



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow

**SUBJECT: RESIDENTIAL SOLID WASTE
AGREEMENTS**

DATE: January 10, 2019

Approved

Date

1/10/19

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

This supplemental memorandum provides additional information and clarification to the City Council regarding the recommendations for Recycle Plus item 7.1 scheduled for the January 15, 2019 Council meeting.

ANALYSIS

After nearly two years of a negotiations process with the Recycle Plus haulers, staff recommends developing agreements to extend and continue services with three of the four existing contractors: Garden City Sanitation, Inc. (Garden City), GreenTeam of San Jose (GreenTeam), and GreenWaste Recovery; ending negotiations with California Waste Solutions (CWS); and initiating a procurement for single-family recycling collection and processing in CWS' service area. CWS objects to the staff recommendation and submitted comments to the Mayor and City Council (Attachment A).

Staff and consultants negotiated with each hauler to reach agreement on terms and compensation to provide San Jose residential solid waste customers with reliable solid waste and recycling collection/processing for the period 2021-2036. Staff negotiated to achieve program performance goals and provide modest compensation increases for each hauler in lieu of placing the contracts out to bid, as originally envisioned. Rate payer value in terms of program performance, customer satisfaction and cost per household were key areas of focus. Staff sought to understand contractor compensation expectations under a variety of scenarios and worked collaboratively to negotiate the best value for our residents.

Unfortunately, staff is not recommending extending through a non-competitive process the current recycling contract, servicing 77% of single-family homes in the City, with CWS for 2021-2036. CWS has requested an estimated compensation increase of 59.5% to 69.6%, has

failed to achieve the existing contract standards in the last six years and has generated significant customer dissatisfaction. If the CWS proposal was accepted, it would result in a higher cost per household, lower customer satisfaction, and lower performance for the residents in Districts A and C. Therefore, staff recommends conducting a competitive procurement to see if we can achieve improved customer service and program performance at a lower price for our residents.

In negotiations, staff took a suggestion by CWS to develop a dynamic pricing structure that would compensate the contractors based on levels of non-recyclables found in the recycling cart. Staff had hoped that by addressing CWS’ assertion that increased garbage in the recycling cart was impacting their cost that a deal could be reached. However, as the chart below indicates, the final bid price from CWS requires an increased compensation of 59.5% at the estimated non-recyclables levels (33% District A, 32% District C) at the time of the 2006 Request for Proposals (RFP), and a compensation increase of near 70% if non-recyclables are at the 40% level that CWS has asserted they believe it to be.

	Current CWS Weighted Average Rate	Proposed CWS Weighted Average Rate at 33/32% Level	Difference Current vs Proposed at 33/32% Level	Proposed CWS Weighted Average at 40% Level	Difference Current vs Proposed at 40% Level
Per Household Service Rate	\$9.47	\$15.10	+59.5%	\$16.06	+69.6%

Note: Rates are in 2017-2018 dollars, to be adjusted by contractual cost of living adjustments.

CWS proposed their price increases without adequately addressing concerns about poor performance, including failure to hit recycling targets, high rates of non-collection notices (which contractors issue when they refuse to collect for what they deem as improperly sorted recyclables) and poor customer service. Compared to other contractors’ pricing, CWS’ proposal was outside industry standards, too expensive, and would not add enough value to justify the higher rate.

Negotiations Process

On March 28, 2017, the City Council directed staff to initiate negotiations with current Recycle Plus contractors to pursue term sheets with key service enhancements and cost provisions for future service agreements. The negotiations were a first step prior to initiating a procurement process, because negotiations with the current contractors were expected to result in streamlined service enhancements and beneficial pricing. If negotiations were unsuccessful with some or all contractors, staff would report on timeframe and strategy for a procurement for services not fulfilled through the negotiations process. Therefore, negotiations were not an “all or nothing” process; if a current contractor did not offer beneficial value for continuing services beyond June 30, 2021, (the termination date of the current contracts) staff was directed to return with a procurement strategy for these services.

Environmental Services Department (ESD) staff received extensive input from all four contractors and identified which ideas would be most beneficial to ratepayers and could be incorporated into a cohesive citywide program. ESD utilized an expert consultant (HF&H) that specializes in negotiations, procurements, contract development, strategic planning, and industry benchmarking for solid waste services. HF&H has served nearly 500 municipalities through more than 1,900 engagements and has worked with numerous Bay Area municipalities, including nearly all of the cities in Santa Clara County. HF&H provided critical support for San José’s Recycle Plus procurement/transition (2006-2007) and extension (2009-2011) and San José’s Commercial system redesign and procurement (2007-2012).

During negotiations, to better understand each contractor’s current costs and reasonableness of proposed pricing, the consultant and staff used cost forms structured similarly to forms used in dozens of sole source and competitive procurements. All contractors have completed these types of forms multiple times for similar processes. Like a typical negotiation or procurement, ESD staff and the consultant asked for clarifications and more detail from all contractors to better understand the costs and the reasonableness of each contractor’s compensation requests for future services. The consultant also benchmarked each contractor’s costs and rates with other local service rates and several recent local procurements.

To develop the final recommendations, staff considered the cost proposals, current contractor performance, and customer service. The matrix below demonstrates the general ratings for each contractor on their price offer, customer service and past contractor performance.

Criteria	CWS	Garden City	Green Team	Green Waste
Price Offer (as compared to original, Council-approved price) ✓ High Value: +0% to 5% increase ○ Good Value: +5% to 15% increase X Low Value: Over 15% increase	X	○	✓	○
Customer Service ✓ Excellent: Minimal complaints, call center responsive ○ Adequate: Some complaints, call center occasionally not responsive X Poor: High-level of complaints, call center frequently not responsive	X	✓	✓	✓
Past Performance ✓ Excellent: No major penalties, met contract standards, excellent environmental performance ○ Adequate: Some penalties, minimal misses of standards, good environmental performance X Poor: Many penalties, frequently missed standards, poor environmental performance	X	✓	○	✓

To continue current services with negotiated enhancements at favorable pricing, staff also negotiated with each contractor individually. In a traditional RFP process, contractors would be compared to one another on technical and pricing scores. In this process, staff looked at each contractor individually to determine if the pricing offered was reasonable in comparison to the contractor's past performance, customer service, and price change from the contractor's current, Council-adopted pricing. The consultant also benchmarked contractor's costs and rates with other local service rates and several recent local procurements. Like a typical contract negotiation, ESD staff and consultants did not prescribe pricing, such as requiring one uniform pricing rate for all contractors.

Cost Analysis / Compensation

The starting point for negotiations was the service rates approved by City Council, when they originally awarded the contracts after competitive procurements. The pricing differences offered by the contractors during negotiations are largely a legacy of these original awards. For example, in 2006, when the CWS and Garden City contracts were awarded, CWS proposed the lowest cost for recycling services and Garden City proposed the highest cost for garbage services. Therefore, the starting point for current negotiations for CWS's price was lower than GreenTeam, and Garden City's was higher than GreenTeam for comparable services. These pricing differences were already approved by Council, so they are not relevant when comparing the final cost proposals from negotiations. The appropriate approach is to compare each contractor's current, Council-awarded bid price with their proposed, negotiated price.

Because of the dynamic compensation structure suggested by CWS and agreed upon in the final term sheet, CWS costs will vary depending on the level of non-recyclables collected, as determined by a waste characterization conducted every two years. CWS's proposed price, as reported in the memorandum, is 59.5% higher than their current, Council-awarded bid price, which assumes levels of non-recyclables as determined in the 2015 Cascadia waste characterization study: 33% in District A, and 32% in District C. At the contamination level of 40% that CWS asserts, CWS is actually requiring a weighted 69.6% increase from their current price.

As shown in the table below, the pricing proposed by CWS would result in an additional \$220 million at the 59% increase, over the 15-year period following compensation changes beginning July 1, 2021. At the 40% non-recyclables level that CWS claims to exist today, they would receive an additional \$37 million over the same 15-year period.

Single-Family Recycling Haulers Price Comparison

SFD Recycling Haulers	2021-2036 15-Year Total Compensation	1st Year Change 2020-2021 vs 2021-2022	2021-2022 Per Household Service Rate (weighted)
CWS (Current)	\$370,310,000	\$580,000	\$10.66
CWS (New @ 33%/32% contamination)	\$590,640,000	\$12,430,000	\$17.00
CWS (New @ 40% contamination)	\$628,040,000	\$15,000,000	\$18.07
GreenTeam (Current)	\$258,320,000	\$400,000	\$14.86
GreenTeam (New)	\$257,280,000	\$350,000	\$14.80

Notes: Assumes 3% cost of living adjustments annually. For the current and potential future agreements, recycling contractors retain all revenue related to recyclables processing (sales and State payments). Since 2010, the annual averages of this revenue were approximately \$12.7 M for CWS and \$3.4 M for GreenTeam SFD recycling.

Despite providing CWS with multiple opportunities to submit revised pricing and despite several staff concessions, CWS did not reduce their net pricing significantly. These concessions included 1) negotiating major risk sharing provisions, including early increased compensation; 2) using local indices for cost of living adjustments to account for higher Bay Area costs; and 3) a new flexible recycling standard and a safety net provision for recycling markets. These contract changes would reduce risk to CWS and result in correspondingly lower costs.

Contractor Performance, Diversion, and Cart Material Composition

In response to a recommendation from the City Auditor’s Report on curbside recycling¹, in Fall 2015, a well-qualified² third-party consultant, Cascadia Consulting Group (Cascadia), conducted an SFD recyclables characterization study to compare against the City’s previous 2008 study, also conducted by Cascadia. The study found that the proportion of recyclables and non-recyclables collected in the residential recycling stream had not changed dramatically in any collection district, or citywide, as compared to the 2008 characterization of single-family recyclables.³ Therefore neither recycling contractor has been required to process a significantly changing recyclables stream during the duration of their contracts.

¹ Curbside Recycling: The City can Enhance its Single-Family Residential Recycling Program to Improve Waste Diversion (May 2015, Report 15-06).

² Cascadia brought more than 22 years of experience working with nationwide jurisdictions to characterize and model municipal and regional waste streams, and has conducted characterization studies for eight of the ten largest metropolitan U.S. areas (City of San Jose Single Family Recyclables Characterization Study, 2015 Report, Page 7).

³ Transportation & Environment Committee, “Recycle Plus Curbside Material Audit” (December 7, 2015, item d.4., page 3).

Additionally, in [CWS' October 27, 2015 proposal submitted to the City of Milpitas](#) as part of their residential garbage and recycling Request for Proposal procurement process⁴, CWS stated that:

“CWS has successfully diverted over 90 percent of the material collected from Oakland residential and commercial sources and *90 percent of recyclables from San Jose*. This diversion percentage has been accomplished through diligent processing of the residential and multi-family/commercial customer waste stream at the company’s two Oakland MRFs”.

CWS’ statement of their ability to divert over 90% of San José material contradicts numerous statements presented to Council in their December 10, 2018 letter (Attachment A) including their difficulties processing San José’s recyclables and their inability to meet minimum contractually required diversion rates, while asserting they shouldn’t have to pay diversion-associated financial penalties and residue disposal costs over the course of their agreement.

In other proposals, CWS has made similar contradictions. In their 2013 proposal to Central Contra Costa Solid Waste Authority, CWS stated, “Since 2002, CWS has increased the solid waste diversion and recycling by the City of San Jose to levels never achieved by preceding companies.” (Attachment B). In their 2013 [proposal](#) to Oakland, CWS stated, “Since 2002, CWS has increased San Jose’s solid waste diversion and recycling to levels never achieved by preceding companies and reduced processing residue from greater than 21 percent to 14 percent.”

The 2015 recyclables characterization study showed that there was little variation of recyclables composition in Districts A, B, and C comparing 2008 to 2015. The study objectives focused on material composition, not demographic analysis (which typically includes reviewing household income levels and ethnic diversity) and therefore demographics vs. district material composition should not be assumed for San Jose.⁵

The City Auditor’s report recommended that the diversion calculations for each recycling contractor should be uniform in the future. The Auditor extrapolated that GreenTeam would miss CWS diversion standards in past years had the CWS diversion calculation been applied to GreenTeam historical data. However, GreenTeam was not held to the CWS contractual obligations and did not operate under those standards. Retroactively applying the standard is misleading and does not fairly represent a contractor’s effort to meet the standards they bid on and are contractually responsible to achieve. Nonetheless, it should be noted that using the same logic with CWS historical data, CWS would have missed GreenTeam’s diversion standard as well.

⁴ October 27, 2015 CWS Proposal in response to the City of Milpitas’s residential garbage and recycling services procurement Request for Proposals; page 1-23, Materials Recovery Success

⁵ Cascadia’s 2015 [study](#) for Seattle reviewed demographic data and showed that recycling contamination differed by two percentage points between low-income and high-income households. (p 46)

Year	Recalculated District A Diversion Rate	District A Requirement	Recalculated District C Diversion Rate	District C Requirement
2017	26.53%	30%	28.42%	35%
2016	27.32%	30%	28.12%	35%
2015	25.36%	30%	27.49%	35%

CWS bid in 2006 to meet the diversion standards in their current agreement and agreed to their diversion calculations upon execution of their agreement.

A [May 2, 2018 Rules Committee memorandum](#) directed staff to report back on the China National Sword policy and to provide an analysis of how market changes could affect San Jose’s recycling program, including consideration of whether changes to current and future contract terms are needed to ensure that San Jose contractors are not penalized unfairly for market changes. It also directed staff to conduct a new independent waste characterization study. Staff had been working with CWS prior to the memorandum on their request for another characterization. In February 7, 2018, ESD communicated to CWS that the proposed approach for a revised recycling standard would address CWS’ concerns with the current diversion calculation and changing market conditions, negating the need to invest as much as \$100,000 in rate payer funds, as well as staff time, for a characterization study since new contracts were to be in place as soon as five months later. Additionally, the recommended agreement changes include biannual waste characterizations of recycling carts, beginning Summer 2019.

On January 12, 2016⁶, ESD presented to Council an offer to reprocess CWS’ recycling residue to help CWS with meeting their diversion targets. Data from the recyclables characterizations indicated that about two-thirds of the non-recyclables from District A and C were compostable. The City offered to re-process CWS’ Materials Recovery Facility (MRF) material destined for landfill to recover organics and recyclables. This approach would have increased the recycling rate for both service districts, while potentially reducing or eliminating CWS’ recycling requirement penalties and disposal costs. Had the reprocessing residue approach been pursued, it may have saved CWS approximately \$1 million in disposal costs annually, and possibly more in transportation, labor, and diversion disincentive costs. However, this approach was not implemented because CWS wanted to maintain ownership of their residue material and requested an opportunity to submit their own plan to improve diversion.

CWS submitted their diversion plan in April 2016 stating “CWS proposes taking the following supplemental steps as part of the government-required program to increase diversion and attempt to meet the RRM diversion incentive goals in the Recycle Plus contract.” (Attachment C). Their plan included two components: equipment upgrades and credit for 100% diversion of processing residue that CWS would reprocess (despite the fact a significant portion of this material would still, ultimately, need to be landfilled). In September 2016, CWS reported installation of two drum feeders that open bags and liberate the contents of bags into the processing system. According to CWS’s plan, “opening these bags enables the recovery of in-bag materials such as

⁶ Recycle Plus Curbside Material Audit, item 7.1, page 6.

organic materials, fiber, glass, metal and plastic containers... film plastic and other liberated recyclable and non-recyclable material to be recovered by our processing system and then marketed.” Following installation of the drum feeders, CWS reported a decrease in residue at their facility; however, they were not able to meet their diversion goals for either year 2016 or 2017.

In November 2017, in response to China’s National Sword policy, CWS communicated to the City their intent to hire additional sorting staff and slow down their processing lines to remove excessive contaminants. Despite the City’s request to document the processing changes by updating Exhibit 3 of the CWS agreement, SFD Recycling Service Operations Plans, CWS did not submit the revised exhibit, and staff cannot verify that the changes were implemented.

Larger Garbage Carts

CWS has consistently asserted that a major cause of non-program material collected in recycling in their service districts is the size of garbage carts. To address this concern, staff and the Recycle Plus contractors pursued larger garbage carts as a potential future service enhancement during negotiations. It was expected this enhancement would give CWS the opportunity to offer the most beneficial pricing to the community since CWS has pointed to larger garbage carts as critical to addressing the issue of non-program material collected.

Although CWS stated that 71% of their proposed price increase (approximately \$4.60 per household) was due to the issue of non-program material, staff were disappointed that CWS’ cost proposal only reduced their service rate by approximately 1% (\$0.10 per household) for implementing larger garbage carts. Because the programmatic costs associated with acquiring and distributing larger carts far exceeded \$0.10 per household, staff did not recommend moving forward with this concept.

Recent Unprecedented Use of NCNs

The agreement with CWS includes a section for issuing Non-Collection Notices (NCNs), a City-approved standard notice left on the recycling cart, which CWS uses to inform service recipients of the reason their materials were not collected. Under Section 6.2.3 of the CWS agreement (Attachment D), if the recycling cart material is contaminated with solid waste, CWS is to, if practical, separate the solid waste from the recyclable material. CWS is then to collect the recyclable material and leave the solid waste behind in the recycling cart with a NCN explaining why the material was not considered recyclable. However, if the recyclable material and solid waste are commingled to the extent that cannot be easily separated or the nature of the solid waste renders the entire contents contaminated, CWS may leave a NCN with instructions on the proper procedures for setting out recyclable material and how to request collection of recyclable material as solid waste.

CWS stated in a letter dated April 3, 2018, “The City knows that CWS has the legal right to reject the contents of thousands of Recycling Carts every week because they are impossibly contaminated with Non-Recyclable Materials. To date, CWS has refrained from taking this drastic step... However, if the City refuses to allow a rate adjustment effective immediately as part of the contract extension, CWS may have no other option.” (Attachment E).

However, during Summer 2018, CWS issued thousands of NCNs that not only caused ongoing inconveniences for residents, but were also excessive and issued inappropriately. Staff assessments of a sampling of the NCN’s issued in August 2018 showed that more than half were issued without following the contractually-required procedure.

CWS Junk Pick Up Service

In July 2015, the recycling contractors were notified that ESD was piloting one free Junk Pickup per household as a way to mitigate illegal dumping. In October 2015, staff informed the haulers about a new outreach campaign that “may significantly increase collection requests” and mentioned there had been “numerous media reports of illegal dumping in recent days”. In 2016-2017 Council approved the expansion of the Junk Pickup program to include two free appointments for SFDs, and in June 2016, staff sent an email to the recycling haulers informing them of the expansion to two free appointments. CWS expressed their support of the second phase of the Junk Pickup Program in May 2016 and, at the same time, they shared that the company had success in implementing the first phase of the program. There were no objections by the haulers despite increasing demand for the service.

On March 21, 2017, Council approved the First Amendment to the current CWS agreement, which, among other things, included increasing the compensation for Junk Pickup services by 70% (from \$26.86 to \$46.00 for each 3-item collection). This represents approximately \$800,000 in additional annual compensation to account for increased costs in equipment and personnel (both collection and call center staff) needed to provide the service. Total CWS compensation for Junk Pickup continued to increase as demand for the service increased. Compensation for 2016-2017 was approximately \$720,000 and increased to \$2,000,000 in 2017-2018. In August 2017, CWS indicated they had hired two new customer service representatives, were buying a new truck, and adding a fourth collection route to help keep up with the demand. They also expanded their phone system to handle the new demands for Junk Pickup appointments.

Staff receives numerous CWS customer complaints for CWS’s issuance of NCNs, missed collections, CWS’s call center issues (long wait times, hang-ups, phone system crashes, lack of returned calls and emails), and Junk Pickup services, and contract management staff follows up with all contractors upon receipt of customer complaints. These complaints have occurred both before and after the implementation of unlimited SFD junk pickup. The added Junk Pickup compensation to CWS was to ensure adequate staffing and equipment to support the program.

2006 Council Direction Related to Different Contractor Standards and Compensation

In late 2005, Norcal Waste Systems (Norcal) declined an extension of their contract for garbage and recycling services in Districts A and C, and, on December 13, 2005, Council acted to terminate allow Norcal's contract to expire on its scheduled expiration date of June 30, 2007. CWS was the processing subcontractor for Norcal. An RFP for these services was issued on February 15, 2006. Bidders in this procurement were CWS, Norcal, and Eagle Recycling for commingled recycling, and Garden City, Norcal, and CWS for garbage. Norcal submitted a proposal during the RFP process and was recommended by staff for garbage and recycling services in a memo dated August 1, 2006.

On August 15, 2006, CWS and Garden City sent the City Manager a letter offering a list of pledges which included: cooperation and efficiencies in garbage and recycling collection, processing, and disposal; a plan to step in if a hauler has equipment problems, benefits of dedicated recycling and garbage trucks; and joint efforts to reduce contaminated recyclables (Garden City to audit garbage carts and report to city, CWS to add truck cameras and a cart inspection program, both to coordinate public education/outreach). They would also work with City staff to allow inspection of CWS' facility and offer ride-alongs.

On August 22, 2006, Council rejected staff's recommendation to award the contract to Norcal. CWS was awarded the residential recycling and processing contract and Garden City was awarded the garbage contract for an initial term of July 1, 2007 through June 30, 2013. Council was concerned with the Norcal recommendation primarily because the public's trust had been damaged by alleged corruption surrounding their 2000-awarded contract.

CWS was not recommended because, although their cost proposal was reasonable, (but still significantly higher than that paid to Norcal), they received a low technical ranking due to concerns about their experience and ability to perform collections. Garden City was not recommended because although they received a high technical score, their cost proposal was among the highest. To address staff's concerns about CWS' ability to perform, Council required strict performance standards for their review and approval which differed from standards applied to other contractors.

Wage Policy and Worker Retention in Future RFP

The existing agreement with CWS states, under Exhibit 15, "Upon termination of this Agreement, [CWS] shall fully cooperate with all CITY requests regarding contacts with [CWS's] employees to enable a transition in the workforce to a new service provider." Upon Council's approval to issue the RFP for Districts A and C, ESD will include a wage policy in the new RFP with requirements for worker retention. Should there be a successor contractor, this provision requires the contractor to offer employment opportunities to any qualified displaced workers from the CWS San Jose site, including stipulations and details on how the employees will be hired. CWS currently operates under a collective bargaining agreement with Teamsters Local 350 and, per the Agreement, its MRF workers are required to receive at least prevailing wage. In the new RFP, the prevailing wage requirement would continue to apply to drivers;

HONORABLE MAYOR AND CITY COUNCIL

January 10, 2019

Subject: Residential Solid Waste Agreements

Page 11

however, sorters, customer service representatives, and mechanics would need to adhere to whatever living wage direction Council provides.

/s/

KERRIE ROMANOW

Director, Environmental Services Department

For questions, please contact Valerie Osmond, Deputy Director, Environmental Services Department at (408) 535-8557.

Attachment A: CWS Letter to Mayor and City Council dated 12/10/18

Attachment B: Oct 7, 2013 CWS Contra Costa County Proposal pg. 10

Attachment C: 2016 CWS Diversion Plan for Excessive Contaminated SJ Recycle Plus.040716

Attachment D: CWS Agreement Section 6.2.3, Non-Collection of Recyclable Material and Used Oil

Attachment E: CWS Letter to ESD dated 4/3/18



December 10, 2018

Mayor and Members of the San José City Council
200 E. Santa Clara St.
San José, CA 95113

Re: ESD's Recommendation Against CWS for Extension of the Recycle Plus Agreement

Dear Mayor and City Council Members:

I am writing to explain the objections of my company California Waste Solutions ("CWS") to the City of San José Environmental Services Department's November 13 Staff Report recommending that the City terminate franchise extension negotiations with CWS extensions while simultaneously extending the franchises of the three other haulers through 2036. That Staff Report is inaccurate and incomplete in very important respects which allows City to paint a deliberately misleading portrait of CWS.

The Staff Report offers a number of supposed justifications for treating CWS, the minority-owned hauler, different from the other three haulers. However, with proper scrutiny, it becomes plain that Staff's explanations are mere pretexts to support an ill-advised, arbitrary and discriminatory recommendation designed to inflict severe injury on CWS.

CWS is certain that the City Council will want to make an informed and fair decision based on the facts – ones that are accurate, reliable and confirmed by the City's own consultants and the City Auditor. Thus, after a short background discussion, CWS has briefly addressed City Staff's five arguments used in their attempt to justify singling out CWS for harsh treatment. None of City Staff's arguments have merit.

Background Regarding Existing and Proposed Recycling Contracts

As the City Council knows, CWS collects "recyclable" materials in Districts A and C. Green Team collects those same materials in District B. The City Council also knows that the materials placed in the recycling carts are not really recyclable because the material in these carts is typically 40% non-recyclable and contaminated material. As a result, City Staff has proposed new contracts which require the "recycling" collectors to process whatever is in the recycling cart—even if it is not recyclable—unless it is hazardous material.

These new contracts are based on a very different concept than the current contracts. Under the current contract, CWS and the City were required to work together to get the non-recyclable materials reduced to less than 10% of the recycling carts through education and Non-Collection Notices (NCNs). Indeed, CWS was required to divert at least an average of 85% of the recycling can material from the landfills or face hefty penalties. Now, City Staff has basically surrendered any idea that recycling cart material will be mostly recyclable by introducing contracts that do not allow for NCNs, do not include diversion penalties and allow the haulers to charge more if the non-recyclable material content is higher.

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The new contracts for recycling haulers will be essentially identical. That is not true of the existing contracts. Material differences in the current contracts include: (a) union labor requirements for CWS that are not imposed on Green Team; (b) a much tougher diversion penalty on CWS than on Green Team; and (c) lower per household rates for CWS than for Green Team, despite the fact that CWS has much higher labor costs and diversion penalties.

Also, CWS' Districts A and C are not identical demographically to Green Team's District B. It is inherently more difficult and costly to operate in Districts A and C. City Staff understands this fact, which is why Garden City is allowed to charge more per household to collect solid waste in Districts A and C than Green Team charges in District B.

1. CWS' Proposed Recycling Collection Rate is Essentially the Same as Green Team's

CWS and the Green Team each made rate proposals based on the City's new requirement that they collect and process the already widely-known highly contaminated material without the ability to issue NCNs, except in cases where hazardous materials are found. The Staff Report grossly misleadingly makes it sound like CWS is proposing higher rates than Green Team when in fact the rates proposed by the two companies are not materially different. See the Rate Comparison chart below.¹

The Staff Report, instead of correctly comparing the rates proposed by the two companies, instead focuses on the 59% rate increase proposed by CWS. CWS' current rate was appropriately based on the conditions of the original program and the new proposed rate is appropriate for the current and future program. Remember, CWS currently gets paid less per household than Green Team to collect a more costly Service Area.

Why didn't Staff tell the Council that the CWS rates are essentially the same as those proposed by Green team? Unfortunately, City Staff is seeking to mislead the City Council and the public as part of an ongoing campaign to drive out the City's only minority-owned hauler. The Rate Comparison chart below shows CWS and Green Team prices are not materially different—even though CWS has much higher costs for union labor wages and benefits and higher operating costs in CWS' service districts. Table below shows comparison in price between CWS and Green Team:

¹Green Team and CWS proposed rates are within 5% in eight out of the twelve categories with Green Team rates higher in three categories and CWS rates higher in nine.

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CWS & GREEN TEAM PROPOSED RATE COMPARISON

CWS		Green Team		Comparison Between CWS & Green Team	
% Non-Program	Rate	% Non-Program	Rate	Rate Difference	% Difference
20-21.99 %	\$13.20	20-21.99 %	\$13.15	\$0.05	0.4%
22-23.99 %	\$13.48	22-23.99 %	\$13.15	\$0.33	2.5%
24-25.99 %	\$13.76	24-25.99 %	\$13.15	\$0.61	4.6%
26-27.99 %	\$14.04	26-27.99 %	\$13.15	\$0.89	6.8%
28-29.99 %	\$14.32	28-29.99 %	\$13.15	\$1.17	8.9%
30-31.99%	\$14.60	30-31.99%	\$13.15	\$1.45	11.0%
*32-33.99%	\$15.02	32-33.99%	\$14.15	\$0.87	6.1%
*34-35.99%	\$15.30	34-35.99%	\$15.15	\$0.15	1.0%
36-37.99%	\$15.58	36-37.99%	\$16.15	\$(0.57)	-3.5%
38-39.99%	\$15.86	38-39.99%	\$16.15	\$(0.29)	-1.8%
40-41.99 %	\$16.14	40-41.99 %	\$16.15	\$(0.01)	-0.1%
>41.99 %	\$16.42	>41.99 %	\$16.15	\$0.27	1.7%

*Per City Study, Non-Program Materials % In CWS Districts

City Staff does not suggest that refusing to extend CWS' franchise and using an RFP process will result in a lower collection rate in Districts A and C. The likelihood is that the City will spend hundreds of thousands of dollars on a "full-employment-act" for consultants that will produce proposals for higher rates. The City will get neither a lower cost nor higher quality "recycling" hauler by putting Districts A and C out to bid. In fact, the City will end up with a hauler who charges more than CWS has proposed or at Green Team's proposed rate or higher because of higher contamination in Districts A & C and, unless the hauler is CWS, will offer inferior service.

2. City Staff is Well Aware that it is IMPOSSIBLE for CWS to Meet the Diversion Methodology in CWS' Recycle Plus Agreement; Indeed, the City Auditor Concluded Green Team Would Have Also Failed to Meet Diversion Under Same Methodology

The diversion methodology in CWS' current Agreement is inherently flawed, as CWS is expected to divert 85% of all incoming materials, but CWS only receives 67-68% of program materials as confirmed by the City's study. How can CWS possibly recycle at least an average of 85% of the material it receives when only 68% of the material is recyclable in the first place. Obviously, CWS cannot do that. Rather than recognize this reality and waive CWS' diversion penalties, City Staff has assessed and CWS has paid millions of dollars in diversion penalties. Whether that is proper under the current contract is a topic for a different day.²

² City Staff's refusal to work with CWS to reduce the non-recyclable material in the recycling carts benefits the City. If this material were properly disposed of in Garden City garbage carts, then the City would pay for hauling and disposal costs. Because it is in the recycling cart, CWS must pay for disposal. The City Staff's refusal to directly address or even allow CWS to address excessive contamination has cost CWS tens of millions of dollars over the last eleven years.

CALIFORNIA WASTE SOLUTIONS, INC.

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The point here is that attacking CWS as a bad recycling contractor because it missed diversion targets is misleading and unfair. *No recycling hauler could meet those targets.* City Staff knows this is true both because the material in Areas A and C is less recyclable than the material in Area B and because CWS has a more difficult diversion methodology than Green Team.. Indeed, the City Auditor concluded that had CWS' formula been applied to Green Team, *Green Team would have failed to meet diversion 5 out of 7 years.* (See Attachment A).

Staff's use of diversion targets as an excuse to discriminate against CWS is further evidence of its bias. CWS should not be barred from being allowed to charge the same rate as Green Team going forward simply because CWS did not meet an impossible diversion standard—one that Green Team also could not meet.

3. City Staff Inexplicably Supports Paying Garden City \$2.88 More Per Household to Collect Solid Waste in Service Districts A & C Than Green Team is Paid to Collect Solid Waste in District B But Opposes Paying CWS the Same Rate to Collect Recyclables.

The Staff Report recommends approving 37% rate difference or \$2.88/household more to Garden City, which is nearly more than \$5.7 million/yr, to provide garbage service in Districts A & C than for Green Team to provide the same service in District B. The Staff Report does not explain why but the answer is simple: *City Staff knows it costs much more to collect in Districts A and C than in District B.* Why else would City Staff support a higher collection rate for Garden City than for Green Team?

Why does Staff claim that a 59% rate increase, which will bring CWS to a rate similar to that charged by Green Team is an unacceptable outrage while simultaneously supporting a 37% rate difference for Garden City that is a much higher rate than that charged by Green Team? The Staff Report does not address this question. Again, CWS is singled out for unfair treatment.

4. CWS Issued More NCNs Than Green Team Due Too Much Higher Levels of Contamination and the Pressure of Staff Diversion Penalty Threats.

Given that NCNs will no longer be used under the new recycling contracts, their historic use might not be very relevant. But it is true that CWS used NCNs much more frequently than Green Team.

This happened for two legitimate and related reasons. First, excessive contamination is much higher in CWS' service districts than in Green Team's, as confirmed by the City's own study. (See Attachment B). So, of course one would expect more NCNs in Districts A and C. In fact, Mayor Reed acknowledged the excessive contamination in a July 25, 2014 letter to Oakland's Mayor Quan. (See Attachment C). For years, CWS asked the City to address the excessive contamination and the City Council directed Staff to implement a pilot program to upsize the small garbage carts and to change contract language regarding diversion, but the Staff never acted.

Second, the City would not give CWS any relief from millions of dollars in diversion penalties. CWS' natural response was to step up the use of lawful NCNs in order to try to encourage City residents to stop putting garbage in their recycling cans. With a City-determined price structure that encourages this behavior and no cooperation from the City, this was CWS' only option.

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CWS did not do anything wrong by issuing NCNs. Under the Recycle Plus Agreement, CWS is permitted to issue NCNs for highly contaminated recycling carts with garbage and non-recyclable materials. CWS submits monthly reports of issued NCNs to the City and, although not required under the Agreement, has provided the City with thousands of instances of photographic evidence to support the NCNs issued. It is perhaps possible to find the occasional NCN that was not done correctly. But the reality is that the vast majority of NCNs were warranted and there are far more instances where CWS collected non-compliant cans without issuing NCNs.

5. Any CWS' Service Issues are Due to City's Poor Implementation of Unlimited Large Item Program

CWS has provided excellent service for 166,000 homes every week for the last eleven years. To the extent there are complaints, they started when the City unilaterally changed the terms of the then pilot program of limited free large item pickup (Junk) to unlimited. CWS was not given the opportunity to collaborate with the City in rolling out the program or given sufficient time to evaluate the impact the astronomical increase in demand for the large item pickup. The City simply did not reach out to CWS. As a result, CWS increased its workforce dedicated to this program alone, including purchasing special trucks, hiring additional drivers and customer service representatives to meet the demand. The resulting City-caused snafu, plus CWS's use of NCNs has left more customers unhappy recently. But over the longer time period, CWS has a happy and satisfied customer base. That will be true under any contract extension as well—particularly as both the NCN and large item collection issues will disappear under the new contract.

Conclusion

CWS should get the same contract extension being offered to the City's non-minority owned haulers:

- CWS's proposed rates are comparable to those proposed by Green Team.
- CWS has a large rate increase because its current rates are much lower than those of Green Team.
- Because CWS has higher costs and more difficult service areas, CWS is actually offering lower cost service overall than Green Team.
- Because Districts A and C have higher rates of contamination and CWS had tougher diversion penalty criteria, of course CWS missed diversion targets and issued more NCNs.

There is no rational reason not to treat CWS the same way as Garden City and Green Team. The Staff Report is a misleading, incorrect effort to lead the City to a bad outcome. Terminating the only minority-owned franchisee for no good reason, while simultaneously extending other comparable franchisees is precisely the type of arbitrary activity that government agencies should avoid. The City Council should reject Staff's biased, discriminatory and factually unsupported recommendation to treat CWS differently than other franchisees. I would be very pleased to answer any questions you may have.

Very Truly Yours,

A handwritten signature in blue ink, appearing to read "David Duong", is written over a printed name and title.

David Duong
CEO & President

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Office of the City Auditor

**Report to the City Council
City of San José**

**CURBSIDE RECYCLING:
THE CITY CAN ENHANCE
ITS SINGLE-FAMILY
RESIDENTIAL RECYCLING
PROGRAM TO IMPROVE
WASTE DIVERSION**

**Report 15-06
May 2015**

Defining and Calculating Diversion Consistently Can Better Help the City Track Its Recycling Progress

As described earlier, diversion rates are meant to measure the percentage of waste that is diverted from landfill disposal. How that is actually calculated in practice for single-family residential households can be difficult because materials may be commingled across districts, or in the case of GreenTeam, with multi-family residential households and with other jurisdictions' recycling. In addition, comparing diversion rates across service districts can be complicated because of different methodologies for calculating diversion across the haulers.

The Current Recycling Contracts Calculate Diversion Rates Differently

The current contracts with the two haulers, renegotiated and agreed to in 2010, include the following methodologies for calculating diversion rates:

- The contract with CWS calculates diversion by dividing the total amount of **recyclables sold** by the total waste stream (garbage plus recycling). Included in the "sold" amount are materials which CWS is able to donate or otherwise dispose of in a manner that allows for it to be recycled and not landfilled.
- The contract with GreenTeam calculates diversion as the amount of **recyclables recovered** through processing at its MRF divided by the total waste stream.²¹

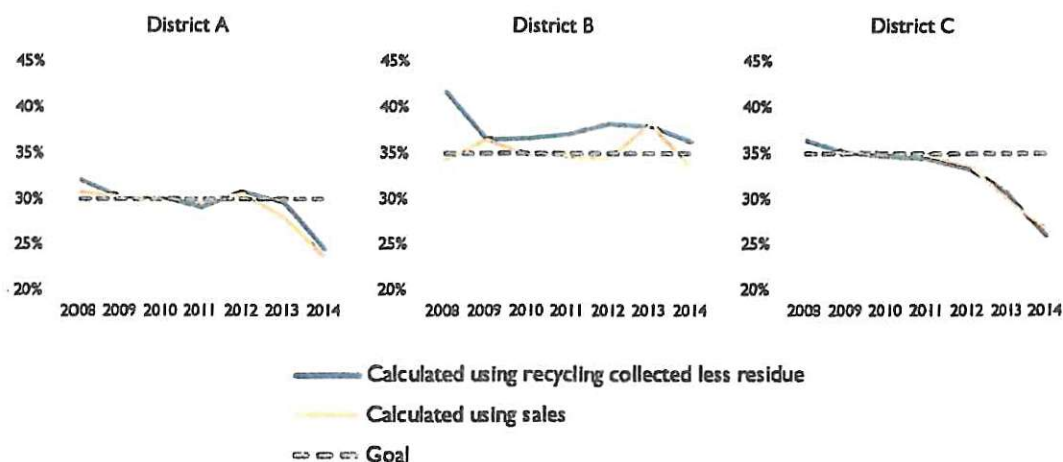
The key distinction between the two is that CWS' diversion is measured by the amount of materials sold and GreenTeam's diversion is measured by the amount of material they are able to recover from the recycling stream, regardless of whether it is sold.²² This distinction is important as not all recovered materials are the same; some are contaminated or of low quality and the hauler may be unable to find a buyer for the materials. Recovered recyclables that are not sold will likely end up being landfilled unless the haulers are able to locate a party to take the materials for recycling (either as a donation or for compensation). From 2008 through 2014, it is estimated that GreenTeam recovered 137,000 tons of single-family residential recyclable materials; we estimate that associated sales (including donated items) totaled 128,000 tons.

²¹ The actual calculation for GreenTeam is (total recycling collected less residue)/(total garbage plus recycling collected) where residue is the amount of material collected in the recycling carts, but which was not able to be processed for sale (e.g., non-recyclable materials placed in the recycling cart, contaminated recyclable materials). In contrast, the formula to calculate CWS' diversion rate is (tons of material recycled, processed, and sold)/(total garbage and recycling collected).

²² The GreenTeam contract addresses sales through the inclusion of a "marketability" standard which requires they demonstrate that at least 85 percent of all material recovered was sold. As with the CWS contract, the agreement allows for recovered materials to be deemed "sold" if they are able to give the materials away or pay someone to recycle them.

Exhibit 12 shows how each district's diversion rate was calculated using the agreed-upon methodologies in their respective contracts, as well as calculated using the methodology included in the other hauler's contract. The variation in methodologies led to a more than 5 percent difference in diversion in district B in one year (applying CWS' diversion calculation methodology to GreenTeam sales estimates for district B implies that district B would not have met diversion goals in five of the seven years of the current contract).

Exhibit 12: Estimated Diversion Rates by District Utilizing Contractual and Alternative Methodologies



Source: Auditor analysis of information provided by the Environmental Services Department from hauler monthly and annual reports.

Notes:

- (a) For purposes of measuring contract compliance, the diversion rate for Districts A and C (CWS) is calculated using sales. GreenTeam's diversion rate for District B is calculated using recycling collected less residue.
- (b) Recyclables recovered may not actually be sold because of contamination or other quality-related issues. Sales in these charts also include materials given away or for which the haulers paid to have taken away. When recovered recyclables are not sold or given away, they will likely be landfilled. Sales may occur in the year following the year sorted. As a result, in some instances the weight sold may be greater than the weight of the residue.
- (c) Current agreements were effective July 1, 2010.

Other Factors and Assumptions Can Affect the Calculated Diversion Rates

As noted earlier, the commingling of materials with other recycling streams at the haulers' MRFs can complicate how diversion is calculated by district. Because of this commingling, ESD must make assumptions about how to best allocate sales or residue across these streams. This can complicate diversion rate calculations.

Curbside Recycling

For example, at the CWS facility, the recycling streams for districts A and C are commingled once they reach the facility. Sales data reported by CWS is then allocated between districts A and C based on the volume of recycling materials incoming into the facility (based on weight tags of the trucks entering the facility). However, based on a 2008 waste characterization study described earlier, the recycling streams may be different, with district A's level of contamination much higher than district C's. If adjusted to account for these different levels of potential contamination, district A's 2014 diversion rate would be lower by about 1.5 percentage points and district C's would be higher by 2 percent.²³

For GreenTeam, district B recyclables are commingled with the City's multi-family residential recycling as well as other jurisdictions' recycling.²⁴ To determine how much recyclable material is recovered, ESD conducts audits of select truckloads of single- and multi-family recycling one or two times each year. The amount of residue is calculated using an historical average of the rate of residue after processing the samples at the GreenTeam MRF. This is then subtracted from recycling collected to determine how much recycling has been recovered and is to be diverted. As a result, the diversion rate is calculated based on not just how the contractor processed material in any given year, but how it has been processing materials over the course of the contract.²⁵

Finally, there may be seasonal or weather-related factors as well. For example, if recyclable materials enter a MRF wet, they may dry and their weight may drop before they are sold. This weight loss could be as much as 5 percent.

Recommendation #3: To better track progress in single-family curbside recycling and inform the development of performance targets, the Environmental Services Department should define a standard diversion calculation and apply it consistently across all garbage and recycling districts in future recycling contracts.

²³ The difference results from allocating sales by each districts' proportion of "clean" recyclable materials collected rather than total materials collected. The amount of "clean" materials collected was calculated as the amount of materials collected less the percent of non-recyclable materials found in each district's recycling stream in the 2008 Waste Characterization study.

²⁴ Prior to April 2014, GreenTeam operated its own MRF. Beginning in April 2014, it began utilizing a MRF owned and operated by GreenWaste Recovery, Inc.

²⁵ It should be noted that if the 2014 diversion calculation was solely based on the results of the 2014 audits, the calculated diversion rate would likely have been higher than reported.



City of San Jose

Single Family Recyclables Characterization Study

2015 Report



Table 6. Detailed Composition, 2015 San Jose District A Incoming Single Family Residential Recycling

Material	Estimated Percent	+ / -	Estimated Tons	Material	Estimated Percent	+ / -	Estimated Tons
Recyclable Paper	38.3%		16,532	Non-Recyclable Materials	28.3%		12,188
Clean Newspaper	5.5%	1.3%	2,357	Pizza Boxes	0.9%	0.2%	385
Clean OCC	10.8%	2.9%	4,668	Contaminated Newspaper	1.5%	0.8%	643
Clean Mixed Paper	21.6%	2.8%	9,313	Contaminated OCC	3.8%	1.3%	1,634
Clean Aseptic and Polycoated Packaging	0.4%	0.1%	193	Contaminated Mixed Paper	6.1%	2.0%	2,619
				Contaminated Aseptic and Polycoated Packaging	0.1%	0.1%	26
Recyclable Plastic	13.7%		5,911	Remainder/Composite Paper	1.4%	0.3%	609
#1 PET Bottles and Containers	2.9%	0.6%	1,252	Remainder/Composite Plastic	2.3%	1.1%	977
#2 HDPE Bottles and Containers	3.0%	0.6%	1,311	Remainder/Composite Metal	0.9%	0.5%	371
#3-#7 Bottles and Containers	1.0%	0.2%	435	Remainder Composite Glass	2.0%	1.8%	861
Plastic Bags and Other Film	3.2%	0.7%	1,352	Medical Waste	0.0%	0.0%	0
Polystyrene	0.5%	0.1%	237	Sharps	0.0%	0.0%	0
Durable Plastic Items	3.1%	1.0%	1,324	Chemicals	0.0%	0.0%	0
				Personal Hygiene Products	1.0%	0.6%	446
Recyclable Metal	5.7%		2,477	TV and CRT Monitors	0.0%	0.0%	0
Aluminum Beverage Cans	0.4%	0.1%	153	Electronics	0.4%	0.5%	189
Aluminum Foil	0.2%	0.1%	75	Automotive Batteries	0.0%	0.0%	0
Steel (Tin) Cans	2.2%	1.0%	965	Lithium Ion Batteries	0.0%	0.0%	0
Other Scrap Metal	3.0%	1.4%	1,284	Alkaline Batteries	0.1%	0.1%	26
				Ni-Cad Batteries	0.0%	0.0%	0
Recyclable Glass	4.7%		2,039	Tanks	0.0%	0.0%	0
Recyclable Glass	4.7%	1.8%	2,039	Tires	0.0%	0.0%	0
				Oil Filters	0.0%	0.0%	5
Compostable Organics	5.4%		2,350	Motor Oil	0.0%	0.0%	0
Food Waste	3.5%	1.5%	1,497	Wood	1.0%	0.4%	443
Yard Waste	0.5%	0.7%	233	Mercury Lamps	0.0%	0.0%	5
Compostable Paper	1.4%	0.5%	621	Other Universal Waste	0.0%	0.0%	17
				Other Materials	6.8%	3.2%	2,931
Recyclable Textiles	3.8%		1,647	Totals	100.0%		43,126
Bagged Textiles	0.2%	0.1%	80	Sample Count	22		
Loose Textiles	3.6%	1.6%	1,548				

Confidence Intervals calculated at the 95% confidence level. Percentages for material types may not total 100% due to rounding.

District B Incoming Single Family Residential Recycling

The results in this section are based on all 23 single family residential recyclables samples collected from District B during the 2015 study. For a comparison of 2008 and 2015 study year results for District B incoming single family residential recycling, reference the Comparison between the 2008 and 2015 Studies section of this report.

As shown in Figure 4, approximately 47 percent of the District B Incoming single family residential recycling stream is Recyclable Paper. About 11 percent is Recyclable Plastic, and smaller amounts are Recyclable Glass (7.6%), Recyclable Metal (3.8%), and Recyclable Textiles (3.8%). When combined, these recyclable Recoverability Groups account for about 73 percent of the materials in this stream. By contrast, about 22 percent of the stream is Non-Recyclable (Landfilled), and about 5 percent is Compostable Organics (Landfilled); together, they account for almost 27 percent of the stream.

For more information about the specific material types that make up each of these recoverability groups, refer to Table 8.

The five most prevalent materials in this substream can be found in Table 9. As shown, *clean mixed paper* (21.4%), *clean OCC* (15.7%), and *contaminated mixed paper* (7.7%) are the three most prevalent material types; together, they represent about 45 percent of the overall substream.

Table 9. Five Most Prevalent Material Types, District C Incoming Single Family Residential Recycling

Material Type	Estimated Percent	Cumulative Percent	Estimated Tons
Clean Mixed Paper	21.4%	21.4%	6,628
Clean OCC	15.7%	37.2%	4,866
Contaminated Mixed Paper	7.7%	44.9%	2,385
Clean Newspaper	5.8%	50.7%	1,802
Recyclable Glass	5.2%	56.0%	1,619
Subtotal	56.0%		17,301
All Other Materials	44.0%		13,620
Total	100.0%		30,921

The detailed composition of the 2015 San Jose District C Incoming Single Family Residential Recycling substream is shown in Table 10. The material types are divided by Recoverability Group.

Table 10. Detailed Composition, District C Incoming Single Family Residential Recycling

Material	Estimated Percent	+/-	Estimated Tons	Material	Estimated Percent	+/-	Estimated Tons
Recyclable Paper	43.7%		13,502	Non-Recyclable Materials	28.2%		8,910
Clean Newspaper	5.8%	1.6%	1,802	Pizza Boxes	0.9%	0.3%	291
Clean OCC	15.7%	3.5%	4,866	Contaminated Newspaper	1.6%	1.3%	497
Clean Mixed Paper	21.4%	3.3%	6,628	Contaminated OCC	3.5%	2.1%	1,094
Clean Aseptic and Polycoated Packaging	0.7%	0.2%	205	Contaminated Mixed Paper	7.7%	2.8%	2,385
Recyclable Plastic	11.0%		3,397	Contaminated Aseptic and Polycoated Packaging	0.1%	0.1%	28
#1 PET Bottles and Containers	3.6%	0.6%	1,122	Remainder/Composite Paper	1.5%	0.6%	464
#2 HDPE Bottles and Containers	2.5%	0.5%	765	Remainder/Composite Plastic	1.8%	0.5%	569
#3-#7 Bottles and Containers	0.9%	0.2%	272	Remainder/Composite Metal	1.6%	1.1%	505
Plastic Bags and Other Film	1.9%	0.3%	596	Remainder Composite Glass	2.4%	1.7%	742
Polystyrene	0.5%	0.3%	148	Medical Waste	0.0%	0.1%	10
Durable Plastic Items	1.6%	0.6%	494	Sharps	0.0%	0.0%	0
Recyclable Metal	3.4%		1,036	Chemicals	0.0%	0.0%	4
Aluminum Beverage Cans	0.4%	0.1%	109	Personal Hygiene Products	0.9%	1.2%	293
Aluminum Foil	0.3%	0.1%	78	TV and CRT Monitors	0.0%	0.0%	0
Steel (Tin) Cans	1.2%	0.3%	371	Electronics	0.4%	0.6%	135
Other Scrap Metal	1.5%	0.7%	479	Automotive Batteries	0.0%	0.0%	0
Recyclable Glass	5.2%		1,619	Lithium Ion Batteries	0.0%	0.0%	0
Recyclable Glass	5.2%	1.6%	1,619	Alkaline Batteries	0.0%	0.0%	6
Compostable Organics	9.9%		1,219	Ni-Cad Batteries	0.0%	0.0%	0
Food Waste	2.1%	0.9%	653	Tanks	0.0%	0.0%	0
Yard Waste	1.0%	0.9%	302	Tires	0.0%	0.0%	0
Compostable Paper	0.9%	0.4%	264	Oil Filters	0.0%	0.0%	6
Recyclable Textiles	4.0%		1,238	Motor Oil	0.0%	0.0%	0
Bagged Textiles	0.3%	0.2%	87	Wood	2.8%	3.1%	873
Loose Textiles	3.7%	1.4%	1,151	Mercury Lamps	0.0%	0.0%	0
				Other Universal Waste	0.0%	0.0%	2
				Other Materials	3.3%	1.4%	1,007
				Totals	100.0%		30,921
				Sample Count	25		

Confidence intervals calculated at the 90% confidence level. Percentages for material types may not total 100% due to rounding.

The five most prevalent materials in this substream can be found in Table 7. As shown, *clean mixed paper* (26.0%), *clean OCC* (12.4%), and *clean newspaper* (8.2%) are the three most prevalent material types; together, they represent about 47 percent of the overall substream.

Table 7. Five Most Prevalent Material Types, 2015 San Jose District B Incoming Single Family Residential Recycling

Material Type	Estimated Percent	Cumulative Percent	Estimated Tons
Clean Mixed Paper	26.0%	26.0%	5,521
Clean OCC	12.4%	38.5%	2,639
Clean Newspaper	8.2%	46.6%	1,734
Recyclable Glass	7.6%	54.2%	1,605
Other Materials	4.9%	59.1%	1,033
Subtotal	59.1%		12,532
All Other Materials	40.9%		8,678
Total	100.0%		21,211

The detailed composition of the 2015 San Jose District B Incoming Single Family Residential Recycling substream is shown in Table 8. The material types are divided by recoverability group.

Table 8. Detailed Composition, 2015 San Jose District B Incoming Single Family Residential Recycling

Material	Estimated Percent	+/-	Estimated Tons	Material	Estimated Percent	+/-	Estimated Tons
Recyclable Paper	47.0%		9,972	Non-Recyclable Materials	21.7%		4,597
Clean Newspaper	8.2%	2.2%	1,734	Pizza Boxes	0.6%	0.2%	124
Clean OCC	12.4%	2.6%	2,639	Contaminated Newspaper	0.8%	0.4%	170
Clean Mixed Paper	26.0%	3.5%	5,521	Contaminated OCC	2.6%	0.9%	548
Clean Aseptic and Polycoated Packaging	0.4%	0.1%	78	Contaminated Mixed Paper	3.7%	1.3%	777
Recyclable Plastic	10.5%		2,311	Contaminated Aseptic and Polycoated Packaging	0.0%	0.0%	6
#1 PET Bottles and Containers	3.4%	0.4%	727	Remainder/Composite Paper	2.1%	1.1%	453
#2 HDPE Bottles and Containers	2.4%	0.4%	510	Remainder/Composite Plastic	2.6%	0.7%	546
#3-47 Bottles and Containers	1.0%	0.2%	215	Remainder/Composite Metal	0.7%	0.5%	139
Plastic Bags and Other Film	1.9%	0.3%	394	Remainder Composite Glass	1.5%	1.1%	326
Polystyrene	0.5%	0.1%	110	Medical Waste	0.0%	0.0%	0
Durable Plastic Items	1.7%	0.5%	356	Sharps	0.0%	0.0%	0
Recyclable Metal	9.8%		815	Chemicals	0.1%	0.1%	13
Aluminum Beverage Cans	0.5%	0.1%	98	Personal Hygiene Products	1.1%	0.8%	236
Aluminum Foil	0.2%	0.0%	34	TV and CRT Monitors	0.0%	0.0%	0
Steel (Tin) Cans	1.1%	0.5%	231	Electronics	0.4%	0.3%	86
Other Scrap Metal	2.1%	0.9%	452	Automotive Batteries	0.0%	0.0%	0
Recyclable Glass	7.6%		1,605	Lithium Ion Batteries	0.0%	0.0%	0
Recyclable Glass	7.6%	1.6%	1,605	Alkaline Batteries	0.0%	0.2%	2
Compostable Organics	5.2%		1,107	Ni-Cad Batteries	0.0%	0.0%	0
Food Waste	3.6%	1.0%	771	Tanks	0.0%	0.0%	0
Yard Waste	0.5%	0.4%	102	Tires	0.0%	0.0%	0
Compostable Paper	1.1%	0.3%	234	Oil Filters	0.0%	0.0%	0
Recyclable Textiles	3.8%		804	Motor Oil	0.0%	0.0%	0
Bagged Textiles	0.8%	0.8%	160	Wood	0.6%	0.7%	137
Loose Textiles	3.0%	1.2%	644	Mercury Lamps	0.0%	0.0%	2
				Other Universal Waste	0.0%	0.0%	0
				Other Materials	4.9%	2.9%	1,033
				Totals	100.0%		21,211
				Sample Count	23		

Confidence intervals calculated at the 90% confidence level. Percentages for material types may not total 100% due to rounding.

Attachment C



Chuck Reed
MAYOR

July 25, 2014

Mayor Jean Quan
Oakland City Hall
1 Frank H. Ogawa Plaza, 3rd Fl
Oakland, CA 94612

RE: California Waste Solution, Inc. and Oakland's Zero Waste

RFP Dear Mayor Quan,

It has come to my attention that California Waste Solutions (CWS) is a participant in Oakland's Zero Waste RFP process. As mayor of San Jose and before that as a council member, I have been through some tough transitions with solid waste service contractors. San Jose had both smaller local solid waste contractors and very large multi-national companies. We have experienced both smooth and rocky transitions in programs and contractors.

The smoothest transition in solid waste service contractors I have seen was with CWS' start-up of city-wide residential recycling collection service for approximately 170,000 units here in San Jose. CWS executed a well-planned transition. It made substantial upgrades to its processing drivers and mechanics, and rolled out a fleet of more than 50 new collection trucks on new routes seamlessly.

In providing successful services to the City of San Jose, CWS dealt with short city schedules, high residue content in the material it receives. CWS increased public education programs, added equipment and enhanced processes. In 2013 CWS did not achieve its diversion incentive goal for a number of factors outside its control. The City is working internally with staff and CWS to solve the problem of excessive contamination of the recycling stream through possible program and contract modifications.

CWS is a locally-owned company of which Oakland can be proud. Its president and founder, David Duong, lives in Oakland and he started his first company there as a refugee in the 1980s.

I know, from our experience here in San Jose, that a small, local company, with roots in the community like CWS, can succeed in a big city with hundreds of thousands of customers. In April, 2010, as a result of excellent service to the rate payers and the City of San Jose, we unanimously voted to extend CWS' agreement for another eight years.

I offer my strong recommendation for California Waste Solutions, Inc.

Sincerely,

Chuck Reed

Chuck Reed, Mayor



RFP FOR PROCESSING SERVICES

recycles materials from commercial businesses throughout the City of Oakland in a non-franchise, competitive market.



In 2002, CWS expanded operations by constructing and operating a modern single-stream recycling facility and transfer station to process and market single-stream materials from 160,000 City of San Jose single-family residences as a subcontractor to Norcal Waste Systems. In 2006, the City of San Jose awarded CWS the franchise both collection and processing recyclables from these homes. Award also included: used motor oil, oil filters and "large items" collection and recycling in the CWS franchise.

1.C Service Initiation and Transition Excellence

Thirty days after CWS began providing both the recyclables collection and recycling processing service in San Jose, the San Jose City Council awarded CWS for its leadership in executing the smoothest transition for solid waste services that the City of San Jose and its citizens had ever experienced during the 14-year history of the City's recycle Plus Program.



Since 2002, CWS has increased the solid waste diversion and recycling by the City of San Jose to levels never achieved by preceding companies. In June 2010, the City of San Jose exercised its option to continue receiving franchise service from CWS and extended CWS's service to the year 2021.

CWS operates a fleet of approximately 80 vehicles which includes 10 walking floor tractor-trailer rigs and collection trucks that feature the emission reducing Cummins ISM engine system fueled by safe and available Ultra Low Sulfur Diesel (ULSD) that results in a 90 percent reduction in particulate matter (PM) and NO_x. CWS's innovative fleet is

capable of operating on B-20 (20 percent bio-diesel fuel), and CWS is considering expansion of its fleet to become fueled with compressed natural gas (CNG). To complement its high efficiency collection fleet, CWS has committed to using hybrid technology in supervisor and light vehicle operations.

As a recycling company, CWS has always derived significant revenues from commodity sales. Because of the uncertainty of markets and the company's reliance on those uncertain returns, the company's principals have committed to work with all markets - but especially emerging foreign markets - to ensure that while the rest of the industry may be experiencing extreme fluctuations in price and demand, CWS can always market materials.



CWS Enhanced Diversion Plan for Excessively Contaminated San Jose Recycle Plus Residential Single-stream Material

Approximately Forty percent (40%) of the City of San Jose Recycle Plus residential single-stream material collected and processed by CWS is contaminated material (Non-Recyclable Material and Non-Program Material). Forty percent (40%) contamination is an excessive level of contamination for a single-stream facility.

Ideally, City Staff would have already been implementing measures to address this excessive front-end contamination by use of larger garbage carts, implementation of City outreach and education programs and City enforcement of Recycle Plus program guidelines. Again, ideally, the City would undertake a proactive approach to meeting its obligations under the Recycle Plus program at the same time that CWS responds to government-required program changes with proposed new Timothy MRF equipment and processing methods to address the excessively contaminated material we receive.

CWS was pleased that on January 12 the City Council resolution led City ESD to embrace reducing the excessive contamination of its Recycle Plus residential single-stream recycling program by working with CWS to enact a Large Garbage Pilot program in focused areas, by improving outreach, and by continuing to study a separate residential food scrap recycling program. CWS continues relying on ESD doing that work in collaboration with CWS's expanding processing activities.

At the January 12 City Council meeting City Staff changed the mission of the Recycle Plus program from improving the behavior of customers who excessively contaminate recyclable material carts to focusing on contractors' activity in processing and diverting excessively contaminated recyclable materials from the recycling stream. In reply, CWS proposes taking the following supplemental steps as part of the government-required program to increase diversion and attempt to meet the RRM diversion incentive goals in the Recycle Plus contract. CWS's supplemental steps, in collaboration with ESD appropriately addressing the matter of excessive contamination, will increase diversion the material CWS receives during 2016.

Additionally, CWS remains willing to make further equipment upgrades to the Timothy facility that broaden our handling and increase our diversion of the Non-program and Non-Recyclable Materials (defined by the Cascadia Consulting Group) that residents place into their recycling carts. Although residents are prohibited from placing those materials in the recycling stream under the terms of the Recycle Plus program, CWS has and will continue to collect and process them, and divert many of them as possible. CWS continues supporting source-separated recycling programs, such as prescribed in the City Recycle Plus single-stream program, because they provide an important supply of post-consumer recyclable materials to secondary markets and important fundamental appreciation for source-reduction and recycling practices that our environmental communities and local governments successfully established for many years.

CWS's proposes the following plan to increase diversion from the excessively contaminated City residential Recycle Plus single-stream material during 2016:

- 1) CWS will install two drum feeders that will open bags and liberate the contents of bags into the processing system. Residents routinely fill their recycling containers with bags containing garbage, organic and other materials that are not included in the Recycle Plus the program. If CWS is lucky, some bags contain some recyclable program materials. Opening these bags enables the recovery of in-bag materials such as organic materials, fiber, glass, metal and plastic containers. CWS intends to perform this equipment installation in August 2016. Film plastic and other liberated recyclable and non-recyclable material can be recovered by our processing system and then marketed. Recovered non-program and non-recyclable material may continue to be disposed of if there is no economically reasonable alternative, or may be marketed or may become available to Green Waste Recovery (GWR) or another contractor as part of the backend processing plan that City ESD proposed to the City Council. Material marketed may be sold as a finished product by CWS or its contractors, which may include GWR.
- 2) Liberating the program material, the non-program recyclable material and garbage within the non-program bags provides CWS the opportunity to recover and divert additional material. The contents of the non-program bags will be evenly spread on the processing system and provide sorters and equipment better access to all materials. As City staff and the City's auditor have observed while at the CWS processing facility, a lot of the material that is processed is covered by bags, other non-program materials (including garbage) that was to be excluded from recycling carts under the terms of the Recycle Plus program. The government required change to our recycling operations to accommodate the excessively contaminated, non-program materials will allow for a better presentation of both program and non-program materials which will lead to increased diversion and a safer work environment for our employees.
- 3) Liberating the content from bags also enables the recovery of more film plastics. Notwithstanding that film plastic and most bags are non-program materials that are not supposed to be in the recycling carts, separating film plastic from its contents enables better recovery of the film. The recovered film will be counted as diversion by CWS and in City ESD's Residential Recycling Material Diversion calculation (RRM).
- 4) The opportunity to recover the contents of bags is important because within bags are some smaller program materials that will be recovered such as fiber, glass, metal, and plastic containers. Additionally bags also contain non-program/non-recyclable materials such as organic material, electronics, batteries, wood, dirt, concrete that may also be recovered and diverted.
- 5) CWS will resume the successful backend processing procedure that it previously used to achieve increased diversion for the City. Backend processing is the re-processing of single-stream materials that have already been processed at least

once. The material re-processed is called post-processed material, and it diverts organic and other materials.

CWS and San Jose have historically described this reprocessed material as “post processing curbside recyclable materials” (PPCRM). CWS reports to the City the amount of PPCRM we market from our processing system. Historically, the City and CWS treated 100% of this PPCRM as diverted material. However, ESD changed its position by restricting the amount of PPCRM that CWS could count toward achieving its RRM Diversion goal. CWS continues to believe that the new restriction imposed by ESD is unreasonable and inconsistent with the Recycle Plus program and the understanding of the parties at the time the Recycle Plus contract was entered into. The City of San Jose has always enjoyed the full benefit of the diversion CWS achieved, even when CWS was prevented from counting that diversion toward its RRM Diversion goal.

CWS suspended the backend processing of PPCRM, in large part, because San Jose restricted use of the diversion credit CWS could apply to our RRM Diversion to only 10% of material received by our Timothy MRF. A key component of CWS’s plan is eliminating this unfair restriction, and allowing CWS diversion credit for all PPCRM that is reprocessed. This approach will increase diversion credit for City and CWS. This approach was recently proposed by City Staff. We believe eliminating that restriction is fair and reasonable.

Material marketed for backend processing may be handled by any material processor that CWS selects. If CWS performs backend processing of CWS’s San Jose material, it may handle it at CWS’s Timothy facility in San Jose or 10th Street facility in Oakland. Factors affecting where that material is backend processed include: the type of processing to be undertaken, the facility capacity, and facility markets. CWS met with Green Waste Recovery and Garden City Sanitation and all parties welcome expanding their collaborative business for increasing solid waste diversion for the City of San Jose.

CWS looks forward to the City ESD Staff comments on our Pilot Program. CWS welcomes suggestions and questions from the City, as well as a reply from ESD to our written suggestions and questions proposed since January 12. The government required Pilot Program basically changes the Recycle Plus program by largely ignoring program restrictions on materials placed in recycling carts and, instead, focusing on processing non-program materials that would be characterized as excessive contamination under the existing City Recycle Plus residential single-stream recycling program. CWS believes that the dramatic change in the Recycle Plus program directed by the City ESD, together with CWS’s significant investment in new equipment and additional processing, will allow CWS to materially increase diversion.

Attachment D: CWS Agreement Section 6.2.3, Non-Collection of Recyclable Material and Used Oil

6.2.3. Non-Collection of Recyclable Material and Used Oil.

CONTRACTOR shall not be required to collect Recyclable Material if the Service Recipient does not segregate the Recyclable Material from Residential Solid Waste. If Recyclable Material is contaminated through commingling with Residential Solid Waste, CONTRACTOR shall, if practical, separate the Residential Solid Waste from the Recyclable Material. The Recyclable Material shall then be collected and the Residential Solid Waste shall be left in the Recycling Cart along with a Non-Collection Notice explaining why the Residential Solid Waste is not considered a Recyclable Material. However, in the event the Recyclable Material and Residential Solid Waste are commingled to the extent that they cannot easily be separated by CONTRACTOR or the nature of the Residential Solid Waste renders the entire contents of the Recycling Cart contaminated, CONTRACTOR will leave a Non-Collection Notice that contains instructions to the Service Recipient on the proper procedures for setting out Recyclable Material, and how to request collection of Recyclable Material as Residential Solid Waste.

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. 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 Division of Code Enforcement 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.

Attachment E: CWS Letter to ESD dated 4/3/18



April 3, 2018

Jeff Anderson
Interim Deputy Director, Environmental Services Department
200 E. Santa Clara St.
10th Floor Tower
San José, CA 95113

Re: San José Recycle Plus Cost Proposal Form

Dear Jeff,

CWS has submitted the enclosed Recycle Plus Program Cost Proposal form in the format requested by the City solely because the City's form blocks CWS from proposing any changes to collection rates during the 2018-2021 time period. CWS' actual rate proposal is the pricing submitted to the City at City's request on January 18, 2018 and the enhancements submitted on February 4, 2018. A copy of these documents is enclosed herewith for the City's convenient reference.

A rate adjustment is necessary and appropriate now for the enhanced collection services being offered to the City by CWS because, through no fault of CWS, CWS cannot continue to provide current collection services at current rates without continuing to suffer a huge financial loss. Every proposal made by CWS to the City over the past year (and there have been many) described a rate adjustment effective immediately. The City never responded that this approach was unacceptable. Thus, CWS was very surprised and extremely disappointed when the City suddenly announced that negotiations could not include any current rate adjustment.

CWS is proposing a fair and reasonable rate which might finally allow us to service the City and its residents in a manner that is financially viable for CWS. The City is well aware that CWS has been servicing the City's approximately 166,000 single family dwelling units at a great financial loss for years due to the highly contaminated materials that CWS collects and processes on a daily basis. The City's own studies demonstrate that the level of contamination is substantially higher in CWS' service area than elsewhere in the City. The City knows that CWS has the legal right to reject the contents of thousands of Recycling Carts every week because they are impossibly contaminated with Non-Recyclable Materials. To date, CWS has refrained from taking this drastic step. CWS has provided the City with thousands of pictures and other supporting documents showing excessive contamination, but not only was CWS criticized for exercising this contractual right, the City has not worked with CWS to resolve this rampant problem per the contract.

However, if the City refuses to allow a rate adjustment effective immediately as part of the contract extension, CWS may have no other option. To date, this behemoth financial loss to CWS is nearly \$30 Million and climbing. CWS has continued to collect these contaminated Carts because the City has led us for the past year to believe that relief was on the way. To learn that no relief is being offered and to hear the City take the position that neither the City nor its residents have any responsibility for contamination in Recycling Carts is stunning. Who exactly does the City think is responsible for the contamination getting into the Carts if it is not the City and its residents?

CALIFORNIA WASTE SOLUTIONS, INC.

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97.



To further exacerbate the problem of high contamination in the Recycling Carts, China's ban of 24 types of commonly Recyclable Materials is causing additional burdens on CWS that are crushing both financially and operationally. Based on the 2017 data just from the impacts of the China ban alone, CWS' calculation shows a projected loss of almost \$6 Million if CWS is forced to process China-rejected Recyclable Materials. Of course, at this rate, future losses are projected to only increase.

Neither of these current situations is tenable for CWS in continuing to provide the exceptional service to the City and its residents as it has strived to do under less than ideal circumstances and on an uneven playing field. It's also unfair and unreasonable to ask us to continue operating to our financial detriment as we have done for years and wait additional years to receive just compensation for the services.

CWS contracted with the City to collect Recyclable Materials. It agreed to take ownership of Recyclable Materials. It agreed to process Recyclable Materials where Market Specifications indicated they could be processed and marketed—even at a loss. CWS incurs the cost to dispose of the excessive garbage that is routinely put in the Recycling Carts, while the City benefits by not having to pay the landfill disposal fees, receives additional profits from CWS' disposal of the garbage by getting a "dividend" from the landfill for each ton of garbage CWS disposes of and collects hundreds of thousands of dollars in diversion disincentive from CWS year after year. The fundamental problem is that the Recycling Carts quite often don't have Recyclable Materials; they are excessively contaminated with garbage. CWS did not sign up to collect or process those sorts of materials. This fundamental problem is exacerbated by the China ban.

Respectfully, an immediate rate adjustment is both equitable and essential. If the City is unable to recognize that reality and insists that the current contract remain in place without appropriate changes, CWS may well be forced into following the letter of that contract for collecting Recyclable Materials by insisting that the City take charge of the "Recycling" Carts when they contain highly contaminated materials. This is not what CWS wants. But options appear to be limited at the moment.

CWS appreciates and understands that there are inherent risks and unknowns in this industry, as we have navigated our way successfully thus far for decades. However, this is a unique and unchartered ground where both the City and CWS together must address the issue of unacceptable contamination in recycling carts and also prepare for the impact of the China's ban on the Recycle Plus Program. It's our expectation and hope that the City has a genuine interest in negotiating with CWS in good faith for a mutually beneficial outcome, and ultimately, in the best interest of providing ongoing high quality service to the residents of San José. As always, I welcome any feedback and questions you may have to further this process.

Very truly yours,

A handwritten signature in black ink that reads "David Duong". The signature is fluid and cursive, written over the typed name.

David Duong
CEO/President

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