COOPERATIVE AGREEMENT AND FOURTH AMENDMENT TO THE FRANCHISES AGREEMENT

The City of San Jose, a California municipal corporation, (the "City") and Allied Waste Services of North America, LLC dba Allied Waste Services of Santa Clara County (Allied) enter into this Cooperative Agreement and Fourth Amendment to the Commercial Solid Waste and Recyclables Collection Franchises Agreement ("Agreement") on this ______ day of June, 2017, for the purpose of resolving in a cooperative manner certain concerns that have arisen between the parties regarding the applicability of the City of San Jose's Living Wage Policy as it relates to the housekeepers, maintenance support (screen cleaners) and sorters (collectively these job classifications at the Recyclery are referred to as "Recyclery Workers") who have worked and currently are working at the Newby Island Recyclery ("Recyclery"). The Cooperative Agreement is premised on the following Recitals:

Recitals

A. The City and Allied entered into a "Commercial Solid Waste and Recyclables Collection Franchises Agreement" effective as of July 1, 2012. The Agreement has been amended three times. The First Amendment was entered into on December 18, 2012, to address various pre-processing issues. The Second Amendment was entered into on March 5, 2013, for the purpose of modifying the revenue requirement assumptions in the RFP and to true up compensation to Allied. And the Third Amendment was entered into on December 18, 2015, for the purpose of clarifying the rate setting process for Rate Year Five through the remainder of the Term.

B. The "Franchisee" under the Agreement is Allied Waste Services of North America, LLC ("Allied"). Pursuant to the Agreement, Allied as the Franchisee is responsible for the collection of Commercial Solid Waste and Recyclables in both commercial solid waste collection service Districts in the City. Allied takes the Commercial Solid Waste and Recyclables to the Recyclery, which is owned and operated by an affiliate of the Franchisee, Browning-Ferris Industries of California, Inc. ("BFI").

C. BFI currently contracts with Leadpoint Business Services ("Leadpoint") to provide staffing for the Recyclery. Leadpoint is a company specializing in recycling processing services. Recyclery Workers sort and process commercial mixed waste and residential and commercial source separated recyclable materials brought to the Recyclery by several jurisdictions other than the City. The same Recyclery Workers also sort and process mixed waste and source separated recyclables collected by Allied from commercial premises in the City under the Agreement. Therefore, the Recyclery Workers work on both (a) San Jose commercial mixed waste and source separated recyclables and (b) source separated recyclables and mixed waste from other jurisdictions. Recyclery Workers are deployed to various sort lines depending upon the workload, making it difficult to determine which of the Recyclery Workers work on San Jose commercial waste and recyclables versus mixed waste and
recyclables from other jurisdictions for any given period of time during a given day, or from day to day. Additionally, screen cleaners provide maintenance support and housekeepers maintain the cleanliness throughout the Recyclery.

D. Allied and the City dispute whether Allied was obligated to pay the Recyclery Workers the San Jose Living Wage requirements under the Agreement. The City contends that during the procurement of proposals for the commercial collection franchises, the City clearly articulated that employees engaged in processing San Jose commercial waste and recyclables under the franchises to be awarded, would be paid the San Jose Living Wage. However, Allied disputes this contention and contends that the Recyclery Workers were not included in the Agreement because they work at the BFI’s Recyclery and not directly for Allied. Allied contends there was no “meeting of the minds” between the parties on whether the Recyclery Workers would be paid the San Jose Living Wage.

E. To resolve the dispute, Allied and the City have agreed on a methodology to address the living wage issue, and have therefore agreed to amend the Agreement to state the parties’ respective obligations with respect to the wages to be paid to the Recyclery Workers who have worked, are currently working, or will work at the Recyclery.

F. One purpose of this Cooperative Agreement is to amend and replace the terms and provisions in the Agreement regarding the payment of the San Jose Living Wage solely as they may relate or be construed to relate to the Recyclery Workers who have worked, are currently working, or will work at the Recyclery, with the terms and conditions of this Cooperative Agreement.

G. Another purpose of this Agreement is to address any rate adjustments resulting from the terms of this Cooperative Agreement.

NOW THEREFORE, based on the foregoing Recitals, and in exchange for other valuable considerations contained herein, the receipt and sufficiency of which are acknowledged by both the City and Allied, the parties agree as follows:

1. No later than ten business days after the execution of this Cooperative Agreement by both parties, Allied must deposit the fixed sum of Two Million Seven Hundred and Fifty Thousand Dollars ($2,750,000) into a Recyclery Worker Restitution Fund (“Fund”). This Fund shall be administered pursuant to Attachment 1 to this Cooperative Agreement, which is incorporated herein by this reference.

2. In Exhibit A to the Agreement, the defined term “CPI-W” is hereby amended to have the following meaning:
a. For the seven-year period commencing with the annual rate setting process for determining Allied’s rates to be effective July 1, 2017, and continuing through and until the rate period June 30, 2024, the CPI-W shall mean the U.S. Bureau of Labor Statistics U.S. City average, Water and Sewer and Trash Collection Services Index (Series CUUROOOOSEHG), but not to exceed 3.12% each year.

b. For the annual setting of Allied’s rates to be effective on July 1, 2024 and for the remainder of the Term of the Agreement, the CPI-W shall mean the U.S. Bureau of Labor Statistics Garbage and Trash Collection Index described in the current agreement (Series CUUROOOOSEHG02).

3. Exhibit E to the Agreement is amended to add the following section 1.1 to Article II titled “Recyclery Workers Wage Requirements:”

Section 1.1: The following wage requirements will apply to Recyclery Workers:

a. Effective July 1, 2017, and continuing throughout the Term of the Agreement, all Recyclery Workers must be paid a “Recyclery Workers’ Wage.” This “Recyclery Workers’ Wage” will be paid to all Recyclery Workers, regardless of whether they are working exclusively on waste or recyclables from the City. The base “Recyclery Workers’ Wage” will be the average of the City’s standard Living Wage rate on July 1, 2017, without Health Benefits (“City’s Living Wage”) and the applicable City of San Jose Minimum Wage on July 1, 2017, which is calculated to be Seventeen Dollars and Twenty-Nine Cents ($17.29) per hour. The base “Recyclery Workers’ Wage” with the Allied’s staffing agency mark up of 55% is $26.80 (“Fully Loaded Recyclery Workers’ Wage”).

b. Approximately one hundred and sixty (160) Recyclery Workers work at the Recyclery. For purposes of this Agreement, the Parties Agree that the City’s commercial mixed waste would occupy the equivalent of 80 Recyclery Workers working full time and with some overtime, but that these hours are distributed among all of the Recyclery Workers. This Cooperative Agreement is predicated on the fact that the City’s obligations are limited to reimbursing Allied through the rates for the City’s portion, as defined below, of the payroll costs associated with the equivalent of 80 Recyclery Workers. In the event that BFI increases the number of Recyclery Workers, Allied agrees that all Recyclery Workers will paid the Recyclery Workers’ Wage and that Allied will be solely obligated to pay the full cost of the both the Differential and the Future Wage Rates (as those terms are defined below) for any Recyclery Workers in excess of 160.
4. For purposes of this Cooperative Agreement, and for the rate setting process in Exhibit A to the Agreement for Allied's customer rates to be effective on July 1, 2017, the annual cost needed to raise the wage rates of Recyclery Workers from the wage rate they received as of June 30, 2017 to the "Recyclery Workers' Wage" is divided into two components: the "Differential" and "Future Wage Increases"—both terms are defined below.

5. Even though the payment of the "Recyclery Workers' Wage" to Recyclery Workers will not commence until July 1, 2017, the annual base cost needed to bring the wage rates for the Recyclery Workers up to the "Recyclery Workers' Wage" (the "Differential") has been determined by the parties as of June 30, 2017, to be $3,601,000. This Differential includes the total cost of raising the wage rates of all Recyclery Workers to the "Fully Loaded Recyclery Workers Wage."

   a. With respect to the Differential of $3,601,000, Allied agrees to absorb and not seek contribution through the annual rate setting process of a portion of the Differential, in the amount of $1,454,500. The City agrees to pass through the remaining $2,146,500 in Rate Year 6 and thereafter by incorporating this sum ($2,146,500) into Allied's NIRRP Processing Costs as defined in Amendment 3 to the Agreement. The methodology to be used in this calculation, for illustrative purposes only, is set forth in Attachment 2.

   b. The obligations of the parties in this section as well as in the other provisions of this Cooperative Agreement shall remain fixed and in effect irrespective of the number of Recyclery Workers, above or below the one hundred and sixty estimate referenced in Section 3b, working at the Recyclery over the Term of the Agreement.

6. "Future Wage Increases" shall mean that effective July 1, 2018 and each year thereafter, the "Recyclery Workers' Wage" will increase by the CPI-W.

7. Allied must take all other actions necessary, to ensure that the "Recyclery Workers' Wage", minus all applicable federal, state and local payroll tax and other governmental imposed deductions, will be paid to all Recyclery Workers, commencing July 1, 2017, for hours worked at the Recyclery on July 1, 2017, or thereafter, and continuing throughout the Term of the Agreement.

8. Allied will deposit the amount described in paragraph 1 in an escrow account at a financial institution selected by the City and to be managed by Rust Consulting, which is a third-party administrator (the "Administrator") for the purpose of making certain payments to eligible Recyclery Workers (the "Eligible Individuals") who have worked at the Recyclery at any time during the period from July 1, 2012, through June 30, 2017. Allied will contract directly with Rust Consulting. Allied will provide the City with a fully executed copy of the contract for services
between Allied and Rust Consulting within thirty (30) days following the execution of this Cooperative Agreement. Payments to the Eligible Individuals and of applicable employer and employee payroll taxes shall be made from the Fund within forty-five (45) days, or such other time period as the parties may agree on, but in no event longer than ninety (90) days after the closing date for receipt of claims. The process for administering the Fund is attached hereto as Attachment 1. The contract between Allied and Rust Consulting must include the obligation for Rust to distribute funds expeditiously as the Parties intend that Recyclery Workers receive restitution as soon as possible. Allied and the City will evenly split the escrow account costs and Rust Consulting Costs for administering the Fund. Once the Fund is fully distributed, Allied must provide a final report on the distribution of the Fund including: 1) number of Recyclery Workers who completed applications; 2) number of Recyclery Workers deemed Verified Eligible Individuals (as that term is defined in Attachment 4); 3) amounts paid to each Recyclery Worker including the amounts of any required deductions (to the extent such reporting is allowed under applicable law); and 4) any amount escheating to the City.

9. The terms and conditions of this Cooperative Agreement and Fourth Amendment will prevail over any conflicting provisions of the Agreement. All terms and conditions of the Agreement not inconsistent with this Cooperative Agreement and Fourth Amendment will remain in full force and effect. Solely with respect to the obligations under the Agreement and other than the payment of the “Recyclery Workers’ Wage” provided for in paragraph 3 of this Cooperative Agreement, and payments to Eligible Individuals provided for in paragraph 8, neither Allied, nor its Subcontractors or Affiliates listed in Exhibit D will have any obligation to pay the City Living Wage to the Recyclery Workers for hours worked at the Recyclery at any time since the July 1, 2012 inception of the Agreement and continuing throughout the remaining Term of the Agreement.

10. Allied hereby amends Exhibit D to the Agreement to include the following Subcontractors: Browning-Ferris Industries of California, Inc. The Parties expressly intend that all Allied Subcontractors and Affiliates listed in Exhibit D, as amended by this Cooperative Agreement will be subject to all the terms and conditions of the Agreement as they apply to Subcontractors. Cascadia will be removed from Exhibit D, as it is no longer providing services under the Agreement. Additionally, Allied agrees to update Exhibit D to the Agreement on an annual basis on or before December 30th of each year to maintain a correct and accurate list of all Subcontractors and Affiliates.

11. The City of San Jose minimum wage will increase over the next few years to $15.00 an hour and thereafter will be adjusted for inflation. This Cooperative Agreement is intended to address all issues related to wage increases related to Recyclery Workers and compensation to Allied therefore throughout the remainder of the Term of the Agreement. Accordingly, Allied agrees that it will not attempt to separately seek recovery of any increases in the City of San Jose minimum wage.
wage under the Change in Law provision in Section 20.2, of the Agreement, unless the City of San Jose minimum wage exceeds the Recyclery Workers’ Wage.

12. Miscellaneous terms:

A. All capitalized terms not defined in this Cooperative Agreement have the meaning ascribed to them in the Agreement.
B. The Parties intend that the Recitals be a material part of this Cooperative Agreement.
C. If a court of competent jurisdiction determines that any part of this agreement relating to the payment of the Living Wage to Recyclery Workers is unlawful or unenforceable, the parties agree to meet and confer towards the goal of finding another way of addressing the concerns regarding the applicability of the City's Living Wage Policy as it relates to the Recyclery Workers.

In Witness whereof, Allied and the City enter into this Cooperative Agreement on the date written above:

CITY OF SAN JOSE,
A Municipal Corporation

ALLIED WASTE SERVICES OF NORTH AMERICA, LLC

Toni Taber, City Clerk

Mike Caprio, Area President

Approved as to form

Richard Doyle
City Attorney
ATTACHMENT 1

Proposed Distribution Methodology For the Recyclery Worker Restitution Fund

1. The Two Million Seven Hundred and Fifty Thousand Dollars ($2,750,000) deposited by Allied within ten (10) business days following execution of the Cooperative Agreement and Fourth Amendment to the Franchises Agreement, into a Recyclery Worker Restitution Fund (the “Fund”) will be used to make payments to the Eligible Individuals who worked at the Recyclery from July 1, 2012 through June 30, 2017. The Administrator must implement the following applications notice, evaluation and payment procedure:

   a. Allied will provide the Administrator a list of names and last known addresses of Eligible Individuals that has been updated to the best of Allied’s ability. Allied or its designee must provide this list to Administrator and the City on or before July 31, 2017.

   b. Administrator will prepare a Notice that will be sent to Eligible Individuals. By August 15, 2017, Administrator will provide a draft of the Notice to the City for review and approval. City will review the Notice and respond with comments, proposed changes or approval by August 22, 2017.

   c. Using a list of the names and last known addresses of Eligible Individuals as updated by Allied, the Administrator shall send a Notice by September 30, 2017, to each Eligible Individual. The Notice shall advise the Eligible Individual, in English, in Spanish and in Vietnamese, that Eligible Individuals will receive a supplemental payment if they fill out the application form (to be provided in English, Spanish and Vietnamese) enclosed with the Notice and mail it to the Administrator, post marked by a specified date of not less than 45 days after the mailing. The application form shall require the full name, present mailing address, phone number (home or cell) and social security number of the person submitting the application. The person submitting the application, should also provide information on the periods they worked at the Recyclery and the positions in which they worked.

   d. Eligible Individuals must submit a completed application form to be eligible to receive a payment. Persons submitting application forms after the deadline specified for mailing of such forms by the Administrator will not be eligible for any payment, unless there are excess funds available.

   e. Following the due date for completed applications, the Administrator will review each application for completeness. All completed applications will be verified by the Administrator as to Eligible Individual’s eligibility based on the job he or she held at the Recyclery.
and the number of hours worked. Following verification of eligibility and the number of hours worked by each Eligible Individual, the Administrator will total the number of hours worked from all the Eligible Individuals. Once the Administrator has confirmed eligibility and hours worked, the Eligible Individual will be referred to as a Verified Eligible Individual. Within forty-five (45) days following the due date for the application forms, the Administrator will divide the Fund amongst the Verified Eligible Individual claims received, provided that:

i. The Administrator may only make payments to Verified Eligible Individuals who timely submit completed application forms to the Administrator;

ii. The Administrator may deduct, if appropriate, all applicable federal, state and local payroll taxes applicable on the date the payments are processed by the Administrator.

iii. The maximum gross sum an Eligible Individual will potentially be able to receive will be the sum equal to fifty percent (50%) of the individual’s total gross compensation earned as a sorter, screen cleaner or housekeeper at the Recyclery for the period from July 1, 2012, through June 30, 2017.

iv. If the total payments to all Verified Eligible Individuals including any associated employer payroll tax contributions, is equal to or less than less than the total amount of money in the Fund, the Administrator shall make the maximum payment to each Verified Eligible Individual.

v. If the total payments for which all Verified Eligible Individuals are eligible to receive is greater than the money in the Fund, the Administrator will reduce the payments to Verified Eligible Individuals proportionately in relation to the total amount of their maximum eligible payment, so there is sufficient money in the Fund to pay all Verified Eligible Individuals. If the total of all payments to all Verified Eligible Individuals, including the associated employer payroll tax deductions are less than the total sum in the Fund, any excess remaining shall escheat to the City to be spent by the City in its discretion for a public purpose.

f. The Administrator shall pay the employer’s payroll tax contributions that are associated with the payments to Eligible Individuals from the Adjusted Escrow Fund. The Administrator shall report to the relevant taxing authorities that the payments as being made by the Administrator and using the Administrator's tax ID number.
## ATTACHMENT 2

### Summary of Franchisee Revenue Requirement

<table>
<thead>
<tr>
<th>Franchisee</th>
<th>Rate Year Five Revenue Requirement</th>
<th>Rate Year Over Year Cost Difference</th>
<th>Rate Year Six Revenue Requirement</th>
<th>Rate Year Over Year Cost Difference</th>
<th>Rate Year Seven Revenue Requirement</th>
<th>Rate Year Over Year Cost Difference</th>
<th>Rate Year Seven Revenue Requirement</th>
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<td>100% CUUR00005A0</td>
<td>$8,617,288</td>
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<td>$3,267,095</td>
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<td>Net Processing Costs</td>
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<td>Transfer and Transport Costs (if applicable)</td>
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<td>$0</td>
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<td>G&amp;A Costs - Labor, Vehicle, Fuel &amp; Other</td>
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<td>G&amp;A Costs - Depreciation &amp; Start-Up</td>
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<td>Vehicle Maintenance Costs - Labor, Vehicle, Fuel &amp; Other</td>
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### Profit

| Franchisee Revenue Requirement before Disposal Costs | $28,159,850 | $711,176 | $28,871,026 | $691,392 | $29,562,418 | $763,706 | $30,326,124 |
| NRPP Processing Costs | $7,830,175 | $2,390,801 | $10,220,976 | $281,077 | $10,502,053 | $327,664 | $10,829,717 |
| Organics Processing Costs | $9,005,655 | ($1,280,413) | $6,725,224 | ($764,776) | $6,960,490 | ($400,000) | $7,360,000 |
| Pass-Through Portion of Organics Facility Disposal Costs | $953,952 | ($498,926) | $455,026 | ($555,026) | $0 | ($0) | ($0) |

### City Fees

| Franchise Fee (General Fund) | $11,355,789 | $143,083 | $11,498,872 | $132,237 | $11,631,109 | $153,204 | $11,783,313 |
| Source Reduction & Recycling Fee (SR/R/AB330/NWM Fund) | $2,904,000 | ($4,000) | $2,900,000 | ($4,000) | $2,900,000 | ($4,000) | $2,900,000 |
| Total City Fees | $13,259,789 | $143,083 | $14,398,872 | $132,237 | $14,531,109 | $153,204 | $14,683,313 |
| Total Franchise Revenue Requirement | $59,219,401 | $1,061,723 | $60,281,124 | $1,814,456 | $62,095,580 | $1,642,574 | $63,738,154 |

### Adjusted Per Contract Methodology

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\text{Adjusted Factor:} & \ 1.0316 \\
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