

## **EXHIBIT 12 WAGE POLICY**

Pursuant to City of San José Prevailing Wage policy, Contractor and any subcontractor shall be obligated to pay not less than the prevailing wage as indicated in this Exhibit.

### **I. CITY COUNCIL WAGE POLICY**

#### **A. PREVAILING WAGE POLICY**

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

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

Prevailing Wages established by the City of San José shall mean the wages paid under a collective bargaining agreement between the Contractor and a recognized union representing workers who perform services pursuant to this agreement; or

If there is no collective bargaining agreement as described above, not less than the prevailing rate of per diem wages for the employee craft/classification as determined by the City of San José's Office of Equality Assurance.

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

#### **B. REPORTS**

The Office of Equality Assurance will monitor the payment of prevailing wage by requiring the Contractor and all Subcontractors to file a LABOR COMPLIANCE WORKFORCE STATEMENT and LABOR COMPLIANCE FRINGE BENEFIT STATEMENT with supporting documentation.

The Contractor and covered Subcontractors shall also report such other additional information, including certified payrolls, as requested by the Director of Equality Assurance to ensure adherence to the Policy.

Labor compliance statements must be filed in the Office of Equality Assurance no later July 10, 2007 at the address below.

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

**THIS EXHIBIT INCLUDES THE LABOR COMPLIANCE WORKFORCE STATEMENT AND LABOR COMPLIANCE FRINGE BENEFIT STATEMENT TO BE SUBMITTED BY THE AWARDED CONTRACTOR ONLY. DO NOT SUBMIT THESE FORMS WITH YOUR PROPOSAL.**

### **C. EMPLOYEE RETENTION REQUIREMENTS**

Contractor acknowledges that when collection services are transferred to Contractor, workers who perform services for City's current Contractor will be displaced from their employment. Contractor shall offer employment to all qualified displaced workers who have been employed by the current Contractor for at least 120 calendar days prior to July 1, 2007 provided that Contractor shall not be required to create additional positions that Contractor does not need nor to lay-off or discharge Contractor's employees in order to employ qualified displaced workers. A qualified displaced worker includes non-management workers of the current Contractor who have been employed for at least 120 calendar days prior to July 1, 2007 and who would otherwise be laid-off. Contractor is prohibited from discharging any qualified displaced workers for at least 90 days after the Collection Start-up Date except for cause. After the initial 90 days, the continued employment of qualified displaced workers will be under the terms and conditions established for all of Contractor's workers in the particular job classification. Contractor shall submit displaced worker hiring status reports to the City Representative on the last working day of October 2007 and on the last working day of June 2008.

The following provisions are applicable to this RFP and will become part of the Agreement:

#### **1. Qualified Displaced Worker Defined**

Qualified Displaced Worker means any person employed by the predecessor Contractor or any subcontractor to the predecessor Contractor who meets the following requirements:

- i. The person provides direct labor or service on the City Agreement;
- ii. The person is not an "exempt" employee under the Fair Labor Standards Act (FLSA); and

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iii. The person has been employed on the City Agreement by the predecessor service Contractor or subcontractor for at least 120 calendar days prior to July 1, 2007.

### **2. Current Eligible Retention Employee Defined**

Current Eligible Retention Employee means a current employee of the new Contractor who meets the following requirements:

- i. The person has been employed by the Contractor for at least the six month period prior to the date of the new service or labor contract;
- ii. The person would otherwise need to be terminated as a result of the implementation of the retention requirements; and
- iii. The Contractor chooses to designate the person as a Current Eligible Retention Employee.

The Contractor must establish requirements i. and ii. above by submitting payroll records or other reliable evidence satisfactory to the Director of Equality Assurance by the date specified in writing by the Director of Equality Assurance. If the Contractor cannot submit such evidence, the employee cannot be designated a Current Eligible Retention Employee.

### **D. Employment of Displaced Workers**

The new Contractor shall offer continued employment to all Displaced Workers who are interested in such continued employment.

The City will provide the new Contractor with information regarding which employees of the Predecessor are Qualified Displaced Workers.

Notwithstanding anything to the contrary in this provision, the new Contractor may deem an employee not to be a Qualified Displaced Worker if, and only if:

1. The employee has been convicted of a crime that is related to the job or to his/her job performance; or
2. The Contractor can demonstrate to the City that the employee presents a significant danger to customers, co-workers or City staff.

In the event that the new Contractor does not have enough positions available to hire all Qualified Displaced Workers desiring continued employment and to retain its Current Eligible Retention Employees, the new Contractor shall hire Qualified Displaced Workers and retain Current Eligible Retention Employees by seniority within each employment classification. For any positions that become available during the initial ninety (90) day period of the Agreement, the new Contractor shall hire Qualified Displaced Workers

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and rehire its Current Eligible Retention Employees by seniority within each employment classification.

1. Retention Requirements
  - a. Qualified Displaced Workers hired by the new Contractor may not be discharged without cause during the initial ninety (90) day period of their employment.
  - b. The new Contractor shall offer continued employment to each Qualified Displaced Worker who receives a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment. Such employment shall be offered under the same terms and conditions established by the new Contractor for all of its employees.

2. Third Party Beneficiary

Qualified Displaced Workers are third party beneficiaries of this Agreement, which means that the employee has the right to enforce the provisions of the Agreement independent of the City's right to enforce the provisions of the Agreement. The third party rights will become effective only when the Agreement becomes effective. No third party rights are intended to apply to any employee regarding the RFP process.

3. Obligations Upon Termination

Upon termination of this Agreement Contractor shall fully cooperate with all City requests regarding contacts with Contractor's employees to enable a transition in the workforce to a new Contractor.

### **E. JOB FAIR**

Contractor shall participate in a job fair for the displaced workers to be held on a City-scheduled day during the period April 1 to April 8, 2007 to discuss employment opportunities with such workers. The City Representative shall notify Contractor of the date and place of the job fair at least seven (7) calendar days in advance.

### **F. EMPLOYEE WORK ENVIRONMENT EVALUATION (THIRD TIER REVIEW)**

All service or labor contracts are required to undergo an Employee Work Environment Evaluation, commonly referred to as "Third Tier Review." This Review looks into a proposer's history as an employer and work condition commitments. Each proposer is required to complete an Employee Work Environment Questionnaire and return it with the proposal.

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If the Questionnaire is not returned, the proposal will be deemed to be non-responsive. All proposals are required to address: employee health benefits; compensated days off; employee complaint procedures; compliance with state and federal workplace standards; Employee Retention requirements, if applicable; and Service Disruption/Labor Peace provisions, if applicable.

### **G LABOR PEACE (*FINAL LANGUAGE DEPENDENT ON PROPOSAL ACCEPTED BY CITY*)**

The Office of Equality Assurance has determined that the level of vulnerability of the proposed Agreement to service or labor disputes is sufficient to warrant that labor peace is essential to the propriety interests of the City. The determination was based on considerations including, but not limited to the following factors:

1. The service or labor will be provided on city site or a site which is important to the propriety interests of the city;
2. The service provider relies on a significant amount of public patronage;
3. The economic effect of any disruption of city expenditures or revenues is significant;
4. The effect of any disruption on the citizens, tourists and businesses in the community is significant.

Proposers are to include in their proposal how they will assure that no labor dispute or unrest will occur during the term of the City Agreement. Failure to address this topic in the submission of the proposal will deem the proposal to be non-responsive.

Proposers are cautioned that the City Agreement will include details and requirements of Labor Peace based on the proposal response.

### **H. ENFORCEMENT**

#### **1. General**

Contractor acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to pay workers prevailing wage ("Wage Provision") and to submit certain documentation to the City establishing its compliance with such requirement. ("Documentation Provision.") Contractor further acknowledges the City has determined that the Wage Provision promotes each of the following (collectively "Goals"):

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- A) IT PROTECTS CITY JOB OPPORTUNITIES AND STIMULATES THE CITY'S ECONOMY BY REDUCING THE INCENTIVE TO RECRUIT AND PAY A SUBSTANDARD WAGE TO LABOR FROM DISTANT, CHEAP-LABOR AREAS.
  - B) IT BENEFITS THE PUBLIC THROUGH THE SUPERIOR EFFICIENCY OF WELL-PAID EMPLOYEES, WHEREAS THE PAYMENT OF INADEQUATE COMPENSATION TENDS TO NEGATIVELY AFFECT THE QUALITY OF SERVICES TO THE CITY BY FOSTERING HIGH TURNOVER AND INSTABILITY IN THE WORKPLACE.
  - C) PAYING WORKERS A WAGE THAT ENABLES THEM NOT TO LIVE IN POVERTY IS BENEFICIAL TO THE HEALTH AND WELFARE OF ALL CITIZENS OF SAN JOSE BECAUSE IT INCREASES THE ABILITY OF SUCH WORKERS TO ATTAIN SUSTENANCE, DECREASES THE AMOUNT OF POVERTY AND REDUCES THE AMOUNT OF TAXPAYER FUNDED SOCIAL SERVICES IN SAN JOSE.
  - D) IT INCREASES COMPETITION BY PROMOTING A MORE LEVEL PLAYING FIELD AMONG CONTRACTORS WITH REGARD TO THE WAGES PAID TO WORKERS.
2. Remedies for Contractor's breach of prevailing wage/living wage provisions
- A) SUSPENSION OR TERMINATION: SUSPEND AND/OR TERMINATE THE AGREEMENT OR FINANCIAL ASSISTANCE AGREEMENT FOR CAUSE;
  - B) RESTITUTION: REQUIRE THE EMPLOYER TO PAY ANY AMOUNTS UNDERPAID IN VIOLATION OF THE REQUIRED PAYMENTS AND CITY'S ADMINISTRATIVE COSTS AND LIQUIDATED DAMAGES. AND IN THE CASE OF FINANCIAL ASSISTANCE TO REFUND ANY SUMS DISBURSED BY THE CITY.
  - C) DEBARMENT: DEBAR THE CONTRACTOR OR SUBCONTRACTOR FROM FUTURE CITY CONTRACTS AND/OR DEEM THE RECIPIENT INELIGIBLE FOR FUTURE FINANCIAL ASSISTANCE.

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D) WITHHOLDING OF PAYMENT: CONTRACTOR AGREES THAT THE DOCUMENTATION PROVISION IS CRITICAL TO THE CITY'S ABILITY TO MONITOR CONTRACTOR'S COMPLIANCE WITH THE WAGE PROVISION AND TO ULTIMATELY ACHIEVE THE GOALS. CONTRACTOR FURTHER AGREES ITS BREACH OF THE DOCUMENTATION PROVISION RESULTS IN THE NEED FOR ADDITIONAL ENFORCEMENT ACTION TO VERIFY COMPLIANCE WITH THE WAGE PROVISION. IN LIGHT OF THE CRITICAL IMPORTANCE OF THE DOCUMENTATION PROVISION, THE CITY AND CONTRACTOR AGREE THAT CONTRACTOR'S COMPLIANCE WITH THIS PROVISION, AS WELL AS THE WAGE PROVISION, IS AN EXPRESS CONDITION OF CITY'S OBLIGATION TO MAKE EACH PAYMENT DUE TO THE CONTRACTOR PURSUANT TO THIS AGREEMENT. THE CITY IS NOT OBLIGATED TO MAKE ANY PAYMENT DUE THE CONTRACTOR UNTIL CONTRACTOR HAS PERFORMED ALL OF ITS OBLIGATIONS UNDER THESE PROVISIONS. ANY PAYMENT BY THE CITY DESPITE CONTRACTOR'S FAILURE TO FULLY PERFORM ITS OBLIGATIONS UNDER THESE PROVISIONS SHALL NOT BE DEEMED TO BE A WAIVER OF ANY OTHER TERM OR CONDITION CONTAINED IN THIS AGREEMENT OR A WAIVER OF THE RIGHT TO WITHHOLD PAYMENT FOR ANY SUBSEQUENT BREACH OF THE WAGE PROVISION OR THE DOCUMENTATION PROVISION.

E) LIQUIDATED DAMAGES FOR BREACH OF WAGE PROVISION: CONTRACTOR AGREES ITS BREACH OF THE WAGE PROVISION WOULD CAUSE THE CITY DAMAGE BY UNDERMINING THE GOALS, AND CITY'S DAMAGE WOULD NOT BE REMEDIED BY CONTRACTOR'S PAYMENT OF RESTITUTION TO THE WORKERS WHO WERE PAID A SUBSTANDARD WAGE. CONTRACTOR FURTHER AGREES THAT SUCH DAMAGE WOULD INCREASE THE GREATER THE NUMBER OF EMPLOYEES NOT PAID THE APPLICABLE PREVAILING WAGE AND THE LONGER THE AMOUNT OF TIME OVER WHICH SUCH WAGES WERE NOT PAID. THE CITY AND CONTRACTOR MUTUALLY AGREE THAT MAKING A PRECISE DETERMINATION OF THE AMOUNT OF CITY'S DAMAGES AS A RESULT OF CONTRACTOR'S BREACH OF THE WAGE PROVISION WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT. THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD BE PAID.

### I. AUDIT RIGHTS

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

### **J. COEXISTENCE WITH ANY OTHER EMPLOYEE RIGHTS**

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

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WAGE POLICY**



**Office of Equality Assurance Wage**

**AGREEMENT: RECYCLE PLUS COLLECTION SERVICES**

<b>Classification</b>	<b>Basic Hourly Pay Rate</b>	<b>Health Welfare &amp; Pension</b>	<b>Vacation Minimum (7 Days)</b>	<b>Paid Sick Leave (11 days)</b>	<b>Paid Holidays (12 Days)</b>	<b>Total Hourly Pay</b>
Garbage Driver	24.57	7.24	.66	1.04	1.13	\$34.64
Recycle Driver	24.57	7.24	.66	1.04	1.13	\$34.64
Yard Trimming Claw Driver	24.57	7.24	.66	1.04	1.13	\$34.64
Yard Trimming Collection Driver	24.57	7.24	.66	1.04	1.13	\$34.64

<b>Breakdown of Benefits</b>		
Paid Vacation Days	After 1 year	7 Days – 56 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	25 Days – 200 Hours
	After 20 years	30 Days – 240 Hours
	After 25 years	35 Days – 280 Hours
	After 30 years	40 Days – 320 Hours
Paid Sick Leave	Eleven (11) paid Sick Days	
Paid Holidays	Twelve (12) paid Holidays	

NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of Agreement, the successful contractor/service provider will be required to submit: (1) Labor Compliance Workforce Statement; (2) Labor Compliance Fringe Benefit Statement with supporting documentation. As a condition of its Agreement, this firm may also be required to complete and file certified payrolls as requested by the Office of Equality Assurance.

## EXHIBIT 12 WAGE POLICY

Office of Equality Assurance Wage Determination continued

**AGREEMENT: RECYCLE PLUS COLLECTION SERVICES**

Classification	Basic Hourly Pay Rate	Health Welfare & Pension	Vacation Minimum( 7 Days)	Paid Sick Leave (11 days)	Paid Holidays (12 Days)	Total Hourly Pay
Residential Street Sweeper	18.89	2.66	.51	.80	.87	\$23.73

Breakdown of Benefits		
Paid Vacation Days	After 1 year	7 Days – 56 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	25 Days – 200 Hours
	After 20 years	30 Days – 240 Hours
	After 25 years	35 Days – 280 Hours
	After 30 years	40 Days – 320 Hours
Paid Sick Leave	Eleven (11) paid Sick Days	
Paid Holidays	Twelve (12) paid Holidays	
<p>NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of Agreement, the successful contractor/service provider will be required to submit: (1) <u>Labor Compliance Workforce Statement</u>; (2) <u>Labor Compliance Fringe Benefit Statement</u> with supporting documentation. As a condition of its Agreement, this firm may also be required to complete and file certified payrolls as requested by the Office of Equality Assurance.</p>		

## EXHIBIT 12 WAGE POLICY

Office of Equality Assurance Wage Determination continued

**AGREEMENT: RECYCLE PLUS COLLECTION SERVICES**

Classification	Basic Hourly Pay Rate	Health Welfare & Pension	Vacation Minimum (6 Days)	Paid Sick Leave (7 days)	Paid Holidays (8 Days)	Total Hourly Pay
Sorter	11.95	3.46	.36	.41	.47	\$16.65
Floor Sorter/Raker	17.84	3.46	.49	.57	.66	\$23.02
Spotter	13.91	3.46	.40	.47	.53	\$18.77
Buy Back Operator	16.38	3.46	.46	.53	.61	\$21.44
Mechanic	28.35	3.46	.73	.86	.98	\$34.38
Equipment Operator	17.70	3.46	.49	.57	.65	\$22.87
Baler Operator	17.81	3.46	.49	.57	.65	\$22.98
Scale Operator	18.79	3.46	.51	.60	.68	\$24.04

Breakdown of Benefits		
Paid Vacation Days	After 1 year	6 Days – 48 Hours
	After 5 years	15 Days – 120 Hours
	After 10 years	20 Days – 160 Hours
	After 15 years	25 Days – 200 Hours
	After 20 years	30 Days – 240 Hours
	After 25 years	35 Days – 280 Hours
Paid Sick Leave	Seven (7) paid Sick Days	
Paid Holidays	Eight (8) paid Holidays	

NOTE: Pursuant to the Labor Code and/or City Resolution, the awarding body is responsible for determining classifications to be used on Construction, Maintenance, Service and other contracts subject to prevailing wage and/or living wage requirements. Upon award of Agreement, the successful contractor/service provider will be required to submit: (1) Labor Compliance Workforce Statement; (2) Labor Compliance Fringe Benefit Statement with supporting documentation. As a condition of its Agreement, this firm may also be required to submit certified payrolls as requested by the Office of Equality Assurance.

## EXHIBIT 12 WAGE POLICY

Office of Equality Assurance Wage Determination continued

### Determination Notes

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

Hours and Days of Work

#### **(Industrial Welfare Commission Order No. 16-2001)**

City of San José contracts subject to City prevailing wage or living wage policies will use the same guidelines for all covered classifications/employees.

Employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

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

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

Rates will be subject to annual adjustment beginning July 1, 2006. (Adjustments will be based on the Consumer Price Index, All Items, for all Urban Consumers [CPI-U] for San Francisco-Oakland-San José)





## EXHIBIT 12 WAGE POLICY

### LABOR COMPLIANCE FRINGE BENEFIT STATEMENT

**CONTRACTOR NAME:** \_\_\_\_\_

**YT & RSS SERVICES AGREEMENT:** \_\_\_\_\_

I certify under penalty of perjury that fringe benefits are paid to the approved plans, funds, or programs as listed below:

Classification	Fringe Benefit Hourly Amount	Name of the Plan or Fund (Attach Premium Transmittal)
1. <div style="border: 1px solid black; padding: 5px; background-color: #e0e0e0;"> <p><b>Documentation of Plan contribution must be returned with this statement</b></p> <p>Please attach a copy of your most recent transmission into each medical, pension, or profit sharing plan account indicating worker name and amount of contribution.</p> </div>	Vacation	
	\$	
	Health & Welfare	
	\$	
	Pension	
	\$	
	Apprentice	
	\$	
	Other (specify)	
	\$	
2. _____	Vacation	
	\$	
	Health & Welfare	
	\$	
	Pension	
	\$	
	Apprentice	
	\$	
	Other (specify)	
	\$	
3. _____	Vacation	
	\$	
	Health & Welfare	
	\$	
	Pension	
	\$	
	Apprentice	
	\$	
	Other (specify)	
	\$	

All (or some) fringes are paid in cash by adding the amount to the employee's basic hourly rate.

\_\_\_\_\_  
Company Name (Please Print)

\_\_\_\_\_  
Name and Title (Please Print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature