

**AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
SALVATION ARMY OF SAN JOSE
FOR NON-PROFIT CHARITABLE REUSE SERVICES**

This Agreement is made and entered into this _____ day of _____ 2020, by and between the City of San José, a municipal corporation (hereinafter “City”) and Salvation Army of San José, a California nonprofit corporation (hereinafter “Non-Profit”).

RECITALS

- A. Non-Profit is a non-profit organization, as defined in Public Resources Code §41904 , engaged in reuse and recycling of materials including bulky goods items such as furniture that would otherwise be disposed of in landfills; and
- B. The costs of disposal of the residue from such reuse and recycling services divert resources from valuable services performed by Non-Profit; and
- C. The City Council has determined that it is in the public interest to encourage the reuse and recycling of materials in order to preserve landfill capacity and to meet the waste diversion requirements of the California Integrated Waste Management Act; and
- D. The Parties desire to work together to divert usable and recyclable goods from the landfill.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. TERM OF AGREEMENT.

The term of this Agreement shall be from July 1, 2020 to June 30, 2021, inclusive, subject to the provisions of Section 10 of this Agreement.

SECTION 2. SCOPE OF SERVICES.

- A. Non-Profit will support City’s overall strategy to divert reusable and recyclable materials from landfills by conducting salvage and reuse operations at Non-Profit’s facilities located in San José.
- B. Non-Profit will demonstrate that, in the Reporting Period, the tonnage of materials recycled and/or made available for reuse which are attributable to operations in San José is equal to or greater than One Thousand Five Hundred and Thirty-One (1,531) tons (representing a level of materials recycled or reused for the Reporting Period that is at least 80% of the donation level for the prior year).
- C. Non-Profit must submit to City an annual Reuse and Recycling Report

(“**Report**”) for the period starting July 1, 2020 through June 30, 2021 (the “**Reporting Period**”), that includes, at a minimum, the following information:

1. Amount of materials recycled or made available for re-use during each month of the Reporting Period and the total for the Reporting Period, including the amount of materials collected as donated items. To the extent practicable, the Report must list the amount and types of materials collected. Types of materials may include, but are not limited to:

- Automobiles
- Books and Multimedia Clothing
- Electrical Appliances (E-Waste) Furniture
- Household Goods
- Mattresses
- Miscellaneous

The amount of materials may be reported by weight or volume measurement as long as a consistent scale of measurement is used for the entire Reporting Period.

2. The percentage of materials collected which is attributable to Non-Profit’s recycling and reuse activities in San José and the calculations used to determine the percentage attributable to San José operations. (For example, the number of collection sites in San José, as a proportion of all collection sites in the Non-Profit’s collection area could be used, with a narrative explanation as necessary.)
3. A statement of verification of the report in substantially the following form signed by a person authorized to bind Non-Profit:

“I have read the accompanying reports and have verified the accuracy of data contained herein”.

This verification statement may be included in the cover letter used to transmit the report provided the person who signs the cover letter is authorized to bind Non-Profit.

- D. Upon the request of the Director of Environmental Services, Non-Profit will provide further clarifying information in addition to the Reuse and Recycling Report. The Director of Environmental Services or the Director’s designee may, from time to time, request to audit Reports.
- E. Non-Profit agrees to submit the Report as soon as practicable after the end of the Reporting Period when diversion data and material amounts can be tabulated and are available for Non-Profit to compile, but no later than September 30, 2020. The Report must be in a format such that documentation of the required information and documentation of Non-Profit’s support of City’s diversion strategy are to the reasonable satisfaction of City’s Director of Environmental Services.

SECTION 3. COMPENSATION.

- A. City will compensate Non-Profit for services performed in accordance with this Agreement at a flat rate of Eight-Eight Thousand, One Hundred and Nine Dollars (\$88,109), provided Non-Profit demonstrates that, in the Reporting Period, the weight of materials recycled and/or made available for reuse which are attributable to operations in San José is equal to or greater than One Thousand Five Hundred and Thirty-One (1,531) tons (representing a level of materials recycled or reused for the Reporting Period that is at least 80% of the donation level for the prior year). In the event the weight of materials recycled and/or made available for reuse which are attributable to operations in San José in the Reporting Period is less than 1,531 tons, the compensation payable to Non-Profit will be reduced proportionally according to submitted tonnage. For example, if the Non-Profit submitted 1,431 tons (100 tons less than required), then the equation would be $1,531/\$88,109 = 1,431/\X . The revised payment would be \$82,352.60.
- B. Non-Profit acknowledges that the goal in establishing this tonnage requirement is to recognize that the size of Non-Profit's operation in San José is remaining constant while allowing for a smoothing of the year-to-year variances in community donation activities that are not under the direct control of Non-Profit.

SECTION 4. METHOD OF PAYMENT.

- A. Non-Profit must submit to City, on or before September 30, 2021, the Report described in SECTION 2 of this Agreement together with an invoice for payment for services performed pursuant to this Agreement.
- B. Upon acceptance of the Report by the City, the City will remit payment to Non-Profit in the normal course of City's business.

SECTION 5. INDEPENDENT CONTRACTOR.

It is understood and agreed that Non-Profit, in the performance of the work and services agreed to be performed by Non-Profit pursuant to this Agreement, will act as and be an independent contractor and not an agent or employee of City. It is further understood and agreed that neither Non-Profit nor any of Non-Profit's employees will obtain any rights to retirement benefits or other benefits that accrue to City's employees, and Non-Profit hereby expressly waives any claim it may have to any such rights and will indemnify, protect, defend and hold City harmless from such claims made by Non-Profit's employees.

SECTION 6. ASSIGNABILITY.

The parties agree that the expertise and experience of Non-Profit are material considerations for this Agreement. Non-Profit will not assign or transfer any interest in this Agreement nor the performance of any of Non-Profit's obligations hereunder, without the prior written consent of the City, and any attempt by Non-Profit to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect. Non-Profit will not engage any subcontractor to perform services otherwise to be performed by Non-Profit under this Agreement without the prior written consent of the City. In the event Non-Profit engages a subcontractor, all payments due to the subcontractor will be the sole responsibility of Non-Profit and will be at no cost to City.

SECTION 7. INDEMNIFICATION.

Non-Profit shall defend, indemnify and hold harmless City, its officers, employees and agents against any claim, loss or liability arising out of or resulting in any way from work performed under this Agreement due to the willful or negligent acts (active or passive) or omissions by Non-Profit or its officers, employees or agents. Neither the acceptance of said services and duties by City nor City's payment to Non-Profit will operate as a waiver of such right of indemnification. Non-Profit's indemnification obligations pursuant to this SECTION 7 will survive expiration or termination of this Agreement.

SECTION 8. INSURANCE REQUIREMENTS.

Non-Profit agrees to have and maintain the policies set forth in Exhibit A, entitled "Insurance," which is attached to and incorporated in this Agreement. All policies, endorsements, certificates or binders will be subject to approval by the City's Risk Manager as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Non-Profit agrees to provide City with a copy of all certificates or endorsements prior to receipt of any payment under this Agreement and agrees to provide City a copy of the policies upon the request of the Risk Manager, City Manager, City Attorney or a representative of any of them.

SECTION 9. NONDISCRIMINATION.

Non-Profit agrees not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identification, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 10. TERMINATION.

- A. City or Non-Profit may terminate this Agreement, without cause, by giving not less than fourteen (14) days written notice of termination.
- B. If Non-Profit fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice.
- C. City's Director of Environmental Services is empowered to terminate this Agreement on behalf of City.

SECTION 11. GOVERNING LAW/VENUE.

The law governing this Agreement and its interpretation will be that of the State of California, and any action to interpret or enforce the terms of this Agreement must be brought in Santa Clara County or if in federal court, in the Northern District of California in San José.

SECTION 12. COMPLIANCE WITH LAWS.

Non-Profit shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments. Without limiting the generality of the preceding sentence, Non-Profit shall comply with the provisions of the City's Business Tax Ordinance in Chapter 4.76 of the San Jose Municipal Code.

SECTION 13. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by Non-Profit or any other person engaged directly or indirectly by Non-Profit to perform the services required in this Agreement will be and remain the property of City without restriction or limitation upon their use.

SECTION 14. WAIVER.

Non-profit agrees that waiver by City of any breach or violation of any term of condition of this Agreement shall not be deemed to be a waiver of any other term of condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Non-Profit shall not be deemed to be a waiver of any term or condition of this Agreement.

SECTION 15. NON-PROFIT'S BOOKS AND RECORDS.

- A. Non-Profit must maintain any and all ledgers, books of account, invoices, vouchers, cancelled 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 three (3) years, or for any longer period required by law, from the date of final payment to Non-Profit pursuant to this Agreement.
- B. Non-Profit must maintain all documents and records that demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- C. Any records or documents that are required to be maintained pursuant to this Agreement must be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, Director of Environmental Services, City Attorney or the City Auditor or a designated representative of either of these officers. Copies of such documents will be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records will be available at Non-Profit's address indicated for receipt of notices in this Agreement.
- D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Non-Profit's business, City may, by written request by 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 must be granted to any party authorized by Non-Profit, Non-Profit's representatives, or Non-Profit's successor-in-interest.

SECTION 16. CONFLICT OF INTEREST.

Non-Profit shall avoid all conflict of interest or appearance of conflict of interest in performance of this Agreement. As of the date of entering into this Agreement, Non-Profit's employees assigned to perform services as specified in Section 2 of this Agreement ("Non-Profit's Assigned Employees") shall not be required to complete and file a Form 700 with CITY's Clerk. In the event that the CITY subsequently determines to require Non-Profit's Assigned Employees to complete and file a Form 700 with CITY's Clerk, CITY will notify Non-Profit in writing of such requirement, including without limitation, instructions regarding the categories of economic interests subject to disclosure on the Form 700 ("Form 700 Notice"). Non-Profit shall cause Non-Profit's Assigned Employees to complete and file the Form 700 with CITY's Clerk in accordance with the instructions specified in the Form 700 Notice, no later than thirty (30) days of the date of the Form 700 Notice. Non-profit shall also submit a copy of any Form 700 filings to the City of San José in accordance with Section 19.

SECTION 17. GIFTS.

- A. Non-Profit is familiar with City's prohibition against the acceptance of any gift by a City officer or designated employee, which prohibition is found in Chapter 12.08 of the San José Municipal Code.
- B. Non-Profit agrees not to offer any City officer or designated employee any gift prohibited by said Chapter.
- C. The offer or giving of any gift prohibited by Chapter 12.08 shall constitute a material breach of this Agreement by Non-Profit. In addition to any other remedies City may have in law or equity, City may terminate this Agreement for such breach as provided in SECTION 10 of this Agreement.

SECTION 18. DISQUALIFICATION OF FORMER EMPLOYEES.

Non-Profit is familiar with the provisions relating to the disqualification of former officers and employees of City in matters that are connected with former duties or official responsibilities as set forth in Chapter 12.10 of the San José Municipal Code ("Revolving Door Ordinance"). Non-Profit must not utilize either directly or indirectly any officer, employee, or agent of Non-Profit 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.

SECTION 19. NOTICES.

Except as provided in Exhibit A, all notices and other communications required or permitted to be given under this Agreement must be in writing and shall be personally served, sent by facsimile or e-mail, or sent by U.S. mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: Valerie Osmond
Environmental Services Department 200 East
Santa Clara Street, 10th Floor San José, CA
95113
Phone: (408) 535-8557
E-mail: valerie.osmond@sanjoseca.gov

To Non-Profit: Major Henry Graciani
ARC Commander
The Salvation Army
180 E Ocean Blvd.,
3rd Floor
Long Beach, CA 90802
E-mail: Henry.Graciani@usw.salvationarmy.org

Notice will be deemed effective on the date personally delivered or sent by e-mail or facsimile or, if mailed, three (3) days after deposit in the mail. In the case of any notice or other communication sent by facsimile or e-mail, a hard copy shall be personally delivered or sent by mail within three (3) business days.

SECTION 20. PRIOR AGREEMENTS AND AMENDMENTS.

This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding will be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

SECTION 21. AUTHORITY TO ENTER INTO AGREEMENT

Non-Profit represents and warrants that the person signing this Agreement has been authorized by Non-Profit's Board to bind Non-Profit to this Agreement and if so asked, Non-Profit will provide a copy of the resolution or other document conveying such authority to bind Non-Profit.

SECTION 22. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY.

- A. The Consultant shall perform its obligations under the Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single Serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."
- B. Prohibition of City Funding for Purchase of Single Serving Bottled Water: The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:
- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
 - Situations where there is a high risk of cross-contamination with non-potable water; or
 - Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

- C. Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <https://www.sanjoseca.gov/your-government/environment/business-school-resources/for-schools/environmentally->

preferable-procurement. Environmental procurement policies and activities related to the completion of Consultant's work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of Energy-Star Compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and
- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

SECTION 23. 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.

WITNESS THE EXECUTION HEREOF on the dates set forth below.

APPROVED AS TO FORM:

CITY OF SAN JOSÉ, a municipal corporation

MARK VANNI
Deputy City Attorney

By: _____
TONI TABER
City Clerk, CMC

Date: _____

SALVATION ARMY, a California nonprofit corporation

By: _____

Date: _____

EXHIBIT A **INSURANCE**

Non-Profit, at Non-Profit's sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Non-Profit, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001, including product and completed operations; and
2. The coverage described in Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, nonowned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

Non-Profit shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 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 project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions 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 retentions as respects City, its officers, employees, agents and contractors; or Non-Profit shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. 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, Non-Profit; products and completed operations of Non-Profit; premises owned, leased or used by Non-Profit; and automobiles owned, leased, hired or borrowed by Non-Profit. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
 - b. Non-Profit'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 excess of Non-Profit's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Non-Profit shall not affect coverage provided City, its officers, employees, agents, or contractors.
 - d. Coverage shall state that Non-Profit'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.
 - e. Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of the City of San José, its officers, employees, agents and contractors.
3. All Coverages

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

E. Acceptability of Insurers

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

F. Verification of Coverage

Non-Profit shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Copies of all the required endorsement shall be attached to the Certificate of Insurance, which shall be provided by Non-Profit's insurance company as evidence of the required coverage.

Proof of insurance shall be either emailed in pdf format to: Riskmgmt@sanJoseca.gov, or mailed to the following postal address (or any subsequent address as may be directed in writing by the Risk Manager):

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

G. Subcontractors

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

END OF EXHIBIT A