

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

This SECOND AMENDMENT TO AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by the CITY OF SAN JOSE, a municipal corporation (“CITY”), and CALIFORNIA WASTE SOLUTIONS, INC., a California corporation. (“CONTRACTOR”).

**RECITALS**

**WHEREAS**, CITY and CONTRACTOR entered into an Agreement on December 14, 2011 whereby CONTRACTOR provides integrated waste management services for the Recycle Plus Program for a term beginning July 1, 2010 through June 30, 2021 (the “Agreement”); and

**WHEREAS**, on March 29, 2017, CITY and CONTRACTOR entered into a First Amendment to the Agreement to modify services related to Large Item Collection; and

**WHEREAS**, CITY and CONTRACTOR desire to further amend the Agreement 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**, for this Second Amendment, the definitions contained in the Agreement will apply unless otherwise specifically stated or amended in this Second Amendment; and

**WHEREAS**, a Negative Declaration for this project under File Number PP10-055 was adopted on June 18, 2010 in accordance with the requirements of the California Environmental Quality Act;

**NOW, THEREFORE,** the parties agree to amend the amended Agreement as follows:

**SECTION 1.** ARTICLE 1, “DEFINITIONS” is amended to add new Sections to read as follows:

**1.55 Director.** The Director of Environmental Services or designee.

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

**SECTION 2.** Section 1.24, “NON-PROGRAM MATERIALS” is amended to read as follows:

**1.24 Non-Program Material.** 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.

**SECTION 3.** ARTICLE 2, “TERM OF AGREEMENT” is amended to read as follows:

**2.1 Initial Term.** Subject to Article 19, the term of this Agreement is from July 1, 2010 through June 30, 2021 (“Initial Term”).

**2.2 Optional Term.** After the Initial Term, the CITY reserves the right, at its sole discretion, to extend the term of this Agreement for up to one (1) six-month term up through December 31, 2021 (“Option Term”), only if CONTRACTOR does not qualify for the 2036 extension as set forth in Section 2.3.1.

**2.2.1 Notice.** The CITY shall provide the CONTRACTOR with no less than thirty (30) calendar days’ prior written notice of its intention to exercise its option to extend the term of this Agreement.

**2.2.2 Appropriation of Funds Contingency.** The CITY’s funding of this Agreement shall be on a Fiscal Year basis and is subject

to annual appropriations of funds. The CONTRACTOR acknowledges that the CITY, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations that financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the CITY to appropriate funds for the purposes of this Agreement. Accordingly, the parties agree that any Option Term is contingent upon the appropriation of funds by the CITY. This Agreement will terminate immediately if funds necessary to continue the Agreement are not appropriated. Despite the foregoing, the CITY shall pay CONTRACTOR for any services performed in accordance with this Agreement up to the date of termination.

2.2.3 Notwithstanding any other definition for Fiscal Year, the period during the Option Term (July 1, 2021 through December 31, 2021), if exercised by the CITY, will be considered a Fiscal Year unless otherwise stated.

### **2.3 Performance Evaluation Period.**

2.3.1 Beginning July 1, 2019 through June 30, 2020 (“Performance Period”), CONTRACTOR agrees to satisfy each of the following performance standards:

- 2.3.1.1 A Customer Satisfaction Standard, as established under Section 13.13 (see Section 12 of this Second Amendment), of at least 75 percent as determined by the annual average of third-party surveys conducted on a quarterly basis between July 1, 2019 and June 30, 2020.
- 2.3.1.2 A Service Delivery Standard, as established under Section 13.14 (see Section 12 of this Second Amendment), of not more than an aggregate of \$30,000 in Liquidated Damages, accumulated during the Performance Period, related to any of the items on the List of Liquidated Damages: Service Delivery in Section 18.2, as amended in this Second Amendment.

2.3.1.3 Meet or exceed the Material Recovery Standard, as established under Article 16 (see Section 14 of this Second Amendment), during the Performance Period as determined by the average of third-party processing studies conducted in August 2019, October 2019, February 2020, and May 2020, or as soon thereafter as the third-party consultant retained by the CITY is able to conduct each study.

2.3.2 If CONTRACTOR fully satisfies all of the performance standards in Section 2.3.1, the CITY and CONTRACTOR agree, subject to appropriation of funds, that they will enter into a new agreement for SFD Recycling Services to be effective July 1, 2021 through June 30, 2036 with substantially the same terms and conditions as are provided for in the SFD Recycling Services agreement for other areas of the CITY and the rates set forth in Exhibit 19 attached to this Second Amendment.

**SECTION 4.** Section 6.2.1, "CONDITIONS OF SERVICE" is amended to read as follows:

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.

**SECTION 5.** Section 6.2.3, “NON-COLLECTION OF RECYCLABLE MATERIAL AND USED OIL” is amended to read as follows:

**6.2.3 Non-Collection of Recyclable Materials and Used Oil.**

- 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. To the extent possible, CONTRACTOR shall also notify CITY's Environmental Services Department of the non-collection prior to leaving the Service Unit.
- 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.

**SECTION 6.** Section 6.2.4, “REPORTING OF PROBLEMS AND NON-COLLECTIONS” is amended to read as follows:

**6.2.4 Reporting of Non-Collections and Problems.**

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 Garbage Carts; 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.

**SECTION 7.** Section 6.7, “SFD LARGE ITEM COLLECTION SERVICE” is amended to include a new Subsection to read as follows:

6.7.8 **CITY Option to Terminate SFD Large Item Collection Service.** Notwithstanding any other termination provision in the Agreement, the CITY, at its sole option, may terminate SFD Large Item Collection Service with six (6) months’ notice to CONTRACTOR.

**SECTION 8.** Section 8.5, “APPROVAL OF NEW NON-PROGRAM MATERIALS” is deleted in its entirety.

**SECTION 9.** ARTICLE 8, “RECYCLABLE MATERIALS PROCESSING” is amended to include a new Section to read as follows:

**8.12 Recycling Markets “Safety Net”:**

CONTRACTOR and CITY will maintain a “safety net” for recycling commodity markets for the remaining term of the Agreement commencing on July 1, 2019.

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 8.12 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.

**SECTION 10.** Section 9.1, “PUBLIC EDUCATION AND OUTREACH PROGRAM” is deleted in its entirety.

**SECTION 11.** ARTICLE 12, “DISPOSAL” is amended to include a new Section to read as follows:

**12.4 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.

**SECTION 12.** ARTICLE 13, “CUSTOMER SERVICE” is amended to include new Sections to read as follows:

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

13.13.1 Quarterly 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.

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 3 years. CITY shall pay the cost of the surveys.

13.13.2 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 CWS’ 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.

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



- 13.14.1. 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, as amended in this Second Amendment.
- 13.14.2 For the purpose of the Option Term, if exercised by the CITY, CONTRACTOR fails to meet the Service Delivery Standard by accumulating an aggregate of more than \$15,000 in Liquidated Damages related to any of the items on the List of Liquidated Damages: Service Delivery in Section 18.2, as amended in this Second Amendment.
- 13.14.3 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.

**13.15 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 a deduction from the payment due to CONTRACTOR on or before October 1 of the following Fiscal Year in which CONTRACTOR did not meet the Customer Satisfaction Standard and Service Delivery Standard as follows:

- One Fiscal Year: -\$0.15/unit/month
- Second Consecutive Fiscal Year: -\$0.30/unit/month
- Third Consecutive Fiscal Year: -\$0.45/unit/month\*

**Example deduction methodology** *(for illustrative purposes only)*

<b>Fiscal Year</b>	<b>2019-2020 (July-June)</b>	<b>2020-2021 (July-June)</b>	<b>2021 (July-Dec)*</b>
<b>Result</b>	CSS & SDS not met	CSS & SDS not met	CSS or SDS met
<b>Deduction rate (per unit per month)</b>	\$0.15	\$0.30	NA

*\*Extension at City's Option*

*Example calculation for example Fiscal Year 2019-2020 result*  
 CONTRACTOR does not meet CSS & SDS for one Fiscal Year:  
 Deduction = \$0.15 x 166,000 (total SFD units) x 12 months = \$298,800

*Example calculation for example 2020-2021 result*  
 CONTRACTOR does not meet CSS & SDS for second consecutive Fiscal Year: Deduction = \$0.30 x 166,000 (total SFD units) x 12 months = \$597,600

**SECTION 13.** Section 14.1.2, "CONTRACTOR REPORTS" is amended to read as follows to read as follows:

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.

**SECTION 14.** ARTICLE 16, “DIVERSION STANDARDS” is amended to read as follows:

**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 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 seventy-five percent (75%).

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, processing studies will be performed four (4) times 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 quarterly studies are performed if an annual average of 20 percent (20%) or more of RRFS, by weight, is present in Residue.

If any one 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, May, August, and October, 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 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:

<b>RRFS List</b>	
<b><u>Recyclable Paper</u></b>	
<ol style="list-style-type: none"><li>1. Clean Newspaper</li><li>2. Clean OCC</li><li>3. Clean Mixed Paper</li><li>4. Clean Aseptic and Polycoated Packaging</li></ol>	
<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>	
<b><u>Recyclable Plastic</u></b>	
<ol style="list-style-type: none"><li>5. #1 PET Bottles and Containers</li><li>6. #2 HDPE Bottles and Containers</li><li>7. #3, #4, #5 and #7 Bottles and Containers</li><li>8. Plastic Bags and Other Film</li><li>9. Polystyrene</li><li>10. Durable Plastic Items</li></ol>	
<i>Note: Does not include Remainder/Composite Plastic.</i>	
<b><u>Recyclable Metal</u></b>	
<ol style="list-style-type: none"><li>11. Aluminum Beverage Cans</li><li>12. Aluminum Foil</li><li>13. Steel (Tin) Cans</li><li>14. Other Scrap Metal</li></ol>	
<i>Note: Does not include Remainder/Composite Metal.</i>	
<b><u>Recyclable Glass</u></b>	
<ol style="list-style-type: none"><li>15. Recyclable Glass</li></ol>	
<i>Note: Does not include Remainder/Composite Glass.</i>	
<b><u>Recyclable Textiles</u></b>	
<ol style="list-style-type: none"><li>16. Bagged Textiles</li><li>17. Loose Textiles</li></ol>	

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, 2019. 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 applied, at a minimum, to all studies done for the remaining term of the Agreement. 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 then-current RRFS List will stay in effect.

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 average of the four processing studies 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
<b>TOTAL</b>	<b>0.15</b>

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

Any Non-Program Material CONTRACTOR Sold during the 3-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**  
*(for illustrative purposes only)*

- Of a 1.0-ton residue sample, 0.15 tons were RRFS.
- In the 3-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 RFS tons in Residue sample	
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1.0 tons of Residue sampled x 1.01 adjustment factor for Non-Program Materials sold	<b>= 14.85%</b>

**16.2.6 MRS Diversion Deduction.** If CONTRACTOR fails to meet the Material Recovery Standard for a Fiscal Year, CITY shall make a deduction from payments due to CONTRACTOR on or before October 1 following the Fiscal Year, in which CONTRACTOR did not meet the Material Recovery Standard as follows:

- One Fiscal Year: -\$0.30/unit/month
- Second Consecutive Fiscal Year: -\$0.60/unit/month
- Third Consecutive Fiscal Year: -\$0.90/unit/month\*

**Example deduction methodology** *(for illustrative purposes only)*

Fiscal Year	2019-2020 (July-June)	2020-2021 (July-June)	2021 (July-Dec)*
<b>MRS Result</b>	MRS not met	MRS not met	MRS met
<b>Deduction rate (per unit per month)</b>	\$0.30	\$0.60	NA

\*Extension at City's option

*Example calculation for example Fiscal Year 2019-2020 result*  
CONTRACTOR does not meet MRS for one Fiscal Year:  
Deduction = \$0.30 x 166,000 (total SFD units) x 12 months = \$597,600



*Example calculation for example 2020-2021 result*

CONTRACTOR does not meet MRS for second consecutive Fiscal Year:

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

**16.3 Large Item Diversion Standard.** Beginning January 1, 2011, CONTRACTOR shall achieve a Large Item diversion standard of not less than seventy five percent (75%) 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.

<b>Marketed Rate Example Calculation</b> <i>(for illustrative purposes only)</i>
$\text{Marketed Rate} = \frac{(\text{Tons of Recyclable Material sold} + \text{Non-Program Material sold}) \div}{((\text{Tons Recyclable Material Collected} + \text{Non-Program Material collected}) - (\text{Tons of Recyclable Material Residue} + \text{Non-Program Material Residue}))}$

**SECTION 15.** Section 17.8, "WITHHOLDING OF PAYMENT" is amended to read as follows:

**17.8 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.

**SECTION 16.** Section 17, "COMPENSATION" is amended to include a new Section to read as follows:

**17.10 Incentive Payments.** CONTRACTOR may be eligible to receive annual incentive payments if CONTRACTOR meets the following criteria in a Fiscal Year.

17.10.1 Customer Satisfaction Incentive Payment. If CONTRACTOR meets the Customer Satisfaction Standard and Service Delivery Standard, set forth in Article 13 as amended by this Second Amendment, CONTRACTOR will receive an incentive payment as set forth in Exhibit 18 (see Section 23 of this Second Amendment).

17.10.2 Material Recovery Incentive Payment. If CONTRACTOR meets the Customer Satisfaction Standard and Service Delivery Standard (set forth in Article 13 as amended by this Second Amendment) and the Material Recovery Standard (set forth in Article 16 as amended by this Second Amendment) CONTRACTOR will receive an incentive payment as set forth in Exhibit 18 (see Section 23 of this Second Amendment).

17.10.3 Incentive payments will be paid within 30 days of CONTRACTOR meeting the standards in the prior Fiscal Year, pending completion of any required studies, final determination of any Liquidated Damages assessed during the applicable Fiscal Year, and receipt of any required information from CONTRACTOR.

**SECTION 17.** Section 18.2, "LIQUIDATED DAMAGES" is amended to read as follows:

**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:

<b>List of Liquidated Damages: Service Delivery (Applies to Each Service District)</b>		
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.
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.

<b>List of Liquidated Damages: Service Delivery (Applies to Each Service District)</b>		
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.
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

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

<b>List of Liquidated Damages: All Other (Applies to Each Service District)</b>		
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 a biodiesel fuel (B20 grade or higher) in Recycle Plus collection fleet set forth in Exhibit 10	\$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

**SECTION 18.** Section 21.4, "INDEMNIFICATION" is amended to read as follows:

**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.

**SECTION 19.** ARTICLE 23, "MISCELLANEOUS PROVISIONS" is amended to include a new Section to read as follows:

**23.26 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.

**SECTION 20.** EXHIBIT 8, "DATA AND REPORTING," is amended as set forth in the Revised Exhibit 8, attached hereto, and incorporated into this Second Amendment.

**SECTION 21.** EXHIBIT 9, "OUTREACH" is deleted in its entirety.

**SECTION 22.** A new EXHIBIT 18, "INCENTIVE CALCULATION," attached hereto, is added to the Agreement and incorporated into this Second Amendment.

**SECTION 23.** A new Exhibit 19, "CONTRACTOR RATES FOR POTENTIAL FUTURE AGREEMENT," attached hereto, is added to the Agreement and incorporated into this Second Amendment.

**SECTION 24.** All the terms and conditions of the amended Agreement not modified by this Second Amendment shall remain in full force and effect.



**SECTION 25.** The recitals set forth above are incorporated by reference into the Second Amendment and are made part of the Second Amendment.

**SECTION 26.** This Second Amendment is effective on July 1, 2019.

**SECTION 27.** This Second Amendment has been negotiated by the CITY and CONTRACTOR, reviewed by their respective counsel, and CITY and CONTRACTOR has had an opportunity to make such changes as that party wished to make. In the event an ambiguity or a question of intent or interpretation arises, this Second Amendment shall be construed as if drafted jointly by each of the parties hereto and no presumptions or burdens of proof shall arise favoring any party by virtue of the authorship of any provisions of this Second Amendment.

**WITNESS THE EXECUTION HEREOF** on the day and year first written above.

“CITY”

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

\_\_\_\_\_  
MARK J. VANNI  
Deputy City Attorney

By \_\_\_\_\_

“CONTRACTOR”

CALIFORNIA WASTE SOLUTIONS, INC,  
a California corporation

By \_\_\_\_\_  
DAVID DUONG  
President

Date: \_\_\_\_\_

**REVISED 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
2. Weight tag number (unique, non-repeating number)

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

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:

1. Date issued

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

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:

**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)

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

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
7. Processing Equipment Breakdown Report (for significant events)
  - i. date of breakdown
  - ii. type of equipment
  - iii. duration of breakdown

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

- 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

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

**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:

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.

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

**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.

**C. Annual Reports**

CONTRACTOR shall submit Annual Reports on or before February 15<sup>th</sup> for the previous calendar year. The final report covering the last six months of service under this Agreement shall be submitted by August 15<sup>th</sup> 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



**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

- 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 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

**REVISED EXHIBIT 8**  
**DATA AND REPORTING**

**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.

## 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.

#### 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:
  - Biodiesel purchase documentation, including blend information (e.g., B20, B50, etc.)
  - Biodiesel usage information including gallons
  - Quantity of vehicles operating on biodiesel
2. Quarterly AFV Reports shall include the following information, if applicable:

- Discussion of Biodiesel 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 18

### INCENTIVE PAYMENT CALCULATION

1. For Fiscal Year 2019-2020 (July 1, 2019 through June 30, 2020) and Fiscal Year 2020-2021 (July 1, 2020 through June 30, 2021), CONTRACTOR is eligible for performance incentive payments as set forth in Section 17.10, "COMPENSATION" (See Section 17 of this Second Amendment).

If applicable, incentive payments will be calculated in accordance with the following formulas:

#### Customer Satisfaction Incentive Payment:

50% of: ((Incentive Rate – District A SFD Recycling Service Rate) x District A SFD Service Units x 12 months) + ((Incentive Rate – District C SFD Recycling Service Rate) x District C SFD Service Units x 12 months)

#### Material Recovery Incentive Payment:

50% of: ((Incentive Rate – District A SFD Recycling Service Rate) x District A SFD Service Units x 12 months) + ((Incentive Rate – District C SFD Recycling Service Rate) x District C SFD Service Units x 12 months)

For the purposes of the calculations related to incentive payments:

- SFD Recycling Service Rate is the Fiscal Year rate effective for Fiscal Year under evaluation;
- Incentive Rate is \$13.43/Service Unit/Month (2018-2019 dollars, adjusted annually); and
- Count of Service Units shall be the monthly average for the respective Fiscal Year for each District.

Example Calculations (*for illustrative purposes*):

*Assumptions: Incentive Rate of \$13.43/Service Unit/Month, District A Recycling Service Rate of \$9.37/Service Unit/Month, District A Service Unit count of 97,000, District C Recycling Service Rate of \$10.09/Service Unit/Month, District C Service Unit count of 67,000*

Customer Satisfaction Incentive Payment = 50% x ((((\$13.43 - \$9.37) x 97,000 x 12) + ((\$13.43 - \$10.09) x 67,000 x 12))) = 50% x (\$4,725,840 + 2,685,360) = 50% x \$7,411,200 = \$3,705,600

Material Recovery Incentive Payment = 50% x ((((\$13.43 - \$9.37) x 97,000 x 12) + ((\$13.43 - \$10.09) x 67,000 x 12))) = 50% x (\$4,725,840 + 2,685,360) = 50% x \$7,411,200 = \$3,705,600

2. Annual Adjustment for Incentive Rate. The Incentive Rate shall be adjusted annually for Fiscal Year 2019-2020 and Fiscal Year 2020-2021 using the following modifications to Refuse Rate Index (RRI) set forth in Exhibit 2 of the Agreement:

## EXHIBIT 18

### INCENTIVE PAYMENT CALCULATION

2.1 Updated indices published by the Bureau of Labor Statistics (BLS) that are specific to the San Francisco Bay Area. The following local indices will replace the current national indices:

a. **Labor**

Employment Cost Index (NAICS)

Local: Series ID: CIU20100000000LKA

Not seasonally adjusted

Series Title: Total compensation for private industry workers in the San Jose-San Francisco-Oakland, CA CSA, 12-month percent change

Ownership: Private industry workers

Component: Total compensation

Occupation: All workers

Industry: All workers

Subcategory: All workers

Area: San Jose-San Francisco-Oakland, CA CSA

Periodicity: 12-month percent change

b. **Other Operating Expenses**

CPI-All Urban Consumers (Current Series)

Local: Series ID: CUURS49BSA0

Not Seasonally Adjusted

Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted

Area: San Francisco-Oakland-Hayward, CA

Item: All items

In the event any index is discontinued, a successor index will be used. A successor index will be an index that is most equivalent to the discontinued index as recommended by the BLS.

2.2 In addition, for the purposes of the annual adjustment for the Incentive Rate:

- Changes in the index for in this Exhibit will be calculated using annual calendar year averages;
- For the local Employment Cost Index (see above “a. Labor” component), the average of the four quarters for the calendar year will be used to calculate this index change, due to BLS only publishing 12-month percent changes (quarter over quarter) and not the actual indices; and
- All labor-related costs (including wages, benefits, payroll taxes, workers compensation, pension, and health and welfare costs) included in Labor component.

## **EXHIBIT 18**

### **INCENTIVE PAYMENT CALCULATION**

3. CONTRACTOR shall submit calendar year financial information in accordance with the annual adjustment for the Incentive Rate, to the CITY's satisfaction, by the following timeline:
  - Calendar year 2018 financial information: prior to November 15, 2019
  - Calendar year 2019 and calendar year 2020: prior to February 15<sup>th</sup> of the following calendar year; include with other financial information related to RRI Adjustment Process, as set forth in Section 17, "COMPENSATION."

END OF EXHIBIT 18



**EXHIBIT 19**

**CONTRACTOR RATES FOR POTENTIAL FUTURE AGREEMENT**

Potential maximum compensation rates for contracted services through June 30, 2036, are detailed in Section B below. The below rates will be incorporated into a future agreement through June 30, 2036 if CONTRACTOR satisfies the Performance Period requirements set forth in Section 2.3

**A. Adjustment of Potential Maximum Rates from 2017-2018 Dollars to 2021-2022 Dollars**

The rates given below are in 2017-2018 dollars and will be adjusted for each fiscal year until the effective date. The table below clarifies how the given rates will be adjusted for each fiscal year until the effective date.

	<b>FY 2018-2019</b>	<b>FY 2019-2020</b>	<b>FY 2020-2021</b>	<b>FY 2021-2022</b>
<b>RRI Methodology</b>	Current Agreement Methodology set forth in Exhibit 2	New Methodology Summarized in Exhibit 18, 2.	New Methodology Summarized in Exhibit 18, 2.	New Methodology Summarized in Exhibit 18, 2.

**B. Potential Maximum Rates for Services**

<b>District A</b>	<b>% Material Not on RRFS List*</b>	<b>Rate</b>	<b>Unit</b>
<b><i>SFD Recycling Collection &amp; Processing discount per household for each 2% below non-RRFS material baseline due to City efforts to reduce non-RRFS material in recycling</i></b>	20.00-32.99%	\$11.19 Plus \$0.28/HH for every 2% incremental above 20%	Per Household
<b><i>SFD Recycling Collection &amp; Processing</i></b>	33.00-34.99% <b>(33% Base level)</b>	\$13.15	Per Household
<b><i>SFD Recycling Collection &amp; Processing</i></b>	35.00-36.99%	\$13.43	Per Household
<b><i>SFD Recycling Collection &amp; Processing</i></b>	37.00-38.99%	\$13.71	Per Household
<b><i>SFD Recycling Collection &amp; Processing</i></b>	39.00-40.99%	\$13.99	Per Household
<b><i>SFD Recycling Collection &amp; Processing</i></b>	>40.99%	\$14.27, plus \$0.28/HH for Every 2% Incremental Above 40.99%	Per Household

**EXHIBIT 19**

**CONTRACTOR RATES FOR POTENTIAL FUTURE AGREEMENT**

<b>District C</b>	<b>% Material Not on RRFS List *</b>	<b>Rate</b>	<b>Unit</b>
<i><b>SFD Recycling Collection &amp; Processing discount per household for each 2% below non-RRFS material baseline due to City efforts to reduce non-RRFS material in recycling</b></i>	18.00-31.99%	\$11.19 Plus \$0.28/HH for every 2% incremental above 20%	Per Household
<i><b>SFD Recycling Collection &amp; Processing</b></i>	32.00-33.99% <b>(32% Base level)</b>	\$13.15	Per Household
<i><b>SFD Recycling Collection &amp; Processing</b></i>	34.00-35.99%	\$13.43	Per Household
<i><b>SFD Recycling Collection &amp; Processing</b></i>	36.00-37.99%	\$13.71	Per Household
<i><b>SFD Recycling Collection &amp; Processing</b></i>	38.00-39.99%	\$13.99	Per Household
<i><b>SFD Recycling Collection &amp; Processing</b></i>	40.00-41.99%	\$14.27	Per Household
<i><b>SFD Recycling Collection &amp; Processing</b></i>	>41.99%	\$14.55, plus \$0.28/HH for Every 2% Incremental Above 41.99%	Per Household

\*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.

END OF EXHIBIT 19