

City of Brisbane

Staff Report

To: City Council via City Manager

From: Maria Saguisag-Sid
Principal Analyst

Subject: New Solid Waste Franchise Agreement with Recology Brisbane for Solid Waste Collection Zone 3

Date: Meeting of November 6, 2014

Purpose: To provide solid waste removal services by approving a new franchise agreement between the City of Brisbane and Recology Brisbane for solid waste collection zone 3.

Recommendation: Staff recommends the City Council consider and approve authorizing the Mayor to execute a Franchise Agreement between the City of Brisbane and Recology Brisbane for the collection and disposal of recyclable materials, organic materials and solid waste in the City of Brisbane's solid waste collection zone 3, effective December 1, 2014.

Background:

In June 2013, the City Council adopted Ordinance 581 and approved Resolution 2013-14, establishing multiple solid waste collections zones for the purpose of having the ability to award separate franchise agreements to each zone as the Council deemed necessary. Staff was directed to discuss a new franchise agreement for zones 1 and 2 with South San Francisco Scavenger Company, Inc. (SSFSC) and zone 3 with Recology Brisbane.

Recology Brisbane's offices are located at the northern portion of solid waste collection zone 3. Currently there are seven active businesses, the City of Brisbane's Corporation Yard, and the Brisbane Baylands that fall within this zone's jurisdiction.

Discussion:

Staff has met with representatives from Recology Brisbane over the past few months to negotiate a new agreement for solid waste collection services within solid waste collection zone 3. Under this new agreement, Recology Brisbane will provide solid waste and recycling collection services, abandoned waste clean-up service, and litter clean up on specified streets within solid waste collection zone 3, similar to services SSFSC will be providing under their agreement for zones 1 and 2.

The rate schedule included in Recology Brisbane's agreement is for commercial businesses as those are the only identified customers within the zone. The franchise fee in the proposed agreement is 14%, which is the same as SSFSC franchise fee. Modifications to the maximum rate schedule are based on a Refuse Rate Index (RRI) which is comprised of three weighted cost

categories: fixed labor, variable/processing costs and biodiesel fuel. While Recology Brisbane's RRI based modification method is different from SSFSC modification methods (modified annually based on Consumer Price Index for Urban Wage Earners and Clerical Workers or every third year based on review of neighboring cities' rates average rates) the resulting increases are very similar.

The term for this agreement is for ten (10) years, with an option to extend up to two (2) successive five (5) year terms by mutual agreement of the parties.

At this time, staff is recommending authorizing the Mayor to approve the new franchise agreement with Recology Brisbane for solid waste collection zone 3 effective December 1, 2014.

Fiscal Impact:

The fiscal impact is unknown at this point as the level of service for existing businesses is not available to us at this time. Staff anticipates that the amount collected from franchise fees will supplement future revenue for the City.

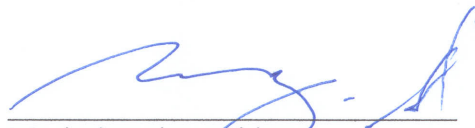
Measure of Success:

Is solid waste removal able to be provided efficiently for zone 3?

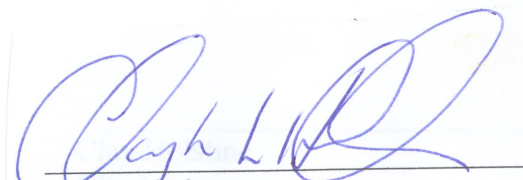
Is the City able to meet the requirements of the Regional Water Quality Control Board to their approval?

Attachments:

Franchise Agreement between the City of Brisbane and Recology Brisbane



Maria Saguisag-Sid
Principal Analyst



Clay Holstine
City Manager

FRANCHISE AGREEMENT BETWEEN THE CITY OF BRISBANE AND
RECOLOGY BRISBANE FOR THE COLLECTION AND DISPOSAL OF RECYCLABLE
MATERIALS, ORGANIC MATERIALS, AND SOLID WASTE IN THE CITY OF
BRISBANE

This Agreement, dated as of this ____ day of _____, 2014, by and between the City of Brisbane, a municipal corporation (hereinafter “City”), and Recology Brisbane, a California corporation (hereinafter “Recology”).

RECITALS

WHEREAS, the State of California has, through enactment of the California Integrated Waste Management Act of 1989, determined that management of solid waste is a shared responsibility of the State and local governments and that it is in the public interest for local governments to be authorized and required to provide adequate solid waste handling services; and

WHEREAS, the amount of solid waste generated in California, coupled with diminishing landfill space, potential adverse environmental impacts from landfilling solid waste, and the need to conserve natural resources have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program; and

WHEREAS, the Act directs local agencies to maximize the use of feasible waste reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of in landfills and requires that City continue to divert fifty percent (50%) of its waste stream from landfills; and

WHEREAS, City and Recology have determined that the primary method for City to satisfy this requirement will be to increase the recycling and reuse of materials otherwise disposed of in landfills; and

WHEREAS, City is subject to prescribed Waste Discharge Requirements ordered by the San Francisco Bay Regional Water Quality Control Board, including a reduction of waste trash loads from the municipal separate storm sewer system entering receiving waters; and

WHEREAS, City intends to meet a portion of these requirements by entering into an agreement that requires Recology to establish a Trash Container Management Policy and to provide in Solid Waste Collection Zone 3 (a) manual cleanup of litter on a scheduled basis along the frontage of certain properties, (b) on-call pickup service for abandoned waste and illegal dumping subject to a tonnage limitation, (c) collection of solid waste on a scheduled basis at specified City facilities, and (d) disposal (at no additional cost) at a Recology facility of solid waste that otherwise City would take to its facilities to be collected there by Recology; and

WHEREAS, contemporary public education and recycling programs will be needed to accomplish such result; and

WHEREAS Recology can meet these requirements and provide solid waste handling services including collection of recyclable and organic materials in a manner and on terms which are in the best interests of City, its residents and businesses, taking into account the qualifications and experience of Recology and the cost of providing such services; and

WHEREAS, City desires for Recology to assume, and Recology is willing to assume, the obligation to ensure that compliance with certain requirements of the Act continue to be achieved, subject to the terms and conditions in this Agreement and applicable law; and

WHEREAS, City desires to assure City's residents and businesses of service rates that are competitive with those charged in neighboring communities; and

WHEREAS, City in 2013 amended Municipal Code Section 8.24 to provide for the establishment by resolution of two or more separate geographic zones in City for solid waste collection services, and the Brisbane City Council has established by resolution three solid waste collection zones in City; and

WHEREAS, City has determined that Recology is the best provider of solid waste collection services in Solid Waste Collection Zone 3; and

WHEREAS, no residential properties or multiple-unit residential properties presently exist in Solid Waste Collection Zone 3 or are anticipated to be constructed during the term of this Agreement;

WHEREAS, the parties wish to assure the health, safety and public welfare of City's businesses in Solid Waste Collection Zone 3 by providing efficient services for recycling and the collection and disposal of all solid waste generated in City pursuant to the terms of a long-term agreement providing for competitive service rates; and

WHEREAS, Recology has participated in the development of this Agreement and is ready, willing and able to perform the services which the Agreement requires;

NOW, THEREFORE, the parties agree as follows:

1. Franchise Grant

- 1.1 City hereby grants to Recology, and Recology hereby accepts from City, the exclusive franchise, right and privilege, subject only to Section 1.4 below, to collect, remove, transport, recycle, compost and dispose of all solid waste (including recyclable and organic materials) generated in City Solid Waste Collection Zone 3, as shown in the Solid Waste Collection Zone Map attached to Resolution 2013-14, and Recology agrees to provide such services on the terms

and conditions set forth herein and in accordance with the provisions of City's laws and regulations pertaining to the accumulation, collection and removal thereof and any applicable State and Federal statutes or administrative rules.

- 1.2 All solid waste collected by Recology pursuant to this Agreement shall become the property of Recology upon its possession thereof; provided that nothing in this section shall be deemed a waiver by City of its rights and duties under this Agreement.
- 1.3 To the extent permitted by applicable law, City agrees to take such steps as may be reasonably necessary to protect Recology's ownership of solid waste, including recyclable materials, placed at the curbside or designated collection location for collection by Recology under the terms of this Agreement. City and Recology shall also cooperate to protect Recology's exclusive rights to collect all solid waste, including recyclable materials, in accordance with the terms hereof, to the extent permitted by applicable law.
- 1.4 The franchise to collect, remove, transport, recycle, compost and dispose of solid waste (including recyclable materials) granted to Recology hereunder shall, throughout the term hereof and in all respects, be exclusive, except as required by State or Federal law and except as follows:
 - (a) Recyclable materials and salvageable materials generated at any commercial and industrial or institutional property that are source separated may be transported personally by the generating person for donation or sale to a licensed processing facility that has been duly approved and authorized as such by a governmental or other appropriate authority, including beverage containers recycled at authorized facilities under the California Beverage Container Recycling Litter Reduction Act, provided that the generating person is paid (or receives CRV value) for such materials;
 - (b) Recyclable materials and salvageable materials generated at any commercial and industrial or institutional property that are source separated may be put out for collection at the generating person's property for donation to any charitable entity or sale to any other third party that, to the extent required by applicable law, has been duly approved and authorized by a governmental or other appropriate authority to accept or purchase such materials, provided that the generating person is not charged a fee, directly or indirectly, for such materials;
 - (c) Solid waste generated at any commercial and industrial or institutional property may be personally transported by the person generating same to any licensed transfer station or materials recovery facility;

- (d) Yard waste removed from a commercial and industrial or institutional property by a gardening, landscaping or tree trimming contractor using its own employees and equipment as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed landfill, transfer station or materials recovery facility;
- (e) Yard waste collected by the City for re-use on property owned, leased, operated or controlled by the City;
- (f) Construction debris and demolition debris removed from a commercial and industrial or institutional property by a licensed construction or demolition contractor using its own employees and equipment as an incidental part of a comprehensive service offered by such contractor, rather than as a hauling service, may be disposed of by such contractor at any licensed transfer station or materials recovery facility; and
- (g) Hazardous waste may be disposed of in any lawful manner.

1.5 Notwithstanding any other provision of this Agreement, Recology shall have no obligations under this Agreement with respect to any territory outside Zone 3 as it exists on the date hereof.

2. Definitions

As used herein, the following terms (whether or not capitalized) shall have the following meanings:

- 2.1 “Act” or “the Act” means the California Integrated Waste Management Act of 1989, as amended.
- 2.2 “Applicable law” means all applicable federal, State, and local laws, regulations, rules, orders, judgments, decrees, decisions, permits, approvals, or other requirements of any governmental body (including any court).
- 2.3 Reserved.
- 2.4 “Charitable entity” means any 501(c)(3) not-for-profit organization or entity maintained for community service, education or the public good, including service clubs, scouting organizations, religious and educational organizations and recognized charities.
- 2.5 “Collect” or “collection” means the collection, transportation, and removal of solid waste within and from City.

- 2.6 “Commercial and industrial property” means property upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, charitable activities, manufacturing and industrial operations, but excluding businesses conducted upon residential properties or multiple-unit residential properties which are permitted under applicable zoning regulations and are not the primary use of the property.
- 2.7 “Construction debris” means used or discarded construction materials generated during the construction or renovation of a commercial and industrial or institutional property.
- 2.8 “Containers” means any and all types of solid waste receptacles including but not limited to carts, rectangular bins, debris boxes or cylindrical containers, which shall be provided by Recology as set forth herein. The types of containers provided by Recology shall be approved by City as appropriate for City’s physical environment, including but not limited to hillside topography, wind conditions and presence of wildlife. Recology shall initially use the following container types, which have been approved by City: Toter brand wheeled, lidded plastic carts, provided in 32-, 64- and 96-gallon sizes; front loader bins consistent with National Waste & Recycling Association standards, provided in 1 cubic yard increments up to 7 cubic yards, as well as 1.5- and 2.5-cubic yard sizes; and open-top debris boxes consistent with National Waste & Recycling Association standards, provided in 10-, 15-, 20-, 30- and 40-yard sizes. Recology and City shall work cooperatively to monitor “state of the art” containers that are commercially available in the industry for wind and wildlife conditions, and shall work cooperatively to adopt improved container types if they become commercially available during the term of this Agreement (it being understood that the cost of any containers that City directs Recology to adopt shall be recovered by Recology through the ratemaking process).
- 2.9 “Customer” means the person to whom (or to which) Recology submits billing invoices for services provided hereunder. The customer may be the owner, occupant or property manager of a premises, provided that the owner shall be responsible for payment if an occupant or property manager fails to pay.
- 2.10 “Demolition debris” means used construction materials or debris generated during the razing or renovation of a commercial and industrial or institutional property.
- 2.11 “Hazardous waste” means all substances defined or regulated as a pollutant, toxic waste, toxic substance, hazardous substance, hazardous material, hazardous waste, acutely hazardous waste or extremely hazardous waste or words of similar import, under applicable federal or state laws or regulations. Hazardous waste

also includes medical waste within the meaning of the California Medical Waste Management Act.

- 2.12 Reserved.
- 2.13 “Institutional property” means the premises or site of any governmental entity, including city, county, state and/or federal buildings, public schools, colleges, and public recreational sites.
- 2.14 “Multiple-unit residential property” means property used for residential purposes, irrespective of whether such dwelling units are rental units or owner-occupied, where there are five or more units, whether in a single structure, or connected structure, or series of structures.
- 2.15 “Organic materials” means Yard Waste, food scraps, paper contaminated with food scraps, biodegradable plastic food service ware, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered organic materials unless such material is source separated.
- 2.16 “Person” means an individual, corporation, partnership, limited liability company, trust, association or other entity.
- 2.17 “Recyclable materials” means solid waste which may be reused (including as a raw material) or processed into a form suitable for reuse through reprocessing or remanufacture consistent with the requirements of the Act, and which has been source separated. “Recyclable materials” include, without limitation, paper, newsprint, printed matter, pasteboard, paper containers, cardboard, glass, aluminum, PET, HDPE, and other plastics, and beverage containers.
- 2.18 “Residential property” means property used for residential purposes, irrespective of whether such dwelling units are rental units or are owner-occupied, with no more than four units in a single structure, connected structure, or series of structures.
- 2.19 “Salvageable materials” means used articles capable of being restored or resold for reuse, in either case without reprocessing or remanufacture, including antiques, used building supplies and automobiles and automobile parts, and which have been source separated.
- 2.20 “Solid waste” means all solid waste as defined in Public Resources Code Section 40191, including, without limitation, for the purposes of this Agreement, construction debris, demolition debris, recyclable materials, organic materials and salvageable materials, but excluding hazardous waste.

- 2.21 “Solid Waste Collection Zone” means the specific geographic area of City designated in a franchise agreement with a scavenger as the territory for which solid waste collection services shall be provided by that scavenger pursuant to Brisbane Municipal Code Section 8.24.010 and as shown in the Solid Waste Collection Zone Map.
- 2.22 “Solid Waste Collection Zone Map” means that Detailed Zone Map attached to Resolution No. 2013-14 adopted on June 3, 2013, and establishing Zones 1, 2 and 3 for solid waste collection services. A more detailed version of the Solid Waste Collection Zone Map is attached hereto as Exhibit A.
- 2.23 “Source separated”
- (a) as to recyclable materials, means recyclable materials (other than organic materials and yard waste) that have been separated from solid waste that is not recyclable material by the person generating such solid waste or recyclable materials at the commercial and industrial or institutional property where such solid waste or recyclable materials are generated.
 - (b) as to salvageable materials, means salvageable materials that have been separated from solid waste that is not salvageable material by the person generating such solid waste or salvageable materials at the commercial and industrial or institutional property where such solid waste or salvageable materials are generated.
 - (c) as to organic materials, means organic materials that, to the extent City permits, directs or requires them to be source separated, have been separated from solid waste that is not organic materials by the person generating such solid waste or organic materials at the commercial and industrial or institutional property where such solid waste or organic materials are generated.
- 2.24 “Yard waste” means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than six (6) inches in diameter) and similar materials.

3. Term

- 3.1 The term of the franchise for Zone 3 shall be for a period of ten (10) years, commencing on the effective date of _____, 2014 (the “Effective Date”) and ending _____, 2024. The term may also be extended for up to two (2) successive five (5) year terms by the mutual agreement of the parties.

4. Franchise Fee

4.1 Recology is obligated to pay City, on or before April 30th of each year during the term of this Agreement, a franchise fee in an amount equal to fourteen percent (14%) of Recology's annual gross revenues from the collection and disposal of all solid waste collected from within Solid Waste Collection Zone 3 during the preceding calendar year in consideration of the provisions of such Agreement and the exclusive contract, right and privilege herein granted to Recology (the "Franchise Fee"). In the event of any future increase in the Franchise Fee, or the direct or indirect imposition on Recology of any new government fees, the maximum rates hereunder shall be increased to cover the cost to Recology of all such increases or additional fees.

5. Services

5.1 Solid Waste. Recology shall collect and dispose of all solid waste (other than source separated recyclable and organic materials, which are subject to Section 5.2 below) generated by any person at every commercial and industrial and institutional property within Solid Waste Collection Zone 3 at least once each week on a regularly scheduled day in accordance with this Agreement. Collection shall be from curbside, where collection containers are placed on the street or alley against the face of the curb, or where no curb exists placed not more than five (5) feet from the outside edge of the street or alley, provided that collection containers may be placed at greater distances from curbside with the mutual agreement of Recology and the customer, which agreement may include pullout fees.

No later than 90 days after the effective date of this Agreement, Recology shall develop a Trash Container Management Policy, which will be submitted to the City's Director of Public Works/City Engineer for review and approval. Said policy shall contain procedures for notification to the owner or user of trash containers (i.e. Solid Waste, Recyclable Materials and Organic Materials containers) when such containers are filled beyond their maximum closed-lid capacity, and after first-time warnings and provision of outreach material on alternatives to overfilling containers, may include charging an additional fee for the collection and disposal of materials from containers that are filled beyond maximum capacity and require Recology to manually mitigate ensuing safety or litter issues.

5.2 Recyclable and Organic Materials. Recology shall collect all source separated recyclable materials and source-separated organic materials generated by any person at every commercial and industrial and institutional property within Solid

Waste Collection Zone 3 upon a schedule established between Recology and the customer, but not less frequently than is required to expeditiously collect such recyclable or organic materials, without creating storage, health, or safety hazards.

Recology may refuse to collect recyclable or organic materials generated by, and shall not be obligated to continue to provide any recycling or organic materials container to, any person who after reasonable warning, fails to sort recyclable or organic materials properly, or fails or refuses to allow Recology to collect, on an exclusive basis, said person's recyclable or organic materials. Recology shall report to City any warning notices issued by Recology for this purpose, and City shall investigate same to determine whether the person receiving the notice has violated the applicable ordinance.

5.3 Reserved.

5.4 Changes; Missed Pick-Ups. Recology shall not alter or adjust weekly collection service days without providing prior notice to all affected service addresses, and any schedule modifications shall not result in reduced service frequency to any customer. Recology shall collect and remove solid waste and recyclable materials from any premises "missed" or "skipped" during the regularly scheduled time, within one (1) working day after request for collection is made by the customer.

5.5 Containers-Standards. Recology shall collect solid waste from containers of a size and weight customary for the service being provided, provided that such containers (other than debris boxes) have lids capable of preventing solid waste from spilling out under normal circumstances. Containers shall be resistant to wind, and to animal intrusion, as described in Section 2.8. Nothing in this section or Section 5.6 shall be deemed to preclude the use of bins or other containers of a size and shape acceptable to Recology that are not owned by Recology. In the event City and Recology shall institute new programs hereunder which require bins or other containers of a particular size and shape different from the containers originally provided by Recology, customers shall be required to use bins or other containers meeting such requirements, provided that the cost of such bins or other containers is not charged directly to any customer but is recovered by Recology through the ratemaking process.

5.6 Containers-Provision and Replacement

(a) Reserved.

(b) Replacement of Containers. Within five (5) business days of the customer's request, Recology shall repair or replace all Recology-provided carts that have been stolen, destroyed or damaged so as to become unusable. The cost

of such repair or replacement shall be at no additional cost to the customer, except that it shall be charged to the customer if (i) two (2) of a customer's carts have been repaired or replaced at no cost within the previous two (2) years (and in both cases the damage was not caused by Recology collection operations), or (ii) the cart damage resulted from customer abuse or neglect (not including normal wear and tear).

- (c) Commercial and Institutional. Recology shall provide containers for each new commercial and industrial and each new institutional property, within Zone 3 of a size and shape suitable for the service level subscribed for by the customer. The cost of supplying such containers shall be borne by Recology, subject to the last sentence of Section 5.5.
- (d) Ownership. The ownership of all containers purchased by Recology under this Agreement shall be and remain with Recology.
- (e) Reserved.

5.7 Personnel and Equipment. Recology shall furnish the personnel, labor and equipment required for the collection, removal, handling and disposal of all solid waste generated within Zone 3.

5.8 Disposal Facilities. Recology shall haul all solid waste collected by it in Solid Waste Collection Zone 3 to a licensed and suitable disposal facility (i.e., landfill) located outside City selected by Recology, except that Recology shall haul all recyclable material and organic material collected by it in Solid Waste Collection Zone 3 to licensed and suitable processing facilities selected by Recology.

5.9 Local Office. Recology shall maintain an office where service may be applied for and complaints made. The address and telephone number of such office shall regularly be included in customer billings and service information distributed to the public. Recology's office shall have a responsible individual available daily between the hours of eight o'clock a.m. and four-thirty p.m., excepting Saturday, Sunday and holidays. Calls for "missed" collections shall be received in person or by voicemail 24 hours per day, seven days per week.

5.10 Service to City Facilities. Recology shall remove, without charge, solid waste generated at City facilities within Solid Waste Collection Zone 3, when such facilities are owned, leased, operated or controlled by City and are set forth on Exhibit C. Such service shall be provided by Recology at least once each week for the number and volume of containers set forth on Exhibit C. In the event that City shall request Recology to provide services at more City locations than are set forth on Exhibit C, for a greater number or volume of containers than are set forth

on Exhibit C, or more frequently than is set forth above in this Section 5.10, then Recology shall charge City for all such excess services at the corresponding rates set forth on Exhibit B as then in effect; provided, however, that Recology and City may agree to have Recology recover fees for such excess services through the next annual rate adjustment.

In addition, Recology authorizes City to deliver or cause its contractors to deliver to the Recology San Francisco transfer station located at 501 Tunnel Avenue up to four hundred (400) tons of solid waste per year at no cost to City or such contractors, provided that such solid waste (i) is delivered for disposal, (ii) meets the facility's requirements for "general refuse" as in effect from time to time, (iii) is generated within City, and (iv) is collected as a public service by City or by City's contractors pursuant to a contract with City. City will not deliver or permit its contractors to deliver any load that is or contains material not meeting the above requirements, and Recology reserves the right to reject any such load. In addition, the City and its contractors may only deliver such solid waste during the transfer station's normal operating hours, and subject to such limitations as ordinarily apply to third parties using the facility.

- 5.11 Institutional Customers. Certain institutional customers, including federal, state and local government facilities and public schools, are not required, by statute, to subscribe for or accept services from Recology. However, if any such customers do subscribe for such services, Recology may charge at the same rates and provide service on the same terms as for commercial customers hereunder unless such institutional customers enter into separate written agreements with Recology that provide different terms. Recology may charge all other institutional properties for services rendered at the same rates and on the same basis as commercial and industrial properties are charged for similar services.
- 5.12 Reserved.
- 5.13 Reserved.
- 5.14 Abandoned Waste Cleanup Collection Service. Recology shall provide abandoned waste and illegal dumping cleanup collection service on the public right of way within Zone 3 (excluding that portion of Tunnel Avenue between 1020 Tunnel Avenue and the southernmost boundary of 601 Tunnel Avenue) within one (1) business day of being notified by City of the occurrence of material quantities of abandoned waste or illegal dumping, at no additional cost to City up to the following annual limit: fifty (50) pick-ups. This service shall require Recology to collect all abandoned or illegally dumped solid waste, recyclable materials, and organic materials, provided that Recology shall not be required to collect

materials from homeless encampments, police activity, or fires or to perform manual litter collection services (except as provided in Section 5.15). The volumes of abandoned waste so collected shall be provided annually to the Director of Public Works. To the extent reasonable, Recology shall determine the person who abandoned the waste or dumped the waste illegally, e.g., by a cursory examination of the contents of the waste as to printed or other material that might indicate the source of the waste, and shall advise the City of its determination.

For abandoned materials, Recology shall dispatch appropriate employees in appropriate vehicles. In the case of special circumstances, such as where the abandoned waste is not accessible from the roadway or is oversized or overweight, either City will provide reasonable assistance as required to place the waste in Recology's vehicles (for example, by providing its backhoe and an operator for up to two hours) or City will reimburse Recology for the rental cost of any special equipment required for such purpose with notice to City and authorization for special equipment. For items such as hazardous waste and sharps, Recology shall not collect such materials but instead shall promptly notify City.

All abandoned or illegally dumped materials collected by Recology shall be transported for processing, and all related diversion statistics will be included in the appropriate reports to City for all materials collected.

- 5.15 Litter Cleanup for City Properties. At no additional cost to City, Recology shall provide manual cleanup of litter along the frontage of properties along the following streets within Zone 3, at the frequencies indicated below:

Weekly:

Beatty Avenue

Alana Way

Monthly:

Lagoon Way

Tunnel Avenue (excluding that portion of the roadway between 1020 Tunnel Avenue and the southernmost boundary of 601 Tunnel Avenue)

The foregoing service shall not require Recology to provide litter cleanup on private property.

- 5.16 Excess Abandoned Waste and Litter Cleanup Services. If City requests and Recology provides abandoned waste or illegal dumping collection services in

excess of the limits in Section 5.14, or provides litter cleanup services in excess of the level of service set forth in Section 5.15, Recology shall charge City for all such excess services at the corresponding rates set forth on Exhibit B as then in effect; provided, however, that Recology and City may agree to have Recology recover fees for such excess services through the next annual rate adjustment.

- 5.17 Hazardous Waste Inspection and Handling. Recology shall inspect solid waste, recyclable materials, yard waste, organic materials, or other materials put out for collection that appear to contain or be contaminated with hazardous waste. Recology shall develop or maintain a hazardous waste training program for its employees that includes the following components: (i) personnel and training; (ii) load checking activities; (iii) management of wastes; and (iv) recordkeeping and emergency procedures.

Recology's load checking personnel, including its collection vehicle drivers, shall be trained in: (i) the effects of Hazardous Wastes on human health and the environment; (ii) identification of prohibited materials; and (iii) emergency notification and response procedures. Collection vehicle drivers shall inspect containers before collection when practical.

Upon City's request, Recology shall provide City with a copy of its hazardous waste training program, the name of its environmental technician, and the frequency of its training sessions.

Under no circumstances shall Recology's employees knowingly collect hazardous waste or remove unsafe or poorly containerized hazardous waste from a collection container. If Recology determines that material placed in any container for collection is hazardous waste or other material that may not legally be accepted or safely processed at the designated transfer and processing facility or presents a hazard to Recology's employees, or those at the designated transfer and processing facility, Recology shall refuse to accept such material. The generator shall be contacted by Recology and requested to arrange proper disposal. If the generator cannot be reached immediately, Recology shall, before leaving the premises, leave a non-collection notice, which indicates the reason for refusing to collect the material and lists the phone number for a hazardous waste facility, or other resources as directed by City. Either the non-collection notice or a Recology environmental technician shall inform the generator how to safely containerize the hazardous waste and shall explain the generator's options for proper disposition of such material.

If hazardous waste is found in a collection container or collection area that could possibly result in imminent danger to people or property, Recology shall

immediately notify City's Fire Department using the nine-one-one (911) emergency telephone number. Recology shall notify City of any reportable quantities of hazardous waste identified in containers or left at any premises within twenty-four (24) hours of identification of such material.

Recology shall provide suitable operational and safety training for all of its employees who operate Collection vehicles or equipment or who are otherwise directly involved in such Collection. Recology shall train its employees involved in Collection to identify, and not to Collect, Hazardous Waste.

Recology shall comply with emergency notification procedures for hazardous waste required by applicable law and regulatory requirements. Recology shall notify all appropriate agencies, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center, of reportable quantities of hazardous waste found or observed by Recology in solid waste, recyclable materials, yard waste, organic materials, electronic waste and construction and demolition debris anywhere within Solid Waste Collection Zone 3. In addition to other required notifications, if Recology observes any substances which it or its employees reasonably believe or suspect to contain hazardous wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Recology will immediately notify City.

Recology shall retain at its offices all records of hazardous materials required by law to be maintained. These records shall include: waste manifests, waste inventories, waste characterization records, inspection records, incident report and training records. Recology shall maintain records showing the types and quantities, if any, of hazardous waste found in solid waste, recyclable materials, yard waste and organic materials which was inadvertently collected from customers within Solid Waste Collection Zone 3, but diverted from landfilling.

- 5.18 Additional Services. Recology shall provide additional services upon request of City, or upon the proposal of Recology as approved by City, subject, if the costs incurred by Recology to provide such services increase, to the establishment by mutual written agreement of a reasonable rate therefor or an increase in existing rates.

Recology shall provide emergency services at City's request in the event of major accidents, disaster, or natural calamities. Emergency services may include, but are not limited to: assistance handling, salvaging, processing, composting, or recycling materials; or disposing of solid waste following a major accident, disruption, or natural calamity. Recology shall be capable of providing emergency

services within twenty-four (24) hours of notification by City or as soon thereafter as is reasonably practical in light of the circumstances. Emergency services as described herein shall be compensated by City in accordance with Exhibit B. If Recology cannot provide the requested emergency services, City shall have the right to temporarily take possession of Recology's equipment for the purposes of providing emergency services.

The City of Brisbane shall have the option of purchasing CNG for City-owned vehicles that use CNG at the Sunset Scavenger facility located at 501 Tunnel Avenue, at the same cost per gallon that Sunset Scavenger incurs for such CNG (inclusive of fuel, transport, equipment and other associated costs). The City may exercise such option only during the fueling facility's normal operating hours, without interference with Sunset Scavenger's operations, and subject to reasonable limitations based on Sunset Scavenger's operational requirements.

- 5.19 Permits and Licenses. Recology shall obtain and maintain throughout the term of the franchise all permits, licenses and approvals necessary or required for Recology to perform the work and services described herein. City shall cooperate with Recology in connection with such permits, licenses and approvals, and shall renew all such permits, licenses and approvals issued by City, provided that Recology is not in material breach of this Agreement and provided Recology shall have fulfilled all then existing requirements for the renewal of such permits, licenses and approvals.
6. Rates. Recology shall bill customers for its services under this Agreement at the rates set forth in Exhibit B to this Agreement, as adjusted under Section 4.1 above, Sections 6.2 and 6.3 below and other relevant provisions of this Agreement. All customers shall be billed monthly in arrears. Recology shall be entitled to charge commercially reasonable late charges and/or interest on overdue accounts, and may stop service if an account remains overdue for more than ninety (90) days. Recology shall report to the City the name and address of any customer if it stops service because the customer's account remains overdue for more than ninety (90) days.
- 6.1 Establishment of Rates. The maximum service rates specified in Exhibit B to this Agreement have been agreed upon by City and Recology and shall take effect on the effective date of the franchise as set forth in Section 3 above. Such maximum service rates shall be subject to review and revision as set forth in Section 4.1 above, Sections 6.2 and 6.3 below and other relevant provisions of this Agreement. Recology shall not charge any amount in excess of the approved rates for services required by or permitted under this Agreement.

6.2 Modification Based on Refuse Rate Index.

- (a) The maximum rates specified under this Agreement shall be adjusted July 1st every year (beginning in 2016) by a percentage amount equal to the RRI Adjustment Percentage, which shall be calculated as follows:

Step 1: For each Source/Index listed in Table 1 below, calculate the annual percentage change in the Source/Index over the most recent 12-month period for which data are available at the time Recology submits the Notice of Intention described in Section 6.2(c) below.

Step 2: For each Cost Category listed in Table 1 below, multiply the Weighting for such Cost Category set forth in Table 1 below by the percentage change in the Source/Index for such Cost Category calculated in Step 1 above.

Step 3: Add the percentages calculated in Step 2 above. The result is the RRI Adjustment Percentage.

For example, if the annual percentage change is 3.0% for CPI(U), 9.0% for the Fuel Index, and 4.0% under the CBAs, then the RRI Adjustment Percentage equals 3.60% (= (.60 x 4.0%) + (.25 x 3.0%) + (.05 x 9.0%)).

Table 1. Refuse Rate Index

<u>Cost Category</u>	<u>Weighting</u>	<u>Source/Index</u>
Fixed Labor	0.60	As per CBAs
Variable/Processing Costs	0.25	CPI(U)
Biodiesel Fuel	0.05	Fuel Index
Total:	0.90	

- (b) For purposes of this Section 6.2:
- (i) “CBAs” means the collective bargaining agreement(s) in effect from time to time applicable to the employees performing collection services under this Agreement. In connection with any adjustment under this Section 6.2, the annual percentage change calculations shall be based on the changes in wage rates required by the CBAs, and Recology shall make available to the City Manager the portions of the CBAs necessary to confirm such changes.
- (ii) “CPI(U)” means the Consumer Price Index, All Urban Consumers, San Francisco-Oakland-San Jose, Not Seasonally Adjusted, Series ID:

CUURA422SA0, published by the U.S. Department of Labor, Bureau of Labor Statistics.

- (iii) "Fuel Index" means the Total G-NGV1 Charge set forth in Schedule G-NGV1, Natural Gas Service for Compression on Customers' Premises, published by Pacific Gas & Electric Company.
- (c) The procedure for rate adjustments under this Section 6.2 shall be as follows:
- (i) Not later than March 31st of each year that is subject to a rate adjustment under this Section 6.2, Recology shall file with City a written Notice of Intention to increase each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if Recology believes such an increase to be called for, or City shall provide to Recology a written Notice of Intention to decrease each of the then current rates effective as of July 1st of the same year in accordance with the above-specified formula, if City believes such a decrease to be called for.
 - (ii) Within thirty (30) days of the filing of the Notice of Intention, the City Manager shall review the Notice of Intention with Recology, and either confirm that the proposed rates are within the limit of Section 6.2(a) above or establish by mutual agreement with Recology any necessary changes to the proposed maximum rates to make such confirmation.
 - (iii) The City Manager shall immediately inform the City Council in writing of the new maximum rates determined in accordance with this Section 6.2 and, not later than June 30th of the year of the Notice of Intention, the City Council shall act upon the new maximum rates as appropriate, with any new maximum rates to become effective on July 1st of the same year.
 - (iv) In the event that CPI(U) or the Fuel Index shall be discontinued or materially modified during the term of the franchise, the parties shall use their best efforts to substitute a replacement index and/or otherwise change Section 6.2(a) above so as to replicate, as nearly as possible, the mutual intention of the parties to rely on the results of the CPI(U) or the Fuel Index as in effect on the date hereof.

6.3 Extraordinary Items. In addition to adjustments under Sections 4.1 and 6.2 above and other relevant provisions of this Agreement, the maximum rates hereunder

shall be subject to increase or decrease to reflect extraordinary increases or decreases in Recology's costs of providing services hereunder, such as landfill or disposal costs, costs mandated by governmental action or judicial decisions or otherwise required in order to comply with applicable law, franchise fees and similar items. Increases or decreases in maximum rates pursuant to this Section 6.3 shall take effect so as to eliminate, to the maximum extent possible, Recology's loss or gain of profit resulting from the extraordinary increase or decrease in costs from the date(s) such increase or decrease first occurred.

- 6.4 Potential Rate Constraints. The parties recognize that, as of the date this Agreement is entered into, there is no authoritative judicial determination of whether Articles XIII C or XIII D of the California Constitution apply to charges imposed by private enterprises for solid waste handling and recycling services when those charges are regulated by a local government.

The City will not be in default of this Agreement if (i) a majority protest or referendum prevents the initial maximum rates or a proposed maximum rate increase from being adopted, (ii) a court rules that maximum rates adopted by City are not consistent with Article XIII C or D, or (iii) a voter initiative not endorsed by City reduces maximum rates from those in effect. After the occurrence of any event referred to in clauses (i)-(iii) above, the parties shall promptly meet and negotiate in good faith to adjust the Franchise Fee and/or service levels commensurate with the rates that Recology may legally charge, in a manner reasonably calculated (given such rates) to minimize any adverse effect on public health and safety and to allow Recology to cover its necessary costs plus a commercially reasonable profit.

Nothing in this Agreement shall be deemed or construed to be an admission by City or Recology that Articles XIII C or XIII D of the California Constitution apply to the rates charged by Recology under this Agreement.

7. Provisions Applicable to Customer Service, Equipment and Personnel

- 7.1 Recology shall use in connection with transportation of solid waste modern motor dump trucks with water tight bodies, sufficient in number and capacity to efficiently perform the work required by the Agreement. Recology shall keep the outside of the truck bodies reasonably free from dirt and debris, and shall clean the inside of the trucks in a sanitary manner on a regular basis. Suitable measures shall be taken to prevent refuse from falling into public streets or places. Recology shall keep all trucks freshly painted in a uniform manner, and the firm name, telephone number, and truck number of each truck shall appear on each side thereof in a conspicuous manner. Recology shall keep all trucks in good

maintenance and repair, regularly inspect same, and keep accurate records of all vehicle maintenance.

- 7.2 Recology shall not litter premises in the process of making collections nor allow refuse to blow or fall from any container or vehicle used for collections. Recology shall clean-up any and all spills, including oil and debris on the streets, resulting from its operations as soon as possible on the same day as the occurrence. Recology shall use due care to prevent vehicle oil, vehicle fuel, or other liquids from being spilled during collection or transportation operations. Should Recology fail to promptly clean up such spills resulting from its operations after notice from City, Recology shall be liable to City for all reasonable costs incurred by City in doing so
- 7.3 Recology shall provide suitable operational and safety training for all of its employees who utilize or operate vehicles or equipment for collection of solid waste or who are otherwise directly involved in such collection. Recology shall also designate one or more qualified employees as supervisors of field operations, who will devote a substantial portion of their time in the field checking on collection operations, including responding to complaints, it being understood that such supervisors may divide their time among collection operations in different jurisdictions.
- 7.4 Recology's general manager shall have e-mail capabilities to enable City and Recology's general manager to communicate via email. Recology's general manager shall respond to City email correspondence within twenty-four (24) hours of the first business day after notification.
- 7.5 Upon request from City, beginning on the effective date, and then on a monthly basis thereafter if requested, Recology shall meet with the City to discuss progress of each active diversion program, quality and reliability of collection services, and compliance with the terms of the Agreement. At each meeting, City and Recology shall have the opportunity to present and discuss proposed changes in service such as changing program requirements or modifying collection methods.
- 7.6 City shall have the right, but not the obligation, to observe and inspect all of Recology's operations under this Agreement. In connection therewith, City shall have the right to enter facilities used by Recology during operating hours, speak to any of Recology's employees and receive cooperation from such employees in response to inquiries. Recology shall make specified personnel available to accompany City employees on such inspections. In addition, upon reasonable notice and without interference with Recology's operations, City may review and copy such of Recology's operational and business records related to this

Agreement (including electronic records) as are reasonably necessary to confirm the costs of any activities for which Recology is requesting a rate adjustment, the amount of franchise fee payments made or required to be made by Recology, and/or any diversion-related data pertaining to Recology's activities under this Agreement. All such records shall be kept confidential by City except as otherwise provided in Section 19 below.

- 7.7 The City Manager may direct Recology in writing to make changes in services and service levels, and in the manner in which services are performed, that do not cause an increase in the cost of performing the services (as determined by Recology) and that do not cause a material decrease in the level of service (as determined by the City Manager).
- 7.8 Recology is required to operate a customer service call center that will serve as the primary telephone point of contact and information for all services. The customer service call center hotline is required to be staffed live during regular business hours (i.e., Monday through Friday 8:00 a.m. to 4:30 p.m.).
- 7.9 Recology shall maintain and publicize an up-to-date website whereby customers can conduct business with Recology. Recology is required to update the website monthly, and more frequently if necessary. At a minimum, the website shall:
- (a) Allow customers to view and pay bills issued by Recology;
 - (b) Allow customers to request services such as, but not limited to, extra collections, service changes, temporary drop box service, service terminations, and service stops;
 - (c) Provide answers to 10 frequently asked questions, including, but not limited to: proper container set-out instructions; list of acceptable recyclable and organic materials; collection days (in response to customer input of service address); billing issues, customer service telephone and email contact information; and the designated processing and transfer station site hours, directions, and acceptable materials;
 - (d) Provide complete list of City-approved rates for all customers;
 - (e) Allow customers to file complaints and receive from Recology e-mail responses to complaints;
 - (f) Provide a link to enable customers to email Recology; and
 - (g) Maintain and produce visitor logs and reporting, including, but not limited to, website and individual page visitation, number of web-based bill

payments per month, number of website-submitted complaints per month, and individual and summary customer complaint and resolution reporting, subject to applicable privacy laws.

- 7.10 Recology shall employ only competent and qualified personnel who serve the public in a courteous, helpful, and impartial manner. Recology shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Recology shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection employees to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Recology shall take appropriate corrective measures. City may require Recology to reassign an employee, if the employee has conducted himself or herself inconsistently with the terms of this Agreement.

Recology shall adopt policies and procedures consistent with State and federal law that ensure a sober and drug-free workplace. This includes strictly prohibiting unlawful manufacture, distribution, possession, or use of any controlled substance in the workplace, regardless of whether the employee is on duty at the time. Further, the policies and procedures shall prohibit an employee from operating either City or Recology equipment or vehicles (whether on or off duty) while under the influence of alcohol or drugs. The purpose of these policies and procedures is to ensure workplace safety, productivity, efficiency, and the quality of Recology's service to customers.

Recology shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for collection services or accept gratuities or compensation in exchange for additional collection services.

8. Records, Reports and Audited Statements

- 8.1 Recology shall keep and maintain accurate books and records clearly showing its revenues and expenses in connection with the operations provided for in this Agreement.
- 8.2 Within thirty (30) days of the City's request therefor, Recology shall provide City with compiled financial statements showing Recology's results of operations within Zone 3 for Recology's most recent fiscal year, including the specific revenues and expenses in connection with the operations provided for in this Agreement. The financial statements shall be prepared by a certified public accountant (CPA) licensed (in good standing) to practice public accounting in the

State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy.

- 8.3 Recology shall make available to City such additional information or reports, as are reasonably requested by City from time-to-time upon reasonable notice by City.
- 8.4 Annually during the period from the commencement of the franchise through the date which applies for purposes of measuring compliance with the diversion requirements of the Act, Recology shall supply City with a written report setting forth Recology's best estimate of the diversion rate as of the end of the most recent month. Recology shall also supply City with such information as City may reasonably request and as Recology possesses concerning such estimate or Recology's activities pursuant to this Agreement, including without limitation any such information reasonably requested by City in connection with the filing of City's reports to CalRecycle or other governmental authorities concerning Act compliance.
- 8.5 Sustainability Report. Recology shall develop and submit to City an annual sustainability report. Recology shall annually file its emissions data with The Climate Registry ("TCR"). The annual sustainability report shall be submitted with Recology's annual report. This report shall include: information on Recology's emissions data filed with TCR; a description of Recology's carbon footprint; and, a description of Recology's activities both planned and implemented to reduce its carbon footprint. Notwithstanding the foregoing, this Section 8.5 shall have no effect unless and until Recology constructs a new facility in Zone 3 and receives a certificate of occupancy for such facility.

9. Hold Harmless and Insurance

- 9.1 Recology shall indemnify and hold harmless City, its Council, boards, commissions, officers, agents, representatives and employees (collectively, "Indemnitees") from any and all actions, claims or damages brought for or on account of injuries to or death of any person or damage to property resulting from or arising out of the operations of Recology, its officers, agents, employees or servants pursuant to this Agreement. The duty of Recology to indemnify and hold harmless shall include the duty to defend as set forth in California Civil Code Section 2778.
- 9.2 Recology shall have in effect during the term of the franchise, workers' compensation and employer liability insurance providing full statutory coverage. In signing this Agreement, Recology makes the following certification required by Section 1861 of the California Labor Code.

“I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability of workers’ compensation or to undertake self-insurance in accordance with the provisions of the code, and I will comply with such provisions before commencing the performance of the work of this Agreement.”

9.3 Recology shall take out and maintain during the term of the franchise liability insurance for the following types and minimum amounts (such minimum amounts to be subject to review by the parties every five (5) years), provided that the stated limits in (a) and (b) below may be satisfied by any combination of basic and excess liability policies:

- (a) General liability, including comprehensive form, premises operations, products/completed operations, hazard, contractual insurance, broad form property damage, independent contractors and personal liability, with limits for bodily and property damage combined of \$1,000,000 each occurrence and \$5,000,000 aggregate.
- (b) Automobile liability, including comprehensive form, owned, hired and non-owned, with a limit of \$2,000,000 for bodily injury and property damage combined.
- (c) Excess liability, umbrella form, with a limit for bodily injury and property damage combined of \$10,000,000 each occurrence and \$10,000,000 aggregate.
- (d) The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best’s Insurance Reports of A- or better.

The policies shall contain endorsements or certificates in substantially the following form if available from the insurance companies:

- (i) Workers’ Compensation and Employers’ liability Policy.
 - “Prior written notice shall be given to the Insured in the event of cancellation or nonrenewal of this policy in accordance with the terms of this policy.” (In the event that Recology receives any such notice, it shall immediately send a copy to:

Attention: (Brisbane contact info.)

- “Insurer waives all right of subrogation against City and its officers and employees for injuries or illnesses arising from work performed for City.”
- (ii) Comprehensive General Liability Policy: Automobile liability Policy; Pollution Liability Policy; and Hazardous Materials Policy.
- “Prior written notice shall be given to the Insured in the event of cancellation, reduction of coverage, or nonrenewal of this policy in accordance with the terms of this policy.” (In the event that Recology receives any such notice, it shall immediately send a copy to:

Attention: (Brisbane contact info).)

“The City, its officers, employees, and agents are additional insureds on this policy.”
- (e) “This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”
- (f) “Inclusion of the City as an insured shall not affect the City’s rights as respects any claim, demand, suit or judgment brought or reconvened against Recology.”

Recology remains responsible for the payment of all losses and investigation, claim administration and defense expenses, including those of City.

No later than thirty (30) days before the effective date, Recology shall furnish City one or more certificates of insurance on a standard ACORD form substantiating that each of the coverages required hereunder is in force, in form and substance satisfactory to City. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If City requests, copies of each policy, together with all endorsements, shall also be promptly delivered to City. Recology shall furnish renewal certificates to City to demonstrate maintenance of the required coverages throughout the term of this Agreement.

In the event performance of any services is delegated to a subcontractor, Recology shall require such subcontractor to provide statutory workers’ compensation insurance and employer’s liability insurance for all of the subcontractor’s employees engaged in the work. The liability insurance required by this Agreement and the automobile liability policy required by this Agreement

shall cover all subcontractors or the subcontractor must furnish evidence of separate insurance meeting all of the requirements above.

Recology shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Recology from any obligation under this Agreement. If any claim is made by any third person against Recology or any subcontractor on account of any occurrence related to this Agreement, other than claims by employees for work-related incidents, Recology shall promptly report the facts in writing to the insurance carrier and to City.

If Recology fails to procure and maintain any insurance required by this Agreement, City may take out and maintain such insurance as it may deem proper and may require Recology to reimburse it for the cost incurred within thirty (30) days and/or deduct the cost from any monies due Recology. City may also treat the failure as a Recology default.

City is not responsible for payment of premiums for or deductibles under any required insurance coverages.

10. Hazardous Waste Indemnification

Recology shall indemnify, defend and hold harmless City and its officers, employees and agents (collectively, the "Indemnitees") against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous wastes released, spilled or disposed of by Recology pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless and indemnify Indemnitees from liability and shall survive the expiration or earlier termination of this Agreement. Notwithstanding the foregoing, Recology is not required to indemnify the Indemnitees against claims arising from Recology's delivery of solid waste, recyclable materials, yard waste or organic materials to any transfer or processing site, or their subsequent delivery to other processing locations or the ultimate disposal site, unless such claims are due to Recology's negligence or willful misconduct.

11. California Integrated Waste Management Act Indemnification

Recology agrees to indemnify and hold harmless the Indemnitees against all fines and/or penalties imposed by CalRecycle or the Local Enforcement Agency (LEA) if and to the extent the same result from Recology's failure to comply with laws, regulations or

permits issued or enforced by CalRecycle or the LEA or Recology's failure to perform obligations under this Agreement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1 but is enforceable to the maximum extent allowable by that Section. This indemnity shall survive the termination or earlier expiration of this Agreement.

12. Franchise Termination

- 12.1 In the event Recology defaults in the performance of any of the duties to be performed by it under the terms of this Agreement, City shall give Recology written notice, either by mail or by personal service, setting forth the default. Recology shall correct such default within fifteen (15) days after receipt of such notice unless the default cannot, by its nature, be cured within said period, in which case the cure period shall be extended for such additional time as is reasonably necessary to effect a cure, provided that Recology shall commence efforts to effect a cure as soon as practicable and shall diligently pursue and complete the cure. If Recology fails, neglects or refuses for the applicable cure period to correct any default which constitutes a material breach of this Agreement, then City, without further notice and without suit or other proceedings, may terminate this Agreement upon thirty (30) days prior written notice to Recology. Nothing in this section shall prohibit the parties from meeting to discuss and negotiate ways to resolve the issue.
- 12.2 In the event City elects to terminate the franchise grant pursuant to Section 12.1 above, City shall have the right forthwith to grant a franchise to another scavenger company or City may elect to assume responsibility for collection of solid waste within all or any portion of its jurisdiction. Until such time as trucks and other equipment are either provided by another scavenger company or are acquired by City for its own use, City may take possession of the trucks and other equipment of Recology used to perform work under this Agreement for a period not to exceed one hundred eighty (180) days. In such event, City shall pay to Recology the reasonable rental value of such trucks and equipment, and keep them in good maintenance and repair, during the time the same are used by City. City and its authorized representatives shall also have access to Recology's billing records for the purpose of billing service accounts during the period City is providing the services described in this Agreement, and shall retain all fees collected for such services.
- 12.3 In the event of any dispute arising between the parties under this Agreement, the parties shall first submit such dispute to non-binding mediation to be completed within ninety (90) days before a JAMS mediator having experience with contracts similar to this Agreement and that is mutually acceptable to the parties. If the

parties are unable, after a period of thirty (30) days, to agree on a mediator, either party shall be entitled to petition a court of competent jurisdiction to appoint such a mediator for the parties. Each party shall bear its own costs, including attorney's fees, incurred in connection with the mediation, and shall pay half the cost of the mediator. If the mediation does not result in a resolution of the dispute that is acceptable to both parties, either party may institute litigation. The prevailing party in such litigation shall be entitled to recover from the other party its reasonable attorney's fees, costs and necessary disbursements, including expert witness fees, incurred in such litigation.

- 12.4 If Recology shall at any time during the term of this Agreement or any extension thereof, become insolvent, or if proceedings in bankruptcy shall be instituted by or against Recology, or if Recology shall be adjudged bankrupt or insolvent by any court, or if a receiver or trustee in bankruptcy or a receiver of any property by Recology shall be appointed in any suit or proceeding brought by or against Recology, or if Recology shall make an assignment for the benefit of creditors, then and in each and every such case, and provided that such proceedings, adjudication, appointment or assignment, as the case may be, continue in effect for ninety (90) days without being vacated, removed or withdrawn, this Agreement shall immediately cease and come to an end, and the rights and privileges granted shall immediately be cancelled and annulled without notice or action required on behalf of City.
- 12.5 Notwithstanding any other provision herein, no default, delay or failure to perform on the part of either party shall be considered a breach hereunder if such default, delay or failure to perform is due to causes beyond such party's control, including, but not limited to, riots, civil disturbances, actions or inactions of governmental authorities, epidemic, war, embargoes, severe weather, fire, earthquake, acts of God, defaults by the other party, or defaults by carriers. In the event of any such default, delay or failure to perform, any dates or times by which the affected party otherwise is scheduled to perform shall be extended for a period of time equal in duration to the additional time required because of the excused default, delay or failure to perform; provided, however, that in the case of Recology's inability to perform due to a labor strike or work stoppage by Recology's employees (other than in sympathy with any labor strike or work stoppage by employees of a third party), the dates or times for performance shall not be extended beyond a period of five (5) days. Irrespective of any grace period provided for in this Agreement, Recology shall immediately restore service after such grace period and pick up all solid waste accumulated during such period.

13. Assignment

Recology acknowledges that this Agreement involves rendering a vital service to City and its businesses in Solid Waste Collection Zone 3, and that City has selected Recology to perform the services specified herein based on (i) Recology's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, and (ii) Recology'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 Recology to perform the services to be rendered by Recology under this Agreement.

Recology shall not assign its rights or delegate or otherwise transfer its obligations under this Agreement to any other Person (except another majority-owned direct or indirect subsidiary of Recology Inc.) 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 Recology default.

For the purpose of this Section, "assignment" shall also include (i) a sale, exchange or other transfer to a third party not controlled by the then stockholders (direct or indirect) of Recology of substantially all of Recology's assets dedicated to service under this Agreement; (ii) a sale, exchange or other transfer of outstanding common stock of Recology to a person who is not a shareholder as of the effective date and which results in a change in control of Recology; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change in control of Recology; and (iv) any assignment of this Agreement or of all or substantially all of Recology's assets dedicated to service under this Agreement by operation of law, including an assignment for the benefit of creditors, a writ of attachment for an execution being levied against this Agreement, or appointment of a receiver taking possession of Recology's property, or transfer of such property occurring in the event of a probate proceeding.

"Change in control of Recology" shall mean a transfer of more than fifty percent (50%) of Recology's voting stock to one or more persons that are not then stockholders of Recology, relatives of any such stockholders or controlling, controlled by or under common control with any such stockholders.

In the event of any assignment, Recology shall perform in accordance with a reasonable transition plan.

RECOLOGY:

Group Manager
Recology Brisbane
250 Executive Park, Suite 2100
San Francisco, CA 94134

or to such other person or address as may be specified from time to time in writing by either party. Each such notice shall be deemed effective upon receipt or, if mailed as aforesaid, three (3) business days after so mailed, or, if sent by overnight courier, upon confirmation of delivery.

18. Compliance with Law

In providing the services required under this Agreement, Recology shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, and by City, now in force and as they may be enacted, issued or amended during the term of this Agreement, and with all permits affecting the services to be provided hereunder.

19. Reports as Public Records

The reports, records and other information submitted or required to be submitted by Recology to City are or may be public records within the meaning of that term in the California Public Records Act, Government Code Section 6250 *et seq.* Unless a particular record is exempted from disclosure by the California Public Records Act, it must be disclosed to the public by City upon request.

City agrees to inform Recology as soon as reasonably feasible upon its receipt of a request under the California Public Records Act for disclosure of any documents relating to Recology that contain confidential financial and/or operational information belonging to Recology so that Recology will have an opportunity to explore whether an exemption from disclosure is available. If City complies with the preceding sentence, Recology will not object to City making available to the public, in response to a request from a member of the public, any information submitted by Recology, or required to be submitted, in connection with Recology's maximum rate applications, including, but not limited to, records described in Section 6, provided that disclosure of such information or records is subject to disclosure under the terms of the California Public Records Act, in the City's sole discretion.

20. No Gifts

Neither Recology nor its employees shall provide, directly or indirectly, any gifts or gratuities to any elected or appointed City official, or to any City employee responsible for administering any provision of this Agreement. Elected or appointed City officials

affected by this provision include members of the City Council, the City Manager and any assistant, deputy or interim City Manager, and department-director level employees.

21. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California, irrespective of choice of law principles.

22. Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in San Mateo County.

23. Parties in Interest

Nothing in this Agreement is intended to confer any rights on any persons other than the parties to it and their permitted successors and assigns.

24. Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

25. Exhibits

Each of the Exhibits attached hereto is incorporated herein and made a part hereof by this reference.

26. Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

27. Interpretation

This Agreement shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

28. Costs and Attorneys' Fees

The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement shall recover its reasonable costs expended in connection with such an action from the other party, including its reasonable attorneys' fees.

29. No Damages for Invalidation of Agreement

If a final judgment of a court of competent jurisdiction determines that this Agreement is illegal or was unlawfully entered into by City, neither party shall have any claim against the other for damages of any kind (including but not limited to loss of profits) on any theory.

30. References to Laws

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions the specified agencies are currently performing. As used herein, the word "include" and its variants mean "including without limitation."

31. Indemnity Against Challenges to Agreement

Recology shall indemnify, defend and hold harmless City and its officers, employees and agents (collectively, the "Indemnitees") from and against any and all liability, claim, demand, action, proceeding or suit of any and every kind and description brought by a third party challenging the process by which proposals were solicited and evaluated or this Agreement was negotiated or awarded, to the extent that such liability, claim, demand, action, proceeding or suit was caused by Recology's failure to comply with applicable law or the lawful instructions of any Indemnitee with respect to such process.

32. Amendments

This Agreement may be amended from time to time only by written agreement between the parties signed by an authorized representative of each party.

33. Successors and Assigns

This Agreement shall be binding upon, and shall inure to the benefit of, each of the permitted successors and assigns of the parties.

34. Integration; Severability

This Agreement, including the Exhibits hereto, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements between the parties, whether written or oral, relating to such subject matter. If a court finds any provision of this Agreement invalid or unenforceable as applied to any circumstance, the remainder of this Agreement and the application of such provision to other persons or circumstances shall remain in effect. The parties further agree to replace such void or unenforceable provision with a valid and enforceable provision which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

IN WITNESS WHEREOF, the parties have executed this Agreement.

RECOLOGY BRISBANE

_____, President

CITY OF BRISBANE

_____, Mayor

ATTEST:

Sheri Spediacci, City Clerk

APPROVED AS TO FORM

Michael Roush, City Attorney

EXHIBIT A
DETAILED ZONE MAP
(see attached)



Includes Main St and Bayshore S of Main

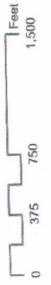


ATTACHMENT A (Page 1 of 4)

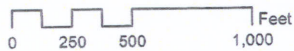
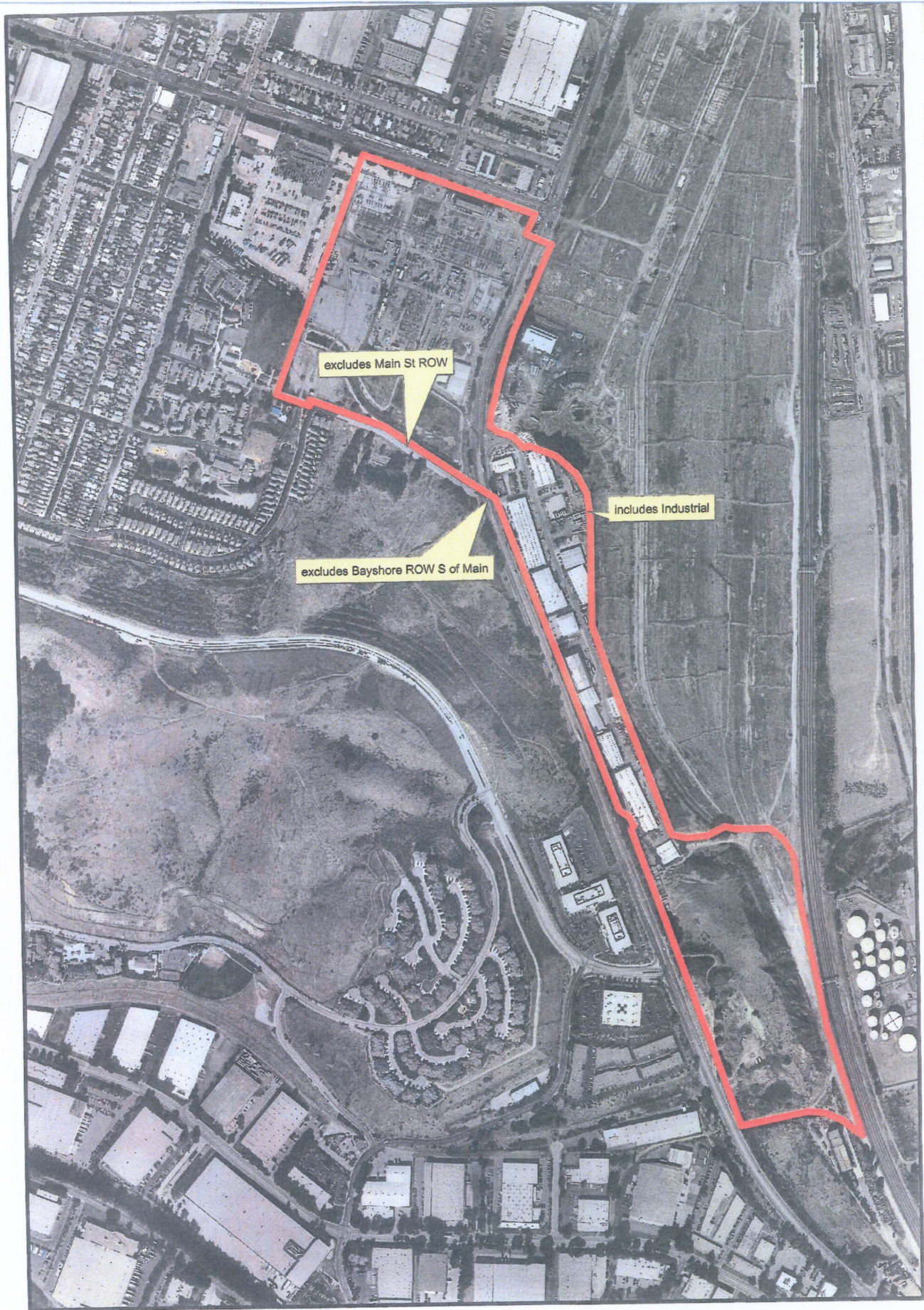
City of Brisbane
Solid Waste Collection Zone
1 - A



**City of Brisbane
Solid Waste Collection Zone
1 - B**

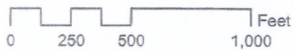
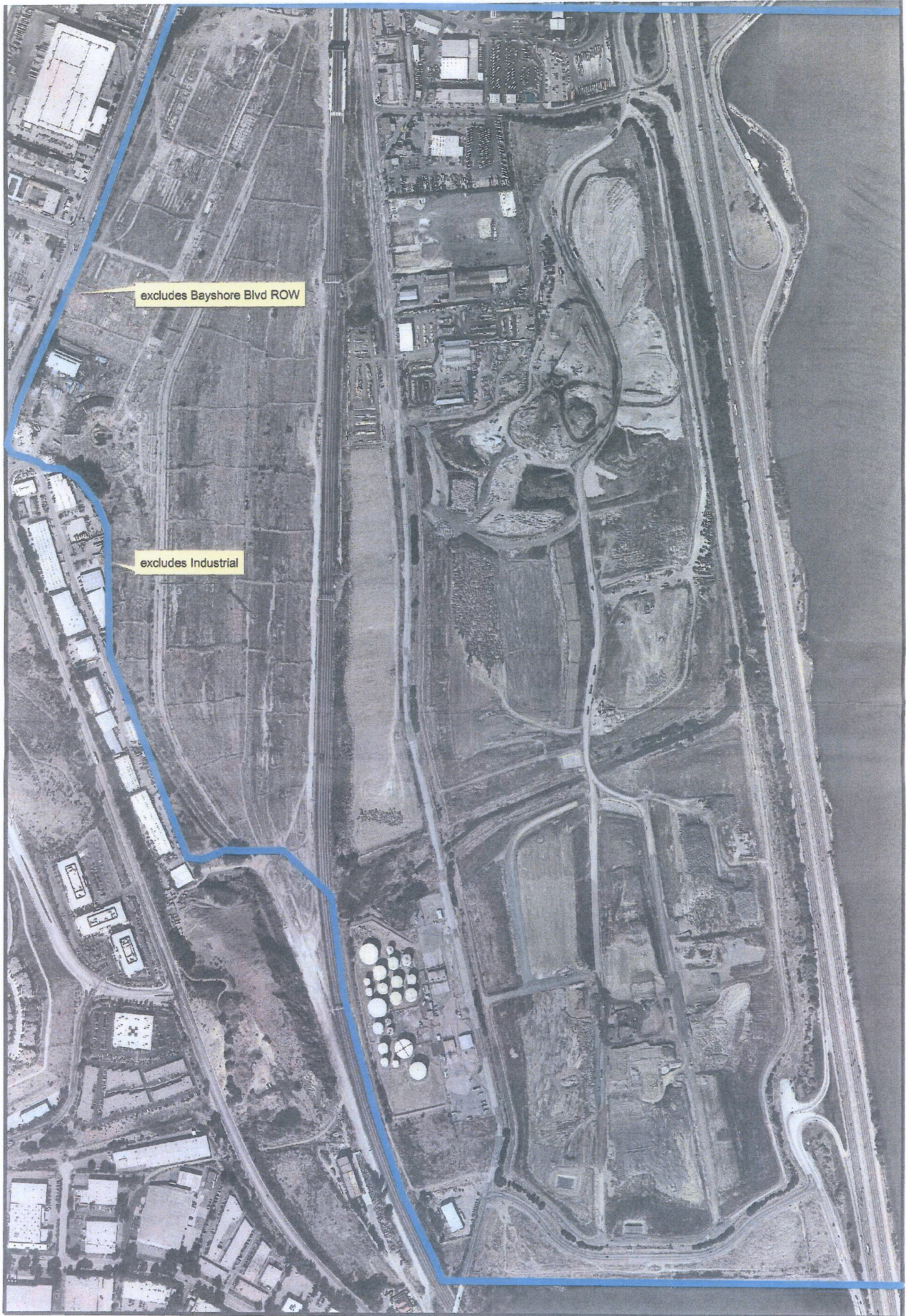


ATTACHMENT A (Page 2 of 4)



**City of Brisbane
Solid Waste Collection Zone**

2



**City of Brisbane
Solid Waste Collection Zone**

EXHIBIT B
MAXIMUM SERVICE RATES
(see attached)

RATE BOOK

UNIFORM COMMERCIAL RATES

Commercial rates include the following components:

- Volumetric charges shown are for trash service
- Recycling services are charged at 25% of the volumetric rate for trash
- Composting services are charged at 75% of the volumetric rate for trash
- There are separate charges for premium services, such as key, distance and elevation

COMMERCIAL RATES

UNIFORM COMMERCIAL RATES 32 GALLON CARTS

NOTE:

These rates apply to Carts located outside.

Carts located inside:

- Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
- Carts located 4 feet or more above or below ground level will be charged 25% more.

Rates listed below are for carts up to 45 pounds. Any weight exceeding 45 pounds will be charged an additional \$0.0757 per pound.

Key Charges:

- 1 Per Week = \$14.90
- 2 Per Week = \$26.22
- 3 Per Week = \$37.29
- 4 Per Week = \$47.98
- 5 Per Week = \$58.71
- 6 Per Week = \$74.82
- 7 Per Week = \$92.13
- Saturday = \$16.11
- Sunday = \$17.32

PICKUPS	1 Cart
1 Per Week =	\$54.53
2 Per Week =	\$109.05
3 Per Week =	\$163.54
4 Per Week =	\$218.07
5 Per Week =	\$272.60
6 Per Week =	\$335.50
7 Per Week =	\$406.83
Saturday =	\$62.91
Sunday =	\$71.33

FOR ADDITIONAL CONTAINERS: MULTIPLY TIMES PER WEEK BY THE NUMBER OF CANS.

COMMERCIAL RATES

UNIFORM COMMERCIAL RATES 64 GALLON CARTS

NOTE: These rates apply to Carts located outside.

Carts located inside:

- Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
- Carts located 4 feet or more above or below ground level will be charged 25% more.

Rates listed below are for carts up to 90 pounds. Any weight exceeding 90 pounds will be charged an additional \$0.0757 per pound.

EXTRA PICK-UPS:

Regular = \$34.83 Saturday = \$47.01 Sunday = \$62.71

Key Charges:

- 1 Per Week = \$14.90
- 2 Per Week = \$26.22
- 3 Per Week = \$37.29
- 4 Per Week = \$47.98
- 5 Per Week = \$58.71
- 6 Per Week = \$74.82
- 7 Per Week = \$92.13
- Saturday = \$16.11
- Sunday = \$17.32

ADD'L CARTS

	1 CART	2 CARTS	3 CARTS	4 CARTS	5 CARTS	6 CARTS	ADD'L CARTS (EACH)
1 Per Week =	\$111.71	\$206.88	\$302.08	\$396.79	\$492.38	\$587.51	\$95.16
2 Per Week =	\$212.42	\$402.74	\$593.05	\$782.94	\$973.31	\$1,163.14	\$190.32
3 Per Week =	\$313.12	\$598.17	\$883.61	\$1,169.09	\$1,454.18	\$1,739.61	\$285.46
4 Per Week =	\$413.76	\$794.43	\$1,174.62	\$1,554.83	\$1,935.49	\$2,315.68	\$380.59
5 Per Week =	\$514.48	\$989.83	\$1,465.22	\$1,940.98	\$2,415.98	\$2,891.77	\$475.73
6 Per Week =	\$637.69	\$1,217.51	\$1,809.29	\$2,378.06	\$2,957.21	\$3,537.47	\$580.21
7 Per Week =	\$782.96	\$1,486.46	\$2,201.84	\$2,894.23	\$3,597.01	\$4,300.83	\$703.77
Saturday =	\$123.21	\$227.68	\$344.07	\$437.09	\$541.23	\$645.70	\$104.48
Sunday =	\$145.27	\$268.95	\$392.55	\$516.17	\$639.80	\$763.37	\$123.55

COMMERCIAL RATES

UNIFORM COMMERCIAL RATES 96 GALLON CARTS EFFECTIVE

NOTE: These rates apply to Carts located outside.

Carts located inside:

- Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
- Carts located 4 feet or more above or below ground level will be charged 25% more.

Rates listed below are for carts up to 135 pounds. Any weight exceeding 135 pounds will be charged an additional \$0.0757 per pound.

EXTRA PICK-UPS:

Regular = \$40.78 Saturday = \$55.06 Sunday = \$73.40

Key Charges:

- 1 Per Week = \$14.90
- 2 Per Week = \$26.22
- 3 Per Week = \$37.29
- 4 Per Week = \$47.98
- 5 Per Week = \$58.71
- 6 Per Week = \$74.82
- 7 Per Week = \$92.13
- Saturday = \$16.11
- Sunday = \$17.32

ADD'L CARTS

	1 CART	2 CARTS	3 CARTS	4 CARTS	5 CARTS	6 CARTS	ADD'L CARTS (EACH)
1 Per Week =	\$149.11	\$275.30	\$402.74	\$529.30	\$656.34	\$782.94	\$126.57
2 Per Week =	\$283.34	\$537.01	\$790.57	\$1,043.80	\$1,297.45	\$1,551.02	\$253.18
3 Per Week =	\$417.57	\$797.82	\$1,178.01	\$1,558.71	\$1,938.88	\$2,319.12	\$379.77
4 Per Week =	\$551.79	\$1,058.70	\$1,565.87	\$2,073.15	\$2,580.36	\$3,087.61	\$506.35
5 Per Week =	\$686.11	\$1,319.95	\$1,953.78	\$2,587.61	\$3,221.43	\$3,855.71	\$632.92
6 Per Week =	\$850.12	\$1,623.22	\$2,396.90	\$3,170.00	\$3,943.20	\$4,717.23	\$772.69
7 Per Week =	\$1,043.85	\$1,981.81	\$2,920.28	\$3,858.25	\$4,796.27	\$5,735.12	\$937.49
Saturday =	\$164.01	\$303.27	\$443.12	\$582.39	\$721.77	\$861.52	\$139.78
Sunday =	\$193.73	\$358.59	\$523.39	\$688.25	\$853.06	\$1,017.89	\$164.80

COMMERCIAL RATES

UNIFORM COMMERCIAL RATES FOR CONTAINERS EFFECTIVE July 1, 2014

NOTE:

These rates apply to containers located outside.

Containers located inside:

- Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
- Containers located 4 feet or more above or below ground level will be charged 25% more.

Key Charges:

- 1 Per Week = \$14.90
- 2 Per Week = \$26.22
- 3 Per Week = \$37.29
- 4 Per Week = \$47.98
- 5 Per Week = \$58.71
- 6 Per Week = \$74.82
- 7 Per Week = \$92.13
- Saturday = \$16.11
- Sunday = \$17.32

EXTRA PICK-UPS (per yard):

Regular = \$72.99 Saturday = \$98.56 Sunday = \$131.32

Uncompacted weight: 300 pounds per yard, plus \$7.57 per 100 pounds (\$0.0757 per pound) over 300 pounds.

PICKUPS	1 YD	1.5 YDS	2 YDS	2.5 YDS	3 YDS	4 YDS	6 YDS	7 YDS
1 Per Week =	\$327.58	\$503.83	\$583.27	\$729.44	\$813.53	\$1,017.04	\$1,444.39	\$1,684.83
2 Per Week =	\$583.27	\$890.85	\$1,098.58	\$1,373.85	\$1,566.31	\$2,007.27	\$2,847.59	\$3,322.51
3 Per Week =	\$874.72	\$1,336.03	\$1,647.88	\$2,060.38	\$2,318.69	\$2,969.91	\$4,210.83	\$4,912.25
4 Per Week =	\$1,166.14	\$1,781.27	\$2,197.17	\$2,747.32	\$3,051.07	\$3,905.41	\$5,532.89	\$6,455.19
5 Per Week =	\$1,457.99	\$2,226.48	\$2,746.47	\$3,434.28	\$3,763.54	\$4,814.09	\$6,814.64	\$7,950.10
6 Per Week =	\$1,900.24	\$2,906.61	\$3,534.09	\$4,416.45	\$4,861.29	\$6,187.16	\$8,569.55	\$10,225.02
7 Per Week =	\$2,489.49	\$3,813.61	\$4,583.81	\$5,729.59	\$6,325.27	\$8,017.72	\$11,169.05	\$12,881.87
Saturday =	\$442.25	\$680.14	\$787.63	\$982.17	\$1,097.75	\$1,373.06	\$1,754.92	\$2,274.93
Sunday =	\$589.24	\$907.00	\$1,049.72	\$1,313.14	\$1,463.98	\$1,830.57	\$2,599.50	\$2,656.85

EXHIBIT C

CITY FACILITIES IN ZONE 3 RECEIVING FREE SERVICE

Facility Name	Facility Address	Container Volume
Corporation Yard	1020 Tunnel Avenue	6 CY Recyclable Materials * 3 CY Solid Waste *

* Containers must be kept at a location within the Corporation Yard not accessible to the public, and must not contain oversize or bulky items.