

**AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF
SAN JOSE AND CALIFORNIA WASTE SOLUTIONS, INC. FOR
RECYCLE PLUS SFD RECYCLING COLLECTION SERVICES**

THIS AGREEMENT is effective on the 1st day of July, 2021 (the “Effective Date”), by and between the City of San José, a municipal corporation of the State of California, (“CITY”) and California Waste Solutions, Inc. (“CONTRACTOR”).

WHEREAS, CITY and CONTRACTOR entered into that certain AGREEMENT BETWEEN THE CITY OF SAN JOSE AND CALIFORNIA WASTE SOLUTIONS, INC. FOR RECYCLE PLUS INTEGRATED WASTE MANAGEMENT SERVICES whereby CONTRACTOR provided integrated waste management services for the Recycle Plus Program from November 21, 2006 through June 30, 2013 with options to extend to June 30, 2015 (“Initial Agreement”); and

WHEREAS, on December 14, 2011, CITY and CONTRACTOR continued their contractual relationship and entered into that certain AGREEMENT BETWEEN THE CITY OF SAN JOSE AND CALIFORNIA WASTE SOLUTIONS, INC. FOR RECYCLE PLUS SFD RECYCLING COLLECTION SERVICES to provide integrated waste management services for the Recycle Plus Program retroactive from July 1, 2010 through June 30, 2021 (“December 14, 2011 Agreement”), which replaced the Initial Agreement; and

WHEREAS, on March 29, 2017, CITY and CONTRACTOR entered into a First Amendment to the December 14, 2011 Agreement (“First Amendment”) to modify services related to Large Item Collection; and

WHEREAS, on June 18, 2019, CITY and CONTRACTOR entered into a Second Amendment to the December 14, 2011 Agreement (“Second Amendment”) to, among other things, change the circumstances under which CONTRACTOR may issue non-collection notices, change how diversion is measured and the disincentives for not meeting diversion targets, implement customer satisfaction standards, accommodate for regulations imposed by the State of California as provided under Senate Bill 1383, assign outreach functions to the CITY, implement a performance evaluation period beginning July 1, 2019 through June 30, 2020, and develop a “safety net” for changes in recycling markets; and

WHEREAS, on June 18, 2019, the City Council authorized the CITY to negotiate and execute an agreement with CONTRACTOR through June 30, 2036, if certain terms were satisfied as set forth in the Second Amendment, in accordance with the term sheets accepted by City Council on January 15, 2019; and

WHEREAS, CONTRACTOR met those terms in the Second Amendment; and

WHEREAS, on April 20, 2021, the term sheet with CONTRACTOR was amended to include SFD Large Item Collection Service, and the City Council authorized

the CITY to negotiate and execute an agreement with CONTRACTOR that included SFD Large Item Collection Service in accordance with the amended term sheet accepted by City Council on April 20, 2021; and

WHEREAS, CITY and CONTRACTOR desire to enter into an Amended and Restated Agreement for a term beginning July 1, 2021 through June 30, 2036, which beginning July 1, 2021 will supersede any and all prior agreements for the collection of recyclable material from single-family dwellings in Districts A and C; and

WHEREAS, continuing CONTRACTOR's services through June 30, 2036 would ensure continuity of service for more than 300,000 Recycle Plus customers; will benefit the CITY through the implementation of customer service performance standards and metrics, the upgrading of CONTRACTOR's collection fleet to compressed natural gas, accommodating for regulations imposed by the State of California under Senate Bill 1383; assign outreach functions to the CITY; and implement other program enhancements that can be achieved at a reduced cost to the CITY; and

WHEREAS, the Negative Declaration prepared for this project under File No. PP10-055 was adopted on June 18, 2010 in accordance with the requirements of the California Environmental Quality Act; and

WHEREAS, this project is also consistent with the Determination of Consistency with Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041), Envision San José 2040 General Plan Supplemental EIR (Resolution No. 77617), and Addenda thereto under File No. PP19-037; and

WHEREAS, this AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF SAN JOSE AND CALIFORNIA WASTE SOLUTIONS, INC. FOR RECYCLE PLUS SFD RECYCLING COLLECTION SERVICES is hereinafter referred to as this "Agreement";

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, AGREEMENTS AND CONSIDERATIONS CONTAINED HEREIN, CITY AND CONTRACTOR HEREBY AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS

For the purpose of this Agreement, the definitions contained in this Article shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Article, the definition of such word or phrase as contained in Chapter 9.10 of the San José Municipal Code shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender.

1.1 **Business.**

All retail, professional, wholesale and industrial facilities and any other commercial enterprises offering goods or services to the public.

1.2 **Business Day.**

Any day Monday through Friday that is not designated a public or bank holiday. As of the date of this Agreement, holidays include: New Year's Day; Martin Luther King, Jr., Day; President's Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; and Christmas Day.

1.3 **Business Service Unit.**

Any Business located in a Mixed Use Dwelling that elects to utilize Collection Services and is approved for such service under CITY's Recycle Plus Program requirements, or any Small Commercial Business.

1.4 **Central Business District.**

The Central Business District as described in San José Municipal Code Section 9.10.1500 and as set forth in Exhibit 5 ("CENTRAL BUSINESS DISTRICT AND TRANSIT MALL ZONE") to this Agreement.

1.5 **City Representative.**

The person, or the person's designee(s), designated by the City Manager to administer and monitor this Agreement.

1.6 **Compostable Waste.**

Vegetable and other food scraps including meat, dairy products, kitchen grease and bones; paper and cardboard that have been contaminated with food, fat or kitchen grease; compostable paper associated with food preparation or food consumption such as paper towels, paper plates, tissue, waxed paper and waxed cardboard; and other materials designated by the City Representative that are capable of being composted.

1.7 Courtesy Notice.

A form approved by the City Representative and used by CONTRACTOR to inform Service Recipients that a courtesy collection occurred even though containers may not have been set out by the Service Recipient according to program instructions.

1.8 Customer Service System.

The computer-based system designated by CITY for service records, billing, reporting and other operations data for the Recycle Plus program.

1.9 Director.

The Director of Environmental Services or designee.

1.10 Disposal Facility.

The Newby Island Landfill, located at 1601 Dixon Landing Road, San José, CA., or an alternate facility reasonably determined by the City following a good faith discussion with CONTRACTOR.

1.11 Dwelling Unit.

Any individual living unit in a single-family dwelling (SFD), multi-family dwelling (MFD), or Mixed-Use Dwelling (MUD) intended for or capable of being utilized for, residential living. Dwelling Unit does not include an individual living unit in a hotel or motel, guesthouse, residential care facility, extended care facility, sorority or fraternity house, school, dormitory, residential service facility, emergency residential shelter, hospital, convent, or monastery, as determined by the City Representative.

1.12 E-Waste.

Discarded electronics equipment such as cell phones, computers, monitors, televisions, and other items containing cathode ray tubes (CRTs).

1.13 Exempt Waste.

Biohazardous or biomedical waste, which may cause disease or reasonably be suspected of harboring pathogenic organisms including human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves from the operation of medical clinics, hospitals, and other facilities that process this waste; Hazardous Waste; the accumulated solids, Residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects (biosolid); stable matter; yard trimmings or lumber that is more than five (5) feet in length in its longest dimension or more than two (2) feet in diameter, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the control of

the Nuclear Regulatory Commission, but not including those materials defined as Large Items or Recyclable Material.

1.14 Fiscal Year.

Each twelve (12) month period beginning July 1 and ending June 30 during the term of the Agreement.

1.15 Garbage.

All putrescible and non-putrescible waste which generally includes, but is not limited to, kitchen and table food waste, animal, vegetative, food or any organic waste that is attendant with, or results from the storage, preparation, cooking or handling of food materials attributed to normal activities of a Service Unit. Garbage must be generated at the Service Unit from which the Garbage is collected. Garbage does not include those items defined as Exempt Waste, and does not include materials collected as Compostable Waste.

1.16 Hazardous Waste.

Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time, but not including materials defined as E-Waste, Used Oil or Used Oil Filters that can be Recycled.

1.17 Homeowners Association.

A corporation of residential owners joined in an association to govern and manage the shared real estate of a multi-unit property, which has the authority to sign service agreements on behalf of the property owner.

1.18 Large Items.

Those materials listed in Exhibit 12 ("LARGE ITEMS") to this Agreement. Large Items must be generated at the Service Unit from which the Large Items are collected.

1.19 Large Yard Trimmings.

Oversized Yard Trimmings such as tree trunks and branches with a diameter between six (6) inches and two (2) feet, and a length not more than five (5) feet in its longest dimension, which are attributed to the normal activities of a Service Unit. Large Yard Trimmings must be generated at the Service Unit from which the Large Yard Trimmings are collected.

1.20 Market Specifications.

Those specifications identified in the Institute of Scrap Recycling Industries, Inc. (ISRI), "Scrap Specifications, Circular 2011 (or the most current version of this document), guideline for Nonferrous Scrap, Ferrous Scrap, Glass Cullet, Paper Stock, Plastic Scrap, Electronics Scrap, Tire Scrap, or such other set of market standards as may be designated by the CITY.

1.21 Materials Recovery Facility.

The facility operated by CONTRACTOR and located at 1005 Timothy Drive, San Jose, CA 95133, or such other facility that is approved in advance by the Director and that is designed, operated, and legally permitted for the purpose of receiving, sorting, processing, storing, or preparing Recyclable Material for sale.

1.22 Mixed Use Dwelling.

A building or structure which contains both Business(es) and Dwelling Unit(s).

1.23 Non-Collection Notice.

A form approved by the City Representative and used by CONTRACTOR to notify Service Recipients of the reason for non-collection of materials set out by the Service Recipient for collection by CONTRACTOR pursuant to this Agreement.

1.24 Non-Program Materials.

Those materials which are collected as part of the provision of SFD Recycling Services or SFD Used Oil Collection services and have been approved by the Director for inclusion in the Material Recovery Standard (MRS) set forth in Article 16 of this Agreement. Materials include Post-Processing Commingled Recyclable Material, Used Oil, Used Oil Filters, car batteries, E-Waste, tires, concrete, Yard Trimmings, Compostable Waste, wood, helium or propane compressed gas tanks or cylinders. Non-Program Material must be generated at the Service Unit from which the Non-Program Material is collected.

1.25 Post-Processing Commingled Recyclable Material.

Materials identified as "Overs," and sold as Mixed Plastics 1-7, collected as part of the SFD Recycling Service that cannot be separated by categories as defined by the Institute of Scrap Recycling Industries, Inc. (ISRI) "Scrap Specifications Circular 2011" or the most current version of this document. No material except "Overs" shall be considered Post-Processing Commingled Recyclable Material.

1.26 Process.

The act of separating Recyclable Material collected under the terms of this Agreement by type, in accordance with the procedures set forth in, the MRF Processing Operations Plan included in Exhibit 3 ("SFD RECYCLING SERVICE OPERATIONS PLANS"), such that each material type meets Market Specifications and can be sold for its highest and best use. The MRF Processing Operations Plan may be modified from time to time by the mutual written agreement of CONTRACTOR and the City Representative. Processing includes the separation of Recyclable Material during the "pre-sort" process as described in the MRF Processing Operations Plan. Processing begins at the time Recyclable Material is delivered to the CONTRACTOR's Materials Recovery Facility and ends when the Processed Recyclable Material is separated in accordance with the MRF Processing Operations Plan.

1.27 Property Manager.

The person that manages residential property with multiple units and has the authority to sign a service agreement on behalf of the property owner.

1.28 Rebuilt Vehicle.

A vehicle with replaced parts, and reconditioned or replaced hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. The Rebuilt Vehicle must also be repainted and its tires must have at least eighty-five percent (85%) of tread remaining.

1.29 Recyclable Material.

Newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding sixty (60) pounds in weight nor two (2) feet in any dimension for any single item); steel including "tin" cans and small scrap (not exceeding sixty (60) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics such as plastic bags, plastic film, plastics (1-7), bottles including containers made of HDPE, LDPE, PET, or PVC, and mixed rigid plastics; textiles; aseptic containers; and other materials (except Non-Program Material) that are capable of being Recycled and that would otherwise be disposed of as Residential Solid Waste as mutually agreed upon in writing by CONTRACTOR and the City Representative. Recyclable Material must be generated at the Service Unit from which the Recyclable Material is collected and does not include items defined as Exempt Waste.

1.30 Recycle.

Process and market in a manner that meets the requirements of the California Integrated Waste Management Act, Public Resources Code Section 40000 *et seq.*, for inclusion of the materials in the calculation of diversion from landfill disposal for the purposes of the solid waste diversion requirements of the Act. Recycle does not include transformation as described in Public Resources Code Section 40201, and does not include stockpiling or storage by CONTRACTOR or any other person.

1.31 Recycling Cart.

A heavy plastic receptacle having a hinged tight-fitting lid and wheels that is approved by the City Representative for use by Service Recipients for SFD Recycling Service and that is appropriately labeled as a Recycling Cart. The specifications for Recycling Carts, including capacity, are set forth in Exhibit 13 ("CONTAINER SPECIFICATIONS AND PERFORMANCE CRITERIA") to this Agreement.

1.32 Residential Solid Waste.

Garbage and Rubbish resulting from the normal activities of a SFD Service Unit. Residential Solid Waste must be generated at the SFD Service Unit from which the Residential Solid Waste is collected and does not include items defined as Exempt Waste.

1.33 Residue.

Recyclable Material that is delivered to the CONTRACTOR's Material Recovery Facility for Processing, but which were not Processed by the CONTRACTOR in a manner that meets Market Specifications, and was subsequently removed from the CONTRACTOR's Materials Recovery Facility and disposed. Residue may also contain Recyclable Material that were contaminated, and may contain *de minimus* amount of clean material that escaped sorting; and Residential Solid Waste which is placed in the Recycling Cart.

1.34 Roll-Off Collection Service.

The collection of Roll-Off Containers containing material other than Residential Solid Waste from SFD Service Units, Small Civic Service Units or Businesses from SFD Service Units, Small Civic Service Units or Businesses, and transported to an appropriate facility.

1.35 Roll-Off Container.

A metal container that is normally loaded onto a motor vehicle.

1.36 Rubbish.

All refuse, accumulation of paper, excelsior, rags, wooden boxes and containers, sweep-ups and all other accumulations of a nature other than Garbage and Yard Trimmings, resulting from the normal activities of a Service Unit. Rubbish must be generated at the Service Unit from which the Rubbish is collected. Rubbish does not include items defined as Exempt Waste.

1.37 Service Districts.

Those areas designated as District A and District C on the map set out in Exhibit 4 ("RECYCLE PLUS SERVICE DISTRICTS") to this Agreement.

1.38 Service Recipient.

A Business Service Unit, a Small Civic Service Unit, or a resident of the City of San José residing in a SFD Service Unit that receives services pursuant to this Agreement.

1.39 Service Unit.

Any Business Service Unit or SFD Service Unit.

1.40 SFD Recycling Collection Services.

SFD Recycling Service, SFD Large Item Collection Service, and SFD Used Oil Collection Service (“Collection Services”).

1.41 SFD Large Item Collection Service.

The periodic on-call collection of Large Items from SFD Service Units in the Service District(s) and the delivery of those Large Items to the Disposal Facility, Materials Recovery Facility or such other facility as are appropriate under the terms of this Agreement and approved in advance by the City Representative.

1.42 SFD Recycling Service.

The collection of Recyclable Material from Service Units in the Service District(s), the delivery of those Recyclable Material to a Materials Recovery Facility, and the processing and marketing of those Recyclable Material.

1.43 SFD Service Unit.

Any Dwelling Unit or Small Civic Service Unit in the Service District(s) utilizing a Garbage Cart, any Dwelling Units in a Mixed Use Dwelling, or any combination of Dwelling Units sharing Garbage Carts, for the accumulation and set-out of Residential Solid Waste.

1.44 SFD Used Oil Collection Service.

The collection of Used Oil in Used Oil Containers and Used Oil Filters in Used Oil Filter Containers from Service Units and the appropriate disposition of the Used Oil and Used Oil Filters in accordance with the requirements of this Agreement.

1.45 Small Civic Service Unit.

Those neighborhood parks, fire stations, and other CITY properties as set forth in Exhibit 6 (“SMALL CIVIC SERVICE UNITS”) to this Agreement.

1.46 Small Commercial Business.

A Business that generates less than one (1) cubic yard solid waste per week, and is included in the residential collection program.

1.47 Sold.

A market based transaction when the ownership of Recyclable Material changes from one legal entity to another, that is documented through the use of a “bill of sale”, “sales agreement”, “cancelled checks”, “invoice”, or other appropriate written documentation.

1.48 Transit Mall Zone.

The Transit Mall Zone described in San José Municipal Code Section 9.10.1510 and as set forth in Exhibit 5 to this Agreement.

1.49 Used Oil.

Any oil that has been refined from crude oil or has been synthetically produced, and is no longer useful because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with non-hazardous physical or chemical impurities. Used Oil must be generated at the Service Unit from which the Used Oil is collected. Used Oil does not include transmission fluid.

1.50 Used Oil Container.

A plain copoly container that is at least four (4) quarts in capacity, leak-proof, has a screw-on lid, has a label designating it for use as a Used Oil Container, is approved by the City Representative, and is provided by CONTRACTOR for the accumulation of Used Oil.

1.51 Used Oil Filter.

Any oil filter that is no longer useful because of extended storage, spillage or contamination with non-hazardous impurities such as dirt or water; or has been used and as a result of such use has been contaminated with non-hazardous physical or chemical impurities. Used Oil Filters must be generated at the Service Unit from which the Used Oil Filter is collected.

1.52 Used Oil Filter Container.

A six (6) mil poly bag with double track seal with dimensions of at least fourteen and one-half (14.5) inches by eight (8) inches that has a label designating it for use as a Used Oil Filter Container, is approved by the City Representative, and is provided by CONTRACTOR for the accumulation of Used Oil Filters.

1.53 Work Day.

Any day, Monday through Friday that is not designated as a holiday under this Agreement, and any Saturday on which collection occurs because of the holiday schedule adjustment described in Section 4.6 of this Agreement.

1.54 Yard Trimmings.

Any vegetative matter resulting from normal yard and/or landscaping maintenance that is not more than five (5) feet in its longest dimension or six (6) inches in diameter or weighs more than sixty (60) pounds and any natural Christmas tree regardless of size and weight. Yard Trimmings includes sod; plant debris such as palm, yucca and cactus; grass clippings; leaves; prunings; weeds; branches; brush; Christmas trees; and other forms of horticultural waste generated at the Service Unit from which the Yard Trimmings are collected. Yard Trimmings do not include items defined as Exempt Waste, or Large Yard Trimmings.

ARTICLE 2. TERM OF AGREEMENT

2.1 Term.

Subject to Article 19, the term of this Agreement is from July 1, 2021 through June 30, 2036.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

3.1 Organizational Status.

CONTRACTOR is a corporation duly organized, validly existing and in good standing under the laws of the State of California. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

3.2 Authorization.

CONTRACTOR has the authority to enter into and perform its obligations under this Agreement. David Duong, President of California Waste Solutions, Inc., has taken all actions required by law, its section of incorporation, its bylaws, or otherwise, to authorize the execution of this Agreement. The real person(s) signing this Agreement on behalf of CONTRACTOR has/have authority to do so.

3.3 No Conflict with Applicable Law or Other Documents.

CONTRACTOR's performance of its obligations under this Agreement does not conflict with, violate, or result in breach of any existing applicable law; or any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which CONTRACTOR is a party or by which CONTRACTOR or any of its properties or assets are bound.

3.4 No Litigation.

There is no action, suit, proceeding or investigation at law or in equity, before or by any court or governmental entity, pending or threatened against CONTRACTOR or its partners, or otherwise affecting CONTRACTOR or its partners, wherein an unfavorable decision, ruling, or finding, in any single case or in the aggregate, would materially adversely affect CONTRACTOR's performance hereunder, or which, in any way, would adversely affect the validity or enforceability of this Agreement, or which would have a material adverse effect on the financial condition of CONTRACTOR or its partners.

3.5 Expertise.

CONTRACTOR has the expertise and professional and technical capability to perform all of its obligations under this Agreement and is ready, willing and able to so perform.

3.6 Acknowledgement of Legal Representation.

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation and negotiation of this Agreement and had the opportunity to contribute to the terms and conditions of this Agreement and, accordingly, the rule that a contract will be interpreted strictly against the party preparing the same does not apply herein to the joint contributions of both parties.

3.7 Financial Interest Representation.

CONTRACTOR warrants and represents that no elected official, officer, agent or employee of CITY has a financial interest, directly or indirectly, in this Agreement or the compensation to be paid under it and, further, that no CITY employee who acts as a “purchasing agent” as defined in the appropriate Section of California Statutes, nor any elected or appointed officer of CITY, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of CONTRACTOR and, further, that no such CITY employee, purchasing agent, CITY elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in CONTRACTOR. Material interest means direct or indirect ownership of more than five percent (5%) of the total assets or capital stock of CONTRACTOR.

ARTICLE 4. GENERAL SERVICES

4.1 Grant of Exclusive Agreement.

CONTRACTOR is hereby granted an exclusive agreement to provide SFD Recycling Collection Services at all Service Units within the Service Districts. No other services, including Roll-Off Collection Service, shall be exclusive to CONTRACTOR.

4.2 Limitations to Exclusive Agreement.

4.2.1 Exceptions to Exclusive Agreement.

Nothing in this Agreement shall be construed to limit the collection, processing, and disposal of the following material to CONTRACTOR:

- Used Oil Collection
- Material collected from temporary residential clean-outs with Roll-Off or front-load containers
- Recyclable Material transported by the generator (self-hauled waste)
- Large Items
- Donated material for which the material and any services related to the collection, processing, or disposal of the material does not involve financial consideration
- Compostable Waste composted on the real property where it is generated
- Exempt Waste
- Material which is set aside for destruction and recycling for security purposes (secure document shredding)
- Rock, concrete, asphalt and dirt (inert material)
- Construction and demolition debris
- Rubber and tires

Nothing in this Agreement shall be construed as requiring Service Recipients to set out the above material for collection by CONTRACTOR. Service Recipients may dispose of these materials by other appropriate means including, but not limited to, taking the material to drop-off facilities and donating or selling such items to private or public entities.

4.3 Service Standards.

CONTRACTOR shall perform all services under this Agreement in a thorough and professional manner. Except for emergency collection services as provided in Article 9, all SFD Recycling Collection Services described in this Agreement shall be

performed regardless of weather conditions or difficulty of collection. CONTRACTOR shall perform all additional services described in this Agreement professionally, promptly and courteously.

4.4 Significant Events.

Significant events may occur including, but not limited to, failure of equipment, hazardous materials incident, regulatory actions, fires, earthquakes, floods, or labor actions that detrimentally impact the CONTRACTOR's operations, marketing, labor relations and customer relations. CONTRACTOR will notify the City Representative within two (2) hours of any significant events that negatively impacts its ability to collect, process, or dispose of the material. CITY considers any disruption of more than four (4) hours to be significant.

4.5 Labor and Equipment.

CONTRACTOR shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of CONTRACTOR's obligations under this Agreement. The enumeration of, and specification of requirements for, particular items of labor or equipment does not relieve CONTRACTOR of the duty to furnish all others that may be required, whether enumerated or not. At all times, CONTRACTOR shall have sufficient backup equipment and labor to fulfill CONTRACTOR's obligations under this Agreement. No compensation for CONTRACTOR's services or for CONTRACTOR's supply of labor, equipment, tools, facilities or supervision will be provided or paid to CONTRACTOR by CITY or by any Service Recipient except as expressly provided by this Agreement.

4.6 Holiday Service.

CITY observes Thanksgiving Day, December 25, and January 1 as "legal holidays." On these "legal holidays," CONTRACTOR will not be required to provide services under this Agreement or to maintain office hours. In any week in which one of these legal holidays falls on a Work Day, SFD Recycling Collection Services for the legal holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday SFD Recycling Collection Services being performed on Saturday.

4.7 Ownership of Materials.

Title to Recyclable Material, Large Items, and Used Oil and Used Oil Filters shall pass to CONTRACTOR at the time the materials are set out for collection, except for Recyclable Material selected for inclusion in a waste characterization study specified in Article 10, in which case title shall pass to the CITY at the time the Recyclable Material is set out for collection.

4.8 Hours of Collection.

Except as set forth below, CONTRACTOR shall provide SFD Recycling Collection Services commencing no earlier than 6:00 a.m. and terminating no later than

6:00 p.m., Monday through Friday, with no service on Saturday (except for holiday service) or Sunday.

Collection in the Central Business District and the Transit Mall Zone shall take place between the hours required by the San Jose Municipal Code. A map of the Central Business District and the Transit Mall Zone is included in Exhibit 5 to this Agreement.

The hours, days, or both of collection set out above may be extended due to extraordinary circumstances or conditions with the prior consent of the City Representative. If such consent is given in any manner other than by written notice, the City Representative shall provide written confirmation to CONTRACTOR within three (3) Work Days.

Notwithstanding the above requirements, delivery of collected materials to the Disposal Facility, Materials Recovery Facility or other appropriate facility shall occur during the normal business hours of such facility unless other arrangements have been made with the facility and have been approved in advance by the City Representative.

4.9 Spillage and Litter.

CONTRACTOR shall not litter premises in the process of providing SFD Recycling Collection Services or while its vehicles are on the road. CONTRACTOR shall transport all Recyclable Material, Large Items, or Used Oil and Used Oil Filters in such a manner as to prevent the spilling or blowing of such waste from CONTRACTOR's vehicle. CONTRACTOR shall exercise all reasonable care and diligence in providing SFD Recycling Collection Services so as to prevent spilling or dropping of Recyclable Material, Large Items, or Used Oil and Used Oil Filters during collection activity and shall immediately, at the time of occurrence, clean up such spilled materials.

CONTRACTOR shall immediately cover with petroleum-absorbent material, all oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from CONTRACTOR's operations or equipment repair and shall remove the debris and the petroleum-absorbent material from the street surface before the end of the calendar day immediately following the day of the spill. CONTRACTOR shall clean up any spillage or litter caused by CONTRACTOR within two (2) hours after the occurrence.

When necessary, CONTRACTOR shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate cleanup, CONTRACTOR's vehicles shall at all times carry sufficient quantities of petroleum-absorbent materials, brooms and shovels, and other appropriate cleanup materials or equipment.

4.10 Commingling of Materials Prohibited.

4.10.1 Residential Waste and Recyclable Material.

CONTRACTOR shall not commingle any Recyclable Material collected pursuant to this Agreement with any Residential Solid Waste without the prior

written authorization of the City Representative. Collecting Recycling Material contaminated with Residential Solid Waste by the Service Recipient is not considered commingling under this Section.

4.10.2 Non- San José Recyclable Material.

CONTRACTOR shall not commingle, at any time, including at CONTRACTOR's Materials Recovery Facility, Recyclable Material collected pursuant to this Agreement with any other materials, whether collected by CONTRACTOR or any other person, without the express prior written authorization of the City Representative.

4.10.3 Used Oil.

CONTRACTOR shall at all time keep all Used Oil and Used Oil Filters collected from SFD Service Units pursuant to this Agreement segregated from other materials. CONTRACTOR shall also keep all Used Oil and Used Oil Filters collected from SFD Service Units pursuant to this Agreement segregated from all other Used Oil and Used Oil Filters collected by CONTRACTOR or generated by CONTRACTOR until all CITY-required data has been collected and recorded by CONTRACTOR. Such segregation includes segregation in the collection vehicles, in the holding tanks at the processing facility and all times the Used Oil and Used Oil Filters are in CONTRACTOR's possession.

4.10.4 Large Item Material.

CONTRACTOR shall not commingle the Large Item material with materials from any other source prior to weighing the Large Item material, without the express prior written authorization of the City Representative.

ARTICLE 5. SERVICE UNITS

5.1 Service Units.

Categories of premises and all such premises which may be added during the term of this Agreement by means of annexation, new construction, or as otherwise set forth in this Agreement are included within the meaning of SFD Service Units or Business Service Units.

Any question as to whether a premise or premises falls within one of these categories shall be determined by the City Representative and written notification of those premises to be included as Service Units shall be provided by CITY to CONTRACTOR. The determination of the City Representative shall be final.

5.2 Service Unit Changes.

CITY and CONTRACTOR acknowledge that during the term of this Agreement it may be necessary or desirable to add or delete Service Units for which CONTRACTOR will provide SFD Recycling Collection Services.

5.2.1 Additions.

CONTRACTOR shall provide SFD Recycling Collection Services described in this Agreement to new Service Units in CONTRACTOR's Service District(s) within ten (10) Work Days of receipt of notice from CITY to begin such SFD Recycling Collection Services. Service Units may also be added at the request of CONTRACTOR with written approval of the City Representative or at the request of the Service Unit and written approval of eligibility by the City Representative.

5.2.2 Deletions.

CONTRACTOR shall immediately cease providing SFD Recycling Collection Services upon receipt of notice from CITY to stop such service. Service Units may also be deleted because of a determination by the City Representative that the premises are not located in the Service Districts, or that the premises do not qualify for SFD Recycling Collection Services.

5.2.3 Route Maps.

CONTRACTOR shall revise the Service Unit route maps to show the addition or deletion of Service Units as provided above and shall provide such maps in an electronic format compatible with the ESRI Shapefile Technical Description "An ESRI White Paper—July 1998" (or the most current version of this document).

5.3 Annexation.

If during the term of this Agreement, additional territory within or adjacent to the Service Districts is acquired by CITY through purchase, annexation, eminent domain, or other procedures, the City Representative may designate such additional territory as

part of the Service Districts. If the additional territory is so designated, CONTRACTOR shall provide SFD Recycling Collection Services, as determined by City Representative, in such additional territory in accordance with the provisions and service rates set forth in this Agreement. Such SFD Recycling Collection Services shall begin within ten (10) Work Days of receipt of written notice from the City Representative. CONTRACTOR shall not begin SFD Recycling Collection Services in any additional territory without written authorization from the City Representative.

If, at the time of acquisition by CITY, the additional territory contains more than five hundred (500) Service Units for which CONTRACTOR will provide SFD Recycling Collection Services, CONTRACTOR may phase in the distribution of Recycling Carts on a schedule approved by the City Representative; provided that CONTRACTOR shall complete the distribution of all Recycling Carts within ninety (90) calendar days after CONTRACTOR receives notification to begin SFD Recycling Collection Services in the additional territory.

ARTICLE 6. SFD RECYCLING COLLECTION SERVICES

6.1 General Provisions.

6.1.1 Frequency of Service.

CONTRACTOR shall provide SFD Recycling Collection Services to each Service Unit in the Service Districts once every week on a scheduled route basis. CONTRACTOR shall provide SFD Used Oil Collection Services to each SFD Service Unit in the Service Districts once every week on a scheduled route basis. CONTRACTOR shall provide collection of Recyclable Material, Used Oil and Used Oil Filters on the same Work Day as the collection of Residential Solid Waste to that Service Unit is scheduled. Where the scheduled collection day falls on a holiday, CONTRACTOR shall adjust the route schedule as set forth in this Agreement.

6.1.2 Accessibility to Street.

In those instances where a public or private street within the Service Districts is temporarily closed to vehicular traffic but is accessible to pedestrian traffic, CONTRACTOR shall use pedestrian access to provide SFD Used Oil Collection Service and SFD Recycling Service with no disruption of service to the Service Units. In those instances where a public or private street within the Service Districts is temporarily closed to vehicular traffic, CONTRACTOR shall not be required to utilize pedestrian access to provide SFD Large Item Collection Service, but shall reschedule collection and shall notify the Service Recipient of the rescheduled collection date.

6.1.3 Service Agreement.

Upon request, CITY will provide CONTRACTOR with a list of private streets in the Service Districts, and shall provide updated lists as additional streets are added or additional information is available. CONTRACTOR shall obtain a signed service agreement from each SFD Service Unit complex or development that requires the CONTRACTOR to enter upon private streets to perform SFD Recycling Collection Services, and that has a Property Manager and/or Homeowner's Association. CONTRACTOR shall provide the City Representative with copies of all signed service agreements within ten (10) Work Days of receipt by CONTRACTOR. The service agreements will contain at least the following information: Name and address of the complex, development, or homeowners' association; name, address and phone number of the contact person for the complex, development, or homeowners' association; permission for CONTRACTOR to enter the private streets; number and size of Recycling Carts; and collection location if not curbside.

6.1.4 Manner of Collection.

CONTRACTOR shall provide all SFD Recycling Collection Services with as little disturbance as possible. CONTRACTOR shall leave any Recycling Cart in an upright position at the same point from which its contents were collected and shall leave replacement Used Oil Containers and Used Oil Filter Containers at the point of collection, without obstructing alleys, roadways, driveways, sidewalks or mailboxes.

CONTRACTOR's employees providing SFD Recycling Collection Services shall follow the regular walk for pedestrians while on private property and shall not trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care shall be taken to prevent damage to property, including flowers, shrubs, and other plantings.

6.1.5 Holiday Contingency Plan.

On or before September 30th of each year, CONTRACTOR shall submit an annual plan that outlines collection strategies to handle increased tonnages during the fall/winter holiday season. The plan should list any additional vehicles which will be utilized including ID#, type, license number and material that will be collected; strategy for fluctuation in the labor force; and how excess material delivered to CONTRACTOR's processing facility will be processed.

6.2 SFD Recycling Service and SFD Used Oil Collection Services.

6.2.1 Conditions of Service.

CONTRACTOR shall provide SFD Recycling Service and SFD Used Oil Collection Service to all Service Units (other than Business Service Units for Used Oil Collection) in the Service Districts when the:

- The Recycling Cart is placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and the Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR's collection crew and vehicle. In the event the Service Recipient produces more Recyclable Material than can fit in the Recycling Cart, CONTRACTOR shall collect corrugated cardboard placed beside the Recycling Cart and such excess Recyclable Material as is set out beside the Recycling Cart in an additional container containing predominantly Recyclable Material whose loaded weight does not exceed sixty (60) pounds.
- Used Oil Containers and Used Oil Filter Containers have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location

agreed to by CONTRACTOR and the Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR's collection crew and vehicle.

6.2.2 Courtesy Notice.

CONTRACTOR shall be required to collect any Recyclables Materials that are placed in a Recycling Cart even if placement of cart causes CONTRACTOR to move it to facilitate collection. CONTRACTOR may affix to the Recycling Cart a Courtesy Notice.

CONTRACTOR may also affix to the Recycling Cart a Courtesy Notice if corrugated cardboard is placed beside the Recycling Cart and cart is not full. In the event a courtesy notice is left more than three (3) times during a rolling twelve (12) month period for the same reason, the City Representative will work with CONTRACTOR to resolve the situation.

6.2.3 Non-Collection.

6.2.3.1 Non-Collection of Recyclable Materials.

CONTRACTOR shall not be required to collect Recyclable Material from a Recycling Cart that contains Hazardous Waste or Exempt Waste. If Recyclable Material is commingled with Hazardous Waste or Exempt Waste, CONTRACTOR shall affix a Non-Collection Notice to the Recycling Cart explaining why the Recycling Cart was not collected and providing instructions to the Service Recipient on the procedures for setting out Recyclable Material and the procedures for disposing Hazardous Waste or Exempt Waste.

6.2.3.2 Non-Collection of Used Oil.

CONTRACTOR shall not be required to collect material placed in Used Oil Containers or Used Oil Filter Containers unless the material is Used Oil or Used Oil Filters, respectively. In the event of non-collection, CONTRACTOR shall affix to the Used Oil Container or Used Oil Filter Container a Non-Collection Notice explaining why collection was not made and providing instructions to the Service Recipient on the procedures for setting out Used Oil or Used Oil Filters. If non-collection is because the material placed in the Used Oil Container or the Used Oil Filter Container was identified by CONTRACTOR as a Hazardous Waste, CONTRACTOR shall notify CITY's Environmental Services Department of the non-collection prior to leaving the Service Unit. If non-collection is because the Used Oil or Used Oil Filter was placed in an improper container, CONTRACTOR shall also leave Used Oil Containers or Used Oil Filter Containers in a number sufficient to contain the uncollected Used Oil (but not

exceeding sixteen (16) quarts) or Used Oil Filters (but not exceeding two (2) Used Oil Filters) along with the Non-Collection Notice.

6.2.4 Reporting of Problems and Non-Collections.

6.2.4.1 Reporting of Non-Collections.

CONTRACTOR shall document in the Customer Service System all instances where a Non-Collection Notice was issued. Notwithstanding any other reporting obligation, CONTRACTOR shall to the extent possible report all Non-Collection Notices by the end of the next Work Day, but no later than two Work Days after the Non-Collection Notice was issued. When reporting Non-Collections Notices to the CITY, CONTRACTOR shall include the address of the Service Recipient and clear and convincing photographic documentation that supports the reason for the Non-Collection. CONTRACTOR shall submit all photographic documentation in an electronic format, approved by the City Representative, with the Service Recipient's address in the file title and the date, time, and GPS coordinates in the metadata of each electronic file. Failure to properly document and report a Non-Collection will subject CONTRACTOR to Liquidated Damages as set forth in this Agreement.

6.2.4.2 Reporting of Problems.

In addition to reporting Non-Collections, CONTRACTOR shall on a daily basis document in the Customer Service System all other situations that prevent or hinder collection and all replacements, repairs and exchanges of Recycling Carts. Except as otherwise provided in this Agreement, to the extent possible, CONTRACTOR shall make such reports by the end of the Work Day in which the event occurred. Where it is not possible to make such reports by the end of the Work Day, CONTRACTOR shall report such events no later than the end of the next Work Day.

6.2.5 Recyclable Material Overflow.

In the case of repeated set-outs of excess Recyclable Material, CONTRACTOR shall contact the Service Recipient to arrange for an appropriate change in Recycling Cart size or the provision of additional Recycling Carts.

In the event CONTRACTOR cannot successfully contact the Service Recipient after three attempts, or cannot reach an agreement with such Service Recipient regarding the change in service, CONTRACTOR shall utilize the Customer Service System to provide the City Representative with the details of the set-outs of excess Recyclable Material, and the attempts at communication with the Service Recipient. The City Representative shall respond to CONTRACTOR's report and make a final written determination. Within ten (10)

Work Days of receipt of the City Representative's written determination, CONTRACTOR shall exchange the Recycling Cart or shall provide additional Recycling Carts to the extent required by such written determination.

6.3 Disposition of Recyclable Material and Used Oil.

6.3.1 Materials Recovery Facility.

CONTRACTOR shall transport and deliver all Recyclable Material collected as a result of performing SFD Recycling Services to the Materials Recovery Facility. In the event the Materials Recovery Facility is unable to accept delivery of the Recyclable Material, CONTRACTOR shall deliver the Recyclable Material to such other appropriate facility as is approved in advance by the City Representative. CONTRACTOR's failure to comply with this provision shall result in the levy of liquidated damages as specified in Article 18 of this Agreement and may result in CONTRACTOR being in default under this Agreement.

6.3.2 Used Oil Processing.

CONTRACTOR shall Recycle the Used Oil and Used Oil Filters only with persons who are authorized by the State of California to Recycle oil. CONTRACTOR shall Recycle all such Used Oil and Used Oil Filters to the extent feasible and, in accordance with applicable state and federal law and at CONTRACTOR's own cost and expense, shall properly dispose of all Used Oil and Used Oil Filters that cannot be Recycled. CONTRACTOR shall report any Used Oil or Used Oil Filters that cannot be Recycled and requires disposal in CONTRACTOR's quarterly report to the CITY.

6.4 Provision and Maintenance of Recycling Carts and Used Oil Containers.

6.4.1 Inventory.

CONTRACTOR shall maintain an inventory of Recycling Carts, Used Oil Containers and Used Oil Filter Containers in sufficient number for CONTRACTOR to perform deliveries, repairs and exchanges of such equipment in a timely manner.

6.4.2 Purchase and Distribution of Recycling Carts and Used Oil Containers.

CONTRACTOR shall purchase and distribute fully assembled and functional Recycling Carts to those Service Units in or added to the Service Districts during the term of this Agreement. The number of Recycling Carts and the size of the Recycling Cart to be distributed will be in accordance with the information provided by the City Representative to CONTRACTOR.

CONTRACTOR shall complete the distribution of the Recycling Carts within ten (10) Work Days of receipt of the information from the City Representative. If directed by the City Representative, CONTRACTOR will

provide multiple Recycling Carts to a Service Unit. Recycling Carts shall meet the specifications set forth in Exhibit 13.

Within ten (10) Work Days of receipt of a verbal request from CITY or a Service Recipient (other than at a Business Service Unit), CONTRACTOR shall, at CONTRACTOR's sole cost and expense, provide the SFD Service Unit or the Small Civic Service Unit with Used Oil Containers and Used Oil Filter Containers in the number requested but not exceeding a number sufficient to hold sixteen (16) quarts of Used Oil and two (2) Used Oil Filters.

At the time CONTRACTOR collects Used Oil from a SFD Service Unit or a Small Civic Service Unit, CONTRACTOR shall, at CONTRACTOR's sole cost and expense, leave at the premises one (1) Used Oil Container for each Used Oil Container collected and one (1) Used Oil Filter Container for each Used Oil Filter Container collected. CONTRACTOR shall keep the outside of all Used Oil Containers and Used Oil Filter Containers clean and may re-use the containers until the condition of the container makes it inappropriate for re-use.

6.4.3 Replacement or Exchange of Recycling Carts.

Under the following circumstances, CONTRACTOR shall replace or exchange each Recycling Cart at no cost or inconvenience to the Service Recipient, and at no cost to the CITY:

- Damage by CONTRACTOR
- Normal Wear and Tear
- Mandatory Service Level Change Initiated by the CITY

Under the following circumstances, CONTRACTOR shall be compensated for the replacement or exchange of each Recycling Cart in accordance with Exhibit 1 ("COMPENSATION"), as adjusted under the terms of this Agreement. CONTRACTOR acknowledges that it will not be compensated for (1) customer initiated Recycling Cart exchanges for District A between 0.114% and 2.807% of the average number of households in a Fiscal Year, and (2) customer initiated Recycling Cart exchanges for District C between 0.034% and 2.064% of the average number of households in a Fiscal Year. Recycling Cart exchanges below or above these ranges shall be compensated by the CITY in the June invoice. Cart exchange counts shall be rounded to the nearest whole number.

- Stolen or Lost Carts
- Voluntary Service Level Change Initiated by the Service Recipient
- Damage not by CONTRACTOR

All replacement, exchange, removal, or repair of Recycling Carts must be completed within ten (10) Work Days of receiving notification from the City Representative or Service Recipient.

6.4.4 Ownership of Recycling Carts.

Recycling Carts in the possession of a Service Unit as of the Effective Date of this Agreement and all Recycling Carts distributed by CONTRACTOR during the term of this Agreement shall be the property of CONTRACTOR. CONTRACTOR shall retain ownership of such Recycling Carts during the term of this Agreement. Upon the expiration or termination of this Agreement, CONTRACTOR shall transfer to CITY and CITY shall obtain ownership of all Recycling Carts that are in the possession of a Service Unit on the date of such expiration or termination. CONTRACTOR shall retain ownership of all Recycling Carts in CONTRACTOR's possession at the expiration or termination of this Agreement.

6.5 On-Premises Service.

6.5.1 Non-Subscription On-Premises Service.

CONTRACTOR shall provide on-premises collection of Recyclable Material and Used Oil to a SFD Service Unit if all adult Service Recipients residing therein have disabilities that prevent them from setting the Recycling Cart or Used Oil Container and Used Oil Filter Container at the curb for collection and if a request for non-subscription on-premises service has been made to, and approved in the manner required by, CITY. The City Representative or agent shall notify CONTRACTOR of any SFD Service Units requiring non-subscription on-premises service; along with the date such service is to begin. No additional monies shall be due to CONTRACTOR for the provision of non-subscription on-premises service.

CONTRACTOR may at any time, but not more often than twice in any Fiscal Year, request that the City Representative or agent verify the eligibility of a SFD Service Unit for non-subscription on-premises service. Upon receipt of CONTRACTOR's request, the City Representative or agent shall make a determination as to whether the SFD Service Unit meets the eligibility requirements and shall notify CONTRACTOR of such determination within sixty (60) calendar days of CONTRACTOR's request. At the time CONTRACTOR makes the request for verification of eligibility, CONTRACTOR may submit to the City Representative or agent any information relevant to the determination.

6.5.2 Subscription On-Premises Service.

CONTRACTOR shall provide subscription on-premises collection of Recyclable Material and Used Oil to those SFD Service Units subscribing to such service, except that subscription on-premises collection service shall not be available in those instances where the on-premises collection location of the

Recycling Cart is more than one hundred (100) yards from the normal curbside set out location. The City Representative shall notify CONTRACTOR of any SFD Service Units subscribing to subscription on-premises collection service, along with the date such service is to begin.

6.5.3 Manner of Collection.

In the case of on-premises service, CONTRACTOR shall remove the Recycling Cart and Used Oil and Used Oil Filter Containers from the back or side of the Service Unit (or from such other location as agreed to by CONTRACTOR and the Service Recipient), shall empty the contents into the collection vehicle, and shall return the Recycling Cart and replacement Used Oil and Used Oil Filter Containers to the location from which they were removed.

6.5.4 Collection Day.

CONTRACTOR shall provide on-premises SFD Recycling Service and Used Oil Collection Service on the same Work Day that curbside collection would otherwise be provided to the SFD Service Unit.

6.6 Hard-to-Serve Service Units.

CONTRACTOR shall provide Collection Service to Service Units in locations that may not be accessible to a standard collection vehicle through use of smaller vehicles and/or alternative collection methods. The service rates for these locations are to be mutually agreed upon by the CONTRACTOR and CITY.

6.7 SFD Large Item Collection Service.

CONTRACTOR shall perform SFD Large Item Collection Service to Small Civic Service Units and SFD Service Units in accordance with the following terms and conditions:

6.7.1 Frequency of Service.

CONTRACTOR shall provide SFD Large Item Collection Service on an on-call basis to those SFD Service Units in the Service District requesting the service. CITY or Service Recipient will notify CONTRACTOR of a request for SFD Large Item Collection Service. Collection shall be made from the curbside within two (2) scheduled collection days of notification to CONTRACTOR by CITY or Service Recipient, unless an alternate date is mutually agreed upon by Service Recipient and CONTRACTOR. In the event of a natural disaster, public emergency or other similar circumstance that make it unreasonable for CONTRACTOR to provide SFD Large Item Collection Service within two (2) scheduled collection days, CONTRACTOR and CITY will mutually agree on a short-term, temporary modification to the scheduling of SFD Large Item Collection Service.

6.7.2 Conditions of Service.

CONTRACTOR shall provide on-call SFD Large Item Collection Service to all SFD Service Units whose Large Items have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by CONTRACTOR and the Service Recipient, that will provide safe and efficient accessibility to the CONTRACTOR's collection crew and vehicle. CONTRACTOR shall notify the Service Recipient in advance; either in writing or by telephone, of the specific Work Day the service will be provided. Each set-out of up to three (3) Large Items shall be considered a single collection for the purposes of invoicing.

6.7.3 Large-Item Collection Service to City.

CONTRACTOR agrees to provide SFD Large Item Collection Services to be determined by the City Representative up to ten (10) times per Fiscal Year through the term of this Agreement. Each set-out of up to three (3) Large Items shall be considered a single collection. The SFD Large Item Collection Services will be at no charge to the CITY or Service Recipient.

6.7.4 Non-Collection.

CONTRACTOR shall not be required to collect more Large Items than specified by the requestor of the service. In the event of non-collection, CONTRACTOR shall affix a Non-Collection Notice to the uncollected Large Item(s) explaining why collection was not made.

6.7.5 Maximum Reuse and Recycling.

CONTRACTOR shall process Large Items in accordance with the following hierarchy:

- Reuse as is (where energy efficiency is not compromised)
- Disassemble for reuse or Recycling
- Recycle
- Disposal

CONTRACTOR shall not landfill such Large Items unless the Large Items cannot be reused or Recycled.

6.7.6 Large Items Containing Freon.

In the event CONTRACTOR collects Large Items that contain freon, CONTRACTOR shall handle such Large Items in a manner such that the Large Items are not subject to regulation as Hazardous Waste under applicable state and federal laws or regulations.

6.7.7 CITY Direction of Large Items.

CITY reserves the right to direct CONTRACTOR to take Large Items collected from SFD Service Units or Small Civic Service Units to designated

site(s) within fifty (50) miles of the city limits of the City of San José for the purpose of permitting persons who will reuse or Recycle such Large Items to obtain the Large Items at no cost. CONTRACTOR shall have no obligation to dispose of the Large Items or Large Item Residue remaining at the site or sites after reusers and recyclers have removed reusable or recyclable Large Items.

ARTICLE 7. RESERVED

ARTICLE 8. RECYCLABLE MATERIAL PROCESSING

8.1 Materials Recovery Facility.

CONTRACTOR shall provide the Materials Recovery Facility for processing all Recyclable Material collected pursuant to this Agreement. CONTRACTOR shall Process all Recyclable Material in the manner set forth in Exhibit 3, of this Agreement to meet Market Specifications. CONTRACTOR acknowledges that it will Process all incoming materials in a manner that meets the terms and intent of the Agreement. CONTRACTOR further acknowledges that many material markets (end-users, paper mills, etc.) have mill or user-specific specifications that may be more stringent than the ISRI specifications, and CONTRACTOR further acknowledges that it shall be responsible for meeting any such other more stringent specifications in order to meet the diversion standards as specified in Article 16 of this Agreement.

8.2 Processing of Recyclable Material.

CONTRACTOR acknowledges that all Recyclable Material collected under the terms of this Agreement are to be Processed unless written authorization to not Process a specific Recyclable Material is received from the City Representative. CONTRACTOR shall Process Recyclable Material in accordance with this Agreement. CONTRACTOR acknowledges that Processing some Recyclable Material may not be profitable but CONTRACTOR nevertheless shall Process Recyclable Material as required hereunder. CITY acknowledges that CONTRACTOR's Residue may contain Recyclable Material that were contaminated, and may contain *de minimus* amount of clean material that escaped sorting.

CONTRACTOR shall not load materials from the tip floor for transport off-site without prior written authorization from the City Representative. This restriction does not apply to materials that have been pulled from the tip floor as a result of the pre-sort operation, to materials that have been fully processed through the MRF, or to materials that are being transferred to an Alternative Processing Facility approved by the CITY pursuant to the Agreement.

8.3 Modification of Market Specifications.

Market Specifications may be modified by CITY based on input from CONTRACTOR, to accommodate material categories that are separated from and typical of a single stream recyclable program or that are either not listed by ISRI or cannot reasonably be processed to meet ISRI specifications. In evaluating the need to modify Market Specifications, CITY shall consider the following criteria:

- the intent of the Agreement that Recyclable Material be separated in a manner so as to allow them to be sold for their highest and best use;
- the commodity specifications required by a list of national commodity brokers located in the San Francisco Bay Area. This list and any amendments shall be developed by the CITY in consultation with CONTRACTOR;

- the commodity specifications used by the list of Peer Recyclable Material Facilities. This list and any amendments shall be developed by the CITY in consultation with CONTRACTOR; and
- information provided by CITY staff, consultants, and CONTRACTOR.

8.4 Review of Market Specifications.

On or before July 1, 2021 and semi-annually thereafter at CONTRACTOR's request, CITY will develop or update information that may be used to modify the Market Specifications. In obtaining this information, CITY will obtain information from the Peer Recyclable Material Facilities related to the standards to which the Peer Facilities are processing a material that is lower than the equivalent ISRI specification. The Peer Facility Specifications will be ranked and the median Peer Facility Specification may be used in place of ISRI specification for a temporary period to be agreed upon by the CONTRACTOR and City Representative.

8.5 Capacity and Reporting Requirements.

CONTRACTOR shall ensure there is sufficient capacity at the Materials Recovery Facility to process, and store until marketed, all Recyclable Material collected by CONTRACTOR pursuant to this Agreement during any one week collection period. CONTRACTOR shall maintain procedures, records and internal controls to preclude the commingling of Recyclable Material collected pursuant to this Agreement with any and all other materials delivered to the Materials Recovery Facility and to ensure complete, accurate and timely recording and reporting of Recyclable Material processing. At a minimum, CONTRACTOR shall perform or shall cause to be performed, all of the following:

- All Recyclable Material shall be weighed upon delivery to the Materials Recovery Facility and all weight (gross and tare) and related delivery information, including date, time, material type, route and truck number, shall be recorded and reported to the CITY as specified in Exhibit 8 ("DATA AND REPORTING") of this Agreement;
- All processed Recyclable Material shall be weighed after baling, containerizing or other processing at the time of shipment from the MRF or Alternate Facility and the weights shall be recorded and reported to the CITY as specified in Exhibit 8;
- The weights of all materials received, the weights of all materials Processed, the weights of all materials sold, the number of bales stored, and weights of all materials disposed as residue shall be reconciled on a weekly basis;
- In the event an alternate storage facility is needed, the weights of all Processed materials transported for temporary storage and the storage location shall be reported upon each occurrence; and

- All scales shall be registered with the County Department of Weights and Measures and shall be regularly maintained to ensure their reliability and continued functioning. Current certificates of registration, inspection reports and all maintenance records shall be made available for review by CITY upon receipt of written request from the City Representative. Scales shall be operated in the same manner as required by State weigh master regulations.

8.6 Disposition of Residue.

CONTRACTOR shall properly dispose of any and all Residue remaining from the processing of Recyclable Material at the Disposal Facility.

8.7 Alternate Facility.

8.7.1 Alternate Processing Facility.

CONTRACTOR shall secure processing capacity at an alternative facility, approved by the City Representative, for use in the event the Materials Recovery Facility is closed on a Work Day because of the order of a regulatory agency having jurisdiction over the Materials Recovery Facility or the Materials Recovery Facility is unable to process Recyclable Material in accordance with the requirements of this Agreement. CONTRACTOR shall submit an alternate processing facility plan in accordance with the outline set forth in Exhibit 16. CITY will make a final determination within thirty (30) calendar days of receipt of CONTRACTOR's alternate processing facility plan.

8.7.2 Alternate Storage Facility.

In the event the Materials Recovery Facility is unable to store the amount of material required by Section 8.6, CONTRACTOR, at CONTRACTOR's sole cost and expense, may arrange for alternate storage capacity at a facility approved in advance by the City Representative, provided that all material collected pursuant to this Agreement shall be kept segregated from all other material at the alternate facility. The materials that were not Processed before transportation to the Alternate Facility shall be transported back to the Materials Recovery Facility for Processing unless another arrangement is approved in advance by the City Representative. Materials that were processed prior to the transfer to the Alternate Facility may be sold directly from the Alternate Facility, provided that the material shall not be commingled with any other materials prior to shipping offsite and provided that CONTRACTOR shall submit to CITY reports required by this Agreement segregated by Alternate Facility.

8.7.3 Temporary Use of Alternate Facility.

CONTRACTOR must notify the City Representative electronically or in writing, at least two hours in advance if materials are to be taken to the Alternate Facility. CONTRACTOR may request approval to Process at the Alternate

Facility for a maximum of 30 calendar days. The CITY reserves the right to extend the duration of the approval; or rescind the approval if CONTRACTOR fails to comply with the terms of the Agreement. The CITY's decision shall be in writing and shall address the following factors in determining whether or not to approve an alternative processing and/or storage facility:

- the rights afforded to CITY with respect to access to the Alternate Facility and records;
- protocols to assure accurate weighing of incoming Recyclable Material;
- protocols to assure that Recyclable Material will be Processed at the Alternate Facility as required under this Agreement;
- in the event that Recyclable Material are commingled at the Alternate facility, a statistically reliable methodology for measuring total separated Recyclable Material and Residue subject to approval from the City Representative; and
- assurance that all reports required of CONTRACTOR pursuant to this Agreement could still be made on a timely basis for all activities occurring at the Alternate Facility.

8.7.4 Reporting of Alternate Facility.

In addition to CONTRACTOR's existing reporting requirements, CONTRACTOR must report daily, either electronically or in writing, the tonnage of material taken to the Alternate Facility.

8.7.5 Direction to Alternate Facility.

In the event that CONTRACTOR is unable to comply with the processing requirement of this Agreement, the CITY reserves the right to require that CONTRACTOR deliver the material to an alternate facility (other than the Materials Recovery Facility or Alternate Facility). The cost of processing for these services will be at CONTRACTOR's sole expense. If CITY incurs costs to provide alternate processing services, the costs shall be deducted from CITY's monthly invoice payment(s) to CONTRACTOR for Recycle Plus Services. Any revenues from the sale of the material would belong to the alternate facility.

8.8 E-Waste Processing.

CONTRACTOR shall cause the E-Waste to be processed with a person or entity in compliance with the Basel Action Network e-Stewardship Standard or another comparable standard approved by the CITY.

8.9 Use as Alternative Daily Cover.

CONTRACTOR shall ensure that the Recyclable Material collected pursuant to this Agreement is not disposed of in a landfill nor utilized as alternative daily cover

(ADC) at a landfill or other landfill application without prior written approval of the Director.

8.10 Transformation of Recyclable Material.

CONTRACTOR acknowledges that the California Integrated Waste Management Act requires solid waste diversion from landfill disposal and that transformation, as defined in Public Resources Code Section 40201, is not an acceptable method for meeting said diversion requirements. CONTRACTOR shall not Process by means of transformation any Recyclable Material collected under this Agreement, nor shall CONTRACTOR ship, transport, deliver or otherwise make available any such Recyclable Material to any person for the purpose of transformation, without the express prior written authorization of the Director. This restriction shall remain in force regardless of any change in the definition of transformation or in the ability of CITY to count transformation as diversion under State law.

8.11 Recycling Markets “Safety Net.”

CONTRACTOR and CITY will maintain a “safety net” for recycling commodity markets for the term of the Agreement.

The commodity markets for recyclables experience cyclical changes and fluctuations in market price due to supply and demand, periodic strikes, transportation issues, and other reasonably foreseeable events (“Market Forces”). The “safety net” specified in this Section 8.11 will not address market price fluctuations or other changes due to Market Forces. If market prices for recyclables fluctuate as a result of Market Forces, CONTRACTOR shall be solely responsible for mitigating any potential economic impacts.

However, if recyclable commodity markets become not reasonably available, or there are other unforeseeable events related to the recyclable commodity that cause ongoing economic impact, CONTRACTOR and CITY will meet to discuss a reasonable modification to the provisions of the new Material Recovery Standard and/or other adjustments to Contractor’s recycling obligations under the agreement with the City.

ARTICLE 9. ADDITIONAL SERVICES

9.1 Public Education and Outreach Program.

CITY will be responsible for public education and outreach related to the Recycle Plus Program. If CONTRACTOR chooses to distribute public education and outreach materials or engage in outreach activities related to the Recycle Plus Program at its own expense, such materials or activities must be approved by the City Representative in advance. Copies of any outreach material and/or a description of the outreach activities shall be submitted to the City Representative for prior review and approval at least fifteen (15) Work Days in advance of providing the outreach to the public.

CONTRACTOR shall provide copies of approved outreach material to the City Representative within five (5) Work Days after publication.

9.2 News Media Relations.

CONTRACTOR shall notify the City Representative by email or phone of all requests for news media interviews related to the Recycle Plus Program within twenty-four (24) hours of CONTRACTOR's receipt of the request. Before responding to any inquiries involving Recycle Plus-related issues or any issues likely to affect participation or Service Recipient perception of services, CONTRACTOR will discuss CONTRACTOR's proposed response with the City Representative.

Copies of draft news releases or proposed trade journal articles shall be submitted to the City Representative for prior review and approval at least five (5) Work Days in advance of release, except where CONTRACTOR is required by any law or regulation to submit materials to any regulatory agency in a shorter period of time, in which case CONTRACTOR shall submit such materials to the City Representative simultaneously with CONTRACTOR's submittal to such regulatory agency.

Copies of articles resulting from media interviews or news releases related to CONTRACTOR's providing services under this Agreement shall be provided to the City Representative within five (5) Work Days after publication.

9.3 Pilot Programs.

9.3.1 Residential Service.

CITY may request CONTRACTOR to conduct pilot test programs that temporarily change the collection method, the type of service, or the service schedule for a portion of the Service Units in CONTRACTOR's Service Districts. A pilot test program shall be limited to no more than ten percent (10%) of the Service Units in the Service Districts and to a term of no more than eighteen (18) months unless otherwise specifically agreed by CONTRACTOR and the Director.

9.3.2 Recordkeeping.

CONTRACTOR shall perform any additional record keeping required by a pilot test program. If CONTRACTOR agrees to perform a pilot test program, CONTRACTOR and the Director shall execute a letter of agreement prior to the start of the pilot test program. The letter of agreement shall set forth the terms of the pilot test program including program costs, program operating parameters, and program duration.

9.3.3 Letter Agreement.

If a pilot test program affects the cost of providing Collection Services, the program costs set forth in the letter of agreement may include an adjustment to the monthly payments otherwise payable to CONTRACTOR under this Agreement to reflect the benefits and/or burdens of the pilot test program. The adjustment shall be set so as to capture any increase or decrease in CONTRACTOR's direct operating costs resulting from the pilot test program. "Direct operating costs" include planning costs; labor expense, including supervision (wages, employment taxes, and fringe benefits); materials, supplies and fuel; and amortized costs of new equipment purchased or equipment modified for the pilot test program. Any increases in direct operating costs must be established by CONTRACTOR and must be capable of verification by an independent auditor.

9.4 Other Programs and Services.

CONTRACTOR shall provide other services and programs related to the Recycle Plus Program as requested by CITY at a price to be mutually agreed upon between CONTRACTOR and the Director. In the event CONTRACTOR and the Director cannot reach a mutually agreed upon price for the requested service or program within sixty (60) calendar days of CITY's request, CITY shall have the right to procure the service of other vendors or contractors to provide the requested service.

9.5 Natural Disaster.

In the event of a tornado, major storm, earthquake, fire, natural disaster, or other such event, the City Representative may grant CONTRACTOR a variance from regular routes and schedules. As soon as practicable after such event, CONTRACTOR shall advise the City Representative when it is anticipated that normal routes and schedules can be resumed. The City Representative shall make an effort through the local news media to inform the public when regular services may be resumed. Clean-up from some events may require that CONTRACTOR hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event. CONTRACTOR shall receive additional compensation, above the normal compensation contained in this Agreement, to cover the costs of rental

equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in Exhibit 1 to this Agreement, provided CONTRACTOR has first secured written authorization and approval from the City Representative.

9.6 Emergency Collection Services.

CONTRACTOR may be required to provide SFD Recycling Collection Services on an emergency services basis. If CITY requires CONTRACTOR to provide such emergency services, CONTRACTOR shall be compensated for such services at the service rates set forth on Exhibit 1 to this Agreement.

ARTICLE 10. COLLECTION ROUTES

10.1 Collection Routes.

CONTRACTOR shall provide the City Representative with maps precisely defining CONTRACTOR's collection routes, together with the days and the times within ten (10) Work Days of the CITY's request . The maps shall be printed and in an electronic format compatible with the ESRI Shapefile Technical Description "An ESRI White Paper—July 1998" (or the most current version of this document). For purposes of this Section, "compatible" means the ability to import and export data between computer systems without the need for custom translation software. CITY shall provide CONTRACTOR with updated base maps of CONTRACTOR's Service Districts in the electronic format referenced above.

CONTRACTOR shall provide the City Representative with an electronic spreadsheet containing route numbers, collection days, street sweeping weeks (if applicable), Customer Service System identification number, and service address for all Service Units. This data shall be provided annually by October 15 of each year.

10.2 Collection Route Changes.

CONTRACTOR shall submit to the City Representative, in writing, any proposed route change (including printed and electronic maps) not less than sixty (60) Work Days prior to the proposed date of implementation. The City Representative may provide written comments on such proposed change to CONTRACTOR no later than ten (10) Work Days after receipt of the proposal, and in such event, CONTRACTOR shall revise the routes to reflect such comments and return them to the City Representative for CITY corroboration within ten (10) Work Days after receipt of the City Representative's comments. CONTRACTOR shall not implement any route changes without the prior approval of the City Representative. CITY will not unreasonably withhold approval of route change requests if new route designs meet customer service and performance requirements.

Route change requests must include the following information in order to be considered for approval:

1. A table comparing, side by side, projected data for the proposed routes with the following information contained in the most recent Collection Route Audit data identified in Section 10.3 of this Agreement:
 - a. The route number, the date of the audit, and the starting and ending times of collection during the audit.
 - b. The number of Service Units on the route.
 - c. The number of trips made by each vehicle to the Materials Recovery Facility.

- d. The tonnage of Recyclable Materials, and the time of arrival and departure of each vehicle at the Materials Recovery Facility.
 - e. The average number of hours per route per day and distribution of work hours amongst the drivers
2. A narrative proposal detailing how the following will be addressed:
- a. Impacts to upcoming County pocket annexations, if applicable
 - b. Impacts to CONTRACTOR's Materials Recovery Facility
 - c. Plans for unused collection vehicles
 - d. Truck maintenance plan changes, if any
 - e. CONTRACTOR's plans to ensure:
 - i. labor peace is maintained
 - ii. drivers do not exceed 45 hour rule
 - iii. excellent customer service is maintained
 - iv. no additional missed collections
 - v. no increase in hold times for customer calls
 - f. Details on routing to accommodate traffic impacts around schools

If the approved route change will change the collection day for a Service Unit, or will change the time of collection from morning to afternoon or vice versa, CONTRACTOR shall provide notice of the route change, in a manner approved by the City Representative, to the affected Service Units not less than thirty (30) Work Days before the proposed date of implementation.

If the route change will change the collection day for a Service Unit, CONTRACTOR shall first coordinate the proposed change with other Recycle Plus service providers and submit to the CITY a transition plan for the route change, and provide a weekly status on the plan. Specifically, the plan must address how CONTRACTOR will resolve missed collections and respond to increase in calls from Service Recipients.

10.3 Route Audits.

10.3.1 Collection Route Audits.

All collection routes shall be audited annually in a manner subject to the approval of the City Representative. CONTRACTOR shall conduct an annual route audit for each of CONTRACTOR's SFD Recycling Service collection routes. The route audits shall be conducted once each calendar year during the term of this Agreement, with each route and Service Unit being audited in a different quarter each year so that all routes and Service Units are audited in each of the four (4) quarters.

CONTRACTOR shall conduct audits of all routes served by one collection vehicle on five (5) consecutive Work Days. Not later than sixty (60) Work Days prior to the first route audit in each year, CONTRACTOR shall submit to the City Representative a schedule of route audits to be conducted in that year together with a description of the audit methodology.

CITY reserves the right to determine which routes will be audited in a particular week and, if CITY exercises this right, shall notify CONTRACTOR of the routes not less than ten (10) Work Days in advance. CONTRACTOR shall report audit findings in an electronic format within thirty (30) calendar days of the audit and summarize the results in CONTRACTOR's quarterly reports.

Upon request by CONTRACTOR, CITY shall provide Service Unit data from the Customer Service System within five (5) Work Days of the request. CONTRACTOR must begin the route audits within five (5) Work Days of receiving the Customer Service System data.

CITY reserves the right to request that CONTRACTOR defer the annual collection route audit in exchange for devoting the same resources to an alternative audit or other measure of program and performance at a time to be determined by the City Representative.

10.3.2 Audit Information.

The route audits shall include the following information for each collection route:

Collection Route Information.

- The name(s), telephone number(s), and signature(s) of the persons performing each route audit;
- The route number, the date of the audit, and the starting and ending times of collection during the audit;
- A description of the route location, including the names of the streets covered;
- The number of Service Units on the route;
- The number of Service Units participating on the date of the audit and the number and type (Recyclable Material, Used Oil & Used Oil Filters) of collection;
- The number of over filled Recycling Carts;
- The number of Recycling Carts that need repair or replacement;
- The tonnage of Recyclable Material the volume of Used Oil, and the number of Used Oil Filters delivered per vehicle trip and the

time of arrival and departure of each vehicle at the Materials Recovery Facility; and

- The number of collection vehicles used on the route by vehicle type (e.g., rear loader recycling truck, side-loading recycling truck), the tare weight of each vehicle, the weight of each vehicle each trip, the capacity of each vehicle by weight and volume, and the number of trips made by each vehicle to the Materials Recovery Facility.

Service Unit Information.

- Customer Service System Identification Number (Prem ID);
- Service Recipient address;
- Recycling Cart size, quantity, and if the carts require repair or replacement;
- Recyclable Material placed beside the carts;
- Overflowing and/or contaminated Recycling Carts; and
- Number of Used Oil Containers and Used Oil Filter Containers collected.

10.4 Special Route Audits.

CITY may request performance of special route audits in addition to the route audits conducted pursuant to Section 10.3. Within fifteen (15) calendar days of receipt of a written request for a special route audit, CONTRACTOR shall provide to the City Representative a written cost proposal for performance of the special route audit. If the City Representative accepts CONTRACTOR's cost proposal, CONTRACTOR shall conduct the special route audit and CITY shall compensate CONTRACTOR at the rate described in CONTRACTOR's cost proposal.

10.5 Waste Characterization Study.

CITY may require that a waste characterization study be undertaken by the CONTRACTOR, or the City may elect to conduct the study. In the event the CITY requests participation of the CONTRACTOR, CONTRACTOR shall within fifteen (15) calendar days of receipt of a written request for a waste characterization study, provide to the City Representative a written cost proposal for performance of the waste characterization study. If the City Representative accepts CONTRACTOR's cost proposal, CONTRACTOR shall participate in the waste characterization study to the extent set forth in the approved study plan, and CITY shall compensate CONTRACTOR at the rate described in CONTRACTOR's cost proposal. In the event CITY elects to conduct the waste characterization study itself, CONTRACTOR shall cooperate with the CITY in conducting the study. Cooperation shall include, but not be limited to, providing route and collection data to assist in the selection of the test samples, and coordinating collection routes and activities so as not to interfere with the study.

10.6 CITY-Conducted Collection Route Audits.

CITY reserves the right to conduct audits of CONTRACTOR's collection route audits. CONTRACTOR shall cooperate with CITY in connection therewith, including permitting CITY employees or agents, designated by the City Representative, to ride in the collection vehicles during the conduct of audits. CONTRACTOR shall have no responsibility or liability for the salary, wages, benefits or Worker's Compensation claims of any person designated by the City Representative to conduct such audits.

ARTICLE 11. PERSONNEL, EQUIPMENT, AND FACILITIES

11.1 Personnel Requirements.

CONTRACTOR shall employ and assign qualified personnel to perform all services set forth in this Agreement. CONTRACTOR shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position. In addition:

- CITY may request the transfer of any employee of CONTRACTOR who materially violates any provision of this Agreement, or who is wanton, negligent, or discourteous in the performance of his or her duties.
- CONTRACTOR shall require its field operations personnel to wear a clean uniform shirt bearing CONTRACTOR's name. CONTRACTOR's employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.
- Each driver of a collection vehicle shall at all times carry a valid California driver's license and all other required licenses for the type of vehicle that is being operated.
- Each driver of a collection vehicle shall at all times comply with all applicable local, state and federal laws, regulations and requirements.
- CONTRACTOR's employees, officers, and agents shall at all times conduct themselves in a professional manner, and must be qualified and appropriately trained for the assigned responsibilities.
- CONTRACTOR's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of CITY.

11.2 Equipment Specifications.

All collection equipment used by CONTRACTOR in the performance of services under this Agreement shall be of high quality and in good working order.

11.3 Collection Vehicles.

11.3.1 Vehicle Specification.

CONTRACTOR shall use vehicles that are designed and operated so as to prevent collected materials from escaping from the vehicles. Hoppers shall be closed on top and on all sides with screening material to prevent collected materials from leaking, blowing or falling from the vehicles. All trucks and containers shall be watertight and shall be operated so that liquids do not spill during collection or in transit.

Except in the case of collection of Large Items, all collection vehicles

utilized by CONTRACTOR pursuant to this Agreement shall provide fully-automated collection except where such service is not feasible because of topographic or other physical factors. The determination that fully-automated collection vehicles are not feasible shall be made by the City Representative after consultation with CONTRACTOR. Where fully-automated services are not feasible, CONTRACTOR shall consult with the City Representative regarding the collection equipment to be utilized.

11.3.2 Dedicated Vehicles.

CONTRACTOR shall dedicate SFD Recycling Service collection vehicles to exclusively provide Collection Service pursuant to this Agreement except as otherwise approved in writing by the City Representative in advance of each occurrence, and shall report these occurrences in the monthly report as set forth in Exhibit 8 ("DATA AND REPORTING").

11.3.3 Clean Air Vehicles.

CONTRACTOR shall provide that its Collection Service vehicles are in full compliance with local, State and federal clean air requirements including, but not limited to, the California Air Resources Board Heavy Duty Engine Standards; the Federal Environmental Protection Agency's Highway Diesel Sulfur regulations and any other applicable air pollution control laws.

11.3.4 Alternative Fuel Vehicles.

For the next fleet replacement, scheduled to occur after July 1, 2021, CONTRACTOR shall use vehicles serving the City powered by Compressed Natural Gas ("CNG"), or other alternative fuel as mutually agreed upon by CONTRACTOR and the CITY.

11.3.5 Cooperation and Testing.

The PARTIES agree to cooperate in seeking grant opportunities for alternative fuel vehicle conversion, facility installations, or deployment of new vehicle technologies. Cooperation may extend to assistance in the preparation and submission of grant requests. CITY may also request that CONTRACTOR participate in testing the use of alternative fuel vehicles and other new vehicle technologies as part of CONTRACTOR's Collection Services. Where vehicle testing involves the use of existing vehicles providing Collection Services under this Agreement, the existing vehicles must be in good working order. Testing of alternative fuels in existing vehicles shall not be required if such testing voids a manufacturer's warranty. CONTRACTOR shall report the results of the testing in CONTRACTOR's Quarterly Report to the CITY.

11.3.6 Lubricants.

Except as approved in writing by the City Representative on an individual vehicle basis, CONTRACTOR shall use re-refined motor oil and re-

refined hydraulic oil in all vehicles used by CONTRACTOR in the performance of this Agreement, to the extent that such re-refined lubricants are available and do not void a manufacturer's warranty.

11.3.7 Large Items.

Vehicles used for collection of Large Items shall not use mechanisms or mechanical handling equipment that may damage reusable goods or release freon or other gases from pressurized appliances, prior to sorting by a CITY-approved process.

11.3.8 Registration.

All vehicles used by CONTRACTOR in providing Collection Services under this Agreement, except those vehicles used solely on CONTRACTOR's premises, shall be registered with the California Department of Motor Vehicles.

11.3.9 Safety Markings and Devices.

All collection equipment used by CONTRACTOR shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, and clearance lights. All such safety markings and devices shall be in accordance with the requirements of the California Vehicle Code, as may be amended from time to time, and shall be subject to the approval of the City Representative.

11.3.10 Vehicle Signage and Painting.

Collection vehicles shall be painted and numbered consecutively without repetition and shall have CONTRACTOR's name, CITY's customer service telephone number as provided to CONTRACTOR by the City Representative, and the number of the vehicle painted in letters of contrasting color, at least four (4) inches high, on each side and the rear of each vehicle. CITY may specify the format of the alpha-numeric numbering sequence to be used, so that all vehicles have a unique identifier. No advertising shall be permitted on the collection vehicles other than the name of CONTRACTOR and promotional advertisement of the Recycle Plus Program. Collection vehicles shall be painted white, or such other color as has been approved in writing by the City Representative and vehicle striping and logos shall be painted CONTRACTOR's primary corporate colors. During the term of this Agreement, CONTRACTOR shall repaint all collection vehicles to the satisfaction of the City Representative on a frequency as necessary to maintain a positive public image as reasonably determined by the City Representative, but not less often than every thirty (30) months.

Collection vehicles shall be identified as City of San José Recycle Plus collection vehicles through the use of interchangeable signs. These signs will contain Recycle Plus-related announcements in English, Spanish, Vietnamese,

or other languages as directed by the City Representative. CONTRACTOR shall be responsible for equipping both sides of the collection vehicles with frames capable of securing signs of dimensions 29-3/16" high by 93-3/16" wide or other dimensions designated by the City Representative. CITY shall provide such signs to CONTRACTOR with a minimum of one (1) week's notice prior to design changes. CONTRACTOR shall install the signs in the frames. CITY shall not require sign changes more frequently than once every quarter.

11.4 Collection Vehicle Noise Level.

The noise level generated by collection vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet above ground level using the "A" scale of the standard sound level meter at slow response. CONTRACTOR shall cause each collection vehicle to be tested no less than once every three (3) years during the months of March and April. CONTRACTOR shall maintain copies of certificates of testing showing the results of the vehicle testing and shall make such certificates available for inspection upon request by the City Representative. CONTRACTOR shall not use any collection vehicle that does not meet the noise level limitations of this Section.

11.5 Vehicle Certification.

All vehicles used by CONTRACTOR in the performance of services under this Agreement shall be in compliance with all applicable State and Federal laws and regulations including, without limitation, requirements of the California Health and Safety Code, the California Vehicle Code, and the regulations promulgated under each of them. CONTRACTOR shall maintain copies of all certificates and reports evidencing compliance, and shall make such certificates and reports available for inspection upon request by the City Representative.

11.6 Equipment Maintenance.

CONTRACTOR shall maintain all collection equipment in a clean condition, free of graffiti and in good repair at all times. All parts and systems of the collection equipment shall operate properly and be maintained in good working order. CONTRACTOR shall wash all collection vehicles at least once a week using recycled water. All washings shall be conducted in a manner that conforms to the BMP Guidelines for Non-Point Source Pollutants in the most recent version of the publication entitled *Storm Water Best Management Practices Handbook for Industrial Commercial*.

11.7 Maintenance Log.

CONTRACTOR shall maintain a maintenance log for all collection vehicles. The log shall at all times be accessible to CITY via computer, or by physical inspection upon request of the City Representative, and shall show, at a minimum, each vehicle's CONTRACTOR-assigned identification number, date purchased or initial lease, dates of

performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

11. 8 Equipment Inventory.

CONTRACTOR shall provide to the City Representative an inventory of collection vehicles and major equipment (e.g. tractor trailers used for transporting materials to the Disposal Facility) to be used by CONTRACTOR in the performance of services under this Agreement. The inventory shall indicate each vehicle by make, model, CONTRACTOR-assigned identification number, DMV license number, the age of the chassis and body, mileage, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuilt status. CONTRACTOR shall submit on an annual basis an updated inventory to CITY, at any time there is a change in vehicles or major equipment, or more often at the request of the City Representative in an electronic format specified by CITY. Each inventory shall also include the tare weight of each vehicle as determined by weighing at a public scale and not at a disposal or other facility scale used by CONTRACTOR. The specific procedure for performing the tare weighing will be subject to the approval of the City Representative. With each inventory CONTRACTOR shall certify that all vehicles meet the requirements of this Agreement.

11. 9 Reserve Equipment.

CONTRACTOR shall have available to it, at all times, reserve collection equipment which can be put into service and operation within one (1) hour of any breakdown. Such reserve equipment shall correspond in size and capacity to the equipment used by CONTRACTOR to perform services pursuant to this Agreement. CONTRACTOR shall provide the City Representative with the replacement vehicle information including: the CONTRACTOR-assigned identification number, DMV license number, tare weight of each vehicle as determined by weighing at a public scale, the age of the chassis and body, type of fuel used, the type and capacity of each vehicle, the number of vehicles by type, the date of acquisition, the decibel rating and the maintenance and rebuild status.

11. 10 Inspections.

CITY or a designated representative shall have the right to inspect CONTRACTOR's Materials Recovery Facility (MRF) during the MRF's normal business hours; all other facilities required to provide services pursuant to this Agreement except those facilities used solely for administrative services; and CONTRACTOR's collection vehicles and their contents at any time while operating inside or outside the City of San José.

CONTRACTOR shall ensure or shall cause CONTRACTOR's subcontractors to ensure, that representatives of CITY have complete access to the Materials Recovery Facility or alternative facility, as appropriate, and in accordance with the terms approved

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by CITY in its approval of an alternate facility in Article 8, and their records of inbound and outbound materials without exception, during normal business hours.

ARTICLE 12. DISPOSAL

12.1 CITY's Responsibility.

CITY shall arrange for sufficient disposal capacity for the disposal of all Residue remaining from the processing of Recyclable Material provided the use does not cause CITY to exceed its disposal allocation under its disposal agreement with the Disposal Facility. CITY is not responsible for the cost of disposal. The rate for Fiscal Year beginning July 1, 2021 is \$51.51 per unbaled ton (2020-2021 dollars) and such rate shall be adjusted each Fiscal Year by the same percentage as the Refuse Rate Index established under Exhibit 2, incorporated herein and attached hereto. The additional cost to accept baled Residue for Fiscal Year beginning July 1, 2021 is \$4.00 per ton. Residue from the Materials Recovery Facility that results from the processing of Recyclable Material collected by CONTRACTOR pursuant to this Agreement is designated Residential Solid Waste.

The compensation to CITY for the cost of disposal shall be deducted from CITY's monthly payment to CONTRACTOR for Recycle Plus Services. Within 30 days of executing this Agreement, and each month thereafter, CONTRACTOR shall submit a report stating the quantity of Residue delivered to the Disposal Facility with copies of scale tags from the Disposal Facility attached.

12.2 CONTRACTOR's Responsibility.

12.2.1 Delivery of Materials.

CONTRACTOR shall transport all Recyclable Material Residue, to the Disposal Facility or such other facilities as the City Representative may designate in writing. If the City Representative directs delivery of materials to a facility other than the Disposal Facility, CITY shall compensate CONTRACTOR for reasonable additional expenses incurred by CONTRACTOR and documented to the reasonable satisfaction of the Director.

12.2.2 Limitation on Use of CITY-Arranged Landfill Capacity.

CONTRACTOR shall not, under any circumstances whatsoever, use any CITY-arranged disposal capacity for the disposal of any material that was collected by CONTRACTOR or by any other person, other than the materials collected pursuant to this Agreement and specifically listed in this Article of this Agreement, without the express prior written authorization of the City Representative.

12.2.3 Compliance With Regulations.

CONTRACTOR shall observe and comply with all regulations in effect at the Disposal Facility, or any other CITY-designated facility, at the time CONTRACTOR transports the materials on the site. CONTRACTOR shall at all times while at the Disposal Facility, or any other CITY-designated facility, operate according to safe industry practices.

12.3 CONTRACTOR's Acknowledgement.

CONTRACTOR acknowledges that CITY will not pay for, but the CITY may arrange for, the disposal of Residue from Large Items (except those directed to another location pursuant to Article 6) or Used Oil processing. The rates for these services include compensation to the CONTRACTOR for the cost of disposal. CONTRACTOR acknowledges that the disposal of all such materials is the sole responsibility of CONTRACTOR, and that CONTRACTOR will not receive additional payment for the cost of disposal.

ARTICLE 13. CUSTOMER SERVICE

13.1 CONTRACTOR's Office.

CONTRACTOR shall maintain an office within the municipal limits of the City of San José where inquiries and complaints can be received. Such office shall be open during the normal business hours of 8:00 a.m. to 6:00 p.m. on all Work Days, and during any and all collection activities on the Saturdays and Sundays when Collection Services are performed pursuant to this Agreement.

13.2 Emergency Contact.

CONTRACTOR shall provide the City Representative with an emergency phone number where CONTRACTOR's representative authorized to act on CONTRACTOR's behalf can be reached outside of the required office hours.

13.3 Telephone Requirements.

CONTRACTOR's office shall be equipped with sufficient telephones that all Collection Service-related calls received during normal business hours are answered by an employee within five (5) rings. CONTRACTOR shall provide either a telephone answering service or mechanical device to receive Service Recipient inquiries during those times when CONTRACTOR's office is closed. Calls received after normal business hours shall be addressed before 12:00 noon on the next Work Day.

13.3.1 Multilingual/TDD Service.

CONTRACTOR shall at all times maintain the capability of responding to telephone calls in English, Spanish, Vietnamese and such other languages as the City Representative may reasonably require. CONTRACTOR shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services.

13.3.2 Service Recipient Calls.

During normal business hours, CONTRACTOR shall maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. CITY will direct service inquiries and complaints to CONTRACTOR through the Customer Service System. CONTRACTOR shall record all calls including any inquiries, service requests and complaints into the Customer Service System. Any such call received via CONTRACTOR's answering service shall be recorded in the Customer Service System no later than 12:00 noon on the following Work Day.

CONTRACTOR shall answer all incoming calls within five (5) rings. Any caller "on-hold" in excess of one and one-half (1.5) minutes shall have the option to remain "on-hold" or to be switched to a message center where the caller can leave a message. CONTRACTOR's customer service representatives shall return Service Recipient calls as provided in this Section. For all messages left

before 3:00 p.m., CONTRACTOR shall attempt all “call backs” at least one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., CONTRACTOR shall attempt all “call backs” at least one time prior to noon the next Work Day. CONTRACTOR shall make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. If CONTRACTOR is unable to reach the Service Recipient on the next Work Day, CONTRACTOR shall send a postcard to the Service Recipient on the second Work Day after the call was received, indicating that CONTRACTOR has attempted to return the call. All attempts to contact the caller shall be recorded in the Customer Service System.

13.4 Online Customer Access.

Beginning July 1, 2021, CONTRACTOR shall provide for and maintain an online self-service feature, accessible to the public, on a website specific to the City and dedicated to services provided to the CITY. The self-service feature shall allow Service Recipients to access service history; provide answers to a list of City-approved frequently asked questions (FAQs); and provide email or web-based forms that provide the public with the ability to report service issues, make service requests or changes to service, provide a change of address, and arrange for special pickup appointments. CONTRACTOR shall work with the City for the City’s website to include an email link to CONTRACTOR and a link to CONTRACTOR’s website. CONTRACTOR shall implement these features subject to CITY input, direction, and approval and at no additional cost to the CITY. If the CITY implements the Digital Platform Integration, set forth in Section 13.5, CITY may direct CONTRACTOR to not offer an online self-service feature as required under this Section.

13.5 Digital Platform Integration.

The CITY has implemented a digital platform, currently known as San José 311, for requests related to customer service, that includes, missed collections, replacement, repair, and exchange of containers, reports of spills, litter, and toppled containers, and viewing service history. For this digital platform, CONTRACTOR shall provide for and maintain back-end support and integration services (that includes but is not limited to the transfer and synchronization of service request data from the CITY’s data management system into CONTRACTOR’s customer relationship management system and the transfer and synchronization of CONTRACTOR’s work order and scheduling data for the service request back to the CITY’s data management system) to interface with any digital platform selected by the CITY (e.g., website, mobile application). The CITY shall support the digital platform’s front-end infrastructure, that includes the user interface (e.g., web request form, live chat). CONTRACTOR shall ensure that the CITY’s data management system will be connected to CONTRACTOR’s customer relationship management system and work order management system through this digital platform during hours of operation and after business hours.

Additional features may be added to the digital platform as they are developed. Prior to the addition of any features, CONTRACTOR and CITY will coordinate on the technical aspects of the digital platform integration, including developing an implementation plan that defines specific roles for each party, establishes a roadmap and timelines for implementation and testing of the interface, including data transfer, synchronization, and security.

Subject to appropriation of funds, CITY shall pay appropriate application integration costs. CONTRACTOR shall implement these features subject to CITY input, direction, and approval. CONTRACTOR shall be responsible to pay for any costs to implement, support, and maintain the back-end infrastructure to interface with any digital platform selected by the CITY.

13.6 Service Complaints.

CONTRACTOR shall handle all service complaints in a prompt and efficient manner. In the case of a dispute between CONTRACTOR and a Service Recipient, CONTRACTOR will refer the matter to the City Representative for review. The City Representative will review the matter and make a determination as to the resolution of the dispute. CONTRACTOR shall not be held responsible for service complaints or be subject to Liquidated Damages for issues arising from or related to San José 311, implemented under Section 13.5, that are inconsistent with CONTRACTOR's obligations under this Agreement and through no fault of CONTRACTOR.

For those complaints related to missed collections that are received by CONTRACTOR by 3:00 p.m. on a Work Day, CONTRACTOR will return to the Service Unit address and collect the missed materials before leaving the Service District for the day. For those complaints related to missed collections that are received after 3:00 p.m. on a Work Day, CONTRACTOR shall have until the end of the following Work Day to collect the materials. For those complaints related to repair or replacement of carts, the appropriate provisions of Article 6 of this Agreement shall apply. At the end of each Work Day CONTRACTOR shall utilize the Customer Service System to provide the City Representative with a response to each complaint which was received from a Service Recipient, or CITY in the event the complaint was made by CITY, during the preceding Work Day.

13.7 Missed Collections.

CONTRACTOR acknowledges and agrees that it is in the best interest of CITY that all Residential Waste, Recyclable Material, and Yard Trimmings be collected on the scheduled collection day. Accordingly, CONTRACTOR will remedy missed collections as set forth in Section 13.6 regardless of the reason that the collection was missed. However, in the event a Service Recipient requests missed collection service more than two (2) times in any consecutive two (2) month period, CITY will work with CONTRACTOR to determine an appropriate resolution to that situation. In the event CONTRACTOR believes any complaint to be without merit, CONTRACTOR shall use

the Customer Service System to notify the City Representative immediately. The City Representative will investigate all disputed complaints and render a written determination within ten (10) Work Days of receipt of CONTRACTOR's notification. If the City Representative determines complaints about missed collections to be without merit, these reported missed collections will not be applicable to liquidated damages set forth in Article 18.

13.8 Customer Service Representative Training.

All of CONTRACTOR's customer service representatives shall be required to attend training as may be provided by CITY. The City Representative shall coordinate with CONTRACTOR to schedule such training.

13.9 Requirements.

CONTRACTOR shall provide and record operating and customer service data elements as set forth in Exhibit 8 of this Agreement.

The Customer Service System includes the basic functions CONTRACTOR needs in order to perform its customer service and specific operational services. CONTRACTOR access is limited to customer information, service location service type and service level information, collection days, and field activities. CITY shall have access to all the information available to CONTRACTOR and, additionally, will control access to the financial and billing functions of the Customer Service System, except for Large Item Collection Service.

All service location, property owner information, and property owner record updates, shall be maintained in the Customer Information System by the CITY or its agent.

13.10 Field Activities.

Field activities and service requests that are received by CONTRACTOR by 3:00 p.m. on a Work Day will count as being received on that particular Work Day. Field activities and service requests that are received after 3:00 p.m. on a Work Day will count as being received the following Work Day.

13.11 Field Activity Descriptions.

CONTRACTOR shall use the field activity descriptions from the Customer Service System by CITY. CITY will provide field activity descriptions for all the services provided under this Agreement.

13.12 Customer Satisfaction Standard.

CONTRACTOR shall meet a standard of at least seventy-five percent (75%) overall customer satisfaction each Fiscal Year as determined by an average of quarterly surveys of Service Recipients conducted during the Fiscal Year.

13.12.1 Surveys will be conducted by a third-party consultant retained by the CITY to perform surveys of the customers of all contractors providing

residential Recycle Plus services under contract with the CITY. At least one customer service survey will be conducted each Fiscal Year but the CITY may conduct additional customer service surveys at its discretion. If multiple customer service surveys are conducted during a Fiscal Year, the results will be averaged to determine the annual survey result in relation to the overall customer satisfaction standard (see example below).

Annual Survey Result (illustrative example)

- *Four (4) surveys conducted during Fiscal Year*
- *Survey results: 80%, 75%, 85%, 80%*
- *Straight average of results = $(80\%+75\%+85\%+80\%)/4 = 80\%$*
- *Annual survey result: 80%*

The procurement process will follow the CITY's procurement policies and procedures, as may be amended. The third-party consultant will be selected by a panel consisting of: one representative from CONTRACTOR, a representative from all other contractors providing residential Recycle Plus services under contract to the CITY, and members of CITY staff sufficient to constitute a majority of the overall members on the selection panel. The term of the agreement for the selected third-party consultant will be for three (3) years. CITY shall pay the cost of the surveys.

- 13.12.2 For these surveys, Service Recipients who express no opinion or state "don't know" in response to questions about CONTRACTOR's customer service will be excluded from survey results. The results of the survey shall be final and binding on both parties.

Seventy-five percent (75%) overall customer satisfaction means that 75 percent (75%) of survey respondents, who had an opinion, rated CONTRACTOR's overall service as satisfactory or better. For the purpose of this Customer Satisfaction Standard, "satisfactory or better" equals a rating of 3 or better on a 5-point scale.

13.13 Service Delivery Standard.

CONTRACTOR shall meet a Service Delivery Standard related to customer service and performance as set forth in this Section.

13.13.1 CONTRACTOR fails to meet the Service Delivery Standard by accumulating an aggregate of more than \$30,000 in Liquidated Damages in a Fiscal Year related to any of the items on the List of Liquidated Damages: Service Delivery in Section 18.2.

13.13.2 To evaluate CONTRACTOR's call center, a third-party consultant, procured independently by the CITY, may conduct anonymous, "secret shopper"

assessments of CONTRACTOR’s call center. To the extent possible, information regarding any such “secret shopper” calls (including but not limited to, any recordings of such calls, summaries of the calls, the date/time of the call, the names of CONTRACTOR employees who were spoken with and results and assessments of CWS performance on the calls) will be shared with CONTRACTOR as soon as reasonably possible following each such call to assist CONTRACTOR in its quality control efforts for its call center.

13.14 Customer Service Deduction.

If CONTRACTOR fails to meet the Customer Satisfaction Standard (“CSS”) and Service Delivery Standard (“SDS”) in a Fiscal Year, CITY will make deductions from the payment due to CONTRACTOR at the rates below.

The total deduction will be spread evenly over the following Fiscal Year after the determination that CONTRACTOR did not meet the Customer Satisfaction Standard and Service Delivery Standard as follows:

- One Fiscal Year: -\$0.15/unit x 12 months
- Second Consecutive Fiscal Year: -\$0.30/unit x 12 months
- Third Consecutive Fiscal Year: -\$0.45/unit x 12 months

Example deduction methodology (for illustrative purposes only)

Fiscal Year	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027
Result	CSS & SDS not met	CSS or SDS met	CSS & SDS not met	CSS & SDS not met	CSS & SDS not met	CSS & SDS not met
Deduction rate (per unit per month)	\$0.15	NA	\$0.15	\$0.30	\$0.45	\$0.45

Example calculation for Fiscal Year 2023-2024 result

CONTRACTOR does not meet CSS & SDS for one Fiscal Year:

Total Deduction = \$0.15 x 166,000 (total SFD units) x 12 months = \$298,800

- Determination of deduction finalized after December 2024 payment
- Deduction applied evenly over remaining monthly payments of Fiscal Year 2024-2025 (January 2025 through June 2025, six monthly payments) = \$298,800/6 = \$49,800 per month over six monthly payments

Example calculation for Fiscal Year 2024-2025 result

CONTRACTOR does not meet CSS & SDS for second consecutive Fiscal Year:

Total Deduction = \$0.30 x 166,000 (total SFD units) x 12 months = \$597,600

- Determination of deduction finalized after October 2025 payment

- Deduction applied evenly over remaining monthly payments of Fiscal Year 2025-2026 (November 2025 through June 2026, eight monthly payments) = $\$597,600/8 = \$74,700$ per month over eight monthly payments

ARTICLE 14. REPORTING AND RECORDKEEPING

14.1 Reports.

14.1.1 Operational Reports.

Operational reports, monthly invoice, and other information will first be generated to support payment to CONTRACTOR. The Customer Service System (CSS) shall have information related to the Service Districts that are necessary, as determined by the City Representative, for CONTRACTOR's operations and for providing information requested by CITY.

14.1.2 CONTRACTOR Reports.

CONTRACTOR shall submit reports through the Customer Service System for daily collection data and processing data as described in Exhibit 8. CONTRACTOR shall submit to the City Representative daily, monthly, quarterly and annual reports containing the information, in the format, and at the times required in Exhibit 8. CONTRACTOR may not change the format, sections or categories of these reports without written approval of the City Representative.

As directed by the City Representative, CONTRACTOR shall submit any additional reports to the CITY that are required by law and, if applicable, as may be amended. CONTRACTOR shall submit such reports in the format and timeframe as directed and approved by the City Representative.

14.1.3 Customer Data Reconciliation.

CONTRACTOR shall compare the CITY's Service Unit data with the CONTRACTOR's Service Unit data and resolve all discrepancies within thirty (30) calendar days of receipt of CITY's Service Unit data. Reconciliations shall be completed annually by March 15 of each year and shall include reconciliation of premise ID, service address, cart type, cart size, and any special services (on-premise, disabled on-premise). CONTRACTOR shall notify CITY ten (10) Work Days prior to commencing the data reconciliation, by requesting Service Unit data from the Customer Service System. The CITY shall provide data within ten (10) Work Days of the request. If a large number of discrepancies are discovered during the data comparison, the CITY may defer resolution of discrepancies until the next annual route audit. CONTRACTOR may choose to replace their Service Unit data with CITY Service Unit data instead of conducting a data comparison. CONTRACTOR shall replace their data with CITY provided data within five (5) Work Days of data receipt, and notify CITY when complete.

14.2 Recordkeeping.

14.2.1 CONTRACTOR shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to

CITY for a minimum period of five (5) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this Agreement.

14.2.2 CONTRACTOR shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of five (5) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

14.2.3 Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Representative, the Director, City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to CITY for inspection at the Environmental Services Department office when it is practical to do so. Otherwise, unless an alternative site is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

14.2.4 Where CITY has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request or demand of any of the above named officers, require that custody of the records be given to CITY and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest.

ARTICLE 15. FUND APPROPRIATION

15.1 Fiscal Year Authorization.

CONTRACTOR understands and agrees that CITY, during any Fiscal Year, is not authorized to expend money, incur any liability or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such Fiscal Year; and that any contract or agreement, verbal or written, made in violation of this Article is null and void; and that consequently, no money may be paid on such contract or agreement beyond such limits. Nothing contained in this Agreement shall prevent the making of agreements or contracts for periods exceeding one (1) year, but any agreement or contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding Fiscal Years. If the City Council does not appropriate funds for the services under this Agreement by June 30 of each year, CITY shall so notify CONTRACTOR and CONTRACTOR shall suspend services under this Agreement until CITY provides written verification that the funds necessary for CONTRACTOR's compensation and other necessary expenditures are appropriated and available within the appropriate Fiscal Year budget.

15.2 Adoption.

CITY does not represent that said appropriation item will be actually adopted, said determination being the determination of the City Council at the adoption of the appropriation.

ARTICLE 16. DIVERSION STANDARDS

16.1 Diversion Standards.

The diversion requirements for this Agreement are as follows:

- 16.1.1 A minimum Material Recovery Standard for SFD Recycling that is less than 20% of Residential Recyclables for Studies (“RRFS”) (as defined in this Article), by weight, present in Residue;
- 16.1.2 A minimum Large Item diversion standard of at least fifty percent (50%).
- 16.1.3 A minimum Marketed Rate of at least eighty-five percent (85%).

16.2 Material Recovery Standard for SFD Recycling.

16.2.1 Annual Assessment of Material Recovery Standard.

CONTRACTOR’S compliance with its diversion requirement for SFD Recycling will be assessed using a “Material Recovery Standard” (“MRS”). Under the MRS, a processing study will be performed once per Fiscal Year to determine the percentage of RRFS, by weight, present in Residue. CONTRACTOR fails to meet its diversion requirement in the Fiscal Year in which the study is performed if twenty percent (20%) or more of RRFS, by weight, is present in Residue.

If any processing study results in 20% or more RRFS Material, by weight, present in Residue, CONTRACTOR shall submit a plan to CITY, for approval, to decrease RRFS present in Residue to less than 20% in the following study period. If the City Representative approves CONTRACTOR’S submitted plan, CONTRACTOR shall implement the plan for the following study period.

16.2.2 Processing Studies.

Processing studies will be performed by a third-party consultant to determine adherence to the MRS. The results of any processing study will be conducted in the timeframe specified in this Section, will be conducted and completed to the satisfaction of the CITY, and will be final and binding on CONTRACTOR.

16.2.2.1 Selection of Third-Party Consultant.

The CITY will retain a third-party consultant to perform processing studies on all contractors providing residential recycling services under contract with the CITY.

The procurement process will follow the CITY's procurement policies and procedures, as may be amended. The third-party consultant will be selected by a panel consisting of: the CITY's Recycle Plus Program Manager, one representative from CONTRACTOR, a representative from each of the other contractors providing residential recycling services under contract to the CITY, a CITY employee appointed by the City Manager, and an individual who is not a CITY employee selected by the City Manager.

The term of the agreement for the selected third-party consultant will be for 3 years. CITY shall pay the cost of the processing studies.

16.2.2.2 Timing of Processing Studies.

CONTRACTOR shall permit the third-party consultant to perform processing studies at any facilities performing services under this Agreement in February or as soon thereafter as the third-party consultant retained by the CITY is able to conduct each study with reasonably sufficient notice to the CONTRACTOR. Any unreasonable failure on the part of CONTRACTOR to permit the third-party consultant to complete a processing study in the required timeframe may result in the assessment of Liquidated Damages as set forth in this Agreement, CITY withholding payment to CONTRACTOR, or both.

16.2.2.3 CITY Satisfaction.

All processing studies shall be completed to the reasonable satisfaction of the CITY. Any willful failure on the part of CONTRACTOR to permit the third-party consultant to complete a processing study to the CITY's reasonable satisfaction may result in the assessment of Liquidated Damages as set forth in this Agreement, CITY withholding payment to CONTRACTOR, or both. CONTRACTOR shall also be required to permit the third-party consultant to perform any additional processing studies necessary to reasonably satisfy the CITY.

16.2.3 Residential Recyclables for Studies ("RRFS") List.

For the purposes of determining appropriate compensation rates and adherence to the Material Recovery Standard, RRFS means recyclable paper, recyclable plastic, recyclable metal, recyclable glass, and recyclable textiles as described in the list below:

RRFS List
<p><u>Recyclable Paper</u></p> <ol style="list-style-type: none">1. Clean Newspaper2. Clean OCC3. Clean Mixed Paper4. Clean Aseptic and Polycoated Packaging <p><i>Note: "Clean" recyclable paper is defined as material not soiled or contaminated that could reasonably be expected to be recycled without special processing or cleaning. This category does not include Remainder/Composite Paper.</i></p>
<p><u>Recyclable Plastic</u></p> <ol style="list-style-type: none">5. #1 PET Bottles and Containers6. #2 HDPE Bottles and Containers7. #3, #4, #5 and #7 Bottles and Containers8. Plastic Bags and Other Film9. Polystyrene10. Durable Plastic Items <p><i>Note: Does not include Remainder/Composite Plastic.</i></p>
<p><u>Recyclable Metal</u></p> <ol style="list-style-type: none">11. Aluminum Beverage Cans12. Aluminum Foil13. Steel (Tin) Cans14. Other Scrap Metal <p><i>Note: Does not include Remainder/Composite Metal.</i></p>
<p><u>Recyclable Glass</u></p> <ol style="list-style-type: none">15. Recyclable Glass <p><i>Note: Does not include Remainder/Composite Glass.</i></p>
<p><u>Recyclable Textiles</u></p> <ol style="list-style-type: none">16. Bagged Textiles17. Loose Textiles

16.2.3.1 Amendment of the RRFS List.

The material identified as RRFs in this Section may be amended to reflect recycling market conditions. To request an amendment, CONTRACTOR and all other contractors providing residential recycling services under contract with the CITY shall submit a joint request to the CITY to add or remove items from the list of RRFs. The joint request must include:

- a. Description of specifically how the material will be diverted (if item is added) or disposed (if item is removed);
- b. Item tonnage data for the past six (6) months, to the extent available;
- c. Item tonnage projected to be collected (if item is added) or disposed (if item is removed) over the next twelve (12) months;
- d. For request to remove item(s), evidence of inability to market material, including third party indices showing drop in commodity pricing, evidence of rejected bales (if item is removed), communications from commodity buyers that are not proprietary and/or confidential in nature, and other pertinent information including proprietary and confidential buyer/broker communications which will be made available only for in-person inspection at CONTRACTOR's premises by CITY representatives but not for copying or note-taking that would reveal the identity of the confidential buyers and/or brokers;
- e. Additional information as may be requested by CITY.

Any joint request shall be made in writing to the Director by November 1 of every odd-numbered year (e.g., 2021, 2023, 2025). The Director shall review the request and respond to CONTRACTOR within sixty (60) calendar days. If approved by the Director, the amended list will be used for the following (2) calendar years. If the joint request is denied, all contractors

may appeal the decision to the City Manager, whose decision will be final. If the joint request is ultimately denied, the RRFS List from 16.2.3 will be in effect.

From the Effective Date through December 31, 2021, the RRFS List will not include: 9. Polystyrene, 16. Bagged Textiles, and 17. Loose Textiles. Item 8. Plastic Bags and Other Film is amended to 8. Plastic Bags and Other Film (clean and clear only).

By August 1 of every odd-numbered year, the Director may propose to CONTRACTOR to maintain the then-current RRFS List. Should CONTRACTOR, and all other contractors providing residential recycling services under contract with the CITY, be agreeable to maintain the then-current RRFS List, CONTRACTOR will forgo the joint request for that year, and the then-current RRFS List will be effective for the following two (2) calendar years.

16.2.4 Approval of New Non-Program Materials. CONTRACTOR may request that items be added or removed to the approved list of Non-Program Materials used to calculate the Material Recovery Standard. Requests to amend the Non-Program Material List shall be made in writing to the Director. If the request is to add an item to the Non-Program Materials List, CONTRACTOR shall include a statement in the request that the item was collected during the provision of SFD Residential Recycling Collection Services, a description of specifically how the material will be diverted, tonnage collected for the past six (6) months, to the extent available, tonnage projected to be collected over the next twelve (12) months, and such other information as may be requested by CITY. The Director shall review the request and respond to CONTRACTOR within thirty (30) calendar days, whose decision will be final.

16.2.5 Calculation of Material Recovery Standard.

The MRS will be calculated using the processing study conducted in each Fiscal Year. From the total tons of Residue sampled, the processing studies will produce data on the weight of the items on the then-current RRFS List, and the sum of these weights will provide the total amount of RRFS present in the Residue sampled.

Example (*for illustrative purposes only*):

- Total amount of Residue sampled for processing study: 1.0 ton

- Weight of items on RRFS list:

Item	Tonnage
Clean Paper	0.10
Plastic	0.03
Metal	0.01
Glass	0.01
Textiles	0
TOTAL	0.15

- Result: Of 1.0-ton Residue sample, 0.15 tons RRFS

Any Non-Program Material CONTRACTOR Sold during the 12-month period prior to the processing study will be included in calculating the MRS. Residue tons will be adjusted by a factor of the percentage of Non-Program Material Sold in relation to the tons of Recycling Material collected.

Material Recovery Standard Example Calculation <i>(for illustrative purposes only)</i>		
<ul style="list-style-type: none"> • Of a 1.0-ton residue sample, 0.15 tons were RRFS. • In the 12-month period prior to the residue sample, CONTRACTOR reported 25,000 tons of recycling cart material collected and 250 Non-Program Material tons sold. • Non-Program Materials represent 1% of tons collected (250/25,000), making the adjustment factor 1.01. • Material Recovery Standard calculation: 		
0.15 RRFS tons in Residue sample	1.0 tons of Residue sampled x 1.01 adjustment factor for Non-Program Materials sold	= 14.85%

16.2.6 MRS Diversion Deduction. If CONTRACTOR fails to meet the Material Recovery Standard for a Fiscal Year, CITY shall make a deductions from payments due to CONTRACTOR at the rates below.

The total deduction will be spread evenly over the following Fiscal Year after the determination that CONTRACTOR did not meet MRS as follows:

- One Fiscal Year: $-\$0.30/\text{unit} \times 12 \text{ months}$
- Second Consecutive Fiscal Year: $-\$0.60/\text{unit} \times 12 \text{ months}$
- Third Consecutive Fiscal Year: $-\$0.90/\text{unit} \times 12 \text{ months}$

Example deduction methodology (for illustrative purposes only)

Fiscal Year	2021-2022	2022-2023	2023-2024	2024-2025	2025-2026	2026-2027
Result	MRS not met	MRS met	MRS not met	MRS not met	MRS not met	MRS not met
Deduction rate (per unit per month)	\$0.30	NA	\$0.30	\$0.60	\$0.90	\$0.90

Example calculation for Fiscal Year 2023-2024 result

CONTRACTOR does not meet MRS for one Fiscal Year:

Total Deduction = \$0.30 x 166,000 (total SFD units) x 12 months = \$597,600

- Determination of deduction finalized after December 2024 payment
- Deduction applied evenly over remaining monthly payments of Fiscal Year 2024-2025 (January 2025 through June 2025, six monthly payments) = \$597,600/6 = \$99,600 per month over six monthly payments

Example calculation for Fiscal Year 2024-2025 result

CONTRACTOR does not meet MRS for second consecutive Fiscal Year:

Total Deduction = \$0.60 x 166,000 (total SFD units) x 12 months = \$1,195,200

- Determination of deduction finalized after October 2025 payment
- Deduction applied evenly over remaining monthly payments of Fiscal Year 2025-2026 (November 2025 through June 2026, eight monthly payments) = \$1,195,200/8 = \$149,400 per month over eight monthly payments

16.3 Large Item Diversion Standard.

CONTRACTOR shall achieve a Large Item diversion standard of not less than fifty percent (50%) per calendar year in CONTRACTOR's Service Districts.

16.3.1 Large Item Diversion Rate Calculation.

The Large Item diversion for each district (Service District A and Service District C) will be calculated as the tons of Large Items collected through the provision of Large Item Collection Services and attributable to the Service District that are Recycled, Processed, and Sold, or delivered to a recycler or reuser, as required by this Agreement, divided by the total tons of Large Items collected from the Service District in the calendar year:

Large Item Diversion Rate Calculation

Large Item Diversion Rate = (Tons of Large Items Recycled, Processed, and Sold, or delivered) ÷ (Tons Large Items collected)

16.3.2 The protocol for determining the tons of materials Sold, the tons of materials collected, and the tons of materials that are attributable to each Service District will be determined by CITY in consultation with CONTRACTOR.

16.3.3 Failure to Meet Minimum Large Item Diversion Standard.

CONTRACTOR's failure to meet the minimum diversion standard for Large Item Collection Services in SFD Service Districts A and C as set forth in this Section will not be considered a basis for default and termination under Section 19.1.

16.4 Marketed Rate.

CONTRACTOR shall achieve a Marketed Rate of not less than eighty five percent (85%). If CONTRACTOR does not meet or exceed a Marketed Rate of 85%, CONTRACTOR fails to meet the Marketed Rate Standard.

The Marketed Rate will be calculated quarterly. The Marketed Rate will be calculated as the tons of Recyclable Material and Non-Program Material Sold, divided by the tons of Recyclable Material and Non-Program Material collected less the tons of Recyclable Material and Non-Program Material Residue. "Sold" shall be defined as "a market-based transaction when the ownership of recyclable material or non-program material changes from one legal entity to another, that is documented through the use of a bill of sale, sales agreement, cancelled checks, invoice or other appropriate written documentation." For the purposes of calculating the Marketed Rate, tonnages will not include any tons Sold or collected, nor any tons of Residue, attributable to Large Item collection.

Marketed Rate Example Calculation

(for illustrative purposes only)

$$\text{Marketed Rate} = \frac{\text{(Tons of Recyclable Material sold + Non-Program Material sold)}}{\text{((Tons Recyclable Material Collected + Non-Program Material collected) - (Tons of Recyclable Material Residue + Non-Program Material Residue))}}$$

ARTICLE 17. COMPENSATION

17.1 Billing and Collection of Payments.

CITY shall be responsible for the billing and collection of payments from Service Units for all SFD Recycling Collection Services.

17.2 Monthly Invoices.

CONTRACTOR shall provide a monthly report no later than the tenth (10th) day of each month following the month such services were rendered; and complete service data entry into the Customer Service System. Upon receipt of the report and access to complete service data, CITY shall then produce a preliminary monthly invoice for all services received under this Agreement no later than the fifteenth (15th) day of the month following the month such services were rendered.

17.2.1 Review of Monthly Invoice by CONTRACTOR.

CONTRACTOR shall review the monthly invoice prepared by CITY and within ten (10) Work Days of receipt of the invoice, CONTRACTOR shall notify the City Representative of any discrepancies or deficiencies in said invoice.

17.2.2 Resolution Of Discrepancies.

CONTRACTOR shall meet with the City Representative within ten (10) Work Days of CITY's receipt of notice of discrepancies or deficiencies to resolve any such discrepancies or deficiencies and shall provide to the City Representative any and all documentation relating to the discrepancy or deficiency that is requested by the City Representative or which CONTRACTOR wishes to provide in support of CONTRACTOR's calculations. Within fifteen (15) calendar days of the receipt of documentation requested in writing by the City Representative or within fifteen (15) calendar days of the meeting between CONTRACTOR and the City Representative, whichever occurs later, the City Representative shall notify CONTRACTOR in writing of the City Representative's resolution of the discrepancies or deficiencies. The City Representative's determination shall be final unless within ten (10) calendar days of the date of the determination CONTRACTOR requests a review by the Director.

If CONTRACTOR timely requests a review by the Director, the Director shall review the City Representative's determination, all relevant documentation presented to the City Representative, and any additional relevant information provided by CONTRACTOR at the time of CONTRACTOR's request for review. If requested by CONTRACTOR, the Director shall meet with CONTRACTOR within fifteen (15) calendar days of CONTRACTOR's request for review. The Director shall render a written decision to CONTRACTOR sustaining or reversing the City Representative's determination, in whole or in part, within thirty (30) calendar days of receipt of CONTRACTOR's request for review.

17.2.3 Partial Month Service.

If, during a month, a Service Unit is added to or deleted from CONTRACTOR's Service Unit list, the billing for such Service Unit shall be pro-rated as follows: (1) if the Service Unit was eligible to receive SFD Recycling Service for at least sixteen (16) calendar days during the month, CONTRACTOR shall be compensated for that Service Unit at the full monthly rate set out in Exhibit 1; and (2) if the Service Unit was eligible to receive SFD Recycling Service for less than sixteen (16) calendar days during the month, CONTRACTOR shall not be compensated for that Service Unit for that month.

17.2.4 Payments.

CITY shall make no payment for any SFD Service Unit, and Business Service Unit that is not included on the list maintained by the CITY.

17.3 Payments to CONTRACTOR.

CITY shall pay CONTRACTOR for services performed in accordance with this Agreement at the service rates set forth in Exhibit 1 ("COMPENSATION") as such rates may be adjusted pursuant to this Agreement. Except as otherwise provided in this Agreement, CITY shall make monthly payments to CONTRACTOR within thirty (30) calendar days of CONTRACTOR's approval of CITY's invoice. In the event there are any amounts listed on the invoice which remain in dispute after CONTRACTOR and CITY complete the Resolution of Discrepancies process set forth in Section 17.2.2 above, CITY shall pay to CONTRACTOR the amounts accepted as appropriate by the Director.

17.3.1 Wire Transfers.

CITY will make monthly invoice payments and/or additional payments by wire transfer to CONTRACTOR's bank account or accounts as are designated by CONTRACTOR. CITY may deduct CITY's costs of the wire transfers from the monthly payment otherwise due to CONTRACTOR.

17.4 Applicable Compensation Rates for SFD Recycling Service.

17.4.1 Every-Other-Year Assessment of Recyclable Material.

CONTRACTOR's applicable compensation rate for SFD Recycling Service will be determined by an assessment of Recyclable Material collected by CONTRACTOR during the performance of SFD Recycling Service. This assessment will be performed once every two (2) Fiscal Years to determine the percentage of material not on the then-current RRFS List (per Section 16.2.3), by weight, present in Recyclable Material collected by CONTRACTOR. The assessment from Fiscal Year 2020-2021 will be used to determine applicable compensation rates at the Effective Date of this Agreement.

17.4.2 Recyclables Studies.

To assess Recyclable Material collected by CONTRACTOR, recyclables studies will be performed by a third-party consultant. The results of these studies will be used to determine the applicable compensation rate for SFD Recycling service effective for the following two Fiscal Years (see illustrative example below). The applicable compensation rates for SFD Recycling Service are the rates corresponding to the percent of material not on RRFS List in SFD Recycling Service Rates Schedule (Exhibit 1, Section II), as adjusted by RRI. The results of any recyclables study will be conducted in the timeframe specified in this Section, will be conducted and completed to the satisfaction of the CITY, and will be final and binding on CONTRACTOR.

Example determination of applicable compensation rate

(numbers provided for illustrative purposes)

In Fiscal Year 2022-2023, third-party consultant's assessment of recyclables collected indicates 40.75% material not on RRFS List for District A and 36.50% material not on RRFS List for District C.

- *Then-current compensation rate for District A = \$14.31 per service unit per month (34% non-RRFS)*
- *Then-current compensation rate for District C = \$14.31 per service unit per month (32% non-RRFS)*
- *Future compensation rate for District A = \$15.21 per service unit per month (40.75% non-RRFS)*
- *Future compensation rate for District C = \$14.91 per service unit per month (36.50% non-RRFS)*
- *Future compensation rates effective for following two Fiscal Years, FY 2023-2024 and FY 2024-2025.*

17.4.2.1 Selection of Third-Party Consultant.

The same third-party consultant retained by the CITY per Section 16.2.2.1 will perform recyclables studies on all contractors providing residential recycling services under contract with the CITY.

17.4.2.2 Timing of Recyclables Studies.

CONTRACTOR shall permit the third-party consultant to perform recyclables studies at any facilities performing services under this Agreement with reasonably sufficient notice to the CONTRACTOR. Any unreasonable failure on the part of CONTRACTOR to permit the third-party consultant to complete a recyclables study in the required

timeframe may result in the assessment of Liquidated Damages as set forth in this Agreement, CITY withholding payment to CONTRACTOR, or both.

17.4.2.3 CITY Satisfaction.

All recyclables studies shall be completed to the reasonable satisfaction of the CITY. Any willful failure on the part of CONTRACTOR to permit the third-party consultant to complete a recyclables study to the CITY's reasonable satisfaction may result in the assessment of Liquidated Damages as set forth in this Agreement, CITY withholding payment to CONTRACTOR, or both. If additional work is needed in order to complete a recyclables study to the CITY's reasonable satisfaction, CONTRACTOR shall permit the third-party consultant to perform such additional work.

17.5 Refuse Rate Index (RRI) Adjustment Process.

The rates for services set forth in Sections 17.5.1 and 17.5.2 shall be increased or decreased by the percentage change in the Refuse Rate Index (RRI) from the annual average of the prior preceding year, to annual average of the immediately preceding year as contained in the most recent publication of the source documents listed in Exhibit 2 ("RATE ADJUSTMENTS - REFUSE RATE INDEX") to this Agreement. The RRI adjustment will be calculated using the annual calendar year averages as published by the United States Department of Labor, Bureau of Labor Statistics ("BLS") indices labeled as Annual by BLS, except the labor index, which will be calculated based on the average change of the four quarters for the calendar year. If an Annual value is not published, the annual calendar year average will be calculated by taking an average of the indices published over the calendar year.

17.5.1 CONTRACTOR shall deliver to CITY financial information for the specific services performed under this Agreement for the preceding calendar year. Such financial information shall be the information described in the "Non-Processing Operating Cost Statement – Description" portion of Exhibit 2 and shall be in the format described in Exhibit 2, as may be revised by CITY from time to time. CONTRACTOR agrees to provide the CITY a description of all items classified as "Other Operating Expenses" for purpose of making the indexed adjustment calculation. If CONTRACTOR fails to submit the financial information in the required format prior to February 15th, it is agreed that CONTRACTOR shall be deemed to have waived the right to the RRI rate adjustment for that year. CONTRACTOR's failure to provide the financial information shall not preclude CITY from applying the RRI using the prior year's

financial data, or pro forma data if no prior year financial data is available, if that application would result in a decrease in the affected service rates.

The BLS or source indices shall be truncated at four (4) decimal places for adjustment calculations. The resulting RRI value from the adjustment calculations may be rounded to four (4) decimal places for use in the final RRI compensation rate adjustment. Annual compensation rate adjustments shall be made only in units of one cent (\$0.01). Fractions of less than one cent (\$0.01) shall not be considered in making compensation rate adjustments. For example:

- RRI value of 0.03587 shall be rounded to 0.0359, or 3.59%
- Dollar amount of \$1.235 shall be truncated to \$1.23

17.5.2 If CONTRACTOR's failure to submit the financial information required by Section 17.4.1 is the result of extraordinary or unusual circumstances as demonstrated by CONTRACTOR to the satisfaction of the City Representative, CITY at its sole discretion may consider the request for the annual RRI rate adjustment.

17.5.3 On or before June 1 of each year, the City Representative shall notify CONTRACTOR of the RRI adjustment to the affected service rates to take place beginning July 1 of that same year.

17.6 Adjustments To Rates Using Refuse Rate Index (RRI).

The adjustments to rates may result in an increase or decrease to the rates. If the adjustment results in an increase greater than six percent (6%), CONTRACTOR may be required to defer the increase in excess of six percent (6%) to the following year and up to three years thereafter. Any amount of the deferred increase in cost remaining on the fourth year would be included in the fourth year adjustment of the service rates.

If the adjustment results in a negative number, CITY will defer that portion of the savings which would cause CONTRACTOR's then current compensation to decrease to the following year, and up to three years thereafter. Any savings not realized by the fourth year would be included in the fourth year adjustment to the service rates.

Notwithstanding this section, any adjustments to rates that result in an increase or decrease to the rates for the last year of this Agreement (2035-2036) shall fully include any deferred increase or savings not previously realized in the previous years' rates.

17.7.1 SFD Rates.

CONTRACTOR shall, subject to compliance with all provisions of this Article, receive an annual adjustment in the following service rates as set forth in the SFD RECYCLING COLLECTION SERVICE and RESIDUE DISPOSAL ADJUSTMENT section of Exhibit 1 to this Agreement:

- SFD Recycling Service, collection (line A.1)

- SFD Used Oil Collection Service (line A.2.)
- Subscription On-Premises Collection (line B.1)
- Excess Cart Exchange (line B.2)
- Large Item Collection, if applicable (line B.3)
- Hard to Serve Premise (line B.4)
- SFD Recycling Service Rates Schedule (Section II)
- Residue Disposal Reimbursement Rates (Section IV)
- Emergency Service Rates (Section VI)

17.7 Service Unit Counts.

CITY will utilize the Customer Service System to maintain the customer database from which the SFD Service Unit counts will be derived. In the event CONTRACTOR does not agree with any of the SFD Service Unit counts as maintained by CITY, CONTRACTOR may at any time, but not more often than once per Agreement Year, request that CITY and CONTRACTOR perform a joint route audit of the Service Unit count at issue. Such audit shall be at no cost to CITY other than labor costs for CITY staff.

17.8 Reconciliation.

The CITY and CONTRACTOR may review compensation payments made to CONTRACTOR pursuant to services provided under the December 14, 2011 Agreement. The request for reconciliation is limited to the period covered by the December 14, 2011 Agreement, and the reconciliation process must be completed on or before June 30, 2022, except as mutually agreed upon in writing by the parties.

The potential compensation adjustments may be due to, but are not limited to, the discovery of Customer Service System errors, discrepancies in Service Unit counts or on-call services already paid to CONTRACTOR, Refuse Rate Index adjustment errors, liquidated damages, administrative charges, or other overpayments or underpayments made to CONTRACTOR's invoice. The City Representative shall issue a written notice to CONTRACTOR of the compensation adjustment and the basis for the assessment. CONTRACTOR may request a review of the compensation adjustments by following the protocols set forth in Section 17.2.2 ("Resolution of Discrepancies") or Section 18.3 ("Procedure for Review of Liquidated Damages"), as appropriate.

17.9 Withholding of Payment.

In addition to express provisions contained elsewhere in this Agreement, CITY may withhold from any payment otherwise due to CONTRACTOR such amount as reasonably determined by CITY as necessary to protect CITY's interest, or, if CITY so elects, may withhold or retain all or a portion of any monthly payment or refund payment

for any of the following reasons. CITY shall provide written notice to CONTRACTOR of the reason for withholding of payments.

- Unsatisfactory progress of the work not caused by any condition beyond the CONTRACTOR's control;
- Defective work not corrected;
- CONTRACTOR's failure to carry out instructions or orders of the City Representative;
- Failure to complete any processing study within the required timeframe;
- Failure to complete any processing study to the reasonable satisfaction of the CITY;
- Execution of work not in accordance with this Agreement;
- Claims filed by or against CONTRACTOR or reasonable evidence indicating probable filing of claims;
- Failure of CONTRACTOR to make payments to any subcontractor for material or labor;
- Substantially unreasonable unsafe working conditions allowed to persist by CONTRACTOR;
- Failure of CONTRACTOR to provide route schedules and other reports as required by CITY;
- Use of any subcontractors without CITY's prior written approval, which shall not be unreasonably withheld

17.10 Payment of Withheld Amounts.

Upon CONTRACTOR's remedy of the above-listed grounds for withholding payment and demonstration of the remedy to the reasonable satisfaction of the City Representative, CITY shall pay all withheld amounts within ten (10) Work Days. CITY shall not be liable for interest on any delayed or late payment.

ARTICLE 18. QUALITY OF PERFORMANCE OF CONTRACTOR

18.1 Intent.

CONTRACTOR acknowledges and agrees that the CITY's primary goals in entering into this Agreement are to ensure that the SFD Recycling Collection Services are of the highest caliber, that Service Recipient satisfaction remains at the highest level, that all services performed under this Agreement are both timely and accurate, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use to the extent possible.

CONTRACTOR agrees its failure to perform the services as set forth in this Agreement would cause CITY damage. CITY and CONTRACTOR mutually agree that making a precise determination of the amount of CITY's damages as a result of CONTRACTOR's failure would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such failure, CONTRACTOR shall pay to CITY as liquidated damages the amounts listed in Section 18.2.

18.2 Liquidated Damages.

It shall be the duty of CONTRACTOR to perform services under this Agreement in such a manner as to implement practices, policies and procedures designed to achieve the goals set forth in Section 18.1 above. In the event CONTRACTOR fails to perform the services as set forth in this Agreement, CONTRACTOR agrees that CITY may deduct liquidated damages from any monies due or which may become due to CONTRACTOR in the following amounts:

List of Liquidated Damages: Service Delivery (Applies to Each Service District)		
a.	Failure or neglect to resolve each complaint within the time set forth in this Agreement.	\$500.00 per incident per Service Recipient.
b.	Failure to clean up spillage or litter caused by CONTRACTOR.	\$300.00 per incident per location.
c.	Failure to repair damage to customer property caused by CONTRACTOR or its personnel.	\$500.00 per incident per location.
d.	Failure to maintain equipment in a clean, safe, and sanitary manner.	\$500.00 per incident per Work Day.
e.	Failure to maintain office hours as required by this Agreement.	\$500.00 per incident per Work Day.
f.	Failure to properly cover materials in collection vehicles.	\$500.00 per incident.

List of Liquidated Damages: Service Delivery (Applies to Each Service District)		
g.	Failure to display CONTRACTOR's name and CITY's customer service phone number on collection vehicles.	\$500.00 per incident per Work Day.
h.	Failure to comply with the hours of operation as required by this Agreement.	\$500.00 per incident per Work Day.
i.	Failure to pick up material on scheduled day	\$100.00 per 1 missed pickup per 1,000 service opportunities for SFD (service opportunity = cart/bin, oil, large item setout)
j.	Failure to repair or replace damaged carts within the time required by this Agreement.	\$100.00 per incident per Work Day.
k.	Failure to deliver or exchange carts within the time required by this Agreement.	\$100.00 per incident per Work Day.
l.	Failure to pick-up Large Items within the time required by this Agreement.	\$100.00 per incident per Work Day.
m.	Failure of CONTRACTOR's field personnel to carry photographic identification or wear uniform shirts.	\$100.00 per incident per Work Day.
n.	Failure to provide required communications equipment.	\$100.00 per incident per Work Day.
o.	Failure to achieve minimum average telephone delay time of 180 seconds or less, measured on a quarterly basis, for a caller to talk with a Customer Service Representative (CSR). "Delay time" means the time from first ring until caller speaks with CSR.	Minimum delay time: 180 seconds quarterly average. \$5,000 per quarter if > 180 second avg. per quarter.

List of Liquidated Damages: Service Delivery (Applies to Each Service District)		
p.	Failure to achieve minimum telephone hold time of a cumulative of 10 minutes or less. "Hold time" means the cumulative time a caller is on-hold waiting to speak to a CSR or call abandoned while waiting to speak to a CSR.	Each call > 10 minutes total cumulative time on-hold or call abandoned after 10 minutes cumulative time on-hold: 0.3% or more of calls per quarter. \$10,000 per quarter if total cumulative time on-hold or call abandoned after 10 minutes on hold is \geq 0.3% of calls per quarter.
q.	Failure to achieve minimum acceptable score for call center service level quality.	\$1,000 for not meeting minimum score of third-party quarterly assessment report; minimum score \geq 80% per assessment/quarter
r.	Failure to provide customer self-service option (website, email) as specified in this Agreement.	\$1,000 per day
s.	Failure to issue Non-Collection Notice as specified in this Agreement.	\$100 per incident
t.	Failure to return empty carts to the point of collection, upright with lids closed and locks secured (if applicable), as specified in this Agreement. This penalty would be complaint-based and for situations with public health & safety implications (e.g., cart toppled, in the middle of the road).	\$100 per incident

List of Liquidated Damages: All Other (Applies to Each Service District)		
u.	Failure to have a vehicle operator properly licensed.	\$500.00 per incident per Work Day.

List of Liquidated Damages: All Other (Applies to Each Service District)		
v.	Failure to maintain or timely submit to CITY all documents and reports required under the provisions of this Agreement.	\$500.00 per incident per Work Day.
w.	Changing routes without proper notification to the City Representative.	\$500.00 per incident per Work Day.
x.	Commingling Recyclable Material with solid waste collected from sources other than a Recycling Cart.	\$5,000.00 per incident.
y.	Commingling of materials in collection vehicles collected inside and outside the City of San José.	\$5,000.00 per incident.
z.	Failure to provide adequate primary and alternate capacity to accept and process Recyclable Material.	\$1,000.00 per Work Day.
aa.	Disposal of Recyclable Material or Residue in the Disposal Facility without first obtaining the required permission of CITY.	\$500.00 per occurrence
bb.	Failure to deliver any collected materials to the Disposal Facility, as appropriate, except as otherwise expressly provided in this Agreement.	\$5,000 first failure \$25,000 each subsequent failure
cc.	Failure to deliver any collected materials to the Materials Recovery Facility except as otherwise expressly provided in this Agreement.	\$5,000 first failure \$25,000 each subsequent failure
dd.	Failure to meet the minimum Large Item diversion requirements of this Agreement (calculated per calendar year per Service District).	\$10,000 for shortfall of 25 percentage points or more
ee.	Failure to comply with the provisions of the “plans” set forth in Exhibit 3 to this Agreement.	\$500 per incident per Work Day.
ff.	Failure to follow the Materials Recovery Delivery and Processing protocol of this Agreement.	\$1,000 per incident per Work Day
gg.	Failure to provide access for CITY (CITY Staff or CITY agent) to CONTRACTOR’S or Subcontractors operating or Processing Facilities.	\$1,000 per incident per Work Day

List of Liquidated Damages: All Other (Applies to Each Service District)		
hh.	Failure to maintain Customer Service System that receives transferred information from City’s web-based and mobile application internet platform for SFD Large Item Collection Service.	\$100.00 per Work Day
ii.	Distribution of public education and outreach material prior to approval by the City Representative.	\$1,000 per incident
jj.	Shipment or sale of unprocessed Recyclable Material.	\$5,000 per incident
kk.	Failure to use alternative fuel in Recycle Plus collection fleet set forth in Section 11.	\$5,000 per month
ll.	Unreasonable failure to permit the third-party consultant retained by the CITY to complete a processing study in the required timeframe.	\$500 per incident per Work Day
mm.	Unreasonable failure to permit the third-party consultant retained by the CITY to complete a processing study to the satisfaction of the CITY.	\$500 per incident per Work Day

18.3 Procedure for Review of Liquidated Damages.

If liquidated damages are applicable, the City Representative shall issue a written notice to CONTRACTOR (“Notice of Nonperformance”) that lists the liquidated damages associated with the nonperformance, and the nature of the nonperformance.

18.3.1 The liquidated damages shall become final unless, within ten (10) calendar days of the date of the Notice of Nonperformance, CONTRACTOR provides a written request for a meeting with the Director to present evidence that the liquidated damages should not be applied.

18.3.2 The City Representative shall schedule a meeting between CONTRACTOR and the Director or the Director’s designee as soon as reasonably possible after timely receipt of CONTRACTOR’s request.

18.3.3 The Director or the Director’s designee shall review CONTRACTOR’s evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to CONTRACTOR.

18.3.4 In the event CONTRACTOR does not submit a written request for a meeting within ten (10) calendar days of the date of the Notice of

Nonperformance, the City Representative's determination shall be final and CITY may deduct the liquidated damages from amounts otherwise due to CONTRACTOR.

18.3.5 CITY's collection of liquidated damages shall not prevent CITY from exercising any other right or remedy, including the right to terminate this Agreement, for CONTRACTOR's failure to perform the work and services in the manner set forth in this Agreement.

18.4 Application of Liquidated Damages.

In the determination of the total liquidated damages imposed during a calendar year, the liquidated damages shall be deemed imposed in the calendar year in which the event giving rise to the liquidated damages occurred. However, the liquidated damages shall not be deemed effective until the Procedure for Review of Liquidated Damages set forth in Section 18.3 has been completed or the time for initiating review has lapsed, whichever occurs later.

18.5 Service Supervisor.

CONTRACTOR shall assign supervisor(s) to be in charge of the SFD Recycling Collection Services and shall provide the name of that person or those persons in writing to the City Representative annually by July 1 of each year of the term of this Agreement, and any other time the person(s) in that position changes. The supervisor(s) shall be physically located in the geographic boundaries of the Service Districts and available to the contract manager through the use of telecommunication equipment at all times that CONTRACTOR is providing SFD Recycling Collection Services. In the event the supervisor is unavailable due to illness or vacation, CONTRACTOR shall designate an acceptable substitute who shall be available and who has the authority to act in the same capacity as the supervisor.

18.6 Contract Manager.

CONTRACTOR shall designate a contract manager and shall provide the name of that person in writing to the City Representative within thirty (30) calendar days of the Effective Date of this Agreement and annually by July 1 of each subsequent Agreement Year of this Agreement and any other time the person in that position changes. The contract manager shall be available to the City Representative, the City Manager and the Director through the use of telecommunications equipment at all times that CONTRACTOR is providing SFD Recycling Collection Services. The contract manager shall provide CITY with an emergency phone number where the contract manager can be reached outside of normal business hours.

ARTICLE 19. DEFAULT OF AGREEMENT

19.1 Termination.

CITY may terminate this Agreement, except as otherwise provided below in this Article, by giving CONTRACTOR thirty (30) calendar days advance written notice, to be served as provided in Section 23.17, upon the happening of any one of the following events:

19.1.1 CONTRACTOR shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

19.1.2 By order or decree of a Court, CONTRACTOR shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of CONTRACTOR, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof, provided that if any such judgment or order is stayed or vacated within sixty (60) calendar days after the entry thereof, any notice of default shall be and become null, void and of no effect; unless such stayed judgment or order is reinstated in which case, said default shall be deemed immediate; or

19.1.3 By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of CONTRACTOR, and such possession or control shall continue in effect for a period of sixty (60) calendar days; or

19.1.4 CONTRACTOR has defaulted, by failing or refusing to pay in a timely manner the liquidated damages or other monies due CITY and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

19.1.5 CONTRACTOR has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and said default is not cured within thirty (30) calendar days of receipt of written notice by CITY to do so; or

19.1.6 In the event that the monies due CITY under Section 19.1.4 or an unsatisfied final judgment under Section 19.1.5 is the subject of a judicial proceeding, CONTRACTOR shall not be in default if the sum of money is bonded. All bonds shall be in a form acceptable to the City Attorney; or

19.1.7 CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Agreement or any of the rules and regulations promulgated by CITY pursuant thereto or has wrongfully failed or refused to comply with the instructions of the City Representative relative thereto and said default is not cured within thirty (30) calendar days of receipt of written notice from CITY to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) calendar days following receipt by CONTRACTOR of written demand from CITY to do so, CONTRACTOR fails to commence the remedy of such default within said thirty (30) calendar days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) calendar days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time).

However, notwithstanding anything contained herein to the contrary, for the failure of CONTRACTOR to provide SFD Recycling Collection Services for a period of three (3) consecutive Work Days, CITY may secure CONTRACTOR's records and equipment on the fourth (4th) Work Day in order to provide interim SFD Recycling Collection Services until such time as the matter is resolved and CONTRACTOR is again able to perform pursuant to this Agreement; provided, however, if CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) calendar days all liability of CITY under this Agreement to CONTRACTOR shall cease and this Agreement may be deemed terminated upon notice by the City Manager. In the event CITY secures CONTRACTOR's equipment in order to provide interim services, ownership of such equipment shall remain with CONTRACTOR and shall not transfer to CITY but CITY shall be obligated to make the outstanding debt payments, if any, on such equipment attributable to the interim period and CITY shall make all payments that would otherwise have been made by CONTRACTOR for vehicle operations (including insurance, fuel and repairs) required to comply with CONTRACTOR's debt obligation to CONTRACTOR's lenders. CITY's responsibility for such outstanding debt payments and other payments shall end at such time as CITY ceases use of such equipment to provide interim services. In the event CITY secures CONTRACTOR's equipment, CITY may utilize CONTRACTOR's office, corporation yard and other facilities on the same terms as for the use of CONTRACTOR's equipment; provided, however, that such use shall not include use of CONTRACTOR's MRF, any Alternate Facility (if applicable), the equipment located at such facilities, other facilities or equipment owned by CONTRACTOR but not employed in the performance of this Agreement, or any real property that is owned by CONTRACTOR or CONTRACTOR's affiliated companies.

19.2 Violations.

Notwithstanding the foregoing and as supplemental and additional means of termination of this Agreement under this Article, in the event that CONTRACTOR's record of performance shows that CONTRACTOR has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by CONTRACTOR, in the opinion of the City Manager and regardless of whether CONTRACTOR has corrected each individual condition of default, CONTRACTOR shall be deemed a "habitual violator", shall be deemed to have waived the right to any further notice or grace period to correct, and all of said defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. The City Manager shall thereupon issue CONTRACTOR a final warning citing the circumstances therefore, and any single default by CONTRACTOR of whatever nature, subsequent to the occurrence of the last of said cumulative defaults, shall be grounds for immediate termination of the Agreement. In the event of any such subsequent default, the City Manager may terminate this Agreement upon giving of written final notice to CONTRACTOR, such termination to be effective upon the date specified in the City Manager's written notice to CONTRACTOR. Upon such termination, all contractual fees due hereunder plus any and all charges and interest, if any, shall be payable to the date of termination, and CONTRACTOR shall have no further rights hereunder. Immediately upon the specified date in such final notice CONTRACTOR shall cease any further performance of SFD Recycling Collection Services, as specified in the City Manager's notice, under this Agreement.

19.3 Effective Date of Termination.

In the event of the aforesaid events specified in Sections 19.1 and 19.2 above, and except as otherwise provided in said Sections, termination shall be effective upon the date specified in the City Manager's written notice to CONTRACTOR and upon said date this Agreement shall be deemed immediately terminated and upon such termination all liability of CITY under this Agreement to CONTRACTOR, other than payment of moneys due, shall cease, and CITY shall have the right to call the Performance Bond and shall be free to negotiate with other contractors for the performance of the services specified in this Agreement. In the event of CONTRACTOR's failure to perform, CONTRACTOR shall reimburse CITY for all direct and indirect costs of providing interim SFD Recycling Collection Services.

19.4 Immediate Termination.

CITY may terminate this Agreement immediately upon written notice to CONTRACTOR in the event CONTRACTOR fails to provide and maintain the Performance Bond or Letter of Credit or other alternative form of collateral acceptable to CONTRACTOR and approved by the CITY prior to the expiration of the Performance Bond or Letter of Credit as required by this Agreement, CONTRACTOR fails to obtain or maintain insurance policies endorsements as required by this Agreement,

CONTRACTOR fails to provide the proof of insurance as required by this Agreement, or CONTRACTOR offers or gives any gift prohibited by Chapter 12.08 of the San José Municipal Code.

19.5 Termination Cumulative.

CITY's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

ARTICLE 20. NONDISCRIMINATION, WAGE POLICY

20.1 Nondiscrimination.

In the performance of all work and services under this Agreement, CONTRACTOR shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status, sexual orientation or disability. CONTRACTOR shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

20.2 Wage Policy.

CONTRACTOR shall pay, and ensure its subcontractors to pay those employees performing work related to this Agreement those specified wage rates as set forth in Exhibit 15 ("WAGE POLICY") and shall meet the documentation and reporting requirements set forth therein.

ARTICLE 21. FINANCIAL ASSURANCE

21.1 Performance Bond.

CONTRACTOR shall keep current, a performance bond in a form substantially as set forth in Exhibit 14 ("FORM OF PERFORMANCE BOND") to this Agreement or in such other form as is acceptable to the City Attorney, for the faithful performance of this Agreement and all obligations arising hereunder in the following amount:

21.1.1 For the term of this Agreement, an amount not less than Four Million Five Hundred Thousand Dollars (\$4,500,000).

21.2 Licensed Surety.

The performance bond shall be executed by a surety company licensed to do business in the State of California; having an "A-" or better rating by A. M. Best or Standard and Poors; and included on the list of surety companies approved by the Treasurer of the United States. If the term of the performance bond is shorter than the term of this Agreement, CONTRACTOR shall submit proof of renewal or extension at least thirty (30) calendar days prior to the Performance Bond expiration date.

21.3 Letter of Credit.

As an alternative to the Performance Bond required by Section 21.1, if approved by the City Manager or designee Director, CONTRACTOR may deposit with CITY an irrevocable letter of credit in an amount as set forth in Section 21.1. If allowed, the letter of credit must be issued by an FDIC insured banking institution chartered to do business in the State of California, in CITY's name, and must be callable at the discretion of CITY.

21.4 Indemnification.

CONTRACTOR shall indemnify and hold harmless CITY, CITY's contractors, and CITY's public officials, officers, directors, employees, agents and other contractors of each of them, from and against any and all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of CONTRACTOR, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to or caused by the performance of the services under this Agreement. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property. CONTRACTOR agrees, at CONTRACTOR's expense, after written notice from the City Attorney, to defend any action against CITY that falls within the scope of this indemnity, or CITY, at CITY's option, may elect not to tender such defense and may elect instead to secure its

own attorneys to defend any such action and the reasonable costs and expenses of such attorneys incurred in defending such action shall be payable by CONTRACTOR.

Additionally, if CONTRACTOR, after receipt of written notice from the CITY, fails to make any payment due under this Agreement to CITY, CONTRACTOR shall pay any reasonable attorneys' fees or costs incurred by CITY in securing any such payment from CONTRACTOR. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by CONTRACTOR from CITY that such amount is due, be made by CONTRACTOR prior to CITY being required to pay same, or in the alternative, CITY, at CITY's option, may make payment of an amount so due and CONTRACTOR shall promptly reimburse CITY for same.

CONTRACTOR's obligations under this Section 21.4 includes the defense of any action against the CITY or the payment of any fines or penalties imposed on the CITY as a result of: (i) CONTRACTOR's failure to meet its obligations under this Agreement, or (ii) due to CONTRACTOR's delay in providing information that prevents CONTRACTOR or CITY from submitting timely reports as required by law.

21.5 Consideration.

It is specifically understood and agreed that the consideration inuring to CONTRACTOR for the execution of this Agreement includes the promises, payments, covenants, rights and responsibilities contained in this Agreement.

21.6 Obligation.

The execution of this Agreement by CONTRACTOR shall obligate CONTRACTOR to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in Article 22.

21.7 Subcontractors.

CONTRACTOR shall require all subcontractors to enter into a contract containing the provisions set forth in Section 21.4 in which contract the subcontractor fully indemnifies CITY in accordance with this Article.

21.8 Exception.

Notwithstanding Sections 21.1, 21.2, 21.3 and 21.4 above, CONTRACTOR's obligation to indemnify, hold harmless and defend CITY, its officers and employees shall not extend to any loss, liability, penalty, complaint, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or gross negligence on the part of CITY, its officers or employees.

21.9 Damage by CONTRACTOR.

If CONTRACTOR's employees or subcontractors cause any injury, damage or loss to CITY property, including but not limited to CITY streets or curbs (excepting normal wear and tear), CONTRACTOR shall reimburse CITY for CITY's cost of

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repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of CITY to be indemnified by CONTRACTOR for any such injury, damage or loss. With the prior written approval of the Director, CONTRACTOR may repair the damage at CONTRACTOR's sole cost and expense.

ARTICLE 22. INSURANCE

22.1 Insurance Policies.

CONTRACTOR shall secure and maintain throughout the term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with CONTRACTOR's performance of work or services under this Agreement. CONTRACTOR's performance of work or services shall include performance by CONTRACTOR's employees, agents, representatives and subcontractors.

22.2 Minimum Scope of Insurance.

There shall be no endorsement reducing the scope of the coverage required below unless approved by the CITY's Risk Manager. Insurance coverage shall be at least as broad as:

22.2.1 The coverage provided by Insurance Office Commercial General Liability coverage ("occurrence" form CG 0001); and

22.2.2 The coverage provided by Insurance Services Office Form No. CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and

22.2.3 Workers' Compensation insurance as required by the California Labor Code and Employers Liability Insurance; and

22.2.4 Umbrella Liability per occurrence policy follow form for scheduled underlyers; Commercial General Liability, Auto Liability, Employer's Liability. Umbrella policy is required to have all scheduled underlyers identified; and

22.2.5 Hazardous Waste and Environmental Impairment Liability Insurance.

22.3 Minimum Limits of Insurance.

CONTRACTOR shall maintain insurance limits no less than:

22.3.1 Commercial General Liability: \$3,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be \$5,000,000; and

22.3.2 Automobile Liability: \$3,000,000 combined single limit per accident for bodily injury and property damage; and

22.3.3 Worker's Compensation and Employers Liability: Worker's Compensation limits as required by the California Labor Code and Employers Liability limits of \$3,000,000 per accident; and

22.3.4 Hazardous Waste and Environmental Impairment Liability: \$3,000,000 per occurrence; and

22.3.5 Umbrella Liability: \$10,000,000 per occurrence, with the Commercial General Liability, Automobile Liability, and Employer's Liability all listed on the policy as scheduled underlayers; and

22.3.6 Crime Coverage.

A Combination Crime policy with minimum limits not less than \$5,000 per occurrence upon implementation of Large Item billing for Employee Dishonesty (Form A); Forgery or Alteration (Form B); Theft, Disappearance, Destruction Inside/Outside Premises (Form C); and Robbery and Safe Burglary Inside/Outside of Premises (Form D).

22.4 Deductibles and Self-Insured Retention.

Any deductibles or self-insured retention must be declared to, and approved by, CITY's Risk Manager. At the option of CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects CITY, its officers, employees, agents and contractors; or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by CITY's Risk Manager.

22.5 Endorsements.

The General Liability and Automobile Liability Coverage policies are to contain, or be endorsed to contain, the following provisions:

22.5.1 The City of San José, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, CONTRACTOR; products and completed operations of CONTRACTOR; premises owned, leased or used by CONTRACTOR; and automobiles owned, leased, hired or borrowed by CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents and contractors.

22.5.2 CONTRACTOR's insurance coverage shall be primary insurance as respects CITY, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by CITY, its officers, employees, agents or contractors shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

22.5.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to CITY, its officers, employees, agents, or contractors.

22.5.4 Coverage shall state that CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

22.5.5 Coverage shall contain a waiver of subrogation in favor of CITY, its officials, employees, agents and contractors.

The Workers' Compensation and Employers' Liability Coverage shall contain waiver of subrogation in favor of the City of San Jose, its officers, employees, agents and contractors.

22.6 All Coverages.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days prior written notice has been given to CITY's Risk Manager, except that ten (10) days prior written notice shall be required in the event of cancellation for non-payment of premium.

22.7 Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to CITY's Risk Manager.

22.8 Verification of Coverage.

CONTRACTOR shall furnish CITY with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. CONTRACTOR shall furnish CITY with a new certificate of insurance and endorsements on each renewal of coverage or change of insurers.

Proof of insurance shall be either emailed in an electronic format to: Riskmgmt@sanjoseca.gov with a copy to the City Representative, or mailed to the following postal address (or any subsequent email or postal address as may be directed in writing by the Risk Manager):

City of San Jose – Finance Department
Risk Management
200 East Santa Clara Street, 14th Floor
San Jose, CA 95113-1905

22.9 Subcontractors.

CONTRACTOR shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

22.10 Modification of Insurance Requirements.

The insurance requirements provided in this Agreement may be modified or waived by CITY's Risk Manager, in writing, upon the request of CONTRACTOR if CITY's Risk Manager determines such modification or waiver is in the best interest of CITY considering all relevant factors, including exposure to CITY.

22.11 Rights of Subrogation.

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against CITY with the express intention of the parties being that the

required insurance coverage protects both parties as the primary coverage for any and all losses covered by the above-described insurance. CONTRACTOR shall ensure that any companies issuing insurance to cover the requirements contained in this Agreement agree and shall provide waiver of subrogation endorsements in favor of the City. The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as it appears in any policy of insurance in which CITY is named as an additional insured shall not apply to CITY.

ARTICLE 23. MISCELLANEOUS PROVISIONS

23.1 Modifications.

CITY shall have the power to make changes in this Agreement as the result of changes in law, changes in the City of San José Municipal Code, or both, to impose new rules and regulations on CONTRACTOR under this Agreement relative to the scope and methods of providing SFD Recycling Collection Services as shall from time-to-time be necessary and desirable for the public welfare. CITY shall give CONTRACTOR notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing SFD Recycling Collection Services as referenced herein shall also be liberally construed to include, but is not limited to the manner, procedures, operations and obligations, financial or otherwise, of CONTRACTOR.

23.2 Request for Additional Services. If requested by the CITY, CONTRACTOR shall take over other Recycle Plus services from other providers. If CITY makes such a request, CITY and CONTRACTOR will negotiate in good faith to determine appropriate compensation for such additional services, subject to appropriation of funds.

23.3 Change in Law.

CITY and CONTRACTOR understand and agree that the California Legislature has the authority to make comprehensive changes in Solid Waste Management legislation and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Agreement. CONTRACTOR agrees that the terms and provisions of the San José Municipal Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Agreement and the Service Recipients of CONTRACTOR located within the Service Districts. In the event any future change in the San José Municipal Code materially alters the obligations of CONTRACTOR, then the affected service rates, as established in Exhibit 1 of this Agreement shall be adjusted. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. CITY and CONTRACTOR agree to enter into good faith negotiations regarding modifications to this Agreement which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Agreement, CITY and CONTRACTOR shall negotiate in good faith, a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of CONTRACTOR due to any modification in the Agreement under this Article. CITY and CONTRACTOR shall not unreasonably withhold agreement to such compensation adjustment.

23.4 Senate Bill 1383.

CONTRACTOR is aware that Senate Bill (SB) 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived

climate pollutants, became law in 2016. CONTRACTOR agrees that the passage of this law and the regulations implemented under it will not present a Change in Law. The City and CONTRACTOR will provide for the program support and reporting required by SB 1383 and its regulations. If CONTRACTOR is required to provide significant changes to services in response to SB 1383, CITY and CONTRACTOR will mutually agree to the appropriate scope and compensation for such services subject to appropriation of funds.

23.5 Exempt Waste.

CONTRACTOR shall not be required to collect Exempt Waste, but may offer such services to Service Recipients. Collection and disposal of Exempt Waste is not regulated under this Agreement, but if provided by CONTRACTOR shall be in strict compliance with all federal, state and local laws and regulations.

23.6 Independent Contractor.

In the performance of services pursuant to this Agreement, CONTRACTOR shall be an independent contractor and not an officer, agent, servant or employee of CITY. CONTRACTOR shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. CONTRACTOR shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither CONTRACTOR nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to CITY employees and CONTRACTOR expressly waives any claim it may have or acquire to such benefits.

23.7 Law To Govern.

The law of the State of California shall govern the rights, obligations, duties and liabilities of CITY and CONTRACTOR under this Agreement and shall govern the interpretation of this Agreement.

23.8 Venue.

Any litigation between CITY and CONTRACTOR concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Courts of Santa Clara County, State of California, or in the United States District Court for the Northern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

23.9 Assignment.

No assignment of this Agreement or any right occurring under this Agreement shall be made in whole or in part by CONTRACTOR without the express written consent of the Director. CITY shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by CONTRACTOR. Any assignment of this Agreement made by CONTRACTOR without the express written consent of the Director

shall be null and void and shall be grounds for CITY to declare a default of this Agreement and immediately terminate this Agreement by giving written notice to CONTRACTOR, and upon the date of such notice this Agreement shall be deemed immediately terminated, and upon such termination all liability of CITY under this Agreement to CONTRACTOR, other than the payment of moneys due as of the date of termination, shall cease, and CITY shall have the right to call the Performance Bond or Letter of Credit and shall be free to negotiate with other contractors, CONTRACTOR, or any other person or company for the service which is the subject of this Agreement. In the event of any assignment, the assignee shall fully assume all the liabilities of CONTRACTOR.

23.10 Subcontractors.

The use of a subcontractor to perform services under this Agreement shall not constitute delegation of CONTRACTOR's duties provided that CONTRACTOR has received prior written authorization from the Director to subcontract such services and the Director has approved a subcontractor who will perform such services. CONTRACTOR shall be responsible for directing the work of CONTRACTOR's subcontractors and any compensation due or payable to CONTRACTOR's subcontractor shall be the sole responsibility of CONTRACTOR. The Director shall have the right to require the removal of any approved subcontractor for reasonable cause. The subcontractors listed in Exhibit 7 to this Agreement, are hereby approved by CITY as to the scope of work specified in Exhibit 7 for each such subcontractor. Additional subcontractors may be used upon the written approval of the Director in accordance with this Section.

23.11 Compliance With Laws.

In the performance of this Agreement, CONTRACTOR shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the Charter of the City of San José and the San José Municipal Code.

23.12 Amendments to Municipal Code.

CITY shall provide written notice to CONTRACTOR of any planned amendment to Chapter 9.10 of the San José Municipal Code that would substantially affect the performance of CONTRACTOR's services pursuant to this Agreement. Except where such amendment is adopted as an urgency measure, such notice shall be provided at least thirty (30) calendar days prior to the City Council's approval of such an amendment.

23.13 Permits And Licenses.

CONTRACTOR shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Agreement. CONTRACTOR shall provide proof of such permits, licenses or

approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Representative.

23.14 Ownership of Written Materials.

All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by CITY or CONTRACTOR in connection with the services to be performed under this Agreement or in connection with the Recycle Plus Program, whether developed directly or indirectly by CITY or CONTRACTOR shall be and shall remain the property of CITY without limitation or restrictions on the use of such materials by CITY. CONTRACTOR shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of the City Representative. This Section does not apply to ideas or concepts described in such materials and do not apply to the format of such materials.

23.15 Waiver.

The waiver by CITY or CONTRACTOR of any breach for violation of any term covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by CITY of any fee, tax, or any other monies which may become due from CONTRACTOR to CITY shall not be deemed to be a waiver by CITY of any breach for violation of any term, covenant or condition of this Agreement.

23.16 Prohibition Against Gifts.

CONTRACTOR represents that CONTRACTOR is familiar with CITY's prohibition against the acceptance of any gift by a CITY officer or employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code. CONTRACTOR shall not offer any CITY officer or designated employee any gift prohibited by said Chapter. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement and, in addition to any other remedy CITY may have in law or in equity, CITY may terminate this Agreement for such breach as provided in Section 19.4 of this Agreement.

23.17 Disqualification of Former Employees.

CONTRACTOR represents that CONTRACTOR is familiar with the provisions of Chapter 12.10 of the San José Municipal Code relating to the disqualification of former officers and employees of CITY in matters that are connected with former duties or official responsibilities (the "Revolving Door Ordinance"). CONTRACTOR shall not utilize, either directly or indirectly, any officer, employee, or agent of CONTRACTOR to perform services under this Agreement, if in the performance of such services the officer, employee or agent would be in violation of the Revolving Door Ordinance.

23.18 Point of Contact.

The day-to-day dealings between CONTRACTOR and CITY with respect to this Agreement shall be between CONTRACTOR's General Manager and the City Representative.

23.19 Notices.

Except as otherwise provided in this Agreement, whenever either party desires to give notice to the other, the notice must be in writing and given as provided in this Section. For the present, the parties designate the following as the respective persons and places for giving of notice:

To CITY:

Director
Department of Environmental Services
200 East Santa Clara Street, 10th Floor
San José, CA 95113

With a copy to:

City Representative
Recycle Plus Program
Department of Environmental Services
200 East Santa Clara Street, 10th Floor
San José, CA 95113

To CONTRACTOR:

Kristina Duong, Chief Financial Officer
1120 Berryessa Road
San Jose, CA 95133

With a copy to:

Glen Hulsenberg, Director of Operations
1120 Berryessa Road
San Jose, CA 95133

Notices shall be effective when deposited in the U. S. mail, postage prepaid, or when personally delivered to the address specified above or to such other address as designated by a party by providing written notice of a change in address. Notice may also be sent by electronic mail and shall be effective when received, provided that electronic mail received after 4:30 p.m. or on weekends or holidays, will be deemed received on the next Work Day. The original of items that are transmitted by electronic mail must also be mailed or personally delivered as provided above within three (3) Work Days of the electronic mail transmittal.

23.20 Transition to Third Party Billing.

In the event that CITY retains a third party to provide billing, customer service, and remittance processing services, CONTRACTOR shall:

- Provide service data updates and information to the third party;

- Modify customer service and electronic interface requirements to conform with the CITY's and third party system requirements;
- Provide the CITY with read only access to CONTRACTOR's customer information system; and
- Participate in the development and reconciliation process to resolve data discrepancy issues including, but not limited to, assisting the CITY to review of documentation from Service Recipients.

23.21 Transition to Next Contractor.

In the event CONTRACTOR is not awarded an agreement to continue to provide SFD Recycling Collection Services following the expiration or early termination of this Agreement, CONTRACTOR shall cooperate fully with CITY and any subsequent contractor(s) to assure a smooth transition of services described in this Agreement. Such cooperation shall include but not be limited to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Service Recipients; providing applicable detailed Service Recipient information, including but not limited to Service Unit, account and billing information; not less than one hundred twenty (120) calendar days prior to the termination of this Agreement, providing a list of workers who will be displaced by the transfer of services to a successor contractor; allowing employees to be available for interviews and training by the new contractor provided the request is consistent with the bargaining agreement, if applicable; providing a complete inventory of all Recycling Carts; providing adequate labor and equipment to complete performance of all SFD Recycling Collection Services required under this Agreement; taking all actions necessary to transfer ownership of Recycling Carts, as appropriate, to CITY; including transporting such containers to a location designated by the City Representative; removing containers in accordance with a schedule approved by the City Representative; coordinating collection of materials set out in new containers if new containers are provided for a subsequent Agreement and providing other reports and data required by this Agreement. CONTRACTOR shall not be responsible for costs incurred by subsequent contractor to interview prospective employees or train new employees.

23.19.1 Temporary Leasing of Facility and Rental of Collection Fleet.

In order to transition services to another contractor, the CITY reserves the right to lease any facilities and rent collection vehicles used to provide services under this Agreement. The terms and conditions of the lease and rental shall be set forth in a written agreement no later than six (6) months prior to the termination of this Agreement. The cost to lease the facilities may not be more than the actual cost when the facilities were used to provide services under this Agreement, or the reasonable comparable cost to lease similar facilities in this geographic service area. The collection vehicle rental price shall be \$100.00 per

hour per vehicle, and the terms and conditions of the rental shall be those customary in the rental of solid waste collection equipment.

23.20 Use of Recycled Products.

For services rendered pursuant to this Agreement, CONTRACTOR shall use recycled paper for all printed material such as brochures, reports, studies, and promotional literature, that exceeds ten (10) pages, or if the cumulative total number of pages per document or printed material times the number of copies made is in excess of ten (10) pages.

23.20.1 For the purposes of this Section, "recycled paper" means a paper or wood pulp product with not less than fifty percent (50%) off its total weight consisting of secondary and post consumer waste and with not less than thirty percent (30%) of its total weight consisting of post consumer waste. "Post consumer waste" means a finished material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary waste" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value and includes post consumer waste but does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood Residue from a manufacturing process.

23.20.2 CONTRACTOR may request an exemption from the requirements of this Section by submitting such request in writing to the Director. Such a request may be approved or denied, in whole or in part, at said Director's sole discretion. CONTRACTOR shall not use, in the performance of services under this Agreement, any product or material that does not meet the standards set forth above without the prior written approval of said Director.

23.21 Entire Agreement.

This Agreement and the Exhibits attached hereto constitute the entire agreement and understanding between the parties hereto, and this Agreement shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained in this Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written.

23.22 Severability.

If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this

Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

23.23 Right to Require Performance.

The failure of CITY at any time to require performance by CONTRACTOR of any provision hereof shall in no way affect the right of CITY thereafter to enforce same. Nor shall waiver by CITY of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

23.24 Headings.

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Agreement.

23.25 Exhibits.

Each Exhibit referred to in this Agreement forms an essential part of this Agreement and is incorporated by this reference into this Agreement. In the event of any conflict or inconsistency between the Agreement and the Exhibits, however, such conflict or inconsistency will be resolved by giving precedence to the Agreement unless otherwise stated.

23.26 Execution in Counterparts.

This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.


23.27 Use of Electronic Signatures.

Unless otherwise prohibited by law or CITY policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code Section 1550. The term "electronically signed contract" means a contract that is executed by applying an electronic signature using technology approved by the CITY.

IN WITNESS WHEREOF, CITY and CONTRACTOR have executed this Agreement on the respective date(s) below each signature.

APPROVED AS TO FORM

CITY OF SAN JOSE, a municipal corporation

Attorney
Mark Vanni
Senr Deputy City Atty II U
mark.vanni@sanjoseca.gov

Mark Vanni (6/14/2021)
Email: mark.vanni@sanjoseca.gov

Sarah Zarate

Sarah Zarate (6/16/2021)
Email: sarah.zarate@sanjoseca.gov

MARK VANNI
Senior Deputy City Attorney

By: _____
SARAH ZARATE
Director

Date: _____

CALIFORNIA WASTE SOLUTIONS,
INC.

David Duong

davidduong@calwaste.com (6/11/2021)
Email: davidduong@calwaste.com

By: _____
DAVID DUONG
President

Date: _____

EXHIBIT 1
COMPENSATION

Beginning the Effective Date of this Agreement, CITY shall compensate CONTRACTOR for services performed in accordance with this Agreement at the following rates (in 2020-2021 dollars):

I. SFD RECYCLING COLLECTION SERVICES

CONTRACTOR shall be compensated for SFD Recycling Collection Services in accordance with the following table.

SFD COMPENSATION	District A	District C
A. BASE SERVICE RATES		
1. SFD Recycling Service ¹ Applicable rates determined following "II. SFD Recycling Service Rates Schedule"	\$14.31/Service Unit/Mo. (Base Level, see "II. SFD Recycling Service Rates Schedule" for applicable rate)	\$14.31/Service Unit/Mo. (Base Level, see "II. SFD Recycling Service Rates Schedule" for applicable rate)
2. SFD Used Oil Collection Service ¹	\$0.00/Service Unit/Mo.	\$0.00/Service Unit/Mo.
3. TOTAL BASE SERVICE RATE (Nos. 1. – 2.)	\$14.31/Service Unit/Mo.	\$14.31/Service Unit/Mo.
B. ADDITIONAL SERVICE RATES		
1. Subscription On-Premises Collection of all Base Service Collection Elements ²	\$36.84/Service Unit/Mo.	\$36.84/Service Unit/Mo.
2. Excess Cart Exchanges ³	\$73.79/Occurrence	\$113.48/Occurrence

¹ For a SFD Service Unit that consists of a combination of Dwelling Units and receives Garbage collection services from shared Garbage carts, CONTRACTOR's compensation for SFD Recycling Service is based on the number of Garbage carts at the Service Unit, regardless of the number of Recycling carts and compensation for SFD Used Oil Collection Service is the compensation listed regardless of the number of containers.

² This rate will be added to the Base Service Rate (line A.3) for each Service Unit receiving Subscription On-Premises Collection Services.

³ CONTRACTOR will not be compensated for (1) customer initiated Recycling Cart exchanges for District A between 0.114% and 2.807% of the average number of households in a Fiscal Year, and (2) customer initiated Recycling Cart exchanges for District C between 0.034% and 2.064% of the average number of households in a Fiscal Year. Recycling Cart exchanges below or above these ranges shall be compensated by the CITY in the June invoice. Cart exchange counts shall be rounded to the nearest whole number.

EXHIBIT 1
COMPENSATION

SFD COMPENSATION	District A	District C
3. Large Item Collection ⁴		
a. Increments of up to 3 Large Items collected	\$50.97	\$50.97
b. Each additional Large Item collected above 3 Large Items	\$16.97	\$16.97
4. Hard-to-Serve Premises ⁵	\$TBD/Service Unit/Mo.	\$TBD/Service Unit/Mo.

II. SFD RECYCLING SERVICE RATES SCHEDULE

Applicable rates based on the percentage of material not on RRFS list (RRFS defined in 16.2.3) found in recycling carts, per studies conducted once every two years.

District A	% Material Not on RRFS List*	Rate	Unit
<i>SFD Recycling Collection & Processing</i>	0.00-19.99%	\$12.17	Service Unit/Mo.
<i>SFD Recycling Collection & Processing discount per household for each 2% below non-RRFS material baseline due to City efforts to reduce non-RRFS material in recycling</i>	20.00-32.99%	\$12.17, plus Additional Increment for every 2% incremental above 20%	Service Unit/Mo.
<i>SFD Recycling Collection & Processing</i>	33.00-34.99% (33% Base level)	\$14.31	Service Unit/Mo.
<i>SFD Recycling Collection & Processing</i>	35.00-36.99%	\$14.60	Service Unit/Mo.
<i>SFD Recycling Collection & Processing</i>	37.00-38.99%	\$14.91	Service Unit/Mo.
<i>SFD Recycling Collection & Processing</i>	39.00-40.99%	\$15.21	Service Unit/Mo.
<i>SFD Recycling Collection & Processing</i>	>40.99%	\$15.52, plus Additional Increment for every 2%	Service Unit/Mo.

⁴ CITY compensation to CONTRACTOR for Large Item Collection services. Additional items rate is effective for additional Large Items collected on the same date at the same address as the first 3 items.

⁵ CONTRACTOR will cooperate with the CITY if it chooses to implement a hard-to-serve rate for existing customers or customers located in new developments. This may include assisting the CITY in the identification of hard-to-serve areas and negotiating with the CITY in good faith to arrive at an appropriate rate for said units.

EXHIBIT 1
COMPENSATION

		incremental Above 40.99%	
Additional Increment	2% incremental	\$0.29	Service Unit/Mo.

District C	% Material Not on RRFS List *	Rate	Unit
SFD Recycling Collection & Processing	0.00-17.99%	\$12.17	Service Unit/Mo.
SFD Recycling Collection & Processing discount per household for each 2% below non-RRFS material baseline due to City efforts to reduce non-RRFS material in recycling	18.00-31.99%	\$12.17, plus Additional Increment for every 2% incremental above 20%	Service Unit/Mo.
SFD Recycling Collection & Processing	32.00-33.99% (32% Base level)	\$14.31	Service Unit/Mo.
SFD Recycling Collection & Processing	34.00-35.99%	\$14.60	Service Unit/Mo.
SFD Recycling Collection & Processing	36.00-37.99%	\$14.91	Service Unit/Mo.
SFD Recycling Collection & Processing	38.00-39.99%	\$15.21	Service Unit/Mo.
SFD Recycling Collection & Processing	40.00-41.99%	\$15.52	Service Unit/Mo.
SFD Recycling Collection & Processing	>41.99%	\$15.83, plus Additional Increment for every 2% incremental Above 41.99%	Service Unit/Mo.
Additional Increment	2% incremental	\$0.29	Service Unit/Mo.

III. EXAMPLES OF EXCESS CART EXCHANGE CALCULATIONS

Recycling Cart exchanges in **District A** will be paid for up to 0.114% and over 2.807% of the average house counts.

Average house counts are the sum of the house counts from the monthly invoices divided by twelve. Jul house counts + Aug house counts ... + Jun house counts

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Example: total exchanges = 2,700 average house count = 93,600

EXHIBIT 1
COMPENSATION

Exchanges will be paid for, **up to** 0.114% of 93,600 = .00114 x 93600 = 107 exchanges
 Exchanges will be paid for, **over** 2.807% of 93,600 = .02807 x 93600 = 2627 exchanges

Pay **up to** 107 exchanges pay 107

Pay **over** 2627 → total exchanges (2700) – 2627 = 73 +73

Total paid = **180 exchanges**

Payment = 180 exchanges x \$73.79/exchange = **\$13,282.20**

Recycling Cart exchanges in **District C** will be paid for up to 0.034% and over 2.064% of the average house counts.

Average house counts are the sum of the house counts from the monthly invoices divided by twelve. Jul house counts + Aug house counts ... + Jun house counts
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Example: total exchanges = 1,000 average house count = 67,000

Exchanges will be paid for, **up to** 0.034% of 67,000 = .00034 x 67000 = 23 exchanges

Exchanges will be paid for, **over** 2.064% of 67,000 = .02064 x 67000 = 1383 exchanges

Pay **up to** 23 exchanges pay 23

Pay **over** 1383 → total exchanges (1000) – 1383 = -383 + 0 none over

Total paid = **23 exchanges**

Payment = 23 exchanges x \$113.48/exchange = **\$2,610.04**

IV. RESIDUE DISPOSAL ADJUSTMENT

The costs associated with the disposal of SFD Recyclable Material residue at the Disposal Facility shall be deducted from the compensation to CONTRACTOR at least once every six (6) months and will be reflected in the monthly invoices.

RESIDUE DISPOSAL REIMBURSEMENT RATES	
Loose Residue Disposal at Disposal Facility	\$51.51/ton
Additional charge for baled material	\$4.00/ton ⁽¹⁾

⁽¹⁾ This additional charge for baled material is not adjusted by RRI.

EXHIBIT 1
COMPENSATION

VI. EMERGENCY SERVICE RATES

CITY shall compensate CONTRACTOR for services performed in accordance with this Agreement at the following rates.

Labor Position or Equipment Type	Make & Model	Hourly Rate
Driver and fully automated side loader	Peterbilt 320 –McNeilus 30yd Street Force	\$187.97
Driver and Knuckleboom Loader	Peterbilt 335 – 22 foot stake	\$171.72
Driver and Cart Delivery Truck	Ford 450 – CNG	\$169.03
Supervisor and Pick-Up	Chevy 2500 – CNG	\$138.55
Driver CDL Class B	N/A	\$96.95
Laborer	N/A	\$74.90

END OF EXHIBIT 1

EXHIBIT 2
REFUSE RATE INDEX

The "Refuse Rate Index" adjustment shall be calculated in the following manner:

1. The expenses of the collection services (processing costs excluded) for the designated fiscal period shall be prepared in the format set forth below:

Non-Processing Operating Cost Statement - Description

Labor: List all labor-related costs, including wages, benefits, payroll taxes, workers compensation, health and welfare, employee retirement or profit-sharing contributions.

List all administrative, officer, operation and maintenance salary accounts.

List payroll tax accounts directly related to the above salary accounts.

Diesel Fuel: List all diesel fuel accounts.

Biodiesel Fuel: List all biodiesel fuel accounts.

Natural Gas: List all natural gas accounts for motor vehicle fuel.

Vehicle Replacement:

List all collection and collection related vehicle depreciation accounts.

List all vehicle lease or rental accounts related to collection or collection related vehicles.

Vehicle Maintenance:

List all collection or collection related vehicle parts accounts.

Other Operating Expenses:

List all other expense accounts related to the services provided under this Agreement by each category. These categories may include, but not be limited to, all insurance including general liability, fire, truck damage, extended coverage and employee group medical and life; rent on property, truck licenses and permits; real and personal property taxes; telephone and other utilities; employee uniforms; safety equipment; general yard repairs and maintenance; non-diesel fuel; office supplies; postage; trade association dues and subscription; advertising; employee retirement or profit sharing contributions; and miscellaneous other expenses.

EXHIBIT 2
REFUSE RATE INDEX

2. The expenses of the collection services (processing costs excluded) shall be broken down into the following six cost categories: Labor; Diesel Fuel; Biodiesel Fuel; Natural Gas, Vehicle Replacement; Maintenance and Other Operating Expenses. Each cost category is assigned a weighted percentage factor on that cost category's proportionate share of the total of the costs shown for all cost categories.
3. With the exception for Natural Gas, which is based on rates published by the Pacific Gas and Electric Company (PG&E), the following indices published by the United States Department of Labor, Bureau of Labor Statistics (BLS), are used to calculate the adjustment for each cost category. The change in each index is calculated on a twelve-month fiscal period in accordance with the terms of the Agreement. In the event any index is discontinued, a successor index shall be used. Successor indices shall be those indices that are most closely equivalent to the discontinued indices as recommended by the BLS.

<u>Cost Category</u>	<u>Index</u>
Labor	Series ID: CIU2010000000LKA Not seasonally adjusted
Diesel Fuel	Series ID: WPU057303; Commodity Code 0573-03, #2 Diesel Fuel
Biodiesel Fuel	Biodiesel fuel index published by the BLS. Until a biodiesel fuel index is published by the BLS, one-hundred percent (100%) of Consumer Price Index, Series ID: CUURS49BSA0, CPI-All Urban Consumers, All Items in San Francisco-Oakland-Hayward, CA Area (or such other relevant index as is mutually agreed by the City Representative and CONTRACTOR)
Natural Gas	PG&E Gas Schedule G-NGV1; Natural Gas Service for Compression on Customer's Premises for use as a motor-vehicle fuel
Vehicle Replacement	Series ID: WPU141301; Group: Transportation Equipment; Item: Truck and bus bodies sold separately
Vehicle Maintenance	Series ID: WPU11440378 Group: Machinery and equipment; Item: Parts and attachments for industrial trucks and tractors

EXHIBIT 2
REFUSE RATE INDEX

Other Operating Expenses Seventy-five percent (75%) of Consumer Price Index, Series ID: CUURS49BSA0, CPI-All Urban Consumers, All Items in San Francisco-Oakland-Hayward, CA Area

4. The percentage weight for each cost category is multiplied by the change in each appropriate index to calculate a weighted percentage for each cost category. The weighted percentage changes for each cost category are added together to calculate the Refuse Rate Index (see Example).

Example

Item #	Category	Data Source	Percentage Change (1)	Item Weight (2)	Weighted Percentage Change (3)
1	Labor	Monthly Labor Review Series ID: CIU2010000000LKA Service-Producing Industries	1.28%	47.72%	0.61%
2	Diesel Fuel	Producer Price Index Series ID: WPU057303 Commodity Code 0573-03 #2 Diesel Fuel	22.08%	0.04%	0.01%
3	Biodiesel Fuel	Monthly Labor Review Series ID: CUURS49BSA0 CPI-All Urban Consumers, All Items	2.72%	0.13%	0.00%
4	Natural Gas	PG&E Schedule G-NGV1 Natural Gas Vehicle 1 Uncompressed	0.00%	0.00%	0.00%
5	Vehicle Replacement	Producer Price Index Series ID: WPU141301 Industry: Transportation Equipment Product: Truck and bus bodies sold separately	-1.53%	5.92%	-0.09%
6	Vehicle Maintenance	Producer Price Index Series ID: WPU11440378 Group: Machinery and equipment; Item: Parts and attachments for industrial trucks and tractors	6.21%	5.56%	0.35%

EXHIBIT 2
REFUSE RATE INDEX

7	Other Operating Expenses	Monthly Labor Review Series ID: CUURS49BSA0 75% of CPI-All Urban Consumers, All Items	2.04%	40.63%	0.83%
Refuse Rate Index				100.00%	1.71%

- (1) Assume these are the percentage changes in the indices from year to year. The Labor category will be calculated based on the average change of the four quarters of the calendar year, not the actual indices.
- (2) Assume the categories represent these percentages as a total of CONTRACTOR's operating costs.
- (3) Product of Percentage Change x Item Weight (including 75% of Category Item #7, CPI All Items)

In this example, the Refuse Rate Index is 1.71%.

END OF EXHIBIT 2

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

The SFD RECYCLING SERVICE OPERATION PLANS included below have been carried over from the 2006 Agreement. Where conflicts exist between the Plans and the Agreement, the Agreement shall prevail.

This EXHIBIT 3 sets out the current operational plans for CWS and may be subject to reasonable revisions by CWS over time and as circumstances dictate, to conform to changing conditions, incorporate new operations, techniques and practices, or to address other operational issues, that are consistent with this Agreement.

- A. Diversion (Page 3 of 42)
- B. Public Education and Outreach (Page 5 of 42)
- C. Customer Service (Page 8 of 42)
- D. Collection Operations (Page 10 of 42)
- E. Processing Operations (Page 17 of 42)
- F. Collection Equipment (Page 40 of 42)
- G. Employee and Labor Relations (Page 42 of 42)

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS



California Waste Solutions
Recycling & Waste Management

City of San José

Recycle Plus Agreement for Recycling Services

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

DIVERSION

CWS' compliance with its diversion requirements will be determined as specified in the Agreement.

In order to receive diversion credit for processed materials, CWS must meet the requirements specified in the Agreement.

Recycling Awareness Training

CWS is a recycling company and as such places an emphasis on recycling starting with the set out at the curb. Although CWS will train its employees on proper recycling, the City is responsible for outreach activities to reduce contamination of recyclables by garbage and other unacceptable materials.

CWS will use route auditors or Supervisor's to train and assist drivers to provide notice to and work with residents who place prohibited material in their recycling carts.

TIMOTHY MRF IMPROVEMENTS

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

PUBLIC EDUCATION AND OUTREACH

PUBLIC EDUCATION

- The City is responsible for outreach activities associated with the Recycle Plus program, and will invest significant resources to these outreach activities. City will develop meaningful performance metrics, with input from CWS to ensure the effectiveness of these outreach efforts.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

CUSTOMER SERVICE

Customer service involves the front line interaction of our collection crews and our customer call center.

CALL CENTER

CWS currently operates a customer call center for San Jose for the Recycle Plus contract, and our Customer Service Technicians are trained to treat callers with the utmost professionalism. CWS uses the Tower software system or a comparable system, including the customer service package, and will develop the data interface between Tower or a comparable system and the City's Consolidated Utility Billing System (PeopleSoft RM) in accordance with the requirements of the agreement.

It takes skill to make the most difficult caller feel that the interaction has been positive; an outcome that could reduce repeat calls. To achieve customer satisfaction, the Customer Service Representatives will be trained to respond with best practices. A Customer Call Center Manager will continually motivate the Customer Service Technicians to provide optimal customer support in a courteous, helpful, and solution-oriented manner.

The Customer Service Department in San José will be staffed by staff members adequately trained to handle calls coming in from Districts A and C. CWS will cross train other office staff that are members of the approved bargaining unit to assist with CSR duties as necessary and CWS will have access to bargaining unit qualified casual pool workers to assist in providing additional staffing as needed.

CURRICULA

Training will be on-going to continually improve and streamline processes. CWS will review and develop training material on safety, recycling awareness, substance abuse, equipment review, obstacle course driving, customer service, sexual harassment, diversity, GPS, routes, and mechanics.

SYSTEMS

Systems have been installed and tested and the Customer Service Representatives completely trained on them. CWS have completed upgrades to the existing customer center with the necessary number of phone lines, adequate broadband internet access, and any required modifications to the CWS customer service software system. This equipment will allow the Customer Service Representatives to look up addresses and provide immediate information on collection day, large item collection appointments and C-UBS work order information.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

CWS' Customer Service System allows for expanded reporting, incoming calls may be tracked by type, location, and date and service route. These reports will enhance CWS' ability to refine services. With assistance from software engineers, CWS will develop an interface with the C-UBS system to meet the reporting and coordination requirements in the Service Agreement. The systems will be modified and tested and the Customer Service Representatives completely trained.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

COLLECTION OPERATIONS

VEHICLES

The planned numbers of collection and support vehicles are provided in Tables 2 and 3 below. As described more fully below in the Collection Equipment Plan, CWS will use a single collection vehicle with a single-compartment body. These vehicles will be operated by a single driver with the required level of California driver's license and who meets all other federal, State of California and CWS requirements. The routes for these collection vehicles will be developed using GIS-based, RouteSmart™ route optimization software currently owned by CWS. Routes will be adjusted for balance during the initial operating period; specifically with regard to load size and the goal of keeping the current day assignments. The driver will be provided with specific route path maps, driving instructions and customer sequence lists.

Table 2
Daily Collection Vehicles

Type	Districts A and C
Collection Vehicle	38
Large Item Collection Vehicle	6
Supervisor Pick-up	4
Cart Vehicle	2

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

Table 3

Back-up Collection Vehicles

Type	Districts A and C
Collection Vehicle	6
Large Item Collection Vehicle	1

Staffing requirements necessary to collect recyclables from Districts A and C are shown in Table 4. Reserve staffing will be available on a part-time basis as necessary.

Table 4

Recycling Collection Staffing Requirements

Position Description	Districts A and C	Reserve Staff (%)
Collection Vehicle Operator	38	18
Large Item Vehicle Operator	* As Necessary	
Supervisor/ Route Auditor	3	
Cart Vehicle Operator	2	18
Total	43	

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

USED OIL

Used oil containers and oil filters will be stored on racks under the collection vehicle body. These leak proof racks with oil absorbent pads on the bottom will hold 24 one-gallon oil containers. They will be sized to store a full day's collection and unloaded at the vehicle storage yard. The used oil containers will empty into a 3,000 gallon tank in secondary containment. An oil filter crusher will extract remaining oil from the filters that will also be recycled. The oil filters will be sent to an approved recycling facility. The extracted oil will be added to the oil collection tank.

LARGE ITEMS

CWS will have a vehicle to collect large items in response to call-in requests. Routes will be developed daily and trucks will be staffed by qualified drivers as required. The number of collection and support vehicles is provided above in Tables 1 & 2.

Potentially reusable or recyclable items will be inspected and categorized by the facility staff, segregated, graded and prepared for shipment. Preliminary arrangements were discussed with Goodwill Industries to take usable items such as furniture, tools, recreational equipment and other items. Usable construction materials, dimensional lumber, plywood sheets, sinks, toilets, etc. will be taken for reuse. Other hazardous wastes from appliances, such as mercury switches and capacitors, will be sent for proper treatment or disposal. All items and materials that are not reusable or directly recyclable will be disposed of in an environmentally safe and regulated manner.

If the City of San José establishes a Reuse Center, CWS will provide the City with the right of first refusal for all usable items.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

MATERIALS DISPOSITION

Collected materials will be marketed and otherwise directed as shown in Table 5 below.

**Table 5
Disposal Arrangements with Facility Locations**

Material	Disposal Facility Name	Location	Facility Type	Fee (Per Ton)
Mixed Fiber	Domestic & International Markets		Warehouse	Market Value
Mixed Plastics	Domestic & International Markets		Warehouse	Market Value
Aluminum Cans	Domestic & International Markets		Warehouse	Market Value
Tin/Bimetals	Schnitzer Steel	11665 Berryessa Road San Jose, CA 95133	Warehouse	TBD
Glass	Strategic Materials, Inc.	2960 Farrar Avenue, Modesto, CA 95354	Warehouse	TBD
Scrap Metal	Schnitzer Steel	11665 Berryessa Road San Jose, CA 95133	Yard	TBD
Sharps	Revolt Recycling LLC	657 143 rd Avenue San Leandro, CA 94578	Warehouse	TBD
Used Oil	Safety-Kleen	1147 N. 10 th Street San Jose, CA 95112	Warehouse	TBD
Used Oil Filters	Safety-Kleen	1147 N. 10 th Street San Jose, CA 95112	Warehouse	TBD
Large Items	Zanker	705 Los Esteros Rd. San Jose, CA 95134	Yard	TBD
Appliances	Zanker	705 Los Esteros Rd. San Jose, CA 95134	Yard	TBD
Freon, CFC	Zanker	705 Los Esteros Rd. San Jose, CA 95134	Warehouse	TBD
Electronics	Revolt	,657 143 rd Ave San Leandro, CA	Warehouse	TBD
Tires	David Rally Wheels	1991 Alum Rock Avenue San Jose, CA 95116	Warehouse	TBD
CRTs	Zanker	705 Los Esteros Rd. San Jose, CA 95134	Warehouse	TBD

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

Material	Disposal Facility Name	Location	Facility Type	Fee (Per Ton)
Batteries	Revolt	657 143 rd Ave San Leandro, CA	Warehouse	TBD
Antifreeze/Coolant	Revolt Recycling LLC	143 rd Avenue San Leandro, CA 94578	Warehouse	TBD
Propane/ Helium Tanks	Revolt Recycling LLC	143 rd Avenue San Leandro, CA 94578	Yard	TBD
Hazard Waste	Revolt Recycling LLC	143 rd Avenue San Leandro, CA 94578	Warehouse	TBD

OFFICE AND YARD LOCATIONS

The CWS corporate headquarters and management staff for the Recycle Plus Program are located at 1005 Timothy Drive, San José, California 95133. The collection vehicle storage yard is located at 1120 Berryessa Road, San José, CA 95133.

OPERATIONS SCHEDULE

It is anticipated that collection vehicles and large item vehicles will be unloaded twice per day, or as necessary.

PHYSICAL EXAMINATIONS

CWS has physical examination requirements for collection employees and prospective employees. These are designed to protect workers and provide assurance that collection employees are capable of meeting the strenuous demands of this job. Specific requirements are contained in the CWS Physical Examination Policy. The responsibility for managing these requirements rests with the CWS Human Resources Manager.

SUBSTANCE ABUSE

CWS maintains a drug-free workplace and requires drug screening for employees and prospective employees. These screenings are designed to protect employees and provide assurance to CWS that its employees are meeting the drug free policy. Responsibility for managing these requirements rests with the CWS Human Resources Manager aided by individual supervisors and line managers as noted in the policy.

The CWS policies on physical examinations and drug testing meet all federal and State of California requirements.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

VEHICLE MAINTENANCE AND REPAIR

CWS when necessary utilizes CWS vendor as a 3rd party service vendor. This site is more than five acres, with ample room for staging equipment prior to delivery with a 8-bay maintenance facility. The service and parts departments are open from 7:30 a.m. to 6:30 p.m. Monday thru Friday; with parts also open on Saturday morning. In addition, CWS vendor has outside repair capabilities with their thoroughly outfitted mobile maintenance trucks.

During the contract period, CWS will perform oil changes and other preventive maintenance functions on the schedule provided by the equipment manufacturers and CWS vendor. The goal of the CWS fleet maintenance approach is to minimize unscheduled repairs. CWS will perform maintenance activities on a scheduled basis in keeping with fleet operation Best Practices.

Road service will be performed by CWS vendor, and CWS. Estimated response time will be a maximum of 60 minutes for replacement in the southern portion of Districts A. Should a breakdown occur while a vehicle is in service, the operator will notify the CWS Collection Supervisor who will generate a Service Order. This will be transmitted from CWS to CWS vendor to fix the vehicle. Replacement collection vehicles will be dispatched by CWS from the vehicle storage yard and specific time for any replacement will be determined by breakdown location and traffic conditions. The number of spare collection vehicles and other vehicles required for each proposed option are shown in Table 2.

Road service tires for CWS vehicles will be provided through the maintenance Service Order system. CWS estimates that the tire service response time will be a maximum of 60 minutes for replacement response from each District.

Maintenance records will be kept on all vehicles by CWS.

Major item repair records will be generated and maintained by CWS and the CWS vendor performing the repair. These repair records will be maintained by CWS so that the Collection Supervisor has a complete file on each vehicle to aid in predicting availability and anticipating related issues.

Collection vehicle cleaning will be done at the CWS Collection Vehicle Yard using a portable pressure washer system at a frequency necessary to maintain good vehicle operation and appearance. Individual drivers are responsible for keeping cabs clean as part of their daily post trip inspection.

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SFD RECYCLING SERVICE OPERATIONS PLANS

MECHANICAL SUPPORT

CWS has mechanics to operate the light duty vehicle shop for minor maintenance such as oil changes, replacement of air filters, hoses, and repairs to brakes, tires, and other vehicle repairs.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

PROCESSING OPERATIONS

This Processing Operations Plan sets out the operational and contingency plans for the CWS facility at 1005 Timothy Drive, San José, California. It may be subject to reasonable revisions by CWS management over time and as circumstances dictate, to conform to changing conditions, incorporate new operations, techniques and practices, facilitate the acceptance of materials from other sources, or to address other operational issues. Revisions to the Processing Operations Plan are subject to review and approval by the City of San José in accordance to Article 8 of the Agreement.

CWS and ESD have developed criteria to be used in selecting Alternative Processing and/or Storage Facilities for processing materials when the Timothy Drive MRF is unable to fully process the incoming materials. City pre-approval is required prior to use of any alternative facility. CWS will not load materials from the tip floor into transport or storage containers without prior written authorization from the City Representative

CWS is committed to labor peace and will maintain collective bargaining agreements with its local unions and/or ensure that not less than the prevailing wage is paid at all times for all classes of non-exempt workers

FACILITY

ACCESS

Days & hours of operation:

The normal processing operations day shift days and hours are 24 hours per day Monday through Friday. The facility closes for three holidays during each year: Thanksgiving, Christmas and New Year's Day. From time to time, it may be necessary to add time or days to shift operations. The facility is permitted for processing 24 hours per day for increased flexibility. Shift hours will not be changed without an amendment to the operations plan

Based on need and permit limitations, the facility may also be opened for processing, administrative activities and outbound materials transport only during earlier or later hours on Monday through Friday, or on designated Saturdays.

Days and hours of materials receipt:

Materials collected are typically received at the facility Monday through Friday between the hours of 6:00 a.m. and 7:00 p.m. The facility is permitted to accept materials during these same hours on Saturdays.

Days and hours of materials departure:

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SFD RECYCLING SERVICE OPERATIONS PLANS

Materials are typically shipped at the facility Monday through Friday between the hours of 6:00 a.m. and 7:00 p.m. The facility is permitted to ship materials during these same hours on Saturdays.

MAINTENANCE

INTERNAL

Processing plant:

Internal facility maintenance largely consists of keeping the floor and related work areas free of excessive amounts of debris. Special attention is given to keeping walkways clear. Given the nature of materials recovery operations, the presence of a certain amount of debris on the floor is unavoidable. At a minimum the floor is swept once per shift, at the end of each shift. Beyond this set schedule, additional sweeping may occur when upon visual inspection the Plant Manager or Plant Supervisor determines that the level of debris buildup presents an unsafe situation, in which case operations may be stopped to clear walkways. Additionally, the floor may also be swept when there is equipment or other operational downtime.

The facility is equipped with a misting system for control of dust and odor. Primary maintenance of this system consists of clearing clogs as needed. Spare nozzles are kept on site to do immediate repairs. A contractor is brought in as needed to do overall system cleaning and check-up.

Administrative offices and employee rest areas:

Once daily, a contracted janitorial service cleans all restrooms, empties all waste receptacles, mops the employee break room floor, and vacuums building carpeting.

EXTERNAL

Litter:

CWS strives to prevent litter from migrating off-site through the following actions:

- On-site Collection - CWS utilizes a sweeper that circulates around the main drive area at a minimum of once daily, no later than the end of the first shift. Additional circulations may be required under windy conditions, precipitation is expected or there is a high level of vehicle traffic generating additional litter.
- Gate Control – An automatic rear gate controlled by a remote control maintained in the scale house prevents litter from blowing outside the fence line.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

- As a general rule, the gate automatically opens/closes when trucks are entering/leaving the yard. The gate will remain closed when there is no truck traffic.
- The scale house operator has a clear view of the gate, and will allow for ingress and egress of trucks as needed.
- The areas surrounding storm drains are included in the regular exterior sweeping schedule. Also, weather conditions direct additional efforts related to litter around storm drains. During the summer, particularly during windy conditions, drains may be covered with plastic to protect them from litter. During rainy weather, litter tends to stick to the ground and not blow or migrate. Storm drains are cleaned and inspected on the regular basis required by storm drain management regulations.

The following actions address off-site litter:

- CWS employee(s) are dedicated to continuously patrolling the building inside, yard internal and external perimeter as well as the neighboring property along Yard Court and Timothy Drive during the daytime operating hours.
- Each employee assigned to this responsibility is directed to pick-up any observed litter near the CWS facility.

Landscaping:

Exterior landscaping consists of grass, ground cover and trees. Grass is watered daily with an automatic sprinkler system. A contracted gardening service maintains all exterior landscaping bi-weekly.

Building Appearance:

CWS regularly monitors the condition of the building exterior and has contractors immediately available to paint and repair as needed.

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

EQUIPMENT INVENTORY

The following equipment in Table 6 is in use at the Timothy MRF. Equipment will be replaced as necessary and appropriate.

Table 6
Processing Equipment

Equipment Type	Age (years)
1 950 Caterpillar Loader, 8 cubic yard capacity	2004
1 928G Caterpillar Loader, 4.5 cubic yard capacity	2003
1 908 Caterpillar Loader, 1.4 cubic yard capacity	2019
Machinex, single-stream sorting system, Pellenc optical sorters and Bollegraaf material feeding hoppers rated at 50 tons per hour	2002, 2007 and 2016
2 Enterprise double ram baler	Purchased 1/06
5 Forklifts, Toyota 5,000 pound lifts, One with rotating forks	2002
5 Forklifts, Toyota 5,000 pound lifts	2012
2 Forklifts, Toyota 5,000 pound lifts	2019
1 Forklift, Toyota 5,000 pound lifts	2016
3 Lindy Forklifts	Purchased 1/06
Lay-Mor Sweeper	2002
Debris boxes and bins for recyclables	Various ages

The Machinex single-stream sorting system was purchased new and consists of many components including the following equipment:

- Two inclined infeed conveyors
- Two Presort conveyors with 22 sorting station
- Five fiber rigid sorting screens
- Sorting conveyors
- The main sorting platform has 25 sorting stations
- A container sorting line with 5 sorting stations

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SFD RECYCLING SERVICE OPERATIONS PLANS

- An eddy current separator
- A four compartment container bunker
- An aluminum bunker
- Five bunkers for temporary storage of OCC and other fibers and trash
- Glass fines bunker
- The two balers referenced above

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

PLANT SPECIFICATIONS

Plant equipment specifications are listed below.

PRODUCTION CAPACITY

Overview

CWS' single-stream equipment is rated at 50 tons per hour (TPH) with a clean single-stream of materials. A clean single-stream is defined as 10% or less non-recyclable material present in incoming material. This equipment, which includes two belts, is typically run at a combined average speed of approximately 45 TPH. Belt speed may be adjusted as necessary by the Plant Manager and/or Plant Supervisor based on the quality of incoming material.

These decisions are relative and based on the staffing level at a specific point in time, and quality/composition of the materials, which may vary by load on a daily basis. Factors that influence the speed, and therefore system capacity may include, but not be limited to materials' moisture content, amounts of materials that must be removed, and residual content (more or less than 10%).

Belt Speed

Belt speed determines the amount of material processed through the system.

If belts are moving too fast, the material balls up and rollback occurs. In a "rollback" situation, material gets hung up in an area of the conveyor and does not break free. The material on the bottom of the ball comes out very thin, and material approaching the ball only adds to the ball. Belt speed is adjusted to avoid this problem, and allow material to flow smoothly through the plant.

Based on the condition and content of incoming materials, the Plant Supervisor and/or Plant Manager determine(s) and direct(s) the speed at which belts run, as well as the amount of material loaded onto infeed belts, two critical determinations that are important in managing the process. This allows materials to spread out on the presort lines, rendering most major contaminants, scrap metals and corrugated cardboard visible to the materials classifiers who are working on the presort line. Note that presort lines move faster than infeed lines, so that materials do not move down the presort lines at the same height at which they are loaded onto the infeed belts.

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SFD RECYCLING SERVICE OPERATIONS PLANS

Examples of factors that influence belt speed determinations include, but may not be limited to:

- Presence of contamination above 10%
- Material moisture content
- Material compaction or fluffiness
- System overload
- Screen(s) efficiency in separating the material
- Consistency in flow
- Screen(s) overload

Balers

There are two double ram balers installed in the MRF that can operate at the rate of 25 tons per hour each.

Maintenance

Preventive maintenance is done on a regularly scheduled maintenance program as outlined by the manufacturer. Each piece of equipment has specific continual and periodic requirements. The manufacturers, Machinex, Pellenc and Bollegraaf, have forms for each piece of equipment describing the actions to be taken and a schedule for those actions. These forms are filled out as maintenance occurs and they are maintained in the CWS archives.

Training

Employees are trained in facility and equipment operation commensurate with job responsibilities. Training includes procedures for plant start-up and shut-down, material classification, safety, hazardous materials recognition, and emergency procedures.

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SFD RECYCLING SERVICE OPERATIONS PLANS

MATERIAL RECOVERY

STAFFING

Table 7 presents the typical number, types, and primary responsibilities of regular day and evening shift employees. The evening shift is subject to change according to material volumes.

Table 7

Staffing

Title	Day Employees	Evening Employees (if needed)	Primary Job Responsibilities
Plant Manager	1		Oversee all plant activities and personnel
Supervisor	1	1	Supervise facility operations
Scale House Operator	1	1	Supervise & conduct scale house operations; control litter gate
Forklift/Sweeper Operator	3	3	Operate the forklift and keep inside gates clear of litter
Loader Operator	2	2	Operate the wheel loader in the materials unloading area
Baler Operators	1	1	Operate balers
Sorters	30*	26	Sort materials on the processing conveyors
Litter Patrol Monitor	1	Reassigned as needed	Keep premises, streets and neighboring business clear of litter
Bale Cleaners	1	1	Prepare bales for market

* Of these, 12 sorters are stationed on the pre-sort lines, 6 per line.

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SFD RECYCLING SERVICE OPERATIONS PLANS

WORK SCHEDULE

Materials receiving and processing related activities may generally be conducted in work shifts that may include staggered start times. From time to time, it may be necessary to extend shift operations. In these instances, a work schedule and staffing will be defined according to need and required duration. The Plant Manager will determine overtime and supplemental shift construction. It should be further noted that break and lunch times are approximate and subject to adjustment according to workflow and plant conditions. The Plant Manager and Supervisor are responsible for notifying employees of deviations in this schedule. No advance notice is required.

Overtime:

From time to time, overtime work may be required to compensate for processing time lost due to plant shutdowns, equipment and utility services failures, or belt slow-downs due to delivery of highly contaminated materials and resulting tipping floor back-up. The Plant Manager makes the decision to operate and authorize overtime, based on the volume of materials on the tipping floor and prognosis for keeping the floor adequately cleared from day to day. In cases where the need for overtime is identified, the Plant Manager is authorized to approve it only for the period necessary to clean the tip floor or catch up from a close-down.

It should be noted that as management staff, the Plant Manager does not have a defined schedule. The person in that position is present during the day shift, but may also work additional hours as needed.

PROCESSING

A narrative description of the materials recovery process is provided below.

MATERIALS IDENTIFICATION

The term Materials as herein used refers to:

Program Materials:

CWS is required to follow the City of San José programs with regard to required material recovery. Material(s) not included in the program may be extracted at the discretion of CWS. Other recyclables, not covered by the Recycle Plus program, are listed in the Agreement.

LOAD SCREENING

CWS' goal is to have all loads contain no more than 10 percent residual garbage. Residual garbage refers to all material remaining after program materials have

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

been removed. CWS has extensive experience with the presence of hazardous and prohibited wastes detected in San Jose's recycling materials.

Employees assigned to the tipping floor are trained to evaluate loads as they are brought in and deposited on the tipping floor. Additionally, management is on the tipping floor on a regular basis. If an unacceptably bad load, or portion thereof, is suspected, the loader operator is directed to notify a supervisor through the use of plant radios. In addition, personnel on the pre-sort line remove any hazardous or prohibited wastes remaining in the recyclables.

One tool used for evaluating incoming loads is the 10 percent visual guideline provided by the California Integrated Waste Management Board (CIWMB). The image was adapted from CIWMB LEA Advisory Number 58 (Revised April 18, 2003), and is available on-line at:

(<http://www.ciwmb.ca.gov/LEAAdvisory/58/default.htm>), Attachment 2A, Comparison Chart for Estimating Percentage Composition. CWS has adapted this visual as a tool to provide a comparison of the percent contamination in a load of solid waste.

LOAD ASSESSMENT

Upon visual inspection before unloading or when the material is deposited on the ground, CWS makes an assessment of the load. The assessment is based primarily upon visual observations of the load. CWS personnel will observe the load for indicators of the presence of prohibited materials, such as container shapes or labels. Prohibited materials include materials that are not on the City of San José's list of recyclable program materials, including garbage and hazardous materials.

Either the loader operator or a spotter will conduct this assessment. Workers must exercise caution and use safety precautions when observing loads from the rear of the vehicle. If necessary, the driver will be instructed to wait before discharging the load. This observation can be made from a distance and from the side of the vehicle. The spotter should be constantly aware of other incoming vehicles and equipment.

If a prohibited material is suspected, the spotter will instruct the driver to not discharge the load until a further investigation is conducted, or will secure the area around the deposited material until the material can be safely returned to the tipping floor or placed in a container for off site disposal. Based upon that assessment, CWS personnel may segregate partial or full loads as follows:

- Rejection of the entire load
- Redirect truck to alternative unloading area

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- Load is partially unloaded before rejecting the remainder of the load
- Entire load is unloaded

LOAD REJECTION:

An entire load is subject to rejection if it contains garbage far in excess of the ten percent contamination level, hazardous wastes, medical wastes, radioactive wastes, or other prohibited wastes that are observed when the hopper is raised. If the loader operator or spotter deems that the contamination is so extensive that separation of acceptable materials would be too time intensive or dangerous the entire load is rejected. If the load has not been dumped, the driver will be instructed to close the hopper and move the truck to a designated area to await further instructions. If the load has been dumped, the material will be inspected and either processed or placed in containers for off-site disposal under conditions and in a facility appropriate to the material. An example would be the presence of drums containing hazardous wastes.

Prohibited wastes include hazardous, medical, radioactive, or other materials that this facility is not permitted to process. Although this assessment is only for a small portion of the load, the presence of significant amounts of these materials would make the acceptability of the entire load questionable. In such an instance, the driver will be instructed to close the hopper and move the truck to a designated area to await further instructions. These instructions could range from directing the vehicle to another disposal facility or to await the arrival of regulatory agency emergency response personnel.

LOAD REDIRECTION:

A filled or partially filled delivery truck is subject to redirection to an alternative loading area, such as at the western end of the tipping area, if an additional content evaluation effort is deemed necessary. Redirection may occur when the load appears to contain contamination above 10 percent or the presence of hazardous or other prohibited materials is suspected. This redirection allows for an extended sorting operation without impacting on incoming vehicles. When time allows, the operator attempts to remove the worst materials from the load. Hazardous, medical or other prohibited wastes are to be removed and handled according to permit requirements prior to pushing the inspected material onto the conveyor.

PARTIALLY UNLOADED REJECTION:

If a prohibited material is suspected when the load is partially discharged, the supervisor may instruct the driver to cease discharging and close the tailgate. Personnel can reject a load or partial load based upon a suspicion that prohibited materials are present. For example, the presence of drums with hazardous

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waste labels and liquid contents are cause for rejection without verifying that hazardous wastes are contained in the container. In such cases, the subject truck will be directed to follow the CWS' protocol for handling, transporting and disposing of hazardous materials. The unloaded portion will either be processed or a portion of the load will be sent to the container for contaminated material.

ENTIRELY UNLOADED REJECTION:

CWS may elect to unload the entire contents of the compartment even if significant contamination is observed. The entire load may be loaded on the conveyor for processing or the loader operator may cleave off a portion of the load. This removed portion will be loaded into a debris box or other container. CWS will seek to minimize the loss of recyclable materials but given the imprecise nature of the loader, this removed portion may contain some recyclable program materials. The containerized material will either be processed later if there is sufficient time and capacity, or the load will be disposed of off-site.

NOTIFICATION

CWS' plant manager or his/her designee will notify the driver, route supervisor and designated City representative when an unacceptably contaminated load arrives and it is determined that the load will be or should be rejected. This notification will occur as soon as the determination is made. Route supervisor shall confer with driver and route auditor so as to find the source of the contamination and implement an education campaign to promote clean recyclables.

SORTING

CWS strives to process material in the most effective and efficient manner, segregating final marketable product, MSW, and hazardous waste. Materials may be baled or bulk shipped depending upon the available market. Material is typically processed on a first-in, first-out basis so that specific material is not on site longer than 48 hours.

Once materials are dumped on the tipping floor the typical sorting process is as follows:

- Facility personnel will scan the materials for the presence of hazardous and other prohibited wastes including tires, cylinders, hoses, wood, metal, concrete, and large items. These materials will be removed to the appropriate storage location.
- Materials are loaded onto two infeed conveyor belts that transport them up to two pre-sort conveyor lines.

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- Pre-sort activities are designed to separate cardboard, scrap metals, textiles, film plastic, prohibited wastes, and municipal solid waste (MSW). Sorters remove these items from the conveyor line and place them in chutes to the designated bunker or in containers. This is the primary point for removal of large items and difficult to handle items.
- Remaining materials from the presort flow into a series of sorting machines with fiber rigid screens that mechanically separate newspaper and mixed paper from other materials such as plastic containers and aluminum cans.
- Separated paper goes to a final sort line for removal of any residual MSW and maybe sorted to various marketable commodity levels.
- Mixed paper and newspaper are consolidated into bunkers and when enough of either material is available, it is directed onto one of the two baler infeed conveyors for baling.
- Recyclable materials from the paper reclaiming process go onto a transfer conveyor, where they are then taken to the container sort line.
- The container sort line is designed to separate three types of plastics, aluminum cans, ferrous metal scraps and cans, textiles, trash and glass.
- Ferrous metals, aluminum, and plastic types are accumulated in their respected bunkers until enough of each respective material type has accumulated for baling or bulk shipment.
- Each material is then directed onto a baler infeed conveyor for baling or is deposited in a container for bulk shipping.
- Glass is directed to a glass sort line where it is stored in bunkers. It is then loaded into end-dump trailers for sale. CWS has received a grant from CIWMB to subsidize the cost of the machinery needed to process glass bottles and jars to a greater degree.
- Baler productivity varies by material type and is dependent on the physical properties and quantity of each material being baled.

HAZARDOUS AND OTHER PROHIBITED WASTE

Once the incoming materials are unloaded on the receiving area and throughout the sorting process, any potentially hazardous or other prohibited wastes that are detected will be removed from the incoming materials and placed in the designated staging area. As necessary, or at the end of each day's shift, collected hazardous or prohibited wastes will be moved to the designated outside storage area. Hazardous wastes include those materials deemed to be hazardous pursuant to federal, state, or local requirements. Typical characteristics of hazardous wastes include toxicity, corrosivity, flammability, and reactivity. Examples may include: lead acid batteries, cathode ray tubes,

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compressed gas containers, used oil and filters, solvents, paints, and pesticides. Containers that meet the regulatory definition of “empty” are not considered hazardous. Many of these prohibited wastes are diverted as recyclable materials.

The determination of a hazardous waste is based upon visual observations of containers and labels. If suspicious odors or reactions are observed, personnel will utilize caution when investigating the material and follow its hazardous waste protocol.

MEDICAL WASTES

Prohibited medical waste includes those materials deemed as regulated medical waste and certain non-regulated wastes. Non-regulated medical wastes can include sharps, needles, and other items from sources exempt from regulation such as households. Regulated medical waste could include biohazardous or infectious wastes from the treatment of humans or animals, and materials used in research or testing that contain body fluids.

SOLID WASTES

Any prohibited municipal solid waste detected in the incoming material, either at the tipping area on the presort line, will be removed. Rejected materials are placed either into a storage container or designated bunker. Prohibited solid wastes include any putrescible and non-putrescible solid and semisolid waste material, including garbage and rubbish and any other non-program materials that are not accepted into the City-designated recycling cart.

STORAGE

CWS contains material in a lawful manner and strives to do so as effectively and efficiently as possible. Permitted storage areas are designated on site maps that have been approved by the City of San José and are a part of the Conditional Use Permit, Fire Permits, and the Hazardous Materials Business Plan. The types of materials received and processed at the facility are not expected to contain materials that produce significant odors.

Potential nuisances are eliminated or minimized by thoroughly cleaning the station, prompt loading of wastes into containers or trailers, transferring the wastes to the landfill within forty-eight hours, and implementing litter control programs. A dust suppression system is installed in the unloading area. This system also serves to reduce potential odors and may be used in conjunction with an odor suppressant or neutralizer. The processing area is typically cleaned of potentially odorous material on a nightly basis.

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INCOMING RAW MATERIAL

Material is typically processed according to a first-in, first-out (FIFO) model. CWS is not currently processing material from any other jurisdiction in its San José MRF and all materials are therefore accounted for as being from San Jose

Prior to any future CWS acceptance of any materials other than those collected through San Jose's Recycle Plus program, the City and CWS will determine a protocol for creating and maintaining separate documentation and reporting consistent with the City's AB 939 reporting requirements.

Unprocessed materials that have not been transported up to the pre-sort line remain on the tip floor overnight. The following morning, unprocessed materials are moved from the back of the tipping floor area to the front of the tipping floor area, to insure that it is processed in a timely fashion (the "front" of the tipping area is defined as the area near the pit conveyers and the "back" is defined as the area towards the loading dock). A concerted effort is made to clear all conveyor belts of materials by the end of the shift. All residual wastes received during an operating day shall be removed from the site within 48 hours of arrival.

OUTGOING PRODUCT AND RESIDUE

Bales of paper, aluminum and other metals, plastic, textiles, and other recyclable materials are stored awaiting transport to offsite facilities. Stored bales must be placed so that there is a minimum of three feet clearance from the facility walls. Walkways between bales will be at least 44 inches wide. Outside storage areas have been authorized by a conditional use permit and subsequent amendments with no outside bale storage located within 10 feet of the property line.

Outgoing Residue is staged near the back area of the tipping floor, under the canopy, awaiting pickup. It is then hauled to a landfill or alternative disposal facility that meets all environmental regulations.

Bales will be stored in accordance to a high pile permit from the Fire Prevention Bureau. Areas designated for bale storage are noted on the Site Plan.

HAZARDOUS WASTE

Any hazardous materials removed from incoming materials will be stored in the designated area. Materials deemed as hazardous waste must be labeled with the contents and accumulation date. Once sufficient quantities are accumulated, CWS will contract with a hauler or a transporter to schedule a removal. Records of these removals will be retained on site for at least three years.

DISRUPTIONS

Significant disruptions may occur in several ways, including:

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- Failure of equipment due to introduction of non-recyclable materials, non-compliant (non-programmatic) materials (e.g. large metals, chemicals, etc. getting into the system)
- Failure of equipment due to normal operating stresses that may be avoided by preventive maintenance or may occur in spite of appropriate preventative maintenance measures
- Hazardous materials incidents
- Regulatory actions
- Fires, earthquakes, floods, labor actions, etc.
- Loss of markets, shipping capacity, fuel, power, etc.

RESPONSE

Significant disruptions in processing ability detrimentally impact the company's operations, marketing, labor relations and customer relations. Such disruptions may also cause recyclables to be reduced in value or lost to contamination. CWS will notify the City Representative within two hours of any significant event that negatively impacts its ability to process materials

CWS regards any disruption of more than four hours to be significant. One of the first tasks of the Plant Manager in evaluating a processing disruption is to determine the probable duration of the disruption. The criteria by which the impact of the disruption is to be judged are as follows:

- Level of hazard associated with the disruption and its cause
- Probable duration of the disruption
- Available space on the tipping floor relative to amount of material anticipated during the probable duration of the disruption
- Available outlets for the current and anticipated inventories of processed and unprocessed materials during the disruption

Mitigation of the disruption begins immediately upon its discovery. If the situation presents a hazard or permit violation situation, CWS will take all prudent action. The order of priority in handling materials in a processing disruption is as follows:

- If the disruption does not allow for partial operation of the sorting system and there is more than four hours of storage available on the tipping floor, then store unprocessed materials on the tipping floor to its capacity
- If the disruption is significant but partial and processing throughput will be reduced but not ceased, reschedule processing to allow for longer hours at lower throughput sufficient to process all materials

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- If there is insufficient space on the tipping floor for storage then contact City Representative to request permission to ship materials to CWS' Alternative Processing Facility
- If the alternative processing facility is unable to accept the material, then contact City Representative to request permission to ship to a second approved Alternative Processing Facility

EMERGENCIES

Emergency response situations may occur at the facility. Potential emergency situations would include power outages, natural disasters, fire, and hazardous materials releases. CWS has implemented emergency response procedures. During an emergency, the designated emergency coordinator for the shift initiates the evacuation procedures by activating the emergency alarm or horn. The shift supervisor is responsible for notifying emergency services and starting the emergency procedures. Additionally, if as a result of an emergency storm drains are threatened by discharge the, openings are covered with a plastic cover.

Emergency coordinators and shift supervisors receive periodic training on emergency response. Each shift periodically practices evacuation drills.

Emergency incidents are recorded in the Log of Special Occurrences required for solid waste facilities.

BASIC RESPONSE

Whenever there is an indication of imminent or actual emergency situation, the following steps are taken:

- Designated emergency coordinator conducts an assessment of the nature and extent of the emergency
- If determined necessary, emergency communications are activated to instruct employees to evacuate the facility
- Facility shut-down procedures are initiated if necessary
- Emergency response agencies are notified as appropriate and identified in the CWS Emergency Response Plan
- Facility emergency personnel take appropriate measures to resolve the situation or minimize the spread to other parts of the facility
- If storm drains might be impacted by any emergency release, specified personnel seal off the potentially impacted drains. Storm Drain emergency response protocols are contained in storm drain management documentation

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Prior to commencing operations after an emergency situation, designated management personnel will assess the facility to ascertain that the hazard has been mitigated.

Designated management personnel will review the incident and determine if any changes to the emergency procedures are necessary.

CWS' MRF at 3300 Wood Street in Oakland has been proposed as the primary Alternative Processing Facility if in the case of an emergency or any other unavailability of the Timothy Drive facility. Upon approval, the secondary Alternative Processing Facility would be CWS' MRF at 1820 Tenth St., Oakland. On or before June 30 of each year, CWS will propose an Alternate Processing Facility and a secondary Alternate Processing Facility. City will utilize the agreed upon criteria in deciding whether to approve the facilities. Once approved, the designation will be valid for one year. However, CWS will still be required to obtain written permission to use the Alternate Facilities on an as needed basis.

EQUIPMENT

The following equipment is available for responding to emergencies:

- Fire extinguishers are located throughout the facility
- Emergency eye wash stations
- First aid kits
- Stormwater spill carts containing
 - Absorbent
 - Spill pillows
 - Spill boom
 - Personal protective equipment
 - Baking soda absorbent for battery storage area
 - Storm drain cover
- Radios for emergency communication
- Personal protective equipment

In addition, loaders and other site equipment can assist with emergency response efforts.

TRAINING

Training for emergency response situations will be commensurate with an employee's responsibility. Employees will be directed that they are not to

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respond to any emergency situation where they are not comfortable. Training topics will include:

- Evacuation procedures
- Assessment of response situations
- Facility shutdown procedures
- Use of fire extinguishers
- Spill prevention and response
- Personal protective equipment
- Notification of emergency agencies
- Cleanup and mitigation of spills

Records of employee training will be documented and maintained.

TRANSPORTATION

Traffic entering the facility property can generally be classified into three types: Incoming loads of unprocessed materials, outgoing loads of processed materials, and personnel, visitors and tradesmen arriving and leaving the facility grounds. Since this site is private property, only vehicles belonging to people with business with CWS are authorized to park in the designated parking areas. If an unauthorized vehicle is inappropriately parked it may be subject to towing.

The facility is capable of handling approximately 36 collection trucks at any one time. This consists of the following as depicted in the Site Plan (Appendices). It should be noted that parking of vehicles other than designated trucks is not allowed in this area.

- Seven trucks queuing behind the 70' entrance scale
- One truck on the 70' entrance scale
- Six trucks unloading on the unloading area
- Twenty-two trucks queuing in the parking spaces at the northeast side of the property

INBOUND TRUCK TRAFFIC

Trucks bringing unprocessed materials to the facility constitute the greatest impact on the facility in terms of traffic, noise and hazard. All of these trucks are to enter the facility grounds from Timothy Drive and are instructed to approach the facility from the south end of Timothy and not to turn onto Timothy from Mabury. Once on site, collection trucks proceed to the 70' entrance scale. After

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being weighed, collection trucks maneuver to the unloading area to discharge materials.

OUTBOUND TRUCK TRAFFIC

Trucks arriving empty to remove processed materials are usually 18-wheel tractor-trailer combinations or roll-off trucks. These trucks shall enter the facility from Timothy Drive and proceed to the designated area within the site for loading. The 18-wheel tractor-trailer combinations shall weigh in and out on the scale closest to Timothy Drive and shall exit onto Timothy Drive turning left only. Roll-off trucks may exit on Yard Court as they are likely to be pointing in that direction.

TRUCK QUEUING

Trucks traveling to CWS Timothy Drive facility are not permitted to queue in the streets. At any time when the truck queue appears to be approaching the entrance, the loader operators and the scale operators are to direct trucks on the scales to the back staging area of the facility until the queue clears.

TRUCK STAGING

Trucks staged at the back of the facility will back into their parking spots and remain until instructed by authorized facility personnel to proceed to the scales (if they have not been weighed) or to the tipping floor (if they have been weighed) to continue their unloading sequence. In general, the facility operates on a first-in first-out basis.

CLOSING AND NOTIFICATIONS

If for any reason truck staging is overflowing and no room is available for the trucks to dump, materials delivery trucks will be turned away and the gate closed. In the unlikely event that such a closing should occur or appears imminent, CWS will notify all drivers immediately and request that they keep their trucks on the routes until the jam is cleared at the facility.

PASSENGER AND LIGHT COMMERCIAL VEHICLE TRAFFIC

Personnel, tradesmen and visitors will almost exclusively enter the facility from Timothy Drive and are not proscribed from turning right when exiting onto Timothy. With clearance from responsible company personnel, tradesmen may enter the Yard Court gate.

HAZARDOUS WASTE TRANSPORT VEHICLES

Only authorized haulers are utilized for removal of any recyclable hazardous, universal, and any other wastes from the facility. CWS will be contractually

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responsible for arranging for the disposal of prohibited wastes. CWS will retain documentation on the removal of these wastes.

PERMITS AND LICENSES

A listing of site and operational permits and licenses is provided below:

- Solid Waste Facility Permit, 43-AN-0024
- Conditional Use Permit, City of San Jose, CP 01-12-108
- Building Permit, City of San Jose – Application submitted
- Occupancy Permit, City of San Jose
- Environmental Protection Identification Number CAL000266187
- Hazardous Materials Business Plan, City of San Jose, Bureau of Fire Prevention
- Hazardous Waste Generator Permit, County of Santa Clara, Department of Environmental Health
- Combustible Material Storage Permit, City of San Jose, Bureau of Fire Prevention
- Places of Assembly Permit, City of San Jose, Bureau of Fire Prevention
- Air Pressure Tank Permit, District of Occupational Safety and Health,
- Industrial Storm Water General Permit Order 97-03-DWQ, State Water Resources Control Board, Facility WDID No. 2431026763 and 2431026765

CERTIFICATIONS

Facility scales are certified by Santa Clara County according to their standards and methodology. The County schedule is to certify annually.

REPORTING

CWS will provide all reports as required in the Service Agreement and in conformance with Exhibit 8 of the City's Recycling Plus Services Agreement.

SALES AND MARKETING PLAN

CWS has been in the business of operating MRFs for more than 25 years. The company's principals have been in the business for more than 25 years and the combined recycling industry experience of the five key managers is more than 120 years. All these years of experience, however, are not enough to ensure that recyclables get recycled both for the highest and best use and for the highest dollar value if that experience is not continuously updated.

As a recycling company, CWS has always derived significant revenues from commodity sales. Because of the uncertainty of markets and the company's reliance on those uncertain returns, the company's principals have committed to

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work with all markets -- but especially emerging foreign markets – to ensure that while the rest of the industry may be experiencing radical fluctuations in price and demand, CWS can always move materials.

Now more than ever, the ability to sell Recyclable materials in foreign markets is critical to the success of any recycling endeavor, as we see increasing stringent standards on acceptable material from China and other markets. Through extensive and regular visits to Asian commodity end users and through his own brokering business, CWS' president, David Duong, makes sure that CWS' recyclable materials move.

CWS' marketing model has a wide array of tools so the recyclable material moves during both high and low demand cycles. CWS relies on long-term supply contracts, aggregation of orders from multiple plants, brokerage, off-site storage, and is in an Associate Partnership with a paper mill in Vietnam for fiber products. Through these techniques, CWS distinguishes itself as a leader in the secondary recyclable materials supply market in the western United States.

Among the recyclable materials CWS markets are:

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- Newspaper (6-8)
- Telephone books (#1)
- Mixed paper (1)
- NCR computer paper
- Carbon computer paper
- Laser computer paper
- Laser-free computer paper
- White ledger paper
- Colored ledger paper
- Card stock
- Boxboard furnish
- Coated white overruns
- News scrap
- Glass bottles and jars in three colors
- Aluminium cans
- Aluminium foil
- Non-ferrous scrap
- Tin, steel, bi-metal cans
- Ferrous scrap
- PET clear
- PET colored
- HDPE natural
- HDPE colored
- Mixed plastics 3-7
- Injection molded HDPE of miscellaneous types
- LDPE natural film
- LLDPE films
- HDPE films
- Specialty polymers
- Wood
- Textiles
- Lead acid batteries
- Tires
- Compressed gas cylinders
- Inerts (glass fines for ADC, asphalt, concrete, dirt, rock, brick)
- White goods and small appliances
- E-waste including CRTs and integrated circuit boards
- Used motor oil
- Used motor oil filters

EXHIBIT 3

SFD RECYCLING SERVICE OPERATIONS PLANS

COLLECTION EQUIPMENT

The number of collection vehicles and support vehicles for recycling collection in Districts A and C are provided in Table 1 and 2 in the Collection Equipment Plan. The staffing requirements necessary to collect recyclables are shown in Table 3. The specific plans for this equipment are provided in the following paragraphs.

COLLECTION VEHICLES

CWS collection vehicles meets all the requirements of the agreement.

A single collection vehicle with a single-compartment body is assigned to collect recyclables from each route. These trucks will be automated side-loaders with low-level hoppers to facilitate manual loading of items such as extra materials and separately-bagged textiles. The specifications for the collection vehicles selected are:

- Chasses: Peterbilt 320 single-steer, right-hand sit-down
- Bodies: McNeilus, StreetForce, 31 cubic yard

These trucks are equipped with engines that meet the California Air Resources Board Heavy Duty Engine Standards as proposed to be in CCR Title 13, Section 2021 et seq, and the Federal EPA Highway Diesel Fuel Sulfur regulations. Some of the vehicles have low-entry cabs with stand up right-hand drive. Some collection vehicles will be equipped with enclosed racks to hold empty used oil containers, full used oil containers, and oil filters lined with oil absorbent pads. These features minimize the effort by the operators when they leave the cab to service bagged materials, on-premise collection and disability collection. This produces the advantage of increasing operator efficiency, lowering the potential for fatigue and injury and lowering overall operational costs.

All the CWS collection vehicles and collection support vehicles are equipped with radio frequency identification (RFID) units and global positioning system (GPS) location equipment. The RFID allows the collection vehicles to be positively identified as they enter processing and/or disposal facilities so that the scale systems can maintain tare weights for each vehicle. This reduces queuing requirements and speeds collection vehicle turnaround at this facility. The GPS system allows CWS to track the location of each collection vehicle in real time. This capability assists in assuring that CWS crews minimize missed collections and facilitate the Route Supervisors ability to provide the quality assurance for collection and provide support needed for the crews. The collection vehicles are painted with the San José logo graphic.

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For large item collection, CWS may use flat bed open body trucks with lift gates for loading.

CARTS

The RFP indicated that the number of damaged carts averaged 14,412 units for Fiscal Year 2004-2005. These were divided between garbage and recycling at 8,448 and 5,964 respectively. In addition, the RFP indicated that the growth is 750 new stops per year. Each of these new stops will require a garbage cart and a recyclables cart. CWS, for planning purposes, has assumed that the distribution of the new and replacement carts by size will follow the size and color distribution presented in the RFP. CWS has made arrangements to purchase the recyclable carts from the OTTO Environmental Systems. CWS has an established relationship with OTTO based on the purchase of 40,000 Otto carts for the roll out of the single-stream curbside program in Oakland. These carts will meet all the requirements of the agreement.

CWS will maintain several months of cart inventory to ensure that sufficient inventory is maintained at all times. These carts will be delivered to the CWS Vehicle Yard.

CWS has a single cart repair and replacement vehicle to service the carts in Districts A and C. This vehicle is equipped with storage containers for storage of spare parts for all the different carts. The parts carried includes wheels, axles, nuts, and lids. The vehicle is sufficient in size to accommodate the carts needed for replacement service orders for the day, based on the data provided in the RFP for new placements, repairs and replacements.

UNION RELATIONS

CWS currently has employees represented by Teamsters Local 70, Teamsters Local 350, ILWU Local 6, and Machinists Local 1546. The company has four separate collective bargaining agreements and excellent relations with all unions. We are willing and able to respect and work cooperatively with all unions and all employees, whether working under collective bargaining agreements or not.

EXHIBIT 4

RECYCLE PLUS SERVICE DISTRICTS

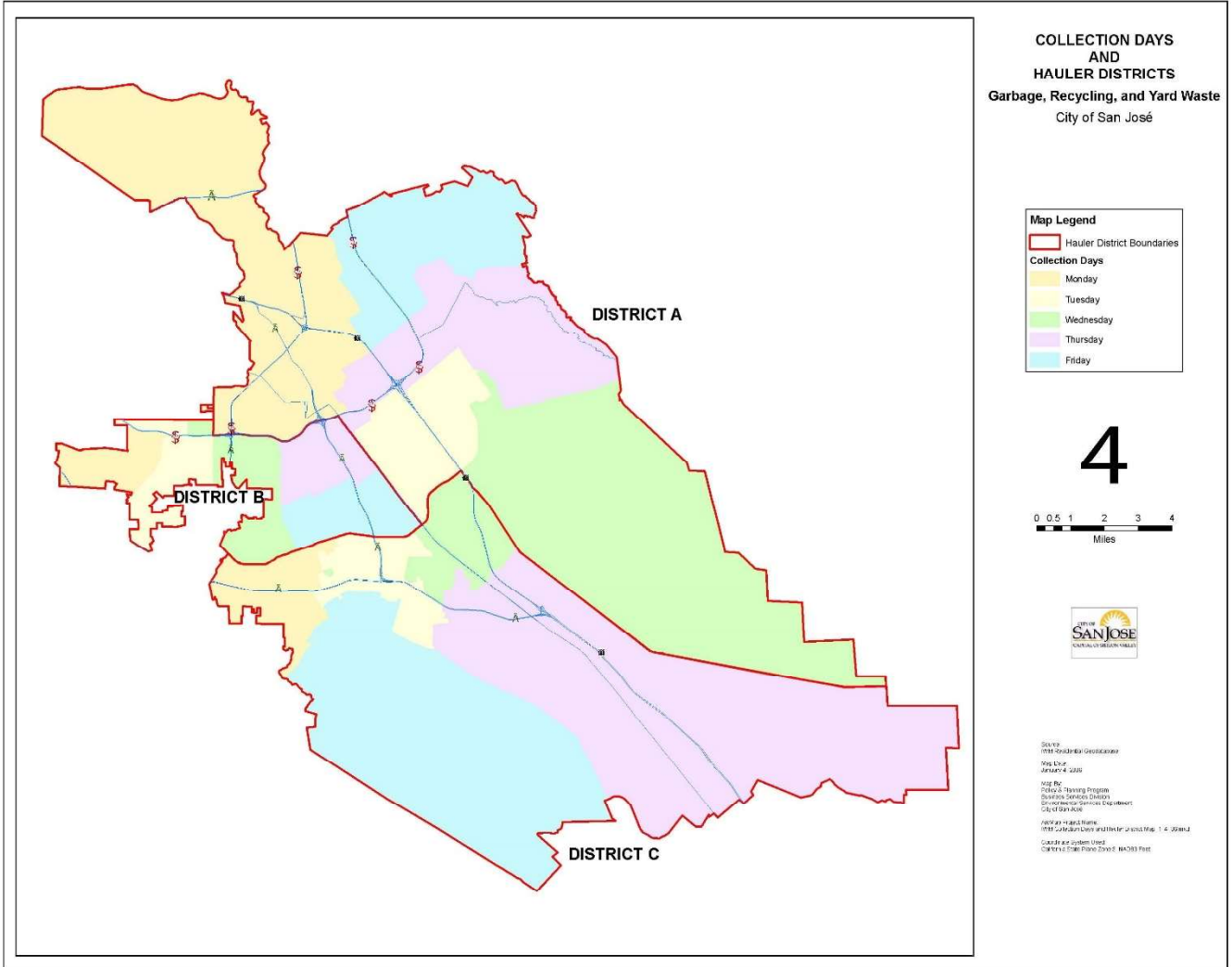


EXHIBIT 5

CENTRAL BUSINESS DISTRICT AND TRANSIT MALL ZONE

Central Business District

The boundaries of the Central Business District are as follows: Commencing at Market and Julian Streets; east on Julian to Fourth Street; then south on Fourth Street to San Salvador; then west on San Salvador to South Market Street; then northwest on Market Street to San Carlos Street; then west on San Carlos to Almaden Boulevard; then north on Almaden Boulevard to Santa Clara Street; then east on Santa Clara Street to Market Street; then north on Market Street to West Julian Street, the point of beginning. Premises on both sides of the boundary streets shall be included in the Central Business District.

Recyclables collection from premises located within the Central Business District shall take place between the hours required by the San Jose Municipal Code, the same day, except within the Transit Mall Zone (see below). Streets within the Central Business District are swept by City crews and are not normally swept by the residential street sweeping contractors. Solid waste collection regulations for the Central Business District are contained in the San José Municipal Code.

Transit Mall Zone

The boundaries of the Transit Mall Zone are as follows: Commencing at Market and Julian Streets; then east on Julian Street to Third Street; then south on Third Street to San Carlos Street; then west on San Carlos Street to Market Street; then north on Market Street to Julian Street, the point of beginning; but excluding any premises which face Julian, Third, San Carlos, or Market Streets.

Recyclables collection from premises located within the Transit Mall Zone shall take place between the hours required by the San José Municipal Code. Streets within the Transit Mall Zone are swept by City crews and are not normally swept by the residential street sweeping contractors. Solid waste collection regulations for the Transit Mall Zone are contained in the San José Municipal Code.

EXHIBIT 5

CENTRAL BUSINESS DISTRICT AND TRANSIT MALL ZONE



EXHIBIT 6

SMALL CIVIC SERVICE UNITS

CONTRACTOR shall provide SFD Recycling Collection Services at the Small Civic Service Units listed in Service Districts A and C.

Department	Facility Name	Facility Address	Facility ZIP	District
DOT	City Parking Garage	50 N. 4 th St	95113	A
Fire	Station 7	800 Emory St	95126	A
Fire	Station 8	802 E. Santa Clara St	95112	A
Fire	Station 11	2840 The Villages Parkway	95135	A
Fire	Station 19	3292 Sierra Rd	95132	A
Fire	Station 23	1771 Via Cinco De Mayo	95132	A
Fire	Station 25	5125 Wilson Way	95002	A
Fire	Station 31	3100 Ruby Ave	95135	A
Fire	Station 12	5912 Cahalan Ave	95123	C
Fire	Station 17	5170 Coniston Way	95118	C
Fire	Station 22	6461 Bose Ln	95120	C
Fire	Station 27	6027 San Ignacio Rd	95119	C
Fire	Station 28	19911 McKean Rd	95120	C
Fire	Station 35	135 Poughkeepsie Rd	95123	C

CITY may add or delete Small Civic Service Units to the list above upon written notice to CONTRACTOR, or as updated in the Customer Service System.

EXHIBIT 7

APPROVED SUBCONTRACTORS

The subcontractors listed below are hereby approved by CITY as to the scope of work specified for each listed subcontractor. CONTRACTOR may employ additional subcontractors only with the prior written approval of the Director as to the subcontractor(s) and the scope of work to be performed by the subcontractor(s).

Name of Company/Firm	Address	Area of Responsibility
TBD		Permitting & Regulatory Compliance
TBD		Contract Compliance, Materials Marketing & Processing

EXHIBIT 8

DATA AND REPORTING

I. DAILY COLLECTION DATA

CONTRACTOR shall compile data on a daily basis and report the following information monthly by electronic format within ten (10) calendar days of the end of each month following the month in which the service was completed.

CONTRACTOR shall provide data in the format approved or provided by the City Representative.

A. Load Data for Recycling and Used Oil Collection Services

For Recyclable Materials, Used Oil and Used Oil Filters, CONTRACTOR shall provide data for each load collected and delivered to the Materials Recovery Facility. Data shall include, at a minimum, the following information:

1. Name of the Materials Recovery Facility receiving load
2. Weight tag number (unique, non-repeating number)
3. Date of collection
4. Day of week collected
5. Date delivered to the Materials Recovery Facility
6. Time of arrival at facility
7. Truck number
8. Net weight of load (in tons)
9. Route number(s)
10. District(s) serviced
11. Number of set-outs
12. Number of Used Oil Containers collected
13. Number of Used Oil Filter Containers collected

B. Load Data for Large Item Collection Services

For Large Item Collection Service, CONTRACTOR shall provide data for each load collected and delivered to the Materials Recovery Facility. Data shall include, at a minimum, the following information:

1. Name of Materials Recovery Facility receiving load

EXHIBIT 8

DATA AND REPORTING

2. Weight tag number (unique, non-repeating number)
3. Date of collection
4. Day of week collected
5. Date delivered to the Materials Recovery Facility
6. Time of arrival at facility
7. Truck number
8. Net weight of load (in tons)
9. District(s) serviced
10. Number of scheduled set-outs collected (in billable units, up to 3 Large Items per set-out)
11. Number of items collected (by type: white goods-CFC, white goods-other, brown goods, mattresses, furniture, upholstered furniture, E-Waste, other)

C. Non-Collection Notice Data

In addition to any other reporting obligation under this Agreement, CONTRACTOR shall provide data for each Non-Collection Notice issued. Data shall include, at a minimum, the following information:

1. NCN work order number entered in Customer Service System (unique, non-repeating number)
2. Date issued
3. Day of the week issued
4. Route number
5. Recipient address
6. Service District
7. Reason for Non-Collection (codes and definitions of codes to be provided by CITY)

D. Courtesy Notice Data

CONTRACTOR shall provide data for each Courtesy Notice issued for the purpose of providing City with information for use in its public education, outreach and enforcement efforts. Data must include, at a minimum, the following information:

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1. Date issued
2. Total number of notices issued

E. Cross Jurisdictional Vehicle Use Data

In the event that Recycle Plus vehicles are providing services outside of San Jose or for non-Recycle Plus Program activities, or if non-Recycle Plus Program vehicles are used inside San Jose for Recycle Plus Program activities, CONTRACTOR shall report vehicle origin, vehicle number, jurisdiction used, and date of use.

F. MISSED COLLECTIONS

CONTRACTOR shall provide data for all reported and non-reported missed pick-ups for each service type (garbage, recycling, yard trimming). Missed pick-ups of oil jugs and/or filters shall be counted as a recycling missed pick-up. Data shall include, at minimum, the following information:

1. Address of each missed collection. If half-street or whole street missed collection, contractor shall provide a starting and ending range of addresses for each street missed
2. Date of each missed collection
3. Date collection was completed
4. Quantity of carts/bins/jugs (per address or address range)
5. Overall missed collection rate per collection day
 - a. Ex: Monday, Garbage: 10 missed collections/10,000 carts on-route= 0.10% missed collection rate (MCR)

II. PROCESSING DATA

CONTRACTOR shall report monthly by electronic format within ten (10) calendar days of the end of each month following the month in which the service was provided, all data described in Articles 6 and 8 of this Agreement, including the following:

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A. Recycling, Used Oil, and Used Oil Filter Processing

CONTRACTOR shall provide processing data for Recyclable Materials and Used Oil and Used Oil Filters. Data shall include, at a minimum, the following information:

1. Tons of Recyclable Materials processed (by commodity)
2. Tons of residue that is delivered to the Disposal Facility
 - i. Name of the Disposal Facility receiving load
 - ii. CONTRACTOR weight tag number (unique, non-repeating number)
 - iii. Disposal Facility weight tag number (unique, non-repeating number)
 - iv. Date delivered to Disposal Facility
 - v. Time of arrival at facility
 - vi. Truck number
 - vii. Net weight of load (in tons)
 - viii. Material type (San Jose residential recycling Residue)
3. Gallons of Used Oil processed
4. Tons of Used Oil Filters processed
5. Material sales information:
 - i. type of material
 - ii. buyer
 - iii. date purchased
 - iv. tons shipped
 - v. price
 - vi. invoice number
 - vii. weight tag number
 - viii. freight cost
 - ix. number of bales
 - x. total revenue

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7. Processing Equipment Breakdown Report (for significant events)
 - i. date of breakdown
 - ii. type of equipment
 - iii. duration of breakdown
 - iv. reason for breakdown
 - v. impacts, if any, to processing operations
 - vi. mitigation measures taken to avoid similar breakdowns
8. Rejected Loads Report
 - i. date
 - ii. time
 - iii. route number (if known)
 - iv. estimated percentage of load rejected
 - v. tons rejected
 - vi. final disposition of material

B. Large Item Processing

CONTRACTOR shall provide processing data for Large Items. Data shall include, at a minimum, the following information:

1. Number of items received by type (CFC white goods, other white goods, brown goods, mattresses, furniture, upholstered furniture, E-Waste, other)
2. Tons collected
3. Tons material reused
4. Tons material Recycled
5. Tons disposed

III. CUSTOMER SERVICE PERFORMANCE

CONTRACTOR shall submit detailed performance data of customer service activity for all incoming calls to haulers customer service center per Work Day and shall include a monthly summary of all calls received with at minimum the following data:

EXHIBIT 8

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1. Total calls received
2. Total customer service representatives available
3. Number of calls on hold for 10.0 minutes or more (cumulative hold time for call)
4. Calls abandoned after 10 minutes or more on hold
5. In-call hold abandon rate (% of calls received)
6. Average delay time (first ring until customer speaks to a customer service representative in mm:ss format)

IV. DATA RECONCILIATION

CONTRACTOR shall compare the CITY's Service Unit data with the CONTRACTOR's Service Unit data and resolve all discrepancies within thirty (30) calendar days of receipt of CITY's Service Unit data. Reconciliations shall be completed annually by March 15 of each year and shall include reconciliation of premise ID, service address, cart type, cart size, and any special services (on-premise, disabled on-premise). CONTRACTOR shall notify CITY ten (10) Work Days prior to commencing the data reconciliation, by requesting Service Unit data from the CITY's Customer Service System. The CITY shall provide data within ten (10) Work Days of the request. If a large number of discrepancies are discovered during the data comparison, the CITY may defer resolution of discrepancies until the next annual route audit. CONTRACTOR may choose to replace their Service Unit data with CITY Service Unit data instead of conducting a data comparison. CONTRACTOR shall replace their data with CITY provided data within five (5) Work Days of data receipt, and notify CITY when complete.

V. REPORT REQUIREMENTS

A. Monthly Reports

CONTRACTOR shall submit Monthly Reports within ten (10) days of the end of each calendar month. The Monthly Report shall follow the report format requested by the City Representative.

B. Quarterly Reports

CONTRACTOR shall submit Quarterly Reports within thirty (30) days of the end of the previous calendar quarter. The Quarterly Report shall follow the report outline below, focusing on analysis and narrative of quarterly activity, with trend comparisons to previous quarter and same quarter of previous year, if applicable.

EXHIBIT 8

DATA AND REPORTING

C. Annual Reports

CONTRACTOR shall submit Annual Reports on or before February 15th for the previous calendar year. The final report covering the last six months of service under this Agreement shall be submitted by August 15th following the end of service. Annual Reports shall follow the outline below, with analysis and narrative to cover the reporting year activity.

D. On-Request Reports

1. Strike Contingency

If CONTRACTOR'S employees are represented by a collective bargaining unit, CONTRACTOR shall detail how normal operations will be maintained if a labor strike should occur. The Strike Contingency Plan shall include, but not be limited to, the steps to be taken to have replacement labor to maintain operations, to maintain facility security, to protect non-union personnel and the public, and a point of contact or spokesperson for media relations.

2. Additional Customer and Operation Information

From time to time, CITY may request additional information in order to evaluate a potential redesign of the Recycle Plus Program services including, but not limited to the following:

a. Routes by Service Type

- Number of routes per day;
- Types of vehicles;
- Time on route(s) (collection, transport, and downtime);
- Crew size per route;
- Number of full time equivalent (FTE) routes; and
- Number of accounts per route.

b. Personnel

- Organizational chart;
- Job classifications and number of employees (e.g. administrative, customer service representatives, drivers, supervisors, educational staff);
- Wages by job classification;
- Number of full-time equivalents (FTE) positions for each job

EXHIBIT 8

DATA AND REPORTING

classification; and

- Number of hours per job classification per year.

c. Productivity Statistics

- Number of Service Units per day per route;
- Representative number of setouts per day per route of actual data or based on annual route audit; and
- Average tons per day per route.

d. Large Item/E-Waste

- Tonnage by Large Item and E-Waste service;
- Number of Large Item pick-ups and E-Waste pick-ups during each month of the most recent 12-month period;
- Disposal tonnage;
- Diversion tonnage, listed by vendor or Processing site;
- Number of stops serviced by a third-party re-use vendor;
- List of re-use vendors collecting reusable items; and
- Number and type of vehicles used to perform the collections, average route hours per week; number of personnel and average labor hours per week during a one-month period.

3. Regulatory Compliance for Vehicles

CONTRACTOR shall provide the CITY Representative with copies of any documentation demonstrating compliance with the following regulatory requirements:

- a. Clean air vehicle regulations as set forth in Section 11.3.3
- b. Registration, licensing, and inspection as set forth in Section 11.3.8
- c. Vehicle certification as set forth in Section 11.5

E. Report Outline for Quarterly and Annual Reports

The following provides an outline of the Quarterly and Annual Report requirements. The purpose of the reports is to provide an analysis of activities and significant events, including service delivery, CONTRACTOR performance, waste stream analysis, commodity prices, and community outreach and relations.

EXHIBIT 8

DATA AND REPORTING

REPORT OUTLINE

SECTION I - DATA

A. Collected Tonnage

This section shall include analysis of tons of Recyclable Materials collected and apparent trends and causes for any tonnage changes.

B. Residue Tonnage Disposed

This section shall include analysis of residue levels at the MRF, and apparent trends and causes for any tonnage changes.

C. Recyclable Tonnage Collected and Sold

This section shall focus on detailed analysis of the Recyclable Materials collected and sold (by major commodity), diversion, apparent trends and causes, and any challenges in the marketing of material.

D. Commodity Prices and Revenue

This section shall focus on detailed analysis of the recyclable markets and sales activity, apparent trends and causes.

E. Large Item Collection

This section shall focus on detailed analysis of the Large Item collection program, diversion, and apparent trends and causes. Additional analysis shall be provided on the following specific program aspects:

- Number of items collected by type (white goods-CFC, white goods-other, brown goods, mattresses, furniture, upholstered furniture, E-Waste, other)
- Tons collected
- Material reused (tons and type)
- Material Recycled (tons and type)
- Tons disposed

F. Used Oil and Used Oil Filter Collection

This section shall include analysis of amounts of Used Oil and Used Oil Filters collected and apparent trends and causes for any significant changes.

EXHIBIT 8

DATA AND REPORTING

G. Non-Collection and Courtesy Notices

This section shall focus on detailed analysis of Non-Collection and Courtesy Notice activity, by the dates issued, and apparent trends and causes for any significant changes.

H. Missed Collections

This section shall focus on detailed analysis of the number of missed collections, apparent trends and causes and possible remedies.

I. Cart Activity

This section shall focus on detailed analysis of Recycling Cart activity; apparent trends and causes for significant changes; and approximate quantities, by size, of CONTRACTOR's inventory of Recycling Carts available for deliveries, repairs and exchanges.

J. Customer Calls

This section shall focus on detailed analysis of customer service activity, apparent trends, major issues and causes. Additional analysis shall be provided on specific service requests and complaint calls and shall include a summary of all calls received. To the extent possible, specific details on Customer Service Representative performance, training, and hiring shall be provided. CONTRACTOR shall include any trends in call center performance and actions taken to correct deficiencies.

SECTION II – ROUTE AUDITS

In this section, CONTRACTOR shall include the route audits conducted during the quarter and the findings from the route audits. This section shall include all of the route audit information required in Article 10 of this Agreement.

SECTION III - VEHICLE INFORMATION

A. Vehicle Inventory and Compliance Reports

B. Vehicle Mileage Report

C. Vehicle Maintenance/Preventative Maintenance Activity

D. Status of State Inspection Requirements

E. Alternative Fuel Vehicle (AFV) Usage and Performance

1. Monthly AFV Reports shall include the following information:

EXHIBIT 8

DATA AND REPORTING

- Biodiesel and Natural Gas purchase documentation, including blend information (e.g., B20, B50, etc.)
 - Biodiesel and Natural Gas usage information including gallons
 - Quantity of vehicles operating on biodiesel and Natural Gas
2. Quarterly AFV Reports shall include the following information, if applicable:
- Discussion of Biodiesel and Natural Gas performance; including but not limited to, average fuel economy, issues with power and speed, and any unusual noise or fumes.
 - Operational issues
 - Maintenance issues
 - Fuel supply issues
 - Analysis and narrative of results from testing the use of alternative fuels in collection vehicles
3. In addition to the above, Annual AFV Reports shall include:
- Summary of Quarterly Reports
 - Emissions ratings
 - Grant status
 - Fuel purchase and delivery documentation

SECTION IV - SIGNIFICANT EVENTS

This section shall discuss any significant events occurring in the organization.

SECTION V - CALENDAR

A. Reports Delivered This Quarter

B. Reports Due Next Quarter

END REPORT OUTLINE

END OF EXHIBIT 8

EXHIBIT 9

RESERVED

EXHIBIT 10

RESERVED

EXHIBIT 11

RESERVED

EXHIBIT 12

LARGE ITEMS

CONTRACTOR shall collect the following materials as “Large Items”. This list of Large Items may be amended by the mutual agreement of CONTRACTOR and the City Representative. Any such amendments shall be in writing and shall be signed by the City Representative and CONTRACTOR.

Item	Description
Basketball hoops	Disassembled
Bathtub	Porcelain, cast iron (incl. Clawfoot).
BBQ grills large	No ashes (cold or hot). <u>No</u> propane tanks.
Bicycle	
Bird bath	Ceramic or concrete. No large fountains.
Box of items	Total weight of box and contents not to exceed 60 pounds and dimensions of box not to exceed 4'x4'x2'. No Garbage or Hazardous Waste.
Box spring	See “Mattress”
Camper shell	Must be a <u>shell</u> (not a full camper) from a passenger-sized vehicle (not commercial). Shell must be no larger than 4' wide x 8' long and no higher than cab of truck. No homemade or hardwood shells. Aluminum or fiberglass shells are acceptable.
Carpet	<u>Dry</u> : Must be rolled with a length no longer than 6' and diameter no larger than 2'. <u>Wet</u> : Must be rolled with a length no longer than 4' and diameter no larger than 2'. Carpets must be bundled or tied and manageable by one person. One roll equals one item. Padding separate item.
Chairs	Upholstered, wood, plastic or aluminum okay. If chairs are designed to stack or nest (e.g. white plastic lawn or aluminum chairs), then 4 stacked chairs is 1 item.

EXHIBIT 12

LARGE ITEMS

Item	Description
Compactors (trash)	Clean and empty.
Computer	Home computer with components (monitor, printer and CPU counts as one item).
Copier	Desktop or household only.
Counter tops	Length no longer than 8'; each 8' length counts as one item.
Dishwashers	No water.
Dog house	
Doors (closet, front/back door)	No all-mirrored or whole-glass doors. Small glass insert in a front/back door is acceptable.
Dresser	
Dryer	
Electronic Components	Can include any or all of the following up to <i>five</i> items per collection: Stereo receiver, turntable, two speakers, cd player, and/or VCR.
Fax machine	
Fences/Gate	Length of sections must be no longer than 8'. No more than 60 pounds. Each bundle is one item. Chainlink should be rolled and bundled. No entire fences, construction debris or wood/cement posts.
Fireplace inserts	No ashes (cold or hot).
Freezer	No longer than 6'. Chest or upright, <u>empty</u> (residential type only – no commercial).
Furnace	
Garage door opener	Disassembled and bundled.
Garbage disposal (appliance)	
Grandfather clock	

EXHIBIT 12

LARGE ITEMS

Item	Description
Hot tub/spa	Small (2-3 person) size. No water. Deck counts as separate item(s).
Hutch	
Kitchen cabinets	Length no longer than 6'.
Ladder	
Large Yard Trimmings	Oversized Yard Trimmings such as tree trunks and branches, weight no greater than 60 pounds and length no longer than 5' and diameter no larger than 2', which are attributed to the normal activities of a Service Unit.
Lawn furniture	See "chairs" "picnic table" and "wood spool" sections.
Lawn mower	Either with or without motor. No fluids.
Light fixture	Must be placed in a box for collection. See also "box of items."
Mattress	Mattress and box spring are separate items. King mattress and box springs (2) count as two items.
Minibike/moped	Either with or without motor. No fluids.
Oven	Empty.
Pallets (wood)	Each pallet counts as 1 item. No cement or construction and demolition.
Piano or organ	No grand pianos. Upright is acceptable and counts as three items.
Picnic table	Detached benches are extra items. See also "chairs" and "wood spool" sections.
Ping pong table	Folded in half.
Plastic pools	Disassembled and bundled

EXHIBIT 12

LARGE ITEMS

Item	Description
Polystyrene foam	Clean. Boxed or bagged. Each container will count as one (1) item
Pool cover	Prepared like carpet.
Pool table	
Pot belly stoves	No ashes (cold or hot).
Refrigerators	Empty. Doors must be removed or secured closed. Counts as one item (including removed door). Residential only, no commercial refrigerators.
Shed	Disassembled and bundled. Prefabricated only. Weight no greater than 60 pounds.
Sink	Household size, no commercial sinks.
Sofa	If sofa is a sectional, each section counts as one item.
Solar panels	Drained, each unit or panel is one item (like countertops).
Spa cover	See also "hot tub/spa" section.
Speakers	See "Electronic Components"
Stereo	See "Electronic Components"
Stereo cabinets/hi-fi	See "Electronic Components"
Stove	Empty. Loose items secured.
Swing set	Simple, A-frame with slide is acceptable. Jungle gyms must be disassembled. Each 60-pound bundle counts as one item.
Table saw	Household garage type, not commercial or industrial.
Television	See "Electronic Components"
Tables	Table leaves may be included, but must be bundled. Each table with up to three leaves counts as one item.

EXHIBIT 12

LARGE ITEMS

Item	Description
Tires	Passenger vehicle and pickup truck tires only. May have rims included. One tire is one item, or one tire/rim is one item or one rim separated from the tire is one item. May add 4 th tire for same cost.
Toilet	
Tree stump	Weight no greater than 60 pounds and length no longer than 5' and diameter no larger than 2'.
VCR	See "Electronic Components"
Vehicle body parts	Disassembled. Items such as car door, hood, fender, car seat, and camper shell. No glass windshields or engine parts. See also "tires" and "camper shell" sections.
Video arcade/pinball machines	Limited to one per household.
Washer	Drained.
Water bed	Drained.
Water heater	Drained.
Wheel barrow	
White goods	Inoperative or discarded refrigerators, ranges, water heaters, freezers, and other similar household appliances.
Window/door frames	Frames must be without glass. Window screens are acceptable.
Wood scrap (scrap lumber)	Bundled with a weight no more than 60 pounds and dimensions no greater than 5'x2'x2'. Must be secured. Each bundle is one item.
Wood spool	Small spool only, similar in size to household picnic furniture.

END OF EXHIBIT 12

EXHIBIT 13

CONTAINER SPECIFICATIONS AND PERFORMANCE CRITERIA

CONTRACTOR shall provide Recycling Carts that meet the following specifications and minimum performance criteria.

Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity	
Volumetric Capacity – Recycling Carts	<ul style="list-style-type: none">• 32-gallons +/- 12%, 64-gallons +/- 12%, and 96-gallons +/- 12%, excluding volume resulting from a crowned lid in the closed position
Minimum Load Rating	<ul style="list-style-type: none">• 32-gal: 100 lb.• 64-gal: 175 lb.• 96-gal: 250 lb.
Compatibility	<ul style="list-style-type: none">• Compatible with commercially available fully automated lifting mechanisms that are or will be used in San José
Standards of Design	<ul style="list-style-type: none">• Designed to meet all relevant sections of American National Standards Institute (ANSI) Z245.30-1999 and Z245.60-1999• Designed such that wastes flow freely out of the cart when dumped by a fully automated lifting mechanism
Materials of Construction & Recycled Content	<ul style="list-style-type: none">• Body of cart: HDPE• At least 20% post-consumer recycled content
Dimensions & Design	<ul style="list-style-type: none">• Body of cart -- nestable for economic bulk transportation and to facilitate distribution to users• Maximum width of 31" including lid and wheels• Leak proof

EXHIBIT 13

CONTAINER SPECIFICATIONS AND PERFORMANCE CRITERIA

Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity	
Lid	<ul style="list-style-type: none">• Manufactured from the same material as the body of the cart.• Rotate at least 270 degrees• Watertight, must prevent rain entry when closed, with or without latches• Snug-fitting and must overlap the cart rim• Self-draining
Handle	<ul style="list-style-type: none">• Handle mounts must either:<ol style="list-style-type: none">1. be an integrally molded part of the cart body; or2. if bolt-on handle mounts are used, they must be designed such as to prevent them from working loose over the active life of the cart
Wheels	<ul style="list-style-type: none">• Minimum tire diameter: 10 inches for 64- and 96-gal carts, 8 inches for 32-gal carts• Minimum tread width: 1.5 inches• Tire material must be natural rubber or polymeric compound• Each wheel must be rated for the minimum load rating of the carts and not deform plastically when subjected to the rated load of the carts• Axle must pass through the cart body outside of the area for waste storage• Wheels must have a locking device to secure them to the cart axle
Fasteners	<ul style="list-style-type: none">• No fasteners are to penetrate the body of the cart where waste will be contained• All fasteners are to be corrosion resistant and free of sharp edges

EXHIBIT 13

CONTAINER SPECIFICATIONS AND PERFORMANCE CRITERIA

Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity	
Finish Surfaces	<ul style="list-style-type: none">• Interior surface must be smooth with a semi- or high-gloss finish• Exterior surface must be suitable for hot stamping on lid and body• Exterior must be free of sharp edges and corners, protrusions, or other structures that could pose a nuisance or hazard to humans
Assembly	<ul style="list-style-type: none">• Carts must be easy to assemble• Nuts must be self-locking• Nuts and/or rivets must be designed such that they cannot be removed with ordinary tools by the public
Performance	<ul style="list-style-type: none">• Carts must pass ANSI standards 245.30-1999, clauses 7.2.4.2 (testing requirements for two-wheeled carts) for the following parameters:<ol style="list-style-type: none">1. volumetric loading capacity2. slope stability3. durability during pulling4. loading and unloading (cycle test)5. center of balance position6. force to tip cart7. lid (collapse)• All metal components of the cart must meet the corrosion resistance requirements of 500 hours of salt spray exposure as described in ASTM B117• Carts must pass the Leakage performance test (Appendix A)• Empty carts must pass the Wind Stability performance test (Appendix A)

EXHIBIT 13

CONTAINER SPECIFICATIONS AND PERFORMANCE CRITERIA

Specifications and Performance Criteria For 32-, 64-, and 96-Gallon Capacity	
Testing	<ul style="list-style-type: none">• Performance testing of production samples shall be conducted at a frequency of 3 per 1000 units manufactured
Environmental	<ul style="list-style-type: none">• Ultra-violet stability: All plastic components must contain UV inhibitors and the cart must maintain performance during the warranty period when exposed to ultra-violet radiation of the sun• Temperature stability: Cart must not plastically deform when subjected to temperatures in the range of 25 deg F to 170 deg F and a compressive load of 200 lb
Identification & Markings	<ul style="list-style-type: none">• The lid must have a suitable area to affix a label for recycling education• The following must be hot-stamped on the lid:<ol style="list-style-type: none">1. facing street arrow• The following must be hot-stamped on the cart body:<ol style="list-style-type: none">1. CITY's logo2. serial number (sequentially numbered)3. production batch number and date4. maximum load weight rating5. cart type, per clause 4.2.1f of ANSI Z245.30-99
Color	<ul style="list-style-type: none">• Recycling: Gray body with blue lid
Warranty	<ul style="list-style-type: none">• Minimum 10 years for all parts of cart; not prorated; any failure under warranty shall be replaced with a newly manufactured whole cart, which is defined to be the body of the cart, wheel, lid, handles, other ancillary features and fasteners

EXHIBIT 13

CONTAINER SPECIFICATIONS AND PERFORMANCE CRITERIA

Appendix A

Performance Tests

Wind Stability

This test is designed to assure that a cart will remain stationary and in the upright position under severe wind conditions.

The cart must be able to remain upright and stationary in a wind flow of 25 mph. The test surface shall be a flat finished asphalt surface. Place one sidewall of cart perpendicular to a horizontal flow of air at 25 mph for one minute. Record whether or not the cart tips over and distance, if any, the cart slides or rolls. Repeat the test for each of the other sides.

To pass this test, the cart shall not tip over, or slide or roll more than 6.0 in., in any of the tests.

Leakage

The purpose of this test is to determine if the cart is designed to minimize leakage.

The cart shall be filled with water to a level within 8 in. from the inside bottom of the container. The container shall be covered with its own lid. The filled container shall then be placed in a covered area over a dry drip pan to collect any leakage and allowed to stand for a period of 24 hours exposed to temperatures within the range of 65 to 75 F. The water level within the container after the test shall be measured and recorded to within the nearest 0.1 in. The results of the test shall be reported in terms of final water level, ambient temperature, visible leakage, and quantity of water collected in the drip pan. Containers that exhibit any leakage shall fail the test.

EXHIBIT 14

FORM OF PERFORMANCE BOND

**RECYCLE PLUS SFD RECYCLING COLLECTION SERVICES
FOR THE
CITY OF SAN JOSE, CALIFORNIA**

KNOW ALL MEN BY THESE PRESENTS: that

(here insert full name and address or legal title of contractor)

as Principal, hereinafter called Contractor, and, _____ (Name of insurer)

as Surety, hereinafter called Surety, are held firmly bound unto the CITY OF SAN JOSE, CALIFORNIA as Obligee, hereinafter called the City, in the amount of **[CONTRACTOR to insert amount per Agreement (\$X,XXX,XXX.XX)]** for the payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has by written agreement dated _____, **[insert year]**, entered into an Agreement with the City for providing Recycling Collection Services in accordance with Agreement of the CITY OF SAN JOSE, CALIFORNIA, which Agreement is by reference made a part hereof, and is hereinafter referred to as the Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if CONTRACTOR shall promptly and faithfully perform said Agreement, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the City.

Whenever CONTRACTOR shall be, and declared by the City to be in default under the Agreement, the City having performed the City's obligations thereunder, the Surety may promptly remedy the default, or shall promptly perform one of the following:

1. Complete the Agreement in accordance with its terms and conditions.

2. Obtain a bid or bids for completing the Agreement in accordance with the terms and conditions, and upon determination by the Surety of the lowest responsible bidder, or if the City elects, upon determination by the City and the Surety jointly of the lowest responsible bidder, arrange for an agreement between such bidder and the City, and make available as work progresses (even though there should be a default or a succession of defaults under the Agreement or Agreements of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Agreement price; but not exceeding, including costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Agreement price," as used in this paragraph, shall mean the total amount payable by the City to CONTRACTOR under the Agreement and any amendments thereto, less the amount properly paid by the City to CONTRACTOR.

Any suit under this bond must be instituted before the expiration date of the Agreement or if extended for an additional term by the City, the expiration of the extended term.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the City named herein or the executor, administrator or successors of the City of San José, California.

Signed and sealed this ____ day of _____, [insert year].

(Principal) (Seal)

(Witness)

(Title)

Surety (Seal)
(Name of Insurer)

(Witness)

By:

(Attorney-in-Fact)

EXHIBIT 15

WAGE POLICY

CONTRACTOR and any of CONTRACTOR's subcontractors shall be obligated to pay not less than the wages as set forth in this Exhibit.

A. PREVAILING WAGE

California Labor Code and/or Resolutions of the City of San José require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San José shall mean the wages paid under a collective bargaining agreement between CONTRACTOR and a recognized union representing workers who perform services pursuant to this Agreement; or, if there is no collective bargaining agreement, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San José's Office of Equality Assurance.

The City Prevailing Wage will be subject to annual adjustment on the first day of each July during the term of this Agreement. Adjustments will be based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José).

B. LIVING WAGE

CONTRACTOR shall pay individuals not less than the hourly wage rate set forth herein if the individual is: (1) performing work under this Agreement, (2) not subject to a collective bargaining agreement, and (3) are in the following job classifications: (a) customer service representatives (CSRs), and (b) mechanics (collectively referred to as "Covered Workers").

For purposes of this Agreement, the hourly living wage rate paid to Covered Workers will be referred to as the "Modified Living Wage" or the "MLW." CONTRACTOR agrees that Covered Workers will be paid at least the following hourly Modified Living Wage rate:

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WAGE POLICY

- If the Covered Worker receives health benefits, as determined by the City’s Office of Equality Assurance, the hourly Modified Living Wage rate is the sum of the following 2 amounts:
 1. 45.71% of the Fiscal Year 2019 living wage rate established by the City’s Office of Equality Assurance for employees receiving health benefits, plus
 2. 54.29% of the Fiscal Year 2019 minimum wage rate established by the City’s Office of Equality Assurance.

- If the Covered Worker does not receive health benefits, as determined by the City’s Office of Equality Assurance, the hourly Modified Living Wage rate is the sum of the following 2 amounts:
 1. 45.71% of the Fiscal Year 2019 living wage rate established by the City’s Office of Equality Assurance for employees who do **not** receive health benefits, plus
 2. 54.29% of the Fiscal Year 2019 minimum wage rate established by the City’s Office of Equality assurance.

The MLW will automatically adjust each Fiscal Year to reflect the changes in the living wage and minimum wage rates as made by the City’s Office of Equality Assurance.

Notwithstanding the foregoing, the increase in the **total** MLW rate for any single Fiscal Year is capped at 5% with no carryover (see example below).

Example of MLW rate change with 5% cap (numbers provided for illustrative purposes)

FY 2019 - 2020			FY 2020 - 2021				FY 2021 - 2022					
Living & Minimum Wages	Calculated MLW	Effective MLW	Living & Minimum Wages	Calculated MLW	Increase	Eligible Increase	Effective MLW	Living & Minimum Wages	Calculated MLW	Increase	Eligible Increase	Effective MLW
\$22.68	\$10.37	\$18.51	\$25.42	\$11.62			\$19.43	\$25.42	\$11.62			\$19.93
\$15.00	\$8.14		\$15.00	\$8.14	6.77%	5.00%		\$15.30	\$8.31	2.57%	2.57%	
	\$18.51			\$19.76					\$19.93			

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WAGE POLICY

As long as CONTRACTOR is paying the then-current effective MLW rate for Covered Workers, CONTRACTOR shall be in compliance even if CONTRACTOR's then-current MLW wage rate is lower than the MLW rate calculated because the rate was capped at 5%. If the 5% cap is reached in any Fiscal Year, the difference between the wages that would have been paid to Covered Workers under the calculated MLW rate and the wages paid to Covered Workers under the capped rate will not be carried over or owed to Covered Workers in future Fiscal Years.

If tonnages of San José Material processed by CONTRACTOR change by more than 20% or if the CITY later contracts with a new processing facility for the Recycle Plus Program that is not providing services to the City as of the Effective Date of the Agreement, CITY and CONTRACTOR will negotiate in good faith to modify the methodology for calculating the MLW rate and associated compensation paid to CONTRACTOR for implementing the MLW. Under no circumstances, however, will a renegotiated methodology result in the lowering of the MLW rate established in this Agreement or result in the reduction of any Covered Worker's wage. Any modification to the MLW methodology will require City Council approval.

C. DOCUMENTATION OF COMPLIANCE

The following requirements will be referred to collectively as the "Documentation Provision."

The Office of Equality Assurance will monitor the payment of wage by requiring CONTRACTOR and all subcontractors to file a Payroll Summary Report and any supporting documentation with the Office of Equality Assurance at the beginning of each Fiscal Year. CONTRACTOR shall also submit all such reports as requested by the Office of Equality Assurance.

CONTRACTOR and covered subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policy.

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All documents must be delivered to:

City of San José
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San José, CA 95113
Phone: 408.535-8430

D. EMPLOYMENT OF DISPLACED WORKERS

Upon termination of this Agreement CONTRACTOR shall fully cooperate with all CITY requests regarding contacts with CONTRACTOR's employees to enable a transition in the workforce to a new service provider.

E. LABOR PEACE

CITY's Office of Equality Assurance has determined that the level of vulnerability of the Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of CONTRACTOR's Employee and Labor Relations Plan set forth in Exhibit 3 to this Agreement.

F. ENFORCEMENT

1. General

CONTRACTOR acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to pay, individuals in the listed job classifications that are performing work under this Agreement not less than the amounts set forth in Sections I (Prevailing Wage) and II (Living Wage) (collectively "Wage Provision") and to comply with the Documentation Provision. CONTRACTOR further acknowledges that CITY has determined that the Wage Provision promotes each of the following (collectively "Goals"):

- a) It protects job opportunities and stimulates CITY's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to CITY by fostering high turnover and instability in the workplace.
- c) Paying individuals a wage that enables them not to live in poverty is

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beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.

- d) It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

3. Remedies for CONTRACTOR's breach of prevailing wage/living wage provisions

- a) **Suspension or termination:** suspend and/or terminate the Agreement or financial assistance **agreement for cause;**
- b) **Restitution:** require CONTRACTOR to pay any amounts underpaid in violation of the required payments and CITY's administrative costs and liquidated damages, and in the case of financial assistance to refund any sums disbursed by CITY.
- c) **Debarment:** debar CONTRACTOR in accordance with Chapter 4.10 of the San Jose Municipal Code.
- d) **Withholding of payment:** CONTRACTOR agrees that the Documentation Provision is critical to CITY's ability to monitor CONTRACTOR's compliance with the Wage Provision and to ultimately achieve the Goals. CONTRACTOR further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision. In light of the critical importance of the documentation provision, CITY and CONTRACTOR agree that CONTRACTOR's compliance with this provision, as well as the Wage Provision, is an express condition of CITY's obligation to make each payment due to CONTRACTOR pursuant to this Agreement. CITY is not obligated to make any payment due to CONTRACTOR until CONTRACTOR has performed all of its obligations under these provisions. Any payment by CITY despite CONTRACTOR's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement nor a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the documentation provision.
- e) **Liquidated damages for breach of wage provision:** CONTRACTOR agrees its breach of the Wage Provision would cause CITY damage by undermining the Goals, and CITY's

EXHIBIT 15

WAGE POLICY

damage would not be remedied merely by CONTRACTOR's payment of restitution to the workers who were paid a substandard wage. CONTRACTOR further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. CITY and CONTRACTOR mutually agree that making a precise determination of the amount of CITY's damages as a result of CONTRACTOR's breach of the Wage Provision would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, CONTRACTOR shall pay to CITY as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should be paid.

F. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Provision shall be made available for audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to CITY for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

G. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any rights of the employee.

EXHIBIT 15

**WAGE POLICY
WAGE DETERMINATION**

FOR CITY CONTRACTED SOLID WASTE SERVICES

A. Prevailing Wage Rate

EFFECTIVE DATE: July 1, 2018

Classification	Basic Hourly Pay Rate	Fringe Benefits	Total Hourly Pay*
Recycle Driver	\$33.96	\$13.95	\$47.91

Breakdown of Benefits		
Paid Vacation Days	After 1 year	7 Days – 56 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	25 Days – 200 Hours
	After 20 years	30 Days – 240 Hours
	After 25 years	35 Days – 280 Hours
	After 30 years	40 Days – 320 Hours
Paid Sick Leave	Eleven (11) paid Sick Days	
Paid Holidays	Twelve (12) paid Holidays	

EXHIBIT 15

**WAGE POLICY
MATERIAL RECOVERY FACILITY OPERATIONS**

Classification	Basic Hourly Pay Rate	Fringe Benefits	Total Hourly Pay*
Sorter	\$16.52	\$6.36	\$22.88
Floor Sorter / Raker	\$24.68	\$7.15	\$31.83
Spotter	\$19.24	\$6.72	\$25.96
Buy Back Operator	\$22.66	\$7.02	\$29.68
Mechanic	\$39.21	\$8.36	\$47.57
Equipment Operator	\$24.46	\$7.15	\$31.51
Baler Operator	\$24.61	\$7.15	\$31.76
Scale Operator	\$25.22	\$7.07	\$32.29

Breakdown of Benefits		
Paid Vacation Days	After 1 year	6 Days – 48 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	25 Days – 200 Hours
	After 20 years	30 Days – 240 Hours
	After 25 years	35 Days – 280 Hours
Paid Sick Leave	Seven (7) paid Sick Days	
Paid Holidays	Eight (8) paid Holidays	

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NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of contract, the successful contractor/service provider will be required to submit: (Payroll Summary Report with supporting documentation. As a condition of its contract, this firm may also be required to submit certified payrolls as requested by the Office of Equality Assurance.

Determination Notes

*The full amount of the total hourly wage must be paid directly to the worker, UNLESS the Contractor is making payments to a benefit plan. If the Contractor is making payments to a benefit plan but the benefits being paid do not add up to the full amount of benefits identified, the Contractor must pay the difference directly to the worker.

B. Modified Living Wage Rate

EFFECTIVE; July 1, 2019

All Covered Workers shall be paid no less than the following:

MODIFIED LIVING WAGE WITH HEALTH BENEFITS	MODIFIED LIVING WAGE WITHOUT HEALTH BENEFITS
\$18.51 per hour	\$19.08 per hour

Subject to any limitations in Section II of this Exhibit, Modified Living Wage rates will be adjusted each Fiscal Year on July 1 to reflect any changes in the City's Living Wage Rate and the City's Minimum Wage Rate.

C. Hours and Days of Work

(Industrial Welfare Commission Order No. 16-2001)

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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WAGE POLICY

One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

EXHIBIT 16

ALTERNATE PROCESSING FACILITY

The alternate processing facility information outlined below shall be submitted by CONTRACTOR in order to secure processing capacity at an alternative facility, subject to approval by City Representative.

A. Facility Information

- Name and location of facility
- Permitted capacity of facility (to ensure additional tonnage is allowed under current permit)
- Average tons currently processed at facility (daily, not including San Jose tons)
- Types of material to be processed at the facility
- Hours of operation at facility
- Hours of operation for processing San Jose material

B. Operations Plan

- Estimated number of tons delivered to facilities (daily)
- How long will material be processed at alternative MRF? If longer than five days, more information will be required (see items C and D below).
- Type of material (SFD, MFD)
- Identify if material be stored, processed and sold separately?
- Identify how will material be delivered (direct, transferred)?
- If transferred, describe transfer operations.
- Description of how contractual reporting requirements will be maintained
- Reason material needs to be processed at alternative MRF. Plan to restore operations at San Jose MRF
- How will the alternative MRF accommodate the increased tonnage: (additional shifts, more employees)
- How will the material be processed (going through entire sort system)

As mentioned above, if the material is processed for longer than five days, the following additional information will be required in the alternative MRF plan:

C. A detailed site plan that clearly identifies the following:

- Location materials are to be unloaded.
- Storage location for unprocessed materials.
- Location of sorting activities.
- Location of residue storage.
- Storage location of loose and baled recyclables.

D. Additions to Operations Plan

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ALTERNATE PROCESSING FACILITY

If San Jose material is being commingled, stored, processed and sold:

- Provide sampling procedure to determine residue rate at alternative facility.
- If processing both SFD and MFD material, separate samples will be required.

If San Jose material is stored, processed and sold separately from other material:

- How San Jose will keep its materials separate from other materials
- How residue will be kept separate and collected, weighed, and transported
- Tracking sales data as outlined in the Agreement

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- EXHIBIT 16 ALTERNATE PROCESSING FACILITY

CWS Final Draft AR_4

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