


7.2 \*Amendment to the Agreement with California Waste Solutions, Inc. for Recycling Collection Services.

**REPLACEMENT**

**CITY COUNCIL ACTION REQUEST**

<b>Department(s):</b> ESD	<b>CEQA:</b> 2010 Solid Waste Service Agreements Negative Declaration, File No. PP10-055	<b>Coordination:</b> City Attorney's Office, City Manager's Budget Office	<b>Dept. Approval:</b> /s/ Kerrie Romanow
<b>Council District(s):</b> 2, 3, 4, 5, 6, 7, 8, 9, 10			<b>CMO Approval:</b> 

**SUBJECT: FIRST AMENDMENT TO CALIFORNIA WASTE SOLUTIONS, INC. RECYCLING COLLECTION SERVICES AGREEMENT**

**REASON FOR REPLACEMENT:**

This memorandum provides an updated basis for recommendation regarding the service enhancements associated with the First Amendment to California Waste Solutions.

**RECOMMENDATION:**

Approve the First Amendment to the Agreement between the City of San José and California Waste Solutions, Inc. (CWS) to increase compensation to CWS for the Large Item Collection service from \$26.86 to \$46.00 through the remaining term of the Agreement and to make service enhancements to the large item collection program.

**BASIS FOR RECOMMENDATION:**

The First Amendment would bring CWS compensation for junk pickup service in Hauler Districts A and C in alignment with the Hauler District B junk pickup service provider (GreenTeam) and more accurately compensate CWS for the actual costs of providing the service. City and hauler outreach promoting the program has been successful at increasing awareness among residents about the program. Participation is on track to quadruple the number of collections compared to FY 2014-2015, when residents paid the haulers directly when requesting the service. As the junk pickup program has expanded in recent years, CWS has incurred increased costs for additional equipment and personnel needed to provide the service.

Junk pickup service mitigates illegal dumping by providing no-additional-cost curbside collection to single-family households. Each pickup can be up to three large items and includes items such as mattresses, furniture, appliances, tires, and boxed smaller items. The program webpage - [sjenvironment.org/junkpickup](http://sjenvironment.org/junkpickup) - contains a comprehensive list of eligible items and frequently asked questions in English, Spanish, and Vietnamese.

The First Amendment would also require CWS to cooperate with the City in developing, implementing, and operating a web-based and mobile application platform for residents to request junk pickups online, and expand junk pickup service to include the collection of polystyrene foam.

**COST AND FUNDING SOURCE:**

There is no additional funding required with this recommendation. Junk pickup service is funded by residential customer rates, and are billed to the residential property owner per the San José Municipal Code. The residential hauler compensation amounts are adjusted annually by a cost of living methodology as required in the Agreement.

**FOR QUESTIONS CONTACT:** Jo Zientek, Deputy Director, (408) 535-8557

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

This First Amendment to the Agreement Between the City of San José and California Waste Solutions, Inc. for Recycle Plus SFD Recycling Collection Services, dated December 14, 2011, ("FIRST AMENDMENT") is made this \_\_\_\_\_ day of March, 2017.

**SECTION 1: RECITALS**

1.1 The City of San José ("CITY") and California Waste Solutions, Inc. ("CONTRACTOR") entered into an Agreement Between the City of San José and California Waste Solutions, Inc. for Recycle Plus SFD Recycling Collection Services on December 14, 2011 for the collection of solid waste for the term of July 1, 2010 through June 30, 2021 (the "AGREEMENT");

1.2 For the purpose of this FIRST AMENDMENT, the definitions contained in the AGREEMENT will apply unless otherwise specifically stated in this FIRST AMENDMENT;

1.3 Under the AGREEMENT, CONTRACTOR is to perform SFD Large Item Collection Service for single-family dwellings in Service Districts A and C. CONTRACTOR is to be paid per occurrence, in increments of up to 3 items, for SFD Large Item Collection Service. When the AGREEMENT was executed, the service rate was \$20.72 per occurrence subject to adjustment as specified in the AGREEMENT. The current service rate is \$26.86 per occurrence;

1.4 Prior to FY 2015-2016, SFD Service Units directly paid the cost of SFD Large Item Collection Service;

1.5 Commencing on July 1, 2015, the CITY began a program to provide SFD Service Units with one annual collection of SFD Large Item Collection Service paid through customer monthly service rates. Beginning July 1, 2016 through June 30, 2017, the program expanded to two annual collections without separate charge to the SFD Service Units;

1.6 The City's implementation of this program has led to an increase in use of SFD Large Item Collection Service. This increase in use has led to increased operating costs for Contractor to meet demand;

1.7 The CITY and CONTRACTOR desire to amend the AGREEMENT to increase the compensation the CITY pays to CONTRACTOR for SFD Large Item

Collection Service to compensate CONTRACTOR for the increased costs in providing SFD Large Item Collection Service;

1.8 The CITY and CONTRACTOR also desire to amend the Agreement to provide service enhancements to SFD Large Item Collection Service program in the City at no additional cost to CITY;

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

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

## **SECTION 2: AMENDMENTS**

2.1 Exhibit 1, Paragraph I, Line B.3 is amended as follows:

<b>SFD COMPENSATION</b>	<b>District A</b>	<b>District C</b>
<b>B. ADDITIONAL SERVICE RATES</b>		
3. Large Item Collection <sup>4</sup>	\$46.00/Increments of up to 3 Large Items collected  \$15.33/for each additional Large Item collected above 3 Large Items	\$46.00/Increments of up to 3 Large Items collected  \$15.33/each additional Large Item collected above 3 Large Items

<sup>4</sup> CITY compensation to CONTRACTOR for Large Item Collection services shall end upon CONTRACTOR assuming billing responsibilities for Large Item Collection.

2.2 Exhibit 12 is amended to add the following to Large Items:

<b>Item</b>	<b>Description</b>
Polystyrene foam	Clean. Boxed or bagged. Each container will count as one item.

2.3 Article 13 is amended to add a new section numbered 13.12 to read in full as follows:

13.12 Internet Requirements. CONTRACTOR shall cooperate with the CITY in developing, implementing, and operating a web-based and mobile application platform for SFD Service Units to request and schedule SFD Large Item Collection Service over the internet.

13.12.1 Internet Platform. CITY intends to develop a comprehensive web-based and mobile application internet platform so that SFD Service Units may request and schedule SFD Large Item Collection Service over the internet through a personal computer or mobile device. CONTRACTOR, at no additional cost to CITY, agrees to work with CITY to develop and implement processes so that service request information for SFD Large Item Collection Service is transferred from the CITY's internet platform and received by CONTRACTOR's Customer Service System. CONTRACTOR's total budget and a one-time cost for working with the CITY to develop and implement such internet platform shall be no more than \$4,000.00. If the CITY modifies its internet platform or implements a different internet platform, CONTRACTOR, at no additional cost to CITY, will update its Customer Service System as necessary to ensure that its Customer Service System continues to receive transferred information from the CITY's modified or different internet platform prior to its public release.

13.12.2 Internet Requests. CONTRACTOR shall respond to all service requests made over the internet in the same manner as required under the AGREEMENT.

2.4 The List of Liquidated Damages in Section 18.2 is amended to add a new section "ff" to read as follows:

<b>List of Liquidated Damages (Applies to Each Service District)</b>		
ff.	Failure to maintain Customer Service System that receives transferred information from with City's web-based and mobile application internet platform for SFD Large Item Collection Service.	\$100.00 per Work Day

### **SECTION 3: MISCELLANEOUS PROVISIONS**

3.1 Incorporation of Recitals. These recitals are incorporated by reference into the FIRST AMENDMENT and are made part of the FIRST AMENDMENT.

3.2 Effective Date of First Amendment. This FIRST AMENDMENT is effective at such time as it is properly executed by the CITY and CONTRACTOR.

3.3 Effect of First Amendment. All terms and conditions of the AGREEMENT not specifically amended by this FIRST AMENDMENT will remain in full force and effect throughout the term of the AGREEMENT. Nothing in this FIRST AMENDMENT alters or extends the Term of the AGREEMENT.

3.4 Headings. The headings in this FIRST AMENDMENT are for the convenience of reference only and are not to be considered in any interpretation of this FIRST AMENDMENT.

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

3.6 Authority to Execute. Each of the undersigned represents and warrants that he/she is appropriately authorized to execute this FIRST AMENDMENT and to bind the party for whom he/she is signing to the FIRST AMENDMENT. Each of the undersigned further agrees to provide a corporate resolution or other legal documentation substantiating the authority to sign on behalf of and bind that entity to this FIRST AMENDMENT.

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**WITNESS THE EXECUTION HEREOF** on the date written below each party's signature.

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSÉ, a municipal corporation

\_\_\_\_\_  
Mark Vanni  
Deputy City Attorney

By:

\_\_\_\_\_  
Toni Taber, CMC  
City Clerk

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

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

"CONTRACTOR"

CALIFORNIA WASTE SOLUTIONS, INC.

By:

\_\_\_\_\_  
David Duong  
President

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