PROPOSED REVISION TO SECTION 3.10 OF 2007 – 2014 SUNNYVALE SMaRT STATION OPERATING AGREEMENT

3.10 **Personnel.** Contractor shall furnish qualified competent drivers and maintenance, supervisory, clerical, laborers and other personnel in sufficient numbers to perform the work required by this Agreement (including the continued and uninterrupted operation and maintenance of the Station and the transfer of Municipal Solid Waste to the Disposal Facility and Recyclable Materials to market) in a safe and efficient manner.

At or before the time it takes over operation of the Station, the Contractor shall fill the positions required to perform its duties and services under this Agreement at the Transfer Station by first offering employment to those employees of the predecessor contractor operating the Station who are working at the Station, and who are eligible for hire in accordance with applicable state and federal laws. Contractor is prohibited from discharging any of the employees so hired for at least 120 days after the date it commences operation of the Station except for cause. After the initial 120 days, the continued employment of workers hired by the Contractor will be under the terms and conditions established for all of Contractor's workers in the particular job classification.

In the event that the Contractor does not have enough positions available to offer employment to all of the predecessor contractor's employees desiring continued employment, the Contractor shall maintain a list of all of the predecessor's employees who are not offered employment, and for any positions that become available during the initial 180 day period of this Agreement, the Contractor shall offer employment to the predecessor contractor's employees by seniority within each employment classification.

Where any of the predecessor contractor's employees based at the Transfer Station are covered by a collective bargaining agreement at the time that the Contractor hires employees to staff the Station, all employees offered employment by the Contractor to fill the positions covered by such collective bargaining agreements shall be offered all of and the same wages, benefits, seniority and working conditions enjoyed by employees covered by such collective bargaining agreements and employed in the corresponding work classifications by the predecessor contractor, and the Contractor shall offer to provide such employees with any future increases or improvements in such wages, benefits and working conditions as the predecessor's employees were then scheduled to receive under such collective bargaining agreements *provided,* however, that such wages, benefits and working conditions shall be comparable to the wages, benefits and working conditions enjoyed by employees in comparable classifications at other recycling stations in Santa Clara County who are represented by the same labor organization that represents the contractor's employees, and in no event shall such wages, benefits and working conditions established after the initial wages, benefits and working conditions exceed the most recent increases given to employees in comparable classifications at other recycling stations in Santa Clara County who are represented by the same labor organization that represents the contractor's employees, nor shall wages increase by more than 3% plus the same percentage as the Basic Annual Payment is increased pursuant to Section 5.02.B per year.

In the event that any of the predecessor contractor's employees based at the Transfer Station are not covered under the terms of a collective bargaining agreement at the time the Contractor takes over operation of the Station, the Contractor shall offer to pay and shall pay its employees based at the Station and working directly under this Agreement in the classifications of such employees who were not covered by a collective bargaining agreement wages and benefits no less than the general prevailing rate of wages for each craft, classification, or type of worker specified by the City as needed to execute this contract, as such rates are determined by the Director of the California Department of Industrial Relations, pursuant to the Director's findings and/or determination of those rates prevailing as of January 1, 2008, made under the provisions of California Labor Code Section 1773.11. In the event that such rates cannot be determined by the Director until after January 1, 2008, such rates shall nevertheless be effective under this Agreement as of January 1, 2008, and in the event that such rates exceed the rates being paid by the Contractor, it shall make retroactive wage adjustments to its Station employees as soon as the Director announces the rates. In the event that any of the wage or benefit rates determined by the Director do not exceed the rates being paid by the Contractor in particular classifications, the Contractor shall maintain in effect such existing rates as may exceed the rates found to be prevailing. Contractor may provide any combination of wages and benefits so long as the hourly cash equivalent of such combination equals or exceeds the "total hourly rate" determined to be the prevailing wage. The method by which the effective hourly cost of benefits such as sick leave, vacation/holiday, and health insurance shall be determined for purposes of determining compliance with this requirement is shown on Exhibit I-3.

In the event that some or all of the Contractor's employees based at the Transfer Station remain uncovered under the terms of a collective bargaining agreement during the term of this Agreement, the Contractor shall no later than July 1, 2009 raise the total hourly cost of wages and/or benefits of such uncovered employees the same percentage as the Basic Annual Payment is increased pursuant to Section 5.02.B. As long as such employees remain uncovered by any collective bargaining agreement, on each subsequent July 1 Contractor will raise the total hourly cost of wages and/or benefits of such uncovered employees the same percentage as the Basic Annual Payment is increased pursuant to Section 5.02.B. Employees of the Contractor who are, or become, covered by the terms of a collective bargaining agreement shall have their wages, benefits and terms and conditions of employment set by the provisions of such collective bargaining agreements.

If Contractor engages any workers through an independent contractor, such as an employment agency, it shall ensure that such contractor:

(a) Staffs all positions at the Station by first offering employment to employees of the predecessor contractor who were performing the functions being taken over by the subcontractor, or by first offering employment to employees of the Contractor who were performing the functions being taken over by the subcontractor, on the same basis, and for the same term, as specified above for employees initially offered employment by the Contractor;

(b) Offers employment to such employees at the same rate of wages, and with the same seniority, benefits and working conditions, as were enjoyed by the employees, and as in the future were promised to such employees;

(c) Continues during the life of this Agreement to provide all such workers with wages, benefits and working conditions equal to those which this Section would require Contractor to pay if the workers had been hired as its own employees, unless such subcontractor employees are covered by a collective bargaining agreement, in which event the terms of the collective bargaining agreement shall control;

(d) Complies with the nondiscrimination requirements imposed on Contractor by Section 10.14;

(e) Maintains workers compensation and employers liability insurance covering such workers in the amount required by Section 7.02.A.1 and with policies meeting the other requirements of Section 7.02A.

Contractor is responsible for providing qualified and competent workers, whether as direct employees or through workers furnished by an independent contractor. Contractor is also responsible for providing sufficient training to all workers so that they can perform the work in a safe and competent manner and are thoroughly familiar with the work which Contractor is required to perform and the standards it is required to meet, under this Agreement.