

**SECOND AMENDMENT TO THE AGREEMENT
BETWEEN
THE CITY OF SAN JOSE
AND
GREENWASTE RECOVERY, INC.
FOR SOLID WASTE SERVICES**

This Second Amendment to the Agreement Between the City of San José and GreenWaste Recovery, Inc. for Solid Waste Services is made this _____ day of _____, 2019, by and between the City of San José, a municipal corporation of the State of California ("City"), and GreenWaste Recovery, Inc., a California corporation ("Contractor").

RECITALS

- A. **WHEREAS**, City and Contractor entered into that certain agreement entitled "Agreement Between the City of San José and GreenWaste Recovery, Inc. for Solid Waste Services" ("Agreement") on May 28, 2011 for a term commencing on July 1, 2010 through June 30, 2021; and
- B. **WHEREAS**, City and Contractor entered into that certain First Amendment to the Agreement ("First Amendment") on June 16, 2015 to clarify the compostable processing rate for all single family dwelling solid waste processed in 2015-2016 and to remove the 15-year commitment for solid waste processing; and
- C. **WHEREAS**, City and Contractor executed a Letter of Agreement on January 24, 2018 to set forth the terms and conditions for implementing the GreenWaste Recovery, Inc. Plastics Residue Processing Pilot; and
- D. **WHEREAS**, on January 15, 2019, the City Council authorized a methodology, commonly referred to as a "Modified Living Wage," to implement the City's Living

Wage Policy, Policy Number 3-3, for regional residential solid waste facilities that serve entities other than the CITY; and

- E. **WHEREAS**, in this Second Amendment to the Agreement (“Second Amendment”), the parties desire to amend the First Revised Exhibit 1B and Exhibit 17 and add a new Exhibit 19 to implement the Modified Living Wage;

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which are hereby acknowledged, the parties agree as follows:

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

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

SECTION 2. Sections C, D, and G of First Revised Exhibit 1B to the Agreement (see First Amendment) are amended to read as follows:

C. MULTI-FAMILY DWELLING PER TON RATE FOR COMPOSTABLE PROCESSING⁽⁴⁾

Time Period	> 70% Diversion	< 69.9% Diversion
July 1, 2010 – June 30, 2011	\$ 70.18	\$ 68.90
July 1, 2011 – June 30, 2012	\$ 77.20	\$ 75.80
July 1, 2012 – June 30, 2013	\$ 77.20 ⁽⁵⁾	\$ 75.80 ⁽⁵⁾

(4) Effective July 1, 2019, \$12.13 per ton increment will be added to the rate paid to CONTRACTOR.

This increment will be adjusted by the modified RRI methodology in Exhibit 19.

(5) These rates shall be adjusted by the RRI index in Exhibit 2.

D. SINGLE-FAMILY DWELLING RATES FOR COMPOSTABLE PROCESSING ⁽⁶⁾

Tons Per Day	> 70% Diversion	< 69.9% Diversion
100 to 150 ⁽⁷⁾	\$ 75.00	\$ 73.70
151 to 580	\$ 79.90	\$ 78.52

(6) Effective July 1, 2019, \$12.13 per ton increment will be added to the rate paid to CONTRACTOR.

This increment will be adjusted by the modified RRI methodology in Exhibit 19.

- (7) This rate, as adjusted per the terms of the Agreement, shall apply to all SFD tons processed beginning July 1, 2015 through June 30, 2016.

G. CITY FACILITY PER TON RATE FOR COMPOSTABLE PROCESSING ⁽⁸⁾

	> 70% Diversion	< 69.9% Diversion
City Facility and Third Party Manager Solid Waste	\$ 67.43	\$ 66.08
Source Separated Compostable Waste	\$ 61.86	n/a

- (8) Effective July 1, 2019, \$12.13 per ton increment will be added to the rate paid to CONTRACTOR. This increment will be adjusted by the modified RRI methodology in Exhibit 19.

SECTION 3. Exhibit 17 to the Agreement is amended to read as set forth in Revised Exhibit 17, "WAGE POLICY," which is attached to and incorporated into this Second Amendment.

SECTION 4. A new Exhibit 19, "MODIFIED REFUSE RATE INDEX," attached hereto, is added to the Agreement and incorporated into this Second Amendment.

SECTION 5. This Second Amendment is effective on July 1, 2019.

SECTION 6. All terms, conditions, and exhibits of the amended Agreement not specifically modified by this Second Amendment will remain in full force and effect throughout the term of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Second Amendment on the date written below each party's signature.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

MARK J. VANNI
Deputy City Attorney

By _____

"CONTRACTOR"

GREENWASTE RECOVERY, INC., a California corporation

By _____

Frank Weigel
Chief Operating Officer

Date: _____

REVISED EXHIBIT 17

WAGE POLICY

CONTRACTOR and any of CONTRACTOR's subcontractors subject to this Exhibit shall be obligated to pay not less than the wage as set forth in this Exhibit.

I. PREVAILING WAGE

California Labor Code and/or Resolutions of the City of San José require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations.

Prevailing Wages established by the California Department of Industrial Relations shall be the General Prevailing Wage Determination made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement.

Prevailing Wages established by the City of San José shall mean the wages paid under a collective bargaining agreement between CONTRACTOR and a recognized union representing workers who perform services pursuant to this Agreement; or, if there is no collective bargaining agreement, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San José's Office of Equality Assurance.

The City Prevailing Wage will be subject to annual adjustment on the first day of each July during the term of this Agreement. Adjustments will be based on the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José).

II. LIVING WAGE

CONTRACTOR shall pay individuals not less than the hourly wage rate set forth herein if the individual is: (1) performing work under this Agreement on CONTRACTOR's premises or at an Alternate Facility approved in accordance with Section 9.11 of this Agreement, and (2) are in the following job classifications: (a) Material Recovery Facility (MRF) worker, (b) customer service representatives (CSRs), and (c) mechanics (collectively referred to as "Covered Workers").

For purposes of this Agreement, the hourly living wage rate paid to Covered Workers will be referred to as the “Modified Living Wage” or the “MLW.” CONTRACTOR agrees that Covered Workers will be paid at least the following hourly Modified Living Wage rate:

- If the Covered Worker receives health benefits, as determined by the City’s Office of Equality Assurance, the hourly Modified Living Wage rate is the sum of the following 2 amounts:
 1. 45.71% of the fiscal year 2019 living wage rate established by the City’s Office of Equality Assurance for employees receiving health benefits, plus
 2. 54.29% of the fiscal year 2019 minimum wage rate established by the City’s Office of Equality Assurance.
- If the Covered Worker does not receive health benefits, as determined by the City’s Office of Equality Assurance, the hourly Modified Living Wage rate is the sum of the following 2 amounts:
 1. 45.71% of the fiscal year 2019 living wage rate established by the City’s Office of Equality Assurance for employees who do **not** receive health benefits, plus
 2. 54.29% of the fiscal year 2019 minimum wage rate established by the City’s Office of Equality assurance.

On July 1, 2020, the MLW will automatically adjust to reflect the changes in the living wage and minimum wage rates made by the City’s Office of Equality Assurance for Fiscal Year 2020-2021.

Notwithstanding the foregoing, the increase in the **total** MLW rate for Fiscal Year 2020-2021 is capped at 5% (see example below).

Example of MLW rate change with 5% cap (numbers provided for illustrative purposes)

	2019 - 2020			2020 - 2021				
	Actual Prevailing & Minimum Wages	Calculated MLW	Effective MLW	Actual Prevailing & Minimum Wages	Calculated MLW	Calculated Year Over Year Increase	Eligible Year Over Year Increase	Effective MLW
Living Wage	\$ 22.68	\$ 10.37		\$ 25.42	\$ 11.62			
Minumum Wage	\$ 15.00	\$ 8.14		\$ 15.00	\$ 8.14	6.77%	5.00%	
		\$ 18.51	\$ 18.51		\$ 19.76			\$ 19.43

As long as CONTRACTOR is paying the then-current effective MLW rate for Covered Workers, CONTRACTOR shall be in compliance even if CONTRACTOR's then-current MLW wage rate is lower than the MLW rate calculated as described in this Section if the calculated MLW rate for Fiscal Year 2020-2021 exceeds 5% and the effective MLW rate is in turn capped then at 5%.

If tonnages of San José Material processed by CONTRACTOR change by more than 20% or if the CITY later contracts with a new processing facility for the Recycle Plus Program that is not providing services to the City as of the Effective Date of the Agreement, CITY and CONTRACTOR will negotiate in good faith to modify the methodology for calculating the MLW rate and associated compensation paid to CONTRACTOR for implementing the MLW. Under no circumstances, however, will a renegotiated methodology result in the lowering of the MLW rate established in this Agreement or result in the reduction of any Covered Worker's wage. Any modification to the MLW methodology will require City Council approval.

III. DOCUMENTATION OF COMPLIANCE

The following requirements will be referred to collectively as the "Documentation Provision."

The Office of Equality Assurance will monitor the payment of wages by CONTRACTOR. CONTRACTOR shall file a Payroll Summary Report and any supporting documentation, with the Office of Equality Assurance at the beginning of each Fiscal Year. CONTRACTOR shall also submit any additional information, such as certified payroll records, as requested by the Office of Equality Assurance. All documents must be delivered to:

City of San José
Office of Equality Assurance
200 East Santa Clara Street
Fifth Floor
San José, CA 95113
Phone: 408.535-8430

IV. EMPLOYMENT OF DISPLACED WORKERS

Upon termination of this Agreement, CONTRACTOR shall fully cooperate with all CITY requests regarding contacts with CONTRACTOR's employees to enable a transition in the workforce to a new service provider.

V. LABOR PEACE

CITY's Office of Equality Assurance has determined that the level of vulnerability of the Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of CITY. Therefore, CONTRACTOR shall at all times comply with the provisions of CONTRACTOR's Employee and Labor Relations Plan set forth in Exhibit 7 ("Plans") to this Agreement.

VI. ENFORCEMENT

1. General

CONTRACTOR acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement and limitations thereto, it is required to pay, individuals in the listed job classifications that are performing work under this Agreement not less than the amounts set forth in Sections I (Prevailing Wage) and II (Living Wage) (collectively "Wage Provision") and to comply with the Documentation Provision.

CONTRACTOR further acknowledges that CITY has determined that the Wage Provision promotes each of the following (collectively "Goals"):

- a) It protects job opportunities and stimulates CITY's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b) It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to city by fostering high turnover and instability in the workplace.
- c) Paying individuals a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d) It increases competition by promoting a more level playing field

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among contractors with regard to the wages paid to workers.

2. REMEDIES FOR CONTRACTOR'S BREACH OF PREVAILING WAGE/LIVING WAGE PROVISIONS

- a) **Suspension or termination:** suspend and/or terminate the Agreement;
- b) **Restitution/Damages:** require CONTRACTOR to pay any amounts underpaid in violation of the required payments and CITY's administrative costs and liquidated damages.
- c) **Debarment:** debar CONTRACTOR in accordance with Chapter 4.10 of the San Jose Municipal Code.
- d) **Withholding of payment:** CONTRACTOR agrees that the Documentation Provision is critical to CITY's ability to monitor CONTRACTOR's compliance with the Wage Provision and to ultimately achieve the Goals. CONTRACTOR further agrees its breach of the Documentation Provision results in the need for additional enforcement action to verify compliance with the Wage Provision. In light of the critical importance of the Documentation Provision, CITY and CONTRACTOR agree that CONTRACTOR's compliance with this provision, as well as the Wage Provision, is an express condition of CITY's obligation to make each payment due to CONTRACTOR pursuant to this Agreement. CITY is not obligated to make any payment due to CONTRACTOR until CONTRACTOR has performed all of its obligations under these provisions. Any payment by CITY despite CONTRACTOR's failure to fully perform its obligations under these provisions shall not be deemed to be a waiver of any other term or condition contained in this Agreement nor a waiver of the right to withhold payment for any subsequent breach of the Wage Provision or the Documentation Provision.
- e) **Liquidated damages for breach of Wage Provision:** CONTRACTOR agrees its breach of the Wage Provision would cause CITY damage by undermining the Goals, and CITY's damage would not be remedied merely by CONTRACTOR's payment of restitution to the workers who were paid a substandard

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wage. CONTRACTOR further agrees that such damage would increase the greater the number of employees not paid the applicable wages and the longer the amount of time over which such wages were not paid. CITY and CONTRACTOR mutually agree that making a precise determination of the amount of CITY's damages as a result of CONTRACTOR's breach of the Wage Provision would be impractical and/or extremely difficult. Therefore, the parties agree that, in the event of such a breach, CONTRACTOR shall pay to CITY as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the amount of wages that should be paid.

VII. AUDIT RIGHTS

All records or documents required to be kept pursuant to this Agreement to verify compliance with the Wage Provisions shall be made available for audit at no cost to CITY, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to CITY for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at CONTRACTOR's address indicated for receipt of notices in this Agreement.

VIII. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS

These provisions shall not be construed to limit an employee's ability to bring any legal action for violation of any legal right.

**WAGE DETERMINATION
FOR CITY CONTRACTED SOLID WASTE SERVICES**

A. Prevailing Wage Rate

EFFECTIVE: July 1, 2010

Classification	Basic Hourly Pay Rate	Health Welfare & Pension	Vacation Minimum (7 Days)	Paid Sick Leave (11 days)	Paid Holidays (12 Days)	Total Hourly Pay*
Garbage Driver	\$27.74	\$8.18	\$.75	\$1.18	\$1.28	\$39.13
Recycle Driver	\$27.74	\$8.18	\$.75	\$1.18	\$1.28	\$39.13
Yard Trimming Claw Driver	\$27.74	\$8.18	\$.75	\$1.18	\$1.28	\$39.13
Yard Trimming Collection Driver	\$27.74	\$8.18	\$.75	\$1.18	\$1.28	\$39.13
Residential Street Sweeper	\$21.33	\$3.00	\$.57	\$.91	\$.99	\$26.80

Breakdown of Benefits		
Paid Vacation Days	After 1 year	7 Days – 56 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	25 Days – 200 Hours
	After 20 years	30 Days – 240 Hours
	After 25 years	35 Days – 280 Hours
	After 30 years	40 Days – 320 Hours
Paid Sick Leave	Eleven (11) paid Sick Days	

Paid Holidays	Twelve (12) paid Holidays
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Determination Notes

*The full amount of the total hourly wage must be paid directly to the worker, UNLESS the CONTRACTOR is making payments to a benefit plan. If the CONTRACTOR is making payments to a benefit plan but the benefits being paid do not add up to the full amount of benefits identified, the CONTRACTOR must pay the difference directly to the worker.

B. Modified Living Wage Rate

EFFECTIVE: July 1, 2019

All Covered Workers shall be paid no less than the following:

MODIFIED LIVING WAGE WITH HEALTH BENEFITS	MODIFIED LIVING WAGE WITHOUT HEALTH BENEFITS
\$18.51 per hour	\$19.08 per hour

Subject to any limitations in Section II of this Exhibit, Modified Living Wage rates will be adjusted each Fiscal Year on July 1 to reflect any changes in the City's Living Wage Rate and the City's Minimum Wage Rate.

C. Hours and Days of Work

(Industrial Welfare Commission Order No. 16-2001)

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) on the seventh (7th) consecutive day of work in a workweek.

EXHIBIT 19

MODIFIED REFUSE RATE INDEX

1. **Modified Annual Adjustment.** The \$12.13 per ton increment rate identified as using a modified RRI in Section C footnote 4, Section D footnote 6, and Section G footnote 8 of the Revised Exhibit 1B, as amended in Section 2 of the Second Amendment, shall be adjusted annually using the following modifications to Refuse Rate Index (RRI) set forth in Exhibit 2 of the Agreement:
 - 1.1 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: CIU2010000000LKA
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.
- 1.2 In addition, for the purposes of the modified annual adjustment:
 - Changes in the indices 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.
2. In addition to the reports and information that CONTRACTOR is required to submit to the CITY related to the RRI Adjustment Process set forth in Article 19, “COMPENSATION”, CONTRACTOR shall submit an annual non-processing operating cost statement in accordance with the modified RRI set forth herein, to the CITY’s satisfaction, by the following timeline:
- Calendar year 2019 and each calendar year thereafter for remainder for term: prior to February 15th of the following calendar year; include with other financial information related to RRI Adjustment Process, as set forth in Article 19, “COMPENSATION.”

END OF EXHIBIT 19