

CITY OF BRAWLEY

REQUEST FOR PROPOSAL

COST OF SERVICE RATE STUDY FOR RESIDENTIAL AND COMMERCIAL ORGANIC  
WASTE PROCESSING PROVIDED BY A FRANCHISED WASTE HAULER AND  
COMPREHENSIVE FRANCHISE AGREEMENT AMENDMENT AND RESTATEMENT  
SERVICES



Proposal Release Date:  
Monday, April 3, 2023

Response Due:  
Friday, April 28, 2023  
4:00 P.M. (PDT)

Submit Responses Electronically To:  
Thomas Garcia  
[tgarcia@brawley-ca.gov](mailto:tgarcia@brawley-ca.gov)

**1. PURPOSE OF REQUEST FOR PROPOSALS AND GENERAL TERMS AND CONDITIONS**

**1.a. Purpose of Request for Proposal**

The City of Brawley (City) invites qualified businesses (the Vendor) to submit proposals for a Cost-of-Service Rate Study for residential and commercial organic waste processing services currently provided by a franchised waste hauler (Republic Services) and comprehensive Franchise Agreement amendment and restatement of services. The successful Vendor will be required to execute an agreement, which is substantially in the form as set forth in Attachment B.

**Assumptions and Definitions**

The following assumptions and definitions are used in preparing this document, and should be adopted in preparing responses:

☐ The term RFP (Request for Proposals) refers to this document and all of its attachments, including any materials from the City and relevant third parties.

☐ The term Proposal refers to the materials submitted in response to this RFP. The term Proposer refers to the Vendor.

Responses will be evaluated based on the criteria outlined in this RFP. Any departure from the criteria must be clearly outlined (See Section 2 of Proposal Format).

**1.b. Questions Regarding the RFP**

The City will host a **Zoom virtual** one hour session on **Monday, April 13, 2023 from 2:00 PM to 3:00 PM** Pacific Standard Time to answer any questions from potential interested vendors.

This session is optional and may be attended using the following information:

Meeting ID – 837 6010 2270

Password – 619798

Any questions, interpretations, or clarifications, either administrative or technical, or contractual about this RFP must be requested via email by **Monday, April 17, 2023**.

Written questions and additional information may be obtained by contacting:

Thomas Garcia, Assistant to the City Manager

[tgarcia@brawley-ca.gov](mailto:tgarcia@brawley-ca.gov)

**1.c. Delivery of Proposals and Selection Process**

To be considered responsive to this RFP, Proposer must submit proposals in the format identified in this section. If you or your company would like to be considered for this engagement, we invite your response due no later than **4 p.m. on Friday, April 28, 2023**. Late submission of responses shall not be considered. Submittal of response shall only be accepted electronically by email. All other forms including (mail, fax, walk-in, etc.) are not acceptable.

**City of Brawley**

RFP for Cost of Service Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services

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Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Proposed services and related pricing and warranties contained in the proposal must be valid for a period of 120 days after the submission of the proposal.

All proposals shall be submitted in two comprehensive PDF files by email only to:

[tgarcia@brawley-ca.gov](mailto:tgarcia@brawley-ca.gov)

Document 1 – Technical Proposal

Document 2 – Price Proposal

A selection committee will evaluate, select, and recommend a proposal to the City Council. Following the notification of the selected vendor, a recommendation and proposed contract will be prepared for review and approval by the City Council at a regularly scheduled Council meeting.

**1.d. Rejection, Property of Proposals, Proposer's Cost, and Confidential Material**

The City reserves the right without prejudice to reject any or all proposals submitted. During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from proposers, and to allow corrections of errors or omissions. At the direction of the City of Brawley, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Proposals become the property of the City and information contained therein shall become public property subject to disclosure laws after Notice of Intent to Award.

Submission of a proposal indicates acceptance by the individual or vendor of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the vendor selected. There is no expressed or implied obligation for the City to reimburse responding vendors for any expenses incurred in preparing proposals in response to this request.

Proposer must notify City in advance of any proprietary or confidential material contained in the proposal and provide justification for not making such material public. City shall have sole discretion to disclose or not disclose such material subject to any protective order which Proposer may obtain.

**1.e. Cancellation**

This solicitation does not obligate the City to enter into an agreement. The City will endeavor to administer the proposal process in accordance with the terms and dates outlined in this RFP, however, the City reserves the right to cancel, modify the activities, timeline, or any other aspect of the process at any time, as deemed necessary by City staff.

### **1.f. Term of Engagement**

It is the intent of the City to contract for the services presented herein for one year and one month (approximately from June 2023 through June 30, 2024).

The proposal package shall present all-inclusive fees and charges for services for the Cost-of-Service Rate Study and comprehensive Franchise Agreement amendment and restatement services.

## **2. COMMUNICATION WITH STAFF, PROPOSAL REQUIREMENTS AND BUDGET**

### **2.a. Communication with Staff**

From the date the RFP is issued until a contract is executed, communication regarding this project between potential vendors and individuals employed by the City of Brawley is prohibited. However, written communication with the procurement contact, as listed on page two of this Request for Proposal, is permitted. Questions and comments during the virtual vendor meeting and interview selection processes are allowed and encouraged.

Once a determination is announced regarding the selection of a vendor, the Vendor will be permitted to speak with person(s) participating in contract negotiations.

Violation of these conditions may be considered sufficient cause to reject a vendor's proposal and/or selection irrespective of any other condition.

The following exceptions to these restrictions are permitted:

- Contacts made pursuant to any pre-existing contracts or obligations; and
- Presentations, key personnel interviews, clarification sessions or discussions to finalize a contract, as requested by the City of Brawley.

### **2.b. Proposal Requirements**

The Potential Vendors shall provide the appropriate information in sufficient detail to demonstrate that the evaluation criteria have been satisfied as specified. To allow for easier comparison of proposals during the evaluation, proposals should contain the following sections and attachments and whenever possible be arranged in consecutive order.

#### ***Executive Summary***

This section shall serve to provide the City with the key elements and unique features of the proposal by describing how the Potential Vendor is going to provide the best solution and services. The Executive Summary should include a schedule of major milestones to accomplish the implementation organic waste processing service fees and a comprehensive Franchise Agreement amendment and restatement.

The Executive Summary should also include a list of high risk or problematic areas which were identified during the proposal process that are reasons for concern. Potential Vendor will not be evaluated on this paragraph and cannot lose evaluation points for listing areas of concern. These concerns will be addressed with the successful Vendor during negotiations.

***Experience & References***

Provide a list of at least three (3) references where the Potential Vendor has provided services and include company name, address, contact name, phone number, and email when possible. References may be contacted by the City before a final selection is made.

***Staff Qualifications and Availability***

Provide information concerning the experience, background, and resumes of those persons who would actually perform work on the project. Indicate the present workload of the project staff to demonstrate their ability to devote sufficient time to meet the proposed schedule.

***Conceptual Treatment of Project and Work Plan***

Describe in more detail the approach to the project. Include a preliminary project plan that includes Potential Vendor's concept of the project including the methodology to be used, proposed timeline, and the major deliverables to be produced. In addition, the Potential Vendor must provide and specify the roles and responsibilities for the City and Potential Vendor. Include any assumptions and constraints.

Vendor shall provide a complete listing of services offered, such as but not limited to:

- How many years has your company been in business?
- How long has the company been providing fee study services for municipal government agencies?
- What is your company's primary line of business?
- Provide a brief overview of your company (furnish your business philosophy, mission statement, management structure, organization chart, etc.).
- State the type of ownership of your company.
- Give the state and date of company incorporation if applicable.
- List headquarters and regional / full-service / office locations, and website address.
- Provide the key contract name, title, address, telephone, and email address. Also identify the person(s) authorized to contractually bind the organization.
- Provide status of any current or pending litigation against your company that might affect your ability to deliver the services that you offer.
- Do you anticipate that your company will be acquired in the foreseeable future?
- What type of insurance coverage do you carry? Describe the amount of coverage as outlined in Section 5 of the City's standard contract requirements attached as Attachment B to this RFP.
- Describe any other value-added services your company can provide.

***Subcontracting Services***

- Subcontracting any portion(s) of the Scope of Services is not preferable; however, if a proposer can demonstrate to the City's satisfaction that is in the best interest of the project to permit a portion of the service(s) to be subcontracted by the proposer, it may be considered. If applicable, provide details on the role of any

subcontractor that will be used. Assignment is prohibited without advance agreement by the City.

***Scope of Services***

Potential Vendor responses to this RFP should cover the following topics. The City desires to have a five-year Cost-of-Service Rate Study for residential and commercial organic waste processing services as provided by a Republic Services, a franchised waste hauler; and the preparation of a comprehensive Franchise Agreement amendment and restatement to incorporate references to organic waste mandates and four previously approved contract amendments as outlined below.

In reviewing and preparing a five-year Cost-of-Service Rate Study for residential and commercial organic waste processing services the following shall be considered:

- Waste hauler has agreed to provide the Vendor with all necessary information to evaluate and verify the proposed organic waste recycling rates for the City.
- The evaluation process should include meetings with the waste hauler, City and Vendor to discuss current business processes related to organic waste recycling, proposed rates, and contract amendments. Meetings may be virtual or in person.
- Evaluation of a cost-effective organic waste recycling program provided by the waste hauler.
- Evaluate the implementation of innovative and sustainable organic material recycling, handling, and processing systems provided by the waste hauler.
- Establish the future stability of rates with a defined consumer price index or predefined annual percentage rate increase; with a not to exceed annual increase amount.
- Provide a comparison of current organic waste recycling service fees against other similar services provided within the County of Imperial or similar communities in the State of California.
- Vendor shall prepare a public hearing notice in English and Spanish languages in accordance with Proposition 218 guidelines.
- A preliminary report shall be presented and reviewed with Staff. Timeline should include a review and comment period prior to finalization and presentation at a public hearing.
- Final report shall incorporate changes pursuant to comments received by Staff and City Council members.
- Vendor shall plan for up to three virtually attended City Council meetings.
- Vendor shall not be responsible for the preparation or presentation of any required amendments to the City's Municipal Code.

Time is of the essence; it should be noted that residential organic waste recycling cost of services have not been implemented. Commercial rates and services were implemented as of January 1, 2022.

As a reference a PDF version of the original Franchise Agreement and four approved Amendments are provided as Attachment A to this RFP. The current Agreement expires on September 1, 2026; the City does not wish to extend or fully amend any additional sections of the current Agreement at this time. The City desires to have one comprehensive restated Agreement incorporating the following:

**City of Brawley**

RFP for Cost of Service Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services

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- The four previously approved amendments
  - Amendment No. 1 – Incorporated street sweeping services and extended the initial term of the Agreement for a ten-year period to September 1, 2026.
  - Amendment No. 2 – Modified the street sweeping schedule.
  - Amendment No. 3 - Amended Section 8.6 – Recycling services, specially adding multi-family bin services.
  - Amendment No. 4 - Adopted a more indicative Consumer Price Index (CPI) for the purpose of establishing annual rate adjustments; the CPI for Water and Sewer and Trash Collection Services as published by the United States Department of Labor, Bureau of Labor Statistics for the latest twelvemonth period for which statistics are available. The CPI rate of October 1st of each year shall go into effect on January 1st for the contract year going forward. Furthermore, the CPI shall not be increased more than four percent (4%) at any one annual anniversary.
- Any and all references to organic waste recycling and processing services as prescribed by Senate Bill 1383 and other currently known State of California mandates.

Republic Services also serves the neighboring cities of Calexico and Imperial, California. References to organic waste recycling services have been successfully negotiated and incorporated into the City of Calexico Franchise Agreement and may be used as a baseline for the City's required amendments.

**Consultant shall conduct the study as follows:**

- Using the application and requirements as set forth in Proposition 218 regulations;
- Work and meet with City staff and waste hauler to ensure that the rate study will be both accurate and appropriate to the City's needs;
- Prepare and deliver a timeline for reference purposes to the City's project manager;
- Develop expert knowledge of the City's Franchise Agreement and financial structure as it relates to the Solid Waste Fund;
- Work and meet with the waste hauler, Public Works and Finance staff to obtain necessary information regarding the implementation of organic waste recycling programs (meetings may be conducted virtually or in person);
  - The City bills and collects payments from residential customers and subsequently submits payments for services to the waste hauler;
  - Waste hauler bills and collects payments from commercial customers.
- Review documentation supporting the proposed fee and rate structure as provided by the waste hauler;
- Develop and deliver a well-documented, understandable, cost of service analysis and rate schedule;
- Complete a regional fee comparison that provides an overview of fees charged by other communities for similar services;
- Document findings and prepare a new five-year rate schedule;
- Identify expense impacts of proposed rate modifications;
- Present findings to City staff, stakeholders, and the City Council;
- Provide all study materials and cost of service models to the City; and
- Provide the City with recommendations of industry best practices for consideration.

## **2.c. CONTENTS OF COST PROPOSALS (submitted in separate PDF file)**

### **NO DOLLAR AMOUNTS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL.**

City is requesting all Potential Vendors to provide cost estimates for the creation and implementation of a five-year Cost-of-Service Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and prepare a comprehensive Franchise Agreement amendment and restatement of services.

The budget narrative should thoroughly and clearly describe each category of expense. Proposed budgets must be complete, cost effective, and allowable (e.g., reasonable, allocable, and necessary for activities).

Potential Vendors should demonstrate in their budget narratives how they will maximize cost effectiveness. Budget narratives should generally describe cost effectiveness in relation to potential alternatives and the goals of the scope of services. The narrative should be mathematically sound and correspond with the information and figures provided. The narrative should explain how the Potential Vendor estimated and calculated all costs, and how they are relevant to the completion of the scope of services. The narrative may include tables for clarification purposes but need not be in a spreadsheet format.

Please list other services you want to offer or have available for consideration. This is optional.

- Potential Vendors submitting a proposal in response to this RFP must disclose any actual, apparent, direct, indirect, or potential conflicts of interest that may exist with respect to the Potential Vendor, management, or employees of the Potential Vendor or other persons relative to the services to be provided. If a Potential Vendor has no conflicts of interest, include a statement to that effect in the proposal.

## **3. EVALUATION AND AWARD CRITERIA**

### **3.a. Evaluation Method**

Proposals will be reviewed by an Evaluation Panel made up of representatives of the City. The Evaluation Panel will select a "short list" of qualified Service Providers who may be formally interviewed.

The RFP shall be awarded to the Potential Vendor whose proposal is most advantageous to the City with price and other factors considered in section 3.b. These include responses to the RFP questions; demonstrated technical ability and expertise; references and/ or recommendations; memberships, licenses, certifications; presentations to the evaluation team (if applicable); and any additional criteria deemed appropriate by the City which would lend itself to establishing the Potential Vendor's ability to perform the work as outlined in this RFP.



**City of Brawley**

RFP for Cost of Service Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services

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**3.b. Evaluation Criteria**

The proposals will be evaluated and ranked in accordance with the evaluation criteria described below.

Overall cost to City and ability to guarantee pricing for the contract period. Reasonableness of the individual firm - fixed prices and/ or hourly rates, and competitiveness of quoted firm -fixed prices with other proposals received; adequacy of the data in support of figures quoted; basis on which prices are quoted.	30 points
Ability to meet the requirements of the RFP Scope of Services - strength and stability of the firm; strength, stability, experience, and technical competence of project staff; logic of project organization; adequacy of labor commitment.	25 points
Maintenance, implementation, training, support offerings and ease of solution's use. Experience in providing services like those requested herein; experience working with public agencies; assessment by client references.	25 points
Acceptance of City's RFP Terms and Conditions, completeness of response, and interview.	20 points

Discussions will be conducted with the most qualified Potential Vendors for the purpose of clarification to assure the full understanding of, and conformance to, the solicitation requirements.

**4. DESCRIPTION OF THE GOVERNMENT****5.a. Background Information**

The City of Brawley is located on the southeastern region of the State of California, in the center of the Imperial County. Although the region is a desert with arid conditions, it is also one of the most fertile agricultural areas in the United States. This is possible through water provided by the All American Canal from the nearby Colorado River in addition to an intricate system of canals throughout the region.

The City of Brawley was incorporated on April 6, 1908, as a general law city which operates under the council/manager form of government. The City is governed by a five member City Council. Council members serve for a period of four years on staggered schedules. Every year, the City Council selects a Mayor from its members to serve for a one year term. The Brawley City Council hires a City Manager to act as the chief administrator for the City's day to day operations.

The City of Brawley is a full-service city. Services provided include police, fire, street maintenance, parks, recreation, library, water, sewer, airport, housing, planning, building inspection, and general administrative services; with few services such as waste hauling provided by a third-party vendor.

**City of Brawley**

RFP for Cost of Service Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services

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**5. SCHEDULE OF EVENTS**

EVENT		DATE
1.	Release Request for Proposal	Monday, April 3, 2023
2.	Virtual Vendor Question and Answer	Thursday, April 13, 2023 from 2PM – 3PM
3.	Deadline to submit written questions	Monday, April 17, 2023
4.	Deadline for receipt of proposal	Friday, April 28, 2023 by 4:00PM
5.	Evaluation Period	From Monday, May 1 - 5, 2023
6.	Interview of top Vendors	Thursday, May 8 – 12, 2023 (depending on mutual availability& scheduling)
7.	Final recommended vendor selection	Week of May 15, 2023
8.	Tentative Contract Negotiations	Starting on May 15 through May 19, 2023
9.	Tentative contract award date	Tuesday, June 6, 2023

**7. REQUIREMENTS OF VENDOR**

If selected to provide the services described in this RFP, the Vendor shall be required to comply with the insurance requirements set forth below:

- a. General  
Vendor shall, throughout the duration of this Agreement, maintain insurance to cover Vendor, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth here.
- b. Commercial General Liability  
Commercial General Liability “per occurrence” coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- c. Automobile Liability – may be waived  
Automobile Liability “claims made” coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage.
- d. Workers’ Compensation  
Workers’ Compensation coverage shall be maintained as required by the state of California with waiver of subrogation.
- e. Professional Liability  
Professional Liability “claims made” coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Vendor in an amount not less than \$1,000,000 per claim.

f. Endorsements

Vendor shall obtain endorsements to the automobile and commercial general liability with the following provisions:

- a. The City (including its elected officials, officers, and employees) shall be named as an additional "insured."
- b. For any claims related to this Agreement, Vendor's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Vendor's insurance and shall not contribute with it.
- c. Vendor shall provide evidence of the additional insured primary and non-contributory endorsements to the City in conjunction with the Certificate of Insurance.

g. Notice of Cancellation

Vendor shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Vendor shall immediately obtain a replacement policy.

h. Authorized Insurers

All insurance companies providing coverage to Vendor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California

i. Insurance Certificate

Vendor shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City, no later than 10 days after the execution of this Agreement and before any commencing any work.

j. Substitute Certificate

No later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement, Vendor shall provide a substitute certificate of insurance or notify the City of the intent to renew the current policy.

k. Vendor's Obligation

Maintenance of insurance by the Vendor as specified in this Agreement shall in no way be interpreted as relieving the Vendor of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Vendor may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

**City of Brawley**

RFP for Cost of Service Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services

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**Business License**

If selected to provide the services describe in this RFP, throughout the duration of the contract, the Vendor shall be required to hold a valid and current City of Brawley business license. License application can be found online at: <https://www.brawley-ca.gov/section/Finance/Forms>

**Contract Form and Execution of Contract**

The successful proposer will be required to enter into an agreed upon Professional Services Agreement. The contract shall be signed by a principal of the selected Vendor and returned together with insurance policies and certificates of insurance, within 10 business days after the Notice of Award of Contract.

A standard City contract template is provided as Attachment B for review and consideration in responding to this RFP.

If an alternative contract is preferred or required by the responding Vendor, it should be included for the City's review in the response to this RFP. Otherwise, the City's standard contract template will be utilized for contract negotiations.

**SOLID WASTE DISPOSAL AND RECYCLING  
FRANCHISE AGREEMENT**

This SOLID WASTE DISPOSAL AND RECYCLING FRANCHISE AGREEMENT ("Franchise") is entered into as of August 10, 2006 and shall be effective as of September 1, 2006 by and between the CITY OF Brawley, a chartered municipal corporation of the State of California ("City") and ALLIED WASTE SERVICES, INC., a Delaware corporation, dba ALLIED WASTE SERVICES OF IMPERIAL VALLEY ("Allied"), with reference to the following facts:

A. City is a general law city within the meaning of California Constitution and has reserved its powers pursuant to California Public Resources Code Section 40000 et seq. to grant an exclusive Solid Waste and Recycling franchise.

B. On June 6, 2006, a duly noticed public meeting was held on this Franchise, all public testimony was reviewed and considered by the City Council, all protests were overruled.

C. On August 10, 2006, upon City approval of said Franchise ("City Adoption Date") City granted, subject to Allied's acceptance by its execution hereof, this Franchise on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City and Allied hereby agree as follows:

1. Definitions. Whenever in this Franchise the words or phrases hereinafter in this section defined are used, either with initial caps or small case lettering, they shall have the respective meaning assigned to them in the following definitions (unless in the given instance, the context wherein they are used shall clearly indicate a different meaning):

- 1.1 "Affiliate" means any parent or subsidiary corporation, partnership or other entity, controlling, controlled by or under common control with any entity, or any fellow member of an association, joint venture or similar arrangement for the provision of Solid Waste disposal or Recycling services in which Allied holds a direct or indirect interest.
- 1.2 "Aluminum" means recoverable materials made from aluminum such as used aluminum food or beverage containers, aluminum foil, siding, screening, and other items manufactured from aluminum.
- 1.3 "Applicable Law" means any federal, State or local rule, regulation, requirement, guideline, permit, action, determination or order of any Governmental Body having any jurisdiction applicable to the subject matter of

this Franchise, as now in effect and as amended from time to time. Applicable Law shall include, without limitation, the City Charter, and Municipal Code.

- 1.4 "Automated Collection" or "Automation" means the Curbside Collection or alley collection of Solid Waste, Recyclables or Yard Waste in Carts designed to be taken from the curb or street and transferred into a Collection vehicle completely by mechanical means such as a robotic arm. The mechanical arm also replaces the container at the curb, alley or street as designated by the City.
- 1.5 "Base Rate" means the amount payable to Allied per Unit as set forth on Exhibit G.
- 1.6 "Beneficial reuse" means the use of material that would have otherwise been disposed of.
- 1.7 "Bin" shall mean those plastic or metal containers of one cubic yard (202 gallons) to eight cubic yards that have plastic lids on the top. Bins are used for weekly or more frequent Collection of Solid Waste, Yard Waste or Designated Recyclables by Allied.
- 1.8 "Bulky Waste" means discarded items whose large size or shape precludes or complicates their handling by standard Residential or Commercial Solid Waste, Recycling and Green Waste Collection methods. Bulky items include White Goods, furniture, bundled tree branches not exceeding six (6) inches in diameter and four (4) feet in length, carpet and other potentially oversize wastes. Bulky Waste does not include hazardous or infectious waste unless specifically exempt. Bulky Waste collection shall be in accordance with Exhibit D.
- 1.9 "Cardboard" means post-consumer waste paper grade corrugated cardboard (grade #11), kraft (brown) paper bags, or solid fiber boxes which have served their packaging purposes and are discarded and can later be reclaimed for Collection and recovery for Recycling.
- 1.10 "Carts" shall mean those plastic containers with a capacity of approximately 32 gallons, 64 gallons and 96 gallons. Carts shall have a fixed lid and are designed for automated and/or semi-automated Collection of Solid Waste, Yard Waste and/or Designated Recyclables by Allied. The City Manager shall approve the type and brand of Cart to be utilized for the duration of the Franchise.
- 1.11 "Change in Law" means any of the following events or conditions occurring on or after the date hereof:
- (a) the enactment, adoption, promulgation, issuance, material modification or written change in an Applicable Law or administrative or judicial interpretation of any Applicable Law; or

(b) the order or judgment of any Governmental Body with jurisdiction over Solid Waste that applies to this Franchise, to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of City or Allied, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

- 1.12 "City" shall mean the City of Brawley, a municipal corporation of the State of California in its present incorporated form or in any later reorganized, consolidated, enlarged or reincorporated form.
- 1.13 "Collection" means the act of removing and conveying non-hazardous and non-infectious Solid Waste, Yard Waste, Recyclables, co-mingled or source separated materials, from Residential, Commercial, Industrial, or Institutional (governmental) Generators, to a facility for Processing, composting, transfer, disposal or transformation.
- 1.14 "Commercial" means a site and/or business zoned or permitted for any use other than Residential including but not limited to Commercial, light Industrial, Institutional, Industrial and agricultural.
- 1.15 "Compactor Containers" means those fully enclosed metal containers of any size (approximately seven to forty five cubic yards) provided by Allied or the customer. Compactors typically serve Large Quantity Generators.
- 1.16 "Curbside Collection" means the service of removing and conveying of non-hazardous and non-infectious Solid Waste, source separated Recyclables, Green Waste, Newspaper (ONP), Mixed Paper (MP), corrugated Cardboard (OCC), steel, Tin and Bi-metal Cans, glass food and beverage containers, #1 and #2 plastic containers, used oil and used oil filters from the public thoroughfare at the curb.
- 1.17 "Designated Containers" ("Containers") shall mean those containers designated by the City Manager for temporary Storage and Collection of Solid Waste, Yard Waste or Designated Recyclables including but not limited to "Recycling Boxes, Carts, Bins, Roll-off Boxes, and or Compactor Containers.
- 1.18 "Designated Recyclables" means those materials designated by the City Manager for recovery or reuse through this Franchise. The list currently includes: Newspaper (ONP), Mixed Paper (MP), corrugated Cardboard (OCC), steel, Tin and Bi-metal Cans, metal coat hangers, Aluminum containers, White Goods, glass food and beverage containers, #1 and #2 plastic containers, used oil, used oil filters, Yard Waste, concrete and asphalt.
- 1.19 "Designated Solid Waste and Recycling Collection or Storage Location"



means a place designated by the City Manager for Storage and/or Collection of Solid Waste, Green Waste and/or Recyclables. Designated locations include, but are not limited to, the curb, alley, waste/Recycling enclosure, a loading dock, or basement of a Commercial enterprise or Multi-family complex where Solid Waste and Recyclables are placed for Collection or temporary Storage prior to Collection by Allied.

- 1.20 "Electronic Waste" means a type of Universal Waste. Some Electronic Wastes such as devices with Cathode Ray Tubes (CRTs) and Liquid Crystal Displays (LCDs) are covered by the Electronic Waste Recycling Act. This Act provides a funding mechanism to facilitate collection and recycling. Examples include televisions and computer monitors.
- 1.21 "Franchised Recyclables" means any Residential, Commercial or Industrial Recyclables, placed in Designated Containers or at Designated Recycling Solid Waste and Recycling Collection or Storage Location(s) to be collected by Allied.
- 1.22 "Garbage" means all non-hazardous, non-infectious organic waste including: kitchen and table waste, and animal or vegetable waste that attends or results from the storage, preparation, cooking, or handling of food stuffs.
- 1.23 "Generator" means every owner, tenant, occupant or person owning or having the care and control of any premises in the City including the temporary use of parks, open space or a public thoroughfare.
- 1.24 "Glass Bottles and Jars" means food and beverage containers made from silica or sand, soda ash and limestone, the product being transparent or translucent and being used for packaging or bottling, including container glass designated redeemable under the California Beverage Container Recycling and Litter Reduction Law, Division 12.1 (commencing with Section 14500) of the California Public Resources Code), as well as glass jars and bottles without redeemable value ("scrap"), but excluding household, kitchen, and other sources of non-container glass such as drinking glasses, ceramics, light bulbs, window pane glass, and similar glass products that are not bottles or jars.
- 1.25 "Governmental Body" means any Federal, State, County, City or regional legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any officer thereof acting within the scope of his or her authority.
- 1.26 "Green Wastes" means the leaves, grass, weeds, shrubs, tree branches, tree trunk and other wood materials from trees. Green Waste may also include incidental amounts of waxed or plastic coated corrugated Cardboard, unpainted and untreated lumber. Green Waste does not include tree stumps.
- 1.27 "Gross Receipts" shall mean the sum of Gross Commercial Receipts, Gross



Industrial Receipts, and Gross Special Service Receipts (each as defined herein).

- 1.28 "Gross Commercial Receipts" shall mean (subject to the exclusion below) all amounts actually billed by Allied from Rates charged to Commercial customers under this Franchise by Allied for collecting, removing, transporting, Processing and/or disposing Solid Waste. The following shall be excluded from Gross Commercial Receipts: (a) revenue generated from the collection and sale of Recyclables collected under this Franchise; (b) revenue generated from the sale or lease of storage containers and La-val Locks; (c) revenue generated from the curbside collection of oil by Allied in accordance with this Franchise; and (d) other taxes or surcharges such as a City utility tax.
- 1.29 "Gross Industrial Receipts" shall mean (subject to the exclusion below) all amounts actually billed by Allied from Rates charged to Industrial customers under this Franchise by Allied for collecting, removing, transporting, Processing and/or disposing Solid Waste. The following shall be excluded from Gross Industrial Receipts: (a) revenue generated from the collection and sale of Recyclables collected under this Franchise; (b) revenue generated from the sale or lease of storage containers and La-val Locks; (c) revenue generated from the curbside collection of oil by Allied in accordance with this Franchise; and (d) other taxes or surcharges such as a City utility tax.
- 1.30 "Gross Special Service Receipts" shall mean (subject to the exclusion below) all amounts actually billed by Allied from Rates charged to Residential Units by Allied for any additional or special service not covered in the standard rates typically charged by the City (excluding Rates charged by the City to Residential Units). The following shall be excluded from Gross Special Service Receipts: (a) revenue generated from the collection and sale of Recyclables collected under this Franchise; (b) revenue generated from the sale or lease of storage containers and La-val Locks; (c) revenue generated from the curbside collection of oil by Allied in accordance with this Franchise; and (d) other taxes or surcharges such as a City utility tax.
- 1.31 "Hazardous or Toxic Waste" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Applicable Laws as "hazardous constituent," "hazardous substance," "hazardous waste constituent," "infectious waste," "medical waste," "bio-hazardous waste," "extremely hazardous waste," pollutant," "toxic pollutant," "chemical constituent," "solid waste," or "contaminant," or any other formulation intended to classify substances by reason of properties that are deleterious to the environment, natural resources or public health or safety including without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity, and reproductive toxicity. Without limiting the generality of the foregoing, Hazardous or Toxic Waste shall include any form of natural gas, as well as any petroleum products or any fraction thereof, and any substance that, due to its characteristics or interaction with one or more other materials,

wastes, chemicals, compounds, substances, mixtures, or by products, damages or threatens to damage the environment, natural resources, or public health or safety, or is required by any law or public entity to be remediated, including remediations which such law or public entity requires in order for real property to be put to any lawful purpose.

- 1.32 "Hospitality" means any establishment that offers dining services, food or beverage sales. This includes taverns, bars, cafeterias, and restaurants, as well as, motels and hotels (temporary housing of less than one month duration), hospitals, schools, colleges, and other such establishments that have dining services, or a restaurant or bar on their premises.
- 1.33 "Industrial" means any property or Generator that is engaged in the manufacture of products including but not limited to construction and demolition. Industrial Generators are typically serviced by Roll-off Boxes of 10-40 yard capacities and typically generate Inert materials such as asphalt, concrete, building debris and some wood and dry Green Waste.
- 1.34 "Industrial Recyclables" means Recyclables from Industrial, construction, and demolition operations, including, but not limited to, asphalt, concrete, dirt, land clearing brush, sand and rock.
- 1.35 "Inert" means materials such as concrete, soil, asphalt, ceramics, earthen cooking ware, automotive safety glass, and mirrors.
- 1.36 "Institutional" shall mean any premise owned and/or occupied by local, State and federal agencies, typically office or education facilities with a common waste stream.
- 1.37 "Landfill" means a disposal system by which Solid Waste is deposited in a specially prepared and synthetically lined area which provides for environmental monitoring and treatment, including weigh scales pursuant to the California Code of Regulations, the California Public Resources Code and the Federal Resource Conservation and Recovery Act.
- 1.38 "Large Quantity Generator" means those Residential, Commercial, Industrial and Institutional entities that generate four (4) or more ninety-six (96) gallon Carts of waste per week excluding source separated Recyclables diverted from disposal or transformation. The definition of Large Quantity Generator applies only to Cart size and waste generated, and does not apply to the rates charged to Residential, Commercial, Industrial or Institutional users.
- 1.39 "Mixed Paper" means corrugated Cardboard, all high and low grade ledger and other fibers not contaminated by food waste or other materials that render them unmarketable.
- 1.40 "Mixed Waste Processing" means a system of recovering Recyclables from the mixed waste stream through separation at a Processing facility, transfer station, Landfill, or other such facility instead of separation at the primary

waste generation source.

- 1.41 "Multi-family" means a structure or structures containing a total of 5 or more dwelling Units in any vertical or horizontal arrangement on a single lot or building site.
- 1.42 "Newspaper" means newsprint-grade paper including any inserts that come in the paper, and excluding soiled paper, all magazines, and other periodicals, telephone books, as well as all other paper products of any nature.
- 1.43 "Nuisance" means anything which is injurious to human health, or is indecent or offensive to the senses, and interferes with the comfortable enjoyment of life or property, and affects at the same time an entire community or neighborhood, or any number of persons, although the extent of annoyance or damage inflicted upon the individual may be unequal, and which occurs as a result of the storage, removal, transport, processing, or disposal of Solid Waste, compost and/or Designated Recyclables.
- 1.44 "Plastic Bottle" means a plastic container with narrow neck or mouth opening smaller than the diameter of the container body, used for containing milk, juice, soft drinks, water, detergent, shampoo or other such substances intended for household or Hospitality use; to distinguish from non-bottle containers (e.g., deli or margarine tub containers) and from non-household plastic bottles such as those for containing motor oil, solvents, and other non-household substances.
- 1.45 "Processing" means the reduction, separation, recovery, conversion, or Recycling of any component(s) of Solid Waste.
- 1.46 "Putrescible Wastes" means the waste in organic material with the potential decomposition capacity to emit noticeable quantities of odor and gas by-products. Material in this category includes, but is not limited to kitchen waste, dead animals, food, etc.
- 1.47 "Recyclables" means any materials that are recyclable, reclaimable, and/or reusable within the following generating categories: Small Quantity Generator and Large Quantity Generator. Any material having an economic value on the secondary materials market or that is otherwise Salvageable shall be included and/or other materials that have been separated from other Small Quantity Generators or Large Quantity Generators for the purposes of being recycled for resale and/or reuse, and placed at a Designated Solid Waste and Recycling Collection or Storage Location or in a Recycling or waste container for the purpose of Collection and Processing, or any such designated recyclable materials collected under a Mixed Waste Processing program.
- 1.48 "Recycling" shall mean any process by which materials which would otherwise be discarded, disposed of in a Landfill or transformation facility and become Solid Waste are collected (source separated, commingled, or as "Mixed

Waste"), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for beneficial reuse.

- 1.49 "Refuse" means Garbage and Rubbish.
- 1.50 "Removal" means the act of taking Solid Wastes, Yard Waste or Designated Recyclables from the place of generation either by the Allied or by a person in control of the premises.
- 1.51 "Removal Frequency" means frequency of Removal of Solid Wastes, Yard Waste or Designated Recyclables from the place of generation.
- 1.52 "Residential" for purposes of this Franchise, means any building or portion thereof designed or used exclusively as the residence or sleeping place of one or more persons, including single and multiple family dwellings, boarding and lodging houses (regardless of whether or not a water meter is shared). Residential does not include short-term Residential uses, such as hotels, motels, tourist cabins or hostels which are regulated as Hospitality establishments.
- 1.53 "Roll-off Boxes" means those 10 to 40 cubic yard steel temporary containers with an open top and doors at least at one end typically used for temporary service to remove and convey non-putrescible, inert (concrete, asphalt, other demolition debris) Solid Wastes and Recyclables or Green Waste.
- 1.54 "Roll-off Service" means service provided for the Collection, Removal and Disposal of Industrial waste such as construction, demolition and other primarily Inert non-Putrescible Wastes and Green Wastes. Roll-off Service is usually provided using metal containers of 10 to 40 cubic yards that are open on the top with doors on one end.
- 1.55 "Rubbish" means non-Putrescible Solid Wastes such as ashes, paper, glass, bedding, crockery, plastics, rubber by-products or litter. Such materials that are designated as recyclable or compost may be exempt from categorizing as Rubbish provided such materials are handled, processed and maintained in a properly regulated manner.
- 1.56 "Salvaging or Salvageable" means the controlled and/or authorized Storage and Removal of Solid Waste, Yard Waste, Designated Recyclables or recoverable materials.
- 1.57 "Scavenging" means the uncontrolled and/or unauthorized Removal of Solid Waste, Yard Waste, Designated Recyclables or recoverable materials. Such activity is unlawful and is a misdemeanor punishable as allowed in the City Municipal Code and Chapter 9 Section 41950 of the California Integrated Waste Management Act of 1989.

- 1.58 "Small Quantity Generator" means all Residential dwellings of four units or less (without restriction on the amount of waste generated by such dwellings, and regardless of whether or not a water meter is shared)) and all Commercial, Industrial and Institutional entities that generate less than four (4) ninety-six (96) gallon Carts of waste per week excluding source separated Recyclables diverted from Disposal or transformation. The definition of Small Quantity Generator applies only to Cart size and waste generated, and does not apply to the rates charged to Residential, Commercial, Industrial or Institutional users.
- 1.59 "Solid Waste" means all Putrescible and non-Putrescible solid waste, semi-solid and liquid wastes, such as Refuse, Garbage, Rubbish, ashes, Industrial wastes, demolition and construction wastes, Electronic Waste, Universal Waste, discarded home and Industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and includes liquid wastes disposed of in conjunction with Solid Wastes at Solid Waste Transfer or Processing Stations or disposal sites, which are generated by Residential, Commercial or Industrial sites within the City. Solid Waste shall not include: Hazardous and Infectious Waste, sewage collected and treated in a municipal or regional sewage system or materials or substances having commercial value or other importance which can be salvaged for reuse, Recycling, composting or resale.
- 1.60 "State" shall mean the State of California.
- 1.61 "Storage" means the interim containment of Solid Wastes, Yard Wastes, or Recyclables in an approved manner after generation and prior to Disposal, Collection or Processing. (Interim means for one week or less, Roll-off containers may store non-Putrescible waste for up to thirty days.)
- 1.62 "Streets and Byways" shall mean the public streets, ways, alleys and places as the same now or may hereafter exist within said City, including State highways now or hereafter established within said City.
- 1.63 "Tin and Bi-metal Cans" means any steel food and beverage containers with a tin or Aluminum plating.
- 1.64 "Transfer or Processing Station" means those facilities utilized to receive Solid Wastes and to temporarily store, separate, convert, or otherwise process the Solid Waste and/or Recyclables.
- 1.65 "Universal Waste" means a type of hazardous waste as determined by the Department of Toxic and Substance Control that can not be disposed in the landfill. It is a low-level hazardous waste that is managed under less stringent requirements than other hazardous wastes. Examples include electronic wastes (see above), batteries, fluorescent tubes and mercury switches.



1.66 "Uncontrollable Circumstances" means any of the following acts, events or conditions, if such act, event or condition is beyond the reasonable control and is not also the result of the willful or negligent act, error or omission or failure to exercise reasonable diligence on the part of the party relying thereon as a justification for not performing an obligation or complying with any condition required by such party under this Franchise:

(a) an act of God (but not including reasonably anticipated weather conditions for the geographic area of the City), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of a public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;

(b) strikes or work stoppages occurring with respect to any activity performed or to be performed under this Franchise; and

(c) pre-emption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances: (a) general economic conditions, interest or inflation rates, currency fluctuations or changes in the cost or availability of commodities, supplies or equipment; (b) changes in the financial condition of City, Allied or any subcontractor affecting their ability to perform their obligations; (c) the consequences of errors, neglect or omissions by City, Allied or any subcontractor; (d) any failure of any subcontractor to furnish labor, materials, service or equipment for any reason (other than an Uncontrollable Circumstance); (e) equipment failure; and (f) any impact of minimum wage law, prevailing wage law, customs or practices on Allied's or City's operating costs.

1.67 "Unit" means an individual residence or any individual residence contained in a Residential Multi-family complex (regardless of whether or not a water meter is shared).

1.68 "White Goods" means kitchen or other large enameled appliances which includes, but is not limited to, refrigerators (with doors and coolant removed), washers, and dryers.

1.69 "Wood Waste" means lumber and wood products but excludes tree stumps, more than incidental dirt or rock, plastic, glass, metal, painted or treated wood, plywood, particle board or other manufactured products that contain glue, formaldehyde, non-organic or non-biodegradable materials.

1.70 "Yard Waste" means the leaves, grass, weeds, and wood materials from trees and shrubs from the single family and Multi-family Residential sources of City's Green Waste (to include landscape haulings from Residential sources). Acceptable materials for Collection include all Yard Waste as herein defined,

excluding treated or processed wood or lumber, Bulky Waste or any other materials as shall be determined by City as to not be Salvageable. All acceptable Yard Waste shall be void of nails, wire, rocks, dirt or any other material that is not considered Yard Waste.

## 2. Grant of Franchise.

2.1 In General. City hereby grants to Allied, subject to the terms and conditions set forth herein, an exclusive Franchise to collect and dispose of, for a fee, Solid Waste and Franchised Recyclables from Residential, Commercial and Industrial sites within the City, in the manner and on the terms specified herein, and to use for such purposes the City Streets and Byways (including, but not limited to, alleys, parking lots, public works yards, and all other paved or surfaced areas within the City). The City represents and warrants that it has the full legal right, power and authority to enter into and grant this Franchise and to perform its obligations hereunder. This Franchise is granted upon each and every condition herein contained, and shall be strictly construed in accordance with Applicable Law. Each of said conditions is a material and essential condition to the granting of this Franchise. Nothing shall pass by the Franchise granted hereby to Allied unless it be granted in plain and unambiguous terms.

## 2.2 Exclusive Nature of Franchise.

2.2.1 During the Term of this Franchise, except as hereinafter otherwise provided, or except as may otherwise be required by federal or State law, the rights granted to Allied under this Franchise shall be exclusive to Allied, and City will not let any contract to, or enter into any contract with, any other person, firm, or corporation for the performance of the services herein required to be performed by Allied. City shall protect Allied's rights to such exclusive contract by proper ordinances, and by reasonable enforcement thereof.

2.2.2 Such exclusive rights shall not extend to Solid Waste or Recycling Services that cannot be exclusively franchised under federal or State law. In addition, this grant of exclusive Franchise is not intended and does not preclude duly licensed City based non-profit organizations and community groups from conducting Recycling programs for the purpose of raising funds, nor does it preclude a person from selling or otherwise disposing of their own Recyclables at a buy-back center or from donating their own Recyclables, so long as said collection(s), donation(s) or sale(s) do not occur at Designated Solid Waste and Recycling Collection or Storage Location(s). Allied and City hereby expressly exclude from Allied's exclusive rights hereunder the picking up, gathering, and Removal of Refuse pursuant to competitively bid contracts between State agencies or local districts and a City authorized waste removal contractor.

## 3. Term.

3.1 Initial Term. The initial Franchise term ("Initial Term") shall be for a ten (10) year period commencing on September 1, 2006 and shall terminate on September 1, 2016, unless earlier terminated in accordance with the provisions hereof.

3.2 Extension of Initial Term by City. City, by affirmative vote of the City Council, shall have the option to extend the Initial Term for another ten (10) year period ("Extended Term"), on the same terms and conditions or such other terms and conditions as may be agreed upon by City and Allied, provided the City Manager reasonably determines that Allied has satisfactorily performed under and is in full compliance with this Franchise and Applicable Law and has the ability to perform its obligations under this Franchise during the Extended Term. City shall notify Allied in writing as to whether City intends to exercise its option to extend the Initial Term at least one hundred eighty (180) days prior to the end of the Initial Term.

4. Consideration.

4.1 Initial Franchise Fee. Upon full and complete execution of this Solid Waste Disposal and Recycling Franchise Agreement, Allied shall pay to the City within 10 working days the amount of seven-hundred thousand dollars (\$700,000) as an initial franchise fee.

4.2 Purchase of City Solid Waste Collection Assets. On or before September 1, 2006, the effective date of the contract, Allied shall purchase the City Solid Waste Collection Assets shown on Schedule 1 to Exhibit A (defined below) attached herein. The purchase price for such assets shall be three-hundred thousand dollars (\$300,000) and such purchase shall be completed in accordance with the Purchase and Sale Agreement attached as Exhibit A.

4.3 Franchise Fee.

4.3.1 In consideration of City's grant of this Franchise, Allied shall pay to City during this Franchise a fee ("Franchise Fee") equal to the sum of the following: 15% of the Gross Commercial Receipts actually billed by Allied under this Franchise; 10% of the Gross Industrial Receipts actually billed by Allied under this Franchise; and 22% of the Gross Special Service Receipts actually billed by Allied under this Franchise. The Franchise Fee shall be included in the rates charged by Allied as shown on Exhibit G.

4.3.2 By, on or before the 22<sup>nd</sup> of each month throughout the term of this Franchise, Allied shall (a) file with the director of finance of City a duly verified statement showing in detail the total Gross Commercial Receipts, Gross Industrial Receipts, and Gross Special Service Receipts billed by Allied under this Franchise during the preceding month or fractional month; and (b) pay to City, in lawful money of the United States, the Franchise Fee payable to the City for the applicable period, plus any and all City imposed fees collected by Allied. On or before the 22<sup>nd</sup> of each month throughout the term of this Franchise, City shall pay to Allied, in lawful money of the United States, the aforesaid Base Rate for such month, or such fractional month, covered by such statement. For the period from September 1, 2006 through October 1, 2006, the City may deduct from the Base Rates payable to Allied the verifiable labor costs for such period related to the City's employees that will provide services to Allied during such period pursuant to the Labor Services Agreement



attached as Exhibit H.

4.3.3 The acceptance by City of payments of the Franchise Fee shall be without prejudice to City's right to an examination of Allied's books and records maintained with respect to the calculation thereof in order to verify the amount of Allied's Gross Receipts. At any reasonable time within three years after receipt of any statement furnished it by Allied as provided in Section 4.3.2, above, and upon fifteen (15) days prior written notice to Allied, City may cause a special audit to be made of those books and records of Allied (i) relating to the calculation of City's Franchise Fee for the period covered by the statement, relating to (ii) the Net Revenue generated from the sale of Recyclables and (iii) as are reasonably necessary to verify Allied's compliance with its performance obligations hereunder. Except as provided below, the cost of such audit shall be borne by City. If it shall be determined that there has been an error in the payment of the Franchise Fee, then a reconciling payment or credit shall be made. If it is determined that the error exceeded three percent (3%) of the amount owed for the period covered by the audit, and such error is to the disadvantage of City, then Allied shall also reimburse City for the cost of the audit. City shall keep all information received from Allied in connection with any audit hereunder confidential, and shall not disclose or use any such information without the prior written consent of Allied, except to the extent required under Applicable Law or in connection with any dispute resolution proceeding with respect to this Franchise.

4.4 Landfill Royalty Payment. In further consideration of City's grant of the Franchise, during the term of this Franchise Allied shall pay to City annually a Landfill Royalty Payment ("Royalty") equal to \$1.50 per ton for the tonnage disposed of in the Allied Imperial Valley Landfill from all City Generators in the preceding twelve-month period, excluding Recyclables. The first such Royalty payment shall be for the twelve (12) month period ending August 31, 2007 and subsequent payments will be for the twelve (12) month periods ending on the applicable anniversary of such date. The Royalty payment shall be made by Allied within forty-five (45) days after the end of the applicable twelve (12) month period. The royalty shall be calculated only on tonnage picked up and transported by Allied under this Franchise that has been charged to and paid by the Franchise Generators. Tonnage that has been donated for special events or City facilities, and or deemed non-collectible will be excluded from tonnage and be exempt from the Royalty.

4.5 Street Maintenance Fund. The City shall be reimbursed an annual amount of \$50,000 per year for reparations of normal wear and tear to city streets and alleys. The first such reimbursement payment shall be for the twelve (12) month period ending August 31, 2007 and subsequent payments will be for the twelve (12) month periods ending on the applicable anniversary of such date. The reimbursement payment shall be made by Allied within forty-five (45) days after the end of the applicable twelve (12) month period. Said amount shall increase annually by two percent (2%). This is a good faith payment and does not constitute acceptance of liability for damages caused by Allied's equipment.

4.6 College Scholarships. On an annual basis during the Initial Term and any Extended Term of this Franchise, Allied will award a \$1,000 scholarship to

each of three (3) residents of the City. Allied shall establish the criteria for awarding such scholarships.

4.7. Free City Service. Allied shall provide City with free Solid Waste, Yard Waste and Recycling Collection, Removal, Processing and disposal services at City facilities for normal city needs (excludes major construction as defined under the City's construction and demolition ordinance, remodeling or special projects, and City improvement projects greater than \$50,000 in value) during the term of this Franchise. Except as provided in this Section 4.7, City shall pay for Roll-off Service requested by City in accordance with the Maximum Rates described in Exhibit G.

4.8 Christmas Tree Pickup. Allied shall conduct a curbside Christmas tree pickup throughout the City of Brawley once a week beginning immediately after Christmas either on the day for holiday service as provided in Section 6.2.2 or the regularly scheduled day for service, as applicable, continuing throughout the entire month of January.

4.9 Free Landfill Use for Residents. Upon showing proof of residency, City of Brawley residents may use the Allied Imperial Valley Landfill (or another landfill designated by Allied and approved by the City, such approval not to be unreasonably withheld) up to four times per year free of charge and dispose a maximum of 1 ton solid waste per trip of non-Commercial, and non-Hazardous Waste materials.

4.10 Limitations on Taxes, Fees and Assessments. Except for the Franchise Fees and other fees provided in this Article IV and any generally City imposed taxes, fees or charges assessed on all businesses for goods or services in City, City shall not impose any other or further fees or assessments on Allied or any valid successor or assign in connection with its activities under this Franchise except to the extent that Allied may immediately pass-through such tax, fee, charge or assessment to Ratepayers (and for which Allied shall cooperate with City in collecting). City agrees to coordinate, whenever possible, the concurrent imposition of any pending regulatory fee increases with any pending service rate increases by Allied. Further, in the event that such taxes, fees charges, or assessments are imposed on Allied with respect to Allied's rights under this Franchise by any Governmental Body other than City, and the legislative action or actions imposing the same further requires that the same be diverted, earmarked or otherwise paid over to the benefit of City, in whole or in part, and such action or actions (i) are not offset by a related legislative action or actions which reduce City revenues under this Franchise, (ii) do not compensate City for additional regulatory duties, (iii) do not reimburse City for new, direct out-of-pocket costs, or (iv) are related to hazardous materials collection or remediation at the landfill by City due to the failure of Allied or its Affiliates to comply with its obligations to City under Section 10 hereunder, such sums, if any, shall be promptly rebated to Allied's accounts or paid over to Allied.

## 5. Compliance with Laws and Directives.

5.1 Allied shall comply with all Applicable Law (or such higher standards as may be required under this Franchise) regarding the manner in which it conducts its

trade and business. Allied and City agree to cooperate with each other in reaching a modification to this Franchise to the extent required by law at any time it should be deemed necessary in the future. In the event of any Change in Law, or a successful third-party challenge to all or any material provision of this Franchise that in either case materially affects City's consideration or Allied's operational requirements hereunder, the parties agree to meet and confer in order to develop reasonable modifications to this Franchise in order to allow this Franchise to continue in substantial conformance with its terms as they existed prior to such Change in Law.

5.2 In addition, at all times during the Term of this Franchise, Allied shall perform its obligations hereunder to the reasonable satisfaction of the City Manager (or a delegate thereof) who shall have the right, consistent with the terms and conditions of this Franchise, to issue orders, directions and instructions to Allied from time to time with respect to the Collection, transportation, and Removal of Solid Waste and Franchised Recyclables, the performance of Allied's services hereunder, and Allied's compliance with the provisions of the ordinances of the City of Brawley as they now exist or may from time to time be amended, and Allied agrees to comply therewith.

## 6. Services to be Provided.

6.1 In General. Allied undertakes and agrees, for the consideration set forth herein, to collect, pick up, remove and dispose of, all Solid Waste and Franchised Recyclables which are generated or accumulated by or upon all property located within the jurisdictional boundaries of the City during the Term of this Franchise, except as herein otherwise provided, subject to and in accordance with the terms and provisions hereof. Allied shall furnish all labor, equipment, and vehicles (including adequate standby equipment and vehicle capacity to provide the service herein required in the event of a breakdown), and all insurance and bonds necessary under Section 9 hereof to insure the efficient and timely performance of such obligation. All Solid Waste and Franchised Recyclables collected by Allied shall become the property of Allied immediately upon the Collection thereof, and shall be forthwith removed and transported by Allied for disposal in the Imperial Landfill or such other Landfill or Processing facility for Franchise Recyclables mutually agreed upon by Allied, City, Imperial Valley Landfill or for sale, as appropriate, which shall be provided, arranged for or furnished by Allied in accordance with the terms of this Franchise. The Collection and Removal of Solid Waste and Franchised Recyclables shall be done in a prompt, thorough, lawful and workmanlike manner.

6.2 Operational Plan. The Collection, Removal and disposal of said Solid Waste and Franchised Recyclables by Allied shall be done in accordance with an operational plan reasonably approved by the City Council ("Operational Plan"). The Operational Plan shall describe the routes to be established and shall contain details regarding servicing schedule, the equipment to be used, and alternate procedures to be followed in the event of severe weather or equipment failures. Pending approval by the City Council of the Operational Plan, Allied shall provide services in accordance with an Operational Plan approved by the City Manager. The Operational Plan may be amended at any time by mutual agreement of the parties

**6.2.1 Collection Times and Frequency.** At least one regular weekly Collection for Solid Waste, Recycling and Yard Waste shall be provided to each Small Quantity Generator and Large Quantity Generator within the City as applicable. Industrial Collection shall be handled on an on-call basis in a manner mutually agreeable to Allied and individual customers as more specifically provided in Section 6.2.19 below. Allied shall not collect Solid Waste or Franchised Recyclables (i) within a Residential area between the hours of 7:00 p.m. and 6:00 a.m or (ii) within a Commercial area which is immediately adjacent to a Residential area before 6:00 a.m. Allied shall complete all routes by the end of the scheduled allowed service day, except in the event of emergency, hazardous weather conditions, natural disaster or other unforeseen circumstances beyond Allied's reasonable control. With prior written permission of the City Manager, this time frame may be modified. Allied agrees to meet and confer with City and make a good faith effort to remedy in a commercially reasonable manner each circumstance where Collection service may be a Nuisance to residents, including but not limited to Commercial Collection adjacent to a Residential dwelling or dwellings.

**6.2.2 Holidays.** The following shall be considered legal holidays where Collection services shall not be required for purposes of this Franchise: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Any other days must have prior written approval from the City Manager. When a regularly scheduled Small Quantity Generator Collection falls on a legal holiday, the Collection for that day and succeeding days of that week shall be rescheduled one day later. Holiday disruptions of Large Quantity Generator and Industrial Collections shall be handled in a manner mutually agreeable to the Allied and individual customers. Allied shall provide a web site detailing collection times for these Holidays in the City.

**6.2.3 Commercial and Industrial Containers: Type and Location.** Allied shall provide Refuse, Recycling and Yard Waste Bins as required for Large Quantity Generator (Commercial) and Industrial Generator customers. Each Bin shall be placed in an accessible, outside location according to individual agreements with each customer.

**6.2.4 Public Placed Litter Bins.** Allied will collect materials deposited in curbside public place litter bins weekly or twice per week as needed with Residential or Commercial waste vehicles from trash cans found in the public right of way or Caltrans public right of way on the 500 and 600 blocks of Main Street. City will pre-approve the design of all containers used in the public right of ways.

**6.2.5 Notice of Collection Schedule.** Allied shall prepare and furnish to all customers not less than seven (7) days prior to the beginning of, or change in service, schedules setting forth the days on which the Collections shall be made. Notice shall be in such form as is first approved by the City Manager or a designee thereof.

**6.2.6 Availability of Extra Carts.** Upon inspection of the outside of a residence and approval of Allied's management, Allied shall make available to



residents a maximum of two green waste carts (green) and two recycle carts (blue) at no charge to resident. In case of severe habitual contamination of these carts Allied reserves the right to remove them from the residence. Additional solid waste carts are also available to residents for an additional charge as shown on Exhibit G.

6.2.6 (a) Curbside Used Oil Collection. Allied will work with the Imperial Valley Waste Management Task Force to develop a curbside oil collection program to be available for residents of the City only and Allied shall promote the use of such program. Any revenue received by Allied from the curbside oil collection program shall be kept by Allied and the City shall not be entitled to any such revenue.

6.2.6 (b) Discounts for Non Profit Organizations. Regular and routine services to Non-Profit Organizations will be charged normal rates as shown on Exhibit G. Services for special events may be donated in Allied's discretion as long as requests are reasonable and contribute to the goodwill of the City and Allied. Such requests will be reviewed by Allied on a case by case basis.

6.2.7 Electronic Waste / Universal Waste. Electronic Waste and Universal Waste will be collected as part of the Bulky Waste pick-up program in accordance with the terms and conditions set forth in Exhibit D. Electronic Waste and Universal Waste will be disposed of at the Imperial Valley Landfill in connection with guidelines established by the Imperial Valley Waste Management Task Force. If no mutually acceptable disposal site for Electronic Waste or Universal Waste is available, the City and Allied will work together to develop a mutually acceptable means of handling such waste.

6.2.8 Missed Pick-Ups. In case of a missed pick-up called in by City or a Generator, Allied shall, where possible, provide Collection within 24 hours. If unable to accommodate due to inadequate notice, or other operating conditions, the Generator shall be so notified and the materials shall be picked up on the next scheduled Collection day. Information on missed pick-ups shall be logged by Allied and shall be available to City upon request.

6.2.9 Special Events. Allied shall cooperate with City in carrying out special events to improve community appearance. Such cooperation shall include, but not be limited to, Allied's provision of free Solid Waste and Recycling containers and Collection services for at least seven (7) special public events sponsored by City. Additional events may be serviced for free or at discounted rates subject to Allied's prior approval. Such special event rates shall be equal to or less than the Maximum Rates allowed under this Franchise. Allied may request additional rates for special services not contemplated in the standard rate structure and City will authorize if reasonable and adequately justified by Allied. The events to receive free service shall be limited to:

1. Cattle Call – Includes a total of approximately 8 to 10 programs during the eleven days of the event. Allied shall provide a minimum of 2 dumpsters except for the parade and the rodeo, which require more dumpsters and 90 gallon containers.
2. Two Additional City Events – should the City sponsor up to two additional events, Allied shall provide free service as requested by the City Manager.
3. Chamber Events – Allied shall provide free service for the following events that are both sponsored by the Brawley Chamber of Commerce and approved by the City Manager:
  - Carnivale on Main (two 3 yard containers)
  - A Taste of Culture (two 3 yard containers and a five 96 gallon carts)
  - Sweet Onion Festival (two 3 yard containers)
  - Sugar Festival (two 3 yard containers)
  - Happy Days in the Park (two 3 yard containers)
  - Founder's Day (two 3 yard containers)

6.2.10 Bulky Waste. Allied shall institute and carry out for the Term of this Franchise a free Bulky Waste pick- up program for Small Quantity Generators and a limited Bulky Waste pick-up program for Large Quantity Multi-family Generators in accordance with the terms and conditions set forth on Exhibit D attached hereto and incorporated herein by this reference.

6.2.11 Equipment Specifications and Maintenance. All trucks (i) will be designed to collect Solid Waste and Franchise Recyclables, (ii) shall be of a type customarily used to provide Solid Waste and Franchise Recyclables collection services in cities comparable to the City, and (iii) shall be of an appropriate size to provide services in the applicable areas of the City. Allied shall clean and wash all trucks at least once each week and shall otherwise keep them clean, neat, mechanically well maintained and in a sanitary condition at all times. All vehicles shall be field inspected by someone other than the driver on a regular basis, but not less than quarterly, for solid or liquid leakage. Allied shall paint its name and telephone number on the side of each truck and on all drop bodies and similar equipment in letters not smaller than four inches high. Each vehicle shall at all times have in the cab, the registration of the truck, certificate of insurance card and an identification card with the name of whom to telephone in case of an accident. Each vehicle shall also be equipped with a five-pound fire extinguisher certified by the State fire marshal, as well as appropriate communications equipment. All of Allied's equipment may be inspected at the discretion of the City Manager during normal business hours.

6.2.12 Spillage. Allied shall exercise all reasonable care and diligence in collecting Solid Waste and Franchised Recyclables so as to prevent spilling, scattering or dropping of Solid Waste or Franchised Recyclables, and shall immediately, at the time of known occurrence, or upon notification by City, clean up any spillage.

6.2.13 Disposal of Solid Waste. Allied shall dispose of Solid

Waste (which has not been source separated for the purposes of recycling or composting), at its expense, at an approved Sub-title D lined Landfill in accordance with all Applicable Law.

6.2.14 Employees. Allied shall provide top quality service by industry standards, including competent, qualified and sober personnel who serve the public in a courteous, helpful and impartial manner. Any employee driving a vehicle shall at all times have in his possession a valid and appropriate vehicle operator's license issued by the State. Allied and its employees and agents shall be required to wear clean clothing of a uniform type when engaged in Collection service on public streets.

6.2.15 Inquiries and Complaints.

a. Telephones will be attended by competent personnel providing live customer response from 8:00 a.m. to 5:00 p.m. on regular work days. An answering service shall be provided after hours, weekends and holidays.

b. Allied shall have a formal and auditable complaint procedure. Upon request, City will be provided details of any complaints, including the resolution thereof. Allied shall make a good faith effort to return such calls received by 2:00 p.m. the same business day, and calls received after 2:00 p.m. by noon the next business day. Allied shall staff its phones such that the average wait time to reach a customer representative does not exceed ninety (90) seconds for any standard calendar month and is otherwise not excessive.

6.2.16 Residential Billing. Allied will cooperate with the City to ensure that all necessary information is provided to the City to correctly invoice the Residential dwelling accounts. The City will be responsible for the billing and the collection of such invoices. For each Residential dwelling (regardless of whether or not a water meter is shared and regardless of whether such Residential dwelling is part of a Multi-family structure), the City shall pay to Allied on a monthly basis the applicable Base Rate on Exhibit G (as adjusted pursuant to the Franchise) and other fees payable by such Residential dwelling (excluding the special charges described in this Section 6.2.16). Allied shall suspend service to Residential dwellings for nonpayment as directed by the City. For each Residential dwelling, the City shall make the monthly payments of the applicable Base Rate to Allied regardless of whether or not the City collects such Base Rate from the Residential dwelling. Allied may bill directly to Residential dwelling accounts charges for special services not covered in the standard rates typically charged by the City, provided that such rates are mutually agreed to by Allied and the Residential dwelling account. Allied will be solely responsible for the invoicing and collection of such special charges.

6.2.17 Commercial and Industrial Billing. Allied will be responsible for the billing and collection from Commercial and Industrial customers as shown in Exhibit G. Commercial billing shall be monthly one month in arrears. Industrial billing shall be one month in arrears for non-recurring charges, such as Roll-off container dump and return charges, but regular monthly charges, such as bin

rental, may be billed monthly one month in advance. Service suspension to Commercial and Industrial customers for nonpayment shall will occur when the account becomes 45 days past due.

6.2.18 Public Information / Public Outreach. As needed, Allied shall update a brochure for all classes of new customers and mail the same to the new customers as soon as reasonably possible but in no event later than the date of initial service to such customers. City shall have ten (10) business days advance notice to review and approve public information before printing and distribution, including billing inserts and handouts. City's failure to respond within such 10-day notice period shall be deemed City's approval of such public information. Allied will cooperate with community groups, schools and civic organizations in the City regarding education on recycling and disposal and will cooperate with such groups and organizations with respect to requests for tours of Allied's recycling facility and the Imperial Valley Landfill.

6.2.19 Tagging and Penalties. Allied shall "tag" and collect (as trash, if necessary) inappropriate set outs of Solid Waste, Yard Waste and Franchise Recyclables by the end of the scheduled service day and shall provide City a quarterly report of same (or more frequently if requested by City). As used herein "tag" shall consist of a written notice attached to a Container or Cart by Allied containing sufficient information to describe the concern or violation pertaining to the inappropriate set out.

6.2.20 Reports. Monthly, quarterly and annual reports shall be provided to the City Manager regarding Franchise operations. Monthly reports shall be provided on or about the 22nd day of each month for the prior month. Quarterly reports shall be provided on or about the 22nd day of the first month after each calendar year quarter for the prior quarter. Annual reports shall be provided on or about February 22nd of the subsequent year. Unless otherwise agreed upon by the parties, the contents of the reports and their format shall be in substantially the form attached hereto as Exhibit F. City shall have the right to audit such records as necessary to verify operational performance. If the reports and records are found to have major discrepancies with Allied's reports and/or the requirements of the Operational Plan, Allied shall reimburse City for the costs directly related to the audit. City will not request such an audit without having provided Allied with 20 working days to respond to a verification of Operational performance or the contents of a report. Allied shall meet with the city to discuss reports and performance at the request of the city. In addition, Allied will reasonably cooperate with City in preparing information and reports to be submitted to the California Integrated Waste Management Board.

6.2.21 Ad Hoc Reports. Allied shall work with the public works director to develop reports or responses to meet informational queries or report requests made by the State Integrated Waste Management Board, Imperial County Waste Management Task Force, or other public agencies, including the City. In addition, Allied agrees to appear before the City Council on a quarterly basis or as requested to provide information on service and rates.



6.2.22 Industrial Roll-Off Service. Allied shall provide Roll-off Services and compactor equipment and personnel sufficient to meet the Solid Waste, Recycling demands of Industrial customers. Industrial service shall be handled on an on-call basis in a manner mutually agreeable to Allied and individual customers with the standard being the delivery of bins and/or Collection service by the end of the next regular business day following a request for service, and same day service shall be available upon request provided that such request is received before 12 noon of the same day. The cost of each service shall be as outlined in Exhibit G.

6.2.23 Residential Service.

- a. In General . On the terms and conditions set forth below Allied shall provide the standard residential service as authorized by the City and shall charge the Maximum Rates as shown in Exhibit G.
- b. Cart size optional. Carts shall be approximately 32-gallons, 64-gallons and 96-gallons and the Refuse cart shall be black in color to contrast with the blue Recycling and green Yard Waste Carts. The standard carts given to each Resident shall be "96 Gallons". Residents, however, may select 32 gallon or 64 gallon carts if they need smaller carts because of ease of handling or storage. Residents must select a cart that will adequately contain all generated Solid Waste without placing additional solid waste next to cart. In addition, no Recyclables, Yard Waste or Green Waste shall be placed in a plastic bag. Residents that have more excess waste greater than their cart will also have the option of requesting an additional 32, 64 or 96 gallon Refuse Carts for an additional charge per month as noted in the Exhibit G. Residents may increase or decrease the cart sizes as needed but will be charged a Cart exchange fee, as authorized in Exhibit G.
- c. Rates. The Residential Rates are itemized in Exhibit G and shall be subject to future adjustments on the terms set forth in Section 7 hereof.
- d. Residential customers may request a cart exchange if cart is damaged or if deemed necessary by Allied and customer.
- e. For Residential customers that are physically handicapped or unable to get their Refuse, Recycling or Yard Waste carts to the curb, Allied will pull such carts to the curb and return if necessary.

6.2.24 Commercial Service. Allied shall provide Commercial services, equipment and personnel sufficient to meet the Solid Waste, Recycling demands of Commercial customers. Commercial service shall be handled on an scheduled basis in a manner mutually agreeable to Allied and individual customers Monday to Sunday. Extra pickup services will be available provided that such request is received before 12 noon of the same day. Commercial customers may request a bin exchange once a year, if deemed necessary by Allied and customer. Additional exchanges are available for an extra charge. The cost of each commercial service shall be as outlined in Exhibit G.

6.2.25 One-Time Alley Cleanup. Within thirty (30) days after Allied begins service under this Franchise, Allied will provide the City a one-time cleanup of Refuse, Green Waste and Bulky Items from alleys in the City. Construction debris shall not be picked up as part of the one-time cleanup.

6.2.26 Alley Service Policy. If agreed to in writing between Allied and a Residential customer, Allied shall provide alley service upon terms as set forth on Exhibit I (including, but not limited to, indemnification of Allied by the Residential customer). Except as provided above, Allied shall be responsible for any damages to any property (including, but not limited to, gas lines, sewer lines, and other utilities, whether above or below ground), equipment, pavement, or curbing resulting from Allied's providing alley service. Notwithstanding any other provision of this Franchise, Allied shall indemnify, save and hold harmless, the City against and from all damages, including bodily injury and property damages (including, but not limited to, damage to gas lines, sewer lines, and other utilities, whether above or below ground), losses, liabilities, demands, claims, remediation obligations, judgments, decrees, costs (including court costs and reasonable attorneys' fees) and expenditures which the City may suffer, to the extent caused by Allied's providing alley service.

6.2.27 Semi-Annual Community Cleanup. Twice per year during the Initial Term or Extended Term of this Franchise, Allied will provide roll-off containers to accept certain waste materials from residents of the City. City and Allied shall mutually agree to the types of waste materials to be accepted as part of the semi-annual cleanup. Residents must show proof that they reside in the City prior to participating in the semi-annual cleanup, and no commercial or industrial users shall be allowed to participate in the semi-annual cleanup.

6.2.28 Public Right of Way Cleanup. Upon request of the City, Allied will remove debris randomly dumped on the public right of way in the City.

6.2.29 Construction and Demolition Debris Permit. Allied will attempt to have the Allied Imperial Valley Landfill permitted as a construction and demolition debris recycling facility. In the event the Imperial Valley Landfill is permitted as a construction and demolition debris recycling facility, Allied will provide construction and demolition debris recycling in accordance with the guidelines set forth in Exhibit C.

## **7. Rates for Collection and Other Services.**

**7.1 In General.** In consideration of Allied's provision of Solid Waste and Recycling services in accordance with the terms of this Franchise, Allied shall be permitted to charge service fees ("Rates") to Generators, except for Generators that are exempt from Rates under this Franchise or under Applicable Law for which, Allied has received prior written approval from City authorizing such exemption ("Ratepayers"). Notwithstanding the foregoing and except as provided below, in no event shall the Rates charged exceed the maximum Rates established by City ("Maximum Rates").

**7.2 Initial Collection Rates.** The initial Maximum Rates permitted to be charged by Allied and paid by Ratepayers for Solid Waste and Recycling services provided by Allied under this Franchise shall be those set forth on Exhibit G attached hereto and incorporated herein by this reference. The Maximum Rates set forth on Exhibit G shall remain in effect from the beginning of the Term until January 1, 2008. Thereafter, the Maximum Rates shall be subject to increase by Allied in accordance with the terms of Section 7.3 hereof, below.

### **7.3 Allied's Right to Increase Collection Rates.**

**7.3.1** Upon each one year anniversary of the date specified in Section 7.2 for the remainder of the Initial Term and any Extended Term the Maximum Rates noted in Exhibit G (excluding any City imposed Franchise Fees, Household Hazardous Waste and AB 939 Fees and future allowable "pass throughs" under this Franchise) shall be increased on the following basis:

- a. Maximum Rates for Residential, Commercial, Institutional, Industrial/Roll-off noted in Exhibit G shall be increased each annual anniversary by an amount equal to the product of the previous year's Maximum Rate multiplied by the percentage increase in the Consumer Price Index ("CPI") for All Urban Consumers (CPI-U) for the Western Urban Area, Size B/C as published by the United States Department of Labor, Bureau of Labor Statistics for the latest twelve-month period for which statistics are available. The CPI rate as of October 1<sup>st</sup> of each year shall go into effect on January 1<sup>st</sup> for the contract year going forward.

**7.3.2** Allied agrees to coordinate, whenever possible, the concurrent imposition of any pending Rate increase with any pending regulatory fee increases by City.

**7.3.3** Whenever Franchise Fees and AB 939 Fees are to be subtracted or excluded for purposes of determining Maximum Rates under this Section 7.3, City agrees to meet and confer with Allied with respect to the inclusion or exclusion of any other additional fees by any other Governmental Body for such calculations.

7.4 Senior and Other Preferred Rate Schedules. The City Council may, at any time, establish a program for preferential Rates for senior citizens or other classifications which are deemed to be in the public interest. Allied shall have the right to pass through the cost of any decrease in Rates payable by senior citizens or other preferred Ratepayers under such program(s) to the remaining Ratepayers.

7.5 Allied's Reserved Right to Request Increases Based on Extraordinary Circumstances. Notwithstanding the foregoing, Allied may submit a request to the City Council for additional Rate relief at any time extraordinary expenses are incurred beyond Allied's reasonable control. City Council reserves the right to approve or disapprove such a request in its sole discretion.

## 8. Recycling Services.

8.1 In General. Allied agrees to provide all necessary labor, services, materials and equipment to implement Residential, Multi-family and Commercial Recycling services for Franchised Recyclables on the terms and conditions set forth below:

### 8.2 Collection.

8.2.1 Residential Recycling Generators. Allied shall collect and remove all Designated Recyclables that are placed in a Designated Container at the curbside on public streets or Designated Solid Waste, Yard Waste and Recycling Location, from City of Brawley residents. Allied shall collect the Franchised Recyclables once each week. Collection will be on the same day of the week as the regularly scheduled Solid Waste Collection day. Allied and City will mutually agree to any changes in Collection day. Allied will notify City of Brawley residents of any changes in the Collection day by distributing a flyer no later than two weeks prior to the affected day.

8.2.2 Multi-Family Residential Recycling. Collection will be on regularly scheduled days as shall be arranged with the building property owner, manager or designated agent thereof, with service as needed, but no less than every two weeks. Allied and City will mutually agree to any changes in Collection schedule frequencies or Removal Frequency. Allied will notify the building property owner, manager or designated agent thereof, of any changes in Collection day(s) by written notification no later than two weeks prior to the affected day.

8.2.3 Commercial. Allied shall provide single stream recycling services to Commercial Customers utilizing steel bins ranging from 4 cubic yards to 8 cubic yards. Collection will be on regularly scheduled days as shall be arranged with the building property owner, manager or designated agent thereof, with service as needed, but no less than every two weeks.

8.2.4 Recycling Markets. Allied shall transport collected Designated Recyclables to locations approved by the state of California for processing and marketing. Should market failure occur for one or more of the Designated Recyclables material types, only the City Manager (or designee) of City may decide not to collect the affected material.

8.2.5 Contaminated Designated Recyclables. Designated Recyclables from a single Residential, Commercial or Industrial Generator (as opposed to an entire vehicle load) that are contaminated due to the placement of Solid Waste in a designated Recycling container, or inclement weather that leaves the Designated Recyclables unmarketable, may be placed in a designated landfill. City agrees to cooperate with Allied in its effort to educate Generators with respect to Allied's recycling education program (the "Recycling Education Program") and to urge Generators to comply with the Recycling Education Program.

8.3 Recycling Education. The parties agree to meet and confer from time to time in order to assess the effectiveness of the Recycling Education Program, and, if necessary, to agree upon appropriate modifications thereto. City also agrees to take such steps as may be reasonably necessary to protect Franchised Recyclables placed at the curbside for Collection by Allied under the terms of this Franchise and shall reasonably enforce City anti-scavenging ordinances, as such ordinances may be amended from time to time by the City.

8.4 Recycling Rebate. In the event Allied receives a rebate for the sale of commodities collected within the City, Allied shall pay the City 50% of the net-revenue received after a deduction for processing costs.

8.5 Cardboard Recycling and Associated Fee. To promote recycling within the community, Allied shall reduce the rates for commercial cardboard bins to seventy-five percent (75%) of the cost of a same size trash bin. In case of severe repeated contamination of these bins, Allied reserves the right to remove them or replace them with trash bins.

8.6 Incentive for Commercial Co-mingled Recycling. To promote recycling within the community, Allied shall reduce the rates for commercial recycling bins to seventy-five percent (75%) of the cost of a same size trash bin. Cardboard mixed with other recyclable materials may be disposed of in these bins. In case of severe repeated contamination of these bins, Allied reserves the right to remove them or replace them with trash bins.

8.7 Community Involvement. See Exhibit J for a list of organizations and events typically sponsored by Allied. Exhibit J is provided as an example only and is subject to change from time to time in the sole discretion of Allied.



9. Insurance and Performance Bond.

9.1 Allied agrees, at Allied's own expense, to carry comprehensive public liability and automobile liability insurance coverage during the full Term of this Franchise, with City also shown as an additional insured thereunder, covering liability for bodily injuries, death and property damage, arising out of or in connection with the operations of Allied, under this Franchise in an amount not less than \$1,000,000 for injuries including death to any one person and in an amount not less than \$5,000,000 for any one accident or occurrence, and property damage in an amount not less than \$200,000. Allied further agrees to carry, at Allied's own expense, workers' compensation insurance in accordance with the laws of the State. Certificates of insurance thereof, shall be deposited by Allied with the City Manager together with endorsements or statements from the insuring companies providing that such policies will not be subject to cancellation until thirty (30) days after written notice to City. All of said policies shall be subject to the reasonable approval of the City attorney.

9.2 Allied shall secure and deliver to the City Manager a twelve (12) month performance bond in the amount of \$1,000,000 to secure the full, true and faithful performance of all their terms, obligations and conditions of this Franchise on the part of Allied. Allied shall present said bond together with a certificate from the surety showing payment in full for such bond, to the City Manager prior to the commencement of operations pursuant hereto and provide a one-year renewal and certificate of payment prior to the start of each year of this Franchise.

9.3 In the event of the termination or cancellation of the insurance or bond required hereunder or the failure of Allied to provide the insurance and/or bond as hereinabove provided, prior to the effective date of such cancellation or termination, this Franchise may be suspended or terminated forthwith by City, by written notice thereof to Allied. Any such suspension shall be for such period or periods as the City Manager from time to time may determine. No liability or obligation shall be incurred by City in favor of Allied by virtue of any such notice or notices or from any such suspension or termination. In the event of such suspension or termination by City upon the failure of Allied to secure and maintain on file said insurance and/or bond during the full term of this Franchise, Allied shall be liable for any and all damages suffered by City arising out of such suspension or termination.

10. Hold Harmless. Allied shall indemnify, save and hold harmless, City and any elected representatives, officers, employees, agents and volunteers thereof ("City Indemnified Parties") against and from all damages, including bodily injury and property damages, losses, liabilities, demands, claims, remediation obligations, judgments, decrees, costs (including court costs and reasonable attorneys' fees) and expenditures (collectively, "Losses") which such City Indemnified Party may suffer, to the extent caused by Allied's negligent performance of services under this Franchise. Without limiting the generality of the foregoing, Allied shall defend, indemnify, save and hold harmless any City Indemnified Parties from and against all Losses which such City Indemnified Parties may suffer, or which may be recovered from, or obtainable against such City Indemnified Parties, resulting from any repair, cleanup or detoxification, or preparation and implementation of any Removal, remedial, response,

closure or other plan or replacement or restoration of natural resources (regardless of whether undertaken due to governmental action) at any Landfill at which Allied (including its successors-in-interest) disposed of Solid Waste collected from City Generators, or activities of Allied or its Affiliates which result in a release or threatened release of hazardous materials into the environment in or around the City or at any Landfill. 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, Section 9607(e), and California Health and Safety Code 25364, to defend, protect, hold harmless and indemnify the City Indemnified Parties from liability. The provisions of this Section 10 shall survive the end of the term or termination of this Franchise. Nothing in this Section is intended to supersede the parties obligation to meet and confer in the event of a Change in Law as provided in Section 5.1 hereof.

**11. Remedies for Default Resolution of Dispute.**

**11.1 Defaults.** The occurrence of any one or more of the following events shall constitute a material default and breach of this Franchise by Allied:

**11.1.1** Allied's failure to make any payment of the Franchise Fee or any other sum due under this Franchise, as and when due, where such failure shall continue for a period of ten (10) days after written notice from City that such amount was not paid on the date such payments is due;

**11.1.2** Allied's failure to observe or perform any of the material covenants, conditions or provisions of this Franchise to be observed or performed by Allied (other than a monetary default as described in Subsection 11.1.1, above, a minor default as described in Exhibit B, or where such failure is excused by an Uncontrollable Circumstance as described in Section 13.9 below), where such failure shall continue for a period of thirty (30) days after delivery of written notice thereof from City to Allied; provided, however, if the nature of such default reasonably requires more than thirty (30) days to cure, then Allied shall not be in default in the event that Allied shall commence cure of such breach within the foregoing thirty day period and diligently prosecute such cure to completion; or

**11.1.3** Allied files for bankruptcy protection, or is placed involuntarily into bankruptcy, control of a material portion of its assets thereof is assumed by a receiver or trustee or assigned for the benefit of its creditors, and such proceeding or condition is not dismissed or vacated within thirty (30) days of its commencement; or

**11.1.4** Allied's excessive commission of minor defaults as more specifically described in Exhibit B.

**11.2 Remedies Upon Allied's Default.** Upon the occurrence of any event of default by Allied, City shall have any and all remedies available to City at law or in equity. Without limiting the generality of the foregoing, City shall have the following remedies:

11.2.1 Liquidated Damages. City may assess liquidated damages against Allied for unsatisfactory performance under the terms and conditions of this Franchise (except where such failure is excused by an Uncontrollable Circumstance as described in Section 13.9 below). A description of the actions or omission which will result in damages and the monetary amount of damages corresponding thereto is attached hereto as Exhibit B. City will provide Allied with five (5) days written notice of any proposed assessment. Allied will have the right to appeal City's assessment to the City Manager.

11.2.2 Termination. If Allied shall fail, neglect or refuse to comply with any of the material conditions of this Franchise (other than where such failure is excused by an Uncontrollable Circumstance as described in Section 13.9), and if such failure, neglect or refusal shall continue for more than thirty (30) days after written demand by the City Manager for compliance therewith (subject to extension as described in Section 11.1.2), then City, by the City Council, in addition to all rights and remedies allowed by law, thereupon may terminate the right, privilege and Franchise granted hereby, and all the rights, privileges and this Franchise of Allied granted hereby shall thereupon be at an end. Thereupon and immediately, Allied shall surrender all rights and privileges in and to this Franchise granted hereby.

11.2.3 Self Help. In the event Allied fails, refuses, or neglects to collect and dispose of Solid Waste or Franchised Recyclables set out or placed for Collection at the time and in the manner herein required (after delivery of notice by City of City's intention to exercise its rights under this Section 11.2.3), City may collect and dispose of the same or cause the same to be collected and disposed of and Allied shall be liable for all expenses incurred in connection therewith. Such remedy of City shall be cumulative and in addition to any and all other remedies it may have in the event of such failure, refusal or neglect of Allied. The Collection, Processing and disposal of Solid Waste or Franchised Recyclables by City or by others as aforesaid shall not be deemed an election of remedies which shall preclude City from availing itself of additional remedies for Allied's breach of contract.

11.2.4 Remedies Cumulative. No provision herein made for the purpose of securing the enforcement of the terms and conditions of this Franchise granted hereby shall be deemed an exclusive remedy or to afford the exclusive procedure for the enforcement of said terms and conditions, but the remedies and procedure outlined herein or provided, including forfeiture, shall be deemed to be cumulative.

11.3 City's Default. City shall be in default of its obligations hereunder as a result of a breach by City of any material obligation required to be performed by it hereunder (other than where such failure is excused by an Uncontrollable Circumstance as described in Section 13.9) if City fails to cure such default within thirty days after the receipt of written notice from Allied specifying such default; provided, however, if the nature of City's default is curable, but more than thirty days are required therefore, City shall not be in default so long as it has commenced performance of such cure within said thirty day period and thereafter diligently pursues



the same to completion. Upon any default by City hereunder, Allied shall be entitled to pursue any and all rights provided at law or in equity. Notwithstanding the foregoing, City shall not be in default under this Agreement for any act or omission by City where City is required by law to exercise independent legislative quasi-judicial, judicial or administrative discretion.

11.4 No Waiver of Remedies. The failure of either party at any time to require performance by the other of a provision hereof, shall in no way affect the right of such party entitled to performance to enforce the same thereafter. Nor shall the waiver of either party of any breach of any provisions hereof be construed to be a waiver of such provisions or of any succeeding breach thereof.

11.5 Administrative Review of Disputes. Prior to commencing litigation, a party shall first give the other party written notice of any dispute with respect to this Franchise. Such notice shall specify a date and location for a meeting of the parties hereto at which such parties shall attempt to resolve such dispute, and the name of a mediator selected by such party to mediate the meeting. City shall keep a record of the proceedings conducted and information presented during such meeting. The cost of such resolution shall be divided and paid equally by the parties. In the event that such dispute cannot be resolved by the parties hereto within thirty (30) days, the matter may be referred by mutual agreement of the parties to non-binding arbitration, or by either party to legal proceedings. Neither party may act to terminate this Franchise for cause except at the conclusion of the meeting of the parties held pursuant to this Section 11.5, or in the event the parties have referred the dispute to arbitration, at the conclusion of the arbitration.

12. Renewal. This Franchise may be renewed as follows:

Where a contract or Franchise has been entered into between the City and an operator and the operator has satisfactorily performed under such contract or Franchise, the City Council, without inviting bids or proposals therefore, may, either prior to or after the expiration of such contract, extend or renew the same upon the same conditions or such other conditions as are mutually acceptable to the City Council and Allied.

Notwithstanding the foregoing, Allied acknowledges and agrees that Allied has no right whatsoever to require City to renew or extend this Franchise, and City retains the right, in its sole discretion to decide to renew or extend this Franchise, or not to renew or extend this Franchise.

13. General Provisions.

13.1 Authority. Each party represents that it has full right, power and authority to execute this Franchise and to perform its obligations hereunder, without the need for any further action under its governing instruments, and that the parties executing this Franchise on behalf of such party are duly authorized agents with authority to do so.

13.2 Assignment. Except as expressly provided herein, neither this Franchise, nor any rights or interest herein, shall be assigned by either party. Any attempted assignment in violation of this section shall be void and shall constitute a material default entitling the other party to terminate this Franchise. Notwithstanding the foregoing, Allied may assign this Franchise without the consent of the City to an affiliate of Allied, or as a collateral assignment to any lender to Allied or any of its affiliates.

13.3 Counterparts. This Franchise may be executed in multiple copies, each of which shall be deemed an original, but all of which shall constitute one agreement after each party has signed such a counterpart.

13.4 Entire Agreement. This Franchise, together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties with respect to the subject matter contained herein. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are superseded. The headings in this Franchise are inserted for convenience only, and shall not constitute a part of this Franchise or be used to construe or interpret any of its provisions.

13.5 Exhibits. All exhibits referred to herein are attached hereto and incorporated herein by this reference.

13.6 Governing Law. This Franchise shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

13.7 Notice. Any notice that may be given to either party under or with respect to this Franchise shall be deemed to have been given when delivered personally or when sent by registered or certified mail, postage prepaid, addressed as follows:

ALLIED:

Allied Waste Services of Imperial Valley  
3354 Dogwood Road  
Imperial, California 93251  
Attn: John Lau

with a copy to:

Allied Waste North America, Inc.  
8364 Clairemont Mesa Boulevard  
San Diego, California 92111  
Attn: James T. Ambroso, District Manager

CITY:

City of Brawley  
City Hall  
400 Main Street  
Brawley California 92227  
Attn: City Manager

with a copy to:

Horton, Knox, Carter & Foote  
895 Broadway  
El Centro, California 92243  
Attn: Dennis Morita

13.8 Successors. Subject to the restrictions on assignment, all terms of this Franchise shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors, and assigns.

13.9 Uncontrollable Circumstances. Except as otherwise specifically provided in this Franchise, neither Allied nor City shall be in breach of this Franchise for any temporary failure or delay in the performance of any obligation under this Franchise (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance; provided, however, the party experiencing an Uncontrollable Circumstance shall not be in breach only if such party complies with the requirements in this Section 13.9. The party experiencing an Uncontrollable Circumstance shall notify the other party by telecommunication or telephone and in writing immediately after the party experiencing such Uncontrollable Circumstance first learns of the commencement thereof, followed within forty-eight hours by a written description of (1) the Uncontrollable Circumstance and the cause thereof (to the extent known) and (2) the date the Uncontrollable Circumstance began and the cause thereof, its estimated duration, the estimated time during which the performance of such party's obligations hereunder will be delayed. Each party shall provide prompt written notice of the cessation of such Uncontrollable Circumstance. A party's obligations hereunder shall be delayed commencing at the date of Notice for only so long as the Uncontrollable Circumstance continues and prevents full compliance with Franchise obligations. Whenever such act, event or condition shall occur, the party claiming to be adversely affected thereby shall (a) use its commercially reasonable efforts to eliminate the cause therefor, (b) minimize the adverse impacts caused thereby, and (c) shall take all reasonably necessary and appropriate actions, including, if necessary, bringing in labor and equipment from unaffected areas to resume full performance under this Franchise as quickly as possible.

13.10 Other Governmental Bodies. In the event any value paid to City under this Franchise is to be shared with or otherwise paid over to any other Governmental Body, City shall be solely responsible for transferring such value to

such Governmental Body, without any indemnification or any other reimbursement from Allied or its Affiliates under this Franchise. Notwithstanding the foregoing, any such requirement shall be considered a Change in Law pursuant to the terms of this franchise and this Section shall not relieve Allied or its Affiliates of its obligations under section 5.1 hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES ON FOLLOWING PAGE.]**

6. This Agreement contains the entire agreement between the parties with respect to the Transactions and supersedes all prior agreements, proposals or representations, arrangements or understandings, written or oral, with respect thereto.

7. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

IN WITNESS WHEREOF, City and Allied have caused this Agreement to be executed effective as of the date first written above.

CITY:

City of Brawley,  
a municipal corporation

By: 

, Mayor

Attest: 

City Clerk

ALLIED:

Allied Waste Services, Inc.,  
a Delaware corporation  
dba Allied Waste Services of Imperial  
Valley

By: 

James T. Ambroso

Its:

District Manager

By: 

(Print Name and Title)

Approved as to form by

  
City Attorney

EXHIBIT A

Purchase and Sale Agreement

See attached.

Attachment A

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") is executed this 1st day of September, 2006, by and between Allied Waste Services, Inc., a Delaware corporation, dba Allied Waste Services of Imperial Valley ("Allied"), and the City of Brawley, a chartered municipal corporation of the State of California ("City").

### **RECITALS**

A. City owns certain assets used in connection with waste collection in and around Brawley, California and listed on Schedule 1 (the "Assets").

B. Allied and City have entered into that certain Solid Waste Disposal and Recycling Franchise Agreement, effective as of September 1, 2006 (the "Franchise Agreement"). Pursuant to Section 4.2 of the Franchise Agreement, Allied has agreed to purchase and City has agree to sell the Assets.

NOW THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **AGREEMENTS**

1. Subject to the terms and conditions set forth in this Agreement, as of the date hereof, City sells and assigns to Allied, and Allied purchases from City, all of City's right, title and interest in and to the Assets free and clear of all encumbrances. The purchase price for the Assets is \$300,000.00 (the "Purchase Price"), payable by Allied to City in immediately available funds on the date of this Agreement.

2. By execution of this Agreement, City represents and warrants that:

(a) City has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by City and the consummation of the transactions contemplated by this Agreement (the "Transactions") will not violate, conflict with or result in the breach of any of the terms of any material contract or agreement to which City is a party or to which City or any of the Assets are bound or subject.

(c) There are no actions, suits or proceedings pending, or to the knowledge of City, threatened against or involving City that would have a material adverse effect upon the Transactions.

(d) City has good and marketable title to the Assets, free and clear of all debts and encumbrances, and, by virtue of the grant, conveyance, sale, transfer, and



assignment of the Assets hereunder, Allied shall receive good and marketable title to the Assets, free and clear of all debts and encumbrances.

(e) The Assets are in good and serviceable condition and repair (subject to normal wear and tear). City has not, nor, to the best of City's knowledge, has anyone else, made any modifications to any of the Assets that would void or invalidate any manufacturer's warranty or cause the Assets not to be in compliance with any applicable law.

(f) There is no contract, agreement or other arrangement granting any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization, governmental authority or other entity any preferential right to purchase the Assets.

(g) The sale of the Assets to Allied hereunder does not require the consent of any person or entity, including any governmental entity.

3. By execution of this Agreement, Allied hereby represents and warrants that:

(a) Allied has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by Allied and the consummation of the Transactions will not violate, conflict with or result in the breach of any of the terms of any material contract or agreement to which Allied is a party or to which Allied or any of the assets of Allied are bound or subject.

(c) There are no actions, suits or proceedings pending, or, to the knowledge of Allied, threatened against or involving Allied that would have a material adverse effect upon the Transactions.

4. Allied shall be responsible for and shall promptly remit to the applicable taxing authority, all sales, transfer or other taxes associated with the transfer of the Assets to Allied pursuant to this Agreement.

5. Each party agrees to indemnify and hold harmless the other party and its partners, officers, members, managers, directors, divisions, subdivisions, affiliates, shareholders, agents, employees, successors and assigns (the "Indemnified Parties") from and against any and all liabilities, losses, damages, costs, expenses and disbursements, including reasonable legal fees, expert witness fees, litigation related expenses, and court costs in such litigation or proceeding, whether arising out of a claim or loss of or damage to property or injury to or death of any person, including any Indemnified Party, or otherwise, caused by the breach of any agreement, covenant, representation or warranty of such party in this Agreement. The indemnification provisions in this Section 5 are in addition to any statutory, equitable or common law remedy any party may have for breach of any representation, warranty or covenant. Any payments made to an Indemnified Party pursuant to this Section 5 shall be treated as an adjustment to the Purchase Price.



**SCHEDULE 1**

**ASSETS**

**TRUCKS**

<u>Vehicle Lic#</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN #</u>
E072858	1987	GMC	Leach	1G8P7D1Y3HV101736
E356853	1991	Peterbuilt	Garbage Trk	1XPZH78X4MD705889
E356852	1991	Peterbuilt	Garbage Trk	1XPZH78X4MD705888
E356851	1991	Peterbuilt	Garbage Trk	1XPZH78X0MD705090
E037948	1995	Volvo	Pakmore Trk	4X52AFHD7TR475560
1105186	2002	Peterbuilt	Garbage Trk	1NPZH78XX2D714227
1076457	2000	Peterbuilt	Garbage Trk	1NPZH78X51D713047
1121040	2002	Peterbuilt	Garbage Trk	1NPZH78X130714862
1202297	2006	Peterbuilt	Garbage Trk	1NPZHD8X96D716432

**COMMERCIAL CONTAINERS**

1,050 two (2) – four (4) cubic yard steel containers

**CARTS**

2,400 sixty-four (64) – ninety-six (96) gallon plastic carts

**EXHIBIT B**

## Liquidated Damages

The parties agree that calculating damages caused by Allied's failure to adhere to performance standards is difficult if not impossible to ascertain. Consequently, the parties agree that the following liquidated damages schedule shall reflect liquidated damages that shall be payable to City in accordance with the terms hereof, and Section 11.2.1 of the Franchise.

#	Unsatisfactory Service Indicator	Description	Penalty Amount
1	Missed Pick Up Response Time [Section 6.2.8]	Failure To Collect Missed Pick-Up By The End Of The Next Business Day After The City Notification.  Each Additional Business Day After Receiving Notification From City.	\$15.00  \$25.00
2	Failure To Respond [Section 6.2.15]	Failure To Make A Good Faith Effort To Resolve Customer Request By Next Business Day.	\$15.00
3	Improper Imposition Of Special Service [Section 7.1]	Franchisee Charges For A Special Service Not Included In Exhibit F Or By Prior City Written Approval.	\$50.00
4	Spillage Or Litter [Section 6.2.12]	Failure To Make A Good Faith Effort To Clean Up Spillage Or Litter Within 90 Minutes After Notification By The City Or Customer.	\$15.00
5	Processing Claim For Damages	Failure To Respond In Writing To A Damage Claim Within 30 Days Of Receipt and Initiate A Process To Resolve.	\$100.00
6	Remitting City Fees [Section 4.3.2]	Failure To Remit City Fees By The 22 <sup>nd</sup> Of The Month. City Fees shall be deemed remitted to the City the day they are deposited in the U.S. Mail (as reflected by the post mark) addressed to the City.	1½% of the Amount of Late Payment
7	Providing Reports [Section 6.2.20]	Penalty Assessed For Not Providing All Reports By The 22 <sup>nd</sup> Of The Month. Recycling Revenue Reported Will Always Be 60 Days In Arrears. Reports shall be deemed to have been provided to the City the day they are deposited in the U.S. Mail (as reflected by the post mark) addressed to the City.  Each Additional Day Late:	\$100.00  \$15.00
8	Billing Problems	Failure To Resolve A Billing Complaint Within	\$25.00

	[Section 6.2.17]	50% Of The Billing Cycle Time Period.  Each Additional Day Problem Not Resolved.	\$5.00
9	Container Supply [Section 6.2.23 (d)]	Failure To Repair Or Replace Inoperable Containers/Bins Within Fourteen Working Days Of Request.  Each Additional Day Problem Not Resolved.	\$25.00  \$5.00
10	Unauthorized Operating Hours [Section 6.2.1]	Contractor Operating During Hours Not Previously Authorized By City.	\$100.00
11	Tagging Materials [Section 6.2.19]	Failure To Tag Or Otherwise Collect On The Same Day And Properly Dispose of Contaminated Or Improperly Set Out Materials.	\$15.00
12	Equipment Maintenance [Section 6.2.11]	Equipment Not Maintained To Franchise Standards.	\$25.00
13	Improper Disposal [Section 6.1]	When Materials Collection From Source Separated Program Intended For Diversion Are Disposed Of At A Landfill Or Transformation Facility Without Prior City Approval. Up To First Ton: Every Ton Or Part Of A Ton Thereafter:	\$50.00 \$50.00
14	Excessive Violations	Damages Amount Increase When Contractor Has Received A Penalty For A Particular Service Indicator More Than 15 Times Per Quarter. After 15 Violations In A Category, the Damages Amount Will Increase By An Additional 25% For Each 5 Additional Penalties.	15% per quarter

1. **Cross References.** Where an unsatisfactory service indicator includes a cross-reference to a Section of the Franchise, any additional or inconsistent performance standards set forth in this Schedule shall govern.

2. **Following Day Obligations.** In each case where a cure for unsatisfactory performance can be rendered within a specified time period, if the expiration of such time period falls on a non-business day, Allied's right to cure shall be extended until the following business day.

3. **Penalties for Additional Days in Breach; Minor Violations.** Allied may obtain relief from "Each Additional Day Late" damages by providing notice to City of the problem and by diligently proceeding to cure the problem as quickly as possible, subject to City's approval. The City will not unreasonably withhold a request for additional time to cure. In addition, minor occasional violations with advance notice from Allied and prompt cure

may be excused at the discretion of the City Manager.

4. Right to Appeal. Allied will have the right to appeal any City Assessment to the City Manager.

5. Single Assessment. Where a single operational failure may potentially constitute multiple violations, such failure will constitute only a single violation, subject to only one penalty.

## EXHIBIT C

### Construction Demolition Guidelines

The fees, vehicles and safety equipment used for collecting standard household waste are not designed to handle large quantities of construction or landscape debris. When building, remodeling or re-landscaping homeowners shall be encouraged by City and Allied to reuse materials on site whenever possible. When homeowners cannot reuse the materials on site they should contact Allied Waste Systems to request an appropriately sized demolition Recycling or waste bin. Small Quantity Generators may also haul the waste to an appropriate recycler or landfill themselves. Construction and demolition debris is not considered standard Residential waste.

Household waste service is not an acceptable means of disposing of landscape or demolition debris in excess of 200 pounds. When disposing of small quantities of demolition or landscape debris please observe the following guidelines:

A small quantity of rock, bricks, dirt, wood or other demolition debris that is generated as an incidental part of regular home occupancy will be collected as long as the driver believes it is safe for him and the equipment to do so,

The material must be free of protruding nails, glass or sharp objects,

The demolition debris must be less than 10% of the total waste being collected and the Allied Collection personnel makes the final determination regarding the 10% limit,

Standard, manual trash containers must weigh less than 60 pounds when collected and an automated container must weigh less than 250 pounds (or the maximum weight identified on the container by manufacturer) when collected,

Wood must be free of nails, glass or sharp objects and cut into four foot lengths or less and placed into a waste receptacle or tied into bundles weighing less than 35 pounds each,

Non painted wood should also be free of nails or sharp objects and should be bundled and placed as Yard Waste not trash.

When quoting a demolition Roll-off or bin for concrete/asphalt, clean dirt and wood the customer shall be instructed to keep the items separate from each other and regular Garbage so it may be recycled not land filled.



## EXHIBIT D

### Free Bulky Pick-Up Policy Small Quantity Generators

The program is intended to provide Small Quantity Generators with free Collection service for bulky items generated from the "standard" Residential use of a single family dwelling. The "standard" is based on the number, frequency and type of items generated. Items that do not meet that standard may be subject to additional fees.

- A Free service includes up to one free service stop per week for non-hazardous, non-infectious household bulky items such as a sofa, chair, mattress, lawn furniture, barbecue, or appliance that can be easily and safely moved by hand or hand truck. Free bulky service does not include items brought from another location or generated from a business such as an auto mechanic or upholstery business conducted at home. Such items will be subject to surcharge based upon a per item fee or an hourly rate as allowed in Exhibit G.
- B Collection of more than 5 household bulky items in any week, or 30 items in any 90 day period may be subject to a surcharge based upon a per item fee or a hourly rate as allowed in Exhibit G.
- C Allied shall provide service on an on call basis, with 48 hours notice from the customer on the next regular Residential trash service day for that residence.
- D Whenever possible, the customer should dismantle or break down items so they may be easily and safely collected. Each item shall weigh less than 60 pounds if they need to be removed by hand.
- E Items over 60 pounds shall be prepared by residents so they can be safely collected on a hand truck. Collection of items that cannot be safely collected with a hand truck may be subject to a hourly surcharge, with prior approval of resident as allowed in Exhibit G, or may be tagged with an explanation and left.
- F Collection on any day other than the standard Refuse and Recycling day is subject to an extra service charge for the first five items and every additional item as allowed in Exhibit G.
- G Loose construction demolition, Yard Waste and other items are not considered bulky items and should be properly recycled or disposed of at a permitted drop-off facility or the customer may subscribe to temporary Roll-off Box/Bin Collection service as appropriate.
- H Allied shall sponsor the "Free Landfill Passes" program for Small Quantity Generators. Small Quantity Generators shall be eligible for two (2) Free Refuse Landfill Passes and two (2) Free Yard Waste Service Passes. The passes are limited to one ton of material.

Free Bulky Pick-Up Policy  
Large Quantity Multi-Family Generators

- A The free program is intended to collect only those items generated from the dwelling Units as a part of normal Residential use.
- C Allied shall provide up to one free service stop per month for non-hazardous, non-infectious materials such as a sofa, chair, mattress, lawn furniture, barbecue, or appliances that can be easily and safely moved by hand or hand truck. Free Collection does not include construction & demolition debris.
- D Free Service is to be provided on an on call basis, with 48 hours notice from the customer.
- E Collection to be performed on the same day as Residential Trash for their service area.
- F Items shall be dismantled or broken down so they may be easily collected and loaded. Items shall weigh less than 60 pounds if they need to be removed by hand. Items over 60 pounds shall be prepared by residents so they can be collected on a hand truck. Example: carpet shall be cut into four foot widths, rolled into sections weighing under 55 pounds and secured with twine or packing tape so that it can also be moved by a hand truck.
- G All items for one complex must be ready for Collection at one time and at one location in the complex that is accessible to the Allied bulky Collection vehicle. Location to be established at the time of 48-hour notice.
- H Free Collection is limited to up to 5 items for every ten Units in the complex. (ie, a building with 11 Units gets up to 5 items, a building of 21 Units gets up 10 items).
- I Collection of more than the standard number of items will result in a per item charge. Additional items that are not collectible by one employee with a hand-truck will be subject to a per hour charge as allowed by Exhibit G.
- J Collection on any day other than the standard day may include a service charge for the first five items and per item charge every additional item as allowed in Exhibit G.
- K Loose construction/demolition, Yard Waste and other items are not considered bulky items and should be properly recycled or disposed of at a permitted drop-off facility (see demolition guide) or the customer may subscribe to temporary Roll-off Box/Bin Collection service with Allied as appropriate.

EXHIBIT E

[INTENTIONALLY LEFT BLANK.]

Attachment A

## EXHIBIT F

### General Reporting Requirements

Quarterly and annual reports shall include a cumulative and up to date accounting of the monthly report and shall be substantially in the form attached to this Exhibit F.

**City of Brawley Monthly Report - Example**

[illegible]

Recycling Tons					
Small Quantity Generators (Carts)					
Multi-Family (Carts)					
Hospitality (Carts)					
Commercial (Front Load)					
Industrial (ROCompactors)					
Total					

[illegible]

## Program Details

Small Quantity Generators (Carts)	
Small Quantity Generators	
Trash	
Pounds/House/Week	
Recycling	
Pounds/House/Week	
Yard Waste	
Pounds/House/Week	
Net Price/Ton	
Revenue 2006	
Revenue 2005	
Recycle Commodities	
3-color	
Amber	
Flint	
Green	
HDPE - Colored	
HDPE - Natural	
Pol	
Aluminum	
Tin	
Miscellaneous	



OCC	
ONP	
Total Tons	
<b>Contamination (Trash)</b>	
Number of Stumps	
Used Oil (Gallons)	
Oil Filters	
# of Bulky Items	
Total Tonnage	
<b>Multi-Family</b>	
Number of Units Billed	
2006 Recycling Tonnage	
2006 Recycling Tonnage	
Pounds/Unit/Week	
Net Price/Ton	
Revenue 2006	
Revenue 2005	
<b>Hospitality</b>	
Number of Customers	
2006 Recycling Tonnage	
2006 Recycling Tonnage	
Pounds/Customer/Week	
Net Price/Ton	
Revenue 2006	
Revenue 2005	
<b>Multi-Family/Hospitality Commodities</b>	
3-color	
amber	
flint	
green	
hdpe-co	
hdpe-nat	
pet	
skum	
tin	
trkspaper	
ooo	
ono	
Total Tons	
<b>Contamination (Trash)</b>	
Commercial (Front Load)	
Trash	

Recycling	
Yardwaste	
Commercial Business Accounts	
Commercial City Accounts	
Schools	
Total	
Net Price/Ton	
Revenue 2006	
Revenue 2005	
Industrial (Roll Off/Compactors)	
Trash	
OC/Mixed Paper	
Single Stream	
Scrap Metal	
Dirt & Concrete	
Recycling Total	
Yardwaste	
Passes	
Green Waste Passes Issued	
Green Waste Passes Used	
Percent Used	
Landfill Passes Issued	
Landfill Passes Used	
Percent Used	
Residential Bulky	
Green Waste From Passes	
Trash From Passes	
YW	
Wood	
Metal	
Concrete	
Total	
City Tonnage	
Diversed	
Concrete Hauled By City	
Yard Waste Hauled By City	
Clean Dirt Hauled By City	
Yard Waste Hauled By AWS	
Total Diversed	

Disposed  
City Trash Hauled By AWS  
City Trash Hauled By City  
Total Disposed  
  
Free Disposal Allowed  
Free Disposal Used to Date  
Free Disposal Available to Date

Attachment A

**EXHIBIT G**

**Maximum Rates**

**Effective September 1, 2006**

<b>Residential Rates</b>	<b>Maximum Base Rate</b>	<b>Max billed rate w/ Franchise fees</b>
<b>Residential Dwelling Units</b>	<b>\$14.17/ Unit/Mo</b>	<b>\$17.82/Unit/Mo</b>
<b>Multi Family Dwelling Units</b>	<b>\$13.00/Unit/Mo</b>	<b>\$14.41/Unit/Mo</b>

<b>Commercial rates</b>	<b>Maximum Base Rate</b>	<b>max billed rate w/ franchise fees</b>
<b>Commercial Bins (Mthly Rates)</b>	<b>Rate Table Attached Minus 15%.</b>	<b>See Rate Table Attached</b>
<b>Commercial Carts (Mthly Rates)</b>	<b>Rate Table Attached Minus 15%.</b>	<b>See Rate Table Attached</b>
<b>Commercial Recycling Bins (Mthly Costs)</b>	<b>Rate Table Attached Discounted 25% (No Franchise Fee)</b>	<b>Rate Table Attached Discounted 25% (No Franchise Fee)</b>
<b>Commercial Bins/Extra Pickup</b>	<b>\$34.00 per Lift</b>	<b>\$40.00 per Lift</b>
<b>Locking Container Fee</b>	<b>\$10.00/Container/Mth</b>	<b>\$10.00/Container/Mth</b>
<b>Container Exchange Fee (One Allowed Per Year at No Add'l Charge)</b>	<b>\$42.50/Exchange</b>	<b>\$50.00/Exchange</b>

	Maximum Base Rate	<u>MAX BILLED RATE W/ FRANCHISE FEES</u>
Temporary /Permanent Boxes	\$150.00/Load Plus Actual Landfill Fee Minus 10% of Load Rate Only	\$150.00/Load Plus actual Landfill fee
Roll Off Box Rental Fee (Per Day)	\$4.50/Box	\$5.00/Box

Additional Fees	Maximum Base Rate	<u>MAX BILLED RATE W/ FRANCHISE FEES</u>
<b>Residential/Extra Pick-Up</b>	\$7.88/Unit/Pickup	\$10.10/Unit/Pickup
<b>Residential/Commercial-Extra Bulk Pick-Up</b> (Not on regular day)	\$15.60 First Item plus \$11.70 for each additional item	\$20.00 First Item \$15.00 Each Add'l item
Residential/Extra Cart Rental	\$3.00/Cart/Mth	\$3.66/Cart/Mth
Residential/Commerical-Cart Exchange Fee	\$11.70/Cart	\$15.00 Cart
Residential Alley Service Fee	\$4.68/Unit/Mth	\$6.00/Unit/Mth



**Attachments to Exhibit G  
Commercial Trash Rate Table  
Effective September 1,2006**

		1	2	3	4	5	6
CX	1.5	79.30	100.90	122.50	144.10	165.80	187.40
CA	2	86.50	115.30	144.10	173.00	201.80	230.60
CB	3	100.90	144.10	187.40	230.60	273.90	317.10
CC	4	115.30	173.00	230.60	288.30	345.90	403.60
CD	5	129.70	201.80	273.90	345.90	418.00	490.10
CE	6	144.10	230.60	317.10	403.60	490.10	576.60
CF	7	158.60	259.50	360.40	461.30	562.20	663.10
CG	8	173.00	288.30	403.60	518.90	634.20	749.50
CH	9	187.40	317.10	446.80	576.60	706.30	836.00
CI	10	201.80	345.90	490.10	634.20	778.40	922.50
CJ	11	216.20	374.80	533.30	691.90	850.40	1009.00
CK	12	230.60	403.60	576.60	749.50	922.50	1095.50
CL	13	245.00	432.40	619.80	807.20	994.60	1182.00
CM	14	259.50	461.30	663.10	864.90	1066.70	1268.50
CN	15	273.90	490.10	706.30	922.50	1138.70	1354.90
CP	16	288.30	518.90	749.50	980.20	1210.80	1441.40
CQ	17	302.70	547.70	792.80	1037.80	1282.90	1527.90
CR	18	317.10	576.60	836.00	1095.50	1354.90	1614.40
CS	19	331.50	605.40	879.30	1153.10	1427.00	1700.90
CT	20	3485.90	634.20	922.50	1210.80	1499.10	1787.40

**Additional Cart Service Rate Table**  
**Effective September 1, 2006**

RATE CODE	SERVICE	SERVICE CHARGE
TR-1	Flat Rate Trash (Residents)	\$17.82 -Minimum Bill \$17.82- Minimum-Add'l Unit
TR-2	Rate Additional Units (Multi-Family)	\$14.41-Minimum Bill \$14.41-Minimum-Add'l Unit
TR-3	Three Collections/Week	\$28.60-Minimum Bill \$28.60- Minimum-Add'l Unit
TR-4	Four Collections/Week	\$37.01-Minimum Bill \$37.01-Minimum Add'l Unit
TR-5	Five Collections/Week	\$45.42-Minimum Bill \$45.42-Minimum Add'l Unit
TR-6	Rooming House Plus Rooms	\$17.82-Minimum Bill \$2.29- Minimum Add'l Unit
TR-7	Commercial & Residential	\$20.19-Minimum Bill \$17.82-Minimum Add'l Unit
TR-8	Commercial Sharing Cart	\$20.19-Minimum Bill \$20.19-Minimum Add'l Unit
TR-9	Two 90-Gallon Carts	\$35.64-Minimum Bill \$35.64-Minimum Add'l Unit

Exhibit H

Labor Subcontract Agreement

See attached.

## LABOR SERVICES AGREEMENT

THIS LABOR SERVICES AGREEMENT (the "Agreement") is made and entered into effective as of September 1, 2006, by and between the City of Brawley, a chartered municipal corporation of the State of California ("City") and Allied Waste Services, Inc., a Delaware corporation, dba Allied Waste Services of Imperial Valley ("Allied").

WHEREAS, Allied and City have entered into that certain Solid Waste Disposal and Recycling Franchise Agreement, effective as of September 1, 2006 (the "Franchise Agreement").

WHEREAS, pursuant to Section 4.2 of the Franchise Agreement and the related Purchase and Sale Agreement, Allied has purchased from the City the trucks listed on Exhibit A (the "Assets").

WHEREAS, pursuant to Section 4.3.2 of the Franchise Agreement, the City has agreed that the City's drivers will provide the Services (as defined below) for the period of time set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Provision of Services. During the Term (as defined below), City shall provide to Allied the following services (the "Services"): City employees shall ride along with Allied's drivers and advise Allied's drivers with respect to routes (such routes shall be the normal routes serviced by the City in the ordinary course prior to the date of this Agreement), operation of the Assets, and any special customer needs, so that Allied's drivers may collect waste materials in accordance with the Franchise Agreement. In no event will the City employees operate any of the Assets or any other equipment of Allied.

As the employer for all of its employees providing Services, the City shall continue to be solely responsible for compliance with all federal, state and local employment laws applicable to its employees.

2. Term. The term ("Term") of this Agreement shall commence on the date hereof and shall expire on October 1, 2006.

3. Compensation.

(a) As payment for all Services rendered under this Agreement, City shall be entitled to deduct from the Base Rates payable to Allied pursuant to the Franchise Agreement the sum of the following labor costs for the City employees providing Services under this Agreement: the hourly rate for the applicable City employee (determined in accordance with the salary schedule attached as Exhibit B) providing Services under this Agreement multiplied by the number of hours actually worked by the applicable City employee providing Services during the Term.

(b) On or before October 16, 2006, City shall prepare and deliver to Allied such supporting documentation as may be required by Allied to support a deduction from the Base Rates as provided above. Within fifteen (15) days after the City delivers such supporting documentation to Allied, Allied shall notify the City of its approval or disapproval of the proposed deduction from

the Base Rates. In the event Allied does not provide any notice within such fifteen (15) day period, the proposed deduction from the Base Rates in the City's notice shall be deemed approved by Allied, and the deduction of such labor costs described in Section 3(a) for the entire Term shall be deducted from the November 2006 payment to Allied. No deduction described in this Section 3 shall be made by the City until: (1) the Services have been completed; and (2) such Services conform to the requirements of this Agreement and the quality of such Services is consistent with City's representations and warranties in this Agreement. Any disputes with respect to this Section 3 shall be handled in accordance with the provisions of Section 17.

4. Independent Contractor, Responsibility for Employees.

(a) City acknowledges and agrees that it is an independent contractor, that neither it nor any of its employees are employees of Allied, and that Allied will make no federal, state, or local tax or unemployment insurance or social security withholdings from payments of the amount payable to City hereunder. City shall report and pay any contributions for taxes, unemployment insurance, social security and other benefits (collectively "Taxes") for itself and its employees. City further acknowledges and agrees that neither it nor its employees are entitled to or eligible to participate in any of Allied's life, disability, health and dental insurance programs, 401(k) plan, vacation benefits, pension program, or any other benefits available to employees of Allied. City shall indemnify, defend and hold Allied and its directors, officers, affiliates, subsidiaries, parents, shareholders, agents, employees, successors and assigns (collectively, the "Allied Indemnified Parties") harmless from and against any and all costs, liabilities, obligations, claims, penalties, fines or losses, including attorneys' fees and costs (collectively, "Losses"), resulting from or in any way related to City's failure to pay any Taxes (including the employer's share of employment taxes should City or its employees ever be found to be an employee of Allied notwithstanding the contrary provisions of this Agreement).

(b) City shall ensure that its employees have the appropriate qualifications (including certification and training), consistent with all applicable laws, to perform the duties related to the Services. City shall be solely responsible for ensuring that its employees are legally authorized to work in the United States. City shall ensure that its employees are able to perform the essential functions of the duties required by Allied, with or without a reasonable accommodation. If an accommodation is necessary, City will be responsible for all costs, if any, associated with the provision of such an accommodation.

(c) City shall ensure, in a manner consistent with applicable law, that all of its employees providing Services hereunder report for and remain at work free from the effects of alcohol and the illegal use of drugs and in condition to perform the Services. Allied reserves the right to ensure that the City's employees performing Services hereunder do so free from the effects of alcohol and the illegal use of drugs, and Allied maintains the right to reject or discontinue the use of any of the City's employees.

(d) Allied shall be entitled to examine City's books and records pertaining to the City's employees providing the Services, City's obligations and duties under this Agreement, and all services rendered by City or its employees under this Agreement, at any time for purposes of auditing compliance with this Agreement.

5. Permits and Licenses. City agrees that it shall at all times maintain in full force and effect all permits, licenses and approvals necessary to lawfully provide the Services.

6. No Authority to Bind Company. Neither the City nor any of its employees shall have the right to bind Allied, transact any business in Allied's name or on behalf of Allied, in any manner or form, or to make any promises or representations on behalf of Allied.

7. [INTENTIONALLY OMITTED.]

8. Method of Services. City shall provide the Services according to City's own lawful means and methods of work, which shall be in the exclusive charge and control of City, and which shall not be subject to the control or supervision of Allied, except as to the results of any of the work performed by City; provided, however, that City shall cooperate fully with the efforts of Allied's personnel. City shall be responsible for City's acts, and the acts of City's agents and employees while engaged in the performance of the Services. City agrees to conform to and abide by all applicable federal, state and local statutes, rules, regulations, ordinances or orders ("Applicable Laws") that are applicable to the Services and persons conducting the type and nature of business conducted by City in performing the Services. Without limiting the foregoing, City acknowledges that by entering into this Agreement, City may be subjecting itself to the requirements of Section 503 of the Rehabilitation Act, 29 U.S.C. § 793, ("Section 503"), the Vietnam Era Veterans Readjustment Assistance Act, 38 U.S.C. § 4212, ("VEVRAA"), and the Executive Order 11246 of September 24, 1965 ("Executive Order"), which impose certain requirements concerning anti-discrimination and affirmative action.

9. Hours of Service. The Services shall be performed during the same hours of operation in effect immediately prior to the date of this Agreement and otherwise in accordance with the terms of the Franchise Agreement.

10. Unauthorized Acts. City shall not make any disbursement or other payment of any kind of character out of the compensation paid to City hereunder or otherwise, or take or authorize the taking of any other action, which contravenes any Applicable Law. City shall indemnify, defend and hold the Allied Indemnified Parties harmless from and against any and all Losses resulting from or in any way related to any unauthorized or unlawful acts of City, its employees and agents, whether willful or not.

11. Insurance. City agrees at all times during this Agreement to maintain in full-force and effect at least the following insurance coverages:

Workers' Compensation

Coverage A	Statutory
Coverage B - Employers Liability	\$2,000,000 each Bodily Injury by Accident
	\$2,000,000 policy limit Bodily Injury by Disease
	\$2,000,000 each occurrence Bodily Injury by Disease

Automobile Liability

Bodily Injury/Property Damage	\$3,000,000
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Combined - Single Limit

Coverage is to apply to all owned, non-owned, hired and leased vehicles (including trailers).

Commercial General Liability

Bodily Injury/Property Damage  
Combined - Single Limit

\$5,000,000 each occurrence  
\$10,000,000 general aggregate

To the extent allowed by applicable law, all such insurance policies will be primary without the right of contribution from any other insurance coverage maintained by Allied. Allied and its affiliates shall be shown as an additional insured on the Automobile Liability and Commercial General Liability policies. The fact that insurance is obtained by City shall not release or diminish the liability of City, including liability under the indemnity provisions of this Agreement. City agrees to waive any and all rights of subrogation it may have against Allied by virtue of any claims which may arise as a result of the Services, and all policies of insurance herein shall be so endorsed. City also hereby agrees to obtain from its insurance carrier(s) a waiver of subrogation in favor of Allied. All policies required herein shall be written by insurance carriers with a rating of A.M. Bests of at least "A-" and a financial size category of at least VIII or a State of California authorized Municipal Risk Pool. Insurance certificates evidencing the above requirements shall be furnished by City to Allied prior to commencing services and provide for not less than 30 days prior notice to the Allied of any cancellation or non-renewal of the policies. In addition, the following requirements apply:

- The Commercial General Liability policy must include Contractual Liability coverage specifically covering City's Indemnification of Allied pursuant to Sections 4, 10 and 12.
- Coverage must be provided for Products/Completed Operations.
- The policy shall also contain a cross Liability/Severability of Interests provision assuring that the acts of one insured do not affect the applicability of coverage to another insured.

12. Indemnity. To the fullest extent permitted by law (i) City shall indemnify, defend and hold harmless Allied, Allied's Affiliates (defined as any legal entity in which Allied owns or controls a majority ownership interest, and Allied Waste Industries, Inc., and each of Allied Waste Industries, Inc.'s subsidiaries and operating units), and all of their respective officers, directors, employees and former employees, and agents ("Allied Indemnified Parties") from and against any and all claims, demands, causes of action, liabilities, costs, expenses (including attorneys' fees, court costs, and expenses of investigation), penalties, fines, assessments and damages ("Losses") to the extent resulting from or in any way related to damages or injuries to persons or property, related to or resulting or arising from, or caused by, willful conduct, error, omissions or negligent acts of the City or its employees or agents, and (ii) Allied shall indemnify, defend and hold harmless the City from and against any and all Losses to the extent resulting from or in any way related to damages or injuries to persons or property, related to or resulting or arising from, or caused by, willful conduct, error, omissions or negligent acts of Allied or its employees or agents.

13. Assignment; Binding Effect; Amendment. City shall not subcontract or assign this Agreement or its rights under it without Allied's prior written consent, which Allied may grant or



acquiescence in any such breach or default, or of or in any similar breach or default occurring later; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

19. Survival. The provisions relating to insurance, indemnification and other obligations that may by reasonable implication continue beyond the expiration or termination of this Agreement including but not limited to Sections 4, 6, 10, 12, 16, 17, 22 and 23 shall survive the expiration or earlier termination of this Agreement.

20. Captions. The headings of this Agreement are inserted for convenience only, and shall not constitute a part of this Agreement or be used to construe or interpret any of its provisions.

21. Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, it shall, to the extent possible, be modified in such manner as to be valid, legal and enforceable but so as most nearly to retain the intent of the parties. If such modification is not possible, such provision shall be severed from this Agreement. In either case the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

22. Remedies. In the event of breach of any of the terms of this Agreement by either party hereto, the non-breaching party will be entitled, where appropriate, to apply for and obtain injunctive relief in any court of competent jurisdiction without limitation as to any other or future remedies that may be available.

23. Attorneys' Fees. If any legal action or any other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or he may be entitled.

24. Relationship of the Parties. Each party is and shall perform its obligations under this Agreement as an independent contractor and, as such, shall have and maintain complete control over all of its respective employees, agents and operations. Neither party nor anyone employed by it shall be, represent, purport to act or be deemed to be the agent, representative, employee or servant of the other party.

25. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument.

*[Remainder of Page is left intentionally blank. Signatures on next page.]*

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

ALLIED:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

CITY:

By:  \_\_\_\_\_

Name: Toni C. Carrillo

Title: Mayor

Attest:  \_\_\_\_\_

Title: City Clerk Janet P. Smith

Approved as to form by

By:  \_\_\_\_\_

Title: City Attorney Dennis H. Morita

Exhibit A

Assets

<u>Vehicle Lic#</u>	<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN #</u>
E072858	1987	GMC	Leach	1G8P7D1Y3HV101736
E356853	1991	Peterbuilt	Garbage Trk	1XPZH78X4MD705889
E356852	1991	Peterbuilt	Garbage Trk	1XPZH78X4MD705888
E356851	1991	Peterbuilt	Garbage Trk	1XPZH78X0MD705090
E037948	1995	Volvo	Pakmore Trk	4X52AFHD7TR475560
1105186	2002	Peterbuilt	Garbage Trk	1NPZH8XX2D714227
1076457	2000	Peterbuilt	Garbage Trk	1NPZH8BX51D713047
1121040	2002	Peterbuilt	Garbage Trk	1NPZH8X130714862
1202297	2006	Peterbuilt	Garbage Trk	1NPZHD8X96D716432

Exhibit B

See attached Salary Schedule.

Attachment A



## EXHIBIT B

City of Brawley  
Solid Waste Employees  
Salary, benefits and administrative cost per applicable pay period

<u>NAME</u>	<u>\$ PER TWO WEEK PERIOD</u>	<u>\$ PER HOUR</u>
Romero	2,945	36.81
Ramos	2,356	29.45
Limon	2,356	29.45
Rogers	2,356	29.45
Perez	2,112	26.40
Araujo	2,112	26.40
Total:	14,237	

1829608.2

## Exhibit I

### Alley Service Policy

#### Criteria to Qualify

- Homeowners wishing alley collection will be responsible for securing the participation from the rest of the owners on their respective blocks. There will be no split service with some in the alley and others on the same block serviced at the curb. (Allied will not be responsible for the solicitation of any collection service.)
- For safety reasons, alleys will not qualify for collection service if any of the following conditions exist:
  - Alleys where trucks are required to back out.
  - Alleys where trucks are require to make more than one attempt to negotiate a left or right turn.
- Alleys will only be serviced if adequate clearance is established and maintained regarding trees, overhead wires, shrubs and articles left in the right of way.
- Alleys must be paved or surfaced to allow collection trucks safe access and collection.

#### Alley Service Requirements

- No parking in alleys on collection day.
- All collection carts will be placed on the collection side of the alley. (The rear of the houses adjoining the alley from both streets.)
- All collection carts will be set out for collection after 6 PM on the day prior and before 6AM of the collection day. All collection carts must be removed from alleys by the end of the collection day.
- Carts must be placed with handles facing collection sidewall at one foot from the wall and two feet between carts.
- Residents who cannot use the curbside collection method whether due to physical constraints or by choice will be charged an additional amount per month for alley collection service as shown in Exhibit G. Those charged will agree to sign a separate service agreement with Allied Waste acknowledging the additional fee.

Allied may require residents using alley service to indemnify Allied for any damages to the alley pavement or underground utilities.

## EXHIBIT J

### Community Involvement

**[NOTE: Exhibit J is provided as an example only and is subject to change from time to time in the sole discretion of Allied.]**

#### Community Involvement through Funding or Other Means

We at Allied Waste Services of Imperial Valley take pride in having strong local community involvement in the cities that we serve. Our involvement goes far beyond the services and programs set forth in the scope of services section of the Solid Waste and Recycling Franchise Agreement. As the needs of a community change so does the nature and scope of our community involvement; however, listed below is the type of involvement the City of Brawley could expect:

##### 1. Active participation with the Chamber

- Allied is currently a member and as we have done at other cities in the Valley we would request to be a member of the Beautification Committee or similar type Committee as the overall appearance of the City is an important issue to us.

##### 2. Schools

- Support and participation in classroom educational programs dealing with recycling and safety tips for children when they are around moving vehicles.
- Allied would provide free container, collection and disposal service to the schools for school events such as carnivals.
- Donations for selected school events and purchase of advertising space in school publications such as year- books.

##### 3. Community Events sponsored by local not-for –profit organizations

- Allied would provide free container, collection and disposal service for selected events.
- On a case-by-case basis we also make cash donations.

##### 4. Youth groups

- Allied sponsors youth athletic teams. Currently we support the Brawley Little League.
- Allied also supports other youth programs such as the Police Athletic League (PAL) and Police Explorers

##### 5. County Events that benefit the entire County

- Allied supports County events such as Freedom Fest, Children Fairs, California Mid-Winter Fair, and Carrot Festival

##### 6. Beautification projects

- In the past Allied has partnered with cities on special clean-up projects that enabled the projects to happen. A recent example is our working with the City of Calexico, the LEA,

and the State on cleaning-up an illegal dumpsite.

Attachment A

**FIRST AMENDMENT TO SOLID WASTE DISPOSAL AND  
RECYCLING FRANCHISE AGREEMENT**

This FIRST AMENDMENT TO SOLID WASTE DISPOSAL AND RECYCLING FRANCHISE AGREEMENT ("Amendment") is entered into as of December 20, 2013, by and between the CITY OF BRAWLEY, a municipal corporation of the State of California ("City") and ALLIED WASTE TRANSPORTATION, INC., a Delaware corporation, dba ALLIED WASTE SERVICES OF IMPERIAL ("Allied"), with reference to the following recitals:

Recitals

A. City is a general law city within the meaning of California Constitution and has reserved its powers pursuant to California Public Resources Code Section 40000 et seq. to grant an exclusive Solid Waste and Recycling franchise.

B. Allied Waste Transportation, Inc. ("Allied") is the correct corporate name for the company designated as "Allied Waste Services, Inc." in the Franchise, and this Amendment therefore provides the correct name of the franchisee under both the Franchise and this Amendment.

C. On August 10, 2006, City granted Allied an exclusive franchise to collect and dispose of, for a fee, Solid Waste and Franchised Recyclables from Residential, Commercial and Industrial sites within the City ("Franchise" or "Agreement"). The Term of the original Franchise commenced on September 1, 2006 and extends through September 1, 2016. The City has the option to extend the Franchise Term for an additional ten-year period, ending September 1, 2026.

D. The City desires that Allied provide street sweeping to the City. Allied has agreed to provide street sweeping services, and requests this Amendment to the Franchise with the City to enable Allied to cover the costs of these services.

E. The purpose of this Amendment is to extend Allied's original franchise agreement with the City pursuant to Sections 3.2 and 12 of the original Franchise, and to revise the Franchise to reflect Allied's agreement to provide street sweeping services for the City. Therefore, this Amendment provides street sweeping services that will commence on January 1, 2014, along with a Franchise Term that will expire on September 1, 2026.

Amendments to Franchise

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City and Allied hereby agree that:

1. Subsection 3.1 shall hereby be amended in its entirety to read as follows:

3.1 Term. The Franchise term shall commence as of August 10, 2006 and shall terminate on September 1, 2026, unless earlier terminated in accordance with the provisions hereof.

2. New Subsections 6.1.1, 6.1.2, 6.1.3 shall hereby be added to the Franchise Agreement as follows:

6.1.1. Street Sweeping Services. In order to further compensate the City for Allied's use of the City's Streets and Byways, Allied shall during the Term provide street sweeping of all City Streets and Byways depicted on Exhibit J, attached hereto, and any additional City-owned Streets and Byways designed by the City during the Term, pursuant to paragraph 6.1.3 below. Allied shall perform the street sweeping services in accordance with the provisions of Exhibit K. Street sweeping services will commence on delivery of the first street sweeper from City to Allied, as provided in 6.1.2 below.

6.1.2 Lease and Purchase of City Street Sweepers. The City currently has one 2013 CNG street sweeper to serve as the primary street sweeper and an existing 2007 CNG street sweeper. Allied shall lease-to-own the new street sweeper from the City for rental of \$60,211 per year for 5 years. After full payment of the 5 annual lease payments for the street sweeper, full title to and ownership of that street sweeper shall pass to Allied, free and clear of all liens and encumbrances. Prior to Allied taking full ownership of a street sweeper, that street sweeper will be used solely in Imperial County. The first lease payment shall be due and payable upon delivery of the street sweeper by the City to Allied. Annual lease payments shall be due within thirty (30) days of the anniversary date of the completed delivery of the sweeper to Allied. Allied shall also purchase the City's current 2007 street sweeper for fair market value (as agreed by proof of three quotes for the same equipment specifications) at the commencement of services pursuant to this Amendment. Allied shall be responsible for all repairs and maintenance for said leased and owned vehicles. The City and Allied shall enter into a written Lease-to-Own and Purchase Agreement consistent with the financial and other terms and conditions of this Amendment for each vehicle, in a form mutually agreed to by the City and Allied. Should the City acquire an additional alternative fuel street sweeper, Allied and the City shall enter into a Lease-to-Own and Purchase Agreement that minimally assumes the full purchase price of the equipment

6.1.3 Street Sweeping Compensation. To compensate Allied for street sweeping services, the City shall pay Allied the sum of \$204,000 a year commencing on the date that Allied begins providing street sweeping services to the City. This annual sum shall be increased on the anniversary date of the provision of street sweeping services using the most recent percent annual increase in the CPI as defined in the Franchise and used in the adjustment of solid waste services rates under the Franchise. This annual payment shall be made by the City to Allied in twelve equal monthly installments, for each year during the Term. Allied will sweep all City streets as directed by Exhibit J and Exhibit K up to 210 curb miles. Should the City's total curb miles requiring sweeping increase through annexation or any other reason by more than five percent of this total (i.e., by more than 10 additional miles), the parties shall meet and confer to consider an adjustment to Allied's Maximum Rates that would reasonably



compensate Allied for its additional costs of sweeping the City's street. Allied shall be entitled to a reasonable rate adjustment to compensate it for such additional street sweeping costs as demonstrated to the City's reasonable satisfaction.

3. Subsection 9.1 shall be hereby amended as follows:

9.1 Allied agrees, at Allied's own expense, to carry comprehensive public liability and automobile liability coverage during the full Term of this Franchise, with City also shown as an additional insured thereunder, covering liability for bodily injuries, death and property damage, arising out of or in connection with the operations of Allied, under this Franchise in an amount not less than \$1,000,000 for injuries including death to any one person and in an amount not less than \$5,000,000 for any one accident or occurrence. Allied further agrees to carry, at Allied's own expense, workers' compensation insurance in accordance with the laws of the State. Certificates of insurance thereof, shall be deposited by Allied with the City Manager together with endorsements or statements from the insuring companies providing that such policies will not be subject to cancellation until thirty (30) days after written notice to City. All of said policies shall be subject to the reasonable approval of the City attorney.

4. New Subsections 9.4 and 9.5 shall hereby be added to the Franchise Agreement as follows:

9.4 All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against the City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Allied or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Allied hereby waives its own right of recovery against the City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

9.5 Environmental Impairment Liability shall be written on a Contractor's Pollution Liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations". The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations shall extend a minimum of three years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured. The Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or

suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer. The City, its officials, officers, agents, and employees shall be included as insureds under the policy.

5. Exhibits J and K are herto incorporated into this Amendment and Franchise as though fully set forth herein.
6. Except as expressly amended herein, all other terms and conditions of the Franchise shall remain in full force and effect.

**CITY:**

City of Brawley, California  
a Municipal Corporation


By:   
Don C. Campbell, Mayor

**ATTEST:**

By:   
Alma Benavides, City Clerk

**ALLIED:**

Allied Waste Transportation, Inc., a Delaware  
Corporation dba Allied Waste Services of  
Imperial

By:   
Mark Clatt, Authorized Agent

**APPROVED AS TO FORM:**

By:   
Dennis H. Morita, City Attorney

## City of Brawley

### Existing vs. Proposed Street Sweeping Services Cost Comparison

(prepared 9-26-13)

	existing	proposed
staffing	\$ 110,384.00	\$ 71,767.00
transportation costs	\$ 10,000.00	
equipment rental fees	\$ 526,414.00	
allied contract		\$ 204,000.00
sub total	\$ 646,798.00	\$ 275,767.00
admin fee of 8%	\$ 51,743.84	\$ 22,061.36
grand total	\$ 698,541.84	\$ 297,828.36
savings		\$ 400,713.48

**August 28, 2013**  
**Sweeping Operations Data**

**Curb Miles** Approximately 190 miles

**Sweepers**

- 1.0 2005 Elgin Crosswind - Diesel  
Freightliner Chassis FL 70  
Miles 83,040  
Hours rear engine 7,330  
New Blower & Housing installed in June, 2102
- 2.0 2007 Tymco 600 BAH – CNG  
Freightliner Chassis FC80  
Miles 44,299  
Hours rear engine 9,531  
Hours Life Recommended 5,000  
Condition : Good
- 3.0 New CNG Operated Sweeper to arrive on October, 2013

**Tonnage** 500 tons/ year  
\$10,000 Transportation Costs

**Routes in place** Two daily routes am and pm shifts  
Streets Swept weekly

The commercial area operator starts at 3am and completes his route 12 noon. The residential area operator sweeps from 7am to 4pm. Street sweeping tasks are completed Monday thru Friday.

**Employees** Two employees, One full time/ One temporary

Temporary \$18.71 / hour / 172 hour month / 12 months = \$38,617 / year  
Full Time \$37.29 / hour / 172 hour month / 12 months = \$76,966 / year  
Total Employee costs without over time \$115,583.00

**Equipment O&M , Fill Station, Fuel (Cost Included in Rental Fee)**

<b>Sum Total Costs</b>	
<b>Employees</b>	<b>\$110,384/fiscal year</b>
<b>Spoils Hauling to landfill</b>	<b>\$10,000/fiscal year</b>
<b>Equipment Rental Fees</b>	<b>\$526,413.83/fiscal year</b>
<b>Total</b>	<b>\$646,797.80/fiscal year</b>
<b>Administrative 8%</b>	<b>\$51,743.83fiscal year</b>
<b>Total</b>	<b>\$698541.70/fiscal year</b>
<b>Cost / month</b>	<b>\$58,211.80/fiscal year</b>

**SECOND AMENDMENT TO SOLID WASTE DISPOSAL  
AND RECYCLING FRANCHISE AGREEMENT**

This SECOND AMENDMENT TO SOLID WASTE DISPOSAL AND RECYCLING FRANCHISE AGREEMENT ("Amendment 2") is entered into as of February 24, 2014, by and between the CITY OF BRAWLEY, a municipal corporation of the State of California ("City") and ALLIED WASTE TRANSPORTATION, INC., a Delaware Corporation, dba ALLIED WASTE SERVICES OF IMPERIAL ("Allied"), with reference to the following recitals:

**Recitals**

- A. As part of the original Scope of Work, Allied as an exclusive franchise will collect and dispose of for a fee, Solid Waste and Franchised Recyclables from Residential, Commercial and Industrial sites with the City.
- B. Amendment No. 1 provided street sweeping services that commenced on January 1, 2014, along with a Franchise Term that will expire on September 1, 2026.
- C. Amendment No. 1 incorporated a street sweeping schedule listed as Exhibit J.

**Amendments to Franchise**

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City and Allied hereby agree that:

- 1. Street Sweeping Schedule Exhibit J is amended with new Street Sweeping Schedule Exhibit J updated February 12, 2014.
- 2. All other items, conditions and stipulations contained in the original Contract shall remain in effect.

**CITY OF BRAWLEY**

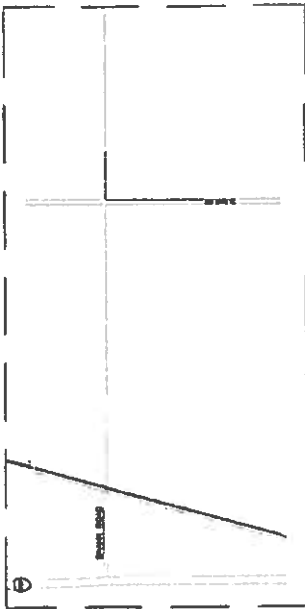
**ALLIED**

By:   
Rosanna B. Moore, City Manager

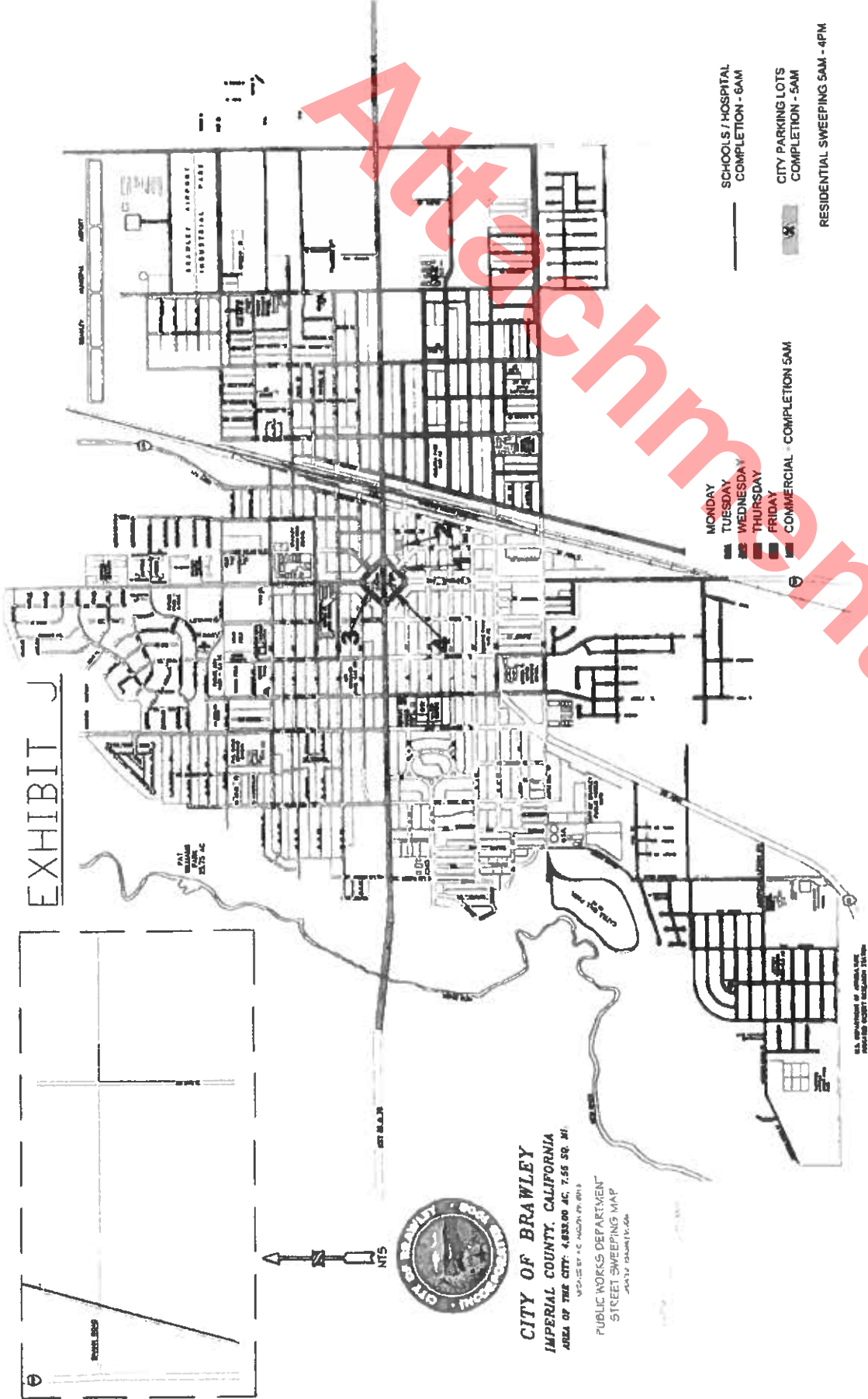
By:   
Mark Clatt, Authorized Agent

**Attest:**

By:   
Alma Benavides, City Clerk



# EXHIBIT J



**CITY OF BRAWLEY**  
**IMPERIAL COUNTY, CALIFORNIA**  
**AREA OF THE CITY: 4,833.00 AC. 7.55 SQ. MI.**  
**OFFICIAL CITY SEAL**  
**PUBLIC WORKS DEPARTMENT**  
**STREET SWEEPING MAP**  
**ADAPTED FROM 1964**

- MONDAY
- TUESDAY
- WEDNESDAY
- THURSDAY
- FRIDAY
- SCHOOLS / HOSPITAL COMPLETION - 6AM
- CITY PARKING LOTS COMPLETION - 5AM
- RESIDENTIAL SWEEPING 5AM - 4PM

U.S. DEPARTMENT OF AGRICULTURE  
NATIONAL AGRICULTURAL LIBRARY



**THIRD AMENDMENT TO SOLID WASTE DISPOSAL AND RECYCLING  
FRANCHISE AGREEMENT**

This THIRD AMENDMENT TO SOLID WASTE DISPOSAL AND RECYCLING FRANCHISE AGREEMENT ("Second Amendment") is entered into as of September 6, 2016, by and between the CITY OF BRAWLEY, a municipal corporation of the State of California ("City") and ALLIED WASTE TRANSPORTATION, INC., a Delaware corporation, dba ALLIED WASTE SERVICES OF IMPERIAL ("Allied"), with reference to the following recitals:

**Recitals**

A. The City of Brawley is a general law city within the meaning of the California Constitution and has reserved its powers pursuant to California Public Resources Code Section 40000 et seq. to grant an exclusive Solid Waste and Recycling franchise.

B. Allied Waste Transportation, Inc. ("Allied") is the correct corporate name for the company designated as "Allied Waste Services, Inc." in the Franchise Agreement. Allied is a wholly owned subsidiary of Republic Services, Inc.

C. On August 10, 2006, the City granted Allied an exclusive franchise to collect and dispose of Solid Waste and Franchised Recyclables from Residential, Commercial and Industrial sites within the City ("Franchise" or "Agreement"). The City Council adopted Amendment No. 1 to the Solid Waste Disposal and Recycling Franchise Agreement on October 1, 2013. Amendment No. 1 incorporated street sweeping services and extended the initial term of the Agreement for a ten-year period to September 1, 2026. The City Council adopted Amendment No. 2 to the Solid Waste Disposal and Recycling Franchise Agreement on February 18, 2014. Amendment No. 2 modified the street sweeping schedule.

D. The City and Allied wish to enter into this Third Amendment to clarify the respective responsibilities of the City and Allied for billing multi-family residential units in the City.

**Amendment to Franchise**

**NOW, THEREFORE**, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City and Allied hereby agree that:

1. New Subsection 6.2.17.1 is hereby added to the Franchise, to read as follows:

6.2.17.1 **Multifamily Billing Services.** The City will be responsible for the billing and collection of invoices for all multifamily structures with total units of four (4) or less. The City shall pay Allied Waste on a monthly basis the applicable Base

Rate on Exhibit G (as adjusted pursuant to the Franchise Agreement) and other fees payable by all multifamily dwellings billed by the City. Allied will be responsible for the billing and collection of invoices for all multifamily structures with total units of five (5) or more, at the applicable rates on Exhibit G. Allied shall suspend service to multifamily dwellings for nonpayment as directed by the City.

2. Section 8.6 is amended in its entirety to read as follows:

Section 8.6 Incentive for Commercial and Multifamily (On Bin Services) Recycling. To promote recycling within the community, Allied shall charge commercial and multifamily recycling bins at seventy-five (75%) of the cost of a same size trash bin. In the case of severe contamination of these bins, Allied reserves the right to remove the bins or replace with trash receptacles.


3. Except as expressly amended herein, all other terms and conditions of the Franchise shall remain in full force and effect.

DATE: 12/8/16

**CITY:** City of Brawley, California  
a Municipal Corporation

By:   
Donald L. Wharton, Mayor

**ALLIED:** Allied Waste Transportation, Inc.  
a Delaware Corporation, dba Allied Waste  
Services of Imperial

By:   
Heath Eddleklute, Vice President

**ATTEST:**

By:   
Alma Benavides, City Clerk

**APPROVED AS TO FORM:**

By:   
William S. Smerdon, City Attorney

#### **FOURTH AMENDMENT TO SOLID WASTE DISPOSAL AND RECYCLING FRANCHISE AGREEMENT**

This FOURTH AMENDMENT TO SOLID WASTE DISPOSAL AND RECYCLING FRANCHISE AGREEMENT ("Fourth Amendment") is entered into as of December 22, 2021, by and between the CITY OF BRAWLEY, a municipal corporation of the State of California ("City") and ALLIED WASTE TRANSPORTATION, INC., a Delaware corporation, dba ALLIED WASTE SERVICES OF IMPERIAL ("Allied"), with reference to the following recitals:

##### **Recitals**

A. The City of Brawley is a general law city within the meaning of the California Constitution and has reserved its power pursuant to California Public Resources Code Section 40000 et seq. to grant an exclusive Solid Waste and Recycling franchise.

B. Allied Waste Transportation Services, Inc., ("Allied") is the correct corporate name for the company designated as "Allied Waste Services, Inc." in the Franchise Agreement. Allied is a wholly owned subsidiary of Republic Services, Inc.

C. On August 10, 2006, the City granted Allied an exclusive franchise to collect and dispose of Solid Waste and Franchised Recyclables from Residential, Commercial and Industrial sites within the City ("Franchise" or "Agreement"). The City Council adopted Amendment No. 1 to the Franchise Agreement on October 1, 2013. The City Council adopted Amendment No. 2 to the Franchise Agreement on February 18, 2014. The City Council adopted Amendment No. 3 to the Franchise Agreement on September 16, 2016.

D. The City and Allied wish to enter into this Fourth Amendment to the Franchise Agreement for the purpose of amending Section 7.3 of the Franchise Agreement by adopting a more indicative index for the purpose of establishing annual rate adjustments.

##### **Amendment to Franchise**

NOW, THEREFORE, in consideration of the above recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, City and Allied agree that:

1. Section 7.3.1a of the Franchise reads:

Maximum Rates for Residential, Commercial, Institutional, Industrial/Roll-off noted in Exhibit G shall be increased each annual anniversary by an amount equal to the product of the previous year's Maximum Rate multiplied by the percentage increase in the Consumer Price Index ("CPI") for All Urban Consumers (CPI-U) for the Western Urban Area, Size B/C as

published by the United States Department of Labor, Bureau of Labor Statistics for the latest twelve-month period for which statistics are available. The CPI rate of October 1<sup>st</sup> of each year shall go into effect on January 1<sup>st</sup> for the contract year going forward.

2. Section 7.3.1a shall be amended to read:

Maximum Rates for Residential, Commercial, Institutional, Industrial/Roll-off noted in Exhibit G shall be increased each annual anniversary by an amount equal to the product of the previous year's Maximum Rate multiplied by the percentage increase in the Consumer Price Index for Water and Sewer and Trash Collection Services published by the United States Department of Labor, Bureau of Labor Statistics for the latest twelve-month period for which statistics are available. The CPI rate in October of each year shall go into effect on January 1<sup>st</sup> for the contract year going forward. Notwithstanding any change in the foregoing CPI, the Maximum Rates for Residential, Commercial, Institutional, Industrial/Roll-off noted in Exhibit G shall not be increased more than four percent (4%) at any one annual anniversary.

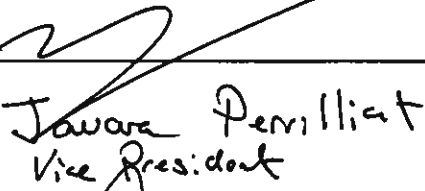
3. Except as expressly amended herein, all other terms and conditions of the Franchise shall remain in full force and effect.

Date: 1/22/2022

CITY: City of Brawley, California  
a Municipal Corporation

ALLIED: Allied Waste Transportation, Inc.  
a Delaware Corporation, dba Allied Waste  
Service of Imperial

By:   
Sam Couchman, Mayor

By:   
Javara Perrilliat  
Vice President  
APPROVED AS TO FORM:

ATTEST:

By:   
Alma Benavides, City Clerk

By:   
William S. Smerdon, City Attorney



December 1, 2021

Tyler Salcido  
City Manager  
City of Brawley  
383 Main St  
Brawley, CA 92227

Enclosed you will find our proposal for a rate adjustment based on our agreement with the City, as we attempt to navigate the increased industry costs while attempting to keep the rates reasonable to the City.

Per Section 7.3 of the Solid Waste Disposal and Recycling Franchise Agreement between the City of Brawley and Republic Services, we are proposing a switch to a more normalized and indicative index to adjust the City's rates. Currently the rate adjustment is based on 12-month CPI change (October – October) supplied by the Department of Labor Statistics. The current U.S. City Average for all Urban Consumers, Size B/C is 6.3%. However, the Company thinks a more indicative index to use is the Water and Sewer and Trash Collection Services indices which has a 12-month percentage change of 3.7% and are proposing we switch to the index, effective January 1, 2022 and all subsequent years of the agreement.

As a good community member and business partner, we value the relationship with the City and see it as a privilege to provide the residents with trash collection services and street sweeping. If you have any questions or would like discuss further, please feel free to call me at (760) 337-2412.

Sincerely,

George Taylor  
Operations Manager  
[gtaylor@republicservices.com](mailto:gtaylor@republicservices.com)

Attachments (table 4 & table 2 CPI index)



## Economic News Release

CPI PRINT

Table 4. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index

Table 4. Consumer Price Index for All Urban Consumers (CPI-U): Selected areas, all items index, October 2021  
[1982-84=100, unless otherwise noted]

Area	Pricing Schedule(1)	Percent change to Oct. 2021 from:			Percent change to Sep. 2021 from:		
		Oct. 2020	Aug. 2021	Sep. 2021	Sep. 2020	Jul. 2021	Aug. 2021
U.S. city average	M	6.2	1.1	0.8	5.4	0.5	0.3
Region and area size(2)							
Northeast	M	5.4	0.9	0.6	4.6	0.4	0.3
Northeast - Size Class A	M	4.7	0.8	0.5	4.1	0.5	0.4
Northeast - Size Class B/C(3)	M	6.4	1.0	0.8	5.2	0.4	0.2
New England(5)	M	5.6	0.9	0.9	4.1	0.2	0.0
Middle Atlantic(4)	M	5.4	0.9	0.5	4.7	0.5	0.4
Midwest	M	6.6	1.0	0.8	5.7	0.4	0.2
Midwest - Size Class A	M	5.8	1.1	0.8	5.0	0.4	0.3
Midwest - Size Class B/C(2)	M	7.1	1.0	0.8	6.2	0.4	0.2
East North Central(4)	M	6.3	1.1	0.9	5.4	0.3	0.2
West North Central(5)	M	7.3	1.0	0.7	6.5	0.7	0.3
South	M	6.6	1.3	1.0	5.8	0.6	0.3
South - Size Class A	M	6.2	1.3	0.9	5.3	0.7	0.3
South - Size Class B/C(3)	M	6.9	1.3	1.0	6.0	0.5	0.3
South Atlantic(5)	M	6.5	1.4	1.0	5.6	0.8	0.4
East South Central(4)	M	7.2	1.0	0.9	6.6	0.1	0.1
West South Central(4)	M	6.6	1.2	0.9	5.7	0.5	0.2
West	M	6.0	1.0	0.8	5.3	0.4	0.2
West - Size Class A	M	5.7	1.0	0.9	5.0	0.4	0.2
West - Size Class B/C(3)	M	6.3	1.0	0.7	5.7	0.4	0.3
Mountain(5)	M	7.0	1.3	1.0	6.0	0.5	0.3
Pacific(5)	M	5.6	0.9	0.7	5.0	0.4	0.2
Size classes							
Size Class A(3)	M	5.6	1.1	0.8	4.8	0.5	0.3
Size Class B/C(3)	M	6.7	1.1	0.9	5.9	0.5	0.3
Selected local areas							
Chicago-Naperville-Elgin, IL-IN-WI	M	5.3	1.0	0.7	4.5	0.4	0.3
Los Angeles-Long Beach-Anaheim, CA	M	5.4	1.2	0.9	4.6	0.5	0.3
New York-Newark-Jersey City, NY-NJ-PA	M	4.3	0.9	0.3	3.8	0.7	0.5

## Footnotes

(1) Foods, fuels, and several other items are priced every month in all areas. Most other goods and services are priced as indicated: M - Every month. 1 - January, March, May, July, September, and November. 2 - February, April, June, August, October, and December.

(2) Regions defined as the four Census regions.

(3) Indexes on a December 1996=100 base.

(4) Indexes on a December 2017=100 base.

(5) Indexes on a December 1986=100 base.

(6) 1998 - 2017 indexes based on substantially smaller sample.

(7) Indexes on a December 2001=100 base.

(8) Indexes on a 1987=100 base.

NOTE: Local area indexes are byproducts of the national CPI program. Each local index has a smaller sample size than the national index and is, therefore, subject to substantially more sampling and other measurement error. As a result, local area indexes show greater volatility than the national index, although their long-term trends are similar. Therefore, the Bureau of Labor Statistics strongly urges users to consider adopting the national average CPI for use in their escalator clauses.



Area	Pricing Schedule(1)	Percent change to Oct. 2021 from:		Percent change to Sep. 2021 from:		
		Oct. 2020	Aug. 2021	Sep. 2021	Sep. 2020	Jul. 2021
Atlanta-Sandy Springs-Roswell, GA	2	7.9	1.5			
Baltimore-Columbia-Towson, MD(4)	2	6.3	2.3			
Detroit-Warren-Dearborn, MI	2	5.5	1.2			
Houston-The Woodlands-Sugar Land, TX	2	6.1	1.1			
Miami-Fort Lauderdale-West Palm Beach, FL	2	5.7	1.5			
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	2	5.6	1.0			
Phoenix-Mesa-Scottsdale, AZ(2)	2	7.1	2.2			
San Francisco-Oakland-Hayward, CA	2	3.8	0.7			
Seattle-Tacoma-Bellevue, WA	2	6.5	1.1			
St. Louis, MO-IL	2	7.5	0.6			
Urban Alaska	2	6.3	1.2			
Boston-Cambridge-Newton, MA-NH	1				4.0	-0.1
Dallas-Fort Worth-Arlington, TX	1				5.9	0.6
Denver-Aurora-Lakewood, CO	1				4.5	0.3
Minneapolis-St. Paul-Bloomington, MN-WI	1				5.4	1.1
Riverside-San Bernardino-Ontario, CA(3)	1				6.8	0.8
San Diego-Carlsbad, CA	1				6.5	0.1
Tampa-St. Petersburg-Clearwater, FL(3)	1				6.1	1.0
Urban Hawaii	1				5.0	1.0
Washington-Arlington-Alexandria, DC-VA-MD-WV(8)	1				4.5	0.7

#### Footnotes

(1) Foods, fuels, and several other items are priced every month in all areas. Most other goods and services are priced as indicated: M - Every month. 1 - January, March, May, July, September, and November. 2 - February, April, June, August, October, and December.

(2) Regions defined as the four Census regions.

(3) Indexes on a December 1996=100 base.

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#### Table of Contents

Last Modified Date: November 10, 2021

U.S. BUREAU OF LABOR STATISTICS Division of Consumer Prices and Price Indexes Suite 3130 2 Massachusetts Avenue NE  
Washington, DC 20212-0001

Telephone: 1-202-691-7000 [www.bls.gov/CPI](http://www.bls.gov/CPI) [Contact CPI](#)



## Economic News Release

## Table 2. Consumer Price Index for All Urban Consumers (CPI-U): U. S. city average, by detailed expenditure category

Table 2. Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, by detailed expenditure category, October 2021  
[1982=84=100, unless otherwise noted]

Expenditure category	Relative importance Sep. 2021	Unadjusted percent change		Seasonally adjusted percent change		
		Oct. 2020- Oct. 2021	Sep. 2021- Oct. 2021	Jul. 2021- Aug. 2021	Aug. 2021- Sep. 2021	Sep. 2021- Oct. 2021
All items	100.000	6.2	0.8	0.3	0.4	0.9
Food	13.977	5.3	1.0	0.4	0.9	0.9
Food at home	7.716	5.4	1.1	0.4	1.2	1.0
Cereals and bakery products	0.979	3.5	0.9	0.0	1.1	1.0
Cereals and cereal products	0.296	3.1	1.3	0.3	0.6	1.6
Flour and prepared flour mixes	0.042	5.0	-0.1	2.0	1.1	2.0
Breakfast cereal(1)	0.136	4.3	3.3	0.0	-0.3	3.3
Rice, pasta, cornmeal	0.119	1.0	0.3	-0.5	1.6	0.0
Rice(1)(2)(3)		0.7	0.0	0.3	0.5	0.0
Bakery products(1)	0.682	3.6	0.7	0.3	1.5	0.7
Bread(1)(4)	0.194	2.3	0.8	-0.1	1.8	0.8
White bread(1)(3)		1.3	0.6	-0.5	2.5	0.6
Bread other than white(1)(2)		3.2	1.1	0.2	1.2	1.1
Fresh biscuits, rolls, muffins(2)	0.100	4.8	0.2	-1.8	3.7	-0.1
Cakes, cupcakes, and cookies(1)	0.174	2.7	-0.1	0.1	0.4	-0.1
Cookies(1)(3)		-0.2	-0.6	0.1	0.3	-0.6
Fresh cakes and cupcakes(1)(3)		6.6	0.7	-0.6	0.7	0.7
Other bakery products	0.214	5.2	1.5	-0.3	1.2	1.7
Owners' equivalent rent of primary residence(11)	22.408	3.1	0.5	0.3	0.4	0.4
Tenants' and household insurance(1)(2)	0.346	-0.4	-0.3	-0.2	0.3	-0.3
Water and sewer and trash collection services(2)	1.081	3.7	0.2	0.3	0.5	0.2
Water and sewerage maintenance	0.787	3.1	0.3	0.2	0.2	0.3
Garbage and trash collection(1)(10)	0.294	5.3	0.0	0.6	1.1	0.0
Household operations(1)(2)	0.893	6.9	0.5	0.7	-0.2	0.5
Domestic services(1)(2)	0.302	7.5	0.1	0.9	-2.3	0.1
Gardening and lawn care services(1)(2)	0.301		1.1	0.5	1.9	1.1
Moving, storage, freight expense(1)(2)	0.096	7.9	-2.2	1.7	-0.8	-2.2
Repair of household items(1)(2)						
Medical care services	7.024	1.7	0.5	0.3	-0.1	0.5
Professional services	3.578	2.8	0.0	0.4	-0.2	0.1

## Footnotes

- (1) Not seasonally adjusted.  
 (2) Indexes on a December 1997=100 base.  
 (3) Special index based on a substantially smaller sample.  
 (4) Indexes on a December 2007=100 base.  
 (5) Indexes on a December 2005=100 base.  
 (6) Indexes on a December 1986=100 base.  
 (7) Indexes on a December 1993=100 base.  
 (8) Indexes on a December 2009=100 base.  
 (9) Indexes on a December 1990=100 base.  
 (10) Indexes on a December 1983=100 base.  
 (11) Indexes on a December 2001=100 base.  
 (12) Indexes on a December 1982=100 base.  
 (13) Indexes on a December 1996=100 base.

CITY PROFESSIONAL SERVICES CONTRACT

CITY OF BRAWLEY

PROFESSIONAL SERVICES AGREEMENT WITH

[Insert full name of Consultant and Project Name and/or number]

This Agreement for Professional Services ("Agreement") is made and entered into by and between the City of Brawley ("City"), a California municipal corporation, and [Complete name of legal business entity], a [Business status, such as a California corporation] ("Consultant"). City and Consultant are referred to individually as "Party" and collectively as "Parties."

**Recitals**

- A. City desires to retain Consultant to perform Cost of Service and Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services; and
- B. On March 13, 2023, the City issued a Request for Proposals (RFP) for Cost of Service and Rate Study for residential and commercial organic waste processing services provided by a franchised waste hauler and comprehensive Franchise Agreement amendment and restatement of services (Project). On or about April 14, 2023, Consultant submitted its proposal for the Project to the City. City has determined that Consultant possesses the skills, experience and certification required to provide the services.
- C. After negotiations between the City and Consultant, the Parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement.
- D. This Agreement was approved by Brawley City Council on May 16, 2023.

Now therefore, the Parties mutually agree as follows:

1. **Scope of Services.** Consultant shall perform the services described in Exhibit "A" attached and incorporated by reference (the "Services"). Consultant represents and warrants that they are a provider of first-class work and/or services and Consultant is experienced in performing the Services contemplated herein and, in light of such status and experience, Consultant covenants that it shall follow industry standards in performing the services required hereunder, and that all materials, if any, will be of good quality, fit for the purpose intended.
2. **Time of Performance.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall begin performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be started and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Extensions to the time period specified in the Schedule of Performance may be approved in writing by the Contracting Officer, or assigned designee.

**2.1 Term.** Unless earlier terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on May 16, 2023 and end on June 30, 2024 ("Initial Term"). This Agreement may be extended for an additional two (2) years upon mutual agreement and amendment by both parties ("Extended Term").

**2.2 Contract Officer.** The "Contract Officer", otherwise known as Tyler Salcido, City Manager, or assigned designee may be designated in writing by the City Manager of the City. It shall be the Consultant's responsibility to assure that the Contract Officer, or assigned designee, is kept informed of the progress of the performance of the services, and Consultant shall refer any decisions, that must be made by City to the Contract Officer, or assigned designee. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer, or assigned designee.

**3. Compensation.** City shall pay Consultant on a time and expense basis, at the billing rates set forth in Exhibit "B," (the "Schedule of Compensation") attached and incorporated by reference for services performed under this Agreement. The method of compensation set forth in the Schedule of Compensation includes payment for time and materials based upon Consultant's rate schedule.

**3.1 Not to Exceed Amount.** Consultant's total compensation under this Agreement shall not exceed amount in dollars (\$XX,000.00). Consultant's billing rates shall cover all costs and expenses for Consultant's performance of this Agreement. No work shall be performed by Consultant in excess of the total compensation amount provided in this section without the City's prior written approval.

**3.2 Invoices.** Consultant shall submit monthly invoice(s) to the City that describe the services performed in accordance with the terms of this Agreement, including times and dates or number of hours worked, and names of persons performing the services. Upon approval in writing by the Contract Officer, or assigned designee, City will pay Consultant for all items stated thereon which are approved by City pursuant to this Agreement no later than thirty (30) days after invoices are received by the City's Finance Department.

**3.3 Compensation for Additional Services.** Any compensation for additional services amount to five percent (5%) or less of the Contract Sum may be approved by the Contract Officer, or assigned designee. Any great amount of compensation for additional services must be approved by the Brawley City Council, the City Manager, or Department Head, depending upon City laws, regulations, rules, and procedures concerning public contracting. Under no circumstance shall Consultant receive compensation for additional services unless prior written approval for the Additional Services is obtained from the Contract Officer, or assigned designee.

**3.4 Force Majeure.** The time period specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of Consultant, including but not restricted to, acts of God or of the public enemy, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, acts of any governmental agency other than the City, and unusually severe weather, if Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer, or assigned designee, in writing of the cause of the delay. The Contract Officer, or assigned designee, shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the forced delay when and if in the Contract Officer's judgement such delay is justified.

**4. Indemnification.** Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the sole, active negligence or willful misconduct of the City.

In this section, "City" means the City, its elected and appointed officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

The provisions of this section survive completion of the services or the termination of this Agreement, and are not limited by the provisions of Section 5 relating to insurance.

**5. Insurance.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein. Consultant shall provide Certificate of Insurance to City along with all required endorsements. Certificate of Insurance and endorsements must be approved by City's Risk Manager prior to commencement of performance.

**5.1** Commercial General Liability "per occurrence" coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.

**5.1.1** Must include the following endorsements:

General Liability Additional Insured (The City including its elected officials, officers, employees, agents, and volunteers)  
General Liability Primary and Non-contributory

**5.2** Automobile Liability "claims made" coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage. Personal Auto Declaration Page if applicable.

**5.3** Workers' Compensation coverage shall be maintained as required by the State of California.

**5.3.1** Must include the following endorsements:

Workers Compensation with Waiver of Subrogation  
Workers Compensation Declaration of Sole Proprietor if applicable

**5.4** Professional Liability "claims made" coverage shall be maintained to cover damages that may be the result of errors, omissions, or negligent acts of Consultant in an amount not less than \$1,000,000 per claim.

**5.5.** For any claims related to this Agreement, Consultant's coverage shall be primary insurance with respect to the City. Any insurance maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

**5.6 Notice of Cancellation.** Consultant shall notify the City if the policy is canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation. Consultant shall immediately obtain a replacement policy.

**5.7 Authorized Insurers.** All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

**5.8 Insurance Certificate.** Consultant shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance and endorsements, in a form satisfactory to the City, before the City signs this Agreement.

**5.9 Substitute Certificates.** Consultant shall provide a substitute certificate of insurance no later than 30 days prior to the policy expiration date of any insurance policy required by this Agreement.

**5.10 Consultant's Obligation.** Maintenance of insurance by the Consultant as specified in this Agreement shall in no way be interpreted as relieving the Consultant of any responsibility whatsoever (including indemnity obligations under this Agreement), and the Consultant may carry, at its own expense, such additional insurance as it deems necessary. Failure to provide or maintain any insurance policies or endorsements required herein may result in the City terminating this Agreement.

**6. Termination.** The City may terminate this Agreement at any time, by giving a thirty (30) days' written notice to Consultant. Upon termination, Consultant shall give the City all original documents, including preliminary drafts and supporting documents, prepared by Consultant for this Agreement. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specially approved by the Contracting Officer, or assigned designee. The City shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, up to the date notice is given.

**7. Dispute Resolution.** If any dispute arises between the City and Consultant that cannot be settled after engaging in good faith negotiations, City and Consultant agree to resolve the dispute in accordance with the following:

**7.1 California Law.** The Agreement shall be interpreted, construed, and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Inasmuch as performance hereunder shall occur in Imperial County, California, and legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Imperial, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

**7.2 Notification of Dispute.** In the event of any dispute arising under this Agreement, the injured party shall notify the injuring party in writing of its contentions by submitting a claim therefore.

**7.3 Retention of Funds.** During the period of time that the Consultant is in default, City shall hold all invoices. In the alternative, City may, in its sole discretion, elect to pay some or all of the outstanding invoices during any period of default.

**7.4 Attorney's Fees.** If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable,



shall be entitled to reasonable attorney's fees; provided, however, that the attorney's fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing party in the conduct of the litigation. Attorney's fees shall include attorney's fees on appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery, and all other necessary costs the court allows which are incurred in such litigation.

**7.5** The dispute resolution process is a material condition to this Agreement and must be exhausted prior to either Party initiating legal action. This dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code §§ 900 et seq.

**8. Ownership of Work.** All original documents prepared by Consultant for this Agreement, whether complete or in progress, are the property of the City, and shall be given to the City at the completion of Consultant's services, or upon demand from the City. No such documents shall be revealed or made available by Consultant to any third party without the City's prior written consent.

**9. City Cooperation.** City shall provide Consultant with any plans, publications, reports, statistics, records, or other data or information pertinent to the Services to be performed hereunder which are reasonably available to Consultant only from or through action by City.

**10. Independent Contractor Status.** Consultant is an independent contractor and is solely responsible for the acts of its employees or agents, including any negligent acts or omissions. Consultant is not City's employee and Consultant shall have no authority, express or implied, to act on behalf of the City as an agent, or to bind the City to any obligation, unless the City provides prior written authorization. Consultant is free to work for other entities while under contract with the City. Consultant, and its agents or employees, are not entitled to City benefits, compensation, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System ("PERS") as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of the City. Except for the Contract Sum paid to Consultant as provided in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing the Services hereunder for City. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws.

**11. Conflicts of Interest.** Consultant (including its employees, agents, and sub-consultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. If Consultant maintains or acquires such a conflicting interest, the City may terminate any contract (including this Agreement) involving Consultant's conflicting interest.

No officer or employee of the City shall have any financial interest, direct or indirect, in the Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. Consultant warrants that

it has not paid or given and will not pay or give any third party any money or other compensation for obtaining this Agreement.

**12. Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of City shall be personally liable to Consultant, or any successor in interest, in the event or any default or breach by City or for any amount which may become due to Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

**13. Rebates, Kickbacks, or Other Unlawful Consideration.** Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration either promised or paid to any City official or employee. For breach of this warranty, City shall have the right, in its sole discretion, to terminate this Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

**14. Notices.** All notices, demands, or other communications which this Agreement contemplates or authorizes shall be in writing and shall be personally delivered or sent by prepaid mail to the other party to the addresses listed below. Either party may change its address by notifying the other party of the change of address in writing.

To City:

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To Consultant:

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With a copy to:

City Attorney  
William Smerdon  
PO Box 1319  
Brawley, CA 92227

**15. Miscellaneous Provisions.**

**15.1 Standard of Care.** Unless otherwise specified in this Agreement, the standard of care applicable to Consultant's services will be the degree of skill and diligence ordinarily used by reputable professionals performing in the same or similar time and locality, and under the same or similar circumstances.

**15.2 Amendments.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties and approved by Consultant and by the City Council of City.

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

**15.4 Assignment and Delegation.** Consultant may not assign, transfer or delegate this Agreement or any portion of it without the City's written consent. Any attempt to do so will be void. City's consent to one assignment shall not be deemed to be a consent to any subsequent assignment.

**15.5 Compliance with the Law.** Consultant shall comply with all applicable local, state, and federal laws, whether or not those laws are expressly stated in this Agreement.

**15.5.1 Wage and Hour Compliance.** Consultant shall comply with applicable Federal, State, and local wage and hour laws.

**15.5.2 Non-discrimination.** Consultant represents and warrants that it is an equal opportunity employer and it shall not discriminate against any sub-consultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sexual orientation or age. Consultant shall also comply with all applicable anti-discrimination federal and state laws, including but not limited to, the California Fair Employment and Housing Act (Gov. Code 12990 (a-f) et seq.).

**15.6 Business Entity Status.** Consultant is responsible for filing all required documents and/or forms with the California Secretary of State and meeting all requirements of the Franchise Tax Board, to the extent such requirements apply to Consultant. By entering into this Agreement, Consultant represents that it is not a suspended corporation. If Consultant is a suspended corporation at the time it enters this Agreement, City may take steps to have this Agreement declared voidable.

**15.7 Licenses, Permits, Fees and Assessments.** Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the Services required by this Agreement, including a City of Brawley business license, if applicable. Consultant and its employees, agents, and subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required for the performance of the Services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the performance of the Services required by this Agreement, and shall indemnify, defend (with counsel selected by the City), and hold City, its elected officials, officers, employees, and agents, free and harmless against any such fees. Consultant shall be responsible for all subcontractors' compliance with this Section.

**15.8 Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

**15.9 Construction of Agreement.** Each Party hereto has had an equivalent opportunity to participate in the drafting of this Agreement and/or to consult with legal counsel. Therefore, the usual construction of an agreement against the drafting Party shall not apply hereto.

**15.10 Severability.** If a term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in effect.

**15.11 Entire Agreement.** This Agreement and the attached Exhibits comprise the entire integrated understanding between the Parties concerning the services to be performed. This Agreement supersedes all prior negotiations, representations or agreements. All exhibits attached hereto are incorporated by reference herein.

**16. Signatures.** The individuals executing this Agreement on behalf of Consultant represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of Consultant.

**17. Representative of Contracting Parties.** The following principles of Consultant ("Principles") are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the Services specified herein and make all decisions in connection therewith. This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

CITY OF BRAWLEY  
a California Municipal Corporation

\_\_\_\_\_

By: \_\_\_\_\_

Title: City Manager

Date: \_\_\_\_\_

CONSULTANT

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

Thomas Garcia, City of Brawley Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

By: William Smerdon, City Attorney  
City of Brawley, California

**EXHIBIT A**

Scope of Services

1. Services to be Provided.:



**EXHIBIT B**  
Schedule of Compensation

The maximum total compensation to be paid to Consultant under this Agreement is not to exceed **XX (\$XX)** encompassing the initial and any extended terms ("Contract Sum"). The Contract Sum shall be paid to Consultant in installment payments made on a monthly basis.