

RESTATED AND AMENDED FRANCHISE AGREEMENT
BETWEEN THE CITY OF CLAYTON
AND PLEASANT HILL BAYSHORE DISPOSAL, INC.
FOR SOLID WASTE AND RECYCLABLE MATERIALS MANAGEMENT SERVICES

THIS FRANCHISE AGREEMENT is entered into this 2nd day of July, 2002, between The City of Clayton, a California municipal corporation, hereinafter referred to as "City", and Pleasant Hill Bayshore Disposal, Inc., a California corporation and subsidiary of Allied Waste Industries, Inc., hereinafter referred to as "Collector", for the collection, transportation, disposal and diversion of Solid Waste¹ and Recyclable Materials².

RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for Solid Waste and

¹ As used in this Agreement, the terms "Solid Waste" and "Waste" each means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, commercial and industrial wastes, Construction and Demolition Wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes. "Solid Waste" and "Waste" includes Recyclable Materials that are discarded by the generators of such materials and "Mixed Waste" which include both Recyclable and non-Recyclable Materials. "Solid Waste" and "Waste" does not include any of the following wastes: (1) hazardous waste, as defined in Public Resources Code section 40141; (2) radioactive waste; and (3) medical waste regulated pursuant to the Medical Waste Management Act. The term "Construction and Demolition Wastes" means wood, wallboard, metals, glass, paper, plastic, concrete, and other Recyclable and non-Recyclable Solid Wastes, including "Mixed Waste," generated by residential, commercial and industrial demolition, remodeling, and construction activities.

²As used in this Agreement, the term "Recyclable Material(s)" means and includes glass, paper, cardboard, wood, concrete, plastic, used motor oil, ferrous and non-ferrous metal, aluminum, and any other waste materials that are capable of being Recycled. The terms "Recycle", "Recycled" and "Recycling" each mean and refer to the process of collecting, sorting, cleansing, treating, and/or reconstituting Recyclable Materials, and returning them to the economic mainstream in

yard waste management services as well as for the selling, processing and handling of Recyclable Materials within their jurisdictions; and

WHEREAS, pursuant to the Public Resources Code 40059, the City Council of the City has determined that the public health, safety and well-being require that an exclusive franchise be awarded to a qualified Solid Waste enterprise for the collection and disposal of Solid Waste from residential, industrial and commercial customers within the City and for integrated Waste management, including an exclusive franchise for the collection, processing and recovery of Recyclable Materials and yard waste from residences and commercial establishments within the City; and

WHEREAS, City and Collector are mindful of provisions of the laws governing the safe collection, transport, Recycling and disposal of Solid Waste and yard waste as well as the Recycling and diversion of Recyclable Materials, including AB 939, the Resource and Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"); and

WHEREAS, City has not, and, by this Agreement does not, instruct Collector on its collection methods, nor supervise the collection of Waste or Recyclable Materials; and

WHEREAS, Collector has represented and warranted to City that it has the experience, responsibility, and qualifications to arrange with residents, commercial, industrial, institutional and other entities in the City for collection and safe transport to disposal facilities of Solid Waste and yard waste and for the collection, safe transport and diversion of Recyclable Materials, the City Council of the City determines and finds that the public interest, health, safety and well-

the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

being would be best served if Collector were to make arrangements with residents and other entities to perform these services; and

WHEREAS, the City Council of the City declares its intention of maintaining reasonable rates for the collection, transportation and disposal of Solid Waste and yard waste and the collection and diversion of Recyclable Materials within the City's boundaries; and

WHEREAS, it is the desire of the parties that this Agreement supersede and replace all previous Agreements between the parties, including Collector's predecessors in interest, covering the same subjects as are included in this Agreement and those related thereto;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Term. The term of this Agreement commences on the date of execution hereof by City and ends on the 31st day of December 2012. This Agreement supersedes and replaces the Franchise Agreements between the parties, including Collector's predecessors in interest, dated January 18, 1984 and July 8, 1998, and subsequent amendments, except as expressly provided herein. Collector has the option to request renewal of this Agreement provided Collector gives City written notice of its desire to exercise this option at least two hundred seventy (270) days prior to the expiration of the original term. In the event Collector gives notice of desire to exercise this option, City reserves the sole right to either renegotiate the scope of services and franchise fee with Collector then entitled to a corresponding adjustment in rates, or City can elect to seek competitive bids for said services

2. Exclusive Privilege and Duty. Except as otherwise provided herein, City hereby grants to Collector the exclusive privilege and duty to collect and remove for disposal and/or Recycling, at a facility of collector's sole choice, all residential, commercial and industrial Solid Waste and yard waste, including Recyclable Materials, within the Franchise Area and to charge

and receive charges therefore, pursuant to and subject to the terms of this Agreement. Collector promises and agrees to perform the responsibilities and duties set forth herein and to be bound by all of the requirements of this Agreement. The Franchise Area may be expanded or reduced in size by mutual agreement of the parties, or as provided in Section 18 (Annexation to Franchise Area) of this Agreement.

3. Exceptions to Exclusive Privilege. The exclusive privilege granted by this Agreement shall not apply in cases where:

A. A person or entity generates Solid Waste, including Recyclable Materials, and personally collects, removes and disposes of such Solid Waste and/or Recyclable Materials in a clean and sanitary manner in conformance with all applicable laws and regulations, including mandatory subscription ordinances. This exception shall not apply to a person who incurs a net cost of collection to a third person in connection with the above described activities or to companies engaged in the construction and/or demolition business; or

B. A person or entity contracts with a third person for the removal and disposal or Recycling of inorganic refuse or garden Waste (a "Non-Franchised Contractor") and such removal and disposal or Recycling is solely incidental to work such as gardening occasionally performed by or for the customer. This exception shall not apply if the Non-Franchised Contractor incurs a net cost of collection to any third person in connection with its collection and/or disposal of said Solid Waste.

4. Administrative Services and Franchise Fees. As consideration for this franchise granted by City for use of its public rights of way, and to partially reimburse City for its costs in overseeing this agreement and for services and programs pertaining thereto, Collector shall pay to the City an annual franchise fee of 5% per year, of the total gross revenues received by

Collector from all residential, commercial and industrial sources within the City limits of Clayton. The franchise fee shall be paid quarterly within thirty (30) days after the end of each calendar quarter and shall be based upon actual gross receipts of Collector for the preceding calendar quarter; provided, however, that in partial consideration of the City's agreement to amend and extend the term of the contractual relationship with the City, the Collector agrees pay to City the total franchise fee amount paid to City in fiscal year 2001-2002 through the year 2004, or the 5% franchise fee of the total gross revenues of the Collector received each year in year 2002, and 2003, and 2004, whichever fee amount is the greater.

5. Franchise Area.

A. Franchise Area Defined. The Franchise Area granted by this Franchise Agreement shall be the corporate limits of the City, and such additional areas as may hereafter be added by reason of annexation.

6. City to Approve Maximum Rates.

A. Maximum Rates; CPI Adjustments. The monthly collection rates inclusive of landfill fees may be increased automatically on an annual basis as of January 1 of each year by an amount equal to ninety percent (90%) of the average percentage increase in the Consumer Price Indices (US-U and SF-U) occurring during the full calendar year preceding the January adjustment date, provided the maximum increase for any one year will be 4%, non-cumulative. No rate reduction shall occur solely as a result of CPI adjustments. Collector agrees to implement new agreed upon rates effective July 1, 2002, and shall not apply an increase to any rates in the year 2003. The rates commencing January 2004 will be adjusted at 100% of the Consumer Price Indices and in years 2005 through 2012, rates will be adjusted by an amount equal to 90% of Consumer Price Indices. Collector agrees that it shall charge those persons,

firms or corporations within the City only those rates as are approved by the City in accordance with this Agreement. The current maximum rates approved by the City at this time shall be those rates set forth in Exhibit "A" attached hereto, made a part hereof and incorporated herein by reference. Nothing in this Agreement precludes Collector from charging rates less than the maximum rates approved by the City.

B. Acme CERCLA Defense Provisions. The provisions in paragraphs 6 and 7 of the Second Amendment to the prior Garbage Collection Franchise Agreement between City and Collector regarding the Acme CERCLA litigation described therein shall remain in full force and effect notwithstanding that all other provisions in said Franchise Agreement and its amendments are superceded and restated by this Agreement.

C. Special Rate Adjustments. Collector shall be entitled to a special rate adjustment to recapture the net costs of any new or increased federal, state or local taxes, fees, surcharges and mitigation fees imposed on the transfer station or landfill or on Solid Waste received at those facilities (except for federal or state income or excise taxes and property taxes) or the increased net costs of transfer or disposal which are caused by new or amended federal, state and local laws and regulations provided the Collector can demonstrate to the City Manager that these taxes, fees and surcharges or net cost increases are imposed outside of the Collector's control, and have negatively impacted the profitability of Collector's Clayton franchise operations. Collector shall provide City Manager with a minimum of sixty (60) days advance notice of such proposed rate adjustments and shall provide City Manager with all supporting documentation required by City Manager. Any rate adjustment shall take effect only after issuance of written approval by the City Manager who will notify the City Council of the special adjustment. Collector may appeal any decision of the City Manager to the City Council.

7. Significantly Changed Circumstances.

Collector may apply for a special rate change at any time if Collector can establish that there is good cause based on an extraordinary change in circumstances for making such application. In order to apply, Collector shall submit to the City Manager a thorough written explanation of the significantly changed circumstances, as well as an explanation of why these extraordinary circumstances constitute good cause for making such an application and the amount of the rate adjustment requested by Collector, together with such other data and supporting documentation as may be required by City Manager. The City Manager shall determine within forty-five (45) days whether good cause exists for an adjustment in rates. If the City Manager determines that good cause does not exist, Collector shall have ten (10) days in which to file an appeal of said determination with the City Council. That appeal shall be placed on the City Council's agenda as soon as practicable. If it has been determined that good cause does exist, a hearing on the proposed rate adjustments will be scheduled before the City Council within sixty (60) days. The City Council shall consider the Collector's application and such other materials and information reasonably requested by the City Council from Collector to assess the merits of Collector's application, and the Council's decision shall be conclusive.

8. Services Provided by Collector.

A. City to Approve All Services. The nature of the services Collector offers and provides to customers residing or doing business in the Franchise Area shall be determined by the City Council. The City Council may change the level of such services from time to time on reasonable notice to Collector; when appropriate, and the Council shall allow Collector to adjust Collector's rates to reflect the change in service levels. The services that Collector offers and provides to its customers affected by this Agreement shall be subject to the prior approval of

the City Council. Nothing in this Agreement, however, shall be construed or interpreted as authorizing the City to reduce or adversely affect Collector's exclusive franchise rights as specified in this Agreement. The services that the Collector currently provides to its customers under this Agreement, and the new maximum rates to be charged by Collector therefore, are set forth in Exhibit "A" attached hereto and made a part hereof by this reference.

B. Once a Week Service. In order to protect the public health and safety, arrangements made by Collector with its customers in the Franchise Area for the collection of Solid Waste, other than yard Waste and Recyclable Material, shall provide for the collection of such Waste generated or accumulated in residential, commercial, and industrial premises within the Franchise Area at least once per week, or more frequently, as Collector and its customers may agree.

C. Hours of Collection. Collector agrees that, in order to protect the peace and quiet of residents, its arrangements for the collection of Solid Waste, yard waste or Recyclable Materials will provide that collections for residential and commercial areas shall not start before 7 a.m. or continue after 7 p.m., six (6) days per week excluding Sunday. Collector agrees to reasonably adjust the hours of commencement of collection operations in selected areas at the request of City Manager where early collection activities have generated numerous complaints from nearby residents.

D. Collection on Holidays. Collector has informed the City that Collector's arrangements with its Solid Waste customers will provide that if the day of collection on any given route falls on a legal holiday, i.e., New Year's Day or Christmas Day, observed by the transfer station, landfill or other lawful disposal site to which Solid Waste Recyclable Materials or yard waste collected within the Franchise Area is taken for disposal, Collector shall provide

collection service for such route on the work day next following such holiday and shall provide collection service on such holiday, and all subsequent collection days during that holiday week shall be moved back one day at the discretion of Collector.

E. City's Facilities. Collector agrees to provide approved Recycling containers and authorized Solid Waste containers at the City's municipal facilities and to provide collection services at such locations, at no charge or expense whatsoever to the City, as follows: two twenty (20) cubic yard containers on call at Heritage Trail, one for green waste and one for garbage; a one (1) cubic yd. container serviced one (1) time a week at 6008 Center St.; a thirty-two gallon (32) container for garbage and four sixty-four (64) gallon containers for Recyclable Materials at City Hall serviced one time a week; and a sixty-four (64) gallon container for Recyclable Material at the Library serviced one time a week and as otherwise specified in Exhibit "B" hereof.

F. Curbside and Commercial Recycling. Collector shall provide a curbside Recycling program, within the Franchise Area, such program being more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. Collector shall Recycle residential Recyclable Materials collected by it under this Agreement that are capable of being Recycled in an economically feasible manner, and shall not dispose of such materials in any Solid Waste landfill site without the prior written consent of the City Manager. "Recyclable Materials" shall include but not be limited to newsprint, printed material, (i.e., computer paper, colored paper, white paper, magazines) paper containers, cardboard, glass, aluminum, PET and other plastics, beverage containers, compostable materials (exclusive of garden waste and sludge), used motor oil, and such other materials agreed to by Collector and City. Collector may also initiate a commercial Recyclable collection program in the City and shall be entitled to

collect all such commercial Recyclable Materials, save and except for Recyclable Materials that are sold or donated by the generator.

G. Curbside Collection Yard Waste Recycling Program. Collector shall provide a curbside yard waste Recycling program within the franchise area whereby residents will be provided by Collector with a 64 gallon cart that can be placed curbside holding grass clippings, brush, weeds, leaves, hay and straw, pruning and tree trimmings, and other similar yard waste. Collection service will be provided every week on the same day as regular collection of Solid Waste.

H. Customer Billing. Bills for all Waste, Recycling and City-contracted street sweeping services shall be administered by Collector at no additional cost to the City or customer. Collector may bill its customers in advance. However, billing periods shall be at least bi-monthly unless the City approves a less frequent billing period. Collector agrees not to discontinue service to a customer until the customer's account has been delinquent in payment for a period of at least thirty (30) days. If the Collector terminates service to any non-paying person, corporation or entity, such person, corporation, or entity as a condition precedent to establishment of such service, shall comply fully with all the then billing policies and practices of the Collector, including, but not limited to, requirement of payment by cash or cash equivalent, prepayment of one full billing cycle, payment of all costs of collection of the monies owed to contractor and payment of a reinstatement fee. If the Collector discontinues service for non-payment of the customer's account, Collector shall immediately give written notice to the City Manager of any discontinuance of service for nonpayment of account, giving the name and address of the customer. Collector agrees City is not responsible or held liable for any bad debts of billed customers for services rendered by Collector.

I. Street Sweeping. Contractor shall remit City-contracted street-sweeping fees collected to the City on a quarterly basis.

J. Public Education. Upon initiation of service, and at least once a year, Collector shall send or deliver to customers information concerning the conditions of service, including but not limited to, rates, fees, charges, service options, payment options, frequency of collection, amount and manner of Solid Waste to be collected, and service inquiry/complaint procedures. In addition to mailers, Collector shall use bill inserts, bill messages, community meetings, press releases and Collector's website to provide additional customer education. The form and content shall be subject to the review and approval of the City Manager.

K. Electronic Waste. Collector shall provide a collection and disposal program for Cathode Ray Tubes (CRT) and other electronic waste with the cost of the program to be paid, at least in part, by the people disposing of such electronic waste. In the event the Collector is unable to provide such services, the Collector shall be obligated to pay all costs and expenses for such services.

9. Collector's Equipment and Provision of All Labor. Collector shall furnish all necessary equipment for services provided pursuant to this Agreement in the Franchise Area and shall maintain such equipment in a sanitary condition at all times. Collector shall furnish all necessary labor in connection with its services under this Agreement. The Collector, in performance hereof, shall use trucks with covered, watertight truck bodies constructed of sufficient strength to withstand a fire within, without endangering adjacent property. Trucks, drop boxes, bins, or similar types of equipment shall be kept clean and in good repair. Collector shall have its name on the side of each truck and its name and telephone number on each drop box, bin or similar type equipment provided by Collector. Collection vehicles shall be designed

and operated while in route in such a manner as to prevent Solid Waste, including leachate and garbage juice, from leaking, escaping or spilling. Any spillage of materials shall be immediately cleaned up by Collector at Collector's sole expense. The noise level generated by compaction vehicles using compaction mechanisms during the stationary compaction process shall be such that it does not unreasonably interfere with the quiet enjoyment of nearby properties.

10. Compliance with Federal, State and Local Laws. Collector shall be responsible for and shall comply with all applicable laws, rules and regulations that are now in effect or may be promulgated or amended from time to time by the Government of the United States, the State of California, the County of Contra Costa, the City and any other agency now authorized or which may be authorized in the future to regulate the services to be performed herein regarding the collection, removal and disposal of Solid Waste, yard waste and Recyclable Materials. In particular and without limitation of the foregoing obligations, Collector warrants that it will comply with all applicable laws in effect during the term of this Agreement, including implementing regulations, as they may, from time to time, be amended, specifically including, but not limited to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601, et seq., The Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. ("RCRA"), the California Integrated Waste Management Act of 1989, and all other applicable laws of the United States, State of California, the County of Contra Costa, all ordinances, orders, rules and regulations of the City, County of Contra Costa Source Reduction and Recycling Element of the County Integrated Waste Management Plan, the requirements of Local Enforcement Agencies and other agencies and jurisdiction relating to the services provided by Collector under this Agreement. Collector shall comply with all final and binding judgments entered against Collector regarding its services performed under this Agreement.

11. Collector's Duty to Maintain Records; City's Right to Examine Records.

A. Collector shall maintain a proper set of books and records in accordance with generally accepted accounting principles, accurately reflecting the business done by it under this Agreement.

B. Collector shall further maintain and make available to City, upon its request, records as to the number of customers, total and by type, route maps, service records, AB 939 records, and other materials and operating statistics in such manner and with such detail as City may require. City acknowledges that such information is the confidential and proprietary information of Collector, and upon receipt by the City shall maintain such information as the confidential and proprietary information of Collector and shall not publicly disclose such information without Collector's prior written consent. Such data shall be maintained for the full term of this Franchise Agreement and any additional period of not less than three (3) years, or any longer period required by law. City shall treat the information required by this paragraph that affects the competitive position of Collector as confidential information to the extent permitted by law.

C. City may at any time during the term of this Agreement have the books and records of the Collector examined by a City agent appointed for that purpose by the City. City shall give fifteen (15) days' written notice to the Collector of such examination date. City expenses incurred under this section shall be paid by Collector through the rates allowed by the City hereunder. Such records shall be made available to City at Collector's regular place of business but in no event outside the County of Contra Costa, California.

D. The information required by this section shall pertain to Collector's operations covered and regulated by this Agreement, and nothing contained herein shall require

the Collector to provide the City with information pertaining to the Collector's operations which are not regulated by the City, except in conformance with this Agreement.

E. Should any examination or audit of Collector's records reveal an underpayment of any fee required under this Franchise Agreement, the amount of such underpayment shall become due and payable to City not later than thirty (30) days after written notice of such underpayment is sent to Collector by City. Should an underpayment by Collector of more than three (3%) percent be discovered, Collector shall bear the entire cost of the City's audit or examination and said cost shall not be recoverable through rate setting.

F. City's agent may examine Collector's books, records and financial statements pertaining to operations not regulated by the City as may be reasonably required for the sole purpose of gathering information necessary to allow said agent to ascertain whether income, expenses, assets and liabilities are reasonably and consistently allocated among operations regulated by City and those not regulated by the City.

G. Nothing in this section shall prevent City from allowing public access to City records as provided for under the California Government Code, and in the event any dispute arises as to the public access to information provided by Collector under the terms of this Agreement, the City shall in its discretion provide public access to said information according to law or tender the defense of any claims made against the City concerning said information to Collector. Prior to releasing any information pursuant to this paragraph, City shall make a good faith effort to notify Collector of the intended release.

H. Upon reasonable notice or as otherwise agreed herein, and at those times designated by the City, Collector shall supply to the City lists of the names of all customers of Collector who are provided any service by Collector within the Franchise Area. At the same or

other time, the City may request and the Collector shall provide information specifying each customer's address, type of service provided to that customer, the number and type of authorized Solid Waste and Recycling containers used by or provided to each customer, whether and which customers are believed to be violating this Agreement, any mandatory subscription ordinance or any other provision of the law, and any other information that the City determines, in its sound discretion, reasonably required to monitor implementation of this Agreement and/or discharge the City's responsibilities under the law. City acknowledges that such information is the confidential and proprietary information of Collector, and upon receipt by the City shall maintain such information as the confidential and proprietary information of Collector and shall not publicly disclose such information without Collector's prior written consent unless disclosure is required by law.

12. Reports and Adverse Information.

A. Annual Reports. Within one hundred twenty (120) days after the close of Collector's fiscal year (Collector's fiscal year ends on December 31st of each year), Collector shall submit to the City Manager a written annual report, in a form approved by the City, including, but not limited to, the following information:

(1) A summary of the previous year's (or, in the case of the initial year, the initial year's) activities including, but not limited to, services begun or discontinued during the reporting year, and the number of customers for each class and level of service;

(2) A revenue statement, setting forth payment of Franchise Fees, and the basis for the calculation thereof, certified by an officer of Collector; and

(3) A list of Collector's officers.

B. Adverse Information. Collector shall provide City two copies of all reports, or other material adversely reflecting on Collector's performance under this Franchise Agreement, submitted by Collector to the California or U.S. EPA, the California Integrated Waste Management Board or any other federal, state or county agency having jurisdiction. Copies shall be submitted to City simultaneously with Collector's filing of such matters with said agencies. Collector's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request, as provided in Section 11.

(1) The Collector shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by the Collector to, as well as copies of all decisions, correspondence and actions by, any federal, state and local courts, regulatory agencies and other government bodies relating specifically to Collector's performance of services pursuant to this Franchise Agreement. Any data that the Collector seeks to be excluded from provisions of the California Public Records Act shall be clearly identified as such by Collector with the basis for such exclusion clearly specified. In the event City receives a request under the Public Records Act, or by subpoena, the City shall notify Collector to permit Collector to object to the release of the information requested or subpoenaed.

(2) Collector shall submit to the City such other information or reports in such forms and at such times as the City may reasonably request or require.

(3) All reports and records required under this or any other section shall be furnished at the sole expense of the Collector.

C. AB 939 Requirements. During the term of this Franchise Agreement, Collector, at Collector's sole expense, shall submit to City information and monthly reports

required by City to meet its reporting obligations imposed by AB 939, and the regulations implementing AB 939, in a manner approved by City. Collector agrees to submit such reports and information on computer disks, or by modem, in format compatible with City's computers, at no additional charge, if requested by City. Collector agrees to adhere to all reasonable request of City in its efforts to comply with AB 939 Requirements.

13. Customer Complaints. Collector shall develop and implement a policy and procedure for responding to and recording customer complaints, including dispute resolution. The policy and procedure shall be subject to the approval of the City Manager.

14. Title to Solid Waste; Salvage Rights; Designation of Recycling and Disposal Facilities.

A. City's Exercise of Jurisdiction. The parties hereto acknowledge that City, by this Agreement, is exercising its jurisdiction under State law to regulate the collection, removal, handling and disposal of all Solid Wastes generated in the Franchise Area. The intent of this Agreement is to regulate residential, commercial and industrial Solid Waste handling service. However, this Agreement does not regulate the collection, removal and disposal of infectious waste, medical waste or hazardous waste irrespective of origin. Collector shall have exclusive ownership and title to all Solid Waste, yard waste and Recyclable Materials collected by Collector pursuant to this Agreement.

(1) Throughout the term of this Agreement, it shall be the Collector's sole responsibility and duty to dispose of the Solid Waste, yard waste and Recyclable Materials collected by virtue of this Agreement at a Recycling facility, Transfer Station, and/or Landfill selected by Collector, and do so in a safe manner and in compliance with all federal, state and local laws and regulations. Collector shall have sole discretion in choosing the facilities to be

used for the Recycling and disposal of the Solid Waste and Recyclable Materials collected under this Agreement. Collector has designated Collector's Martinez Transfer Station and the Keller Canyon Landfill for disposal of Solid Waste collected under this Agreement. In this connection, the Collector agrees that it shall process and/or dispose of all Solid Waste and yard waste collected in the Franchise Area at a Solid Waste facility that is fully licensed and appropriately permitted and, to Collector's knowledge, is not in material violation of any health, safety or hazardous materials laws, rules, regulations or orders.

(2) By entering into this Agreement the City has waived its right to salvage and assigns and delegates such right of salvage to the Collector. The salvage rights set forth in this Section specifically are intended to refer to salvage operations once the Solid Waste, yard waste and Recyclable Materials are placed by the generator in the Waste stream.

B. Rights Reserved as to Hazardous Wastes. The City reserves the right to contract with other parties to have hazardous wastes collected, transported, disposed of, processed and/or diverted.

C. Indemnity re: Disposal of Solid Waste. Collector shall indemnify and hold the City harmless from any liabilities and damages (including but not limited to clean-up and remediation costs connected with hazardous waste or hazardous materials releases) arising out of disposal of City's Wastestream at the Keller Canyon Landfill or any other landfill site selected by Collector.

15. Insurance.

A. Workers' Compensation Insurance. Collector shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accordance with the provisions and requirements of the Labor Code

of the State of California. Policy endorsements that implement the required coverage shall be filed and maintained with the City Manager throughout the term of this Franchise Agreement.

B. General Liability Insurance. Collector shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of FIVE MILLION DOLLARS (\$5,000,000.00) aggregate and TWO MILLION DOLLARS (\$2,000,000.00) per occurrence for bodily injury and property damage, with any self-insured retention not exceeding \$200,000.00 per occurrence. Said insurance shall protect Collector and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from operations performed pursuant to this Franchise Agreement, whether such operations be by Collector itself, or by its agents, employees and/or subcollectors. Copies of the policies or policy endorsements evidencing the above-required insurance coverage shall be filed with the City Manager. Endorsements that are required to be made a part of all of the insurance policies required by this Section are as follows:

(1) "The City, its employees, agents, officers and consultants are hereby added as insureds as respects liability arising out of activities performed by or on behalf of Collector to the extent of Collector's negligent acts or willful misconduct."

(2) "This policy shall be considered primary insurance as respects any other valid collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."

(3) "This policy shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."

(4) "Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever reason. Such notice shall be sent to the City Manager."

The limits of such insurance coverage, and companies, shall be subject to review and approval by the City Manager every year and may be increased at that time and may match the coverage provided by the City's own liability insurance policy. The City shall be included as an additional insured on each of the policies, or policy endorsements.

All required insurance shall be obtained from a company or companies licensed to do business in the State of California and acceptable to City. Failure of Collector to maintain insurance in the manner and the amounts stated herein and as directed by City Manager, subject to the approval of the City Council, will constitute a material breach of this Agreement.

C. Modification. The insurance requirements provided herein may be modified or waived in writing by the City Manager, provided the City Manager determines that such waiver or modification does not unreasonably increase the risk of exposure to the City, including the fact that the parent of Collector may be self-insured up to a certain acceptable amount.

16. Indemnification.

A. Complete Indemnification of City. All work and performance covered by this Agreement shall be at the risk of Collector.

Collector agrees to defend, save, indemnify and keep harmless the City, its officers, employees, agents, consultants and assigns against any and all liability, claims, judgments, or demands, including demands arising from injuries or deaths of persons and damage to property, including environmental damage, arising directly or indirectly out of the obligations herein undertaken or out of the operations conducted by Collector, save and except for claims, litigation or damages to the extent they arise solely from the negligence or willful misconduct of City, and will make good to and reimburse City for any expenditures, including reasonable attorney's fees, that City may make by reason of such matters and, if requested by City shall defend any such suit at the sole cost and expense of Collector.

The above promise by Collector to indemnify, hold harmless and defend the City expressly includes, but is not limited to, all claims, damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City, its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substances or hazardous Waste at any place where municipal Solid Waste is or has been transported, transferred, processed, stored, disposed of or otherwise come to be located by Collector under Agreement, or the activities of Collector pursuant to this Agreement resulting in a release of hazardous

substances or Waste into the environment. The foregoing is intended to operate, in part, as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify City. The intent of the section is to provide City with the highest level of protection possible under existing and future laws.

B. Defense of Agreement. Should any party successfully challenge the validity of this Agreement, the procedure by which this Agreement was entered into or the validity of any ordinance or resolution which authorizes the City to enter into this Agreement, then in such case the Collector shall have no cause of action for damages or any other relief against City as a result of such successful challenge.

Collector shall have the obligation at its sole cost to defend this Agreement and City. City has no duty to Collector to defend the validity of this Agreement or any provision hereof, but shall reasonably cooperate with Collector in its defense of this Agreement, at no cost to City.

C. AB 939 Indemnification

In addition, Collector shall defend with counsel reasonably acceptable to the City, indemnify and hold the City harmless from any and all fines, penalties and assessments levied against or threatened to be levied against the City for the City's failure to meet the requirements of AB 939, its amendments or any successor legislation and/or all rules and regulations promulgated thereunder if said failure results from Collector's material breach of previously existing Franchise Agreements with City, or its material breach of this Franchise Agreement, including but not limited to failing to timely supply to the City the reports and

information required by the City in order to comply with AB 939 or such other indemnification as may otherwise be authorized by the provisions of Public Resources Code Section 40059.1.

17. Default by Collector and Termination.

A. If the City Manager determines that the Collector's performance pursuant to this Franchise Agreement has not been in conformity with the provisions of this Franchise Agreement, the City Manager may advise Collector in writing of such deficiencies. The City Manager may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction (or the commencement and diligent pursuit of measures reasonably calculated to correct the deficiencies within a reasonable period of time) shall be sixty (60) days from the receipt by Collector of such written notice. Any such notice of default shall expressly refer to Collector's right to appeal the notice of default within thirty (30) days of receipt of the notice. The Collector shall respond to such notice in writing within ten (10) calendar days of receipt of the City Manager's notice. Said response shall detail how and when Collector intends to remedy the default. The City Manager shall review the Collector's response and decide the matter and notify the Collector of that decision, in writing. A decision or order of the City Manager shall be final and binding on Collector if the Collector fails to file a "Notice of Appeal" with the City Manager within thirty (30) days of receipt of the City Manager's decision. Within ten (10) working days of receipt of a Notice of Appeal, the City Manager may meet and confer with Collector regarding any issues in dispute, or refer the appeal to the City Council for proceedings in accordance with Section 17B-C, below.

B. The City Council, in such case, may publicly meet and confer with Collector or shall set the matter for hearing. The City Council shall give Collector, and any other

person requesting the same, at least fourteen (14) days written notice of the time and place of any hearing set pursuant to this paragraph. At the public hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give the Collector, or its representatives and any other interested persons, a reasonable opportunity to be heard.

C. Based on the evidence presented at the public hearing, the Council shall determine by resolution whether the Franchise Agreement should be terminated. If the evidence presented at the public hearing establishes that the Collector has committed a material breach of this Franchise Agreement, the City Council shall make written findings supporting its determinations and, based thereon, may elect to terminate the Franchise Agreement, reduce the rates then being charged by the Collector or take other appropriate action regarding the Franchise Agreement or Collector. Collector's performance under its Franchise is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

D. This right of termination, to reduce rates and/or to take any other appropriate action is in addition to any other rights of City upon a failure of Collector to perform its obligations under this Franchise Agreement.

E. The City, subject to the procedures set forth in Section 17 (A)-(C), further reserves the right to terminate Collector's Franchise, or reduce rates or to take other appropriate action in the event (a) any of the following occurs and (b) Collector fails to commence efforts to timely cure any such deficiencies (except in the case of intentional fraud described in subparagraph 1, in which case no cure period shall apply) within the time period specified in Section 17 (A):

(1) If the Collector practices, or attempts to practice, any intentional fraud upon the City, or makes any intentional material misrepresentations to the City in any of the reports required by this Franchise Agreement.

(2) If the Collector becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Collector in a bankruptcy proceeding.

(3) If the Collector fails to provide or maintain in full force and effect, the workers compensation, liability and indemnification coverages or cash bond as required by the Franchise Agreement.

(4) If the Collector willfully violates any final and binding orders or rulings of any regulatory body having jurisdiction over the Collector relative to this Franchise Agreement; provided, however, that the Collector may contest any orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise Agreement shall be deemed to have occurred, providing a resolution of such contest proceedings.

(5) If the Collector ceases to provide collection service as required under this Franchise Agreement over all or a substantial portion of its Franchise Area for a period of seven (7) days or more, for any reasons within the control of the Collector.

(6) If the Collector willfully fails to make any payments required under the Franchise Agreement and/or refuses to provide City with required information, reports and/or test results in a timely manner as provided in the Franchise Agreement.

(7) Any other act or omission by the Collector which materially violates the terms, conditions or requirements of the Franchise Agreement and which is not corrected or remedied within the time set forth in this Franchise Agreement or, if the Collector cannot reasonably correct or remedy the breach within the time set forth in such notice, if the

Collector should fail to commence to correct or remedy such violation within the time set in such notice and diligently effect such correction or remedy thereafter.

(8) Multiple or repeated breaches, or a pattern of breaches and subsequent attempts to cure said breaches by Collector notwithstanding whether any of the breaches are ultimately cured by the Collector.

F. Any waiver of a breach shall not be deemed to be a waiver of any subsequent breach or to be construed as approval of a course of conduct.

G. Upon the occurrence of a material breach and the declaration of such and termination of this Agreement by the City Manager or City Council, as the case may be, this Agreement and the Franchise granted thereunder shall be of no further force and effect, excepting those provisions concerning City's right to temporarily assume Collector's obligations. City then shall be free to enter into whatever other arrangements are deemed justified and necessary for the collection, removal and disposal of Solid Waste and yard waste, and collection and diversion of Recyclable Materials within the Franchise Area.

18. Annexation to Franchise Area. All territory that may in the future be annexed to the City shall, upon annexation and subject to City's authority and direction to include such territory in this franchise, be included in the territory to be served by the Collector. City shall give notice to Collector of all such annexations.

19. Franchise Transferable; City Consent Required.

A. The franchise granted by this Franchise Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any

person, except the Collector, either by act of the Collector or by operations of law, without the prior written consent of the City expressed by resolution. Any attempt by Collector to assign this franchise without the consent of City shall be void.

B. The City may impose reasonable conditions of approval on a Franchise Agreement transfer, including, but not limited to conditions requiring acceptance of amendments to the City's Ordinances, Resolutions, Orders, Rules and Regulations and this Franchise Agreement, and the payment of a transfer fee to the City.

C. The term "assignment" shall include any dissolution, merger, consolidation or other reorganization of the Collector, which results in change of control of the Collector, or the sale or other transfer by probate proceeding or otherwise of a controlling percentage of Collector's capital stock to a person not a shareholder on the date of the execution of this Agreement.

D. City consent is required for any change in control of Collector. "Change in control" shall mean any sale, transfer or acquisition of Collector. If Collector is a corporation, any acquisition of more than ten percent (10%) of Collector's voting stock by a person, or group of persons acting in concert, who already owns less than 50% of the voting stock, shall be deemed a change in control; provided, however, any transfer of ownership of any or all of the stock or assets of Collector to another wholly-owned subsidiary of Allied Waste Industries, Inc. shall not constitute a change in control.

20. Franchise Transfer; Fees.

A. Any application for a franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by City Resolution, to cover the anticipated cost of all direct and indirect administrative

expenses including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In addition, the Collector shall reimburse the City for all costs not covered by a transfer fee in an amount not to exceed Ten Thousand Dollars (\$10,000.00). City's request for reimbursement shall be supported with evidence of the expense or cost incurred. The applicant shall pay such bills within thirty (30) days of receipt.

B. The franchise transfer fees are over and above any franchise fees specified in this Franchise Agreement and shall not be recoverable costs for rate setting purposes.

21. Emergency. Notwithstanding Collector's exclusive franchise rights as set forth in this Agreement, in the event of an emergency due to natural disaster or labor strike which interrupts the collection of Solid Waste, yard waste and Recyclable Materials by Collector, the City Council shall have the right to declare a temporary suspension of this Agreement for the reasonable duration of the emergency and until such time as City determines that Collector is able to reassume all obligations under this Agreement. In such emergency City may contract on a temporary basis with third parties to perform the obligations of Collector hereunder. Should Collector fail to demonstrate to the satisfaction of the City Council that required services can be resumed by Collector prior to the expiration of a six (6) month period, this Agreement may be terminated at the direction of the Board.

22. Attorney's Fees.

In the event that any party hereto institutes an action or proceeding for a declaration of the rights of the parties under this Franchise Agreement, for injunctive relief, or for an alleged breach or default of, or any other action arising out of, this Franchise Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations

hereunder, whether or not suit is filed or prosecuted to final judgment, the non-defaulting party or prevailing party shall be entitled to reasonable attorney's fees and to any court costs incurred, in addition to any other damages or relief awarded.

23. Hazardous Waste. The parties hereto recognize that federal, state and local agencies with responsibility for defining hazardous Waste, and for regulating the collection, handling or disposing of such substances are continually providing new definitions, tests and regulations concerning these substances. Under this Agreement, it is Collector's responsibility to keep current with the regulations and tests on such substances and to identify such substances and to comply with all federal, state and local regulations concerning such substances.

24. Annual Review of Performance and Quality of Service.

A. From time to time, at its sole discretion, City may examine Collector's operation in order to evaluate whether or not the Collector is operating at a satisfactory level of efficiency and customer satisfaction.

Collector agrees to cooperate in any such examination and shall permit City representatives to inspect, at Collector's principal place of business, such information pertaining to Collector's obligations hereunder as City may require, including, but not limited to, such things as customer inquiry records, collection routes and equipment records. Access to Collector's records shall be subject to Section 11.

B. At City's sole option, within ninety (90) days of the first anniversary of the effective date of this Franchise Agreement, and each year thereafter throughout the term of the Franchise Agreement, City may hold a public hearing at which the Collector shall be present and shall participate, to review the Collector's performance and quality of service. The reports required by this Franchise Agreement regarding customer complaints shall be utilized as the

basis for review. In addition, any customer may submit comments or complaints during the review meetings, either orally or in writing, and these shall be considered.

C. Within thirty (30) days after the conclusion of the public hearing, City shall issue a report with respect to the adequacy of performance and quality of service. If any noncompliance with the Franchise is found, City may direct Collector to correct the inadequacies or initiate proceedings in accordance with Section 17.

D. (1) Collector shall provide prompt, efficient, continuous and professional service to its customers.

(2) Upon the request of the City, as part of the Annual Review of Performance described above, and not less than six (6) months prior to Collector's notice of contract renewal, assignment or extension of term, Collector shall conduct a survey or surveys of all customers to determine their satisfaction with Collector's service, including, without limitation, response to customer complaints. The survey methodology, format and content shall be subject to the prior review and approval of the City Manager. A copy of the survey results shall be sent to the City within sixty (60) days of completion of the survey. Nothing in this paragraph shall limit the right of the City to conduct additional surveys. The Collector shall cooperate with the City in such cases.

(3) At least once a year, Collector shall send or deliver to its customers information concerning the conditions of service, including, but not limited to, rates, fees, charges, service options, payment options, discounts (if any), days of collection, the amount and manner of refuse to be collected, the amount and manner of Recyclable Materials to be collected, service level and inquiry/complaint procedures, including the name, address and local telephone

number of Collector. The form and content shall be subject to the review and approval of the City Manager.

25. System and Services Review. To provide for technological, economic, and regulatory changes in Solid Waste collection, to facilitate renewal producers, to promote competition in the Solid Waste industry, and to achieve a continuing, advanced Solid Waste collection system, and the collection and marketing of Recyclable Materials, the following system and services review procedures are hereby established.

A. At City's sole option, City may hold a public hearing on or about the first anniversary date of the Franchise Agreement in which it reviews the collection systems and services. Subsequent system and services review hearings may be scheduled by City each two (2) years thereafter. It is City's intent to conduct any system and services review concurrently with any Annual Review of Performance and Quality of Service as provided for in Section 24, above.

B. Sixty (60) days after receiving notice from the City, Collector shall submit a report to City indicating the following:

(1) All Solid Waste collection and Recycling services reported in Solid Waste collection and Recycling industry trade journals that are being commonly provided on an operational basis, excluding tests and demonstrations, to communities in the United States with comparable populations, that are not provided by Collector to City; and

(2) Changes recommended to improve the City's ability to meet the goals of AB 939; and

(3) Any specific plans for provision of such new services by the Collector along with the estimated expenses and adjustments to rates necessary to compensate

Collector for providing such services, or a justification indicating why Collector believes that such services are not feasible for the Franchise Area; and

(4) A capital and equipment purchasing and improvement plan, covering at least the following two (2) years, in which is described, among other things, the nature of the capital and equipment which Collector proposes to acquire, estimated costs of same and the likely effect said plan will have on rates.

C. Topics for discussion and review at the system and services review hearing shall include, but shall not be limited to, services provided, customer complaints, rights of privacy, amendments to the Franchise Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals and regulatory constraints.

D. City and the Collector may each select additional topics for discussion at any system and services review hearing. The Collector agrees to cooperate in any such examination and shall provide for inspection to the City or its designated representatives, at the Collector's principal place of business, such information as the City may require, including but not limited to such things as collection routes and equipment records.

E. Not later than sixty (60) days after the conclusion of each system and services review hearing, City shall issue a report. The report shall summarize the systems and services review hearing and address services not being provided to City that are considered technically economically feasible by City. City may require the Collector to provide such services within a reasonable time, for reasonable rates and compensation.

26. Public Access to Collector.

A. Office Hours. Collector's office hours shall be at a minimum, from 8:00 a.m. to 4:30 p.m. daily, on all collection days. Collector shall maintain a toll-free area code

phone ~~number~~. A representative of Collector shall be available during office hours for communication with the public at Collector's principal office which shall be located at 441 N. Buchanan Circle, Pacheco, California. Collector shall also maintain an after hours telephone number for use during other than normal business hours. Collector shall have a representative or answering service or recorded message with an emergency phone number available at said after-hours telephone number during all hours other than normal office hours.

B. Service Complaints.

(1) All customer complaints shall be directed to Collector. Collector shall record all complaints received by mail, by telephone or in person (including date, name, address of complainant and nature of complaint). Collector agrees to use its best efforts to resolve all complaints by close of business of the second business (Waste collection) day following the date on which such complaint is received. Service complaints may be investigated by the City Manager or the City Manager's designee. Unless a settlement satisfactory to complainant, the Collector and the City Manager's designee is reached, the complainant may refer the matter to the City Manager for review.

(2) Collector will maintain records listing the date of customer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Collector to resolve the complaint. All such records shall be maintained for a period of twenty-four (24) months and a complaint summary report shall be prepared by Collector and mailed monthly to the City Manager.

C. Government Liaison Person. The Collector shall designate a "government liaison person" who shall be responsible for working with the City Manager or the City Manager's designated representative to resolve consumer complaints. Unless a settlement

satisfactory to complainant, the Collector and the City Manager's designee is reached, the complainant may refer the matter to the City Manager for review.

D. Regular Meetings with City. Periodically upon request from City Manager, Collector shall meet with City representatives at the City's headquarters to discuss matters of mutual concern including but not limited to, problems in Collector's service, compliance with AB 939 and future planning. The person attending these meetings in behalf of the Collector shall be vested with sufficient authority to make decisions binding on the Collector.

27. Notice Provisions. All notices required or permitted to be given under this Franchise Agreement shall be in writing and shall be personally delivered or sent by telecopier or United States certified mail, postage prepaid, return receipt requested, addressed as follows:

To City Manager:

Gary A. Napper
City Manager
City of Clayton
6000 Heritage Trail
Clayton, CA 94517-1250

Copy to City Legal Counsel

Turner, Huguet & Adams
Attorneys at Law
P. O. Box 110
Martinez, CA 94553

To Collector:

Pleasant Hill Bayshore Disposal, Inc.
Attention: Tim Argenti
441 N. Buchanan Circle
Pacheco, CA 94553

Copy to:

Tom Bruen
Bruen & Burke
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telecopier Number (925) 295-3132

or to such other address as either party may from time to time designate by notice to the other given in accordance with this Section. Notice shall be deemed effective on the date personally

served or sent by telecopier or, if mailed, three (3) business days from the date such notice is deposited in the United States mail.

28. General Provisions.

A. Force Majeure. Collector shall not be in default under this Franchise Agreement in the event that the collection, transportation and/or disposal services of Collector are temporarily interrupted or discontinued for any of the following reasons: riots, wars, sabotage, civil disturbances, insurrection, explosion, natural disasters such as floods, earthquakes, landslides and fires, or other catastrophic events which are beyond the reasonable control of Collector. Events of force majeure and "other catastrophic events" do not include labor disturbances, the financial inability of the Collector to perform each and every obligation of Collector or failure of the Collector to obtain any necessary permits or licenses from other governmental agencies or Collector's inability to obtain or maintain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Collector.

1. Labor Disturbance. Notwithstanding anything in subsection A. above to the contrary, in the event a labor disturbance interrupts collection, transportation and/or disposal of Solid Waste or Recyclable Materials by Collector as required under this Franchise Agreement, City may elect to exercise its rights under Section 20 of this Franchise Agreement only upon the expiration of fourteen (14) calendar days from the commencement of a service interruption due to a labor disturbance. "Labor disturbance" includes, without limitation, strikes, lockouts, sick-outs, or similar actions."

B. Independent Contractor. Collector is an independent contractor and not an officer, agent, servant or employee of City. Collector is solely responsible for the acts and omissions of its officers, agents, employees, Collector and subcollectors, if any. Nothing in this

Franchise Agreement shall be construed as creating a partnership or joint venture between City and Collector. Neither Collector nor its officers, employees, agents or subcollectors shall obtain any rights to retirement or other benefits that accrue to City employees.

C. Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees, Collector or subcollectors of the Collector to private or public property shall be promptly repaired or replaced by Collector, at Collector's sole expense.

D. Right of Entry. Collector shall have the right, until receipt of written notice revoking permission to pass is delivered to Collector, to enter or drive on any private street, court, place, easement or other private property for the purpose of collecting or transporting Solid Waste pursuant to this Franchise Agreement.

E. Law to Govern; Venue. The law of the State of California shall govern this Franchise Agreement. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Contra Costa. In the event of litigation in a U. S. City Court exclusive venue shall lie in the Northern City of California.

F. Fees and Gratuities. Collector shall not, nor shall it permit any agent, employee or subcollector employed by it to, request, solicit, demand or accept, either directly or indirectly, any compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Franchise Agreement.

G. Amendment or Modification. This Agreement may be amended or modified upon and only by written agreement of the parties hereto. The parties agree to meet and confer in good faith if amendments or modifications are proposed.

H. Savings Clause and Entirety. If any non-material provision of this Franchise Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or

unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Franchise Agreement.

I. 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 or violation of the same or any other provision. The acceptance of any monies that 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.

J. Survival of Obligations. Obligations of this Agreement which embody continuing obligations, including but not limited to Section 16 (Indemnification) shall survive the termination or expiration of this Agreement.

K. New Agreement. Upon the effective date of this Agreement, all other Agreements between the parties for the provisions of Solid Waste and/or Recycling services within the Franchise Area are superseded except that all continuing obligations under said superseded agreements shall continue in full force and effect for the periods covered by said superseded agreements.

L. Entire Agreement. This Agreement represents the full and entire agreement between the parties hereto with respect to the matters covered herein.

M. Joint Drafting. The parties to the Franchise Agreement drafted this Franchise Agreement jointly.

N. Contest of Agreement's Terms by the Parties. In the event either party to this Agreement attempts to challenge the validity of any portion of this Agreement, such action in attempting to challenge the Agreement shall constitute a material breach of this Agreement

and the non-breaching party shall have the right to elect to terminate forthwith without suit or other proceeding.

O. Binding on Successors. The terms of this Agreement are binding upon the respective successors and assigns of the parties.

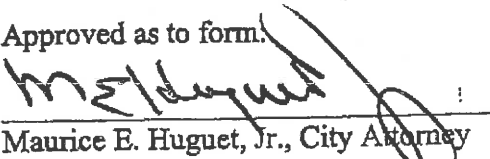
WITNESS the execution of this Agreement on the day and year first written above.

Attest:

CITY OF CLAYTON

Rhonda Basore
Rhonda Basore, City Clerk

By: 
Gregory J. Manning, Mayor

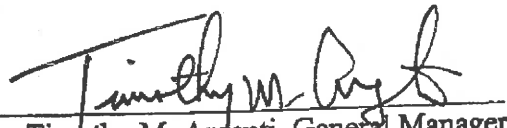
Approved as to form:

Maurice E. Huguet, Jr., City Attorney

By: 
Gary A. Napper, City Manager

Approved as to form:

PLEASANT HILL BAYSHORE DISPOSAL, INC.

Thomas M. Bruen
Thomas M. Bruen
Attorney for Collector

By: 
Timothy M. Argenti, General Manager

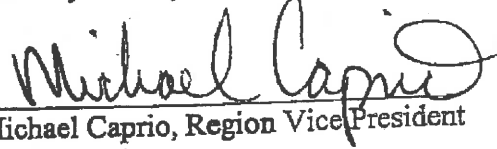
By: 
Michael Caprio, Region Vice President
Pacific Region

EXHIBIT A
Rules and Rates for Residential, Commercial and Multi-Family Solid Waste,
Yard Waste and Recyclables Collection
 Effective 01 July 2002

BASIC RESIDENTIAL SERVICE

One	20 gal refuse cart weekly service	\$ 9.06
	64 gal recyclable cart weekly service	\$ 3.65
	64 gal yard waste cart weekly service	<u>\$ 5.05</u>
		\$17.76
One	32 gal refuse cart weekly service	\$10.13
	64 gal recyclable cart weekly service	\$ 3.65
	64 gal yard waste cart weekly service	<u>\$ 5.05</u>
		\$18.83
One	64 gal refuse cart weekly service	\$18.89
	64 gal recyclable cart weekly service	\$ 3.65
	64 gal yard waste cart weekly service	<u>\$ 5.05</u>
		\$27.59
One	96 gal refuse cart weekly service	\$21.42
	64 gal recyclable cart weekly service	\$ 3.65
	64 gal yard waste cart weekly service	<u>\$ 5.05</u>
		\$30.12

YARD WASTE EXEMPT RESIDENTIAL SERVICE

One	20 gal refuse cart weekly service	\$ 9.06
	64 gal recyclable cart weekly service	<u>\$ 3.65</u>
		\$12.71
One	32 gal refuse cart weekly service	\$10.13
	64 gal recyclable cart weekly service	<u>\$ 3.65</u>
		\$13.78
One	64 gal refuse cart weekly service	\$18.89
	64 gal recyclable cart weekly service	<u>\$ 3.65</u>
		\$22.54
One	96 gal refuse cart weekly service	\$21.42
	64 gal recyclable cart weekly service	<u>\$ 3.65</u>
		\$25.07

RECYCLING ONLY CUSTOMERS

One	64 gal recyclable cart weekly service	\$ 3.65
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Clayton		Commercial Rates			
	Service				
1yd	1 x per week	110.00			
	2 x per week	222.01			
	3 x per week	333.00			
	4 x per week	444.06			
	5 x per week	555.01			
2yd	1 x per week	170.91			
	2 x per week	341.76			
	3 x per week	512.65			
	4 x per week	683.56			
	5 x per week	854.41			
3yd	1 x per week	230.81			
	2 x per week	461.63			
	3 x per week	692.44			
	4 x per week	923.25			
	5 x per week	1,154.05			
32 Gal	1 x per week	18.91			
	2 x per week	37.82			
	3 x per week	56.72			
	4 x per week	75.63			
	5 x per week	94.54			
64 Gal	1 x per week	31.09			
	2 x per week	71.71			
	3 x per week	112.29			
	4 x per week	152.85			
	5 x per week	193.49			
96 Gal	1 x per week	46.07			
	2 x per week	100.73			
	3 x per week	155.48			
	4 x per week	210.25			
	5 x per week	265.02			
Clayton Roll-Off Rates					
COMPACT RATE	MINIMUM MONTHLY	REGULAR RATE	Excess Tonnage	TON LIMIT	DAYS
\$ 271.84	\$ 349.49	\$ 192.50	\$ 343.28	\$ 68.98	1 3

RESIDENTIAL SOLID WASTE SERVICES

1. PHBD shall provide each City resident with a 20, 32, 64 or 96-gallon cart for weekly solid waste service. PHBD shall have sufficient reserves of carts to allow for future changes in customer cart size preferences and carts that are stolen or lost. PHBD shall automate the City's residential refuse collection operations in areas where automation is determined feasible. This service shall be implemented at a mutually agreed upon time between the Contractor and the City no sooner than August 1, 2002.

2. Twice each calendar year, any single family residential unit customer may call PHBD to have the customer's solid waste collected with a two cubic yard quantity (equivalent to fourteen 32 gallon bags) and subject to materials and weight limitations – such limitations are subject to prior approval by the City:

- ◆ Articles shall be placed at the curb the night before scheduled service day
- ◆ All items shall be placed in disposable boxes, bags or containers. All containers shall be taken.
- ◆ No more than 50 pounds of items in any one container
- ◆ Prunings shall be trimmed to less than 4 feet in length and shall be boxed or tied with strong cord. Loose piles shall not be picked up.
- ◆ No dirt, rocks or concrete
- ◆ No large auto parts (transmission blocks, engines, etc.), appliances (stoves, freezers, etc.) or large furniture
- ◆ TV, computer monitors or other CRT's
- ◆ Tires
- ◆ Mattresses

3. PHBD shall provide extra or special bulky item pickups as needed and upon request by customers at an additional charge.

RESIDENTIAL RECYCLING SERVICES

1. PHBD shall provide weekly, same day as yard waste and solid waste collection service, the collection of recyclables including metal containers, aluminum, tin, bi-metal, ferrous and nonferrous cans, empty and dry latex paint cans, aerosol containers, aluminum foil, pie plates, glass bottles and jars of all colors, small-neck household, food and beverage plastic containers with the #1-#7 recycling symbols, polycoated paper containers such as milk and juice cartons, newspapers, cardboard, magazines, white and colored paper, phone books, junk mail and chipboard such as cereal and show boxes. PHBD shall distribute one new 64 gallon recycling cart to all City residential customers prior to program implementation. PHBD shall automate the City's residential recycling collection operations in areas where automation is determined feasible as of program implementation.

2. PHBD shall provide curbside collection of used motor oil and oil filters. Motor oil shall be poured into clear plastic containers with secure lids, sealed and placed next to

recycling cart. Maximum of 3 gallons of oil per pickup. Oil filters shall be removed and drained and placed into a clear, heavy plastic sealable bag (such as a Ziploc freezer bag) and placed next to the recycling cart.

3. PHBD shall provide each City resident with one 64-gallon yard waste cart for automated collection where feasible. Acceptable material includes grass clippings, brush, weeds and leaves, hay, straw, prunings, tree trimmings and tree branches up to 6 inches in diameter and 3 feet in length. Not acceptable material includes plastic bags, rocks, concrete, sod and dirt, loose fruits and vegetables, large tree trunks/stumps/palm fronds, pet waste and tree branches over 6 inches in diameter and 3 feet in length.

All yard waste material collected by PHBD shall be used for alternative daily cover (ADC) as currently allowed by state laws and regulations at the Keller Canyon Landfill Company. PHBD and the City agree that yard waste shall be a mandatory service unless a residence meets all the following criteria and submits an Application to Request Exemption from Curbside Green Waste/Yard Waste Program and receives approval from the city for an exemption:

1. Residence is an attached residential structure, (i.e., duet, attached residence/townhome; condo)
2. Front yard of property is maintained by a Home Owner's Association and is not the maintenance responsibility of the owner/occupant.
3. Rear/side yard area; that area enclosed, fenced or otherwise designated for the exclusive use of the owner/occupant, contains less than 400 square feet of landscape area.
4. Within the private yard, any area greater than 400 square feet of landscaping must be permanent impervious material (i.e. cement patio, concrete, wood deck) NOT temporary pavers, decorative rock, dirt, etc.

4. Four times each calendar year, any single-family residential unit customer may call PHBD to have the customer's extra yard waste and extra cardboard picked up. Collection guidelines are as follows:

- ◆ Place extra leaves and yard clippings in containers that have handles and are 32 gallons or less in volume. Maximum 50 pounds per container. Yard waste containers will be not taken away.
- ◆ Acceptable yard waste the same as in residential curbside collection service.
- ◆ Tree branches and prunings must be 3 feet or less in length and 6 inches or less in diameter.
- ◆ Cardboard must be flattened and trimmed to 3 feet or less on each side. Bundle with cord or string.
- ◆ Place bundled cardboard or yard waste containers at the curb before 5 am of scheduled on-call pickup day or leave at the curb the night before.
- ◆ Keep extra material at least 4 feet away from carts.

MULTIFAMILY SOLID WASTE & RECYCLING SERVICES

1. PHBD shall provide multi-family units with can service a 32, 64 or 96 gallon cart for weekly solid waste serviced on a date mutually agreed upon by the Contractor and the City. PHBD shall also provide these units with a 64 gallon recycling cart unless other arrangements have been made due to size and space limitations. The same materials shall be collected as in the single-family residential curbside recycling program.

2. PHBD shall provide multifamily complexes which are considered commercial accounts with 1-3 yard bin service accounts, serviced no less than once a week. PHBD shall also provide these units with recycling carts and collect the same materials as in the single-family curbside recycling program.

EXHIBIT B
Collection at Clayton City Facilities

Collection at all listed facilities shall occur not less than once a week as requested by the City:

<u>Address</u>	<u>Name</u>	<u>Equipment Service</u>
6000 Heritage Trail	City Hall/Police Station	carts
N. Regency Drive	Community Park	containers
6125 Clayton Road	Community Library	carts
6008 Center Street	Endeavor Hall	container

<u>Address</u>	<u># Roll-off Boxes</u>	<u>Service Level</u>
Main Street-Keller House	1	On-call
5901 Heritage Trail	2	On-call

RESOLUTION NO. 50-2005

**A RESOLUTION AUTHORIZING EXECUTION OF AMENDMENT NO. 1 TO THE
RESTATED AND AMENDED FRANCHISE AGREEMENT BETWEEN THE CITY OF
CLAYTON AND PLEASANT HILL BAYSHORE DISPOSAL, INC., FOR SOLID
WASTE AND RECYCLABLE MATERIALS MANAGEMENT SERVICES**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, the City of Clayton entered into an Agreement, dated July 2, 2002 for the collection, transportation, disposal and diversion of solid waste and recyclable materials (the "Agreement"); and

WHEREAS, the Agreement was executed by Pleasant Hill Bayshore Disposal, Inc.; and

WHEREAS, Pleasant Hill Bayshore Disposal, Inc. in fact is and was a fictional business name registered to Allied Waste Systems, Inc., in Contra Costa County; and

WHEREAS, both parties wish to clarify that Allied Waste Systems, Inc., dba Pleasant Hill Bayshore Disposal, Inc., is the Franchisee and Collector (as defined in the Agreement); and

WHEREAS, both parties wish to amend the Agreement as follows:

A. The title of the Agreement shall be amended and replaced to read as follows:

**"RESTATED AND AMENDED FRANCHISE AGREEMENT BETWEEN
THE CITY OF CLAYTON AND ALLIED WASTE SYSTEMS, INC., d/b/a
PLEASANT HILL BAYSHORE DISPOSAL, INC. FOR SOLID WASTE
AND RECYCLABLE MATERIALS MANAGEMENT SERVICES."**

B. The first paragraph of the Agreement shall be amended and replaced to read as follows:

"THIS FRANCHISE AGREEMENT is entered into this 2nd day of July 2002 between the City of Clayton, a California municipal corporation, hereinafter referred to as "City", and Allied Waste Systems, Inc., d/b/a Pleasant Hill Bayshore Disposal, Inc., a Delaware corporation and subsidiary of Allied Waste Industries, Inc., hereinafter referred to as "Franchisee" or "Collector", for the collection, transportation, disposal and diversion of Solid Waste and Recyclable Materials."

C. Section 27 of the Agreement shall be amended by deleting the words "Pleasant Hill Bayshore, Inc." and replacing them with "Allied Waste Systems, Inc." and deleting the words "Bruen & Burke" and replacing them with "Law Offices of Thomas Bruen."

NOW, THEREFORE, BE IT RESOLVED it being agreeable by the City Council of Clayton, CA and the Franchisee as follows:

Section 1. The Mayor is hereby authorized to execute Amendment No. 1 to the Restated and Amended Franchise Agreement, a copy of which is attached to this Resolution; and

Section 2 This Resolution shall and does take immediate effect from and after its passage and adoption.

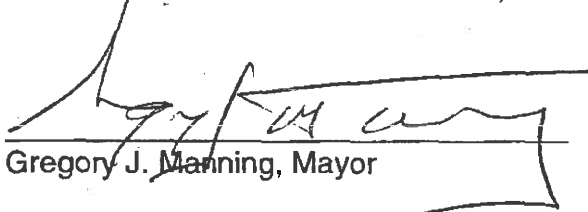
PASSED, APPROVED AND ADOPTED by the City Council of the Clayton, California at a regular meeting thereof held the 6th day of September 2005 by the following recorded vote:

AYES: Councilmember Laurence, Pierce, Walcutt, Vice Mayor Shuey and Mayor Manning.

NOES: None.


ABSENT: None.

THE CITY COUNCIL OF CLAYTON, CA



Gregory J. Manning, Mayor

ATTEST:



Rhonda K. Basore, City Clerk

**AMENDMENT NO. 1 TO THE RESTATED AND AMENDED FRANCHISE
AGREEMENT BETWEEN THE CITY OF CLAYTON AND PLEASANT HILL
BAYSHORE DISPOSAL, INC. FOR SOLID WASTE AND RECYCLABLE
MATERIALS MANAGEMENT SERVICES.**

This AMENDMENT NO. 1 is made and entered into this 6th day of Sept, 2005 by and between the City of Clayton, a California municipal corporation, hereinafter referred to as "City" and Allied Waste Systems, Inc., d/b/a Pleasant Hill Bayshore Disposal, Inc.

WHEREAS, Clayton and Allied have entered into a an agreement, dated July 2, 2002 for the collection, transportation, disposal and diversion of Solid Waste and Recyclable Materials (the "Agreement"); and

WHEREAS, the Agreement was executed by Pleasant Hill Bayshore Disposal, Inc.; and

WHEREAS, Pleasant Hill Bayshore Disposal, Inc. is a fictional business name registered to Allied Waste Systems, Inc. in Contra Costa County, CA; and

WHEREAS, both parties wish to clarify that Allied Waste Systems, Inc., d/b/a Pleasant Hill Bayshore Disposal, Inc. is the Franchisee and Collector (as defined in the Agreement); and

WHEREAS, both parties wish to amend the Agreement.

NOW THEREFORE, IT IS MUTUALLY AGREED by both parties that the Agreement is amended to read as follows:

1. The title of the Agreement is amended and replaced to read as follows:

**"RESTATED AND AMENDED FRANCHISE AGREEMENT
BETWEEN THE CITY OF CLAYTON AND ALLIED WASTE
SYSTEMS, INC., d/b/a PLEASANT HILL BAYSHORE DISPOSAL,
INC. FOR SOLID WASTE AND RECYCLABLE MATERIALS
MANAGEMENT SERVICES."**

2. The first paragraph of the Agreement is amended and replaced to read as follows:

"THIS FRANCHISE AGREEMENT is entered into this 2nd day of July, 2002 between the City of Clayton, a California municipal corporation, hereinafter referred to as "City", and Allied Waste Systems, Inc., d/b/a Pleasant Hill Bayshore Disposal, Inc., a Delaware corporation and subsidiary of Allied Waste Industries, Inc., hereinafter referred to as "Franchisee" or "Collector", for the collection, transportation, disposal and diversion of Solid Waste and Recyclable Materials."

3. Section 27 of said document shall be amended by deleting the words "Pleasant Hill Bayshore, Inc." and replacing them with "Allied Waste Systems, Inc." and deleting the words "Bruen & Burke" and replacing them with "Law Offices of Thomas Bruen."

ALLIED WASTE SYSTEMS, INC.

By: _____

Print Name: _____

Title: _____

CITY OF CLAYTON, CA

By:  _____

Print Name: Gregory J. Manning

Title: Mayor

ATTEST:

Rhonda K Basore
Rhonda K. Basore, City Clerk

APPROVE AS TO FORM:

City Attorney

Thomas M. Bruen
Counsel for Collector

**AMENDMENT NO.2 TO RESTATED AND AMENDED FRANCHISE
AGREEMENT BETWEEN THE CITY OF CLAYTON AND ALLIED WASTE
SYSTEMS, INC., FOR SOLID WASTE AND RECYCLABLE MATERIALS
MANAGEMENT SERVICES**

This Amendment No. 2 to the Restated and Amended Franchise Agreement ("Amendment") is entered into effective 17 August, 2011 between the City of Clayton, a municipal corporation ("City"), and Allied Waste Systems, Inc., a Delaware Corporation registered to do business in California, an indirect subsidiary of Republic Services, Inc. ("Collector").

Recitals

WHEREAS,

- A. The City and Pleasant Hill Bayshore Disposal, Inc., Collector's predecessor in interest, entered into a Restated and Amended Franchise Agreement, dated July 2, 2002.
- B. City and Collector entered into Amendment No. 1 to the Restated and Amended Franchise Agreement on or about September 6, 2005, confirming and clarifying that Allied Waste Systems Inc., dba Pleasant Hill Bayshore Disposal Inc., was the Franchisee and Collector, which action was approved by City Resolution No. 50-2005.
- C. Effective December 5, 2008, Allied Waste Industries Inc., the indirect owner of Collector's parent company, Allied Waste North America, Inc., was merged into Republic Services, Inc. Collector Allied Waste Systems, Inc. has continued to operate as a subsidiary of Allied Waste Industries Inc. under the same current management and in compliance with the terms of the Agreement, which said merger was approved by the City on or about September 15, 2009 by City Resolution No. 37-2009.
- D. Section 19 of the Agreement authorizes an assignment of the Agreement, subject to City's consent.
- E. City has consented to the assignment of the Agreement and the franchise rights to Collector, subject to the terms of this Amendment.
- F. City and Collector agree the franchise rights of the Agreement shall expire on December 31, 2012, without further action.
- G. City and Collector have agreed to a time extension of the Agreement as amended, (The Agreement) subject to the terms and conditions of this Amendment No. 2.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises contained herein, the parties agree as follows:

1. Section 1 of the Agreement is amended as follows:

The Term of the Agreement shall expire at midnight on December 31, 2022.

2. Section 4 of the Agreement is amended in its entirety effective immediately to read as follows:

Administrative Services and Franchise Fees; Community Enhancement Fee. Effective the next collector billing cycle for customer services in Clayton following approval of this amended Agreement, and as consideration for this franchise granted by City for use of its public rights of way, and to partially reimburse the City for its costs in overseeing this agreement and for services and programs pertaining thereto, Collector shall pay to the City a total annual franchise fee of ten percent (10%) of Collector's gross receipts from customer services provided under this Agreement to residential, commercial and industrial customers within the City limits of Clayton. The franchise fee shall be paid quarterly within 30 thirty (30) days after the end of each calendar quarter and shall be based upon actual gross receipts of Collector for the proceeding calendar quarter.

As further consideration for the extension of the Term of the Agreement, Collector shall, by January 15, 2013, pay to the City a Community Enhancement Fee in the amount of \$100,000.

3. Section 6 of the Agreement is amended to insert the following new paragraph at the end of 6.A.:

Effective the next collector billing cycle for customer services in Clayton following approval of this amended Agreement, Collector will charge up to the maximum service rates as set forth in Exhibit A attached hereto. Commencing effective on January 1, 2013, and every January 1st thereafter during the Term, the Collector's maximum monthly collection rates inclusive of landfill fees shall be increased automatically by an amount equal to ninety percent (90%) of the percentage increase in the Consumer Price Index for the San Francisco Bay Area- All Urban Consumers (base year: 1982-84) during the most recent twelve month period prior to the January 1 rate adjustment date for which such data is available ("CPI"), subject to the following minimum guaranteed rate increase and the maximum rate cap: regardless of the actual applicable change in the CPI, Collector shall receive at least a one percent (1%) increase in its rates every January 1st and Contractor's rates shall not increase more than five percent (5%) at any such annual CPI adjustment.

4. Section 7 of the Agreement is replaced and amended to read in its entirety:

7. Landfill Capacity. Collector agrees to reserve and provide disposal capacity at the Keller Canyon Landfill for all Solid Waste and Yard Waste collected within the franchise area during the term of this Agreement.

5. Section 9 of the Agreement shall be amended to add a new sentence at the end as follows:

Any collection vehicles that are replaced during the term of the Agreement shall be replaced with collection vehicles that use Natural Gas fuel.

6. Section 15. A. is amended to read in its entirety as follows:

Workers' Compensation Insurance. Collectors shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accordance with the provisions and requirements of the Labor Code of the State of California. Said workers' compensation insurance shall include the following endorsement: "All rights of subrogation are hereby waived against the City, its officers and employees acting within the scope of their appointment or employment." Policy endorsements that implement the required coverage shall be filed and maintained with the City Manager throughout the term of this Franchise Agreement.

7. Section 16. of the Agreement is replaced and amended to read in its entirety:

16. Indemnification.

a. **Indemnification.** Contractor shall indemnify, defend and hold harmless City, its officers, directors, employees, volunteers and agents (collectively "indemnities") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with:

- (1) the alleged negligence or willful misconduct of Contractor, its officers, employees, agents and/or subcontractors in performing services under this Agreement;
- (2) the failure of Contractor, its officers, employees, agents and/or sub contractors to comply with applicable laws (including, without limitation, environmental laws) and regulations, and/or applicable permits and licenses;
- (3) the acts of Contractor, its officers, employees, agents and/or subcontractors in performing collection services under this Agreement for which strict liability is imposed by law (including, without limitation, environmental laws).

The foregoing indemnity applies regardless of whether the loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnities' negligence, except this indemnity shall be limited to exclude coverage for intentional wrongful acts and active negligence of indemnities. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to the City) the City, its officers, directors, employees, and agents against any claims, actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any events described in the immediately preceding paragraph.

Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

b. Hazardous Substances Indemnification. Contractor shall indemnify, defend with counsel selected by City, protect and hold harmless the City, its officers, directors, employees, volunteers, and agents (collectively, "indemnitees") from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all responses, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, hazardous waste, and/or house hazardous waste (collectively, "waste") at any places where Contractor transports, processes, stores or disposes of the Solid waste, and/or construction and street debris, or other waste collected under this Agreement. This indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional wrongful acts and active negligence of indemnitees. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provision in this Agreement and is intended to survive the end of the term of this Agreement. Nothing in this paragraph shall prevent the Contractor from seeking indemnification or contribution from persons or entities other than indemnitees, for any liabilities incurred by the Contractor, or the indemnitees. As appropriate, the parent company should provide the guarantees necessary to meet this provision. All costs of Contractor incurred in providing this indemnification and in defense of itself and related party entities, shall be disallowed for purposes of setting rates under this Agreement.

c. Proposition 218 Indemnification. City intends to comply with all applicable laws concerning the setting of maximum rates under this Agreement. Nonetheless, Contractor shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Contractor or any of the indemnitees resulting in any form from the City's setting of maximum rates for service under this Agreement or in connection with

the application of California Constitution Article XIII C and Article XIII D to the imposition, payment or collection of rates and fees for services provided by Contractor under this Agreement. Nothing herein is intended to imply that California Constitution Articles XIII C or XIII D, apply to the setting of rates for the services provided under this Agreement; rather this section is provided merely to allocate risk of loss as between the parties.

d. AB 939/SB1016 Indemnification. The Contractor agrees to indemnify and hold harmless City, its officers, directors, employees and agents from and against all fines and/or penalties imposed by the CalRecycle if the source reduction and recycling goals or any other requirement of AB 939/SB1016 or any future diversion or disposal requirements are not met by City with respect to the waste stream collected under this Agreement and such failure is due to the failure of Contractor to meet any obligation under this Agreement, including delays in providing information that prevents City from submitting reports required by AB 939/SB1016 in a timely manner.

In interpreting the foregoing AB 939/SB1016 indemnification provision, Contractor and City are cognizant of Public Resources Code 40059.1 and agree that the intent of this Agreement is to provide Contractor with the breadth of rights and responsibilities to allow the City to meet its AB 939 diversion requirements through implementation of Contractor's programs. The program and services to be carried out by Contractor under this Agreement, as more particularly outlined in the service specifications (Exhibit A), are intended and expected to allow the City to meet its AB 939 diversion requirements, provided all programs are carried out consistently and competently, and with an aggressive program of outreach and customer education. Reliance by the City on Contractor's ability to provide programs and services that will consistently provide for City's compliance with AB 939 diversion requirements constitutes a material consideration for City to grant the exclusive rights and privileges contained herein.

8. Section 27 shall be amended by inserting the name of the new City Attorney when appointed.

9. New Section 29 shall be added to the Agreement as follows:

The Collector shall provide at no charge reasonable assistance to the City in the enforcement of any mandatory commercial recycling ordinance enacted by the City. Collector agrees to provide the mandatory commercial recycling services enacted by the City at no cost to the commercial customer.

10. Paragraph 3 of the Residential Solid Waste Services section of Exhibit A to the Agreement shall be amended to read in its entirety as follows:

Collector shall provide extra pickups as needed and upon request by customers at no additional charge. Collector shall provide special bulky item pickups for items such as large appliances and furniture as needed and upon request for no additional charge.

11. The following paragraphs will be added to the Residential Solid Waste Services section of Exhibit A to the Agreement and became effective on the signing of the extended Agreement:

4. Collector shall provide customer curbside collection of electronic waste (E Waste) at no additional charge. Collector shall provide customer curbside collection of household batteries and compact fluorescent bulbs at no additional charge.

5. Collector shall collect at no charge to City illegally dumped non-hazardous waste reported to the Collector.

12. Paragraph 1 of the Residential Recycling Services section of Exhibit A to the Agreement shall be amended to add the following language, effective at the signing of the extended Agreement:

Collector shall, at a resident's request, provide and service a 96-gallon recycling cart for residents in lieu of a 64- gallon recycling cart for no additional charge. Collector shall, at a resident's request, provide and service one additional 64-gallon recycling cart at no additional charge.

Collector shall provide extra pickups for recyclable material as needed and upon request by customers at no additional charge.


Collector shall provide unlimited residential curbside collection of recyclable materials.

13. Paragraph 3 of the Residential Recycling Services section of Exhibit A to the Agreement shall be amended to add the following language:

Collector shall, at a customer's request, provide and service a 96-gallon yard waste cart in lieu of a 64- gallon yard waste cart for no additional charge. Collector shall, at a customer's request, provide and service one additional 64-gallon yard waste cart at no additional charge.

14. Except as expressly amended by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.


Attest:


Laci Jackson, City Clerk

Approved as to form:



City Attorney

CITY OF CLAYTON

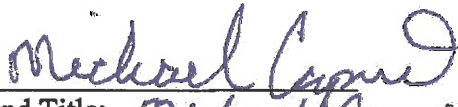
By: 
David T. Shuey, Mayor

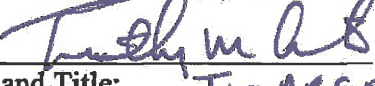
By: 
Gary A. Napper, City Manager

APPROVED AS TO FORM:

By: 
Thomas M. Bruen, Attorney for Collector
ERIK A. REINERTSON

ALLIED WASTE SYSTEMS, INC.

By: 
Name and Title: Michael Caprio
Area President

By: 
Name and Title: Tim ARGENTI
GENERAL MANAGER

RESOLUTION NO. 33-2011

**A RESOLUTION AUTHORIZING EXECUTION OF AMENDMENT NO. 2 TO
THE RESTATED AND AMENDED FRANCHISE AGREEMENT BETWEEN
THE CITY OF CLAYTON AND ALLIED WASTE SYSTEMS, INC. (A
DELAWARE CORPORATION REGISTERED TO DO BUSINESS IN
CALIFORNIA, AN INDIRECT SUBSIDIARY OF REPUBLIC SERVICES, INC.)
FOR SOLID WASTE AND RECYCLABLE MATERIALS
MANAGEMENT SERVICES**

**THE CITY COUNCIL
City of Clayton, California**

WHEREAS, the City of Clayton entered into a Franchise Agreement, dated July 2, 2002 for the collection, transportation, disposal and diversion of solid waste and recyclable materials (the "Agreement"); and

WHEREAS, Amendment No.1 to the Agreement was executed by the City of Clayton and Allied Waste Systems, Inc., a Delaware corporation registered to do business in California, an indirect subsidiary of Republic Services, Inc. (the Collector/ Franchisee) on or about September 6, 2005 for purpose of Franchisee ownership change only; and

WHEREAS, the aforementioned Agreement will expire December 31, 2012 without further action;

WHEREAS, both parties wish to extend the Agreement to midnight on December 31, 2022, upon mutually beneficial terms and conditions as set forth in Amendment No. 2, attached hereto and incorporated herein as if fully set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Clayton, California does hereby determine as follows:

Section 1. The above Recitals are true and correct facts pertaining to this public policy matter.

Section 2. The terms and conditions set forth in Amendment No. 2 (attached) are herewith found to be in the best interests of the general welfare and health of its citizens and businesses in the City of Clayton, and Amendment No. 2 is hereby approved and adopted.

Section 3. The Mayor and City Manager are each hereby authorized and directed to execute Amendment No. 2 to the Restated and Amended Franchise Agreement, a true and correct copy of the Amendment No. 2 being attached to this Resolution; and

Section 4. This Resolution shall and does take immediate effect from and after its passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Clayton, California at a regular public meeting thereof held the 16th day of August 2011 by the following recorded vote:

AYES: Mayor Shuey, Vice Mayor Geller, Councilmembers Medrano, Pierce and Stratford.

NOES: None.

ABSENT: None.

ABSTAIN: None.

THE CITY COUNCIL OF CLAYTON, CA


David T. Shuey, Mayor

ATTEST:


Laci Jackson, City Clerk

**AMENDMENT NO.2 TO RESTATED AND AMENDED FRANCHISE
AGREEMENT BETWEEN THE CITY OF CLAYTON AND ALLIED WASTE
SYSTEMS, INC., FOR SOLID WASTE AND RECYCLABLE MATERIALS
MANAGEMENT SERVICES**

This Amendment No. 2 to the Restated and Amended Franchise Agreement ("Amendment") is entered into effective 17 August, 2011 between the City of Clayton, a municipal corporation ("City"), and Allied Waste Systems, Inc., a Delaware Corporation registered to do business in California, an indirect subsidiary of Republic Services, Inc. ("Collector").

Recitals

WHEREAS,

- A. The City and Pleasant Hill Bayshore Disposal, Inc., Collector's predecessor in interest, entered into a Restated and Amended Franchise Agreement, dated July 2, 2002.
- B. City and Collector entered into Amendment No. 1 to the Restated and Amended Franchise Agreement on or about September 6, 2005, confirming and clarifying that Allied Waste Systems Inc., dba Pleasant Hill Bayshore Disposal Inc., was the Franchisee and Collector, which action was approved by City Resolution No. 50-2005.
- C. Effective December 5, 2008, Allied Waste Industries Inc., the indirect owner of Collector's parent company, Allied Waste North America, Inc., was merged into Republic Services, Inc. Collector Allied Waste Systems, Inc. has continued to operate as a subsidiary of Allied Waste Industries Inc. under the same current management and in compliance with the terms of the Agreement, which said merger was approved by the City on or about September 15, 2009 by City Resolution No. 37-2009.
- D. Section 19 of the Agreement authorizes an assignment of the Agreement, subject to City's consent.
- E. City has consented to the assignment of the Agreement and the franchise rights to Collector, subject to the terms of this Amendment.
- F. City and Collector agree the franchise rights of the Agreement shall expire on December 31, 2012, without further action.
- G. City and Collector have agreed to a time extension of the Agreement as amended, (The Agreement) subject to the terms and conditions of this Amendment No. 2.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises contained herein, the parties agree as follows:

1. Section 1 of the Agreement is amended as follows:

The Term of the Agreement shall expire at midnight on December 31, 2022.

2. Section 4 of the Agreement is amended in its entirety effective immediately to read as follows:

Administrative Services and Franchise Fees; Community Enhancement Fee. Effective the next collector billing cycle for customer services in Clayton following approval of this amended Agreement, and as consideration for this franchise granted by City for use of its public rights of way, and to partially reimburse the City for its costs in overseeing this agreement and for services and programs pertaining thereto, Collector shall pay to the City a total annual franchise fee of ten percent (10%) of Collector's gross receipts from customer services provided under this Agreement to residential, commercial and industrial customers within the City limits of Clayton. The franchise fee shall be paid quarterly within 30 thirty (30) days after the end of each calendar quarter and shall be based upon actual gross receipts of Collector for the proceeding calendar quarter.

As further consideration for the extension of the Term of the Agreement, Collector shall, by January 15, 2013, pay to the City a Community Enhancement Fee in the amount of \$100,000.

3. Section 6 of the Agreement is amended to insert the following new paragraph at the end of 6.A.:

Effective the next collector billing cycle for customer services in Clayton following approval of this amended Agreement, Collector will charge up to the maximum service rates as set forth in Exhibit A attached hereto. Commencing effective on January 1, 2013, and every January 1st thereafter during the Term, the Collector's maximum monthly collection rates inclusive of landfill fees shall be increased automatically by an amount equal to ninety percent (90%) of the percentage increase in the Consumer Price Index for the San Francisco Bay Area- All Urban Consumers (base year: 1982-84) during the most recent twelve month period prior to the January 1 rate adjustment date for which such data is available ("CPI"), subject to the following minimum guaranteed rate increase and the maximum rate cap: regardless of the actual applicable change in the CPI, Collector shall receive at least a one percent (1%) increase in its rates every January 1st and Contractor's rates shall not increase more than five percent (5%) at any such annual CPI adjustment.

4. Section 7 of the Agreement is replaced and amended to read in its entirety:

7. Landfill Capacity. Collector agrees to reserve and provide disposal capacity at the Keller Canyon Landfill for all Solid Waste and Yard Waste collected within the franchise area during the term of this Agreement.

5. Section 9 of the Agreement shall be amended to add a new sentence at the end as follows:

Any collection vehicles that are replaced during the term of the Agreement shall be replaced with collection vehicles that use Natural Gas fuel.

6. Section 15. A. is amended to read in its entirety as follows:

Workers' Compensation Insurance. Collectors shall obtain and maintain in full force and effect throughout the entire term of this Franchise Agreement full workers' compensation insurance in accordance with the provisions and requirements of the Labor Code of the State of California. Said workers' compensation insurance shall include the following endorsement: "All rights of subrogation are hereby waived against the City, its officers and employees acting within the scope of their appointment or employment." Policy endorsements that implement the required coverage shall be filed and maintained with the City Manager throughout the term of this Franchise Agreement.

7. Section 16. of the Agreement is replaced and amended to read in its entirety:

16. Indemnification.

a. **Indemnification.** Contractor shall indemnify, defend and hold harmless City, its officers, directors, employees, volunteers and agents (collectively "indemnities") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit of any and every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with:

- (1) the alleged negligence or willful misconduct of Contractor, its officers, employees, agents and/or subcontractors in performing services under this Agreement;
- (2) the failure of Contractor, its officers, employees, agents and/or sub contractors to comply with applicable laws (including, without limitation, environmental laws) and regulations, and/or applicable permits and licenses;
- (3) the acts of Contractor, its officers, employees, agents and/or subcontractors in performing collection services under this Agreement for which strict liability is imposed by law (including, without limitation, environmental laws).

The foregoing indemnity applies regardless of whether the loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the indemnities' negligence, except this indemnity shall be limited to exclude coverage for intentional wrongful acts and active negligence of indemnities. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to the City) the City, its officers, directors, employees, and agents against any claims, actions, suits or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any events described in the immediately preceding paragraph.

Contractor's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

b. Hazardous Substances Indemnification. Contractor shall indemnify, defend with counsel selected by City, protect and hold harmless the City, its officers, directors, employees, volunteers, and agents (collectively, "indemnitees") from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all responses, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, indemnitees arising from or attributable to the acts or omissions of Contractor, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit damages arising from or attributable to any operations, repair, clean-up or detoxification, or preparation and implementation of any removal, remedial, response, closure, post-closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, hazardous waste, and/or house hazardous waste (collectively, "waste") at any places where Contractor transports, processes, stores or disposes of the Solid waste, and/or construction and street debris, or other waste collected under this Agreement. This indemnity afforded indemnitees, shall only be limited to exclude coverage for intentional wrongful acts and active negligence of indemnitees. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC §9607(e) and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify City from liability. This provision is in addition to all other provision in this Agreement and is intended to survive the end of the term of this Agreement. Nothing in this paragraph shall prevent the Contractor from seeking indemnification or contribution from persons or entities other than indemnitees, for any liabilities incurred by the Contractor, or the indemnitees. As appropriate, the parent company should provide the guarantees necessary to meet this provision. All costs of Contractor incurred in providing this indemnification and in defense of itself and related party entities, shall be disallowed for purposes of setting rates under this Agreement.

c. Proposition 218 Indemnification. City intends to comply with all applicable laws concerning the setting of maximum rates under this Agreement. Nonetheless, Contractor shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Contractor or any of the indemnitees resulting in any form from the City's setting of maximum rates for service under this Agreement or in connection with

the application of California Constitution Article XIII C and Article XIII D to the imposition, payment or collection of rates and fees for services provided by Contractor under this Agreement. Nothing herein is intended to imply that California Constitution Articles XIII C or XIII D, apply to the setting of rates for the services provided under this Agreement; rather this section is provided merely to allocate risk of loss as between the parties.

d. AB 939/SB1016 Indemnification. The Contractor agrees to indemnify and hold harmless City, its officers, directors, employees and agents from and against all fines and/or penalties imposed by the CalRecycle if the source reduction and recycling goals or any other requirement of AB 939/SB1016 or any future diversion or disposal requirements are not met by City with respect to the waste stream collected under this Agreement and such failure is due to the failure of Contractor to meet any obligation under this Agreement, including delays in providing information that prevents City from submitting reports required by AB 939/SB1016 in a timely manner.

In interpreting the foregoing AB 939/SB1016 indemnification provision, Contractor and City are cognizant of Public Resources Code 40059.1 and agree that the intent of this Agreement is to provide Contractor with the breadth of rights and responsibilities to allow the City to meet its AB 939 diversion requirements through implementation of Contractor's programs. The program and services to be carried out by Contractor under this Agreement, as more particularly outlined in the service specifications (Exhibit A), are intended and expected to allow the City to meet its AB 939 diversion requirements, provided all programs are carried out consistently and competently, and with an aggressive program of outreach and customer education. Reliance by the City on Contractor's ability to provide programs and services that will consistently provide for City's compliance with AB 939 diversion requirements constitutes a material consideration for City to grant the exclusive rights and privileges contained herein.

8. Section 27 shall be amended by inserting the name of the new City Attorney when appointed.

9. New Section 29 shall be added to the Agreement as follows:

The Collector shall provide at no charge reasonable assistance to the City in the enforcement of any mandatory commercial recycling ordinance enacted by the City. Collector agrees to provide the mandatory commercial recycling services enacted by the City at no cost to the commercial customer.

10. Paragraph 3 of the Residential Solid Waste Services section of Exhibit A to the Agreement shall be amended to read in its entirety as follows:

Collector shall provide extra pickups as needed and upon request by customers at no additional charge. Collector shall provide special bulky item pickups for items such as large appliances and furniture as needed and upon request for no additional charge.

11. The following paragraphs will be added to the Residential Solid Waste Services section of Exhibit A to the Agreement and became effective on the signing of the extended Agreement:

4. Collector shall provide customer curbside collection of electronic waste (E Waste) at no additional charge. Collector shall provide customer curbside collection of household batteries and compact fluorescent bulbs at no additional charge.

5. Collector shall collect at no charge to City illegally dumped non-hazardous waste reported to the Collector.

12. Paragraph 1 of the Residential Recycling Services section of Exhibit A to the Agreement shall be amended to add the following language, effective at the signing of the extended Agreement:

Collector shall, at a resident's request, provide and service a 96-gallon recycling cart for residents in lieu of a 64- gallon recycling cart for no additional charge. Collector shall, at a resident's request, provide and service one additional 64-gallon recycling cart at no additional charge.

Collector shall provide extra pickups for recyclable material as needed and upon request by customers at no additional charge.


Collector shall provide unlimited residential curbside collection of recyclable materials.

13. Paragraph 3 of the Residential Recycling Services section of Exhibit A to the Agreement shall be amended to add the following language:

Collector shall, at a customer's request, provide and service a 96-gallon yard waste cart in lieu of a 64- gallon yard waste cart for no additional charge. Collector shall, at a customer's request, provide and service one additional 64-gallon yard waste cart at no additional charge.

14. Except as expressly amended by this Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.


Attest:


Laci Jackson, City Clerk

Approved as to form:



City Attorney

CITY OF CLAYTON

By: 
David T. Shuey, Mayor

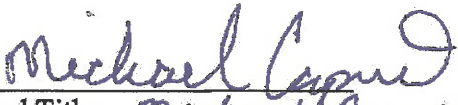
By: 
Gary A. Napper, City Manager

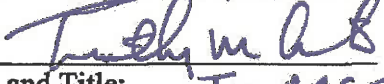
APPROVED AS TO FORM:

By: 
~~Thomas M. Bruen, Attorney for Collector~~
ERIK A. REINERTSON

Clayton/Garb 2011 Revised 110810

ALLIED WASTE SYSTEMS, INC.

By: 
Name and Title: Michael Caprio
Area President

By: 
Name and Title: Tim ARGENTI
GENERAL MANAGER