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# County of Santa Clara

Recycling and Waste Reduction Commission of Santa Clara County  
Recycling and Waste Reduction Division

1555 Berger Drive, Building #2, 3<sup>rd</sup> Floor  
San Jose, California 95112  
(408) 282-3180 FAX (408) 282-3188  
www.ReduceWaste.org



## IMPLEMENTATION COMMITTEE MEETING AGENDA

**DATE:** Thursday, November 13, 2014  
**TIME:** 12:30 p.m. – 1:30 p.m.  
**LOCATION:** 1555 Berger Drive, Auditorium  
San Jose, CA 95112

(\*\* Denotes item on which action may be taken)

1. **Call to Order and Introductions\*\***
2. **Approval of Draft Minutes of the October 9, 2014\*\***
3. **Public Comment**  
(This item is reserved for persons desiring to address the committee on any matter not on this agenda.) For members of the public who wish to address the committee on any item not listed on the agenda this would be the appropriate time. The Chair will call individuals in turn. Speakers are limited to three (3) minutes. The committee is not permitted action or extended discussion of any item not on the agenda except under special circumstances. If committee action is requested, the committee may place the matter on a future agenda. All statements that require a response will be referred to staff for reply in writing
4. **Letters of Agreements \*\***
5. **FY 2016 Annual Budget\*\***
6. **Adjournment\*\***

**Commissioners:** James R. Griffith, Chair; Ronit Bryant, Kansen Chu, Thomas F. Kotowski, Linda J. LeZotte, Orrin Mahoney, Teresa O'Neill, Jan Pepper, Cat Tucker, Mike Wasserman

## **LETTER FROM TAC ADMINISTRATOR**

DATE: November 1, 2014  
FROM: Robert D'Arcy, Administrator  
TO: Lisa Rose, Contracting Agent  
RE: Annual Work Plan and Budget

THIS LETTER, is effective on July 1, 2014 to memorialize the duties, responsibilities, staffing commitments and costs to fulfil the role of the Administrator as stated in Section VIII of the AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE, dated June 4, 2013. The Letter includes the Annual Work Plan and personnel budget approved by the Implementation Committee and the Recycling and Waste Reduction Commission. The Letter also states that the Administrator agrees to provide the described services at the approved costs for the upcoming fiscal year and that all employee and overhead costs will be maintained at the levels specified in the budget to the best of his ability.

### **I. Entities**

Santa Clara Board of Supervisors (Board) – Comprised of five elected officials who govern Santa Clara County.

Recycling and Waste Reduction Commission (RWRC) – Comprised of ten elected officials who serve as the principal advisory body to city and town councils and the Board of Supervisors on countywide solid waste planning issues.

Technical Advisory Committee (TAC) – Comprised of solid waste professionals from each city and the County, Santa Clara Valley Water District, representatives of the private solid waste industry, business, institutions of higher learning and representatives of interested community organizations.

Implementation Committee (IC) – Comprised of one voting member of TAC from each jurisdiction, with the exception of the City of San Jose which has two votes, and the Santa Clara Valley Water District to make decisions and recommendations on all fiscal, management and administrative issues of the TAC.

### **II. Parties**

This Letter is between the TAC Administrator and the TAC Contracting Agent pursuant to the AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE.

### III. Term of Letter

The Term of this Letter shall be for Fiscal Year 2015 (July 1, 2014 through June 30, 2015).

### IV. Purpose

The purpose of this Letter is to memorialize the duties, responsibilities, staffing commitments and costs to fulfil the role of the Administrator of the RWRC TAC.

### V. Duties

Administrator provides administration and management services to the TAC and carries out the Annual Work Plan. Duties of the Administrator include, but are not limited to: scheduling meetings of the TAC and all committees, subcommittees, and ad hoc subcommittees; preparing agendas and meeting minutes; maintaining all TAC records and files; notifying the TAC of correspondence received and preparing outgoing correspondence; completing all tasks in the Annual Work plan; providing monthly reports at TAC meetings on the status of the Work Plan; and other duties as directed by the IC. The Administrator reports to the Chair of the TAC. The Administrator shall work cooperatively and collaboratively with the IC, the Fiscal Agent and the Contracting Agent. The Administrator is paid from funds in the adopted TAC budget.

### VI. Annual Work Plan and Budget

The Administrator will maintain a list of potential work items to be placed in the Annual Work Plan for the upcoming fiscal year. In November of each year, the IC will review the list of potential work items compiled by the Administrator, add additional items as needed, and direct the Administrator to prepare a proposed Work Plan and Budget for the upcoming fiscal year. The proposed Work Plan will contain the following elements (Attachment A):

Scope of Work, Administrative Tasks, Other Staff Commitments, Fiscal Agent and Contracting Agent Costs, Cost Detail for Comparison, Projected Amount of Fund Transfer from Fiscal Agent to Contracting Agent, Discussion Concerning Potential Conflicts.

The Administrator shall submit the final draft of the proposed Annual Work Plan and Budget to the IC no later than the second Thursday in December of each year. If required, the IC will provide revisions and comments to the Administrator, who will then revise and finalize the Annual Work Plan and Budget. The IC will approve an Annual Work Plan and Budget on or before January 31 of each year and forward it to the Commission for approval.

The Annual Work Plan and Budget is attached at Attachment B.

### VII. Reporting and Evaluation

The Administrator shall prepare a self-evaluation/audit report to the IC including significant accomplishments, work items planned but not accomplished, work items not planned but completed, and the status of all work items in the Annual Work Plan. The report will include recommendations and suggestions for improving the work of the Administrator and will be submitted on or before September 15.

## VIII. Standard Provisions

The Standard Provisions will be those as follows:

- A. Entire Understanding
- B. This document represents the entire agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Letter are merged into this Letter.

This Letter may only be changed by a recorded vote of the Parties to the AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE.

- C. Conflict of Interest

Administrator shall comply, and require its subcontractors to comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulation of the Fair Political Practices Commission concerning disclosure and disqualification (California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Letter and is grounds for immediate termination of services.

In delivering this Letter, Administrator pledges that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with his performance. Administrator further pledges that, in the performance of this role, it will not employ any contractor or person having such an interest. Administrator, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provision of the Political Reform Act are applicable to any individual providing service under this Letter, Administrator shall, upon delivery of this Letter, provide the Contracting Agent with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Administrator's employees, agents and subcontractors, that could be substantively involved in "making a government decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position" as described in CCR 18701(a)(1). Administrator shall immediately notify the Contracting Agent under this Letter in such a capacity. Administrator shall immediately notify the Contracting Agent of the names of individuals working in such capacity who, during the term of the Letter, end their service to the Contracting Agent.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Letter, Administrator shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Letter, annually by April 1, and within 30 days of their termination of service.

D. Assignment

No assignment of obligations hereunder shall be valid without the prior written consent of all parties.

E. Assignment of Clayton Act, Cartwright Act Claims

Administrator assigns to the Contracting Agent all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec.15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or service by the Administrator for sale to the Contracting Agent pursuant to this Letter.

F. Waiver

No delay or failure to require performance of any provisions of this Letter shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly state.

G. Termination

The Administrator may, by written notice to Contracting Agent, terminate all or part of this Letter at any time for the convenience of the Contracting Agent. The notice shall specify the effective date and the scope of the termination. In the event of termination, Administrator shall deliver to Contracting Agent all documents prepared pursuant to the Letter, whether complete or incomplete. Administrator may retain copy for its records. Upon receipt of the documents, Administrator shall be compensated based on the completion of services provided, as solely and reasonably determined by Contracting Agent.

H. Budget Contingency

Services covered by this Letter are contingent upon the appropriation of sufficient funding by the Contracting Agent. If funding is reduced or deleted by TAC and/or IC for the services covered in this Letter, the Contracting Agent has the option to terminate Administrator's services with no liability occurring to the Contracting Agent or to offer an amendment to this Letter indicating the reduced amount.

I. Contracting Principles

All entities that contract with the Contracting Agent to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all

applicable federal, state, and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the Contracting Agent copies of any financial audits that have been representatives of the Administrator, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

J. California Public Records Act

All proposals become the property of the Contracting Agent, which is a public agency subject to the disclosure of the California Public Records Act (CPRA). If Administrator proprietary information is contained in document submitted to Contracting Agent, and Administrator claims that such information falls within one or more CPRA exemptions, Administrator must clearly mark such information “CONFIDENTIAL AND PROPRIETARY,” and identify the specific lines containing the information. In the event of a request for such information, the Contracting Agent will make the best efforts to provide notice to Administrator prior to such disclosure. If the Administrator contends that any documents are exempt for the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief for other appropriate remedy from a court of law in Santa Clara County before the Contracting Agent responds to the CPRA request. If Administrator fails to obtain such a remedy before the Contracting Agent responds to the CPRA request, Contracting Agent may disclose the requested information.

Administrator further agrees that it shall defend, indemnify and hold Contracting Agent harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney’s fees) that may result from denial by Contracting Agent of a CPRA request for information arising from any representation, or any action (or inaction), by the Administrator.

K. Third Party Beneficiaries

This letter does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

L. Intellectual Property Rights

Ownership: Contracting Agent shall own all right, title and interest in and to the Deliverables. For purposes of this Letter, the term “Deliverables” shall mean any documentation and deliverable created by Administrator during the performance of services that are identified in this Letter. Administrator hereby assigns to the Contracting Agent all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Administrator, either alone or jointly with others, during the period of Administrator’s agreement with the Contracting Agent or result from the use of premises leased, owned or contracted for by the Contracting Agent. Administrator acknowledges that all original works of authorship which are made by Administrator (either solely or jointly with others) within the scope of this Letter and which are protectable by copyright are “works made for hire,” as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to Contracting Agent. Administrator agrees that the Contracting Agent will be the copyright owner in all copyrightable works of

every kind and description created or delivered by Administrator, either solely or jointly with others, in connection with any agreement with the Contracting Agent.

M. Intellectual Property Indemnity

Administrator represents and warrants for the benefits of the Contracting Agent and its users that, to its knowledge, as of the effective date of this Letter, Administrator is the exclusive owner of all rights, title and interests in the Deliverables and/or services provided pursuant to the Letter. Administrator shall defend, indemnify and hold the Contracting Agent harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverable and/or services provided pursuant to this Letter infringe upon any intellectual property rights of third parties.

N. Ownership Rights to Materials/Restrictions on Use

All materials obtained, developed or prepared by Administrator in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the Contracting Agent. To the extent Administrator owns or claims ownership rights to said Deliverables, Administrator hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the Contracting Agent pursuant to the terms and conditions of this Letter and at no additional cost. The Contracting Agent has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials, prepared under this Letter. If Administrator wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Administrator shall obtain prior written authorization from the Contracting Agent, which consent may be withheld by the Contracting Agent in its sole discretion. Administrator acknowledges that all original works of authorship which are made by Administrator (solely or jointly with others) within the scope of this Letter and which are protectable by copyright are "works made for hire," as the term defined in the United States Copyright Act (17U.S.C., Section 101), and shall belong solely to the Contracting Agent. Administrator agrees that the Contracting Agent will be the copyright owner in all copyrightable works of every kind and description created or developed by Administrator, solely or jointly with others, in connection with any agreement with the Contracting Agent. If requested to, and at no further expense to the Contracting Agent, Administrator will execute in writing any acknowledgements or assignments of copyright ownership of such copyright works as may be appropriate for preservation of the worldwide ownership in the Contracting Agent and its nominees of such copyrights.

O. Severability.

If any provision of this Letter is found to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

IX. Notice to Contracting Agent

In compliance with Section VIII. C. of this Letter, Administrator hereby gives notice to Contracting Agent that administrator holds a voting right on the TAC as the Manager for the County of Santa Clara Recycling and Waste Reduction Division and is substantively involved in making government decisions and is serving in a staff capacity to the County, the RWRC, IC and TAC.

Letter Signatory

\_\_\_\_\_  
Robert D'Arcy, Division Manager  
Recycling and Waste Reduction Division

DATE: \_\_\_\_\_

## ATTACHMENT A

### ELEMENTS TO BE CONTAINED IN THE ANNUAL WORKPLAN AND BUDGET

1. **Scope of Work.** The proposed Annual Work plan and Budget will contain a detailed scope of work for each proposed task, the employee work hours estimated to complete each task, the name(s) of the specific employees that will perform the work for each task, the cost of the work hours for each task, all proposed overhead costs for the Administrator and all other projected costs. If the Administrator is a public agency, the costs may be shown as a percentage of each Full Time Equivalent (FTE) and the cost therefor, as long as the position (such as 'Analyst I') and the name of the employee filling that position are indicated, along with the fully burdened cost of the specified percentage of each FTE. The proposed Annual Work plan shall contain a list of key milestones for each task.
2. **Administrative Tasks.** The Work plan shall include a task for providing administrative support for the TAC including work hours to prepare meeting agendas, to schedule meetings, attend meetings, prepare minutes and correspondence, and carry out the direction of the TAC and all Committees and Subcommittees. The Work plan shall also include a separate task for providing administrative support to the Commission including work hours to prepare agendas, attend Commission meetings, prepare minutes, and carry out the direction of the Commission, its Committees and Subcommittees.
3. **Other Staff Commitments.** The proposed Work plan will contain a listing of the other duties and responsibilities of each assigned employee (other than the work to be performed as Administrator for the TAC and the Commission) including the work hours and a general description of the key tasks and projects to be performed. This will serve as a cross-check (regardless of whether the Administrator is a public agency or a private firm) to ensure that the time of each employee is not overcommitted, and that sufficient time exists for each employee to complete all their assigned tasks.
4. **Fiscal Agent and Contracting Agent Costs.** The Administrator shall consult with the Fiscal Agent and with the Contracting Agent (in the event they are separate PARTIES) and shall incorporate the proposed costs for the services of each into the proposed Work plan and Budget. Such costs shall be clearly and separately identified for each function (and identified separately from those of the Administrator) and shall include the costs for employee time, expenses (such as bank fees), overhead charges and all other proposed costs.
5. **Cost Detail for Comparison.** The budget shall be formatted in a clear and concise manner such that all projected expenditures and revenues are detailed by project and line item. The proposed Work plan and Budget shall contain sufficient detail about proposed work hours and costs such that a comparison can be made between the proposed costs for the current Administrator, the current Fiscal Agent and the current Contracting Agent, and other potential providers of these services.
6. **Projected Amount of Fund Transfer from Fiscal Agent to Contracting Agent.** In the event the Fiscal Agent and the Contracting Agent are different PARTIES, the budget shall include the projected amount of funds to be transferred from the Fiscal Agent to the Contracting Agent in order to pay for contracts with Outside Contractors that will be awarded by the Contracting Agent in the upcoming year. Such projections shall take into account all funds currently held by the Contracting Agent (if any) and the

amount of such funds already encumbered for contracts in progress. The projection shall be accompanied by a recommendation as to the frequency of fund transfers from the Fiscal Agent to the Contracting Agent that will be required to fund contracts awarded by the Contracting Agent for the upcoming year (e.g. annual one-time transfer of funds, quarterly transfer of funds, or other recommended timing.)

7. **Discussion Concerning Potential Conflicts.** Once the initial draft of the proposed Annual Work plan is prepared, the IC Chair, the Administrator, the Fiscal Agent and the Contracting Agent shall meet to review and discuss the Work plan and shall work cooperatively to identify and address any potential conflicts that could arise with regard to policies of the Administrator, the Fiscal Agent or the Contracting Agent. Examples include proposed sale of recycling containers or other goods at less than the purchase price (i.e. subsidized cost of compost bins for the home composting program); provision of recycling grants, prizes, incentives; and other such items. At the direction of the IC Chair, the Administrator shall further investigate any potential conflicts that have been identified, and shall, in consultation with the Fiscal Agent and the Contracting Agent, research and propose solutions for each. If solutions cannot be found, the issue may be presented to the IC for further consideration and/or the IC Chair may direct the Administrator to revise the Work plan and Budget to remove the items creating the potential conflict. In this event the IC Chair will inform the IC of such action when the Annual Work plan and Budget are considered for approval.

All parties to the AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE entered into on June 4, 2013 recognize and agree to potential conflicts, perceived or real that may arise from time to time as a result of the County serving as the Administrator, Contracting Agent and Fiscal Agent. All parties acknowledge the voting rights of the County through the Recycling and Waste Reduction Division and approve of its role as Administrator, Contracting Agent and Fiscal Agent.

## LETTER OF AGREEMENT FISCAL AGENT

DATE: November 1, 2014  
FROM: Rob D'Arcy, Fiscal Agent  
TO: Lisa Rose, Contracting Agent  
RE: Fiscal Responsibility

THIS LETTER, is effective on July 1, 2014 to memorialize the duties and costs to fulfil the role of the Fiscal Agent as stated in Section IX of the AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE.

### I. Entities

Santa Clara Board of Supervisors (Board) – Comprised of five elected officials who govern Santa Clara County.

Recycling and Waste Reduction Commission (RWRC) – Comprised of ten elected officials who serve as the principal advisory body to city and town councils and the Board of Supervisors on countywide solid waste planning issues.

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Implementation Committee (IC) – Comprised of one voting member of TAC from each jurisdiction, with the exception of the City of San Jose which has two votes, and the Santa Clara Valley Water District to make decisions and recommendations on all fiscal, management and administrative issues of the TAC.

### II. Parties

This Letter is between the RWRC TAC Fiscal Agent and the RWRC TAC Contracting Agent pursuant to the AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE.

### III. Term of Letter

The Term of this Letter shall be for Fiscal Year 2015 (July 1, 2014 through June 30, 2015).

### IV. PURPOSE

The purpose of this Letter is to memorialize the duties and costs to fulfil the role of the RWRC TAC Fiscal Agent.

V. Duties

The Fiscal Agent serves as the treasurer of the Countywide funds and is responsible for collecting the SWFP from all solid waste disposal facilities and non-disposal facilities located within Santa Clara County. The Fiscal Agent shall diligently pursue collection of all SWPF funds and keep the IC apprised of the amount and entity owing delinquent payments, as well as of the status of collection activity initiated by the Fiscal Agent regarding the delinquent payments. The Fiscal Agent shall manage all funds in accordance with generally accepted government accounting procedures. The Fiscal Agent shall keep Countywide Funds segregated from all other funds administered by the Fiscal Agent in separately numbered and coded accounts that are readily identifiable as those containing Countywide Funds; shall credit appropriate interest income on such funds in each fiscal year; and shall not expend, use or transfer any funds except in accordance with the Annual Work plan and Budget approved by the IC and the Commission, or as otherwise directed by the IC.

VI. Financial Obligations

The Administrator on behalf of the RWRC TAC will compensate the Fiscal Agent as identified in the approved Work Plan and Budget.

VII. Quarterly and Annual Budget Status.

The Fiscal Agent shall prepare and submit quarterly budget updates to the IC every three (3) months, and shall provide a Year-End Budget Report. These reports shall be formatted in a clear and concise manner such that all expenditures, revenues, movement of monies, reallocation of funds and adjustments to the budget are detailed by project and line item (i.e. numerical reference and narrative description). The Year-End Budget Report shall be submitted to the IC on or before October 31 each year. The IC, at any time, request additional budget information detail, documentation and updates. The Fiscal Agent shall respond promptly to all such requests.

VIII. Biennial Audit.

The Fiscal Agent shall arrange for an audit by an independent third party Certified Public Accounting Firm (CPA) to be conducted every other year beginning with an audit of the 2013-14 fiscal year. The Fiscal Agent may utilize the CPA firm retained by the jurisdiction of which the Fiscal Agent is a part, to perform that PARTY's annual audit. In such event, the results of the audit of the Countywide Funds and accounts shall be clearly and separately called out in the CPA's audit report. The results of the audit shall be reported to the IC on or before January 15, every other year.

Evaluation of the Fiscal Agent. Each year, the Fiscal Agent shall prepare a self-evaluation along with the Year-End Budget Report, for submittal to the IC. The self-evaluation will include a description of key work tasks performed, any duties or tasks not

completed, and any non-planned work tasks completed. The report will include recommendations and suggestions for improving the services of the Fiscal Agent. The IC will review the report at a regular meeting and discuss any suggested or needed changes or improvements. The IC will rate the overall performance of the Fiscal Agent based upon the ability of the Fiscal Agent to perform its duties in a timely manner and in accordance with all requirements of this Letter. The final recommendations and feedback of the IC will be recorded in the minutes and also in a letter from the IC Chair to the Fiscal Agent. This feedback will be used by the Fiscal Agent to make any required changes in operations and procedures and/or work tasks for the next fiscal year.

#### IX. Standard Provisions

The Standard Provisions will be those as follows:

##### A. Entire Understanding

- B. This Letter represents the entire understanding between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Letter are merged into this Letter.

This Letter may only be changed by a recorded vote of the Parties to the  
AGREEMENT CREATING THE SANTA CLARA COUNTY RECYCLING AND  
WASTE REDUCTION TECHNICAL ADVISORY COMMITTEE.

##### C. Conflict of Interest

Fiscal Agent shall comply, and require its subcontractors to comply with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulation of the Fair Political Practices Commission concerning disclosure and disqualification (California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this Letter and is grounds for immediate termination of services.

In delivering this Letter, Fiscal Agent pledges that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with his performance. Fiscal Agent further pledges that, in the performance of this role, it will not employ any contractor or person having such an interest. Fiscal Agent, including but not limited to contractor's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this Agreement, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provision of the Political Reform Act are applicable to any individual providing service under this Letter, Fiscal Agent shall, upon delivery of this Letter,

provide the Contracting Agent with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to Fiscal Agent's employees, agents and subcontractors, that could be substantively involved in "making a government decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position" as described in CCR 18701(a)(1). Fiscal Agent shall immediately notify the Contracting Agent under this Letter in such a capacity. Fiscal Agent shall immediately notify the Contracting Agent of the names of individuals working in such capacity who, during the term of the Letter, end their service to the Contracting Agent.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this Letter, Fiscal Agent shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this Letter, annually by April 1, and within 30 days of their termination of service.

D. Assignment

No assignment of obligations hereunder shall be valid without the prior written consent of all parties.

E. Assignment of Clayton Act, Cartwright Act Claims

Fiscal Agent assigns to the Contracting Agent all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec.15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or service by the Fiscal Agent for sale to the Contracting Agent pursuant to this Letter.

F. Waiver

No delay or failure to require performance of any provisions of this Letter shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

G. Termination

The Fiscal Agent may, by written notice to Contracting Agent, terminate all or part of this Letter at any time for the convenience of the Contracting Agent. The notice shall specify the effective date and the scope of the termination. In the event of termination, Fiscal Agent shall deliver to Contracting Agent all documents prepared pursuant to the Letter, whether complete or incomplete. Fiscal Agent may retain copy for its records. Upon receipt of the documents, Fiscal Agent shall be compensated based on the completion of services provided, as solely and reasonably determined by Contracting Agent.

#### H. Budget Contingency

Services covered by this Letter are contingent upon the appropriation of sufficient funding by the Contracting Agent. If funding is reduced or deleted by TAC and/or IC for the services covered in this Letter, the Contracting Agent has the option to terminate Fiscal Agent's services with no liability occurring to the Contracting Agent or to offer an amendment to this Letter indicating the reduced amount.

#### I. Contracting Principles

All entities that contract with the Contracting Agent to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, shall be fiscally responsible entities and shall treat their employees fairly. To ensure compliance with these contracting principles, all contractors shall: (1) comply with all applicable federal, state, and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the Contracting Agent copies of any financial audits that have been representatives of the Administrator, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

#### J. California Public Records Act

All proposals become the property of the Contracting Agent, which is a public agency subject to the disclosure of the California Public Records Act (CPRA). If Fiscal Agent proprietary information is contained in document submitted to Contracting Agent, and Fiscal Agent claims that such information falls within one or more CPRA exemptions, Fiscal Agent must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the Contracting Agent will make the best efforts to provide notice to Fiscal Agent prior to such disclosure. If the Fiscal Agent contends that any documents are exempt for the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief for other appropriate remedy from a court of law in Santa Clara County before the Contracting Agent responds to the CPRA request. If Fiscal Agent fails to obtain such a remedy before the Contracting Agent responds to the CPRA request, Contracting Agent may disclose the requested information.

Fiscal Agent further agrees that it shall defend, indemnify and hold Contracting Agent harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorney's fees) that may result from denial by Contracting Agent of a CPRA request for information arising from any representation, or any action (or inaction), by the Administrator.

#### K. Third Party Beneficiaries

This letter does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

L. Intellectual Property Rights

Ownership: Contracting Agent shall own all right, title and interest in and to the Deliverables. For purposes of this Letter, the term "Deliverables" shall mean any documentation and deliverable created by Fiscal Agent during the performance of services that are identified in this Letter. Fiscal Agent hereby assigns to the Contracting Agent all rights, title and interest in and to any and all intellectual property whether or not patentable or registrable under patent, copyright, trademark or similar statutes, made or conceived or reduced to practice or learned by Fiscal Agent, either alone or jointly with others, during the period of Fiscal Agent's agreement with the Contracting Agent or result from the use of premises leased, owned or contracted for by the Contracting Agent. Fiscal Agent acknowledges that all original works of authorship which are made by Fiscal Agent (either solely or jointly with others) within the scope of this Letter and which are protectable by copyright are "works made for hire," as that term is defined in the United States Copyright Act (17 U.S.C. Section 101), and shall belong solely to Contracting Agent. Fiscal Agent agrees that the Contracting Agent will be the copyright owner in all copyrightable works of every kind and description created or delivered by Fiscal Agent, either solely or jointly with others, in connection with any agreement with the Contracting Agent.

M. Intellectual Property Indemnity

Fiscal Agent represents and warrants for the benefits of the Contracting Agent and its users that, to its knowledge, as of the effective date of this Letter, Fiscal Agent is the exclusive owner of all rights, title and interests in the Deliverables and/or services provided pursuant to the Letter. Fiscal Agent shall defend, indemnify and hold the Contracting Agent harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and reasonable attorney's fees) by a third party alleging the Deliverable and/or services provided pursuant to this Letter infringe upon any intellectual property rights of third parties.

N. Ownership Rights to Materials/Restrictions on Use

All materials obtained, developed or prepared by Fiscal Agent in the course of performing services hereunder, including but not limited to videotapes, audio recordings, still photographs, ads or brochures, and the derivative works, patent, copyright, trademark, trade secret or other proprietary rights associated therewith (collectively "Deliverables"), shall be the sole and exclusive property of the Contracting Agent. To the extent Fiscal Agent owns or claims ownership rights to said Deliverables, Fiscal Agent hereby expressly assigns all said rights, title, and interest in and to the Deliverables to the Contracting Agent pursuant to the terms and conditions of this Letter and at no additional cost. The Contracting Agent has the exclusive royalty-free irrevocable right to duplicate, publish or otherwise use for any purpose, all materials, prepared under this Letter. If Fiscal Agent wishes to use the materials prepared hereunder for any purpose including but not limited to promotional, educational or commercial purposes, the Fiscal Agent shall obtain prior written authorization from the Contracting Agent, which consent may be withheld by the Contracting Agent in its sole discretion. Fiscal Agent acknowledges that all original

works of authorship which are made by Fiscal Agent (solely or jointly with others) within the scope of this Letter and which are protectable by copyright are “works made for hire,” as the term defined in the United States Copyright Act (17U.S.C., Section 101), and shall belong solely to the Contracting Agent. Fiscal Agent agrees that the Contracting Agent will be the copyright owner in all copyrightable works of every kind and description created or developed by Fiscal Agent, solely or jointly with others, in connection with any agreement with the Contracting Agent. If requested to, and at no further expense to the Contracting Agent, Fiscal Agent will execute in writing any acknowledgements or assignments of copyright ownership of such copyright works as may be appropriate for preservation of the worldwide ownership in the Contracting Agent and its nominees of such copyrights.

O. Severability.

If any provision of this Letter is found to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

X. Notice to Contracting Agent

In compliance with Section VIII. C. of this Letter, Fiscal Agent hereby gives notice to Contracting Agent that Fiscal Agent holds a voting right on the TAC as the Manager for the County of Santa Clara Recycling and Waste Reduction Division and is substantively involved in making government decisions and is serving in a staff capacity to the County, the RWRC, IC and TAC.

Letter Signatory

\_\_\_\_\_  
Robert D’Arcy, Division Manager  
Recycling and Waste Reduction Division

DATE: \_\_\_\_\_

FY 2016 Recycling and Waste Reduction Division Draft Budget						FY 2017 & FY 2018 Projections		
	<u>Task</u>	<u>Employee</u>	<u>Title</u>	<u>FTE</u> <u>Work %</u>	<u>FY 2016 Fund</u> <u>Transfer</u>	<u>FY 2017 Fund</u> <u>Transfer</u>	<u>FY 2018 Fund</u> <u>Transfer</u>	
<b>Administrator</b>	Support RWRC,	Rob D'Arcy	Division Manager	35%	\$69,052	\$71,123	\$73,257	
	TAC, Adhoc Comm.,	Lisa Rose	Sr. Management Analyst	35%	\$54,014	\$55,634	\$57,303	
	TAC Subcommittees,	Clifton Chew	Management Analyst	50%	\$74,413	\$76,645	\$78,945	
	NDFE,	Sue Sherrin	Associate Management Analyst	5%	\$5,522	\$5,688	\$5,858	
	State Reporting	Gilbert Vasquez	Office Specialist III	10%	\$9,973	\$10,273	\$10,581	
	IC Reporting	Vacant	Management Analyst	50%	\$74,413	\$76,645	\$78,945	
	TAC Reporting	Vacant	Associate Management Analyst	20%	<u>\$24,232</u>	<u>\$24,959</u>	\$25,708	
						\$311,618	\$320,967	\$330,596
	Green Business	Lisa Rose	Sr. Management Analyst	20%	\$30,865	\$31,791	\$32,745	
		Sue Sherrin	Associate Management Analyst	90%	\$99,394	\$102,376	\$105,447	
		Gilbert Vasquez	Office Specialist III	5%	\$4,987	\$5,136	\$5,290	
		Vacant	Associate Management Analyst	20%	<u>\$24,232</u>	<u>\$24,959</u>	<u>\$25,708</u>	
						\$159,478	\$164,262	\$169,190
	Disposal Reporting	Clifton Chew	Management Analyst	35%	<u>\$52,089</u>	<u>\$53,652</u>	\$55,261	
						<b>\$523,185</b>	<b>\$538,880</b>	<b>\$555,047</b>
<b>Contracting Agent</b>	Contract Management,	Rob D'Arcy	Division Manager	5%	\$9,865	\$10,160	\$10,465	
	Request for Proposals	Lisa Rose	Sr. Management Analyst	30%	\$46,298	\$47,687	\$49,117	
	SCVWD, CDR,	Vacant	Associate Management Analyst	10%	<u>\$12,116</u>	<u>\$12,479</u>	\$12,854	
	Food Recue,							
	Eco-Gardener, Schools Conf., HCEP, Audit							
					\$68,278	\$70,326	\$72,436	
<b>Fiscal Agent</b>	Accounting	Rob D'Arcy	Division Manager	5%	\$9,865	\$10,160	\$10,465	
	Accounting	Staff	Accounting Dept	40%	<b>\$47,472</b>	<b>\$48,896</b>	<b>\$50,363</b>	
<b>TOTAL LABOR COST</b>					<b>\$648,799</b>	<b>\$668,263</b>	<b>\$688,311</b>	

FY 2016 Draft Expenditures		FY 2017 Draft Expenditures		FY 2018 Draft Expenditures	
<b>Object 2</b>		<b>Object 2</b>		<b>Object 2</b>	
5205300 Landline Telephones	\$750	5205300 Landline Telephones	\$750	5205300 Landline Telephones	\$750
5220200 Insurance	\$3,000	5220200 Insurance	\$3,500	5220200 Insurance	\$3,800
5250100 Office Expenses	\$2,500	5250100 Office Expenses	\$2,500	5250100 Office Expenses	\$2,500
5250200 Postage External	\$1,500	5250200 Postage External	\$1,500	5250200 Postage External	\$1,500
5250250 Postage Internal	\$1,500	5250250 Postage Internal	\$1,500	5250250 Postage Internal	\$1,500
5250750 Printing Internal	\$4,500	5250750 Printing Internal	\$4,500	5250750 Printing Internal	\$4,500
5255100 Prof & Spcialzed Svc		5255100 Prof & Spcialzed Svc		5255100 Prof & Spcialzed Svc	
Food Rescue				Food Rescue	
Ecology Action	\$7,500	Ecology Action	\$7,500	Ecology Action	\$7,500
Eco-Gardeners	\$5,000	Eco-Gardeners	\$5,000	Eco-Gardeners	\$5,000
School Conference		School Conference		School Conference	
5255150 Advertising (GB)	\$7,800	5255150 Advertising (GB)	\$7,800	5255150 Advertising (GB)	\$7,800
5255500 Contract Services		5255500 Contract Services		5255500 Contract Services	
Auditor	\$12,500			Auditor	\$12,500
Home Composting	\$150,000	Home Composting	\$150,000	Home Composting	\$150,000
CDR	\$65,000	CDR	\$65,000	CDR	\$65,000
5255850 County Counsel	\$10,000	5255850 County Counsel	\$10,000	5255850 County Counsel	\$10,000
5258200 AEM Overhead	\$129,760	5258200 AEM Overhead	\$133,653	5258200 AEM Overhead	\$137,662
5275100 Small Tool & Instruments	\$10,000	5275100 Small Tool & Instruments	\$10,000	5275100 Small Tool & Instruments	\$10,000
5281600 70 W Hedding Overhead	\$30,000	5281600 70 W Hedding Overhead	\$31,500	5281600 70 W Hedding Overhead	\$33,075
5285110 Fleets & Fuel Costs	\$200	5285110 Fleets & Fuel Costs	\$250	5285110 Fleets & Fuel Costs	\$300
5285200 Auto Services and Costs	\$6,500	5285200 Auto Services and Costs	\$7,000	5285200 Auto Services and Costs	\$7,500
5285300 Mileage Reimbursement	\$200	5285300 Mileage Reimbursement	\$200	5285300 Mileage Reimbursement	\$200
5251000 Workshops & Conferences	\$6,800	5251000 Workshops & Conferences	\$6,800	5251000 Workshops & Conferences	\$6,800
5285800 Business Travel	\$250	5285800 Business Travel	\$250	5285800 Business Travel	\$250
<i>Object 2 Total</i>	\$455,260	<i>Object 2 Total</i>	\$449,203	<i>Object 2 Total</i>	\$468,137

**Recycling and Waste Reduction- Fund 0037**

Fund Balance Analysis FY 2011- FY 2018

		<b>Actuals FY 11</b>	<b>Actuals FY 12</b>	<b>Actuals FY 13</b>	<b>Actuals FY 14</b>	<b>Projection FY 15</b>	<b>Projection FY 16</b>	<b>Projection FY 17</b>	<b>Projection FY 18</b>
<b>Beginning Fund Balance</b>		\$94,487	\$75,690	\$84,290	\$438,915	\$710,928	\$749,726	\$605,667	\$448,201
<b>Revenue</b>									
	<i>Fund Balance Adjustment</i>	\$171,605							
4811300	Other Sales	\$19,610	\$13,658	\$17,596	\$22,176				
4813050	SCVWD - Green Business	\$100,000	\$100,000	\$100,000	\$104,674	\$60,000	\$60,000	\$60,000	\$60,000
4813200	Contributions and Donation	\$0	\$48,135	\$0					
4813800	Solid Waste Planning Fee	<u>\$906,080</u>	<u>\$858,144</u>	<u>\$1,063,219</u>	<u>\$956,693</u>	<u>\$950,000</u>	<u>\$900,000</u>	<u>\$900,000</u>	<u>\$900,000</u>
	<b>Total Revenue</b>	<b>\$1,197,295</b>	<b>\$1,019,937</b>	<b>\$1,180,815</b>	<b>\$1,083,543</b>	<b>\$1,010,000</b>	<b>\$960,000</b>	<b>\$960,000</b>	<b>\$960,000</b>
<b>Expenditures</b>									
	Salaries and Benefits	\$802,790	\$735,299	\$748,876	\$698,432	\$693,502	\$740,798	\$763,022	\$785,912
	Services Supplies	\$413,302	\$310,038	\$277,309	\$293,824	\$368,700	\$455,260	\$449,203	\$468,137
Transfer In	Unincorporated	\$0	<u>(\$34,000)</u>	<u>(\$199,995)</u>	<u>(\$180,726)</u>	<u>(\$91,000)</u>	<u>(\$91,999)</u>	<u>(\$94,759)</u>	<u>(\$97,601)</u>
	<b>Total Expenditures</b>	<b>\$1,216,092</b>	<b>\$1,011,337</b>	<b>\$826,190</b>	<b>\$811,530</b>	<b>\$971,202</b>	\$1,104,059	\$1,117,466	\$1,156,448
<i>Net Income (Surplus/Deficit)</i>		<i>(\$18,797)</i>	\$8,600	\$354,625	\$272,013	\$38,798	<i>(\$144,059)</i>	<i>(\$157,466)</i>	<i>(\$196,448)</i>
<b>Ending Fund Balance</b>		<b>\$75,690</b>	<b>\$84,290</b>	<b>\$438,915</b>	<b>\$710,928</b>	<b>\$749,726</b>	<b>\$605,667</b>	<b>\$448,201</b>	<b>\$251,753</b>

	Rob D'Arcy Div Manager	Lisa Rose Sr. MA	Clif Chew Management Analyst	Sue Sherrin Assoc MA	Vacant Assoc MA	Vacant Management Analyst	Gilbert Vasquez OS III	Staff Accountant
Administrator	35%	35%	50%	5%	20%	50%	10%	
Green Business		20%		90%	20%		5%	
Disposal Reporting			35%					
Contracting	5%	30%			10%			
Fiscal	5%							40%
<b>TOTAL</b>	<b>45%</b>	<b>85%</b>	<b>85%</b>	<b>95%</b>	<b>50%</b>	<b>50%</b>	<b>15%</b>	<b>40%</b>