

## PROFESSIONAL SERVICES CONTRACT

THIS CONTRACT is entered into this \_\_\_\_ day of \_\_\_\_\_ 2016, between the CITY OF STOCKTON, a municipal corporation ("City"), and **R3 CONSULTING GROUP, INC.** whose address is **1512 EUREKA ROAD, SUITE 220, ROSEVILLE, CA 95661**, ("Consultant") for the **PERFORMANCE REVIEW AND BILLING AUDIT OF FRANCHISED WASTE HAULERS**, hereinafter referred to as "Project".

## RECITALS

- A. Consultant represents that it is licensed in the State of California and is qualified to provide the services proposed in the SCOPE OF WORK section of this Contract.
- B. City finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Contract.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, and conditions in this Contract, City and Consultant agree as follows:

**1. SCOPE OF SERVICES.** Subject to the terms and conditions set forth in this Contract, Consultant shall undertake and complete the services described in **Exhibit A**. Consultant shall provide said services at the time, place, and in the manner specified in **Exhibit A** and compatible with the standards of the profession. Consultant agrees that it shall produce a fully complete project that is acceptable to the City.

**2. COMPENSATION.** City shall pay Consultant for services outlined in **Exhibit B**, according to the fee not to exceed the schedule detailed in which is attached to this Contract and incorporated by this reference. Consultant agrees this fee is for full remuneration for performing all services and furnishing all staffing and materials called for in the scope of services. The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed **\$120,000.00** or as otherwise mutually agreed to in a Contract Change Order.

**3. SCHEDULE AND TERM.** Consultant shall perform the scope of work as described in **Exhibit C** according to the schedule detailed in **Exhibit C**, which is attached to this Contract and incorporated by this reference. This Contract shall commence on the date written above and shall expire on **March 31, 2017**, unless extended by mutual agreement through the issuance of a Contract Change Order.

- a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used, and include the City project number. Payment shall be made within thirty (30) days of approval of invoice by City.
- b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. City shall have no obligation or liability to pay any invoice for work performed which Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after work is accepted by City.

**4. RIGHTS AND DUTIES OF CITY.** City shall make available to Consultant all data and information in the possession of City which both parties deem necessary to complete the work, and City shall actively aid and assist Consultant in obtaining such information as may be deemed necessary from other agencies and individuals.

**5. OBLIGATIONS OF CONSULTANT.** Throughout the term of this Contract, Consultant represents and warrants that it has or will have at the time this Contract is executed, all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required for the Consultant to practice its professions, and Consultant shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals. Consultant shall meet with the Public Works Director or other personnel of City or third parties as necessary on all matters connected with the carrying out of Consultant's services. Such meetings shall be held at the request of either party hereto. Consultant further warrants that it will follow the best current, generally accepted and professional practices to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding this project.

**6. OWNERSHIP OF WORK.** All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Consultant in the performance of this Contract shall become and remain the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Contract. If any materials are lost, damaged, or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Contract and shall not be disclosed to anyone not connected with these services unless the City expressly provides prior written consent.

**7. CHANGE ORDERS.** City reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be

Professional Services Contract – R3 CONSULTING GROUP, INC.

(Updated 12/17/15)

required for the proper completion of the work contemplated by Consultant. Any such changes will be set forth in a Contract Change Order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A Contract Change Order will not become effective until approved by the authorized City official.

**8. TERMINATION.** The City may terminate this Contract at any time by mailing a notice in writing to Consultant. The Contract shall then be deemed terminated and no further work shall be performed by Consultant. If the Contract is so terminated, the Consultant shall be paid for that percentage of work actually completed at the time the notice of termination is received.

**9. CONSULTANT STATUS.** In performing the obligations set forth in this Contract, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees, and are not agents of the City. Subcontractors shall not be recognized as having any direct or contractual relationship with the City. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of Consultant. The Consultant shall be responsible for the work of subcontractors, which shall be subject to the provisions of this Contract. The Consultant is responsible to the City for the acts and omissions of its subcontractors and persons directly or indirectly employed by them.

- a. If in the performance of this Contract any third persons are employed by Consultant, such persons shall be entirely and exclusively under the direction, supervision, and control of Consultant. All terms of employment including hours, wages, working conditions, discipline, hiring, and discharging or any other term of employment or requirement of law shall be determined by Consultant.
  - i. It is further understood and agreed that Consultant must issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Consultant's personnel.
  - ii. As an independent contractor, Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against the City based upon any contention by any third party that employer-employee relationship exists by reason of this Contract.

**10. ASSIGNMENT.** Consultant shall not assign, sublet, or transfer this Contract or any interest or obligation in the Contract without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

**11. INDEMNITY AND HOLD HARMLESS.** With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, Consultant shall indemnify, and hold harmless City, its Mayor, Council, officials, and employees from and against any and all claims and causes of action which result in liabilities, judgments, awards, losses, damages, expenses, and costs (including reasonable attorneys' fees, expert and consultant fees, and other expenses of litigation) including, but not limited to, death or injury to persons, or damage to property, which arise out of any violation of federal, state, or municipal law or ordinance, to the extent damages are caused by the Consultant's negligent services provided under this Agreement, or are in any way caused by the negligent performance of work by the Consultant or Consultant's officers, agents, employees, or subcontractors. Consultant shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Consultant to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Consultant under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With the exception that this section shall in no event be construed to require indemnification by Consultant to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Consultant shall indemnify, defend, and hold harmless City, its Mayor, Council, officials, representatives, and employees from and against claims, losses, expenses, and costs including, but not limited to, reasonable attorneys' fees, arising out of any claim brought against the City by an employee of Consultant, regardless of whether such claim may be covered by any applicable workers compensation insurance. Consultant's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant under workers' compensation acts, disability acts, or other employee benefit acts.

**12. INSURANCE.** During the term of this Contract, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit D** and shall otherwise comply with the other provisions of **Exhibit D**.

**13. HEADINGS NOT CONTROLLING.** Headings used in the Contract are for reference purposes only and shall not be considered in construing this Contract.

**14. NOTICES.** Any and all notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

To Consultant: R3 Consulting Group, Inc.  
1512 Eureka Road  
Suite 220  
Roseville, CA 95661

To City: Public Works Director  
City of Stockton  
22 E. Weber Avenue  
Room 301  
Stockton, CA 95202

**15. CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with all applicable federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. **TITLE VI**

Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d).  
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. **DISCRIMINATION AND HARASSMENT POLICY**

The City of Stockton has a Discrimination and Harassment Policy (**Exhibit E**). The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. **LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE**

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=01001-02000&file=1770-1784>.

d. **PREVAILING WAGE RATES**

Consultant and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. Consultant performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime Consultant and each subcontractor's responsibility to insure that the prevailing wage rates of concern is current and paid to the employee.

- i. The Consultant performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The Consultant shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the Consultant choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the Consultant shall reimburse the City the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to City the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under Consultant, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.
- iii. **PAYROLL RECORDS** - The Consultant to whom the contract is awarded shall insure that the prime and each subcontractor will, in

accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the Consultant's responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.

- iv. APPRENTICESHIP STANDARDS - The Consultant shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

**16. LICENSES, CERTIFICATIONS, AND PERMITS.** Prior to the City's execution of this Contract and prior to the Consultant's engaging in any operation or activity set forth in this Contract, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Contract. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Contract.

**17. RECORDS AND AUDITS.** City reserves the right to periodically audit all charges made by Consultant to City for services under this Contract. Upon request, Consultant agrees to furnish City, or a designated representative, with necessary information and assistance.

Consultant agrees that City or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. Consultant agrees to provide City or its delegate with any relevant information requested, and shall permit City or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purposes of determining compliance with this Contract. Consultant agrees to maintain such records for a period of three years from the date that final payment is made.

**18. CONFIDENTIALITY.** Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

**19. CONFLICTS OF INTEREST.** Consultant covenants that other than this Contract, Consultant has no financial interest with any official, employee, or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner or degree by the performance of Consultant's services under this Contract. If such an interest arises, Consultant will immediately notify City.

**20. WAIVER.** In the event either City or Consultant at any time waive any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Contract, whether of the same or of any other covenant, condition, or obligation.

**21. GOVERNING LAW.** California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

**22. NO PERSONAL LIABILITY.** No official or employee of City shall be personally liable to Consultant in the event of any default or breach by City or for any amount due Consultant.

**23. INTEGRATION AND MODIFICATION.** The response by Consultant to the Request for Proposals and the Request for Proposals on file with the City Clerk are hereby incorporated herein by reference to the extent that such documents do not differ from the provisions and terms of this Contract that shall supersede such response to Request for Proposals. This Contract represents the entire integrated agreement between Consultant and City, supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties, and may be amended only by written instrument signed by Consultant and City. All exhibits and this contract are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Contract and the attached exhibits, the terms of this Contract will prevail.

**24. SEVERABILITY.** The provisions of this Contract are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

**25. THIRD PARTY RIGHTS.** Nothing in this Contract shall be construed to give any rights or benefits to anyone other than City and Consultant.

//

Professional Services Contract – R3 CONSULTING GROUP, INC.

(Updated 12/17/15)

**26. AUTHORITY.** The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF: the parties have executed this Contract the day and year first hereinabove written.

**CITY OF STOCKTON**

BY: \_\_\_\_\_  
KURT O. WILSON  
CITY MANAGER

ATTEST:

BY: \_\_\_\_\_  
BONNIE PAIGE  
CITY CLERK

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
DEPUTY CITY ATTORNEY

**R3 CONSULTING GROUP, INC.**

By: William H. Schoen  
Signature

WILLIAM SCHOEN  
Print Name

Title: PRINCIPAL

**City of Stockton, CA**

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

**Section 4****Detailed Work Plan / Scope of Work**

Our proposed Detailed Work Plan / Scope of Work for the Performance Review and Billing Audit of Franchised Waste Haulers is provided below. We have also proposed a number of value-added project deliverables which are discussed at the end of this Section.

## Task 1 Data Collection and Kick-off Meeting

### Task 1.1 Document Request and Review

Upon City authorization to proceed, R3 requests that the City and Companies provide the following information, as available:

**From the City:**

- Current solid waste ordinances and resolutions;
- Current Franchise Agreement (Agreement) and all amendments;
- Correspondence between the City and the Companies regarding any relevant contractual matters (e.g., service complaints, financial issues);
- Quarterly and annual reports submitted by the Companies as required by Article 8.2 of the Agreements;
- Accounting of Franchise Fee, Contractor fee and AB 939 Fee received from the Companies;
- CalRecycle Annual Report for 2014;
- CalRecycle Form 303 Household Hazardous Waste Report; and
- Notifications to assess liquidated damages and any other information related to the findings associated with those notices.

**From the Companies**

- Customer subscription levels by line of business (residential and commercial) and service level;
- Historical diversion and disposal tonnages by line of business (residential, commercial, roll-off) and program (e.g., residential curbside, residential organics, commercial recycling, C&D recovery, etc.);
- Supporting documentation for 2013, 2014 and 2015 reported diversion rates;
- AB 341 and AB 1826 List of Covered Generators, and Covered Generators that have and have not subscribed to commercial recycling and commercial organics programs;
- Copies of Biennial Inspection of Terminus (BIT) inspections;
- Experience modification factors for the past 3-5 years;
- List of all safety, operations, customer service, vehicle maintenance and other performance benchmarks that are tracked and historical performance relative to those benchmarks;



**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers****Section 4****Detailed Work Plan / Scope of Work**

- Workers' compensation and on-the-job injury summaries (OSHA Form 300 and Form 300A) for the past 3-5 years;
- Documentation of any Regulatory Violations (Agreement Article 10.2.12);
- Employee handbook, policies and procedures, safety handbook, employee manuals and/or work rules;
- Organizational charts and reporting relationships;
- All applicable job descriptions;
- Copies of all management reports that are regularly produced;
- New hire and refresher training program documentation;
- Copies of annual training schedules and documentation of training completed;
- Route maps and current route lists and collection schedules;
- Ratio of supervisors to routes;
- Supervisor route observation policies and procedures;
- Policies and procedures for monitoring overweight vehicles;
- Documentation of provision of all required collection services (Agreement Exhibit A.1-General);
- Street sweeping maps, policies and procedures, and street sweeping specific training schedule and topics;
- Street sweeping and residential solid waste collection schedules;
- List of street sweeping services provided for special events (Agreement Article 4.12) and community cleanup events (Agreement Article 4.13);
- Customer complaint log;
- Public education and outreach materials provided to the public;
- Vehicle list, including vehicle legal load weights, and vehicle replacement schedule;
- Copies of vehicle load weights for the past 12 months;
- Vehicle maintenance records;
- Vehicle spill log;
- Documentation of compliance with low emission vehicle requirements (Agreement Article 4.17);
- Quarterly, and annual reports submitted by the Companies (Agreement Article 8.2);
- Excel file of most recent complete residential and commercial billing register with customer address and service levels;
- List of national accounts;
- Copies of Companies' 2013, 2014 and 2015 Monthly Billing Statement and documentation of associated monthly remittance;

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

- Reconciliation of 2013, 2014 and 2015 Annual Contract Fee and AB 939 Fee payments with audited Gross Rate Revenues;
- Documentation of any and all other payments to the City (Agreement Section 6.3.D);
- Accounting of franchise fees, Contractor Fees and AB 939 Fees paid to the City;
- Audited financial statements supporting annual “Gross Rate Revenues” for 2013, 2014 and 2015; and
- Records of liquidated damages paid to the City.

Some of the above listed items can be reviewed on-site.

## Task 1.2 Meetings

### Task 1.2.1 Project Kick-off Meeting

R3 will facilitate a Project Kick-off Meeting with designated representatives of the City and the Companies. The meeting will provide an opportunity to review the project objectives, R3's project approach, schedule and budget, and discuss data availability. We suggest that the Project Kick-off Meeting begins with R3 and City staff and later, invite each of the Companies to join the meeting.

Prior to the Project Kick-off Meeting with the City, R3 will prepare an agenda and submit it to the City for review. A primary objective of the Kick-off Meeting will be to review specific issues of concern to the City and discuss R3's work scope and approach, among other things.

### Task 1.2.1 Ongoing Coordination / Meetings

Throughout the course of the engagement, R3 will provide status reports to the City no less than every other week. Mr. Schoen, Mr. Tagore-Erwin and Mr. Schultz are also available for teleconferencing with the City throughout the project at any time, and to meet with the City when we are on-site conducting our review, or as otherwise required. Starting with the Project Kick-Off Meeting, R3 will coordinate with the Companies throughout the project, with respect to scheduling meetings, conducting our on-site review, discussing our review and information requests, and reviewing our preliminary findings as they are developed.

## Task 1.3 Initial Review

Following the Project Kick-Off Meeting, R3's Task Leads (Mr. Schoen, Mr. Tagore-Erwin and Mr. Schultz) will conduct our Initial Review. This Initial Review will provide us with the opportunity to begin our assessment of each of the Companies' management, administration, customer service, maintenance, and collection operations in support of the more detailed subsequent on-site work. A particular focus of the Initial Review will be each Companies' route supervision staffing, policies, and procedures. We will conduct route observations with each of the Companies' route supervisors to both observe and evaluate collection operations, and to understand what the route supervisors' responsibilities are, and what a typical day of route supervision involves.

As part of this task, we will also review how each of the Companies responded to the following findings from the 2008 Performance Audit, and specifically if and what actions they have taken to address the following issues:

## Section 4

### Detailed Work Plan / Scope of Work

R3

**City of Stockton, CA**  
 Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

**Section 4**

**Detailed Work  
Plan / Scope of  
Work**

**Republic Services**

**Performance Review:**

- Inconsistency in tagging of carts;
- Not consistently cleaning litter caused by collection activities;
- Returning carts with lids open;
- Not returning carts to upright position;
- Some bins not clearly labeled to indicate type of material;
- Tracking and addressing fluid spills;
- Not providing sufficient field supervision;
- Not consistently responding within 24 hours to missed pick-up complaints;
- Issues related to missing street sweeping data;
- No meaningful summary of Commercial Account Data; and
- Recycling analysis that is totally lacking in any real analysis of the recycling programs and does not discuss any issues associated with minimizing contamination, effectiveness of the food waste collection program, results of outreach efforts, etc.

**Billing Audit:**

- Complied with most provisions of the Agreement, but deficient in record retention, account and data management, and properly applying the rates.

**Waste Management**

**Performance Review:**

- Inconsistency in tagging of carts;
- Not consistently cleaning litter caused by collection activities – HDR observed a sufficient number of incidents of litter not being cleaned up by drivers, concluding that the company is not providing litter-free collections as required;
- Returning carts with lids open;
- Not returning carts to upright position;
- Some bins not clearly labeled to indicate the type of material (some commercial recycling bins were missing proper signage);
- Tracking and addressing fluid spills;
- Not providing sufficient field supervision;
- In partial compliance with diversion requirements; we recommend that the company provide a detailed and comprehensive Action Plan to increase waste diversion, as originally requested by the City's Public Works Director, and continually update such plan as needed on a quarterly basis; and

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

- Issues related to missing street sweeping data, non-submittal of Annual Report information for Items 1 and 2, and Recycling Analysis Information.

**Billing Audit:**

- Complied with most provisions of the Agreement, but deficient in record retention, account and data management, and properly applying the rates.

**Deliverables**

Task 1 includes the following deliverables:

- *Review of available information;*
- *Facilitation of Project Kick-Off Meetings; and*
- *Initial Review.*

## Task 2 Performance Review

Our Performance Review includes a Franchise Agreement Compliance Review and Regulatory Compliance Review, Collection Operations Review, Customer Service Review and Financial Management Practices Review, Vehicle and Equipment Maintenance, Repair and Replacement Review, and an Assessment of Performance Monitoring and Benchmarking Systems. In the following subsections we have indicated which line items from Agreement Section 8.A.3 will be addressed so that the City can clearly see where each of the Performance Review items are covered in our Scope of Work and our Additional Recommended Tasks.

In order to ensure that the on-site and field observations are conducted efficiently, R3 will work with the Companies in advance to develop a meeting schedule for staff interviews.

On-site and field observations may include, but are not necessarily limited to the following:

- Interviews and discussions with the Companies, administration and management personnel;
- Review and observation of the Companies' customer service and billing functions;
- Interviews and discussions with the Companies financial and accounting personnel;
- Interviews with route dispatchers, field supervisors and managers;
- Interviews with route drivers;
- Interviews with vehicle maintenance staff and observation of maintenance facilities;
- Review of the Companies' on-route collection services, including driver start and end times, and a visual inspection of residential routes before and after collection to evaluate cart placement, cleanliness of streets, and physical condition of streets, sidewalks and street trees;
- Review of the Companies' street sweeping operations, including hours of operation, sweeper speed, water usage, and other requirements of Article 4.1 of the Agreements and Exhibit H;
- Review of the Companies' internal communication methods; and

**Section 4**

**Detailed Work Plan / Scope of Work**

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers****Section 4****Detailed Work Plan / Scope of Work**

- Review of public education and outreach materials.

The findings and conclusions of each of the following Performance Review tasks will be documented in our Task 4 Draft Report and Final Report along with any appropriate recommendations for improving each Company's operations.

**Task 2.1. Franchise Agreement Compliance Review and Regulatory Compliance Review**

**Task 2.1.1 Franchise Agreement Compliance Review**

R3 will document and review the major objective items in the Agreements that require, among other things, that the Companies provide specific services, meet specific performance standards, track and document information, and submit payments, information or reports. Review of the Contractor's compliance with the requirements of Agreement Article 5.1 Consumer Information and Public Education will be covered under Task 2.1.

The following are examples of items that will be reviewed, as listed in the Agreement:

- Hours of Collection (Agreement Article 3.3.G);
- Use of Low-Emission Vehicles (Agreement Article 4.17);
- Efficacy of Contractor's Consumer Information and Public Education Plan (Agreement Article 5.1, Exhibit E);
- Customer Service and Accessibility (Agreement Article 5.2);
- Hazardous Waste (Agreement Article 5.6);
- Contractor's Monthly Billing Statement and Remittance (Agreement Article 6.3);
- Quarterly and Annual Reporting (Agreement Article 8.2);
- Current Insurance Certificates (Agreement Article 9.5);
- Exhibit A – Scope of Services major requirements related to:
  - General;
  - Solid Waste Collection;
  - Recyclables Material Collection;
  - Green Waste and Food Waste Collection;
  - Recyclable Materials Processing and Marketing;
  - Neighborhood Cleanup Program;
  - Community Cleanup Events;
  - Christmas Tree Collection;
  - On-Call Bulky Items Pickup;
  - Side Yard Service for Disabled and Frail Elderly Residential Customers;
  - Collection Services for City Buildings and Properties;
  - Collection from Public Containers;
  - Public Education (See also Exhibit E);
  - Street Sweeping and Seasonal Leaf Collection; and
  - Food Waste.

**R3**

**City of Stockton, CA**

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

- Exhibit B – Standards of Performance major requirements related to:
  - Company Standards;
  - Collection Containers;
  - Vehicles;
  - Collection Schedule;
  - Collection Routes;
  - Collection Requirements;
  - Litter Abatement;
  - Personnel; and
  - Recyclable Materials and Green Waste and Food Waste Processing and Marketing.
- Exhibit D – Diversion Plan;
- Exhibit E – Public Education Plan;
- Exhibit F – City Buildings to be Serviced by Contractor;
- Exhibit G – City Special Events Serviced by Contractor; and
- Exhibit H – Street Sweeping and Seasonal Leaf Collection.

To structure our review, we will develop a Compliance Checklist that will list the major objective contractual requirements to be assessed as part of the Performance Review. The Compliance Checklist will also include:

- The specific procedure that will be followed to assess each Company's compliance with each requirement;
- The information and documentation to be obtained; and
- The testing to be conducted to determine compliance.

The Compliance Checklist will also reference where the supporting documentation for our findings and conclusions for each requirement is located.

### **Task 2.1.2 Regulatory Compliance Review**

Our review of each of the Company's regulatory compliance will include a review of the following:

- OSHA Forms 300 and 300A;
- California Highway Patrol BIT Inspections and Mister (Series) Reports; and
- CalRecycle LEA Inspection Reports.

As part of this task, we will also review the status of each Company's efforts in support of the City's compliance with AB 341 and AB 1826, including the extent to which they:

- Have identified covered generators;
- Have notified those covered generators of the requirements of AB 341 and AB 1826;
- Are providing commercial recycling and organic diversion collection services to those covered generators; and

Section 4

Detailed Work  
Plan / Scope of  
Work

R3

**City of Stockton, CA**  
**Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

**Section 4**

**Detailed Work  
Plan / Scope of  
Work**

- Are tracking those covered generators that are not currently in compliance.

**Task 2.2 Management and Administration Review**

This task will provide the City with an assessment of the effectiveness of the Companies' management and administrative systems, and identify potential changes or improvements to management practices, policies, and procedures. This task will include, but is not necessarily limited to, review of the following items, some of which are identified in the Agreement Section 8.A.3:

- Overall organizational structure, management systems, and procedures (a) ;
- Staffing practices, including the deployment of management and supervisory personnel (e);
- Personnel management practices, including compensation policies and the resolution of employee grievances (g);
- Employee job and safety training, and management of Hazardous Waste (h);
- Utilization of management and facilities, equipment and personnel (k);
- Staffing ratios, including the ratio of customers to management staff, supervisors, dispatchers, drivers, maintenance personnel, customer service and billing representatives, etc.;
- Data tracking and reporting procedures, including what data is continuously tracked and how data are used to manage the collection operations; and
- Employee management policies and procedures.

In conducting this task, we will meet with management and supervisors of each of the Companies, and review the structure and staffing of their management and administrative systems and operations. We will also interview various front line staff. Policies and procedures will be reviewed with a focus on how those policies and procedures are implemented and the associated training that is provided to staff. We will also review if and what performance benchmarks have been established and the historical performance relative to those benchmarks. This review will be coordinated with Task 2.7.

Systems for collecting and reporting data will also be reviewed. As part of that process we will request and review all management reports that are regularly produced, identify who receives that data, how it is used, and to what extent the Companies conduct diagnostic review based on that data to identify areas that need improvement. We will also review management's business planning processes, and if and how the Companies establish and execute operational and other priorities.

Key questions to be answered include:

- Is there effective functional management, responsibility and accountability for the primary franchise functions?
- Are there clearly defined and documented responsibilities for key management, administrative and operational functions?
- Is there a clearly defined chain of command and reporting relationships?

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

- Are there clear and established performance standards (benchmarks), is performance tracked according to those standards and is staff held accountable for performance both good and bad?
- Is there a formally documented annual staff performance review process?
- What are each Companies strengths, limitations and opportunities for improvement?

**Task 2.3 Collection Operations Review**

As part of this task, we will provide the City with an assessment of the effectiveness of the Companies' collection operations and determine if the Companies have an effective driver training program and if they have a reasonable number of route supervisors. Additionally, we will gauge the effectiveness of route supervision, if the Company is actively monitoring driver performance, and whether drivers are providing collection services in a safe and effective manner and adhering to the associated requirements of the Agreement.

This task will include, but is not necessarily limited to, a review of the following items:

- Review of the efficiency of collection operations, including an analysis of routes, schedules and the impact of the requirements of the Agreement (c);
- Field observations/route audits of the Companies' residential collection services, including driver start and end times and a visual inspection of residential routes before and after collection to evaluate cart placement, correlation of billing records to containers on-site, cleanliness of streets; and physical condition of streets and sidewalks;
- Field observations/route audits of the Companies' commercial collection services, including driver start and end times and a visual inspection of commercial routes before and after collection to evaluate bin placement, correlation of billing records to containers on-site, cleanliness of streets, and physical condition of streets and sidewalks;
- Review of method of collection and types of materials collected from City owned facilities and public spaces;
- Review of missed pickup records;
- Review of routes and schedules;
- Review of incidental services;
- Review of worker training program;
- Review of supervisor roles and responsibilities;
- Review the current route to supervisor ratio; and
- Review of vehicle load weights and procedures for tracking and addressing overloaded vehicles.

Our Collection Operations Review will start by reviewing the vehicle and crew configurations used to provide franchised services, the schedules for those services, and the macro-routing and micro-routing structures. We will also assess the overall collection system productivity and the basis for establishing daily productivity targets. The systems for communication between route drivers and customer service representatives will also be reviewed, including

Section 4

Detailed Work  
Plan / Scope of  
Work

R3

**City of Stockton, CA**  
**Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

**Section 4**

**Detailed Work  
Plan / Scope of  
Work**

what, if any, on-board computer systems are being used. The interviews and interactions with each of the Companies route supervisors that is initiated as part of our Initial Review will be continued as part of this task. Driver interviews will also be conducted. This task will begin with Task 1.3 Initial Review and be coordinated with Task 3.1 Route Audits.

**Task 2.4 Street Sweeping Review**

As part of this task, we will assess the effectiveness of each of the Companies' street sweeping operations, including the street sweeping technology employed, and will include, but is not necessarily limited to, review of the following items:

- Timeliness and thoroughness of street sweeping, including coordination with Collection Services (d);
- Street sweeping policies and procedures, including street sweeping speed limitations, and driver training;
- Street sweeper supervision and assessment of performance;
- The provision of required street sweeping services, including street sweeping following provision of Special Events (Article 4.12); and
- The type of street sweeping vehicles employed (e.g., Regenerative Air, Vacuum, Mechanical Broom), and the rational for the technology selected.

Field observations will be conducted as part of this task with the street sweeping supervisor and independently. The training program for street sweeping staff will be reviewed, along with associated policies and procedures. We will assess the extent to which performance standards have been established (e.g., travel speeds), how performance is monitored, and assess the level and effectiveness of route supervision.

**Task 2.5 Customer Service Review and Financial Management Practices Review**

This task will cover the following items:

- Financial Management practices, including the Contractor's billing and collection system, and its policies with regard to uncollected Customer accounts (f); and
- Procedures for receiving and resolving Customer complaints and concerns (i).

R3 will review the current customer service functions and structure utilized by the Companies, and their financial management practices specific to each Company's billing and collection system, and its policies with regards to uncollected customer accounts. This will include the protocol for addressing customer complaints, and service interruption procedures. Complaint logs will be reviewed and classified into complaint categories, if not already delineated, and missed-pickup records will be reviewed to identify and report statistics of chronically missed customers by customer type and service rendered. We will also review the responsiveness of the Companies' customer service representatives to customer inquiries, requests and complaints, average telephone response times, including a sampling during at least one quarterly billing period, courteousness of representatives, accuracy of information given, and willingness and ability to resolve complaints where applicable.

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

As part of this task, R3 will conduct separate interviews with customer service and billing staff. During these interviews, we will review the internal organizational processes for the following customer service and billing functions:

- Data exchange and communication between customer service, routing, marketing/sales, billing, and operations;
- Responding to calls from residential and commercial customers regarding inquiries for new service;
- Establishing new customer accounts in the billing system;
- Coordinating delivery of refuse and recycling bins or carts;
- Establishing service level and collection frequency for new accounts;
- Establishing start-dates and service initiation for new accounts;
- Establishing end-dates and service termination for closed accounts;
- The process and procedures for addressing customer complaints and calls, including missed collection, broken or stolen carts, etc.;
- How special billing arrangements for non-standard services are completed;
- Resolving delinquent payment (uncollected) Customer accounts;
- Resolving billing inquiries and complaints;
- Generating and updating route lists;
- Processing and closing work orders in the customer service system;
- Tracking of bin placement by number and address; and
- Confirming delivery of bins, or carts.

### **Task 2.6      Vehicle and Equipment Maintenance, Repair and Replacement Review**

The primary objective of this task is to determine if the Companies are maintaining vehicles and equipment in a safe operating condition. The vehicle and equipment maintenance, repair and replacement review will include, but is not limited to the following tasks:

- Procedures for the acquisition, maintenance, safety check, and replacement of equipment (j).
- Review routine maintenance procedures and schedules for residential collection and commercial collection vehicles;
- Review of utilization, safety, and suitability of facilities, and equipment;
- Review of procedures for maintenance, safety check, and replacement of equipment;
- Review pre- and post-trip inspection practices, and communication between drivers, dispatchers and maintenance personnel;
- Review historical BIT results;
- Review any established performance benchmarks and performance relative to those benchmarks such as the following, and:

**Section 4**

**Detailed Work Plan / Scope of Work**

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers****Section 4****Detailed Work Plan / Scope of Work**

- Required Preventative Maintenance services completed within ten percent (10%) of the due date miles; and
- Fleet availability percentage.

- Assessing the general appearance of each Companies' fleet.

Our review of the Companies' vehicle maintenance functions will be conducted through both review of available information and on-site field work. One of the first things we will do is establish the reasonableness of the level of maintenance staffing, and the scheduling of maintenance functions (e.g., single-shift, swing shift). We will also interview maintenance management and document existing performance standards (benchmarks), the process for tracking performance against those standards, and historical performance.

### **Task 2.7 Assessment of Performance Monitoring and Benchmarking Systems**

This task will include addressing the following item listed under the Scope of the Performance Review in Section 8.7 of the Agreement:

- Comparison with practices and businesses deemed similar to the Contractor (j).

R3 will also assess the performance benchmarking systems the Companies have in place for monitoring and improving performance.

*"That which is not measured is not managed"* is an adage that R3 has found to be very applicable to solid waste management operations. Establishing contractual baseline requirements and internal performance benchmarks, measuring progress against those benchmarks and conducting associated diagnostic review to identify opportunities for improvement is one of the foundations of an effective management system. Both Republic Services and Waste Management have embraced "management by metrics" to various degrees at a corporate level and within their individual operating Divisions. Waste Management's "Mission to Zero" initiative has the goal of reducing the number of on-the-job accidents and injuries to zero. Republic Services has its "Focus 6" safety training program.

As part of our review, and in support of comparing the Companies' practices and performance with similar businesses, we will document their existing safety, customer service and performance benchmarking systems, and their current and historical performance relative to those benchmarks. Based on the information provided, and additional information gathered as part of our review, we will develop a comparison of the current performance of each of the Companies to:

- Their internal historical performance;
- Established corporate benchmarks;
- Their performance relative to each other (i.e., Republic vs. Waste Management); and
- Their performance relative to industry standards, and other operations to the extent that information is available.

In the case that a Company does not have established benchmarks, or are not directly tracking and reporting certain appropriate safety or operational information, we may recommend that they begin tracking and reporting that information, which includes the following:

**R3**

**City of Stockton, CA**

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

- **Total Recordable Injury Rate (TRIR)** – The number of OSHA recordable injuries incurred per 100 full time employees – the lower the TRIR the better. This is essentially the same as the TRCR discussed above.
- **Vehicle Accident Rate Report (VARR)** – The number of operational hours between auto accidents. The higher the VARR the better.
- **Lost Time Work Rate** – The number of paid total temporary disability employees per 100 employees.
- **Property Accident Recordable Rate (PARR)** – The number of operational hours between property accidents. The higher the PARR the better.
- **Customer Service Metrics, including:**
  - Total number of incoming calls;
  - Average customer hold time;
  - Dropped calls percentage;
  - Call log by type of call: missed pickups, bill payments, complaints, compliments, service changes, bulky, etc.; and
  - Number of accounts per Customer Service Representative.

**Section 4**

**Detailed Work Plan / Scope of Work**

**Deliverables**

Task 2 includes the following deliverables:

- *Findings and recommendations for Tasks 2.1 through 2.6 to be included in the Task 4 Draft and Final Reports; and*
- *Recommendations for additional Performance Metrics to be Tracked and Reported (Task 2.7).*

### **Task 3 Billing Audit (Audit of Billings and Financial Reports)**

Our Audit of Billings and Financial Reports will cover the following two audits specified in Section 6.7 of the Agreements:

1. **Audit of Billings** – The auditor shall review the billing practices of the Contractor with relation to delivery of collection services. The intent of this audit is to use sampling to verify that customers are receiving the type and level of service for which they are billed; and
2. **Audit of Revenue Reporting** – The auditor shall review relevant financial reports and data submitted by the Contractor pursuant to Article 8. The purpose of this audit is to verify that the Contractor is correctly calculating Gross Rate Revenues, and is properly remitting Contractor Fees, AB 939 Fees and Liquidated Damages.

R3 anticipates that the City and the Companies will provide access to all required financial and operational records, including monthly, annual and quarterly reports. In the event that access to the records is not granted, or the records are unavailable, the testing protocol will be modified to include those records that are available.

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers****Section 4****Detailed Work Plan / Scope of Work****Task 3.1 Audit of Billings**

The purpose of the Audit of Billings is to determine the extent to which residential and commercial subscribers are billed correctly for the level of service provided, and whether or not billings are consistent with the appropriate rate schedule.

The Audit of Billings will include the following items:

- A review of service levels and charges from a recent billing cycle to determine if the rates charged for the various service levels are consistent with the approved rate schedule;
- A review of a recent billing cycle to determine if all rates charged have been approved (e.g., are there any charges that are billed but are not listed on the approved rate schedule such as finance charges, push/pull charges, etc.); and
- Field audits (route audits) of selected routes to compare the rates charged to various residential and commercial accounts to the actual level of service observed in the field. Any identified discrepancies will be documented. R3 will also review any billing or route audit procedures the Companies employ to verify service levels and to correct any billing errors.

At the conclusion of these tests, R3 will make a determination of the level of accuracy of the Companies' subscriber billing system, and formulate suggestions, as appropriate, to improve the accuracy of the system. As part of this task, R3 will review the status of delinquent accounts and collections.

**Task 3.2 Audit of Revenue Reporting**

The purpose of the Audit of Revenue Reporting is to determine if the Companies are correctly calculating Gross Rate Revenues, and are properly remitting Contractor Fees, AB 939 Fees and Liquidated Damages. R3 takes a two-step approach to auditing revenues and fees:

1. **Test Revenue Transactions** – Determine if revenues from subscription services are properly recorded the companies accounting system; and
2. **Test of Contractor Fee and AB 939 Fee Transactions** – Determine whether franchise fees paid were properly calculated in accordance with the terms of the Agreement.

For the Test of Revenue Transactions, R3 will work with each Company's accounting staff, to verify that the rates, billed amounts, and corresponding payments of a set of randomly selected residential and commercial subscribers were correct and properly posted to the accounting system.

For the Test of Contractor Fee and AB 939 Fee Transactions, R3 will review the check register for all such payments made to the City for calendar years 2013, 2014, and 2015, to determine if the total franchise fees reported as paid per year tie to the Companies' financial statements. R3 may also compare the financial statement figures to the total gross revenues posted to the Companies' General Ledgers.



**City of Stockton, CA**

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

**Liquidated Damages**

R3 understands that the City imposed liquidated damages to both waste haulers during the first few years of the contract for failing to reach fifty-percent (50%) diversion, leaking vehicles and missed pickups. However, the issuance of notices to assess liquidated damages in 2010 have been sufficient to achieve compliance. R3 will review the notices to assess liquidated damages and associated calculations of liquidated damages, and verify with the City that those payments have been made and were correctly calculated.

**Section 4**

Detailed Work  
Plan / Scope of  
Work

**Deliverables**

Task 3 includes the following deliverables:

- *On-site review and testing of the Companies' financial records;*
- *Route audits to verify the service level at specific addresses included in the test group (conducted as part of Task 3.1); and*
- *Results of the Task 3.1 Audit of Billings and Task 3.2 Audit of Revenue Reporting.*

**Task 4 Draft and Final Reports****Task 4.1 Draft Report**

Upon completion of Tasks 2 and 3, R3 recommends that we present our preliminary findings to the Companies for their review. This step is undertaken to ensure that we have not misinterpreted any of the information that has been provided. Based on comments received from the Companies, we will make any appropriate adjustments to our findings prior to presenting our Draft Report.

R3 will prepare an electronic Draft Report in both Microsoft Word and PDF formats that incorporate the work performed in Task 1 through Task 3.

R3 anticipates that the Draft Report will include the following sections:

- Executive Summary;
- Introduction;
- Methodology; and
- Findings and Recommendations.

**Task 4.2 Final Report**

Based on written or verbal comments from City staff on the Draft Report, R3 will prepare and submit a Final Report to the City in an electronic PDF format.

**Deliverables**

Task 4 includes the following deliverables:

- *Electronic copy of the Draft Report (Word and PDF); and*
- *Electronic copy of the Final Report (PDF).*

R3

**City of Stockton, CA**  
 Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

**Section 4**

**Detailed Work Plan / Scope of Work**

**Limitations**

Our Work Plan / Scope of Work is designed to focus on the major objective contractual requirements, with a more detailed focus on those that are of most interest and importance to the City. In addition to rendering an opinion as to the Contractor's compliance with respect to the contractual requirements that are reviewed, it is our intent to also provide the City with an overall assessment of each of the Companies' performance relative to safety, customer service and the effectiveness of their diversion programs.

To enable us to conduct as thorough and comprehensive a review as possible, our initial information request (Task 1.1) is designed to obtain much of the information that we need to effectively undertake our review and determine each Company's compliance with the related requirements covered under each of our work scope tasks. If requested information is not or cannot be made available, we will note that in our report and adjust our review and focus accordingly.

**Value-Added Deliverables**

In addition to the project tasks and deliverables covered in our Scope of Work above, R3 also proposes to provide the City with a number of Value-Added Services, largely designed to support the City's future efforts to either negotiate sole-source extensions to the current franchises or conduct a competitive procurement for those services. Specifically, R3 will provide the following deliverables to the City:

- 1) **Enhanced Reporting Requirements** - Providing recommendations for enhanced proactive hauler reporting requirements to facilitate more efficient and effective administration of the franchises by the City;
- 2) **New and/or Enhanced Performance Based Contractual Terms and Conditions** - Providing recommendations for new and/or enhanced performance based contractual terms and conditions that are aligned with the City's objectives for its solid waste management system; and
- 3) **Additional Diversion Potential Analysis** - Conducting an Additional Diversion Potential Analysis in support of the City's consideration of policy, program and service options for a new franchise for achieving a seventy-five percent (75%) diversion rate consistent with the State's year 2020 diversion goal.

**1) Enhanced Reporting Requirements**

R3 will review the Companies quarterly and annual reports for compliance with Article 8.2 of the Agreement and other reporting requirements, as part of Task 2.2.1 above (Franchise Agreement Compliance Review). In addition, R3 will assess the effectiveness of those quarterly and annual reporting requirements and provide the City with recommended new or enhanced reporting requirements to, among other things:<sup>1</sup>

**R3**

<sup>1</sup> Article 8.3 (Additional Reporting) includes the requirement that: "*The Contractor shall furnish the City with any additional reports as may reasonably be required.*"

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

- Provide for more effective monitoring of the Companies' compliance with the key terms and conditions of the Agreements, including those requirements for which liquidated damages apply;
- Provide additional information to enable the City to effectively assess the Companies overall performance on an ongoing basis, including their overall safety, customer service and diversion performance; and
- Provide the documentation the City needs to demonstrate its compliance with AB 1826 and other regulatory requirements.

The objective of developing enhanced reporting requirements is for the Companies to proactively provide the City with the information it needs to effectively administer the Agreements and determine contractual compliance, and provide a clear and succinct documentation of the performance of each of the Companies with respect to safety, customer service, diversion program effectiveness, AB 341 and AB 1826 compliance, and any other items that are of particular importance to the City.

**Deliverables:**

- *Recommendations of enhanced reporting requirements to be included in the Task 4 Draft and Final Reports.*

## 2) Recommended Changes to Contract Terms and Conditions

The City's existing franchisees with the Companies expire in approximately three (3) years. This Performance Review and Billing Audit and the findings and recommendations that are generated will provide the City with an assessment of each of the Companies' operational performance and contractual compliance. This review also provides the opportunity to, based in part on the findings of our review, provide recommendations for new or enhanced franchise agreement terms and conditions that will provide the City with the ability to more efficiently and effectively administer the contract, and monitor the franchisees' contract compliance and overall performance.

R3 has significant recent experience assisting jurisdictions with negotiating sole source contract extensions and conducting competitive procurements for franchised services. In either case, the effectiveness of the terms and conditions of the accompanying franchise agreement will dictate in part, if not a large part, how effectively the franchise operations support the jurisdiction's specific goals and objectives for its solid waste collection system. If terms are loose or ill-defined (e.g., good faith efforts), the ability to establish compliance can be difficult, if not impossible. If liquidated damages are established for items for which the jurisdiction does not receive the related performance information from the franchisee necessary to determine their compliance, holding the franchisee to the established performance standards and, if appropriate, assessing liquidated damages, can be extremely difficult and time consuming.

As part of this task, R3 will make recommendations for new or enhanced contract terms, conditions, and reporting requirements to facilitate the City's ability to:

**Section 4****Detailed Work Plan / Scope of Work**


**City of Stockton, CA**  
 Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

**Section 4**

**Detailed Work Plan / Scope of Work**

- More effectively monitor the franchisees' operational performance and contractual compliance; and
- Implement one or more new franchises when the current franchise terms expire that effectively support the City's goals and objectives for its solid waste management system.

**Deliverables:**

- *Recommendations of new or enhanced contract terms and conditions and reporting requirements to be included in the Task 4 Draft and Final Reports.*

### 3) Additional Diversion Potential Analysis

The City's Agreements with the Companies have a number of diversion-related requirements, notably the Diversion Requirements specified in Exhibit J (Liquidated Damages). In addition, the Companies are required to:

- **Use Best Efforts** – "Best Efforts" as used in this Agreement with regard to performance of Contractor's obligations to Divert materials, shall mean at a minimum to competently undertake each of the programs for which materials Diversion is required hereunder and to perform materials Diversion activities for the program in a manner which is equal to, or exceeds industry standards within California, for communities which are in compliance with AB 939 diversion requirements;
- **Section 3.3 (Provision of Service) Subsection A (General)** – Contractor shall make Best Efforts to Recycle or Divert from Disposal fifty percent (50%) of all Collection Materials collected in performing all Collection Services;
- **Section 4.6 (Free Neighborhood Cleanup Program)** – Contractor shall make Best Efforts to Recycle or Divert from Disposal fifty percent (50%) of all materials collected through the neighborhood cleanup program and collection events; and
- **Exhibit A – On-Call Bulky Item Pickup Program** - The Contractor shall use Best Efforts to ensure that all Recyclable Materials are Diverted from Disposal and the Contractor shall use Best Efforts to Recycle or Divert from Disposal fifty percent (50%) of all materials collected through the Bulky Items pick-up program.

Compliance with the above terms and conditions falls under the review that R3 will conduct as part of the Franchise Agreement Contract Compliance Review (Task 2.2.1). That review will determine the accuracy of each Company's most recent reported diversion rate. As part of that process, we will review all relevant supporting documentation to determine if the diversion figures are accurate, including determining if the calculated diversion rates include any non-franchised tonnages, and if those rates accurately account for any contamination and/or residual materials that are ultimately disposed after processing.

In addition to review the accuracy of the Companies reported diversion rates, we also propose to assess the effectiveness of each of the Companies' diversion programs and capture rates, and conduct what we refer to as Additional Diversion Potential Analysis (ADPA). This ADPA is intended to support of the City's consideration of revising minimum diversion requirements and establishing additional diversion-related activities as part of any

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers**

new or extended franchise agreement. In addition, the ADPA will provide an assessment of what it may take for the City to meet the State's seventy-five percent (75%) diversion goal.

The City has a calculated 2014 State AB 341 Diversion Rate of sixty-five point two percent (65.2%), well above the fifty percent (50%) AB 939 Diversion mandate, but less than the State's 2020 goal of seventy-five percent (75%) diversion. While seventy-five percent (75%) diversion is only a goal at this time, R3 recommends to its clients that they consider, if not actively plan for, the State establishing a seventy-five percent (75%) diversion requirement at some point in the future. We also recommend that any new contracts or franchise agreements that jurisdictions enter into have terms and conditions that support the ability to attain that diversion level, should it become a mandate, including establishing minimum diversion requirements (which the City currently has).

The ADPA will present the current waste composition for the single family residential, multi-family residential and commercial waste streams with the tons currently disposed identified by material type.<sup>2</sup> The targeted material types for each diversion program (e.g., residential curbside recycling, commercial recycling and multi-family organics) will be identified along with the total current tons diverted through each of those programs. This will provide a picture of how many tons of each of the targeted material types for each current diversion program are being diverted, how many remain in the waste stream, and the associated capture rate (effectiveness) of each program.

The evaluation of potential additional diversion that may be achievable through new program options and/or existing program service enhancements will be presented in the context of the assumed capture rates for the targeted materials that are currently disposed. As an example, if there are 10,000 tons of mixed paper remaining in the commercial waste stream, and we assume that a specific option (e.g., mandatory commercial recycling, increased public education/outreach) will capture twenty percent (20%) of that total, 2,000 additional tons will be diverted. That diverted tonnage will also be presented in the context of the associated additional diversion percentage in support of achieving a City diversion rate of seventy-five percent (75%), consistent with the State's year 2020 goal.

**Deliverables** (to be included in the Task 4 Draft and Final Reports):

- *Assessment of the effectiveness (capture rates) of the Companies existing diversion programs; and*
- *Additional Diversion Potential Analysis.*

**Section 4**

**Detailed Work Plan / Scope of Work**

<sup>2</sup> If City-specific waste composition data is not available, we will use data from CalRecycle's most recent statewide waste composition study.

**R3**

**City of Stockton, CA****Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers****Section 4****Detailed Work  
Plan / Scope of  
Work**

*This page intentionally left blank.*

R3

**City of Stockton, CA**

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

# Cost Proposal

R3 will complete our Project Scope of Work on a time and materials basis for a not-to-exceed budget of **\$120,000**. Our billing rates and charges are provided below; our detailed cost proposal is provided on the following page.

**TABLE B-1**  
**Billing Rates and Charges 2015 - 2016**

<b>R3 CONSULTING GROUP</b>	
<b>Category</b>	<b>Hourly Rate</b>
Principal / Project Director	\$190 per hour
Senior Project Manager	\$185 per hour
Project Manager	\$170 per hour
Senior Project Analyst	\$140 - 160 per hour
Project Analyst	\$125 - 140 per hour
Associate Analyst	\$100 - 125 per hour
Administrative Support	\$75 - 95 per hour

<b>REIMBURSABLE COSTS (Included in hourly rates)</b>	
Consultants/Subcontractors	Cost plus 10%
Lodging and meals	Direct cost
Travel — Private or company car	\$0.54 per mile
Travel — Other	Direct cost
Delivery and other expenses	Direct cost

## Payments

Unless otherwise agreed in writing, fees will be billed monthly at the first of each month for the preceding month and will be payable within 30 days of the date of the invoice.

## Escalation

Fees will be escalated annually in accordance with the change in the Consumer Price Index.

Appendix B

Cost Proposal

R3

## City of Stockton, CA

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

## Appendix B

## Cost Proposal

Task	R3 Consulting Group				Abbe & Associates		Hours	
	William Schoen	Richard Tagore-Erwin	Garth Schultz	David Pinter	Emily Morse	Natalie Lessa	Mekdem Wright	Ruth Abbe
\$ 190.00	\$ 190.00	\$ 190.00	\$ 190.00	\$ 145.00	\$ 125.00	\$ 125.00	\$ 100.00	\$ 165.00
<b>1 Data Collection and Kick-Off Meeting</b>								
1.1 Document Request and Review	2					7	4	\$ 1,740
1.2 Meetings	8	8	8					\$ 4,560
1.3 Initial Review	8	8	8					\$ 4,560
<b>2 Performance Review</b>								
2.1 Franchise Agreement Compliance Review and Regulatory Compliance Review	16	16			60	40	16	\$ 17,580
2.2 Management and Administrative Review	4	16			20	8		\$ 7,100
2.3 Collection Operations Review	4	40		16		8		\$ 11,480
2.4 Street Sweeping Review	4	8		12				\$ 4,020
2.5 Customer Service and Financial Management Practices Review	4		40		44			\$ 13,860
2.6 Vehicle and Equipment Maintenance, Repair and Replacement Review	8	8						\$ 3,040
2.7 Assessment of Performance Monitoring and Benchmarking Systems	12					8		\$ 3,080
<b>3 Billing Audit</b>								
3.1 Audit of Billings	4		16		40	40		\$ 12,800
3.2 Audit of Revenue Reporting	4		40		44			\$ 13,860
<b>4 Draft and Final Reports</b>								
4.1 Draft Report	16	16	16		16			\$ 13,120
4.2 Final Report	8	8	8		8	8		\$ 6,560
Total Hours	102	128	136	28	112	144	111	20
Total Budget	\$ 19,380	\$ 24,320	\$ 25,840	\$ 4,060	\$ 14,000	\$ 18,000	\$ 11,100	\$ 3,300
Expenses								\$ 120,000
Total Project Budget								

R  
B

**City of Stockton, CA**

Professional Services to Conduct a Performance Review and Billing Audit of Franchised Waste Haulers

**Section 6****Schedule**

<b>Table Key - Staffing</b>	
WS	William Schoen
RTE	Richard Tagore-Ervin
GS	Garth Schultz
DP	David Pinter
EM	Emily Morse
NL	Natalie Lessa
MW	Meldem Wright
RA	Ruth Abbe

**TABLE 6-1**  
**Schedule**

Task	Task Lead	Support Staff	Milestones	Start Week	End Week	Week													
						1	2	3	4	5	6	7	8	9	10	11	12	13	14
City Council Approval (June 21, 2016)																			
Assume Authorization to Proceed (July 1, 2016)																			
Kick-Off Meeting (July 28, 2016)																			
Draft Report Issued (November 7, 2016)																			
<b>1 Data Collection and Kick-Off Meeting</b>																			
1.1 Document Request and Review	WS		WS   MW   RA	N/A	N/A	1	3												
1.2 Meetings	WS		WS   GS   RTE		Kick-off Meeting	3	3												
1.3 Initial Review	WS		WS   GS   RTE	N/A	N/A	3	3												
<b>2 Performance Review</b>																			
2.1 Franchise Agreement Compliance Review and Regulatory Compliance Review	WS   NL   MW   RA		Internal Draft (wk. 10)	3	12														
2.2 Management and Administrative Review	WS   NL   MW   RA		Internal Draft (wk. 7)	4	8														
2.3 Collection Operations Review	WS   DP   MW		Internal Draft (wk. 8)	5	9														
2.4 Street Sweeping Review	WS   DP		Internal Draft (wk. 8)	5	9														
2.5 Customer Service and Financial Management Practices Review	WS   GS   EM		Internal Draft (wk. 10)	7	11														
2.6 Vehicle and Equipment Maintenance, Repair and Replacement Review	WS		Internal Draft (wk. 10)	7	11														
2.7 Assessment of Performance Monitoring and Benchmarking Systems	WS   MW		Internal Draft (wk. 12)	9	12														
<b>3 Billing Audit</b>																			
3.1 Audit of Billings	WS   EM		Internal Draft (wk. 11)	7	11														
3.2 Audit of Revenue Reporting	WS   EM		Internal Draft (wk. 12)	8	12														
<b>4 Draft and Final Reports</b>																			
Review Preliminary Findings	RTE   GS		Completed Week 14	13	14														
4.1 Draft Report	RTE   GS   EM   NL		Issued Week 15	15	18														
4.2 Final Report	RTE   GS   EM   NL																		2 weeks after receiving written comments

R3

**Insurance Requirements for Professional Services****To Conduct A Performance Review and Billing Audit of Franchised Waste Haulers**

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

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. (***Not required if consultant provides written verification it has no employees***)
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$1,000,000** per occurrence or claim, \$1,000,000 aggregate. (If Claims-made, see below.)

If the Consultant maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**Additional Insured Status**

**The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL**

policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (**at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used**).

### **Primary Coverage**

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept primary endorsements limiting the Consultant's insurance coverage to sole negligence.

### **Notice of Cancellation**

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton**.

### **Waiver of Subrogation**

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

### **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

### **Claims Made Policies**

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.

2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

### **Verification of Coverage**

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

### **Certificate Holder Address**

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

### **Maintenance of Insurance**

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

### **Subcontractors**

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

### **Special Risks or Circumstances**

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject:	Directive No. HR-16	Page No. 1 of 14
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>6/1/2016</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/04, 6/7/98, 1/1/00  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/16/03

**I. PURPOSE**

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

**II. POLICY**

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-16</b>	<b>Page No. 2 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>6/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-018 (Sexual Harassment in the Workplace) revised from 10/21/91, 8/1/96, 1/1/98  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/18/93

maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 3 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/04, 6/1/98, 1/1/98  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

**III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT**

A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:

1. Soliciting applications from a source where all or most of potential workers are of the same race or color;
2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
3. Questioning a job applicant about the existence, nature and severity of a disability.

B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 4 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-C16 (Sexual Harassment in the Workplace) revised from 10/21/91, 6/1/98, 1/1/08  
 PER-097 (Sexual Harassment Investigative Procedures) revised from 2/18/03

otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. **Verbal Harassment:** Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
2. **Physical Harassment:** Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
3. **Visual Harassment:** The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.

C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made a term or condition of employment; or
2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 5 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/08, 1/1/08

PER-037 (Sexual Harassment Investigative Procedures) revised from 2/18/03

3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 6 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>6/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-018 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/05, 1/1/08  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/18/03

**I. Retaliation for making harassment reports or threatening to report harassment.**

**D. Affordable Care Act (ACA) Anti-Retaliation**

Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:

1. Receives a health insurance tax credit or subsidy through the Health Care "Marketplace" or "Exchange", by which can trigger a penalty payable by the employer;
2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
3. Testifies in a proceeding concerning such violation;
4. Assists or participates in a proceeding concerning a violation; or
5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

**IV. REPORTING AND COMPLAINT PROCEDURES**

**A. Immediate Action Required**

The City's reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-16</b>	<b>Page No. 7 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>6/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/95, 1/1/98  
 PER-097 (Sexual Harassment Investigative Procedures) revised from 2/15/93

employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

**1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment**

- a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
- b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
- c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	Directive No. HR-16	Page No. 8 of 14
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  6/1/2015	Revised From:  7/27/08 4/6/09 3/1/2010  (see below)

PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/96, 1/1/98  
 PER-007 (Sexual Harassment Investigative Procedures) revised from 2/16/93

with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>  <b>DISCRIMINATION AND HARASSMENT POLICY</b>	<b>Directive No. HR-15</b>	<b>Page No. 9 of 14</b>
	<b>Effective Date:</b>  <b>5/1/2015</b>	<b>Revised From:</b>  <b>7/27/09</b> <b>4/8/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-010 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/05, 1/1/08  
 PER-037 (Sexual Harassment Investigative Procedure) revised from 2/15/93

- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

**V. INVESTIGATION PROCEDURES**

**A. Determination of Responsibility for Investigation**

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject:	Directive No. HR-15	Page No. 10 of 14
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/00, 1/1/08  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

**B. Investigative Guidelines**

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject:	Directive No. HR-16	Page No. 11 of 14
DISCRIMINATION AND HARASSMENT POLICY	Effective Date:  5/1/2016	Revised From:  7/27/09 4/6/09 3/1/2010 (see below)

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/05, 1/1/08  
 PER-037 (Sexual Harassment Investigation Procedures) revised from 2/16/03

supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

**VI. RESPONDING TO THE COMPLAINT**

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject:	Directive No. HR-15	Page No. 12 of 14
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>5/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/94, 8/1/96, 1/1/08  
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/16/03

make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
  - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
  - 2. Unfounded: The investigation proved that the act(s) or omission(s)

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

<b>Subject:</b>	<b>Directive No. HR-15</b>	<b>Page No. 13 of 14</b>
<b>DISCRIMINATION AND HARASSMENT POLICY</b>	Effective Date:  <b>6/1/2015</b>	Revised From:  <b>7/27/09</b> <b>4/6/09</b> <b>3/1/2010</b> <b>(see below)</b>

PER-016 (Sexual Harassment in the Workplace) revised from 10/21/94, 6/1/96, 1/1/08

PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. **Sustained:** The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

## **VII. DISCIPLINE**

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

## **VIII. ALTERNATIVE REMEDIES**

If upon exhausting all internal remedies to file, investigate, and respond to a charge of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e et seq.), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

**CITY OF STOCKTON, CALIFORNIA**  
**CITY MANAGER ADMINISTRATIVE DIRECTIVE**

Subject:	Directive No. HR-16	Page No. 14 of 14
DISCRIMINATION AND HARASSMENT POLICY	Effective Date:  5/1/2015	Revised From:  7/27/09 4/6/09 3/1/2010 (see below)

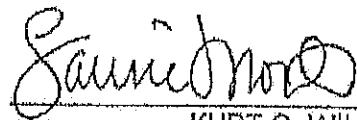
PER-016 (Sexual Harassment in the Workplace) revised from 10/21/04, 8/1/96, 7/1/98  
 PER-037 (Sexual Harassment Investigative Procedure) revised from 2/16/03

agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

**IX. COMMUNICATION OF POLICY**

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON  
 CITY MANAGER

2020AIGRPWISACOS:PER,PER\_Library:96180.1