

**SERVICE AGREEMENT  
CITY OF FRESNO, CALIFORNIA**

THIS AGREEMENT is made and entered into effective the 1 day of July, 2016, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Cedar Avenue Recycling and Transfer Station, LP, a California limited partnership (hereinafter referred to as "SERVICE PROVIDER"), individually each a "Party" and collectively "the Parties."

**RECITALS**

WHEREAS, CITY desires to obtain Co-mingled Recyclables Processing services for materials collected by CITY and its agents, hereinafter referred to as the "Project"; and

WHEREAS, SERVICE PROVIDER is engaged in the business of furnishing services as a Co-mingled Recyclable processor and hereby represents that it desires to and is physically and legally capable of performing the services called for by this Agreement; and

WHEREAS, SERVICE PROVIDER acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107; and

WHEREAS, this Agreement will be administered for CITY by its Director of Public Utilities (hereinafter referred to as "Administrator") or designee.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained to be kept and performed by the respective Parties, it is mutually agreed as follows:

**1. Definitions.**

For the purposes of this Agreement, the definitions and identifications set forth below are agreed upon by the Parties.

- (a) Approval - shall mean a discretionary approval which shall not be unreasonably withheld, unless stated otherwise.
- (b) Business Day(s) - shall mean Monday through Saturday.
- (c) CITY's Representative - shall mean the Director of Public Utilities or his/her designee.
- (d) Contaminants - shall mean those chemicals, waste or other materials that render normally Recyclable Materials unusable or cause them to lose their market value.
- (e) Fiber Materials - shall include, but not be limited to, the following paper products: newspaper, mixed paper, office paper, computer paper, magazines, cardboard,

chipboard, paper bags, and telephone books.

- (f) Holiday(s) - shall mean Thanksgiving Day, Christmas Day, and New Year's Day.
  - (g) Municipal Solid Waste ("MSW") - shall mean refuse, garbage, and trash, and may include food wastes, inorganics, and other materials not suitable for Recyclable Materials Processing.
  - (h) Process or Processing – shall mean the method by which the SERVICE PROVIDER prepares the collected Recyclable Material for storage, shipment, and/or sale.
  - (i) Processing Facility – shall mean the location(s) where SERVICE PROVIDER Processes the collected Recyclable Material prior to storage, shipment and/or sale. The Processing Facility for purposes of this Agreement is located at 3457 S. Cedar Avenue, Fresno, California 93725; phone number (559) 233-1158.
  - (j) Receiving Facility - shall mean the location where SERVICE PROVIDER receives deliveries of co-mingled Recyclable Material from CITY. The Receiving Facility location for purposes of this Agreement is 3457 S. Cedar Avenue, Fresno, California 93725; phone number (559) 233-1158. Any proposed change to the location of the Receiving Facility is subject to the approval of the CITY, which will not be unreasonably withheld.
  - (k) Recyclable Material(s) (also "Materials") - shall include, but not be limited to, the various grades of waste paper, newsprint, magazines, envelopes, telephone books, corrugated cardboard, chipboard, glass (colorless, green, or brown), metal, rigid beverage containers, thermoplastics (1, 2, and 3), milk and juice containers (aseptic packages), and such other materials as mutually agreed upon in writing by the CITY and the SERVICE PROVIDER. Except as expressly provided herein, Recyclable Material shall not include any container which contains or has contained any hazardous waste or hazardous substance as defined in the California Health and Safety Code and/or any other material mutually agreed upon in writing by both Parties.
  - (l) Ton - shall mean 2,000 pounds avoirdupois.
  - (m) Working Day(s) - shall include all days the City of Fresno Recycling collection services are operational, as set by the City of Fresno solid waste collection schedule. SERVICE PROVIDER may petition CITY to modify these working hours to meet the conditions of its permit; however, CITY shall be under no obligation to agree to any modification.
  - (n) Year – shall mean the anniversary date of the Effective Date of this Agreement.
2. Scope of Services. SERVICE PROVIDER shall perform to the satisfaction of CITY, the services described in **Exhibit A**, including all work incidental to or necessary to perform such services, even though not specifically described in **Exhibit A**. By executing this Agreement, SERVICE PROVIDER guarantees it currently has the site capacity, staffing, and equipment to fully meet the requirements of this Agreement.



3. Non-Exclusive Agreement. CITY agrees to deliver to SERVICE PROVIDER's Receiving Facility, on a daily basis, excluding Sundays, approximately 50 percent of Recyclable Materials it (or its agent) collects. SERVICE PROVIDER acknowledges and agrees this is a non-exclusive Agreement and CITY is not obligated by this Agreement to deliver a minimum amount of Recyclable Materials to the Receiving Facility, but only approximately 50 percent of whatever is collected. CITY will make best efforts to deliver Recyclable Materials of equitable quality to all service providers receiving Recyclable Materials each day.

Furthermore, CITY makes no guarantee on tonnages of Recyclable Material to be anticipated by SERVICE PROVIDER, but will endeavor to avoid large fluctuations in the amount of material that is delivered to the Receiving Facility on any given day. CITY retains the right to divert negligible quantities of Recyclable Materials for various purposes at its sole discretion.

4. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above ("Effective Date") and shall continue in full force and effect for ten years, through June 30, 2026, subject to any earlier termination in accordance with this Agreement. The services of SERVICE PROVIDER as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

5. Business License. If the SERVICE PROVIDER does not have a City of Fresno Business License, it shall obtain such a license prior to the Effective Date of this Agreement and maintain it in effect throughout the term of this Agreement.

6. Compensation.

- (a) SERVICE PROVIDER shall compensate CITY for each ton of Recyclable Material in accordance with the schedule set forth in **Exhibit A**, attached hereto and by this reference incorporated herein.
- (b) SERVICE PROVIDER shall provide quarterly statements accounting the calculated rebates owed to CITY, on January 15, April 15, July 15, and October 15 of each year.
- (c) SERVICE PROVIDER shall pay CITY quarterly. Such payment shall accompany each quarterly report. Should SERVICE PROVIDER fail to make payment to CITY within 30 days of the dates described in Subsections (a) and (b) above, SERVICE PROVIDER shall pay interest to CITY on such amount at the rate of 8 percent per annum, accumulated for each calendar day payment is late.
- (d) Contaminants. The Parties recognize that Contaminants lessen the efficiency of Processing and SERVICE PROVIDER incurs costs disposing of Contaminants. After two years from the Effective Date of this Agreement, if Contaminants comprise more than 25% of the Materials delivered to SERVICE PROVIDER by CITY or its agent(s), based upon the Composition Study procedures as set forth



in EXHIBIT D, SERVICE PROVIDER may reduce its compensation to CITY by the then-current per-ton cost to dispose of the excess Contaminants (more than 25%) at the CITY-designated disposal facility (currently American Avenue Landfill). SERVICE PROVIDER shall document weight of Contaminants by providing certified weight tickets from the disposal facility.

In the event that CITY delivers materials to SERVICE PROVIDER containing less than 20% Contaminants, as calculated by the Composition Studies, SERVICE PROVIDER shall increase its compensation to CITY \$1.00 per ton of recyclable materials received.

SERVICE PROVIDER shall conduct a Composition Study of the CITY'S delivered materials in both May and October of each year of this Agreement, in accordance with procedures described below. Thereupon, the average of the most recent two Composition Studies will be used to determine the percentage of Contaminants contained in the City's Recyclable Materials. If CITY has contracted with more than once SERVICE PROVIDER to process Recyclable Materials, all SERVICE PROVIDERS shall complete Composition Studies as set forth herein. Of the Composition Studies completed by each SERVICE PROVIDER, the pair of Composition Studies calculating the lowest average of Contaminants shall be used by the City and all SERVICE PROVIDERS to establish the level of Contaminants in the materials delivered to SERVICE PROVIDER.

CITY shall be given no less than 24 hours' prior notice of, and have the right to observe, monitor, and audit, each and every Composition Study conducted by SERVICE PROVIDER. The SERVICE PROVIDER and CITY shall mutually agree upon the date(s) and time(s) of any Composition Study examining CITY's materials, in writing, no less than three (3) days in advance of each Composition Study.

- (e) SERVICE PROVIDER understands and agrees any request by SERVICE PROVIDER to adjust the payment to CITY other than as set forth in this Agreement, make material changes to this Agreement, or otherwise decrease revenue or increase costs to CITY under this Agreement, may result in CITY either, in the CITY's sole discretion: (1) issuing a new Request for Proposals for these services; or (2) entering into an agreement with another provider of the same service then currently under contract to complete the balance of the term of this Agreement pursuant to the terms of the other contract; either of which may result in termination of this Agreement if CITY awards a contract to another service provider.

Notwithstanding the above, SERVICE PROVIDER may submit to the Administrator a request for a price adjustment, along with documentation supporting the request, if all the following occur:



- i) A material change in law (for example, minimum wage or regulatory requirements) including, but not limited to, the cumulative impact of multiple changes in law, affects the net cost to perform the services herein by a margin of at least 10 percent (based upon cost at the commencement of the Agreement);
- ii) The change in law negatively affects feasibility of providing the services as set forth in Exhibit A, based upon the net cost to SERVICE PROVIDER and considering a combination of commodity market gains, lower fuel costs, or other offsets to the costs incurred due to a change in law; and
- iii) The negative impact continues for a period of at least one year.

OR

- iv) The average monthly market price is less than \$70 for two consecutive quarters, as reported by the Pulp and Paper Weekly using the PPI Recovered Paper – Export Market Index, Mixed Paper (2) – Official Board Markets (“OBM”) Los Angeles (“LA”) commodity designation.

Should a request demonstrate the above, the Administrator shall consider the request, and the Parties shall have 60 days to negotiate a price adjustment and amendment to this Agreement, subject to approval of the City Council. If no agreement is reached, the Parties may agree to continue the Agreement without a change in terms, or the CITY will issue a Request for Proposals or enter into an agreement with another provider of the same service then currently under contract, as set forth above. If no agreement is reached, 180 days from the date SERVICE PROVIDER submits a request, SERVICE PROVIDER shall be relieved of its duties to CITY hereunder and shall have no further obligation pursuant to this Agreement to furnish the services called for by this Agreement.

If this Agreement is terminated by CITY pursuant to the above, SERVICE PROVIDER shall be relieved of its duties to CITY hereunder and shall have no further obligation pursuant to this Agreement to furnish the services called for by this Agreement. Apart from its obligation to pay to CITY any compensation due to CITY for materials delivered and processed prior to such termination, SERVICE PROVIDER shall have no further liability whatsoever to CITY hereunder.

- (f) Should the Parties mutually agree to modify the scope of services provided in this Agreement or provide for the rendition of additional services not required by this Agreement, such modification may include an adjustment to CITY’s compensation. Any change in the scope of services must be made by written amendment to the Agreement and signed by an authorized representative for each Party.
- (g) Payment: SERVICE PROVIDER shall submit payment to the City of Fresno as set forth in this Agreement at the following address:

City of Fresno  
Solid Waste Division  
1325 El Dorado Street, Building S  
Fresno, CA 93721

7. Termination, Remedies and Force Majeure.

(a) This Agreement may terminate without any liability of SERVICE PROVIDER to CITY as provide in Section 6 above, and without any liability of CITY to SERVICE PROVIDER upon the earlier of: (i) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; (ii) any material change to SERVICE PROVIDER which affects SERVICE PROVIDER's obligations to CITY; or (iii) expiration of this Agreement.

(b) Termination for cause:

(i) If the SERVICE PROVIDER shall fail to complete delivery within the time or times specified herein, of all or any part of the materials, equipment, supplies, or services to be provided under the Agreement, the City Manager of the City of Fresno or his/her designee, acting for and on behalf of CITY, may at any time after the expiration of the time for cure, terminate the Agreement as to the whole thereof; or in the event partial delivery has been made and accepted, as to such of the items or service to be furnished which have not been delivered or accepted prior to such termination.

(ii) Either Party may terminate this Agreement if the other Party materially breaches any of its obligations under this Agreement and fails to commence and diligently pursue reasonable efforts to cure such breach within 15 days after written notice by the other Party specifically describing the breach.

(iii) Such termination shall be effective upon receipt by the a Party of written notice of termination from the authorized representative of the other Party, which notice shall be deemed to have been received by the other Party, if mailed by certified mail, within 48 hours to the Party's address as contained this Agreement, or, if personally delivered, upon the delivery thereof to the Party, the authorized representative of the Party, or to the Party's said address.

(c) Immediately upon any termination or expiration of this Agreement, SERVICE PROVIDER shall: (i) stop all work hereunder; (ii) pay to CITY any and all earned payments; and (iii) return all properties and materials in the possession of SERVICE PROVIDER that are owned by CITY. Subject to the terms of this Agreement, SERVICE PROVIDER shall pay compensation to CITY for Recyclable Materials delivered prior to the effective date of termination.

(d) In the event of termination due to failure of SERVICE PROVIDER to satisfactorily perform in accordance with the terms of this Agreement, CITY may demand from



SERVICE PROVIDER payment of an assurance, in an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any such demand by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of SERVICE PROVIDER, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

- (e) Upon any breach of this Agreement by SERVICE PROVIDER, CITY may:
  - (i) exercise any right, remedy (in contract, law, or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law;
  - (ii) proceed by appropriate court action to enforce the terms of the Agreement;
  - and/or (iii) recover all direct, indirect, consequential, economic, and incidental damages for the breach of the Agreement.
- (f) SERVICE PROVIDER shall provide CITY with adequate written assurances of future performance, upon Administrator's request, in the event SERVICE PROVIDER fails to comply with any terms or conditions of this Agreement.
- (g) SERVICE PROVIDER shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of SERVICE PROVIDER and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. SERVICE PROVIDER shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and promptly give written notice to Administrator of the cessation of such occurrence.

8. Receiving Recyclable Materials.

- (a) SERVICE PROVIDER shall make the Receiving Facility available for deliveries of Recyclable Material on Working Days (between the hours of 6:30 a.m. to 5:30 p.m., Monday through Friday, and from 7:00 a.m. to 12:00 p.m. on Saturday, except Holidays), or such other times as the Parties may agree.
- (b) Except as expressly provided in this subsection, SERVICE PROVIDER will accept the Recyclable Material "as is" and will assume all risks in handling such material.
- (c) Recyclable Material delivered to the Receiving Facility by CITY shall be received by SERVICE PROVIDER's employees and equipment onto grounds of the Receiving Facility. SERVICE PROVIDER shall ensure that CITY's vehicles are able to complete delivery of a load in twelve minutes or less (from time of weigh-in prior to unloading the Materials through weigh-out after unloading the Materials).
- (d) SERVICE PROVIDER shall make accessible clean, sanitary, and well-maintained restroom facilities conveniently located at the Receiving Facility for



drivers delivering Recyclable Materials. Said restrooms shall remain available during all hours the Receiving Facility may receive Recyclable Materials.

- (e) In the event that SERVICE PROVIDER determines an entire single load of Recyclable Material delivered by a CITY vehicle pursuant to this Agreement constitutes "hazardous material" as defined in Division 4.5 of Title 22 of California Code of Regulations, then SERVICE PROVIDER may reject such load and return it to CITY; provided that SERVICE PROVIDER provides to CITY clear and convincing evidence that the entire load returned by SERVICE PROVIDER: (i) was originally contained in a single load delivered by a CITY vehicle pursuant to this Agreement; and (ii) that such entire single load constituted "hazardous material" as defined in Division 4.5 of Title 22 of California Code of Regulations.
- (f) In the event that SERVICE PROVIDER determines an entire single load of Recyclable Material delivered by a CITY vehicle pursuant to this Agreement is comprised of 50 percent or greater Contaminants by weight, SERVICE PROVIDER may reject the single load, provided SERVICE PROVIDER may back charge CITY for its reasonable and necessary processing costs, but shall keep the load and not require CITY retake possession of the load.
- (g) SERVICE PROVIDER shall provide weight tickets from a State of California registered and certified scale. Weight tickets are to be signed by the delivering CITY employee. SERVICE PROVIDER shall electronically transmit data of all weight tickets to CITY for each Working Day, by the following Working Day. SERVICE PROVIDER shall sort the original hard copy weight tickets by date and mail or deliver to CITY's Solid Waste Management Division office on a daily basis. This requirement may be satisfied by giving such hard copies to a CITY delivery vehicle driver to transport to such Division office. The electronic format is to be compatible with Access, Dbase, FoxPro, Excel or ASCII. SERVICE PROVIDER shall develop a format and electronic transfer process satisfactory to CITY with assistance of CITY's information systems specialist.

SERVICE PROVIDER shall prepare each weight ticket by assigning each a unique control number, identifying thereon the Receiving Facility by name, and including thereon the following printed information: Inbound Date and Time, Weighmaster Outbound Date and Time, Weighmaster CITY Truck Number, Vehicle License Plate Number, Description of material, Gross Weight in pounds, Gross Truck Tare Weight in pounds, Net Weight in pounds, Driver Signature, Route Number.
- (h) SERVICE PROVIDER shall at all times comply with all federal, state and local agency regulations in receiving Recyclable Materials.
- (i) In furtherance of CITY delivering Recyclable Materials with no more than a reasonable quantity of residual/contaminant materials, CITY will continue a good faith reasonable program of educating solid waste customers about minimizing Recyclable Material contamination and enforcement efforts.



9. Processing Recyclable Materials.

- (a) SERVICE PROVIDER shall be responsible for the storage, processing, transfer, sale, and final disposition of CITY's Recyclable Materials at the Processing Facility in a manner ensuring compliance with permits issued by federal, state or local governmental bodies or agencies for the Processing Facility. Final end-use of Processed Recyclable Materials shall conform to California Integrated Waste Management Board ("CIWMB"), now "CalRecycle," Assembly Bill 939 ("AB939") requirements to enable CITY to receive maximum feasible diversion credits. SERVICE PROVIDER shall comply with the provisions of the Source Reduction and Recycling Element (SRRE) plan adopted by CalRecycle for CITY to meet such AB939 requirements. The end use of one hundred percent of CITY's Recyclable Materials received and Processed by SERVICE PROVIDER shall be subject to the reasonable approval of CITY's Representative. SERVICE PROVIDER shall comply with all applicable federal, state and local laws, and with AB939 requirements for final disposition of CITY's Recyclable Materials.
- (b) SERVICE PROVIDER shall be responsible for all costs related to, and disposal of, any Residuals from the Recyclable Materials delivered to SERVICE PROVIDER.
- (c) SERVICE PROVIDER shall meet all federal, state and local laws, as well as CalRecycle regulations and standards for the methods of Processing of Recyclable Materials.

10. Confidential Information and Ownership of Documents.

- (a) Subject to State regulations, any reports, information, or other data prepared or assembled by SERVICE PROVIDER pursuant to this Agreement shall not be made available to any individual or organization by SERVICE PROVIDER without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, SERVICE PROVIDER shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes, and other information disclosed or submitted orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential, and proprietary of CITY. Confidential Information shall not include daily tonnage records of materials received from CITY.
- (b) Any and all writings and documents prepared or provided by SERVICE PROVIDER pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement. SERVICE PROVIDER shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.
- (c) This Section shall survive expiration or termination of this Agreement.



11. Representation of Skill. It is mutually understood and agreed by and between the Parties hereto that inasmuch as SERVICE PROVIDER represents to CITY that SERVICE PROVIDER is skilled in the industry and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of SERVICE PROVIDER to do and perform such services in a skillful manner, and SERVICE PROVIDER agrees to thus perform the services. Therefore, any acceptance of such services by CITY shall not operate as a release of SERVICE PROVIDER from said industry standards or those set forth in this Agreement.

12. Indemnification. To the furthest extent allowed by law, SERVICE PROVIDER shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs, and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time, and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of SERVICE PROVIDER, its principals, officers, employees, agents or volunteers in the performance of this Agreement. The SERVICE PROVIDER's obligations under the preceding sentence shall apply regardless of whether CITY or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the gross negligence or by the willful misconduct of CITY or any of its officers, officials, employees, agents or volunteers.

This section shall survive termination or expiration of this Agreement.

13. Insurance.

(a) Throughout the life of this Agreement, SERVICE PROVIDER shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either: (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide; or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in **Exhibit B** shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, SERVICE PROVIDER fails to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to SERVICE PROVIDER shall be withheld until notice is received by CITY that the required insurance has been restored to



full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve SERVICE PROVIDER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

- (c) The fact that insurance is obtained by SERVICE PROVIDER shall not be deemed to release or diminish the liability of SERVICE PROVIDER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SERVICE PROVIDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SERVICE PROVIDER, its principals, officers, agents, employees, or persons under the supervision of SERVICE PROVIDER, vendors, suppliers, invitees, consultants, sub-consultants, or anyone employed directly or indirectly by any of them.
- (d) Upon request of CITY, SERVICE PROVIDER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

14. Conflict of Interest and Non-Solicitation.

- (a) Prior to CITY'S execution of this Agreement, SERVICE PROVIDER shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, SERVICE PROVIDER shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by SERVICE PROVIDER in such statement.

SERVICE PROVIDER shall comply with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, SERVICE PROVIDER shall provide a written opinion of its legal counsel that, after a due diligent inquiry, SERVICE PROVIDER is in full compliance with all laws and regulations. SERVICE PROVIDER shall take reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of



interest, SERVICE PROVIDER shall immediately notify CITY of these facts in writing.

- (b) In performing the work or services to be provided hereunder, SERVICE PROVIDER shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.
- (c) SERVICE PROVIDER represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.
- (d) SERVICE PROVIDER shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, SERVICE PROVIDER shall remain responsible for complying with Section 14(a), above.
- (e) This Section shall survive expiration or termination of this Agreement.

15. Recycling Program. In the event SERVICE PROVIDER maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, SERVICE PROVIDER at its sole cost and expense shall:

- (a) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (b) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (c) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

16. General Terms.

- (a) Authorized signature. Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or his/her designee.
- (b) Audits. Records of SERVICE PROVIDER'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business



hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of SERVICE PROVIDER pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. This Section 11(b) shall survive expiration or termination of this Agreement.

- (c) License. Prior to execution of this Agreement by CITY, SERVICE PROVIDER shall have provided evidence to CITY that SERVICE PROVIDER is licensed to perform the services called for by this Agreement (or that no license is required).

17. Nondiscrimination. To the extent required by controlling federal, state and local law, SERVICE PROVIDER shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, SERVICE PROVIDER agrees as follows:

- (a) SERVICE PROVIDER will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
- (b) SERVICE PROVIDER will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. SERVICE PROVIDER shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to SERVICE PROVIDER'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SERVICE PROVIDER agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.



- (c) SERVICE PROVIDER will, in all solicitations or advertisements for employees placed by or on behalf of SERVICE PROVIDER in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
- (d) SERVICE PROVIDER will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of SERVICE PROVIDER'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18. Independent Contractor.

- (a) In the furnishing of the services provided for herein, SERVICE PROVIDER is acting solely as an independent SERVICE PROVIDER. Neither SERVICE PROVIDER, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venture, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which SERVICE PROVIDER shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that SERVICE PROVIDER is performing its obligations in accordance with the terms and conditions thereof.
- (b) This Agreement does not evidence a partnership or joint venture between SERVICE PROVIDER and CITY. SERVICE PROVIDER shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, SERVICE PROVIDER shall bear its own costs and expenses in pursuit thereof.
- (c) Because of its status as an independent SERVICE PROVIDER, SERVICE PROVIDER and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. SERVICE PROVIDER shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, SERVICE PROVIDER shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of SERVICE PROVIDER'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs



and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, SERVICE PROVIDER may be providing services to others unrelated to CITY or to this Agreement.

19. Notices. Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this Agreement or at such other address as the Parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.
20. Binding. Once this Agreement is signed by all Parties, it shall be binding upon, and shall inure to the benefit of, all Parties, and each Parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.
21. Assignment.
  - (a) This Agreement is personal to SERVICE PROVIDER and there shall be no assignment, transfer, sale, or subcontracting by SERVICE PROVIDER of its rights or obligations under this Agreement without CITY approval. Any assignment by SERVICE PROVIDER or its successors without CITY approval shall be null and void and may result in termination of this Agreement, at the election of the CITY.
  - (b) SERVICE PROVIDER hereby agrees not to assign the payment of any monies due SERVICE PROVIDER from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due SERVICE PROVIDER directly to SERVICE PROVIDER.
22. Compliance with Law. In providing the services required under this Agreement, SERVICE PROVIDER shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.
23. Waiver. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
24. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction.



Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

25. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
26. Severability. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.
27. Interpretation. The Parties acknowledge that this Agreement in its final form is the result of the combined efforts of the Parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either Party, but rather by construing the terms in accordance with their generally accepted meaning.
28. Attorney's Fees. If either Party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.
29. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
30. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the Parties, provided for within the body of this Agreement, shall be null and void.
31. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
32. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific Parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
33. Extent of Agreement. Each Party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and SERVICE PROVIDER.



IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

By: Thomas Esqueda  
Thomas Esqueda, Director  
Department of Public Utilities

ATTEST:  
YVONNE SPENCE  
City Clerk

By: Marco Martinez-Velasquez  
Deputy Marco Martinez-Velasquez  
318116

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: DTS 2-18-16  
Date

CEDAR AVENUE RECYCLING AND  
TRANSFER STATION, LP  
a California limited partnership

By: Richard M. Caglia 2/18/16  
Name: Richard M. Caglia  
Title: Pres. Corp. Dev.  
Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Partner

Addresses

CITY:  
City of Fresno  
Attention: Jerry Schubert, Assistant  
Director of Public Utilities  
1325 El Dorado  
Fresno, CA 93706  
Phone: (559) 621-1801  
FAX: (559) 266-1009

SERVICE PROVIDER:  
Cedar Avenue Recycling and Transfer  
Station, LP  
Attention: Richard M. Caglia, Partner  
3457 S. Cedar Ave.  
Fresno, CA 93725  
Phone: (559) 233-1158  
FAX: (559) 441-4140

Attachments:

Exhibit A - Scope of Services and  
Revenue Schedule  
Exhibit B - Insurance Requirements  
Exhibit C - Conflict of Interest Disclosure  
Exhibit D - Composition Study Process



## Exhibit A

### **SCOPE OF SERVICES** **Service Agreement between City of Fresno** **and Cedar Avenue Recycling and Transfer Station, LP** Co-mingled Recyclables Processing

The Service Provider shall provide to CITY services related to Recyclables Processing as follows:

1. The Service Provider(s) will receive, process and recycle Recyclable Materials collected by the City of Fresno or its assigned agents and delivered to the Service Provider(s) processing site in accordance with the terms of this Agreement.
2. The Service Provider will be expected to pay the City on a per ton basis for all Recyclable Materials delivered to the Service Provider processing site, as set forth in the terms of this Agreement.
3. The Service Provider(s) will assume all responsibility for the legal and proper disposal of residual waste materials that cannot be beneficially reused or recycled by the vendor(s). All residual waste materials shall be disposed of at the American Avenue Landfill, which is owned and operated by Fresno County.
4. The Service Provider(s) shall be required to submit quarterly tonnage reports for Recyclable Materials delivered to the Service Provider's processing site by the City, and the tonnage reports shall include the quantities of residual waste materials delivered to the American Avenue Landfill.

#### ***Description of Current Services***

The City currently provides residential solid waste collection service to all single-family residential housing units (up to four dwelling units) located within the City's municipal corporate limits. All residents receive solid waste collection, Co-mingled recyclables collection, and green waste collection services on a designated day for their neighborhood, and are provided with 96-gallon carts for each of the three material streams. Additional 96-gallon carts can be provided upon request, and an additional charge, for Co-mingled recyclables and green waste. The materials accepted through that program are listed on the City's website at:

<http://www.fresno.gov/Government/DepartmentDirectory/PublicUtilities/SolidWaste/ResidentialServices/Blue.htm>



**REVENUE SCHEDULE FOR RECYCLABLE MATERIALS PAYMENTS  
FROM CARTS TO CITY OF FRESNO**

**Recyclables Rebate Index\***

Fiber Price	Price to City Per Ton
\$0 to 109.99	\$1.00
\$110.00 to \$119.99	\$2.00
\$120.00to \$129.99	\$3.00
\$130.00 to \$139.99	\$5.00
\$140.00 to \$149.99	\$7.50
\$150.00 to \$159.99	\$9.50
\$160.00 to \$169.99	\$12.00
\$170.00 to \$179.99	\$14.00
\$180.00 to \$189.99	\$16.00
\$190.00 to \$199.99	\$18.00
\$200.00	\$20.00
>\$200.00	\$20.00 + \$2.00/ \$10

\*

\*Based on the PPI Recovered Paper – Export market index,  
Mixed Paper (2) – OBM LA commodity designation.



## **Exhibit B**

### **INSURANCE REQUIREMENTS**

#### **Service Agreement between City of Fresno ("CITY") and Cedar Avenue Recycling and Transfer Station, LP Co-mingled Recyclables Processing**

### **MINIMUM SCOPE OF INSURANCE**

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

### **MINIMUM LIMITS OF INSURANCE**

SERVICE PROVIDER shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:



1. **COMMERCIAL GENERAL LIABILITY:**

- (a) \$2,000,000 per occurrence for bodily injury and property damage;
- (b) \$2,000,000 per occurrence for personal and advertising injury;
- (c) \$4,000,000 aggregate for products and completed operations; and,
- (d) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than

- (a) \$1,000,000 each accident for bodily injury;
- (b) \$1,000,000 disease each employee; and,
- (c) \$1,000,000 disease policy limit.

5. **CONTRACTORS' POLLUTION LEGAL LIABILITY** (CPL) (and/or other applicable policies as determined by the City's Risk Manager or his/her designee, e.g. Asbestos Legal Liability) *unless waived in writing by the CITY'S Risk Manager or his/her designee* shall be written on either an occurrence form, or a claims-made form, and is required for all environmental and water remediation work and for all work transporting fuel. CPL is also required for demolition, renovation, HVAC, plumbing and electrical work (including, without limitation, lighting) on any structure built prior to the year 1990 with limits of liability of not less than the following:

- (a) \$1,000,000 per occurrence or claim; and,
- (b) \$2,000,000 general aggregate per annual policy period.

(i) In the event this Agreement involves any lead based, mold or asbestos environmental hazard, either the CAL policy or other appropriate insurance policy shall be endorsed to include *Transportation Pollution Liability insurance* covering materials to be transported by SERVICE PROVIDER pursuant to the Agreement.

(ii) In the event this Agreement involves any lead-based environmental hazard (e.g., lead based paint), and/or asbestos environmental hazard (e.g. asbestos remediation), and/or mold environmental hazard (e.g. mold remediation) the CPL insurance policy or other appropriate policy shall be endorsed to include coverage for lead based environmental hazards and/or asbestos

environmental hazards and/or mold environmental hazards and "microbial matter including mold" with the definition of "Pollution" und

### **UMBRELLA OR EXCESS INSURANCE**

In the event SERVICE PROVIDER purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

### **DEDUCTIBLES AND SELF-INSURED RETENTIONS**

SERVICE PROVIDER shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and SERVICE PROVIDER shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) SERVICE PROVIDER shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

### **OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. SERVICE PROVIDER is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, SERVICE PROVIDER shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, SERVICE PROVIDER shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.



(ii) The CGL, CAL and CPL policies of insurance shall be endorsed to name CITY, its officers, officials, agents, employees and volunteers as additional insureds. SERVICE PROVIDER shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

(iii) For any claims related to this Agreement, SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it. SERVICE PROVIDER shall establish primary and noncontributory status by use of ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and noncontributory status as broad as that contained in ISO Form CG 20 01 04 13.

(iv) Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(v) The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.

(v) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

**PROVIDING CITY WITH DOCUMENTS** – SERVICE PROVIDER shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, SERVICE PROVIDER shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**CLAIMS-MADE POLICIES** - If any coverage required is written on a claims-made coverage form:

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by SERVICE PROVIDER.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, SERVICE PROVIDER must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to CITY for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

**MAINTENANCE OF COVERAGE** - If at any time during the life of the Agreement or any extension, SERVICE PROVIDER fails to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY hereunder shall in any way relieve SERVICE PROVIDER of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by SERVICE PROVIDER shall not be deemed to release or diminish the liability of SERVICE PROVIDER, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by SERVICE PROVIDER. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of SERVICE PROVIDER, its principals, officers, agents, employees, persons under the supervision of SERVICE PROVIDER, vendors, suppliers, invitees, consultants, sub-consultants, or anyone employed directly or indirectly by any of them.



**Exhibit C**  
**DISCLOSURE OF CONFLICT OF INTEREST**  
Co-mingled Recyclables Processing

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: #3) CARTS per-  
forms services for City  
Commercial Franchisees  
under current contract.  
#6) CARTS works with  
other contractors in the  
performance of processing  
recyclables.

☐ Additional page(s) attached.

*Richard Caglia*  
 Signature  
2/29/16  
 Date  
Richard Caglia  
 (name)  
cedar avenue  
Recycling & Transfer  
 (company)  
P.O. Box 446  
 (address)  
Fresno, Ca. 93709  
 (city state zip)

*R. Caglia*

**EXHIBIT D**  
**Composition Study Procedures**

Composition Study Procedures

1. In preparation for, and prior to the start of each Composition Study, SERVICE PROVIDER shall ensure that:
  - a. CITY has agreed to the date of the Composition Study in writing at least seven (7) days prior, and CITY is permitted to station observers to monitor the Processing Facility for the duration of the Composition Study or any portion thereof, at sole discretion of CITY's Administrator;
  - b. The Processing line and equipment are clear of all material and debris processed prior to the Composition Study,
  - c. All floor space, areas, bunkers, and other facilities are adequately clear of all materials not appropriate for inclusion in the Composition Study including, but not limited to, materials delivered to the Processing Facility by any third party; and
  - d. Notify appropriate personnel, including, without limitation, employees of SERVICE PROVIDER, of the Composition Study and procedures, so that the likelihood of a breach in Composition Study procedures may be minimized.
2. The Composition Study shall include 100% of the Recyclable Materials and Residual Materials delivered to the Processing Facility by the CITY, or CITY'S agent(s), on the days designated as the Composition Study sample days.
3. SERVICE PROVIDER shall bale all Recyclable Materials processed during the Composition Study in the manner appropriate for preparation for shipping. All Recyclable Materials shall be weighed and all bales measured for volume.
4. At the conclusion of the Composition Study, SERVICE PROVIDER shall ensure that all Recyclable Materials provided and identified for the Composition Study are processed and included in the Composition Study.
5. SERVICE PROVIDER shall provide to the CITY an analytical report by material type. The analytical report shall include weight and volume processed by each material type, as well as other information that may be deemed appropriate by the CITY.
6. The days of the week selected for the Composition Study should be rotated to ensure that the material and data are representative of the CITY'S material delivery profile.









# City of Fresno

2600 Fresno Street  
Fresno, CA 93721  
www.fresno.gov

## Legislation Text

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File #: ID16-207, Version: 1

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### REPORT TO THE CITY COUNCIL

February 25, 2016

**FROM:** DOUG SLOAN, City Attorney  
Office of the City Attorney

#### SUBJECT

Actions pertaining to processing of Co-mingled Recyclables (Citywide):

1. Adopt a finding pursuant to CEQA Guideline 15061(b)(3) of No Possibility these actions may have a significant effect on the environment.
2. Award a ten year agreement to Mid Valley Recycling, LLC (Mid Valley), to process 50 percent of the City's Co-mingled Recyclables (recyclables) at an indexed rate paid per ton to the City.
3. Award a ten year agreement to Cedar Avenue Recycling and Transfer Station, LP (CARTS), to process 50 percent of the City's recyclables at an indexed rate paid per ton to the City.

#### EXECUTIVE SUMMARY

On December 10, 2015, Council directed the City Attorney to negotiate agreements with the top two proposers for green waste and recyclables processing, with each to receive approximately 50 percent of the City's materials collected.

Council may award two, ten-year agreements - one to Mid Valley to process 50 percent of the City's recyclables at an indexed rate with a floor of \$1.00 per ton paid to the City, and another to CARTS to process the remaining 50 percent on the same terms. After two months of negotiations, the parties have reached agreements, subject to Council approval.

#### BACKGROUND

In May 2015, the City issued Request for Proposals (RFP) 3405, seeking proposals to process both recyclables and green waste. Of the proposers for recyclables, Mid Valley proposed the highest payment to the City at \$10 per ton, and CARTS was second at \$7.50. On October 8, 2015, Council was asked to approve an agreement with Mid Valley, subject to negotiation of the final terms. The item was continued to allow the Administration to pursue a "best and final offer" from the top proposers. However, that request was rescinded on October 21, 2015, and the RFP was repealed on October 23, 2015. Subsequently Council directed the City Attorney to negotiate with the top two proposers in each category.



## **2000 Sunset Agreement**

On March 16, 2000, the Council awarded an agreement to Sunset Waste Paper, Inc., (Sunset) to process residential recycling materials. The initial 5-year term of the Agreement was through March 16, 2005. The terms of the agreement provided a revenue sharing program for materials delivered to the facility.

## **First Amendment to 2002 Agreement**

On April 3, 2002, Council approved a long term agreement to Sunset, which allowed it to obtain financing for its new processing facility. The agreement also allowed for a larger portion of revenues to be shared with the City. The cost of the processing of materials was based on a per ton charge of \$15.00 per ton for processing and \$31.25 per ton for residual waste delivered to American Avenue Landfill. At the conclusion of the agreement costs had risen to \$18.55 per ton for processing, with a revenue sharing component, and \$31.25 for residual waste delivered to American Avenue Landfill.

## **Commercial Outsourcing**

On December 5, 2011, the City entered into an agreement for two commercial franchises, Allied Waste Services and Mid Valley Disposal, which allowed for the franchise holders to process recycling materials at locations other than Sunset. Sunset sued the City of Fresno for breach of the original agreement. The City and Sunset agreed to a settlement of \$2,900,000 paid over the remaining three years of the agreement. In September 2014, Mid Valley acquired Sunset, its processing facilities, and its contracts upon assignment. A request to assign the current agreement for the City was granted. The subsequent two, five year amendments to the original agreement were not renewed and an RFP for the services was requested. Since March of 2015 and during the RFP process, Mid Valley continues to process materials for the City at no cost or payment to the City.

## **Proposals**

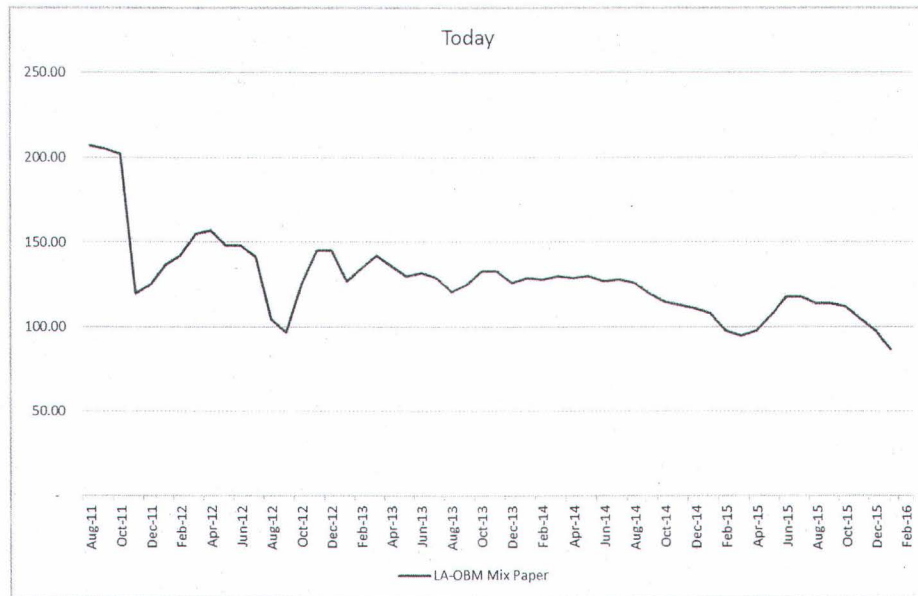
Pursuant to the RFP, Mid Valley proposed payment to the City of \$10.00 per ton and CARTS \$7.50 per ton. However, both companies have made it very clear their proposals were not fixed prices over ten years, but rather were subject to negotiation of complete terms of contracts to include provisions for the fluctuation of commodities markets, labor costs, government regulations, and contamination levels. Even if Council had awarded one or more contracts in November, the complete terms of contracts presented for consideration now likely would have been similar.

## **Price Factors**

The recycling processors essentially buy materials from the City, sort them, and then resell them. Materials are sorted in to categories largely composed of fiber (paper products), metals, plastics, glass, and then waste destined for the landfill. The recyclables are largely sold to markets abroad and must be transported to ports and shipped. The largest factors affecting the profitability of the operations are the commodities prices, which are affected by supply and demand of the particular items and oil prices. The commodity with the greatest influence, and therefore the customary standard for pricing, is the fiber market. Over the last five years, prices for fiber have ranged from about \$80 to \$210 per ton, with a typical price of about \$130 per ton. Currently, however, prices are very low, and the companies could be losing money even at \$0 cost or payment to the City. The companies do anticipate, however, that prices fluctuate and will increase again in the future, smoothing the costs and allowing for an offset of losses at other times. Here is a table of actual market prices over the last 5 years:



Recycled fiber market prices August 2011 - February 2016



Labor costs also affect the companies. Both companies indicate the feasibility of the prices agreed upon now would be affected by increases in minimum wage.

Also affecting the companies is the degree or percentage of waste materials (contaminants) included with the recyclables that must be sorted and sent to a landfill at an additional cost to the recycling company. Contamination levels vary, but average around 20 to 25 percent in materials collected by the City. When valuable recyclables are stolen or otherwise redirected from the City's collection process, this reduces the overall value of the materials and increases the percentages of contaminants. If City solid waste customers are not diligent in separating materials or place wet paper products (wet products cannot be processed) in the City recycling containers, this negatively impacts the recycling operations. This factor is influenced by the degree and effectiveness of City education and enforcement programs concerning recycling.

### Current Negotiations

The City Attorney's Office negotiated contracts with the service providers. During the negotiations the companies indicated the RFP did not thoroughly specify criteria for several important variables, such as fluctuations in market rates for the recyclables, and the percentage of contaminants in the recyclable materials, and therefore the initial price offered by Mid Valley was not firm and had been subject to changes based upon those factors.

Further, since the RFP was issued in June 2015, market prices have fallen substantially. For example, the recycled fiber market, the point of sale for roughly half of recyclable materials, was priced at \$130 in June 2015 and is currently at \$80. In addition, low oil prices are impacting the recycled plastics market, with uncertainty regarding market recovery. These factors are compounded by the possibility that labor rates may increase. During negotiations neither Mid Valley nor CARTS



felt able to offer the steady per-ton prices submitted in response to the RFP in mid-2015. Both service providers insist on tying payments to the recycled fiber market index, with prices calculated quarterly.

After extensive discussions, the agreements before Council include the following material terms:

- Payment to the City pursuant to the market price for recycled fibers, with a floor of \$1.00 per ton of recyclables and increased payment to the City based upon market rates, with no ceiling (the City previously paid for recyclables processing, and is currently not paying for processing while negotiations continue); the parties share in the increased profitability as market prices rise.
- A request by service provider to change the price other than as set forth in the agreement may result in the City issuing an RFP for the services or awarding services to another service provider currently contracted to perform the services, at the City's option.
- Only exceptions to above are (1) if a change in law causes a greater than 10 percent net decrease in funds to service provider for more than a year, in which case service provider may submit a request for price adjustment along with documentation supporting a negative effect on its bottom line, or (2) if the market falls below \$70 for two consecutive quarters. In either event, service provider and the City may negotiate a rate adjustment for 60 days and if no agreement is reached, City may issue RFP or award to another service provider contracted to perform the services.
- Service providers dispose of any residuals at the County landfill.
- The City may be back-charged for excessive contaminants, based upon controlled studies conducted twice per year.

The proposed reduction in processing costs for recycling will convert the cost to the City for recycling of roughly \$350,000 per year to revenue for recycling of at least \$30,000 per year (based on average of 30,000 tons of materials delivered to the two companies). This revenue generation will help DPU further Council's request to maintain current solid waste rates until Fiscal Year 2019. Based upon these negotiations, the City Attorney believes the contractual terms likely would not improve should the City reject these contracts and send the contracts out to another RFP process.

## **ENVIRONMENTAL FINDINGS**

Pursuant to CEQA Guidelines section 15061(b)(3), there is no possibility that awarding these agreements will have a significant effect on the environment and this project is not subject to CEQA. This is because awarding the service agreements does not directly affect the environment. Each service provider must comply with CEQA regulations in performing its services, and construction of any new facilities required to fulfill these agreements will be assessed separately prior to construction.

## **LOCAL PREFERENCE**

Although all the service providers are local businesses, local preference was not considered because FMC 4-109 does not require local preference for non-consulting, non-professional services contracts.

## FISCAL IMPACT

The City currently delivers approximately 30,000 tons of curbside co-mingled recycling. The prior agreement cost \$18.55 per ton to process, less a share of the revenue, equaling approximately \$350,000 annually. The new agreements provide revenue to the solid waste management division and rate payers of at least \$30,000, for an annual difference of at least \$380,000.

This is the table set forth in the contracts to determine prices paid to the City:

### Recyclables Rebate Index\*

Fiber Price	Price to City Per Ton
\$0 to 109.99	\$1.00
\$110.00 to \$119.99	\$2.00
\$120.00 to \$129.99	\$3.00
\$130.00 to \$139.99	\$5.00
\$140.00 to \$149.99	\$7.50
\$150.00 to \$159.99	\$9.50
\$160.00 to \$169.99	\$12.00
\$170.00 to \$179.99	\$14.00
\$180.00 to \$189.99	\$16.00
\$190.00 to \$199.99	\$18.00
\$200.00 to \$209.99	\$20.00
>\$209.99	\$20.00 + \$2.00 / \$10

\*Revenue sharing shall be tied to the PPI Recovered Paper - Export market index, using the Mixed Paper (2) - OBM LA commodity designation.

### Attachments:

Agreement with Mid Valley  
Agreement with CARTS