

REGULAR MEETING

FEBRUARY 1, 2023



Imperial City Council

Katherine Burnworth- Mayor
Robert Amparano-Mayor Pro Tem
Ida Obeso-Martinez-Council Member
Stacy Mendoza- Council Member
James Tucker-Council Member

AGENDA

Regular Meeting of the Imperial City Council

City Council Chambers
220 West 9th Street
Imperial, CA 92251-1637
And
333 Universal Hollywood Drive
Universal City, CA 91608
February 1, 2023
Closed Session at 6:00 pm
Open Session at 7:00 pm

The Imperial City Council meetings, including public comments, are being livestreamed on the city's social media pages. By remaining in the room, you are giving your permission to be recorded.

1. You are encouraged to observe the City Council meetings via Livestream at the City of Imperial Facebook page.
2. If you are unable to participate in-person, and wish to address the City Council on matters within their jurisdiction, please email public comments to cityclerk@cityofimperial.org.
3. All documents containing an executive summary and staff recommendation associated with open session action items are made available for public inspection on the City's website, www.cityofimperial.org seventy-two (72) hours prior to the posted meeting time.
Government Code section 54957.5(b)(2)(B)

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meeting, please contact (760) 355-4373. A notification of 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to this meeting [28CFR 35.102-35.104 ADA title II].

A. City Council Convenes to Closed Session at 6:00 pm

- A-1. Public Employee Performance Evaluation (§54957)**
Title: City Manager

B. City Council Convenes to Open Session at 7:00 pm

Roll Call

Pledge of Allegiance

Adjustments to the Agenda

Action Taken in Closed Session

C. Public Appearances:

C-1. Matters not appearing on the agenda: If you wish to address the Council concerning any item within the Council's jurisdiction, please raise your hand and be acknowledged by the Mayor. At that time, state your name and address for the record. The Mayor reserves the right to place a time limit on each person's presentation of three (3) minutes. It is requested that longer presentations be submitted to the Council in writing.

D. Special Presentation:

D-1. National Cancer Prevention Awareness Month

E. Consent Agenda:

All items appearing under “Consent Agenda” will be acted upon by the City Council in one motion without discussion. Should any Council member or other person request that any item be considered separately, that item will then be taken up at the time as determined by the Mayor.

- E-1.** Approval of Claims and Warrants Report.
- E-2.** Continued emergency action of resolution 2022-60 (Sandalwood Glen, Sky Ranch, Cross & Colonia pump/ lift stations.)
- E-3.** Amendment of the Parks Director Job Description to Parks & Recreation Job Description.
- E-4.** Approval of Council Meeting Minutes for December 21, 2022, and January 4, 2023.

F. Public Hearing: (Discussion/ Action- Recommend/Deny)

- F-1. Subject: Public Hearing of the City Council to Discuss the Vacation of a Public Right-of-Way Portion of O Street Between 12th Street and 13th Street with in the City of Imperial.**

- 1. Open Public Hearing**
- 2. Staff Report – Public Comment**
- 3. Close Public Hearing**
- 4. Council Discussion**
- 5. Recommended Action:** Adoption of Resolution 2023-02, Approving the Vacation of a Public Right -Of-Way Portion of O Street, Between 12th Street And 13th Street Within the City of Imperial.

G. Action Items: (Discussion/Action– Approve-Disapprove)

- G-1. Subject: Declaration of Imperial Police Department Motorcycle as Surplus.**

- 1.** Declaration of Imperial Police Department motorcycle as surplus.
- 2.** Authorization of sale and /or salvage of items declared surplus.

- G-2. Subject: Morning Star Subdivision Unit 1A.**

- 1.** Approval and Acceptance of Off-Site Street Improvements.
- 2.** Authorize bond reduction up to 90% and to keep the remaining 10% for the one-year warranty period.

G-3. Subject: Republic Services Annual Rate Adjustment.

1. Approval of Republic Services Cost Price Index (CPI) Adjustment of Four Percent (4%) For Waste and Recycling Services in The City of Imperial.

G-4. Subject: Future of Healthcare in Imperial County Discussion

H. Reports

H-1. Department Reports

H-2. City Manager Report

H-3. Mayor and Councilmember Reports

I. Adjournment

- I-1. Subject:** Adjournment of this Regular Meeting of the City Council is Until the Next Regularly Scheduled Meeting, Wednesday, February 15, 2023, at 7:00 pm.

DATE SUBMITTED 1/27/2023
 SUBMITTED BY ACM
 DATE ACTION REQUIRED 2/1/2023

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT: CONSENT: AMENDMENT OF PARKS DIRECTOR JOB DESCRIPTION TO
 PARKS & RECREATION JOB DESCRIPTION

DEPARTMENT INVOLVED: City Manager's Office -Human Resources

BACKGROUND/SUMMARY:

As part of the recent reorganization of duties and departments, the City has amended the essential functions and responsibilities of the Parks Director job description to include the divisions of recreation and special events. Attached you will find the amended Parks & Recreation Director job description.

FISCAL IMPACT: NONE

ADMIN SERV
INITIALS

DP

STAFF RECOMMENDATION: It is staff's recommendation to approve the amended job description as presented to include the essential functions and responsibilities of recreation and special events.

DEPT. INITIALS

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MANAGER'S RECOMMENDATION:

approve

CITY
MANAGER'S
INITIALS

DHM

MOTION:

SECONDED:
 AYES:
 NAYES:
 ABSENT:

APPROVED ()
 DISAPPROVED ()

REJECTED ()
 DEFERRED ()

REFERRED TO:

CITY OF IMPERIAL
DIRECTOR OF PARKS AND RECREATION

Range 102
MSPC Salary Schedule
Classification/Group: Management
Full Time | Exempt
Department: Parks and Recreation

DEFINITION:

Under the direction of the City Manager and Assistant City Manager, plan, organize, control and direct the City of Imperial's Community Services Department operations and activities including recreation, parks, and community events; plan, organize and supervise community events, programs and services; oversee the maintenance of City parks, vehicles, equipment, buildings and grounds; coordinate and direct Parks and Recreation Services communications, projects, personnel and information to meet City needs and ensure smooth and efficient Department activities; train, supervise and evaluate the performance of assigned personnel.

ESSENTIAL DUTIES AND RESPONSIBILITIES

- Coordinate and direct Parks and Recreation Services communications, projects, personnel and information to meet City needs and ensure efficient department activities; meet and confer with staff administrators, officials, developers, engineers, consultants and others regarding maintenance, construction projects, other Department activities and related needs and issues; investigate, analyze and resolve public, employee and departmental issues, conflicts and complaints.
- Train, supervise and evaluate the performance of assigned personnel; interview and select employees and recommend transfers, reassignment, termination and disciplinary actions; coordinate employee work assignments and schedules; review work to ensure compliance with established standards, requirements and procedures.
- Direct activities to ensure optimal department effectiveness and efficiency; develop and implement Department plans, strategies, goals, objectives, policies and procedures; monitor, evaluate and modify Department activities in response to project progress; coordinate projects with contractors, engineers, developers, consultants and others.
- Ensure compliance with established safety standards and procedures; ensure a safe working environment and instruct employees concerning safety standards, issues and procedures.
- Direct and participate in inspection programs and activities to ensure proper and timely identification and resolution of fire, safety and health hazards.
- Provide consultation to administrators, personnel, outside agencies and the public concerning maintenance, construction, repair and other Department activities; respond to inquiries and provide detailed and technical information regarding related projects, services, timelines, standards, requirements, laws, codes, regulations, ordinances, policies and procedures.

- Plan, organize, control and direct community programs and services involving recreation, leisure and senior events and activities; oversee the development and arrangement of calendars and schedules for recreation events, classes and activities.
- Oversee the maintenance of parks, vehicles, equipment, buildings and grounds; monitor park landscape maintenance and repair including streetscapes and City facility landscaping; oversee and direct maintenance of play structures and the required inspections, repairs and replacements of equipment; establish and maintain related timelines and priorities; ensure related activities comply with established laws, codes, regulations, ordinances, policies and procedures.
- Estimate and ensure adequate personnel, materials and equipment needed for installation, construction, maintenance and repair projects, work orders and activities; compile and prepare cost estimates; monitor and ensure adequate equipment and supply levels; coordinate the purchase of equipment and supplies as appropriate.
- Plan, schedule, develop and implement construction, installation, maintenance, capital improvement and repair projects; develop plans, RFP's and project specifications; review project plans and specification for compliance with established requirements; inspect City and contractor projects for accuracy, completeness and compliance with established standards and specifications.
- Oversee and participate in the preparation and maintenance of various records and reports related to projects, work orders, inventory, personnel, grants, maintenance, cost estimates, budgets, payroll and assigned activities; ensure mandated reports are submitted to appropriate governmental agency according to established timelines.
- Participate in the development of long range plans for land use related to Community Services operations, facilities and parks.
- Develop community knowledge and build partnerships and coalitions that will identify the Department as a community focal point.
- Represent the City to other agencies and organizations to develop partnerships that nurture the City's community programs and facilities.
- Provide advisory support to the Friends of Parks and act as liaison to other, citizen committees, community agencies and governmental agencies to facilitate land conservation, park development for the delivery of recreation programs and services.
- Develop and prepare the annual preliminary budget for the Community Services department; analyze and review revenue, expenses, supplemental funding and related budgetary and financial data; research funding sources and oversee fundraising efforts and grant writing; control and authorize expenditures in accordance with established limitations; administer Department grants in accordance with established requirements.
- Provide technical information and assistance to the City Manager regarding Community Services projects, activities, needs and issues; assist in formulating and developing policies, procedures and programs; serve as the City Manager in the absence of the administrator as directed.
- Participate in City Council meetings; attend staff meetings; provide assistance, information and support to committees, City residents, public and other public agencies.
- Communicate with personnel, administrators, contractors, outside organizations and the public to exchange information, coordinate activities and resolve issues or concerns.
- Negotiate with residential developers and other public agencies for dedication of

land or fees for park purposes.

- Contract program administration vendors, including instructors, entertainers for community events, landscape maintenance workers and small grant sub-contractors.
- Operate standard office equipment including a computer and assigned software; utilize testers and various hand and power tools; drive a vehicle to conduct work.
- Provide responsible and complex leadership to demonstrate the role of parks in enhancing community vitality.
- Facilitate community problem solving and have the ability to be flexible and change plans based on the needs of the community

OTHER DUTIES:

- Perform related duties as assigned.

REQUIRED QUALIFICATIONS:

Desirable Training and Experience

A Bachelor's degree in business management or public administration preferred, or Five years of professional parks leadership experience, at least two years of which were in an administrative capacity.

Licenses and other Requirements:

- Must possess a valid California Class C driver's license.
- Certified Playground Safety Inspector

Knowledge of:

- Planning, organization and direction of Community Services operations and activities including recreation, parks, library and community services and the maintenance of City parks, vehicles, equipment, buildings and grounds.
- Principles, techniques, practices and procedures involved in planning, scheduling, developing, implementing and inspecting construction, installation, maintenance and repair projects.
- Applicable building codes, ordinances, requirements, regulations and safety precautions.
- Practices, procedures, methods, equipment and materials used in the construction and maintenance of parks, vehicles, equipment, buildings and grounds.
- Resource development to garner grants, legislative appropriations, donations, sponsorships and in-kind services for programs.
- Health and safety regulations and procedures.
- Applicable laws, codes, rules, regulations, policies and procedures.
- Inventory practices and procedures.
- Budget preparation and control.
- Principles and practices of administration, supervision and training.
- Interpersonal skills using tact, patience and courtesy.

Ability to:

- Plan, organize, control and direct Community Services operations and activities including recreation, parks, community and library services and the maintenance of City parks, vehicles, equipment, buildings and grounds.
- Establish a customer service philosophy in the Department to respond to citizen inquiries and resolve difficult or controversial issues.
- Coordinate and direct Community Services communications, projects, personnel and information to meet City needs and ensure smooth and efficient Department activities.
- Train, supervise and evaluate the performance of assigned personnel.
- Prioritize work to meet competing demands of various projects and tasks.
- Plan, schedule, develop and implement construction, installation, maintenance and repair projects.
- Inspect projects for accuracy, completeness and compliance with established standards, requirements, specifications and procedures.
- Develop and implement Department plans, strategies, goals, objectives, policies and procedures.
- Direct community programs involving recreation, leisure and senior events and activities.
- Estimate and ensure adequate personnel, material and equipment levels needed for projects.
- Receive, prioritize and coordinate response to requests, customer service calls and work orders.
- Communicate effectively both orally and in writing.
- Interpret, apply and explain laws, codes, regulations, policies and procedures.
- Establish and maintain cooperative and effective working relationships with others.
- Operate standard office equipment including a computer and assigned software.
- Analyze situations accurately and adopt an effective course of action.
- Meet schedules and timelines.
- Work independently with little direction.
- Plan and organize work.
- Direct the preparation and maintenance of a variety of reports, records and files.

WORKING CONDITIONS

Work Environment:

- Indoor/Outdoor environment;
- Seasonal heat and cold or adverse weather conditions;
- Regular exposure to fumes, dust, oil and grease;
- Noise from equipment operation;
- Driving a vehicle to conduct work;
- Variable hours including evening, week-ends and holidays.

Physical Demands: The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable

accommodations may be made to enable individuals with disabilities to perform the essential functions.

- Dexterity of hands and fingers to operate a computer keyboard, maintenance equipment and tools;
- Seeing to inspect projects and read a variety of materials;
- Hearing and speaking to exchange information;
- Sitting or standing for extended periods of time;
- Lifting, carrying, pushing and pulling heavy objects as assigned by the position;
- Walking over rough or uneven surfaces and to inspect projects;
- Bending at the waist, kneeling or crouching;
- Reaching overhead, above the shoulders and horizontally;
- Heavy physical labor;
- Climbing ladders.

HAZARDS:

- Working around and with machinery with moving parts;
- Working at heights;
- Exposure to chemicals and fumes.

DATE SUBMITTED 1/27/2023
 SUBMITTED BY ACM
 DATE ACTION REQUIRED 2/1/2023

COUNCIL ACTION (X)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: REPUBLIC SERVICES ANNUAL RATE ADJUSTMENT

1. APPROVAL OF REPUBLIC SERVICES COST PRICE INDEX (CPI)
 ADJUSTMENT OF FOUR PERCENT (4%) FOR WASTE AND
 RECYCLING SERVICES IN THE CITY OF IMPERIAL.

DEPARTMENT INVOLVED:

BACKGROUND/SUMMARY:

The City of Imperial has an agreement with Republic Services (aka Allied Waste) for Residential and Commercial Waste and Recycling Collection services. The agreement calls for an annual rate adjustment of no more than five percent (5%) per calendar year. CPI is currently calculated at 6.3%, however, in an effort to be consistent with neighboring jurisdictions contractual agreements, Republic Services has proposed an increase of no more than 4%.

FISCAL IMPACT: CPI will be applied to waste services charge of the Imperial Utility Bill.

\$1.02 per utility bill

ADMIN SERV
INITIALS

DA

STAFF RECOMMENDATION: It is staff's recommendation to approve the CPI of 4%, with the understanding that further discussion will be needed regarding the "extreme" circumstances Republic Services references in their correspondence. Staff does not recommend additional increases at this time, or until an amount can be mutually agreed upon with our neighboring jurisdictions.

DEPT. INITIALS

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MANAGER'S RECOMMENDATION:

approve

CITY
MANAGER'S
INITIALS

OTM

MOTION:

SECONDED:

AYES:

NAYES:

ABSENT:

APPROVED ()

DISAPPROVED ()

REFERRED TO:

REJECTED ()

DEFERRED ()



Sustainability in Action

December 13, 2022

Dennis H. Morita
City Manager
City of Imperial
420 South Imperial Avenue
Imperial, CA 92251

To keep the discussion going, I wanted to follow up with you on our conversation after the Council meeting. You intimated that after your City Managers conversations between you, Tyler, and Esperanza, you all were looking into the possibility that a Prop 218 would need to be conducted prior to the approval of an extraordinary price increase to the communities. Although it has been our contention that Prop 218 isn't necessary (because of our "arm's length" transactions), we wholly support the City's position on the matter, if necessary. So, is it the conclusion of the group that the easier path, would be to implement the price increase January 1, 2023, based on the contractual Water, and Sewer, and Trash CPI indicator, with a revisit of the extraordinary price adjustment that will be implemented in March after review of Prop 218? (Calexico performed Prop 218 in 2019 stipulating that it was good for 5 years).

Do you feel comfortable and does time permit, for the WST CPI price increase of 4.0% to be agendized for approval at the next City Council meeting (December 21, 2022), or do you feel the process is being rush? Please advise.

Hopefully the case can be made that we are and have always been a good community partner, with excellent service, participating financially, or with in-kind services. We are putting forth this request, because we have experienced the same economic hardships that the City and other contractors have encountered and are wanting to recoup some of the costs that are beyond our control (survey of the Valley indicates other cities have increased or considering increasing higher than the 8.1% rate adjustment we are proposing). Thank you again for your time, and as always, I can make myself available to discuss at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "George Taylor".

George Taylor
Operations Manager
Republic Services of Imperial
gtaylor@republicservices.com
(760) 337-2412

AGREEMENT

This agreement is entered on December 15, 2004, by and between the City of Imperial, a municipal corporation, hereinafter referred to as "City," and Allied Waste Transportation, Inc., a Delaware corporation qualified to do business in California, dba Valley Environmental, hereinafter referred to as "Contractor."

WITNESSETH

WHEREAS, City requires services for the collection and disposal of solid waste generated within the City; and

WHEREAS, Contractor submitted a proposal which has been found acceptable, in concept, by the City; and

WHEREAS, terms utilized herein shall have the meanings set forth in Exhibit 1.

NOW, THEREFORE, BE IT AGREED AS FOLLOWS:

1. SCOPE OF SERVICES. Contractor will provide all labor and equipment necessary to perform services in accordance with the terms and conditions hereinafter set forth and as contained in Chapter 10 of the ordinances of the City as said ordinances currently exist or may hereinafter be amended. Contractor's tasks shall include the following:

a) Area of Service. Contractor shall provide service to the incorporated area of the City of Imperial as it currently exists or may be subsequently amended pursuant to the laws relating to annexation and detachment. City shall provide Contractor thirty (30) days written notice of any change in service area.

b) Service. Contractor shall provide solid waste collection service to residential occupancies containing four (4) or fewer separate living units, no less than one (1) time per week. Said service shall be provided to residential occupancies containing four (4) or more separate living units and commercial and industrial establishments on the basis of need. Government and public agencies shall be classified as industrial establishments for the purposes of this contract, except, however, said government and public agencies shall not be required to use the services of Contractor. For residential service, Contractor shall provide "three can" service whereby a green container shall be provided for green waste, black for household waste and brown/blue for recyclable material. Contractor shall collect and dispose of bulky goods and special wastes from residential premises as set forth in Exhibit 2. Recycling and green waste collection shall be carried out as set forth in Exhibit 3. Except as specifically set forth herein, so long as Contractor is not in breach of this Agreement, City agrees not to contract with another Contractor or company to provide solid waste collection, except for solid waste not required to be picked up by this Contractor.

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c) Vehicles and Vehicle Maintenance. Contractor shall maintain all trucks and equipment used within the City in good mechanical condition. Trucks and/or equipment shall be clean and uniformly painted. All equipment used in the performance of this Agreement shall be subject to inspection by the City, and, upon reasonable notice given by the City to the Contractor, the Contractor shall make the equipment available for inspection. If the City finds that any equipment being used by the Contractor is not in satisfactory condition, the defect so found shall be corrected by the Contractor within three (3) days of receipt of notice thereof. The term "satisfactory condition" as herein used shall include, but shall not be limited to, vehicle equipment that does not have oil leaks, excess grease drippings, hydraulic fluid spillage or any other kind of spillage that could cause hazard or an unsightly appearance to the City rights-of-way or private properties. If said defects are not corrected within said period of time, then that piece of equipment requiring correction of defects shall not be used by Contractor in the performance of the Agreement. All trucks and equipment used within the City by the Contractor shall conform to all applicable California State Vehicle Codes; furthermore, Contractor's vehicles shall be registered within the State of California.

Vehicles that are not operating properly shall be taken out of service until they are repaired and do operate properly. Contractor shall keep accurate records of all vehicle maintenance and repairs, recorded according to date and mileage, nature of maintenance or repair and the signature of a maintenance supervisor or mechanic that the maintenance or repair has been properly performed. Contractor shall make such records available to City on request, to the extent necessary to perform the inspections authorized by this Agreement.

d) Traffic and Noise. Contractor shall so conduct his operation as to offer the least possible obstruction and inconvenience to public traffic or disruption of the peace and quiet of the area within which collections are effected. Collections of refuse may be made at any time in response to complaints, and shall be made in emergency situations where for health or safety reasons immediate collection is warranted.

e) Reports. Contractor shall provide Quality of Service Reports, Complaint Logs, Recycle/Diversion Reports, and Landfill Tonnage Reports to the City on a monthly basis. Tonnage Reports shall depict commercial and residential and include green waste and, with respect to recyclables, the amount recovered versus what is placed in the landfill.

f) Container Location/Delivery. If any containers are placed within City right of way, such practice shall cease no later than 6 months from the date of execution of this agreement. All containers shall be returned to permanent locations immediately following pick up. Contractor shall remove graffiti from containers no later than three working days after notification.

City shall notify Contractor to arrange delivery of residential containers. Commercial customers will be referred to Contractor to arrange delivery. Containers shall be delivered to new residential and commercial customers within 3 working days of notification. A replacement container shall be provided within 3 working days of notice that a replacement is necessary.

City shall give Contractor 3 working days notice of Contractor's failure to perform as set forth herein. If Contractor does not thereafter perform, the City may deduct from sums otherwise owing the Contractor the sum of \$100.00. If Contractor does not perform within 3 working days of the penalty, City may proceed as set forth in paragraph 19.

2. TERM. The term of this Agreement shall commence on _____, 2004, and shall expire on June 30, 2008, provided, however, that said term may be extended for an additional two (2) year period on such terms as may be agreed upon by the parties. If the terms of the extension are not reduced to writing and signed by both parties by December 1, 2007, this agreement shall terminate on June 30, 2008.

3. PICK UP DAYS AND HOURS. Contractor, may in its discretion, establish pick up days except that no service shall be provided on Sunday unless an emergency or holiday makes Sunday pick up necessary to maintain a regular pick up schedule. Collection shall not begin prior to six o'clock a.m.

4. SOLID WASTE RECEPTACLES AND CONTAINERS. Solid waste receptacles and containers shall be in conformity with Article 3, Chapter 10 of the City Ordinances. Contractor shall not be responsible for pick up from unapproved receptacles or containers except that Contractor agrees to pick up cardboard boxes and plastic bags where said boxes and bags are otherwise in conformity with the Ordinance. Contractor shall promptly clean up litter generated during the course of making its collection from approved containers.

5. OFFICE. Contractor shall establish and maintain an office. Said office shall maintain telephone service and shall be adequately staffed and open no less than Monday through Friday, from eight o'clock a.m. to five o'clock p.m.

6. SOLID WASTE NOT REQUIRED TO BE PICK UP. No material need be accepted that is prohibited by federal or state regulations. By way of example and not a complete list, such material includes hazardous wastes as defined by state and federal law.

7. DISPOSAL SITE. Contractor shall dispose of all solid waste collected only at a site or facility which has obtained all necessary licenses and entitlements from any governmental agencies having jurisdiction over same. City reserves the right to direct the waste stream. The City shall provide Contractor with written notice at least 3 months prior to directing the waste stream to a facility other than the current landfill

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located at 104 East Robinson Road, Imperial, California. The parties agree to negotiate in good faith any changes in rates related to using another site. If the parties do not agree on a rate during said period, either party may terminate this agreement by giving 3 months written notice.

8. CURB AND ALLEY SERVICE. Contractor shall provide alley service in the commercial areas. Alleys shall not be utilized where collection equipment must be backed out. Alley service will not be provided in residential areas.

9. WALK-UP SERVICE FOR DISABLED PERSONS. Contractor agrees to provide walk-up service to persons who, because of a physical disability, cannot transport containers to a location where they may be serviced.

10. SPRING CLEAN-UP/CHRISTMAS TREE COLLECTION. At no additional cost to City, Contractor, during May of each year, shall provide a spring clean-up of the sort conducted during May of 2004. Such event includes a curbside Friday-Saturday pickup with an unadvertised Monday final pass to retrieve items which may have been placed late. Additionally, Contractor at no additional cost to City shall provide Christmas tree collection. The parties shall agree upon the areas to be designated for drop off and the times of collection. Curbside pickup will be provided for those City residents whose physical disabilities make it impractical to transport the tree to the designated location.

11. CITY FACILITIES AND EVENTS. Contractor shall provide City refuse collection at the following rates:

Once per week pickup -	2 yard containers	\$19.77
	3 yard containers	\$26.37
	4 yard containers	\$32.93
40 yard roll-off (per pickup)		\$100.00

Recycling and green waste containers and pickup shall be provided at no charge to City at facilities designated by City. Further, there will be no charge for containers and pickup for five (5) special events.

12. BILLING. Contractor will bill commercial/industrial and roll-off billings directly and will provide the City with a detailed listing of account charges including the 9% franchise fee and AB 939 fees on a monthly basis. City will continue to bill all residential accounts. Contractor acknowledges City may, in its discretion, alter the timing of its billing from time to time and further acknowledges that City intends to bill one-half of the residential customers in the first of each month and one-half on the 15th of each month. Contractor shall be compensated no later than the fifteenth of the month, following the month services were rendered. Rates are attached hereto as Exhibit 4. Additionally, the City may establish a fee in order to fund environmental

charges mandated by federal and state law associated with land fill operation and closure requirements.

13. FRANCHISE FEE. Ninety-one percent (91%) of amounts collected for service shall be remitted to Contractor. Nine percent (9%) may be retained by City as a franchise fee/charge for billing and administrative services. The Franchise Fee shall also apply to commercial accounts and shall be accounted for and remitted monthly by Contractor.

14. AMOUNT OF SOLID WASTE. Contractor shall remove all solid waste presented for collection in the designated containers without limit as to the amount or nature thereof, except as expressly herein provided in Section 6. Notwithstanding the foregoing, Contractor has the right to require customers who regularly set out waste that exceeds the capacity of the container to obtain a larger or an additional container, at such customer's expense. For purposes of this paragraph, "regularly" is defined as more than three (3) consecutive pickups.

15. UNIFORMS. Contractor's employees shall at all times be dressed in clean uniforms bearing the company name and/or logo. Employees shall not remove portions of the uniform while working.

16. COLLECTION ROUTES. Within thirty (30) days of the date of execution of this Agreement, Contractor shall submit to the City a proposed plan setting forth collection routes. Said plan shall include the proposed days of collection for each such route.

17. USE OF CONTRACTOR'S SITE. Residents of the City may utilize Contractor's disposal site free of charge. Contractor may require proof of residence. Commercial use of Contractor's disposal site by City residents shall be at applicable fees. City's "occasional" use of Contractor's site will be free of charge. "Significant" City use of Contractor's site will be charged the lesser of fifty percent (50%) of rate charged by the City of Imperial or fifty percent (50%) of rates posted at the Contractor's site. For purposes of this paragraph, "significant" City use is defined as more than fifteen forty (40) yard roll-ups per calendar year.

18. HOLIDAYS. The Contractor may observe the following legal Holidays:

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

Contractor shall provide collection services for any holiday falling on a day except Sunday. Residential trash service for legal holidays shall be on the next

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business day. For example, a Monday holiday, residential trash service will be performed on Tuesday. Commercial trash service will be either the day before or the day after the legal holiday. For example, on a Monday holiday, the commercial trash service will be performed on Tuesday.

19. BREACH OF AGREEMENT. If Contractor fails to collect and dispose of refuse as required by this Agreement for a period in excess of two (2) consecutive working days, City may employ such means as it deems advisable and appropriate to continue work, including but not limited to, temporarily hiring another Contractor until the matter is resolved and Contractor is again able to carry out his operations and obligations under this Agreement. In that event, City shall deduct any and all operating expenses incurred by City from any money then due or to become due to Contractor and, should the City's cost for continuing the operation exceed the amount due Contractor, the City may then collect such amount from the Contractor.

All terms, conditions and specifications of the Agreement are considered material and failure to perform any part of the Agreement, shall be considered a breach of the Agreement. Should either party fail to perform any of his obligations herein, the other party may, at its option, terminate the Agreement fifteen (15) days after written notification to the other party of the violation and failure of the party to remedy the violation within said time. In the event performance is precluded by a Force Majeure, the parties will not terminate the agreement pursuant to this provision during the pendency of the incident giving rise to the Force Majeure.

Any violation of the terms of this Agreement by the Contractor shall immediately be brought to the attention of the Contractor. Should the violation not be immediately addressed and corrected, the Contractor shall receive written notification of the violation as set forth herein, and the corrective action required to be accomplished within that time frame. In the event of failure to comply with the notice, the City may take whatever action is appropriate to correct the violations under this Agreement, or as otherwise allowed under law.

20. WASTE DIVERSION.

a) State Mandate (AB939). California Public Resources Code establishes goals for diverting waste from landfills. The parties agree to cooperate to achieve mandated levels of diversion.

b) Contractor Waste Diversion Responsibility. The Contractor shall provide full cooperation with the City's Waste Diversion activities and in the implementation of the City's "Source Reduction and Recycling Element" (SRRE). The Contractor shall comply with the Waste Diversion reporting requirements established by the State for the City. The Contractor shall cooperate with the City's efforts to develop and to implement public education and information programs designed to promote source reduction, recycling and composting in general, as well as specific Waste

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Diversion strategies identified in the City's Source Reduction and Recycling Element. The Contractor shall implement the strategies and schedules developed by the City. Failure of Contractor to perform its obligations under this Section which is the direct cause for penalties to be imposed against the City pursuant to the provisions of Chapter 6 of the Public Resources Code of the State of California, shall cause the Contractor to reimburse the City for such portion of the fine attributable to such failure to perform. Contractor shall keep City advised of the costs and revenues from any strategies implemented and any rate adjustments required, which rate adjustments will not be unreasonably withheld. Further, in the event City does not meet waste diversion goals mandated by law, City, in its discretion, may permit other contractors to provide "roll-off" service. For purpose of this paragraph "roll-off" includes containers of ten (10) cubic feet and larger.

c) Ownership of Waste and Recyclables. Upon collection, all municipal solid waste and recyclable materials shall become the property of the Contractor. Commercial customers may use a company other than Allied for recyclable material. Contractor shall pay to City the sum of five (\$5.00) dollars per ton. Contractor shall pay said amount monthly and shall provide a written report demonstrating the basis for payment. Contractor shall also maintain a phone log of calls it receives in connection with the recycling program.

d) AB939 Studies. The Contractor shall conduct annual waste analysis studies as may be required to indicate compliance with the California Integrated Waste Management Act (AB939) and the City's adopted SRRE. Such studies shall include, but not be limited to, a waste characterization study and may be completed in cooperation with the County of Imperial's study. The Contractor shall provide this work, quarterly and annual reports of tonnage and amounts diverted, at no cost to the City.

21. BANKRUPTCY. If a voluntary or involuntary petition in bankruptcy is filed on behalf of or against the Contractor, City may terminate the Contract effective on the date the petition is filed.

22. COMPLIANCE WITH LAWS. All work to be performed by the Contractor pursuant to the terms of this Agreement shall be performed in accordance with all laws, Ordinances and regulations of the United States, State of California and the City of Imperial now in effect or hereafter enacted.

23. PERMITS AND LICENSES. Contractor shall obtain all permits and licenses required by any governmental agency to perform the services set forth in this Agreement.

24. INDEMNITY. Contractor shall defend, indemnify and save harmless the City and its officers, agents and employees from any and all claims, demands, damages, costs, expenses or liability arising out of this Agreement or occasioned by the

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negligent performance of the provisions hereof, including, but not limited to, any negligent act or omission to act on the part of Contractor or his agents or employees or independent contractors directly responsible to it.

25. INDEPENDENT CONTRACTOR. Contractor, its officers, employees, agents and consultants are independent contractors and not employees of the City.

26. WORKERS' COMPENSATION. Contractor shall obtain and maintain during the term of performance of this Agreement; such Worker's Compensation insurance as may be necessary to protect itself from claims under Workers' Compensation laws and to relieve the City of any responsibility thereunder.

27. PERFORMANCE BOND. Contractor shall furnish to City a performance bond for the faithful performance of this Contract and all obligations arising hereunder in the amount of twenty five thousand dollars (\$25,000). Said bond shall be executed by a surety company licensed to do business in the State of California. Contractor may make a cash deposit of said amount in lieu of a bond.

28. INSURANCE. The Contractor shall secure and maintain throughout the duration of the Agreement insurances of such types and not less than amounts as hereinafter listed with coverages as follows:

TABLE OF INSURANCE

<u>TYPE OF INSURANCE</u>	<u>LIMITS OF LIABILITY</u> (Minimum Combined Single Limit)
GENERAL LIABILITY Comprehensive Form Premises Operations Explosion and Collapse Hazard Contractual Insurance Broad Form Property damage Independent Contractors Personal Injury	\$1,000,000
AUTOMOBILE LIABILITY Comprehensive Form Owned Hired Non-Owned	\$1,000,000
EXCESS LIABILITY Umbrella Form	\$2,000,000 Excess of Primary

EMPLOYER'S LIABILITY

\$500,000

a) Liability. The Contractor shall file with the City and maintain on file throughout the term of this Agreement a Comprehensive Liability Insurance Policy issued by a company duly authorized to do business in the State of California, insuring both the City and the Contractor with respect to the work performed by the Contractor under the terms of this Agreement. The City shall be named as an additional insured on the Contractor's policy and the policy shall contain an appropriate Severability of Interest Clause and Cross Liability Endorsement.

A Certificate of Insurance naming the City as additional insured shall be furnished for approval by the City Manager on each policy. The City shall be notified by the insurer a minimum of thirty (30) days prior to effective date of any modification or cancellation of the above insurance. The acceptance of insurance, or any subsequent modification, is subject to the approval of the City Manager.

Regardless of such approval by the City Manager, it shall be the responsibility of the Contractor to maintain adequate insurance coverage at all times during the term of this Agreement; and failure to do shall not relieve him of any part of the contractual obligations or responsibilities. Failure on the part of the Contractor to maintain their insurances in full effect shall be considered as a material breach of the Agreement and will be treated as such by the City.

29. CERTIFICATES OF INSURANCE. Contractor shall provide a certificate of insurance for each insurance policy to City prior to commencement of work under this Agreement. Contractor's failure or refusal to procure or maintain the insurance as required herein, or failure or refusal to furnish proof of same shall be cause for City to terminate this Agreement.

30. NOTICES. Notices under this Agreement shall be given as follows:

- a) City Manager
City of Imperial
420 S. Imperial Avenue
Imperial, California 92251
- b) Valley Environmental Services
3354 Dogwood Road
Imperial, California 92251

31. ASSIGNMENTS. No assignment of this Agreement or any rights thereunder shall be made without the express written consent of the City which consent shall not be unreasonably withheld; provided however, Contractor may assign this Agreement to any lender to Contractor or any of its affiliates as a collateral assignment without the consent of the City.

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32. TRANSFER OF STOCK OR INTEREST. Each and every change of principal, or assignment of any interest on the part of such Contractor during the term of this Agreement shall be subject to prior written approval of such transfer of stock or other interest.

33. TITLE TO WASTES. Contractor shall have vested title to all solid waste materials collected under his Contract.

34. ATTORNEYS' FEES. If any party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the losing party, reasonable attorneys' fees and costs of suit.

35. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties and no amendments or authorization shall be binding upon the parties unless in writing and signed by the party to be charged.

THIS AGREEMENT is executed on the day and year first above written and shall be binding upon the parties hereto, their heirs, successors and assigns.

CITY OF IMPERIAL, CALIFORNIA
a municipal corporation

By Tom Maynard

ALLIED WASTE TRANSPORTATION,
INC., a Delaware corporation dba Valley
Environmental

By Rich Felt
Its General Manager

ATTEST:

By Debra Jackson
Debra Jackson, City Clerk

EXHIBIT 1

DEFINITIONS

1. "AB 939" means the California Integrated Waste Management Act of 1989, (California Public Resources Code §40000 et seq.) as it may be amended from time to time, and as implemented by the regulations of the California Integrated Waste Management Board (hereafter "Board").
2. "AB 939 Administrative fee" means the fee or assessment set by the City which is intended to offset the City's expenses in administering this Agreement and to compensate City for the costs associated with compliance with AB 939. Any fees or assessments imposed under this Agreement shall be those, which the City Council may from time to time hereafter approve by resolution.
3. "Bin" means those receptacles provided by Allied for commercial, industrial, and construction premises uses. Bins shall include receptacles which are picked up by refuse trucks by means of front loading apparatus as well as "roll-off boxes" and other, similar receptacles.
4. "Bulky goods" means discarded furniture, furnishings or appliances, including white goods, carpets (rolled so as not to exceed eighteen (18) inches in diameter or four (4) feet in length, mattresses, and branches and limbs of trees not exceeding eighteen (18) inches in diameter or four (4) feet in length.
5. "California Integrated Waste Management Act of 1989" or "AB 939" means the State law as found in the California Public Resources Code §40000 et seq.
6. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601.
7. "City" or "the City" shall mean the City of Imperial, California, a municipal corporation. As the context requires, the term may refer to something established and/or promulgated by the City Council or by or through the authority of the City; e.g. a "City ordinance" or a "City resolution" or "City permit."
8. "City Council" shall refer to the City Council of the City of Imperial. The City Council is the governing body of the City.
9. "City limits" means the current boundaries of the City together with all subsequent changes thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the Office of the City Clerk.
10. "City Manager" shall mean the City Manager of City, or his or her designee.

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11. "Commercial subscriber" or "Commercial customer" means a customer of Allied for solid waste collection and disposal and recycling and/or green waste services (if subscribed to) who occupies any commercial or industrial premises, any mobile home park, trailer park, any hotel or motel, any apartment buildings containing more than four (4) apartments, condominium buildings containing more than four (4) condominiums, or any building in which a combination of residential, commercial and/or industrial uses exist.

12. "Commercial wastes" includes all types of solid wastes generated by commercial customers, businesses, governmental institutions, industries, hotels, motels, apartment buildings containing more than four (4) units, and condominium buildings containing more than four (4) condominiums.

13. "Compostable materials" or "green waste" means leaves, grass clippings, brush, branches and other forms of organic waste generated from landscapes or gardens, separated from other solid waste. "Compostable materials" does not include stumps or branches in bundles exceeding eighteen (18) inches in diameter or four (4) feet in length.

14. "Construction and demolition waste" means the waste building materials, packaging, plaster, drywall, cement and rubble resulting from construction, remodeling, repair and demolition operations on pavements, buildings and other structures (except asbestos-containing materials).

15. "Container(s)" means those receptacles provided by Allied for residential use as approved by City.

16. "Curbside" means the parkway or, if none, the area immediately adjacent to the travel lane of the street along the frontage of the residential unit where Allied will pick up and remove municipal solid waste as prescribed herein.

17. "Director" means the City's Director of Finance, or his or her designee.

18. "Force Majeure" means an act of God such as earthquake, hurricane, tornado, an act of public enemy or war, which could not have been avoided through the exercise of reasonable care and prudence and the effects of which precludes performance.

19. "Hazardous waste" means any waste material(s) or mixture of waste(s) defined as such pursuant to RCRA, 42 U.S.C. § 6901, et seq., CERCLA, 42 U.S.C. § 9601, et seq., and all future amendments to either of them, or as defined by the Environmental Protection Agency or the California Integrated Waste Management Board (hereafter the "Board"), or either of them, and shall include household hazardous waste and medical waste. Where there is a conflict in the definitions employed by two (2) or more agencies having

jurisdictions over hazardous or solid waste, the term "hazardous waste" shall be construed to have the broader, more encompassing definition.

20. "Municipal solid waste" means all solid waste generated within the City, which is designated for collection under this Agreement.

21. "Putrescible waste" means material capable of being decomposed by micro organisms with sufficient rapidity as to cause nuisances because of odors, gases or other offensive conditions, and include materials such as food wastes, and offal. (See definition of "solid waste").

22. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 6901.

23. "Recyclable material" means material which has been source separated or commingled with other similar material and can be reused or processed into a form suitable for reuse through reprocessing or remanufacture and includes paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, polyethylene terephthalates (PET), and other plastics, beverage containers, compostable materials, and such other materials designated as recyclables by the Board, or other agency with jurisdiction, and which are collected by Allied pursuant to this Agreement.

24. "Residential customer" means a customer of Allied for solid waste collection and disposal and recycling and/or green waste services who occupies a residential unit.

25. "Residential unit" means each place used for residential purposes, including the following, but not restricted to: single-family dwellings, apartments and/or condominiums containing four (4) or fewer units, and town houses whether or not using dumpster-type bins, and not including: hospitals, convalescent homes, hotels and motels.

26. "Solid waste" means putrescible and non-putrescible material including every accumulation of animal waste, vegetable or other matter which results from the processing, consumption, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter normally resulting from domestic, institutional, commercial, industrial, agricultural, and other community activities, including, but not by way of limitation, used nonrecyclable food containers, and other waste likely to attract flies or rodents, but excluding materials set out for recycling, composting, and/or any hazardous waste.

EXHIBIT 2

BULKY GOODS

Allied shall collect and dispose of Bulky Goods from all residential premises if requested by the customer. Two pick-ups per calendar year shall be at no cost. Thereafter, costs for Bulky Goods collections shall be established by Allied. City will collect the charge as part of the customer's monthly regular bill only if Allied provides written authorization from the customer authorizing the fee and collection as part of the customer's monthly bill. The form of the written authorization shall be approved, in advance, by City.

Bulky Goods shall be placed by the resident and collected by Allied at curbside. Bulky Goods must be of a weight that can be reasonably lifted and collected by Allied collection crew and equipment. The allowable amount of Bulky Goods, which shall be collected by Allied as part of this service, and not considered Special Waste, shall be 4 items or less.

Construction debris, dirt, rock, sod and similar types of Solid Waste from residential premises shall be considered Special Wastes and not be considered Bulky Goods.

The collection of Bulky Goods shall be made within seven (7) working days after Allied's receipt of the residential customer's request for such collection from the residential premises.

SPECIAL WASTE COLLECTION

Special Waste shall mean Solid Waste generated in the City which does not fit the collection criteria and specifications as described in the Agreement. Special Waste shall be collected, disposed of and charged by Allied in the same manner as bulky goods. The City also acknowledges that the Franchise is granted only with respect to those services described in the Agreement and does not include the collection, transportation, processing or disposal of hazardous waste and medical waste.

EXHIBIT 3

"RECYCLE IMPERIAL"

"Recycle Imperial" shall be an integral part of the services to be provided by Allied to the City. The goals of "Recycle Imperial" shall be to illustrate a commitment to waste reduction, reuse and recycling in order to meet California's recycling requirements as set forth in Assembly Bill 939. Specifications for "Recycle Imperial" are as follows and may change from time to time as specified by the Director and Allied:

A. Programs. Programs shall include, but not be limited to, residential curbside collection of commingled, recyclable materials, residential curbside collection of green waste, commercial (if subscribed to) waste recycling by means of source separated, recyclable collection and commingled solid waste processing at a materials recovery facility. Collection of materials will be at a minimum of one time per week for residential customers and on an as needed basis for Commercial Subscribers.

B. Containers and Bins. Containers and bins shall be supplied to residents and commercial subscribers by Allied and meet the specification of the Director. Containers and Bins shall be supplied and maintained by Allied during the term of this Agreement. Containers and bins, which are broken or damaged due to normal wear and tear, shall be replaced, if needed, one time per year free of charge. Containers or Bins which are broken, damaged, lost or stolen due to customer neglect or require replacement more frequently than one time per year, will be replaced at a charge to the customer or subscriber.

C. Additional Containers and Bins. Customers will be supplied with three Containers as part of the basic rates to be charged as established by City. Additional containers and bins for recyclables, green waste, solid waste shall be provided by Allied.

D. Public Education. Allied shall, at its own expense, provide an ongoing public education program to inform participants as to the proper use and placement of containers, proper materials to be placed inside the various types of containers and other program instructional information as may be necessary to insure successfully meeting the goals of the program. Allied shall conduct public meetings, send mailings and otherwise provide information to the participants of the programs as to the actual program itself, and its long-term environmental benefits. City shall approve of all literature and material that Allied plans to distribute to participants prior to distribution. City shall provide assistance with public education, news media, advertising and other such press releases that will become necessary from time to time and provide information and advertising in City publications about the "Recycle Imperial" program.

E. Marketing of Recyclable Materials: Allied shall be responsible for all marketing activities in the secondary materials market and secure to the best of its ability purchase commitments from recyclable product purchasers. Allied shall use its best efforts to investigate, research, develop and maintain markets for recyclables and green waste byproducts. Allied will take all reasonable steps to minimize downgrades and rejections of recovered materials.

F. Revenue from the Program: Five (\$5.00) dollars per ton from residential Recyclable Materials shall be paid to City by Allied on a monthly basis in arrears.

ADDENDUM TO AGREEMENT

This addendum is entered this 30th day of November, 2007 between the City of Imperial, a municipal corporation of the State of California ("City") and Allied Waste Transportation, In., a Delaware corporation qualified to do business in California, dba Valley Environmental ("Contractor").

WITNESSETH

WHEREAS, the parties hereto entered an agreement dated December 15, 2004, which sets forth the terms upon which Contractor would provide collection and disposal of solid waste services to the City ("Agreement"), and

WHEREAS, the Agreement is scheduled to expire on June 30, 2008; and

WHEREAS, paragraph 2 of the Agreement contemplates that the parties may negotiate terms upon which the Agreement may be extended for a two year period, but that such terms, "...must be reduced to writing and signed by both parties by December 1, 2007,..."; and

WHEREAS, the parties have been diligently pursuing negotiations but anticipate that negotiations will not be complete by December 1, 2007; and

WHEREAS, among other things, the parties may wish to negotiate for an extension period longer than two years.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. The above referenced recitals are true and correct and are incorporated herein by this reference.
2. Paragraph 2 is amended such that the date by which the terms of the extension must be reduced to writing and signed by both parties is January 31, 2008.
3. Paragraph 2 is further amended such that the parties may negotiate an extension for a period longer than two years.
4. Nothing contained herein shall obligate or bind either party to execute an extension except upon such terms as are acceptable to each party.
5. Except as set forth herein, the terms of the Agreement shall remain in full force and effect.

CITY OF IMPERIAL

By: Mark D. Best

Attest:

By: [Signature]
City Clerk

ALLIED WASTE TRANSPORTATION, INC.,
A DELAWARE CORPORATION DBA
VALLEY ENVIRONMENTAL

By: Bart Drumm
Its Division Manager

FIRST AMENDMENT TO AGREEMENT

August 6, 2008

THIS FIRST AMENDMENT TO THE AGREEMENT (the "Amendment") is made and entered into on August 6, 2008, between the City of Imperial, a California municipal corporation (the "City"), and Allied Waste Transportation, Inc., d/b/a Allied Waste Services of Imperial County, a Delaware corporation ("Contractor").

Witnesseth

WHEREAS, on December 15, 2004, the City and Contractor entered into that certain Agreement for Contractor to provide services for the collection and disposal of solid waste generated in the City (the "Franchise Agreement"); and

WHEREAS, City and Contractor desire to amend certain provisions of the Agreement and extend the Agreement by eight (8) years pursuant to the terms of this Amendment including a five (5) year extension option.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Contractor agree as follows:

1. Amendment to Section 1 – Scope of Services. The following provision shall be inserted into Section 1 of the Agreement:

(a) The following shall be added as the third sentence of Section 1(a) of the Agreement:

"If the City should decide to annex any current unincorporated areas of Imperial County into its city limits, Contractor shall have 120 days following the approval by the Local Agency Formation Committee (LAFCO) and notification by the City to provide the containers required in the Agreement."

2. Amendment to Section 1 – Scope of Services. The parties agree to amend Section 1 of the Agreement as follows:

(a) The fourth sentence of Section 1(b) of the Agreement is amended in its entirety to read as follows:

"For residential service, Contractor shall provide "three-cart" service whereby a blue cart shall be used for recyclable material, a green cart shall be provided for green waste and a black cart shall be provided for household waste. Each resident shall receive a blue cart beginning July 2009 and such blue cart distribution shall be concluded no later than August 31, 2009. The size of each cart shall be 96-gallons.

(b) The following shall be added as the fifth sentence of Section 1 (b) of the Agreement:

"Upon request, each residence will receive one (1) additional blue recycling container or green waste container at no charge."

(c) The fifth sentence of Section 1(b) of the Agreement is amended in its entirety to read as follows:

"Contractor shall collect, recycle and dispose of bulky items and special wastes from residential premises as set forth in Exhibit 2."

(d) The following sentence shall be added to Section 1(b) of the Agreement:

"Contractor shall collect, dispose and recycle Construction and Demolition debris as outlined in Exhibit 4."

3. Amendment to Section 1 – Scope of Services. The following provision shall be inserted into Section 1 of the Agreement:

(a) The following shall be added as the third sentence of Section 1(f) of the Agreement:

"Contractor shall remove graffiti from containers no later than two (2) business days after notification by City or customer."

(b) The following shall be added as the fourth sentence of Section 1(f) of the Agreement:

"If the City should decide to annex any current unincorporated areas of Imperial County into its city limits, Contractor shall have 120 days following the approval by the Local Agency Formation Committee (LAFCO) and notification by the City to provide the containers required in the Agreement."

4. Amendment of Section 2 – Term. Section 2 of the Agreement shall be amended in its entirety to read as follows:

"The term of this Agreement shall be extended for a period of eight (8) years commencing on September 1, 2008 and shall expire on August 31, 2016. Said term may be extended for an additional five (5) year period provided the City Manager determines that Contractor is in general compliance with the terms and conditions of the Agreement and on such terms as may be agreed upon by the parties. If the terms of the five-year extension are not reduced to writing and signed by both parties by February 1, 2016, this Agreement shall terminate on August 31, 2016."

5. Section 4 – Solid Waste Receptacles and Containers. The following provision shall be inserted as (a) in Section 4:

(a). “Commercial Bin Colors: All commercial bins used for solid waste collection shall be Imperial Adobe. All commercial bins used for recycling shall be blue and shall be clearly identified as for recycling only in English and Spanish.”

(b). “Industrial Bin Colors: All industrial bins (roll-offs) shall be blue. Industrial bins used for recycling only shall be clearly identified as for recycling only in English and Spanish.”

6. Section 7 - Disposal Site. Section 7 of the Agreement shall be amended in its entirety to read as follows:

“Contractor shall dispose of all solid waste collected in City in a lined subtitle D Landfill which has all the necessary licenses and entitlements from any governmental agencies having jurisdiction over the same.

The City hereby approves the following disposal sites for disposal of its solid waste:

Allied Imperial Landfill
Copper Mountain in Arizona
Mesquite Regional Landfill in Imperial County

At its sole discretion, Contractor reserves the right to utilize any or all of the above named landfills for disposal of City solid waste. Any changes in disposal site other than the above named sites will be brought to the attention of the City prior to any change in disposal locations. Change in said disposal location, except the three referenced above, will be approved by both the City and Contractor. Changes in disposal site will not increase contract rates unless adjusted for extraordinary costs and approved by the City Council.

Should the Imperial Landfill expansion not take place, Contractor agrees to move forward within 60 days with a separate application to site a large-scale Construction and Demolition (C&D) Facility at the Imperial Landfill property to serve the C&D needs of the City during the term of this Agreement.

7. Section 10 - Spring Clean-Up/Christmas Tree Collection. Section 10 of the Agreement shall be amended in its entirety to read as follows:

10A. "At no additional cost to City, Contractor shall support two (2) community clean up events per year, said community clean up events shall be determined by City and Contractor. Additionally, Contractor, at no cost to the City, shall provide Christmas tree collection from December 26 through January 31. City and Contractor shall agree upon the location for drop off of trees and times for collection."

8. Section 10 - Vocational Scholarships. The following provision shall be inserted into the Agreement as Section 10B:

"Beginning March of 2009, and on an annual basis during the term of this Agreement, Contractor will award a seven-hundred and fifty (\$750.00) scholarship to each of two (2) residents of the City. Contractor and City shall establish the criteria for awarding such scholarships.

9. Section 11 - City Facilities and Events. Section 11 of the Agreement regarding solid waste and recycling collection for City facilities shall be amended as follows:

"Contractor shall provide City refuse and recycling collection for regular service to all City facilities including, but not limited to City Hall, City yard and City parks, as designated by the Director, at no cost to the City.

Once-per-week	2-yard bin	No charge
	3-yard bin	No charge
	4-yard bin	No charge
Upon request (limited to six (6) per month)	Roll-offs	No charge

10. Section 12 - Billing. Section 12 of the Agreement shall be amended in its entirety to read as follows:

"The parties agree that the rates for collection of solid waste, attached to this Amendment, and as referenced throughout this Agreement, which is made a part of the Agreement, shall replace the existing Ordinance 683 which establishes rates for collection and removal of solid waste.

Residential

The rate for residential customers will be \$18.00 per month for solid waste, recycling and green waste collection services beginning September 1, 2008. Each year thereafter, the residential rate shall be adjusted by the Consumer Price Index (CPI) as set forth in this Agreement. City will be responsible for billing and managing residential accounts.

City shall pay Contractor on a monthly basis the Contractor's share of the amount City collects for residential solid waste hauling service. Contractor will absorb City residential billing bad debt up to .50% of the total billed annually. City will annually pay Contractor an amount equal to the uncollected amount billed for residential solid waste services over .50% of annual amount billed.

City shall utilize both collection agency services and property tax roll placement to secure non-payment for services. City and Contractor will meet semi-annually to review bad debt and ongoing strategies to reduce and eliminate bad debt on all solid waste hauling services.

City and Contractor will perform a joint house count within forty-five (45) days of the effective date on the contract amendment to reconcile an agreed upon residential account base unit count. City will provide Contractor on a daily basis, via e-mail or fax, a list of residential accounts that started or stopped utility service with the City. All residential unit stops and starts, (new and closed accounts), received and entered from the 20th of the previous month to the 20th of the current month will be used to determine monthly residential accounts billable from Contractor to City.

Commercial

The rates, attached as Ordinance 683, for commercial customers shall be adjusted by 20% beginning on September 1, 2008 and an additional 20% on July 1, of 2009. Rates in July of 2010 will be adjusted according to the rate matrix in the attachment for Ordinance 683. The CPI shall not apply to commercial customers in the first three years of this Agreement, but the rates beginning in July of 2011 shall be subjected to the CPI.

Contractor will bill and manage commercial and industrial billings directly and will provide the City with a summary of AB 939 and franchise fees on a monthly basis. Contractor will pay fees to City on a monthly basis by the fifth working day of the month.

Additionally, the City may establish a fee in order to fund environmental charges mandated by federal and state law associated with landfill operation and closure requirements.

Industrial Roll-Off

Contractor shall charge City \$209 per pull for construction and demolition material. Mixed construction and demolition (C&D) loads shall be charged the rate of \$47 per ton, clean green waste and wood loads shall be charged \$39 per ton, clean cardboard loads shall be charged \$10 per ton and clean concrete loads shall be charged per ton based on current market conditions. Roll-off, construction and demolition rates will also be subjected to the annual CPI adjustment.

11. Section 13 – Franchise Fee. Section 13 of the Agreement shall be amended as follows:

“Ninety-one percent (91%) of amounts billed for base residential service shall be retained by Contractor. Nine-percent (9%) shall be remitted to City as a franchise fee to cover the City’s costs for billing and administrative services. The Franchise Fee shall also apply to commercial accounts and shall be accounted for and remitted monthly by Contractor. Additional fees, including fee charged pursuant to Section 39 shall be added to the base rate and retained by the City.”

12. Section 13 - Franchise Fee. The following provision shall be inserted into Section 13 of the Agreement:

"Formula for Changes in Compensation. The compensation paid to Contractor shall be adjusted annually, effective July 1 of each calendar year hereafter during the term hereof, pursuant to the "Adjustment Formula" set forth below. In the event that circumstances beyond the control of Contractor impose or generate additional costs in the performance of this Agreement, Contractor, on July 1 of each year, may petition City Council to determine if an adjustment in compensation is warranted to avoid undue financial hardship or if Contractor shall incur any extraordinary costs of doing business such as fuel costs outside of the CPI calculation on Contractor or material impairment of Contractor’s ability to provide the level and quality of service herein specified.

Contractor agrees to furnish all such accounts and records as are needed in the judgment of the City to substantiate any requests for increased payments from City or increased rates to customers. The decision of City Council shall be final.

Rate Adjustment Formula.

City and Contractor agree to meet during the month of January to calculate any rate adjustment.

Rate adjustment shall be based upon the Consumer Price Index for all Urban Consumers in the Los Angeles, Orange County and Riverside areas as published by the US Department of Labor, Bureau of Labor Statistics for the previous twelve-month period ending in December of each year, for which statistics are available and shall not exceed five (5) percent.

13. Section 14 – Amount of Solid Waste. Section 14 of the Agreement shall be amended with the third sentence to read as follows:

For purposes of this paragraph, “regularly” is defined as more than two (2) consecutive pickups.

14. Section 17 – Use of Contractor’s Site. Section 17 of the Agreement shall be amended in its entirety to read as follows:

“Residents of the City will receive four (4) free landfill passes per year to the Allied Imperial Landfill, one per each calendar quarter beginning in October 2008. Residents must show proof of residency when redeeming landfill passes at the Allied Imperial Landfill and may dispose up to one-ton of solid waste per pass. Commercial business use of disposal site shall be charged the gate rate when using the Allied Imperial Landfill.”

“Should the Imperial Landfill close prior to the termination of this Agreement, Contractor will continue to honor landfill passes at a facility owned by Contractor and mutually agreed upon by City and Contractor. Such facility shall be located within five miles from the City.”

15. Section 18 – Holidays. The third and fourth sentences of Section 18 of the Agreement shall be amended in their entirety as follows:

“For example, a Monday holiday residential and commercial trash service will be performed on Tuesday. Regular Tuesday service will occur on Wednesday and each subsequent day of the week collection will move to the next calendar day.”

16. Section 20 – Waste Diversion. The fifth sentence of Section 20 of the Agreement, (b) Contractor Waste Diversion Responsibility, shall be amended in its entirety as follows:

“Beginning in October 2008, City and Contractor will agree on the current diversion percentage and establish such percentage as a baseline for Contractor’s diversion responsibilities based on the annual diversion report as provided by the California Integrated Waste Management Board. Annually, thereafter, until the end of the Agreement, Contractor must show improvement in City diversion by an annual average of 9% per year over the prior year or City will receive a landfill royalty of \$1.00 per ton on all City waste disposed at the Imperial Landfill. When City diversion rate reaches the greater of 50% or the rate mandated by the California Integrated Waste Management Board, Contractor shall no longer be required to meet this threshold or pay any landfill royalty fees for the next 12 months or until the diversion rate falls below the mandated rate.”

17. Section 24 – Indemnity. Section 24 of the Agreement shall be amended in its entirety to read as follows:

“The parties agree that Section 24 shall not require Contractor to indemnify the City for the City’s sole negligence.”

18. Section 28 – Insurance. The parties agree that the first paragraph of Section 28(a) shall be amended in its entirety to read as follows:

“Liability. The Contractor shall file with the City and maintain on file throughout the term of this Agreement a Certificate of Insurance issued by a company duly authorized to do business in the State of California, insuring both the City, as an additional insured, and Contractor with respect to the work performed by Contractor under the terms of this Agreement. The City shall be shown as an additional insured on the Contractor’s policy and the policy shall contain an appropriate Severability of Interest Clause and Cross Liability Endorsement.

A Certificate of Insurance showing the City as an additional insured shall be furnished for approval by the City Manager on each policy. The City shall be notified by the insurer a minimum of thirty (30) days prior to the effective date of any cancellation of the above insurance. The acceptance of insurance, or any subsequent modification, is subject to the reasonable approval of the City Manager.”

19. Section 30 – Notices. Section 30(b) of the Agreement shall be amended in its entirety to read as follows:

“Allied Waste Services of Imperial Valley
3354 Dogwood Road
Imperial, CA 92251
attention, Bart Browning
copy to District Office,
8364 Clairemont Mesa Blvd, San Diego, CA 92111
attention, Johnnie Perkins”

20. The parties agree to add the following as Section 35 - Capitalized Terms.

Capitalized terms used but not otherwise defined in this Amendment shall have the meanings assigned to them in Exhibit 1 of this Agreement.

21. The parties agree to add the following as Section 36 - Continuing Effect.

Except as expressly modified or amended by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect.

22. The parties agree to add the following as Section 37 - Execution in Counterparts.

This Amendment may be executed in any number of counterparts, each of which shall be deemed an original.

23. The parties agree that Section 38 is now known as the Entire Agreement.

24. The parties agree to add the following as Section 39 – AB939 Fee:

Pursuant to California Public Resources Code 41902, the City may directly assess a fee or may, by agreement, arrange for the fee to be collected by the Contractor under this Agreement. The Contractor agrees to pay or collect, as the case may be, an AB939 Administrative Fee of 7.45% on all commercial and industrial waste collection services as established in this Agreement and from time to time amended hereafter.

25. The parties agree to add the following as Section 40 – Liquidated Damages:

City may assess liquidated damages against Contractor for unsatisfactory performance under the terms and conditions of this Agreement (except where such failure is excused by an Uncontrollable Circumstance as described below) and the description of said actions and omissions which result in damages of monetary amounts are listed herein as liquidated damages schedule.

City will provide Contractor within five (5) business days written notice of any proposed assessment. Contractor shall have the right to appeal City's assessment to the City Manager, but the City Manager's decision will be final.

Uncontrollable Circumstances:

Except as otherwise specifically provided in this Agreement, neither City nor Contractor shall be in breach of this Agreement for any temporary failure or delay in the performance of any obligation under this Agreement (other than any payment at the time due and owing) to the extent such failure or delay is due to the occurrence of an Uncontrollable Circumstance.

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

- a. an act of God (but not including reasonably anticipated weather conditions for the geographic area of the City), hurricane, landslide, lightning, earthquake, fire, explosion, flood, sabotage or similar occurrence, acts of public enemy, extortion, war, blockade or insurrection, riot or civil disturbance.
- b. strikes or work stoppages occurring with respect to any activity performed or to be performed under this Agreement.
- c. pre-exemption of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain.

It is specifically understood that none of the following acts or conditions shall constitute Uncontrollable Circumstances:

- a. general economic conditions, interest or inflation rates, currency fluctuations or changes in the cost or availability of commodities, supplies or equipment.
- b. changes in the financial condition of the City or Contractor affecting their ability to perform their obligations.
- c. consequences of errors, neglect or omission by City or Contractor.
- d. equipment failure.
- e. any impact of minimum wage law, prevailing wage law, customs or practices on City's or Contractor's operating costs.

Liquidated Damages Schedule:

The City and Contractor agree that the following liquated damages schedule shall reflect liquidated damages that shall be payable to the City in accordance with the terms hereof:

- | | | |
|----|--|----------------------|
| 1. | Failure to collect missed pick-up by the end of the next business day following notification by City of resident | \$25.00 |
| | Each additional business day following receipt of notification by City or resident | \$35.00 |
| 2. | Failure to make a good faith effort to clean up spillage or litter within 24 hours after notification by the City or Customer | \$15.00 |
| 3. | Failure to remit fees to City by 22 nd of each month (fees shall be deemed remitted to the City the day they are deposited in the US mail and postmarked) | 1.5% of late payment |

4. Penalty for not providing all reports by the 22nd of each month (reports shall be deemed provided to the City the day they are deposited in the US mail and postmarked) \$100.00
Each additional day late \$15.00
 5. Failure to resolve a billing complaint within 4 business days \$20.00
 6. Failure to replace or repair inoperable containers/bins within three (3) business days of request \$25.00
 7. Failure to deliver additional blue recycling or green waste container within three (3) business days of request \$25.00
 8. Failure to remove graffiti from bins/containers within two (2) business days after notification \$25.00
 9. Failure to respond in writing to a damage claim within 10 days of receipt and initiate a process to resolve \$75.00
 10. 35 or more violations per calendar quarter will result in an additional payment of a percentage of all fines levied in that quarter \$15% of fines
26. The parties agree to amend the second sentence in Exhibit 1 regarding Compostable Materials as follows:
"Compostable materials" does not include stumps or branches in a bundle exceeding eighteen (18) inches in diameter or four (4) feet in length."
27. The parties agree to add the following definition to Exhibit 1:
Base Rate - the charge for solid waste and recycling collection services charged by Contractor before franchise, AB939 or any other regulatory fees.
28. The parties agree to eliminate the following from Exhibit 3 "Recycle Imperial:"
C. Additional Containers and Bins

29. The parties agree to insert the following into Exhibit 3 "Recycle Imperial."

F. Recycling Ranger: To assist the City meet its state mandated recycling program, Contractor will, on a regular basis, audit residential, commercial and industrial recycling containers to assess the waste stream being diverted. A recycling ranger employed by Contractor will work in conjunction with City to identify residential, commercial and industrial customers not in compliance with the City recycling goals.

City and Contractor shall develop method by which customers are notified or informed of the City recycling diversion program. A plan will be submitted within 30 days of contract signing by Contractor outlining the joint program to achieve City's recycling goals.

30. The parties agree to insert the following into Exhibit 3 "Recycle Imperial."

G. Recycling Awards Challenge

Introduction: The City of Imperial and Allied Waste Services are joining forces to create a "Recycling Awards Challenge" whereby residents and businesses will be able to compete for the annual "Recycler of the Year."

There will be three categories for the Recycling Awards Program: single-family residential, multi-family residential and commercial/industrial. Each quarter a recycling star will be awarded in each category with the "Recycler of the Year" award to be announced at the end of the year. Participants can also receive the recycling badge for outstanding efforts in recycling each month.

Requirements: To be eligible to receive any of the recycling awards residents and businesses must utilize either the blue container or bin provided to them by Contractor. Both City staff and Contractor's Recycling Ranger will conduct spot inspections throughout each month to identify the top recyclers.

Recycling congratulations notes will be left on each bin or container by Recycle Rosie for those who show a strong recycling effort. For those who have mixed non-recyclables with their recyclables, Rosie will leave a note reminding each participant to recycle.

Education: Prior to program implementation, residential, commercial and industrial customers will receive information on the program and what recyclables can be placed in the blue containers and bins. The city website and Imperialite will maintain information on the program.

Awards: The awards category will be as follows:

Recycler of the Year (trophy presentation at city council with \$100 gift card and recognition on city website and Imperialite)

Recycling Star (certificate along with \$20 gift card for area business)

Recycling Badge (\$10 gift card from area business)

The City and Contractor will work jointly to develop the criteria for selection of each award recipient. Awards will be distributed on a quarterly basis with a review following each six months to determine the effectiveness and progress of the program. The Recycler of the Year award will be presented annually before the city council.

31. Amendment to Sections 31 and 32 – Assignments/Transfer of Stock or Interest.
Sections 31 and 32 of the Agreement shall be amended in their entirety to read as follows:

Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "Assignment") to any other person or entity without the prior written consent of City. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section the term "assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party, (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the

foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

Contractor acknowledges that this Agreement involved rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an assignment shall be made in a manner to be prescribed by the City Manager, and no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the assignment if approved, made reasonable assurances that it will meet) to following requirements:

- (a) Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.

- (b) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years.
- (c) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least five (5) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided City with a complete list of any such citations and censures; (iii) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (iv) of any other information reasonably required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obligated to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all considerations relating to City's approval have been met.

[16]

[Signatures on following page]

IN WITNESS WHEREOF, the City and Contractor have executed this Amendment as of the date first written above.

The City of Imperial,
a California municipal corporation

By: [Signature]
Name: GEOFF DALE
Its: MAYOR

Allied Waste Transportation, Inc.
a Delaware corporation

By: [Signature]
Name: [Signature] 8/21/08
Its: [Signature]

[17]

IN WITNESS WHEREOF, the City and Contractor have executed this Amendment as of the date first written above.

The City of Imperial,
a California municipal corporation

By: _____
Name: _____
Its: _____

Allied Waste Transportation, Inc.
a Delaware corporation

By: _____
Name: _____
Its: _____ 8/21/08

EXHIBIT 1

DEFINITIONS

1. "AB 939" means the California Integrated Waste Management Act of 1989, (California Public Resources Code §40000 et seq.) as it may be amended from time-to-time, and as implemented by the regulations of the California Integrated Waste Management Board (hereafter "Board").

2. "AB 939 Administrative fee" means the fee or assessment set by the City which is intended to offset the City's expenses in administering this Agreement and to compensate City for the costs associated with compliance with AB 939. Any fees or assessments imposed under this Agreement shall be those, which the City Council may from time to time hereafter approve by resolution.

3. "Base Rate" means the charge for solid waste and recycling collection services by Contractor before franchise, AB939 or any other regulatory fees.

4. "Bin" means those receptacles provided by Contractor for commercial, industrial, and construction premises uses. Bins shall include receptacles which are picked up by refuse trucks by means of front-loading apparatus as well as "roll-off boxes" and other, similar receptacles.

5. "Bulky goods" means discarded furniture, furnishings or appliances, including white goods, carpets (rolled so as not to exceed eighteen (18) inches in diameter or four (4) feet in length), mattresses, and branches and limbs of trees not exceeding eighteen (18) inches in diameter or four (4) feet in length.

6. "California Integrated Waste Management Act of 1989" or "AB 939" means the State law as found in the California Public Resources Code §40000 et seq.

7. "CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601.

8. "City" or "the City" shall mean the City of Imperial, California, a municipal corporation. As the context requires, the term may refer to something established and/or promulgated by the City Council or by or through the authority of the City; e.g. a "City ordinance" or a "City resolution" or "City permit."

9. "City Council" shall refer to the City Council of the City of Imperial. The City Council is the governing body of the City.

10. "City limits" means the current boundaries of the City together with all subsequent changes thereto, which boundaries are shown by maps incorporated herein by reference and which are on file in the Office of the City Clerk.

11. "City Manager" shall mean the City Manager of City, or his or her designee.

12. "Commercial subscriber" or "Commercial customer" means a customer of Contractor for solid waste collection and disposal and recycling and/or green waste services (if subscribed to) who occupies any commercial or industrial premises, any mobile home park, trailer park, any hotel or motel, any apartment buildings containing more than four (4) apartments, condominium buildings containing more than four (4) condominiums, or any building in which a combination of residential, commercial and/or industrial uses exist.

13. "Commercial wastes" includes all types of solid wastes generated by commercial customers, businesses, governmental institutions, industries, hotels, motels, apartment buildings containing more than four (4) units, and condominium buildings containing more than four (4) condominiums.

14. "Compostable materials" or "green waste" means leaves, grass clippings, brush, branches and other forms of organic waste generated from landscapes or gardens, separated from other solid waste. "Compostable materials" does not include stumps or branches in a bundle exceeding eighteen (18) inches in diameter or four (4) feet in length.

15. "Construction and demolition waste" means the waste building materials, packaging, plaster, drywall, cement and rubble resulting from construction, remodeling, repair and demolition operations on pavements, buildings and other structures (except asbestos-containing materials).

16. "Container(s)" means those receptacles provided for the collection of solid waste, recycle material and green waste by Contractor for residential use as approved by City.

17. "Curbside" means the parkway or, if none, the area immediately adjacent to the travel lane of the street along the frontage of the residential unit where Contractor will pick up and remove municipal solid waste as prescribed herein.

18. "Director" means the City's Director of Finance, or his or her designee.

19. "Force Majeure" means an act of God such as earthquake, hurricane, tornado, an act of public enemy or war, which could not have been avoided through the exercise of reasonable care and prudence and the effects of which precludes performance.

20. "Hazardous waste" means any waste material(s) or mixture of waste(s) defined as such pursuant to RCRA, 42 U.S.C. § 6901, et seq., CERCLA, 42 U.S.C. § 9601, et seq., and all future amendments to either of them, or as defined by the Environmental Protection Agency or the California Integrated Waste Management Board (hereafter the "Board), or either of them, and shall include household hazardous waste and medical waste. Where there is a conflict in the definitions employed by two (2) or more agencies having jurisdictions over hazardous or solid waste, the term "hazardous waste" shall be construed to have the broader, more encompassing definition.

21. "Municipal solid waste" means all solid waste generated within the City, which is designated for collection under this Agreement.

22. "Putrescible waste" means material capable of being decomposed by micro organisms with sufficient rapidity as to cause nuisances because of odors, gases or other offensive conditions, and include materials such as food wastes, and offal. (See definition of "solid waste").

23. "RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C.6901.

24. "Recyclable material" means material which has been source separated or commingled with other similar material and can be reused or processed into a form suitable for reuse through reprocessing or remanufacture and includes paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, polyethylene terephthalates (PET), and other plastics, beverage containers, compostable materials, and such other materials designated as recyclables by the City, Contractor, or other agency with jurisdiction, and which are collected by Contractor pursuant to this Agreement.

25. "Residential customer" means a customer of Contractor for solid waste collection and disposal and recycling and/or green waste services who occupies a residential unit.

26. "Residential unit" means each place used for residential purposes, including the following, but not restricted to: single-family dwellings, apartments and/or condominiums containing four (4) or fewer units, and town houses whether or not using dumpster-type bins, and not including: hospitals, convalescent homes, hotels and motels.

27. "Solid waste" means putrescible and non-putrescible material including every accumulation of animal waste, vegetable or other matter which results from the processing, consumption, decay or decomposition of meats, fish, fowl, birds, fruits, grains or other animal or vegetable matter" normally resulting from domestic, institutional, commercial, industrial, agricultural, and other community activities, including, but not by way of limitation, used nonrecyclable food containers, and other waste likely to attract flies or rodents, but excluding materials set out for recycling, composting, and/or any hazardous waste.

EXHIBIT 2

FREE BULKY PICK-UP POLICY FOR RESIDENTS

- Each City residence shall receive one (1) free bulky item pick up per month twelve (12) annually.
- Bulky items shall be picked up on their regular service day provided the customer calls 72 hours in advance to request service.
- Bulky items shall be placed by the resident and collected by Contractor at the curb. The weight of bulky items must be a weight that can reasonably be lifted and collected by Contractor collector and equipment.
- Bulky items per pick up shall not exceed four (4) items.
- Bulky items shall include such things as a sofa, chair, mattress, lawn furniture, barbecue, or appliances that can be easily and safely moved by hand or hand truck.
- Free bulky item collection does not include construction and demolition debris.

SPECIAL WASTE COLLECTION POLICY FOR RESIDENTS

- Special Waste shall mean any solid waste generated in the City which does not fit the collection criteria and specifications as described in the Agreement.
- Special Waste shall be collected, disposed of and charged by Contractor in the same manner as commercial collection and disposal service.
- The City acknowledges that the exclusive franchise is granted only with respect to those services described in the Agreement and does not include the collection, transportation, processing or disposal of hazardous waste and medical waste.

EXHIBIT 3

"RECYCLE IMPERIAL"

"Recycle Imperial" shall be an integral part of the services to be provided by Contractor to the City. The goals of "Recycle Imperial" shall be to illustrate a commitment to waste reduction, reuse and recycling in order to meet California's recycling requirements as set forth in Assembly Bill 939. Specifications for "Recycle Imperial" are as follows and may change from time to time as specified by the City Manager and Contractor:

A. **Programs.** Programs shall include, but not be limited to, residential curbside collection of commingled, recyclable materials, residential curbside collection of green waste, commercial waste recycling by means of source separated recyclable collection and commingled solid waste processing at a materials recovery facility. Collection of materials will be at a minimum of one time per week for residential and commercial customers.

B. **Containers and Bins.** Containers and bins shall be supplied to residents and commercial subscribers by Contractor and meet the specification of the City Manager. Containers and Bins shall be supplied and maintained by Contractor during the term of this Agreement. Containers and bins, which are broken or damaged due to normal wear and tear, shall be replaced, if needed, one time per year free of charge. Containers or Bins which are broken, damaged, lost or stolen due to customer neglect or require replacement more frequently than one time per year will be replaced at a charge to the customer or subscriber.

C. **Public Education.** Contractor shall, at its own expense, provide an ongoing public education program to inform participants as to the proper use and placement of containers, proper materials to be placed inside the various types of containers and other program instructional information as may be necessary to insure successfully meeting the goals of the program. Contractor shall conduct public meetings, send mailings and otherwise provide information to the participants of the programs as to the actual program itself, and its long-term environmental benefits. City shall approve of all literature and material that Contractor plans to distribute to participants prior to distribution. City shall provide assistance with public education, news media, advertising and other such press releases that will become necessary from time to time and provide information and advertising in City publications about the "Recycle Imperial" program.

D. **Marketing of Recyclable Materials:** Contractor shall be responsible for all marketing activities in the secondary materials market and secure to the best of its ability purchase commitments from recyclable product purchasers. Contractor shall use its best efforts to investigate, research, develop and maintain markets for recyclables and green waste byproducts. Contractor will take all reasonable steps to minimize downgrades and rejections of recovered materials and disposal of recyclable materials in the residue from the processing facility.

E. **Revenue from the Program:** Five (\$5.00) dollars per ton of materials collected from residential Recyclable Materials shall be paid to City by Contractor on a monthly basis in arrears.

F. **Recycling Ranger:** To assist the City meet its state mandated recycling program, Contractor will, on a regular basis, audit residential, commercial and industrial recycling containers to assess the waste stream being diverted. A recycling ranger employed by Contractor will work in conjunction with City to identify residential, commercial and industrial customers not in compliance with the City recycling goals.

City and Contractor shall develop method by which customers are notified or informed of the City recycling diversion program. A plan will be submitted within 30 days of contract signing by Contractor outlining the joint program to achieve City's recycling goals.

G. **Recycling Awards Challenge:** The City of Imperial and Allied Waste Services are joining forces to create a "Recycling Awards Challenge" whereby residents and businesses will be able to compete for the annual "Recycler of the Year."

Residential customers will be split into two categories, single-family and multi-family and commercial/industrial customers will compete in a single category. Each quarter a recycling star will be awarded in each category with the "Recycler of the Year" award to be announced at the end of the year. Participants can also receive the recycling badge for outstanding efforts in recycling each month.

Requirements: To be eligible to receive any of the recycling awards residents and businesses must utilize either the blue container or bin provided to them by Contractor. Both City staff and Contractor's Recycling Ranger will conduct spot inspections throughout each month to identify the top recyclers.

Recycling congratulations notes will be left on each bin or container by Recycle Rosie for those who show a strong recycling effort. For those who have mixed non-recyclables with their recyclables, Rosie will leave a note reminding each participant to recycle.

Education: Prior to program implementation, residential, commercial and industrial customers will receive information on the program and what recyclables can be placed in the blue containers and bins. The city website and Imperialite will maintain information on the program.

Awards: The awards category will be as follows:

Recycler of the Year (trophy presentation at city council with \$100 gift card and recognition on city website and Imperialite)

Recycling Star (certificate along with \$20 gift card for area business)

Recycling Badge (\$10 gift card from area business)

The City and Contractor will work jointly to develop the criteria for selection of each award recipient. Awards will be distributed on a quarterly basis with a review following each six months to determine the effectiveness and progress of the program. The Recycler of the Year award will be presented annually before the city council.

EXHIBIT 4

CONSTRUCTION, DEMOLITION AND INERT DEBRIS PROCESSING

In order to serve the needs of local citizens, businesses, road builders, and housing developers, as well as to assist the City of Imperial in meeting its AB 939 recycling goals, the Allied Imperial Landfill has been permitted to conduct processing of construction and demolition debris up to 25 tons per day. Combined, these materials are commonly referred to as CDI debris, or simply CDI. Upon approval of the expansion of the Allied Imperial Landfill by the California Integrated Waste Management Board, the landfill plans to pursue permitting at higher levels, most likely in the neighborhood of 200 tons per day, or greater.

CDI processing activities will take place in the same general area currently used for green waste processing and recycling operations. This area is located far enough away from the landfill's boundaries to minimize impact to nearby residences, and is fenced to control wind-born litter migration.

The CDI operation will begin in September 2008. Large-scale CDI processing operations will be incorporated into the landfill's five-year permit review process, which will be submitted for regulatory review by the first of 2009, and approval to conduct the operations is anticipated in the second or third quarter of 2009.

The landfill will accept CDI as formally defined under California regulation, and generally considered to be non-hazardous materials resulting from construction work. This includes, but may not be limited to, primarily the following materials:

- lumber and wood
- gypsum wallboard
- metal
- roofing material
- tile
- plastic pipe
- concrete
- asphalt (cured)
- heating, ventilating, and air conditioning systems and their components
- lighting fixtures
- equipment, furnishing and fixtures
- tools and building materials consumed in the course of the construction work
- cardboard and other packaging materials derived from the construction project
- plant materials resulting from construction work

Generally, CDI materials will be brought to the site by truck, unloaded, sorted, stockpiled, then transported offsite for reuse or recycling, or in some cases, used beneficially on site for things such as landfill daily cover material, road base, etc. Generally, small scale CDI processing will occur in the following manner:

1. Private and commercial vehicles hauling CDI materials will enter the facility at the main gate at the southeast corner of the site.
2. Vehicles will then proceed to the scalehouse in the central portion of the site, where they will be weighed.
3. Each vehicle will be visually inspected by facility staff to ensure that materials meet the requirements of what is construction and demolition debris as outlined above.
4. The vehicle will then proceed to the CDI processing area, and the CDI material will be unloaded and spread out onto an earthen pad using a loader.
5. The CDI material will then be sorted by landfill personnel into roll-off boxes. Sorting will be conducted both using a loader and by hand, depending on the types and quantities of materials in any given load. General categories of sorted CDI are anticipated to include the following:
 - Concrete and asphalt for offsite transport for further processing and/or reuse, or for on-site use as clean fill and/or road base material.
 - Recyclables, including materials such as soda cans, plastic bottles, glass bottles, newspaper, cardboard, metals, gypsum, etc. These recyclables will then be transported offsite to an appropriate facility, such as the Allied Waste Services MRF.
 - Woody debris for further processing at the landfill's greenwaste facility prior to being recycled.
 - Green material for further processing at the landfill's greenwaste facility prior to being recycled.
 - Grassy green material for direct use as landfill alternative daily cover (ADC).
 - Dirt, soil, and fines for direct use as landfill ADC, or as clean fill.
 - Small, residual amounts of solid waste, which will be disposed of in the landfill.

6. Once the transport vehicle has unloaded, it will exit the facility through the main gate located at the southwest corner of the site.

Future large scale CDI operations will be based on experience gained through the small-scale operations discussed above. At this time, it is anticipated these large scale operations will include the activities discussed above, as well as the differences and additions described below:

1. Larger, dedicated equipment will be employed in order to efficiently process higher quantities of CDI. This equipment is likely to include a loader, an excavator, a conveyor processing and picking line, and possibly a grinder for wood, concrete, asphalt, and similar materials.
2. Each vehicle will be visually inspected by facility staff to ensure that materials meet the requirements of what is construction and demolition debris as outlined above.
3. The CDI will be unloaded onto a concrete or asphalt deck where the excavator will remove large bulky items and place them in the appropriate roll off boxes. This could include items such as metal, mattresses, white goods, carpet, etc. that cannot easily go across the processing and picking line.
4. The smaller CDI material would then be loaded onto the processing line and pass over a screen or into a trommel to remove fines. The remainder of the CDI would then be hand-separated by material type and end-use categories as it moves across the processing line.
5. Larger-sized wood, concrete, asphalt would be ground and/or chipped for use as biomass, landscaping material, aggregate, clean fill, or similar useful materials.

The site is permitted to conduct landfill operations from 6:30 AM to 4:00 PM Monday through Friday and 8:00 a.m. – 12:00 p.m. on Saturday. At this time, the landfill plans to conduct CDI operations during the following times and days:

Commercial Haulers: 6:30 AM to 4:00 PM Monday through Friday

Private Haulers: 8:00 AM to 4:00 PM Monday through Friday

Allied Waste Services will conduct an extensive public education program to educate residential, industrial and commercial customers on diversion of materials including recyclables and the types of construction, demolition and inert materials that may be recycled.

[27]

The education program will include a dedicated staff person who will promote recycling in the community through communication with civic groups, schools, builders and others whose businesses produce a high volume of recyclable and construction, demolition and inert materials.

ORDINANCE 683

City of Imperial 2008 Solid Waste Rates						
MSW- SINGLE CART SYSTEM						
MONTHLY SOLID WASTE RATES						
	2 YD	3 YD	4 YD	5 YD	6 YD	8 YD
1 X WK	\$65.45	\$75.54	\$94.20	\$105.74	\$130.90	\$136.39
2 X WK	\$74.84	\$118.33	\$146.04	\$171.23	\$236.66	\$272.39
3 X WK	\$118.33	\$158.62	\$201.43	\$241.73	\$317.26	\$409.18
4 X WK	\$146.04	\$201.43	\$254.28	\$312.22	\$402.86	\$545.57
5 X WK	\$171.23	\$241.73	\$312.22	\$377.66	\$483.44	\$681.97
6 X WK	\$198.89	\$284.52	\$365.08	\$440.62	\$569.03	\$878.90
X DUMP	\$25.39	\$29.34	\$36.53	\$41.01	\$47.26	\$64.74

Recycle Container Rates	
Any size Commercial Container for Recycle Is:	\$25.00

Residential Service Rate	
1 refuse can	\$18.00
1 recycle can	Additional refuse can \$9.50
1 green waste can	Each Unit Up to 4 Units \$17.25

ROLL-OFF & COMPACTOR / TRANSFER 40YD 30YD 20YD				
Roll-Off's	\$209.00/Per Pull		\$47.00	Per Ton
Compactor	\$290.00/Per Pull		\$47.00	Per Ton
Compactor	\$345.00 a Month Rental			
(Customers must sign an agreement acknowledging the monthly minimum charges (either by fax or coming to the office))				

Clean up bins (minimum of one dump every 30 Days)			
3 YD	\$68.34 Per Dump	6 YD	\$121.28 Per Dump
(Customers must sign an agreement acknowledging the monthly minimum charges (either by fax or coming to the office))			

Miscellaneous	
Install Wheel / Clean Dumpster	\$55.00 One Free per Year
Replace Damage or Burned cont.	\$150.00
Burned / Stolen Cart	\$82.69
Roll Out / Lock Charge	\$5.51 Each Time
Automatic Lock Bar	\$5.51 Per Month
Cart Exchange Fee	\$50.00 Per Exchange
Pressure Wash Compactor Units	\$130.00 Per Wash
Rates include AB939 recycling and franchise fees	

SECOND AMENDMENT TO AGREEMENT
September 1, 2014

This SECOND AMENDMENT TO THE AGREEMENT (the "Second Amendment") is made and entered into as of September 1, 2014, (the "Effective Date") by and between the CITY OF IMPERIAL, a municipal corporation of the State of California ("City") and ALLIED WASTE TRANSPORTATION, INC., a Delaware corporation, dba ALLIED WASTE SERVICES OF IMPERIAL ("Allied"), with reference to the following recitals:

Recitals

- A. City is a general law city within the meaning of California Constitution and has reserved its powers pursuant to California Public Resources Code Section 40000 et seq. to grant an exclusive Solid Waste and Recycling franchise.
- B. On December 15, 2004, City granted Allied an exclusive franchise to collect and dispose of, for a fee, solid waste, yard waste and recyclable materials from residential, commercial and industrial premises within the City (the "Agreement"); and
- C. On August 6, 2008, the City and Allied entered into the First Amendment to the Agreement (the "First Amendment"); and
- D. By virtue of the First Amendment, the term of the Agreement was extended by eight years, to expire on August 31, 2016, with an option to further extend the term if the City Manager determines that Allied is in general compliance with the Agreement and on such terms as may be agreed to by the parties; and
- E. The City desires that Allied provide street sweeping to the City. Allied has agreed to provide street sweeping services, and requests this Second Amendment to the Agreement to enable Allied to cover the costs of these new services; and
- F. The purpose of this Amendment is to extend the term of Allied's Agreement with the City, as previously amended by the First Amendment, and to further revise the Agreement as so amended to reflect Allied's provision of street sweeping services for the City. This Second Amendment provides street sweeping services will commence on September 1, 2014, along with a franchise term that will expire on August 31, 2026.

Amendments to Franchise

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

1. Section 2, "Term," is hereby amended in its entirety to read as follows:

The term of this Agreement shall commence on September 1, 2004, and shall expire on August 31, 2026, unless earlier terminated in accordance with the provisions hereof.

2. New Subsections 11 (a), (b) and (c) are hereby added to the Agreement, to read as follows:

a) Street Sweeping Services. In order to further compensate the City for Allied's use of the City's streets depicted on Exhibit J, attached hereto, and any additional City-owned streets designated by the City during the Term, pursuant to section (c) below, Allied shall perform street sweeping services for the City in accordance with the provisions of Exhibit K. Street sweeping services will commence on September 1, 2014, as provided in (b) below, and continue for the Term of this Second Amendment.

b) Lease and Purchase of City Street Sweepers. The City currently has one new Tymco street sweeper to serve as its primary street sweeper. Allied shall lease-to-own this street sweeper from the City for a rental payment annually of \$90,756 per year for three years commencing on September 1, 2014, followed by annual rental payments of \$15,126 for two years. The cumulative rental payments for the five-year lease period will be \$302,518.50. After full payment of the 5 years of lease payments for the street sweeper, full title to and ownership of the street sweeper shall pass to Allied, free and clear of all liens and encumbrances. Prior to Allied taking full ownership of the street sweeper, the street sweeper will be used solely in Imperial County. Annual rental payments will be made in twelve equal monthly installments. The first lease payment shall be due and payable on September 1, 2014 (the "Sweeper Lease Commencement Date"). Monthly lease payments shall be due within ten (10) days of the first day of each calendar month commencing on the Sweeper Lease Commencement Date. Allied shall be responsible for all repairs and maintenance for the leased street sweeper. The City and Allied shall enter into a written Lease-to-Own and Purchase Agreement consistent with the financial and other terms and conditions of this Second Amendment for the street sweeper, in a form mutually agreed to by the City and Allied.

Sept 14 90,756
Sept 15 90,756
Sept 16 90,756
Sept 17 15,126
Sept 18 15,126
81

c) Rates. To compensate Allied for annual street sweeping services, the City shall pay Allied the sum of \$127,000 a year commencing on the date that Allied begins providing street sweeping services to the City. This annual sum shall be increased on the anniversary date of the provision of street sweeping services using the most recent percent annual increase in the CPI as defined in the Agreement and used in the adjustment of solid waste services rates under the Agreement. This annual payment shall be made by City to Allied in twelve equal monthly installments. Allied will sweep all City streets as directed by Exhibit J and Exhibit K up to 175 curb miles. Should the City's total curb miles requiring sweeping increase through annexation or any other reason by more than five percent of this total (i.e., by more than 9 additional miles), the parties shall meet and confer to consider an adjustment to Allied's rates that would reasonably compensate Allied for its additional costs of sweeping the City's street. Allied shall be entitled to a reasonable rate adjustment to compensate it for such additional street

sweeping costs as demonstrated to the City's reasonable satisfaction.

3. Section 25, "Insurance," is hereby amended in its entirety to read as follows:

a) General Liability and Auto Insurance. Allied agrees, at Allied's own expense, to carry comprehensive public liability and automobile liability coverage during the full Term of this Agreement, with City also shown as an additional insured thereunder, covering liability for bodily injuries, death and property damage, arising out of or in connection with the operations of Allied under this Agreement in an amount not less than \$1,000,000 for injuries including death to any one person and in an amount not less than \$5,000,000 for any one accident or occurrence.

b) Workers Compensation Insurance. Allied agrees, at Allied's own expense, to carry workers' compensation insurance in accordance with the laws of the State.

c) Certificates. Certificates of insurance thereof, shall be deposited by Allied with the City Manager together with endorsements or statements from the insuring companies providing that such policies will not be subject to cancellation until thirty (30) days after written notice to City. All of said policies shall be subject to the reasonable approval of the City attorney.

d) Pollution Insurance. Environmental Impairment Liability shall be written on a Contractor's Pollution Liability form or other form acceptable to the City providing coverage for liability arising out of sudden, accidental and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000 dollars per claim and in the aggregate.

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

f) Miscellaneous Provisions. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the Policy must include work performed "by or on behalf" of the insured. The Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. The policy shall specifically

provide for a duty to defend on the part of the insurer. The City, its officials, officers, agents, and employees shall be included as insured's under the policy.

3. The parties agree to add a new Section 41, to read as follows:

Allied will pick up and dispose of debris, concrete and inert waste located on the surface of the vacant City-owned property next to the Department of Public Works facility located on North P Street in the City of Imperial, at no cost to the City.

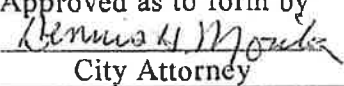
4. The parties agree to add a new Section 42, to read as follows:

~~Donation of labor,~~
Allied shall donate labor, resources and finances, totaling up to Five Thousand Dollars (\$5,000.00) annually, for the City of Imperial social, economic and educational training and curriculum projects, as requested by the City.

5. Exhibits J and K hereto are incorporated into this Second Amendment and the Agreement as though fully set forth herein.

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

IN WITNESS WHEREOF, Allied and the City have entered into this Franchise Agreement as of the date first written above.

CITY: City of Imperial, a municipal corporation By:  Geoff Dale, Mayor Attest:  City Clerk Approved as to form by  City Attorney	ALLIED: Allied Waste Transportation, Inc. a Delaware corporation, dba Allied Waste Services of Imperial By:  Alberto Guardado, Registered Agent

EQUIPMENT LEASE AND PURCHASE AGREEMENT

This EQUIPMENT LEASE AND PURCHASE AGREEMENT, together with any attached Schedules (collectively "Agreement"), is made as of this 1st day of September 2014, by and between THE CITY OF IMPERIAL, a municipal corporation of the State of California ("City") and ALLIED WASTE TRANSPORTATION, INC., a Delaware corporation, dba ALLIED WASTE SERVICES OF IMPERIAL ("Allied"), with reference to the following recitals:

Recitals

A. Pursuant to the Second Amendment to Agreement between the City and Allied ("Second Amendment"), Allied has agreed to lease and to ultimately purchase from the City, and the City has agreed to lease and to ultimately sell to Allied, the street sweeping vehicle and related equipment ("Sweeper"), described on Schedule A which is attached hereto and is incorporated herein by this reference; and

B. The purpose of this Agreement is to provide for the leasing and purchase of the Sweeper described on Schedule A, on the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Allied agree as follows:

1. Lease.

City leases to Allied, and Allied leases from City, the Sweeper identified on Schedule A, upon the terms and conditions of this Agreement.

2. Term.

The City owns the Sweeper identified on Schedule A. The Sweeper will be delivered by City to Allied on August 18, 2014 (the "Delivery Date"). The lease term is for five years, to commence on the Delivery Date and end on the fifth anniversary of the delivery date.

3. Rent.

Allied shall pay the City total rent for the five year lease period of 302,518.50, payable as follows: Annual rental payments of \$90,756 for three years commencing on September 1, 2014,

followed by annual rental payments of \$15,126 for two years. Annual rent shall be payable by Allied to the City in equal monthly installments, equal to one-twelfth of the annual rent. The first lease payment shall be due and payable on September 1, 2014 (the "Sweeper Lease Commencement Date"). Monthly lease payments shall be due within ten (10) days of the first day of each calendar month commencing on the Sweeper Lease Commencement Date. No other fees or sums shall be owed by Allied to the City for the lease of the Sweeper. The annual rent shall be fixed for the duration of the lease term, and shall not increased or escalate for any reason.

4. Use.

Allied shall use the Sweeper in a careful and proper manner and shall comply with all laws, ordinances, and regulations relating to the possession, use, and maintenance of the Sweeper. Prior to Allied taking full ownership of the Sweeper, the Sweeper shall be used solely in Imperial County. Allied may sublease use of the sweeper to a subcontractor.

5. Maintenance and Repair.

Allied shall keep the Sweeper in good repair, condition, and working order, and shall furnish all parts and service necessary to keep them in good working order.

6. Assignment of Warranties.

The City shall assign to Allied all manufacturer and distributor warranties, guarantees, and service policies or contracts applicable to the Sweeper.

7. Loss or Damage.

Allied shall bear the risk of all loss or damage to the Sweeper during the lease term. If the Sweeper is damaged so it is not usable, or is lost or stolen, Allied shall replace the Sweeper with a Sweeper of like condition at the time of the loss or damage.

8. Insurance.

Allied will, at its own cost and expense, insure the Sweeper for the applicable amounts stated in the Agreement, and will maintain a loss payable endorsement in favor of the City.

9. Taxes and Fees.

Allied will prepare, execute, and file returns and pay, on a timely basis, at Allied's expense, all sales and use taxes and any other personal property taxes, charges, assessments, or levies imposed on or against the Sweeper by jurisdictions other than the City, of whatever kind or nature, together with any penalties or interest in connection with these charges, except any taxes on or measured by Allied's revenues or net income. Allied will, on any property tax returns required filed by Allied, include the Sweeper as property leased by Allied for purposes of personal property tax assessments.

10. Indemnity.

Allied will indemnify the City against, and hold City harmless from, all claims, actions, proceedings, costs, damages, and liabilities, including attorney's fees, arising out of, connected with, or resulting from Allied's negligent operation of the Sweeper.

11. Default.

The occurrence of one or more of the following events shall constitute an "Event of Default": Allied fails to pay when due any rent payment becoming due under this Agreement; Allied fails to perform any other obligation assumed by Allied under this Lease; or Allied (i) becomes insolvent; (ii) commits an act of bankruptcy; (iii) becomes subject to any voluntary or involuntary bankruptcy proceeding; (iv) makes an assignment for the benefit of creditors; or (v) enters into any type of voluntary or involuntary liquidation.

On the happening of an Event of Default, City may, at its option serve Allied with a Notice of Default, requesting that Allied cure any default which is capable of being cured. Allied shall have thirty (30) days to cure said default, or such longer time as may reasonably be required to cure the default. Should Allied fail to cure the default within the time allowed, the City may terminate the lease as to the Sweeper and retake possession of the Sweeper.

12. Purchase Option.

At the end of the Term, City shall sell to Allied and Allied shall purchase from the City the Sweeper for the price of ~~One Dollar (\$1.00)~~. Upon such purchase, full title to and ownership of the Sweeper shall pass to Allied, free and clear of all liens and encumbrances.

13. Applicable Law.

This Agreement shall be governed by and construed under the laws of the State of California.

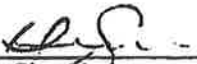
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

[Signatures on Next page]

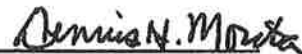
CITY:

City of Imperial, a municipal corporation

By: 
Mayor, Geoff Dale

Attest: 
City Clerk

Approved as to form by


City Attorney

ALLIED:

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

By: 
Alberto Guardado, Registered Agent

SCHEDULE A

Manufacturer: Tymco, Inc.

Date of Manufacture: November 2012

Gross Vehicle Weight Rating (GVWR): 54,000 lbs

Gross Axle Weight Rating (GAWR) Front: 12,000 lbs

Gross Axle Weight Rating (GAWR) Rear: 20,000 lbs

Vehicle ID Number: 1FVAC4DX7DHFE9375

INTERMEDIATE MANUFACTURE BY
Fontaine Modification Company

Charlotte, NC

DATE OF INTERMEDIATE MANUFACTURE
18 November 2012

GVWR 24,400 KG 54,000 LBS

GAWR FRONT
5,443 KG 12,000 LBS

GAWR INTERMEDIATE (1)
9,070 KG 20,000 LBS

GAWR INTERMEDIATE (2)
N/A KG N/A LBS

GAWR REAR
10,432 KG 23,000 LBS

VEHICLE IDENTIFICATION NUMBER
1FVAC4DX7DHFE9375

EXHIBIT K
CITY OF IMPERIAL STREET SWEEPING SERVICES

1. General Provisions Regarding Removal of Debris from Streets.

Allied shall furnish all tools equipment, apparatus, facilities, expertise, labor, and materials (including water), and perform all work necessary to sweep all City-owned streets and byways (the "Street System") in the City so as to remove debris therefrom in a good and workmanlike manner. Said work shall be performed and completed to the reasonable satisfaction of the City Manager consistent with industry standards.

2. Operations; Compliance with Laws and Regulations.

The street sweeping methods and procedures used by Allied shall be consistent with the current standards in the industry, in compliance with all Federal, State and local laws and regulations, and shall be subject to the approval of the City Manager.

3. Schedule and Routes.

Street sweeping routes and schedules are to be performed pursuant to the Street Sweeping Map attached hereto as Exhibit J. The City Manager shall approve the hours during which the sweeping shall be performed. Sweeping may be required during early morning hours on certain major streets.

4. Special Events.

Allied will provide street sweeping services for sixteen (16) work order special events per calendar year. The City shall provide Allied with five (5) days notice of any work order special events.

5. Emergency Street Sweeping Services.

Allied shall provide emergency contact information and a 24-hour on call telephone number for emergency street sweeping. Allied shall provide street sweeping services on an emergency basis outside of established hours and routes when requested by the City, and shall be compensated by City for such services at a rate of \$105/hr. for the first hour that a street sweeper is on the site of an emergency street sweeping and in half hour increments thereafter.

6. Parking Lots.

Allied will provide street sweeping services for the City lots identified in Exhibit J.

7. Complaints

Complaints related to street sweeping are to be reasonably resolved, including by re-sweeping areas not properly serviced if necessary, within 24 hours.

8. Sweeping Vehicle Speed.

Street sweeping vehicles shall not operate at a speed that exceeds the manufacturer's

recommendations for the sweeper and/or the speed for good street sweeping practice as determined by the City Manager.

9. Safety.

All safety related defects determined to exist on any sweeping vehicle shall be corrected by contractor prior to the vehicle being utilized for further street sweeping operations.

10. Disposal of refuse.

Allied shall, at its own expense, dispose of all Solid Waste Collected in the course of street sweeping in the same manner as required for solid waste collected in the course of providing solid waste handling services. Allied shall not temporarily stockpile street sweeping debris on any public property pending its ultimate disposal.

11. Allied's Street Sweeping Equipment.

a. Type. Allied's street sweeping equipment shall be the sweeping equipment leased or purchased by Allied from the City pursuant to this Franchise, of a type consistent with current standards in the industry and shall be subject to the approval of the City Manager. Prior to Allied taking full ownership of a leased alternative fuel street sweeper from the City, that street sweeper will be used solely in Imperial County. Notwithstanding the foregoing, the City Manager shall be deemed to have approved Allied's use of the street sweeping vehicles Allied is leasing or purchased from the City. In addition, street sweeping shall be conducted by either vacuum sweeper or combination sweepers. A mechanical broom sweeper may be approved by the City for certain heavy sweeping areas. All street sweepers utilized in this agreement shall meet all Federal, State, and local regulations including but not limited to SCAQMD Rule 1186.

b. Quantity. Allied shall have and maintain a minimum of one (1) primary alternative fuel sweeper, and one (1) back-up sweeper for use in providing services to the City. In the event that a sweeper requires repair or replacement, a replacement sweeper will be provided so that the established inventory does not fall below the above stated minimums.

c. Condition. All vehicles and equipment used to perform street sweeping services shall be kept and maintained by Allied or its subcontractor in good mechanical condition and working order. Any of the primary sweepers that need permanent replacement due to age and condition of the vehicle shall be replaced with a new vehicle. In addition, the following shall apply:

- (1) Said equipment shall be kept clean at all times;
- (2) Said equipment shall be painted in fashion approved by the City Manager; and,
- (3) Mechanical brushes and brooms shall be maintained in proper condition and shall be replaced as recommended by the manufacturer or when pick-up availability becomes impaired.
- (4) Inspection. All equipment utilized for street sweeping operations shall be subject to inspection by the City Manager at any time. The street sweeper may be parked and located at a City-owned lot to be designated by the City or at Allied's facility at 3354 Dogwood Road, Imperial, CA.

12. Street Sweeping Personnel.

- a) **Qualifications.** Allied shall employ competent and experienced drivers and mechanics for the performance of street sweeping operations ("Street" Sweeping Personnel.")
- b) **Uniforms.** Allied's Street Sweeping Personnel shall wear clean uniform bearing Allied's (or its subcontractor's) company name, or other suitable clothing approved by the City.
- c) **Identification of Employees.** Allied shall provide identification badges, cards or similar devices, for all its street sweeping personnel who may make personal contact with residents of the City. The City may require Allied to notify Customers yearly of the form of identification.
- d) **Employee List.** Allied shall provide the City, and update on annual basis the current list of its street sweeping personnel.
- e) **Driver's License.** Allied's street sweeping personnel shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating.
- f) **Discontinued use of Unsatisfactory Employees.** No street sweeping personnel shall continue to have any involvement whatsoever with regard to any work in any way relating to or arising from this Agreement if the City gives notice to Allied that such person is determined by the City to be intemperate, discourteous, disorderly, inefficient, or otherwise objectionable.
- g) **Training and Legal Compliance.** Allied shall provide operating and safety training for its entire street sweeping personnel that meets minimum OSHA, and all other applicable standards.

13. Contract Administration.

- a) **Verification.** At the discretion of the City Manager, the City may require the installation of odometers, time clocks, or other specialized equipment to verify work performed.
- b) **Monthly Report.** Allied shall keep a daily log of streets swept. Said log shall state the area and the number of curb miles swept. Each month a Monthly Report shall be prepared from the daily log and submitted to the City Manager.

14. Subcontracting.

Allied may utilize the services of a subcontractor to perform the services and meet the obligations set forth in this Exhibit. Any subcontracting shall be subject to such reasonable conditions as may be required by the City Manager, and shall be subject to the following:

- a) Allied shall be responsible to ensure any permitted subcontractor complies with all applicable terms and conditions of this Agreement;
- b) Any permitted subcontractor shall be required to provide a written agreement to the City, in a form approved by the City Attorney, demonstrating its agreement to be bound by all applicable provisions of this agreement, including specifically, without limitation, the insurance and indemnity provisions set forth herein; and
- c) Allied shall be responsible for the actions and/or omissions of any subcontractor as if Allied were carrying out the services in question itself.

recommendations for the sweeper and/or the speed for good street sweeping practice as determined by the City Manager.

9. Safety.

All safety related defects determined to exist on any sweeping vehicle shall be corrected by contractor prior to the vehicle being utilized for further street sweeping operations.

10. Disposal of refuse.

Allied shall, at its own expense, dispose of all Solid Waste Collected in the course of street sweeping in the same manner as required for solid waste collected in the course of providing solid waste handling services. Allied shall not temporarily stockpile street sweeping debris on any public property pending its ultimate disposal.

11. Allied's Street Sweeping Equipment.

a. Type. Allied's street sweeping equipment shall be the sweeping equipment leased or purchased by Allied from the City pursuant to this Franchise, of a type consistent with current standards in the industry and shall be subject to the approval of the City Manager. Prior to Allied taking full ownership of a leased alternative fuel street sweeper from the City, that street sweeper will be used solely in Imperial County. Notwithstanding the foregoing, the City Manager shall be deemed to have approved Allied's use of the street sweeping vehicles Allied is leasing or purchased from the City. In addition, street sweeping shall be conducted by either vacuum sweeper or combination sweepers. A mechanical broom sweeper may be approved by the City for certain heavy sweeping areas. All street sweepers utilized in this agreement shall meet all Federal, State, and local regulations including but not limited to SCAQMD Rule 1186.

b. Quantity. Allied shall have and maintain a minimum of one (1) primary alternative fuel sweeper, and one (1) back-up sweeper for use in providing services to the City. In the event that a sweeper requires repair or replacement, a replacement sweeper will be provided so that the established inventory does not fall below the above stated minimums.

c. Condition. All vehicles and equipment used to perform street sweeping services shall be kept and maintained by Allied or its subcontractor in good mechanical condition and working order. Any of the primary sweepers that need permanent replacement due to age and condition of the vehicle shall be replaced with a new vehicle. In addition, the following shall apply:

- (1) Said equipment shall be kept clean at all times;
- (2) Said equipment shall be painted in fashion approved by the City Manager; and,
- (3) Mechanical brushes and brooms shall be maintained in proper condition and shall be replaced as recommended by the manufacturer or when pick-up availability becomes impaired.
- (4) Inspection. All equipment utilized for street sweeping operations shall be subject to inspection by the City Manager at any time. The street sweeper may be parked and located at a City-owned lot to be designated by the City or at Allied's facility at 3354 Dogwood Road, Imperial, CA.

12. Street Sweeping Personnel.

- a) **Qualifications.** Allied shall employ competent and experienced drivers and mechanics for the performance of street sweeping operations ("Street") Sweeping Personnel.")
- b) **Uniforms.** Allied's Street Sweeping Personnel shall wear clean uniform bearing Allied's (or its subcontractor's) company name, or other suitable clothing approved by the City.
- c) **Identification of Employees.** Allied shall provide identification badges, cards or similar devices, for all its street sweeping personnel who may make personal contact with residents of the City. The City may require Allied to notify Customers yearly of the form of identification.
- d) **Employee List.** Allied shall provide the City, and update on annual basis the current list of its street sweeping personnel.
- e) **Driver's License.** Allied's street sweeping personnel shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating.
- f) **Discontinued use of Unsatisfactory Employees.** No street sweeping personnel shall continue to have any involvement whatsoever with regard to any work in any way relating to or arising from this Agreement if the City gives notice to Allied that such person is determined by the City to be intemperate, discourteous, disorderly, inefficient, or otherwise objectionable.
- g) **Training and Legal Compliance.** Allied shall provide operating and safety training for its entire street sweeping personnel that meets minimum OSHA, and all other applicable standards.

13. Contract Administration.

- a) **Verification.** At the discretion of the City Manager, the City may require the installation of odometers, time clocks, or other specialized equipment to verify work performed.
- b) **Monthly Report.** Allied shall keep a daily log of streets swept. Said log shall state the area and the number of curb miles swept. Each month a Monthly Report shall be prepared from the daily log and submitted to the City Manager.

14. Subcontracting.

Allied may utilize the services of a subcontractor to perform the services and meet the obligations set forth in this Exhibit. Any subcontracting shall be subject to such reasonable conditions as may be required by the City Manager, and shall be subject to the following:

- a) Allied shall be responsible to ensure any permitted subcontractor complies with all applicable terms and conditions of this Agreement;
- b) Any permitted subcontractor shall be required to provide a written agreement to the City, in a form approved by the City Attorney, demonstrating its agreement to be bound by all applicable provisions of this agreement, including specifically, without limitation, the insurance and indemnity provisions set forth herein; and
- c) Allied shall be responsible for the actions and/or omissions of any subcontractor as if Allied were carrying out the services in question itself.

DATE SUBMITTED 01/25/2022
 SUBMITTED BY Public Services
 DATE ACTION REQUIRED 02/01/2023

COUNCIL ACTION ()
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: Declare Emergency at Hwy 86 & Aten Rd. Continue Emergency Lift Stations 1. Continue Emergency Action of Resolution NO. 2022-60				
DEPARTMENT INVOLVED: <u>Public Services – Waste Water</u>				
BACKGROUND/SUMMARY: After replacing suction lines at three lift stations back in mid- June, Public Services inspected other pump & lift stations and found four other stations needing suction lines removed and replaced. Bracing and supports for these suctions line have also failed and will be replaced, as well. This is critical and considered an emergency repair to continuing to provide sewer collection in the areas of: Sandalwood Glen, Sky Ranch, Cross & Colonia Pump/Lift Stations. If lines continue to fail, these lift stations will not be able to function; each one currently has a failed line and are running at 50%. Public Services is continuing to work with A&R Construction to rectify issues.				
FISCAL IMPACT: TBD	FINANCE INITIALS <u></u>			
STAFF RECOMMENDATION: Council continues approval of emergency action	DEPT. INITIALS <u></u>			
MANAGER'S RECOMMENDATION: <u>approve continuance</u>	CITY MANAGER'S INITIALS <u></u>			
MOTION:				
<table style="width: 100%;"> <tr> <td style="width: 33%;"> SECONDED: AYES: NAYES: ABSENT: </td> <td style="width: 33%; text-align: center;"> APPROVED () DISAPPROVED () REFERRED TO: </td> <td style="width: 33%; text-align: center;"> REJECTED () DEFERRED () </td> </tr> </table>		SECONDED: AYES: NAYES: ABSENT:	APPROVED () DISAPPROVED () REFERRED TO:	REJECTED () DEFERRED ()
SECONDED: AYES: NAYES: ABSENT:	APPROVED () DISAPPROVED () REFERRED TO:	REJECTED () DEFERRED ()		

DATE SUBMITTED 01/24/23
 SUBMITTED BY Capt. Max Sheffield
 DATE ACTION REQUIRED 02/01/23

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: DECLARATION OF IMPERIAL POLICE DEPARTMENT MOTORCYCLE AS SURPLUS

1. DECLARATION OF IMPERIAL POLICE DEPARTMENT MOTORCYCLE AS SURPLUS.
2. AUTHORIZATION OF SALE AND/OR SALVAGE OF ITEMS DECLARED SURPLUS

DEPARTMENT INVOLVED: Police Dept.

IPBACKGROUND/SUMMARY:

The Imperial Police Department is requesting the Imperial City Council's consideration to declare the Department's current 2006 BMW police motorcycle as surplus. If declared, the police motorcycle will be sold or auctioned, and monies made on this motorcycle will go toward a traffic safety program.

FISCAL IMPACT: None

ADMIN
SERVICES
SIGN INITIALS

DP

STAFF RECOMMENDATION: Approve motorcycle as surplus

DEPT. INITIALS

MS #46

MANAGER'S RECOMMENDATION:

approve

CITY
MANAGER'S
INITIALS

SHM

MOTION:

SECONDED:
 AYES:
 NAYES:
 ABSENT:

APPROVED ()
 DISAPPROVED ()

REJECTED ()
 DEFERRED ()

REFERRED TO:

DATE SUBMITTED 01/24/2023
 SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR
 DATE ACTION REQUIRED 02/01/2023

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT: DISCUSSION/ACTION: MORNING STAR SUBDIVISION UNIT 1A 1. APPROVAL AND ACCEPTANCE OF OFF-SITE STREET IMPROVEMENTS. 2. AUTHORIZE BOND REDUCTION UP TO 90% AND TO KEEP THE REMAINING 10% FOR THE ONE-YEAR WARRANTY PERIOD.	
DEPARTMENT INVOLVED: COMMUNITY DEVELOPMENT	
BACKGROUND/SUMMARY: City staff conducted regular field inspections during the construction of the off-site street improvements for the subject project and a final walk through was completed on January 23, 2023. At this time, the improvements were found to be completed. See Exhibits "A" attached herewith for details. One-Year warranty for labor and materials will end on February 01, 2024. Now the developer is requesting that the City accept the improvements and reduce the bond amount accordingly.	
FISCAL IMPACT: NO FISCAL IMPACT	ADMIN SERVICES SIGN INITIALS <u>P.P. JVPD</u>
STAFF RECOMMENDATION: 1. Staff recommends approval and acceptance of off-site street improvements of Morning Star Subdivision Unit 1A 2. Staff recommends authorization of bond reduction up to 90% and to keep the remaining 10% for the One-Year warranty period.	DEPT. INITIALS <u>P.P. JVP</u>
MANAGER'S RECOMMENDATION: <u>approve</u>	CITY MANAGER'S INITIALS <u>AM</u>
MOTION: SECONDED: AYES: NAYES: ABSENT:	
APPROVED () DISAPPROVED () REJECTED () DEFERRED () REFERRED TO:	

DATE SUBMITTED January 24, 2023
 SUBMITTED BY Community Development Director
 DATE ACTION REQUIRED February 1, 2023

COUNCIL ACTION (X)
 PUBLIC HEARING (X)
 REQUIRED RESOLUTION (X)
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT:	DISCUSSION/ACTION: PUBLIC HEARING OF THE CITY COUNCIL TO DISCUSS THE VACATION OF A PUBLIC RIGHT-OF-WAY PORTION OF O STREET BETWEEN 12 TH STREET AND 13 TH STREET WITHIN THE CITY OF IMPERIAL
	1. Adoption of Resolution No 2023-02, Approving the vacation of a public right-of-way portion of O Street between 12 th Street and 13 th Street within the City of Imperial
DEPARTMENT INVOLVED:	Community Development Department
BACKGROUND/SUMMARY: See attached Staff Report.	
FISCAL IMPACT: N/A	ADMIN SERV INITIALS DP
STAFF RECOMMENDATION: Staff recommends approval of Resolution No. 2023-02 subject to Conditions of Approval.	DEPT. INITIALS P.P. JVP
MANAGER'S RECOMMENDATION: approve	CITY MANAGER'S INITIALS ADN
MOTION: SECONDED: AYES: NAYES: ABSENT: APPROVED () DISAPPROVED () REFERRED TO: REJECTED () DEFERRED ()	

DATE SUBMITTED January 24, 2023
 SUBMITTED BY Community Development Director
 DATE ACTION REQUIRED February 1, 2023

COUNCIL ACTION (X)
 PUBLIC HEARING ()
 REQUIRED RESOLUTION (X)
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

IMPERIAL CITY COUNCIL AGENDA ITEM

SUBJECT:	DISCUSSION/ACTION: A RESOLUTION OF THE CITY COUNCIL OF THE CITY IMPERIAL, CALIFORNIA, APPROVING THE VACATION OF A PUBLIC RIGHT-OF-WAY PORTION OF O STREET BETWEEN 12 TH STREET AND 13 TH STREET WITHIN THE CITY OF IMPERIAL 1. Adoption of Resolution No 2023-02, Approving the vacation of a public right-of-way portion of O Street between 12 th Street and 13 th Street within the City of Imperial
DEPARTMENT INVOLVED:	Community Development Department
BACKGROUND/SUMMARY: See attached Staff Report.	
FISCAL IMPACT: N/A	ADMIN SERV INITIALS PC
STAFF RECOMMENDATION: Staff recommends approval of Resolution No. 2023-02 subject to Conditions of Approval.	DEPT. INITIALS P.P. J JVP
MANAGER'S RECOMMENDATION:	CITY MANAGER'S INITIALS _____
MOTION: SECONDED: AYES: NAYES: ABSENT: APPROVED () DISAPPROVED () REFERRED TO: REJECTED () DEFERRED ()	



Staff Report

Agenda Item No.

To: City of Imperial Planning Commission

From: Othon Mora, Community Development Director

Date: January 24, 2023

Subject: O Street Abandonment between 12th Street and 13th Street

Summary:

Applicant:	Precision Engineering & Surveying, Inc. on behalf of Joshua Quintero
Project Location:	O Street between 12 th Street and 13 th Street
Project Description:	Abandonment of O Street between 12 th Street and 13 th Street
Zoning:	Rail Served Industrial (I-2)
General Plan:	Industrial Zone
Environmental:	Categorically Exempt – 15301 Existing Facilities
Recommendation:	Approve, subject to conditions

Background

Precision Engineering & Surveying, Inc., on behalf of Joshua Quintero, is requesting the abandonment of the portion of O Street between 12th Street and 13th Street. The 300-feet long, 80 feet wide portion of O Street requested to be abandoned will allow for a proposed project which consists of an industrial park constructed in two phases. The first phase is a welding and machining shop, currently under construction, placed over APN 063-012-001 and 063-121-002 with a section reserved for a retention basin with the water capacity of 10,130 cubic feet. The second phase is contingent on the street abandonment and if approved, an industrial park on APN 063-123-001 is being proposed. The abandonment of that portion of O Street will add more usable space to build a suitable retention basin and allow adequate space to build the industrial park. Mr. Quintero owns the parcels (highlighted below) abutting O Street and is initiating the process of acquiring the final parcel to be able to build the industrial park. Currently, O Street between 12th and 13th Streets is unimproved and does not provide access to any of the abutting properties except as an alternate access to the City of Imperial's Waste Water Facility and Maintenance Shop.

The City of Imperial's Planning Commission held a public hearing for this project on October 26, 2022 and adopted Resolution PC2022-08 for finding of conformance with the City's General Plan. A concern of the possible gifting of public funds was discussed at the Planning Commission meeting and referred to City Attorney, Katherine Turner, for further review. After staff research and deliberation, the portion of O Street between 12th Street and 13th Street was legally confirmed to be a public right-of-way with no monetary value to the City.

Project Location

The highlighted parcels are owned by the applicant.



Aerial View of Proposed Street Abandonment



Discussion/Analysis

City staff has reviewed the proposed abandonment of O Street between 12th Street and 13th Street. The Development Review Committee met and reviewed the project for compliance with the City's General Plan and development standards on August 18, 2022. City Attorney, Katherine Turner, has reviewed the project and has recommended staff proceed with the proposed street abandonment.

Environmental Compliance

The project is categorically exempt from the California Environmental Quality Act (CEQA) under Section 15301 of the Guidelines.

Evaluation

California Government Code 65402 requires the City of Imperial not to vacate/abandon any streets unless the abandonment has been found to be in conformance to the General Plan. The abandonment of O Street between 12th Street and 13th Street has been found to be in conformance with the Land Use and Circulation Elements of the General Plan. The City of Imperial General Plan Circulation Element requires that streets be functionally classified according to the type of level of traffic they are designed to accommodate. O Street in its entirety is not classified as a Major or Secondary Arterial nor considered Industrial or Residential Collectors. All portions of O Street are classified as a local street and therefore not essential for traffic flow. P Street is classified as a secondary arterial and has sufficient capacity to handle any additional traffic resulting from the vacation and abandonment and will not interfere with local circulation.

Public Notification

The public hearing scheduled for February 1, 2023 has been duly noticed at the project site since January 20, 2023 and in the Holtville Tribune and Calexico Chronicle, newspapers of general circulation, on January 19 and January 26, 2023. An Intent to Vacate Notice of Public Hearing was sent to all property owners within 300-feet of the properties.

Recommendation

Staff recommends the City Council conduct a public hearing to receive comments for and against the project. Unless sufficient evidence to the contrary is presented at the public hearing, Staff recommends adoption of Resolution 2023-02 approving the vacation of a public right-of-way portion of O Street between 12th and 13th Street.

Attachments

- Adopted Planning Commission Resolution PC2022-08
- Legal Description
- Site Plan
- Draft City Council Resolution 2023-02

Respectfully submitted,

Othon Mora, MCM, CBO
Community Development Director

**RESOLUTION NO. PC2022-08
FOR
FINDING OF CONFORMANCE WITH THE GENERAL PLAN FOR
THE RIGHT OF WAY VACATION OF A PORTION OF
O STREET BETWEEN 12TH STREET AND 13TH STREET**

WHEREAS, the owner of property adjoining a city street has requested the City to vacate a portion thereof; and

WHEREAS, the Government Code of the State of California, Section 65402, provides in part that a local agency shall not vacate or abandon any streets until the location, purpose, and extent of such activity has been reported upon as to conformity with the adopted General Plan applicable thereto; and

WHEREAS, the portion of O Street between 12th Street and 13th Street is not identified in the Circulation Element of the General Plan as a major or secondary arterial roadway circulation system nor will it restrict access to private property; and

WHEREAS, the finding of conformance is with the General Plan is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061 (b) (3)

NOW, THEREFORE, be it resolved that the Planning Commission does hereby find the proposed vacation of the portion of O Street between 12th Street and 13th Street to be in conformance with the City of Imperial General Plan.

BE IT FURTHER RESOLVED that the Planning Commission hereby determines that the City Council should take the necessary procedures to effect the vacation on the portion of O Street between 12th Street and 13th Street as shown on Exhibit A, and be subject to the determination of ownership for the applicant's potential purchase, if necessary, and the conditions of approval outlined in Exhibit B.

PASSED, ADOPTED AND APPROVED by the Planning Commission of the City of Imperial, this 26th day of October, 2022.


Planning Commission Chairman

ATTEST:

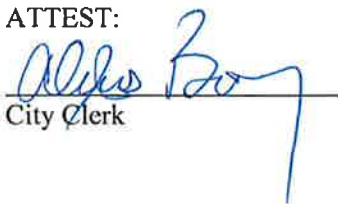

City Clerk

EXHIBIT "A"

STREET ABANDONMENT LEGAL DESCRIPTION

A PORTION OF "O" STREET IN THE TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NUMBER 883 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF "O" STREET BOUND TO THE NORTH BY A LINE CONNECTING THE NORTHEAST CORNER OF BLOCK 24 AND THE NORTHWEST CORNER OF BLOCK 23 AND BOUND TO THE SOUTH BY A LINE CONNECTING THE SOUTHEAST CORNER OF BLOCK 24 AND THE SOUTHWEST CORNER OF BLOCK 23, TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NUMBER 883 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

CONTAINING 0.55 ACRES MORE OR LESS.

THE ABOVE DESCRIBED PROPERTY IS SUBJECT TO ALL COVENANTS, EASEMENTS, AND AGREEMENTS OF RECORD.

AS SHOWN ON EXHIBIT "B", ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.



DRAFT RESOLUTION NO. 2023-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF IMPERIAL, CALIFORNIA, APPROVING THE VACATION OF A PUBLIC RIGHT-OF-WAY PORTION OF O STREET BETWEEN 12TH STREET AND 13TH STREET WITHIN THE CITY OF IMPERIAL

WHEREAS, the owner of properties adjoining a City street has petitioned the City to vacate a portion of O Street between 12th Street and 13th Street, which constitutes a public street pursuant to the provisions of the Streets and Highways Code Section 8308 thereof and has further agreed to pay any costs associated therewith; and

WHEREAS, The City of Imperial's Planning Commission adopted Resolution PC2022-08 and concluded the right-of-way vacation of O Street between 12th Street and 13th Street in conformance with the City's adopted Circulation Element of the General Plan; and

WHEREAS, the finding of conformance with the General Plan is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15061 (b)(3); and

WHEREAS, pursuant to the provisions of the California Streets and Highway Code, Section 8320 et seq., the City Clerk of the City of Imperial has administratively set a hearing for the City Council to consider ordering the vacation of O Street between 12th Street and 13th Street; and

WHEREAS, the City Council of the City of Imperial hereby declares its intention to vacate a portion of O Street along 12th Street and 13th Street, approximately three hundred feet in length and eighty feet in width, further legally described as follows and in Exhibit A with location depicted in the map attached hereto as Exhibit B:

A PORTION OF "O" STREET BOUND TO THE NORTH BY A LINE CONNECTING THE NORTHEAST CORNER OF BLOCK 24 AND THE NORTHWEST CORNER OF BLOCK 23 AND BOUND TO THE SOUTH BY A LINE CONNECTING THE SOUTHEAST CORNER OF BLOCK 24 AND THE SOUTHWEST CORNER OF BLOCK 23, TOWNSITE OF IMPERIAL, IN THE CITY OF IMPERIAL, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO MAP NUMBER 883 ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, A COPY OF SAID MAP BEING ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF IMPERIAL COUNTY.

CONTAINING .55 ACRES, MORE OR LESS; and

WHEREAS, upon hearing and considering all testimony and arguments, examining and analyzing the information submitted by staff and considering any written and oral comments received, the City Council considered all facts relating to the project; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Imperial as follows:

- A) The City Council proposes to vacate the portion of the right-of-way described herein; and
- B) A public hearing was duly noticed in accordance with the Streets and Highway Code Section 8322 and 8323 and held at the City Council Chambers located at 200 West 9th Street, Imperial, California on February 1, 2023 at 7:00 P.M., or as soon thereafter; and

- C) The City Council finds, from all the evidence submitted, that the vacation of said portion of O Street between 12th Street and 13th Street is consistent with the City's adopted General Plan and is unnecessary for present or prospective public use.
- D) That based on the evidence presented, the City Council hereby **APPROVES the vacation of the portion of O Street between 12th Street and 13th Street**, subject to the Conditions of Approval outlined in Exhibit C.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial, this 1st day of February, 2023.

Katie Burnworth
Mayor

ATTEST:

Kristina Shields
City Clerk

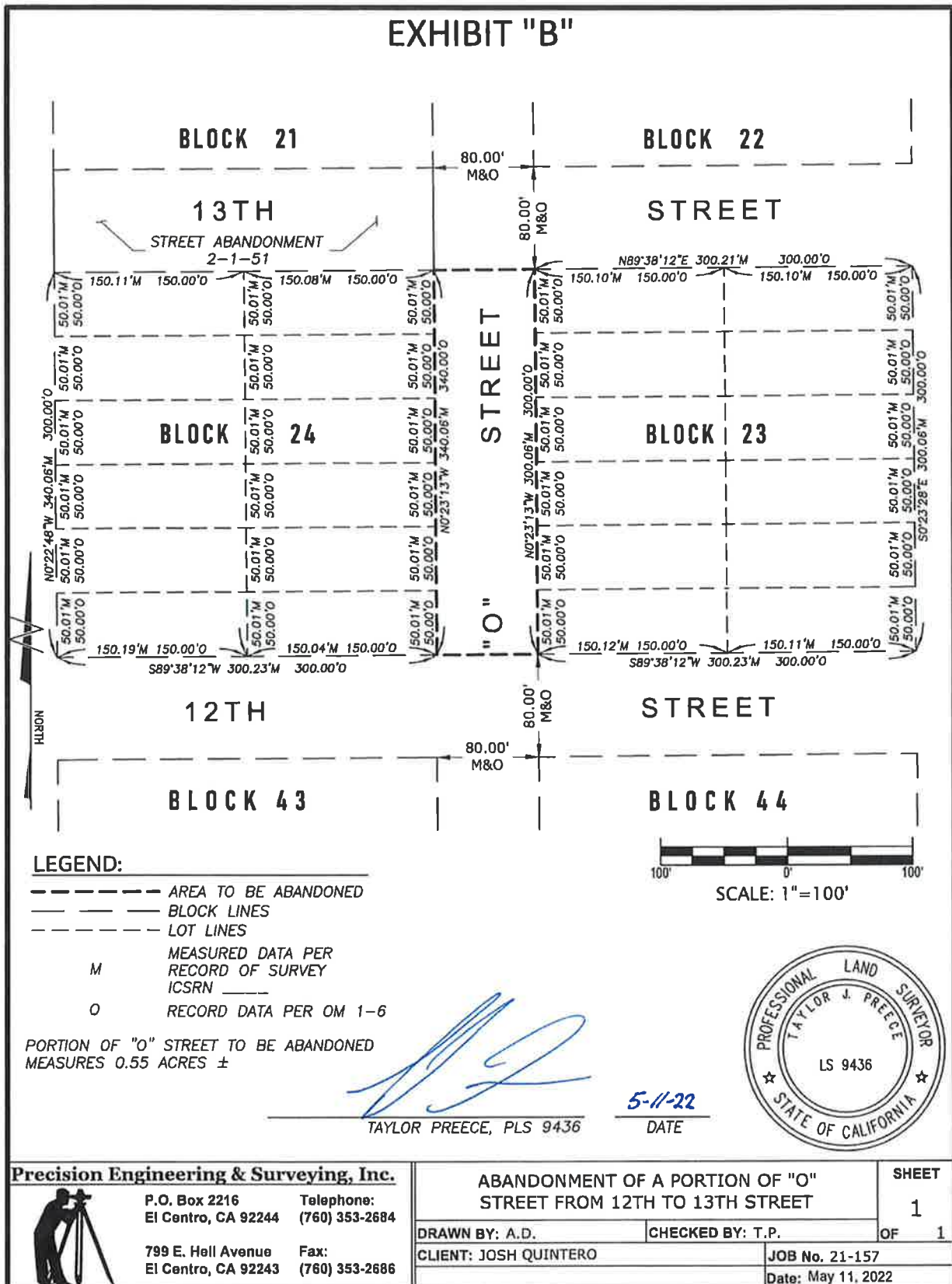


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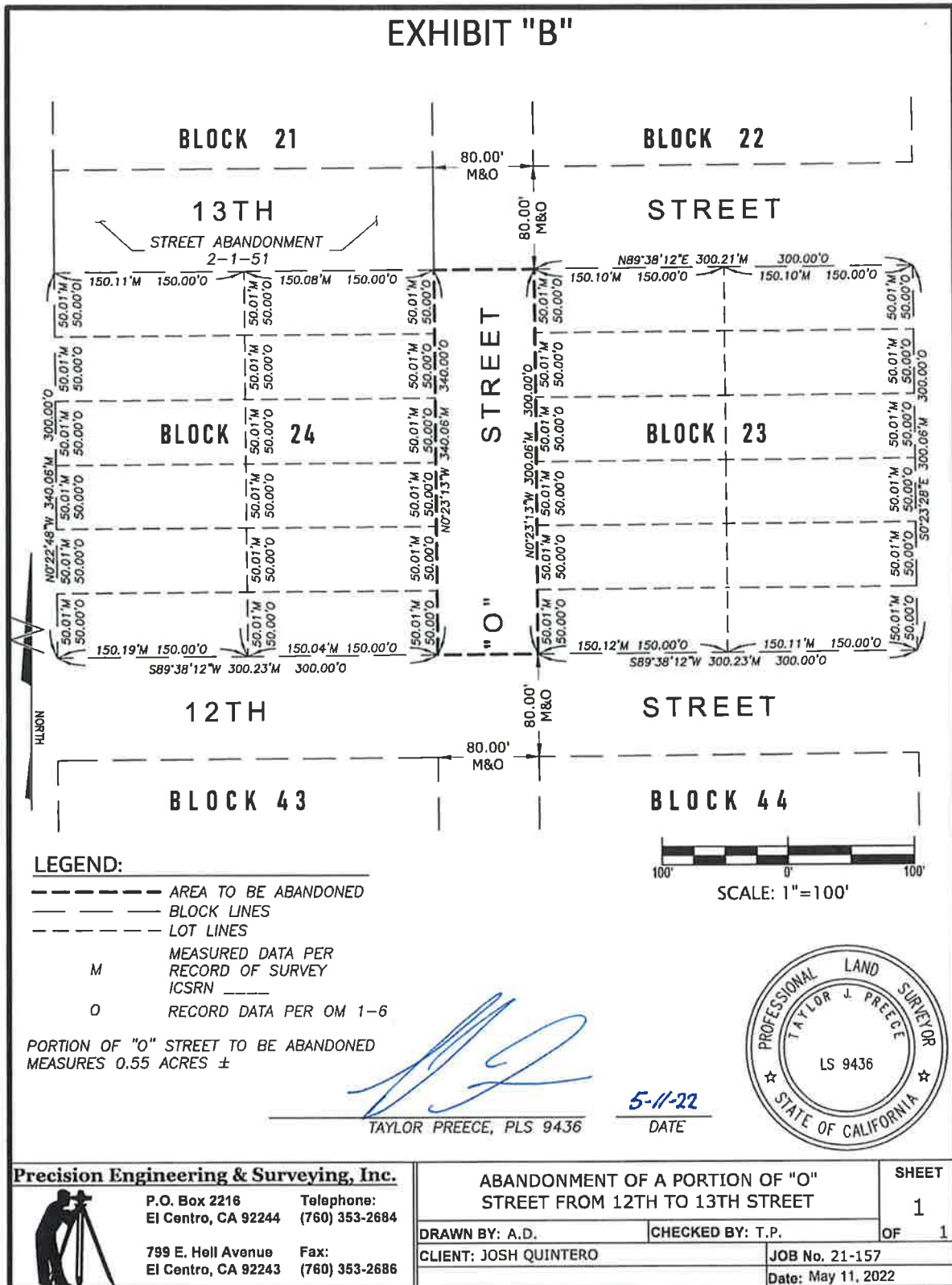


EXHIBIT C

CONDITIONS OF APPROVAL

O Street Vacation between 12th Street and 13th Street

**Josh Quintero
306 S. N Street
Imperial, CA 92251**

1. The Applicant shall comply with all local, State and Federal laws, regulations, rules, ordinances, and standards as they pertain to this project, whether specified herein or not. Where conflicts occur, the most stringent shall apply.
2. The Applicant shall pay all applicable impact and capacity fees.
3. The right-of-way vacation shall not constitute the waiver of any requirement of the City's Ordinances or regulations, except where a condition set forth herein specifically provides for a waiver.
4. The Applicant shall agree to defend, indemnify and hold harmless the City of Imperial and its agents, including consultants, officers and employees from any claim, action or proceeding against the City or its agents, including consultants, officers and employees to attack, set aside, void, or annul the approval of the right-of-way vacation. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness costs that may be asserted by any person or entity, including the Property Owner/Applicant arising out of or in connection with the approval of the public right-of-way vacation, including any claim for private attorney general fees claimed by, or awarded to any party from the City.
5. All conditions of approval for this right-of-way vacation shall be reprinted and included as a plan sheet(s) with the building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all grading, landscaping, and construction plans kept on the project site. It is the responsibility of the Applicant to ensure that the project contractor is aware of, and abides by, all conditions of approval. Prior approval from the Planning Department must be received before any changes are constituted in site design, grading, building design, building colors or materials, landscape material, etc.
6. Department Comments
 - Public Services
 1. Applicant shall provide access to repair underground utilities, such as storm water and potable water, on O Street between 12th Street and 13th Street, running North and South, if needed.
 2. City of Imperial Shop South entrance gate located on O Street and Northern portion of 13th Street may be used as an additional access point, if needed.

3. All paving material shall be asphalt and shall maintain line of site to existing O Street City of Imperial Shop entrance.

Fire Department

4. Abandonment of public streets are of concern as they could lead to operational challenges in emergency situations that could cause unforeseen issues. As presented, this private enterprise project does not currently present an issue.
5. Right-of-Way vacation procedures are to be executed according to City of Imperial specifications.

Community Development

6. A Site Plan Review is required prior to the construction of any building or structure on any Industrial Zone property pursuant to Section 24.19.500 of the City of Imperial Zoning Ordinance.
 7. Industrial Zone property development and performance standards shall apply to all land and buildings authorized within this zone.
7. The provisions of the permit are to run with the land/project and shall bind the current and future owner(s) successor(s) in interest, assignee(s) and/or transferor(s) of said project.
 8. If the Community Development Department finds and determines that the Applicant or successor-in-interest has not complied or cannot comply with the terms and conditions listed herein, or the Planning/Building Department determines that the activities constitute a nuisance, the City shall provide Applicant with notice and opportunity to comply with the enforcement or abatement order. If after receipt of the order (1), Applicant fails to comply, and/or (2) Applicant cannot comply with the conditions set forth herein, then the matter shall be referred to the Planning Commission, or to the appropriate enforcement authority for termination of the right-of-way abandonment of the portion of O Street, between 12th and 13th Street.
 9. As between the City and the Applicant, any violation of these Conditions of Approval may be a "nuisance per se". The City may enforce the terms and conditions of these conditions in accordance with its Codified Ordinances and/or State law. The provisions of this paragraph shall not apply to any claim of nuisance per se brought by a third party.
 10. Applicant shall not be permitted to maintain a "nuisance", which is anything which (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and/or (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and/or (3) occurs during or as a result of the re-located business.

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EXHIBIT "B"

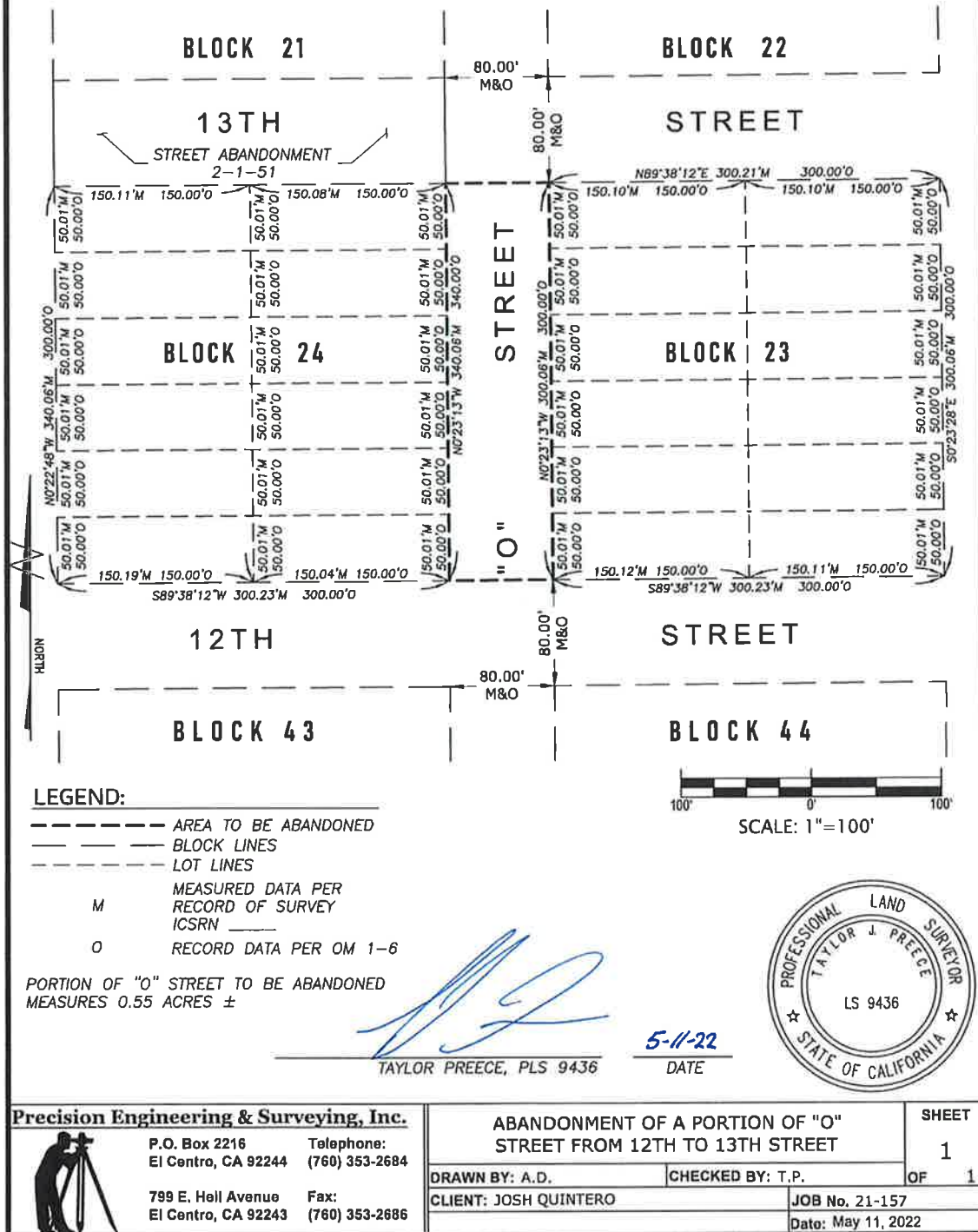


EXHIBIT C

CONDITIONS OF APPROVAL

O Street Vacation between 12th Street and 13th Street

Josh Quintero

306 S. N Street

Imperial, CA 92251

1. The Applicant shall comply with all local, State and Federal laws, regulations, rules, ordinances, and standards as they pertain to this project, whether specified herein or not. Where conflicts occur, the most stringent shall apply.
2. The Applicant shall pay all applicable impact and capacity fees.
3. The right-of-way vacation shall not constitute the waiver of any requirement of the City's Ordinances or regulations, except where a condition set forth herein specifically provides for a waiver.
4. The Applicant shall agree to defend, indemnify and hold harmless the City of Imperial and its agents, including consultants, officers and employees from any claim, action or proceeding against the City or its agents, including consultants, officers and employees to attack, set aside, void, or annul the approval of the right-of-way vacation. This indemnification obligation shall include, but not be limited to, damages, costs, expenses, attorney's fees, or expert witness costs that may be asserted by any person or entity, including the Property Owner/Applicant arising out of or in connection with the approval of the public right-of-way vacation, including any claim for private attorney general fees claimed by, or awarded to any party from the City.
5. All conditions of approval for this right-of-way vacation shall be reprinted and included as a plan sheet(s) with the building permit plan check sets submitted for review and approval. These conditions of approval shall be on, at all times, all grading, landscaping, and construction plans kept on the project site. It is the responsibility of the Applicant to ensure that the project contractor is aware of, and abides by, all conditions of approval. Prior approval from the Planning Department must be received before any changes are constituted in site design, grading, building design, building colors or materials, landscape material, etc.
6. Department Comments
 - Public Services
 - a. Applicant shall provide access to repair underground utilities, such as storm water and potable water, on O Street between 12th Street and 13th Street, running North and South, if needed.

- b. City of Imperial Shop South entrance gate located on O Street and northern portion of 13th Street may be used as an additional access point, if needed.
- c. All paving material shall be asphalt and shall maintain line of site to existing O Street City of Imperial Shop entrance.

Fire Department

- d. Abandonment of public streets are of concern as they could lead to operational challenges in emergency situations that could cause unforeseen issues. As presented, this private enterprise project does not currently present an issue.
- e. Right-of-Way vacation procedures are to be executed according to City of Imperial specifications.

Community Development

- f. A Site Plan Review is required prior to the construction of any building or structure on any Industrial Zone property pursuant to Section 24.19.500 of the City of Imperial Zoning Ordinance.
- g. Industrial Zone property development and performance standards shall apply to all land and buildings authorized within this zone.

- 7. The provisions of the permit are to run with the land/project and shall bind the current and future owner(s) successor(s) in interest, assignee(s) and/or transferor(s) of said project.
- 8. If the Community Development Department finds and determines that the Applicant or successor-in-interest has not complied or cannot comply with the terms and conditions listed herein, or the Planning/Building Department determines that the activities constitute a nuisance, the City shall provide Applicant with notice and opportunity to comply with the enforcement or abatement order. If after receipt of the order (1), Applicant fails to comply, and/or (2) Applicant cannot comply with the conditions set forth herein, then the matter shall be referred to the Planning Commission, or to the appropriate enforcement authority for termination of the right-of-way abandonment of the portion of O Street, between 12th and 13th Street.
- 9. As between the City and the Applicant, any violation of these Conditions of Approval may be a "nuisance per se". The City may enforce the terms and conditions of these conditions in accordance with its Codified Ordinances and/or State law. The provisions of this paragraph shall not apply to any claim of nuisance per se brought by a third party.
- 10. Applicant shall not be permitted to maintain a "nuisance", which is anything which (1) is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, and/or (2) affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal, and/or (3) occurs during or as a result of the re-located business.