



CITY OF SAN JOSE TERM SHEET FOR RECYCLE PLUS FUTURE CONTRACT

This term sheet is a summary of the proposed terms, as of the date stated in the signature block, between GreenTeam of San Jose ("Contractor") and staff with the City of San José ("City") Environmental Services Department ("ESD") for a future solid waste services agreement that will replace Contractor's current agreement set to expire on June 30, 2021.

ESD will present this document to the San José City Council for consideration at its regularly scheduled meeting on October 16, 2018 (subject to change), with a request for direction from the City Council asking whether to continue negotiations with Contractor in accordance with this proposal. However, this term sheet is not binding on the City, and any modification, approval or acceptance of this term sheet by the City Council is not intended to nor will it form a contract or enforceable agreement with the City. This document only represents Contractor's intention to enter into an agreement with the City under these terms. Any agreement that incorporates all or part of these terms will be subject to further input from the City Council and acceptance by the City Council as required under the San José Municipal Code and City Charter. If properly executed, any future agreement will supersede this term sheet and the existing agreement with Contractor.

A. Agreement Term

The term of an agreement for solid waste services would be expected to begin on July 1, 2019 and end on June 30, 2036.

B. Reduce Per Capita Waste to Landfill

- 1) **Material Recovery Standard:** Contractor's compliance with its diversion requirements will be assessed using a new standard, "Material Recovery Standard", which will replace the "RRM Diversion Standard" in Contractor's current agreement. Waste characterization studies will be conducted between July 1 and September 30 in calendar years 2019 and 2020, and between January and March in subsequent years starting in 2021. The studies will determine by weight the percentage of program material (as defined in Attachment A) present in recycling cart material landfilled (residue). If 20% or more program material, by weight, is present in residue, contractor fails to meet standard for the calendar year.

Any non-program material Contractor sold during the 12-month period prior to the processing study shall be included in calculating the Material Recovery Standard. The residue tons shall be adjusted by a factor of the percentage of non-program material sold in relation to the tons of recycling cart material collected.

Material Recovery Standard Example Calculation
(for illustrative purposes only)

- Of a 100 ton residue sample, 15 tons were program material.
- In the 12-month period prior to the residue sample, Contractor reported 100,000 tons of recycling cart material collected and 1,000 non-program material tons sold.
- Non-program materials represent 1% of tons collected (1,000 / 100,000), making the adjustment factor 1.01.
- Material Recovery Standard calculation:

$$\frac{15 \text{ program material tons in residue sample}}{100 \text{ residue tons} \times 1.01 \text{ adjustment factor for non-program materials sold}} = 14.85\%$$

If Contractor fails to meet the Material Recovery Standard for a particular calendar year, beginning calendar year 2019, City shall make a deduction from payments due to Contractor on or before March 1st following the end of the calendar year in which Contractor did not meet the Material Recovery Standard.

- Year One: -\$0.30/unit/month
- Second Consecutive Year: -\$0.60/unit/month
- Third and Subsequent Consecutive Year: -\$0.90/unit/month

Effective Date: July 1, 2019

- 2) **SB 1383 Compliance:** Contractor is aware that SB 1383, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants, became law in 2016. Contractor will agree that passage of this law and the regulations required under it will not represent a Change in Law. The new agreement between the City and Contractor will provide for the program support and reporting required by SB 1383 and its regulations. If Contractor is required to provide significant changes to services in response to SB 1383 (e.g., updating container colors citywide), City and Contractor will meet to determine appropriate scope and compensation for such services. **Effective Date: July 1, 2019**

- 3) **Recycling Markets:** Contractor and City will establish a "safety net" for recycling commodity markets in the agreement. The commodity market for recyclables experiences cyclical changes and fluctuations in market price due to supply and demand, periodic strikes, transportation issues, and other reasonably foreseeable events. This "safety net" would not be intended to address market price fluctuations or other changes due to these events. If such events occur, Contractor will be solely responsible for mitigating any potential economic impacts and will not look to the City for compensation adjustments. However, if recyclable commodity markets become not reasonably available (if the average commodity price drops by an agreed-upon percent under the previous five-year average, according to third-party recycling market indices), or there are other unforeseeable events related to recycling markets that cause ongoing economic impact, Contractor and City will meet to discuss a reasonable modification to

the provisions of the new Material Recovery Standard and/or other adjustments to Contractor's recycling obligations under the agreement with the City. **Effective Date: July 1, 2019**

C. Ease of Use

- 4) **Customer Satisfaction:** Overall customer satisfaction is a high priority for Contractor now and in the future. The current agreement does not have an overall measurement of customer satisfaction. In conjunction with ESD, Contractor will develop a process for measuring overall customer satisfaction, and agrees to minimum performance standards and associated liquidated damages, incorporating those previously negotiated and included in Attachment B. Other customer service enhancements will include:
- a. **Performance standards:** To ensure an acceptable customer service experience for residents, Contractor, in conjunction with ESD, will develop performance standards to address contractor's call center and quality of collection. Contractor will also develop mechanisms, to ensure Contractor maintains minimal hold times, trained customer service representatives, customer self-service options, completion of collection services on the scheduled day without leaving behind toppled containers, and liquidated damages that are payable to the City for these topics. **Effective Date: July 1, 2019**
 - b. **Online customer access:** For no additional cost to the City, Contractor will implement online self-service features, such as access to service history, frequently asked questions (FAQ's), live chats, and email or web-based forms for customers to report services issues, make service requests, provide changes of address, or arrange for special pickup appointments; **Effective Date: July 1, 2021**
 - c. **My SanJose App:** Contractor will interface with the *MySanJose* App, with City supporting the front end, so that a customer can easily connect with hauler for customer service related questions and requests (including missed collections and replacement containers). City to fund appropriate app integration costs. **Effective Date: July 1, 2021**
- 5) **Outreach:** The City will be responsible for outreach activities associated with the Recycle Plus program. By October 1, 2019, and pending final City Council approval of related budget actions, the City intends to invest significant resources to these outreach activities. City will develop meaningful performance metrics, with input from all Recycle Plus contractors, to ensure the effectiveness of these outreach efforts. The Public Education and Outreach Plan (PEOP) and the Articles and Exhibits associated with the PEOP in the current agreement will not be included in any future agreement. This includes:

Article 11 – Additional Services

- **11.1 Public Education and Outreach Program (PEOP)**
- **11.2 Annual Collection Service Notice (ACSN)**
- **11.3 Collection Calendar**

Exhibit 10 – Data and Reporting

- IV Data
 - o B. Quarterly Reports (IV Community Outreach Summary)
 - o C. Annual Reports (IV Community Outreach Summary)

Exhibit 11 – Outreach

- 1. Annual Outreach Plan (SFD & MFD)
- 2. Technical Assistance Program (MFD only)
- 3. Quarterly Coordination Meetings (SFD & MFD)
- 4. Additional Outreach Materials (SFD & MFD)

Effective Date: July 1, 2019

- 6) **Use of Non-Collection Notices:** Contractor will limit the use of non-collection notices (NCNs) to instances where containers contain hazardous waste (hazardous waste includes “Exempt Waste” and “Hazardous Waste” as defined in the current agreement), or, for garbage collection, overflows as described in current agreement.

For all NCNs issued, Contractor will provide the City with photo documentation and related information (address, reason for NCN) within twenty-four hours of issuing the NCN. Failure to properly document an NCN will result in Liquidated Damages of \$100 per incident payable to the City. Distribution and parameters of Courtesy Notices will continue under the terms of Contractor’s current agreement.

Effective Date: July 1, 2019

D. Competitive Rates

- 7) **Compensation:** New compensation rates are included in Attachment C: Contractor Pricing and will be effective July 1, 2021. Applicable rates will be based on the percentage of non-program material (as defined in Attachment A) found in recycling carts, per studies conducted once every two years. The first study will be conducted July 1 through September 30, 2019. Starting 2021 and subsequent years, the studies will be conducted every two years during the period of January 1 through March 30.

- 8) **Annual Compensation Adjustment Methodology:** The Refuse Rate Index (RRI) will be updated to indices published by the Bureau of Labor Statistics (BLS) that are specific to the San Francisco Bay Area. The following local indices will replace the current national indices:

a. Labor

Employment Cost Index (NAICS)

Local: Series ID: CIU20100000000LKA

Not seasonally adjusted

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

Ownership: Private Industry workers
Component: Total compensation
Occupation: All workers
Industry: All workers
Subcategory: All workers
Area: San Jose-San Francisco-Oakland, CA CSA
Periodicity: 12-month percent change

b. Other Operating Expenses

CPI-All Urban Consumers (Current Series)
Local: Series ID: CUURS49BSA0
Not Seasonally Adjusted
Series Title: All items in San Francisco-Oakland-Hayward, CA, all urban consumers, not seasonally adjusted
Area: San Francisco-Oakland-Hayward, CA
Item: All items

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

In addition:

- RRI index changes will be calculated using annual calendar year averages, not December to December values, as in the current agreement.
- 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.
- All labor-related costs (including wages, benefits, payroll taxes, workers compensation, pension, and health and welfare costs) included in Labor component.

Effective Date: July 1, 2021

- 9) Multi-Family Compensation: Contractor payment methodology would be updated to accommodate new performance standard consistent with the concept developed during negotiations.

Effective Date: July 1, 2019

E. Other Terms and Conditions

- 10) Green Fleet: For next fleet replacement, scheduled to occur after July 1, 2021, all of Contractor's fleet serving the City will be fueled by Compressed Natural Gas (CNG).
- 11) Large Item ("Junk Pickup") services will continue until June 30, 2021 at the rates in the current agreement with Contractor. However, the City will have the sole option to terminate Junk Pickup service upon 6 months' notice to Contractor.
- 12) A Living Wage requirement, as modified by the City Council ("Modified Living Wage" or "MLW"), will be incorporated into the Agreement. ESD's recommended MLW methodology will be presented to the City

Council at its regularly scheduled meeting on September 25, 2018 (subject to change). ESD is recommending that the City Council modify the City's Living Wage Requirement to combine 45.71% of the San Jose Living Wage rate (currently \$20.57/hour with benefits) and 54.29% of the San José Minimum Wage Rate (currently \$13.50/hour). The City's Living Wage Rate is adjusted every fiscal year by the City. City's Minimum Wage will increase to \$15.00/hour on January 1, 2019. Annual adjustments to MLW wage rate (paid to workers) to be 0-5%, with no carryover (see example below). With this adjustment methodology, it is possible the MLW rate in any given year may be less than a rate calculated using then current Living Wage and Minimum Wage. If the City Council approves of this methodology, Contractor and City will include it in the future agreement. If the City later contracts with a new Recycle Plus facility or SJ GWR tonnages change by more than 20%, the City and Contractor will negotiate in good faith to modify the MLW methodology. Any MLW rate from a modified methodology will not be lower than the MLW rate at the time of establishing the modified methodology. Contractor will not be able to reduce any employee's wage as a result of any modification to the MLW methodology. Any such modification to the MLW methodology and amendment to the agreement will require City Council approval.

Example of MLW rate change (numbers provided for illustrative purposes)

MLW Rate Effective 7/1/19	Calculated % Change for 7/1/20 Rate	% Change Applied to 7/1/20 Rate	MLW Rate Effective 7/1/20	Calculated % Change for 7/1/21 Rate	% Change Applied to 7/1/21 Rate	MLW Rate Effective 7/1/21
\$17.26	7%	5%	\$18.12	2.5%	2.5%	\$18.57

- 13) If requested by the City, Contractor will take over other Recycle Plus services from other providers as requested by City. If such a request occurs, City and Contractor will meet to determine appropriate compensation for such services.
- 14) All other terms and conditions in the existing agreement will not change except for technical adjustments where appropriate.

F. Attachments:

- A. Waste Characterization Studies**
- B. Customer Service Performance Standards**
- C. Contractor Pricing:** summary of contractor's pricing offer. Contractor to complete offer based on the effective dates included in this term sheet.
- D. Contractor Previous Pricing Offers:** The function of this attachment is to record Contractor's previous pricing offers and present final pricing offers.

By signing this document and completing the Contractor Pricing, Attachment C, Contractor represents that it has full authority to negotiate with the City and intends to enter into an agreement with the City under these terms.

Paul Nelson

GreenTeam of San Jose Authorized Signature

9/18/18

Date

PAUL NELSON

Printed Name

DIVISION VICE PRESIDENT

Title

Attachment A: Waste Characterization Studies

Processing studies will be conducted to determine by weight the percentage of program and non-program material present in recycling cart material collected and in recycling cart material landfilled (residue). Waste characterization studies will be performed by a qualified third-party contractor jointly selected by the Recycle Plus recycling contractors and City representatives. The vendor selection team will consist of the following: Recycle Plus Program Manager, one representative from Contractor, one representative from California Waste Solutions, one City Manager appointed City employee, and one City Manager appointed individual from an outside agency (pending availability). The term of the agreement for the selected consultant shall be 3 years. The City will cover the costs of waste characterization studies. For all parties, the results from all waste characterization studies (used for determining appropriate compensation rates and for determining adherence to the Material Recovery standard) shall be final and binding.

Program Material List:

For the purposes of the annual studies, program materials will be: recyclable paper, recyclable plastic, recyclable metal, recyclable glass, and recyclable textiles, as detailed in Table 4 of the "Single Family Recyclables Study" conducted in 2015 (see below). All other materials, including compostable organics and used oil and oil filters, will be considered non-program material. The program material list may be amended every two years to reflect recycling market conditions. Both recycling contractors may co-sign a request that item(s) be added and/or removed to the approved list of program material. Requests for addition could include compostable organics. The requests shall include:

- a. Description of specifically how the material will be diverted (if item is added) or disposed (if item is removed);
- b. Item tonnage data for the past six (6) months, to the extent available;
- c. Item tonnage projected to be collected (if item is added) or disposed (if item is removed) over the next twelve (12) months;
- d. For request to remove item(s), evidence of inability to market material, including third party indices showing drop in commodity pricing, evidence of rejected bales (if item is removed), and other pertinent information;
- e. Additional information as be requested by City.

The request to amend the program material list shall be made in writing by November 1, 2019 to the ESD Director. Subsequent requests shall be submitted by both contractors by November 1 of odd-numbered years thereafter. The Director shall review the request and respond to Contractor within sixty (60) calendar days. If ESD approves request, the amended list will be applied to all studies done in the following two calendar years. Example:

Contractors Submit Request	ESD Response	If Approved, Applied to Studies
By November 1, 2019	By December 2019	January 2020-December 2021
By November 1, 2021	By December 2021	January 2022-December 2023

Table 4. Detailed Composition, 2015 San Jose Overall Incoming Single Family Residential Recycling

Material	Estimated Percent	+ / -	Estimated Tons	Material	Estimated Percent	+ / -	Estimated Tons
Recyclable Paper	42.0%		40,606	Non-Recyclable Materials	27.0%		25,695
Clean Newspaper	6.2%	0.9%	5,894	Pizza Boxes	0.8%	0.1%	800
Clean OCC	12.8%	1.8%	12,174	Contaminated Newspaper	1.4%	0.6%	1,310
Clean Mixed Paper	22.5%	1.8%	21,462	Contaminated OCC	3.4%	0.9%	3,276
Clean Aseptic and Polycoated Packaging	0.5%	0.1%	476	Contaminated Mixed Paper	6.1%	1.3%	5,781
				Contaminated Aseptic and Polycoated Packaging	0.1%	0.0%	60
Recyclable Plastic	12.2%		11,619	Remainder/Composite Paper	1.6%	0.3%	1,526
#1 PET Bottles and Containers	3.3%	0.3%	3,100	Remainder/Composite Plastic	2.2%	0.6%	2,093
#2 HDPE Bottles and Containers	2.7%	0.3%	2,586	Remainder/Composite Metal	1.1%	0.4%	1,015
#3-#7 Bottles and Containers	1.0%	0.1%	922	Remainder Composite Glass	2.0%	1.0%	1,929
Plastic Bags and Other Film	2.5%	0.3%	2,342	Medical Waste	0.0%	0.0%	10
Polystyrene	0.5%	0.1%	495	Sharps	0.0%	0.0%	0
Durable Plastic Items	2.3%	0.5%	2,174	Chemicals	0.0%	0.0%	17
				Personal Hygiene Products	1.0%	0.5%	975
Recyclable Metal	4.5%		4,528	TV and CRT Monitors	0.0%	0.0%	0
Aluminum Beverage Cans	0.4%	0.1%	359	Electronics	0.4%	0.3%	410
Aluminum Foil	0.2%	0.1%	186	Automotive Batteries	0.0%	0.0%	0
Steel (Tin) Cans	1.6%	0.5%	1,568	Lithium Ion Batteries	0.0%	0.0%	0
Other Scrap Metal	2.3%	0.7%	2,214	Alkaline Batteries	0.0%	0.0%	34
				Ni-Cad Batteries	0.0%	0.0%	1
Recyclable Glass	5.5%		5,264	Tanks	0.0%	0.0%	0
Recyclable Glass	5.5%	1.0%	5,264	Tires	0.0%	0.0%	0
				Oil Filters	0.0%	0.0%	11
Compostable Organics	4.8%		4,676	Motor Oil	0.0%	0.0%	0
Food Waste	3.1%	0.8%	2,921	Wood	1.5%	1.0%	1,452
Yard Waste	0.7%	0.4%	636	Mercury Lamps	0.0%	0.0%	7
Compostable Paper	1.2%	0.2%	1,119	Other Universal Waste	0.0%	0.0%	19
				Other Materials	5.2%	1.7%	4,971
Recyclable Textiles	3.9%		3,669	Totals	100.0%		95,257
Bagged Textiles	0.3%	0.2%	327	Sample Count	70		
Loose Textiles	3.5%	0.9%	3,342				

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

"Clean" recyclable paper is defined as material not soiled or contaminated that could reasonably be expected to be recycled without special processing or cleaning.

Attachment B: Customer Service Performance Standards

Overall customer satisfaction: 95% as determined by third-party survey

Quality of Performance of Contractor (additions to section 21.2 of current agreement):

Topic	Liquidated Damage Language	Amount	New/ Updated
Call Center	Failure to Achieve Minimum Average Telephone Delay Time for Customer to Talk with a CSR	Minimum delay time: 180 seconds quarterly average. Delay time is time from first ring until customer speaks with CSR.	new
		>190 second avg, \$5,000/quarter	
Call Center	Failure to Achieve Minimum Telephone Delay Time for Customer on Hold	Each call > 10 minutes total time on hold or call abandoned after 10 minutes on hold: not more than .3% of calls per quarter	new
		>=.3%, \$10,000/quarter	
Call Center	Failure to Achieve Minimum Acceptable Score for Call Center Service Level Quality	\$1,000 for not meeting minimum score of third party quarterly assessment report	new
		Minimum Score >=80% per assessment/quarter	
Customer Service	Failure to provide customer self-service option (website, email) as specified in this Agreement	\$1,000 per day	new
Incorrect Issuance of NCNs	Failure to issue Non-Collection Notice as specified in this Agreement	\$100 per incident	new
Missed Pick Ups	Failure to pick up material on scheduled day	\$100 per 1 missed pickup per 1,000 service opportunities for SFD, 1 per 100 service opportunities for MFD (service opportunity = cart/bin, oil, large item setout)	updated: replace route completion
Collection Quality	Failure to return empty carts to the point of collection, upright with lids closed and locks secured (if applicable), as specified in this Agreement. This penalty would be complaint-based and for situations with public health & safety implications (e.g., cart toppled, in the middle of the road)	\$100 per incident	new
Large Items	Failure to collect as required in agreement, within 2 collection days	\$100 per incident per work day	updated

Failure to meet above Customer Service standards by accumulating more than \$30,000 of Liquidated Damages in a calendar year and failure to meet 95% overall customer satisfaction determined by third-party survey results in City making a deduction from payment due to Contractor on or before March 1st following the end of the calendar year:

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

Attachment C: Contractor Pricing

Services to be continued per 2011 contract terms, with changes detailed in this term sheet. Compensation and annual RRI adjustments will be at current 2011 contract terms through June 30, 2021 (except as noted below in Section B). Offered compensation for contracted services starting July 1, 2021, is detailed in Section B below. The pricing submitted will be used for final evaluation.

A. Adjustment of Proposed Rates from 2017-2018 Dollars to 2021-2022 Dollars

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

	FY 2018-2019	FY 2019-2020	FY 2020-2021	FY 2021-2022
RRI Methodology	Current Agreement Methodology	New Proposed Methodology Included in this Term Sheet	New Proposed Methodology Included in this Term Sheet	New Proposed Methodology Included in this Term Sheet

B. Offered Rates for Services Beginning July 1, 2021

Item	% Non-Program Material*	Offer	Unit
<i>SFD Recycling Collection & Processing discount per household for each 2% below non-program material baseline due to City efforts to reduce non-program material in recycling</i>	20.00-25.99%	\$13.15	Per Household
<i>SFD Recycling Collection & Processing</i>	26.00-27.99% (26% Base level)	\$13.15	Per Household
<i>SFD Recycling Collection & Processing</i>	28.00-29.99%	\$13.15	Per Household
<i>SFD Recycling Collection & Processing</i>	30.00-31.99%	\$13.15	Per Household
<i>SFD Recycling Collection & Processing</i>	32.00-33.99%	\$14.15	Per Household
<i>SFD Recycling Collection & Processing</i>	34.00-35.99%	\$15.15	Per Household
<i>SFD Recycling Collection & Processing</i>	>35.99%	\$16.15	Per Household
<i>SFD Garbage Collection</i>	NA	\$7.72	Per Household
<i>MFD Garbage & Recycling Collection, Recycling Processing</i>	NA	\$0	Annual \$ Change from 17/18 Monthly Compensation
<i>City Facility Garbage & Recycling Collection, Recycling Processing</i>	NA	\$0	Annual \$ Change from 17/18 Monthly Compensation

*Applicable rates based on the percentage of non-program material (as defined in Attachment A) found in recycling carts, per studies conducted once every two years, as described in Section D.

Attachment D: Contractor Previous Pricing Offers

To record past offers during negotiations, previous offers are included below. The following rates are in **2017-2018 dollars, to be adjusted by RRI.**

Pricing offers:

- **April Offer:** Pricing submitted to City in April 2018, under different terms than this term sheet. New compensation rates effective July 1, 2021. Current RRI continues for entire term; options for: City outreach, customer service enhancements, and a new recycling standard different from current packet.
- **August Offer:** Pricing submitted to City on August 15, 2018 and based on signed, unedited term sheet, under different terms than this term sheet. Includes City outreach, local RRI, customer service enhancements, and a new recycling standard different from Attachment A in current packet.

Item	4/13/2018 Offer	8/15/2018 Offer	Unit
<i>SFD Recycling Collection & Processing</i>	\$12.95	\$13.15	Per Household
<i>SFD Garbage Collection</i>	\$7.72	\$7.72	Per Household
<i>Outreach Transitioned to City (SFD)</i>	-\$0.05	included	Per Household Savings
<i>MFD Garbage & Recycling Collection, Recycling Processing</i>	\$0	\$0	Annual \$ Change from 17/18 Monthly Compensation
<i>Outreach Transitioned to City (MFD)</i>	-\$40,000	-\$40,000	Annual Savings
<i>City Facility Garbage & Recycling Collection, Recycling Processing</i>	\$0	\$0	Annual \$ Change from 17/18 Monthly Compensation