. Terms

All other terms in the Amended and Restated Agreement for the Collection, Processing and Disposal of Municipal Solid Waste, Recyclables and Organic Waste, not specifically amended by this First Amendment shall remain in full force and effect. This First Amendment is executed in two (2) duplicates, each of which is deemed to be an original.

27. Signatures

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

IN WITNESS WHERE OF, the City and Contractor do hereby agree to the full performance of the terms set forth herein.

CITY OF FREMONT

Fred Diaz
12/14/17

**Fred Diaz
City Manager or designee**

Date: 12/15/17

CONTRACTOR

Michael Caprio

**Michael Caprio, Area
President Allied Waste
Services of
North America**

Date: 11/14/17

APPROVED AS TO FORM:

Hanyk Lemie
Hanyk Lemie
**Hanyk Lemie
City Attorney**

Date: 12/14/17

Corporate Resolution

EXHIBIT B
UNIT PRICE BREAKDOWN
January 1, 2016 – December 31, 2017*

Description	Fixed Unit Price	Disposal Unit Price	Variable Unit Price	Fuel Unit Price	Contractor Compensation	Fran. Fee	IWM Fee	Total Unit Price
Single Family Dwellings MSW - 20 gal	\$1.01	\$4.92	\$5.44	\$0.36	\$11.73	\$1.59	\$2.54	\$15.86
Single Family Dwellings MSW - 32 gal	\$1.06	\$5.19	\$5.62	\$0.36	\$12.23	\$1.65	\$2.65	\$16.53
Single Family Dwellings MSW - 64 gal	\$1.24	\$6.46	\$6.41	\$0.42	\$14.53	\$1.96	\$3.14	\$19.63
Single Family Dwellings MSW - 96 gal	\$2.29	\$11.66	\$12.01	\$0.77	\$26.73	\$3.61	\$5.78	\$36.12
Single Family Dwellings - Organic Waste Processing	\$0.29	\$0.01	\$1.26	\$0.09	\$1.65	\$0.18	\$0.00	\$1.83
Single Family Dwellings – Organic Waste Collection	\$1.06	\$0.75	\$4.73	\$0.30	\$6.84	\$0.76	\$0.00	\$7.60
Single Family Dwellings – Recyclables Collection	\$0.13	\$0.10	\$3.76	\$0.22	\$4.21	\$0.47	\$0.00	\$4.68
Single Family Dwellings - Bulky Goods Collection	\$0.02	\$0.09	\$0.77	\$0.03	\$0.91	\$0.12	\$0.20	\$1.23
Multi-Family Dwellings – Recycling Collection	\$0.05	\$0.10	\$4.97	\$0.30	\$5.42	\$0.60	\$0.00	\$6.02
Multi-Family Dwellings – MSW	\$1.03	\$5.47	\$5.63	\$0.36	\$12.49	\$1.69	\$2.70	\$16.88
Front End Load – MSW	\$0.78	\$6.06	\$4.60	\$0.30	\$11.74	\$1.89	\$2.13	\$15.76
Front End Load – Commercial Organics	\$0.53	\$0.00	\$17.78	\$0.32	\$18.63	\$0.00	\$0.00	\$18.63
Rolloff, Non-compacted – MSW	\$1.06	\$8.63	\$6.38	\$0.42	\$16.49	\$2.66	\$2.99	\$22.14
Rolloff, Compacted – MSW	\$2.47	\$34.47	\$3.59	\$0.22	\$40.75	\$6.56	\$7.38	\$54.70
Single Family Dwelling Backyard Service	\$0.00	\$0.00	\$13.24	\$0.85	\$14.09	\$1.91	\$3.05	\$19.05
Commercial Backyard Service	\$0.00	\$0.00	\$16.38	\$1.03	\$17.41	\$2.80	\$3.15	\$23.36

*Revised unit prices to be used as basis for setting 2018/19 Solid Waste Collection Rates

CERTIFICATE OF SECRETARY

The undersigned, Secretary of **ALLIED WASTE SERVICES OF NORTH AMERICA, LLC**, a Delaware limited liability company (the "Company"), does hereby certify on behalf of the Company, that **MICHAEL A. CAPRIO**, is a duly elected Vice President of the Company, that in such capacity he, the President or any other Vice President of the Company, can exercise such power and perform such duties as usually accompanies such office, and implicit in such power is the authority to execute that certain *First Amendment to the Amended and Restated Agreement for the Collection, Processing, and Disposal of Municipal Solid Waste, Recyclables, and Organics* between the Company and the City of Fremont, in the State of California, and that there is no current intention to remove him from such office.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 14th day of November, 2017.


Eileen B. Schuler
Secretary