CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

COUNCIL AGENDA: 08-22-06
ITEM: 7.1

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Scott P. Johnson

SUBJECT: **RECYCLE PLUS-- SUPPLEMENTAL 4 OF 4**

DATE: 8-17-06

Approved Deanna Santana Date 8/17/06

REASON FOR SUPPLEMENTAL

This is the fourth in a series of supplemental memoranda that will address questions and issues raised at the Recycle Plus RFP Study Session on August 11, 2006. This supplemental memorandum addresses the completion of the administrative protest process.

PROTEST PROCESS

On August 1, 2006, staff met with unsuccessful proposers to inform them about the City's award recommendation. In accordance with paragraph 5.7, titled "Protest Procedure," of the Recycle Plus Request for Proposal, on August 1, proposers were notified, in writing, that they may protest staff's award recommendation to the City's Chief Purchasing Officer, in writing, by Thursday August 10th, 5 p.m. detailing the grounds, factual basis and providing all supporting information.

On August 10, the City's Chief Purchasing Officer received a protest letter from Garden City Sanitation, Inc. and California Waste Solutions, Inc.. Staff met with representatives from Garden City and California Waste Solutions on August 17 to discuss the City's response to the submitted protest letters. The protest letters from the two companies and the City's response are attached to this memorandum.

On August 11, Finance also received an email from Eagle Recycling, Inc. Eagle Recycling was disqualified prior to Phase III of the evaluation process, the Best and Final Offer process, due to a low technical score. To address Eagle Recycling's concerns, staff met with Eagle Recycling on August 17. Attached, please find the August 11 email from Eagle Recycling and the City's response.

As discussed during the Study Session on August 11, the City's protest responses were formulated by Finance with technical assistance from Environmental Services and reviewed by the City Attorney's Office. As requested by Council during the Study Session, the City Auditor's Office reviewed the protest letters and attended the meetings with companies.

SCOTT P. JOHNSON
Director, Finance

For questions please contact Walter C. Rossmann, Chief Purchasing Officer at (408) 535-7051.

Attachments:

(A) Correspondence from Garden City Sanitation, Inc. and City's response
(B) Correspondence from California Waste Solutions, Inc. and City's response
(C) Correspondence from Eagle Recycling, Inc. and City's response

Garden City Sanitation
1060 Richard Avenue
Santa Clara, CA 95050
408/727-5365

August 11, 2006

Mr. Walter C. Rossman, CPM, Chief Purchasing Officer
City of San Jose
Finance Department
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113

Letter of Protest: RFP 05-06-09 Recycle Plus 2006
Protest of Staff Analysis and Recommendation

Dear Mr. Rossman:

While we appreciate staff's many hours of work on this very daunting RFP it is incumbent upon Garden City Sanitation (GCS) to formally protest several major points of staff's analysis and its conclusion to not recommend our proposal to the City Council.

These major points of protest, once corrected and clarified, coupled with staff's own language from its analysis of our proposal clearly demonstrate GCS's competence to deliver quality garbage collection services at an extremely competitive price to the residents of San Jose. It is our hope that once the facts are clear, and the record clarified, that staff and the City Council will see the merits of selecting our firm for this RFP. **Issue Number 1: Local Business Preference**

In the City's *August 11, 2006 Recycle Plus RFP Study Session Materials/August 15, 2006 Recycle Plus RFP Council Report, Item 7.1* binder, *Tab 5, p 9, Table 6,* GCS was not awarded the local business preference points as it rightly should have. As per the evaluation criteria described in the City's *RFP 05-09-06,* GCS should have received the five percentage points available for the *Local Business Preference (Form K)* for the following reason:

- The *RFP* documents state the following relative to *Form K – Local and Small Business Application*:

  > **"...In order for your company to be eligible for local and/or small business preference, you must complete Form K, Request for Contracting Preference for Local and Small Businesses...."** - *RFP, §4.1.5*
  >
  > **"...Businesses with a legitimate presence in Santa Clara County in accordance with the ordinance titled "Contracting Preferences for Local and Small Business."** - *RFP, §5.5.6*

GCS completed *Form K* and it was submitted as part of the proposal response. A copy of the original document is attached. Furthermore, GCS has an established business presence in Santa Clara County as evidenced by its mailing address., GCS's affiliate company, Mission Trail Waste Systems, does have a Business Tax Certificate on file with the City of San Jose and paid approximately $9,000.00 in franchise fees to the city. Furthermore, the business relationship between Mission Trail Waste Systems and GCS is clearly explained in the proposal response on page 9 of 193, attached.

Once these five percentage points are applied, GCS' technical proposal ranks highest overall.

Issue Number 2: Labor Union MOU

City staff misrepresents GCS on two points:

- In the *Study Session Materials/Council Report* binder (referenced above) staff states in its *Memorandum* to the Mayor and City Council dated August 1, 2006, and located behind *Tab 8* of that binder, page 8, under the subhead *Employee Relations and Labor Relations Plan*, the following bullet point: "Assures a Memorandum of Agreement will be signed by the company and the union Teamsters #350) upon award of contract. This statement is in error and misleading since the company had, in fact, already signed an MOU with Teamsters Local No. 350 on May 15, 2006, attached. A copy of this MOU was provided to staff at GCS' May interview, and provided again to staff in response to follow up questions asked of GCS on June 6, 2006, to which GCS replied on June 12, 2006 (see attached response).

- Staff also stated in another bullet point in the same document and under the same subsection referenced above, that GCS "Would ask the City to allow negotiated labor and benefit increases to be categorized as pass-through costs." The excerpted section from GCS' proposal response is attached for context. Please see page 189 of 193. This was simply a suggestion as is clearly stated, and, furthermore, GCS took no exceptions to the *Agreement* whatsoever.

Issue Number 3: Cost/Rate Comparison to the Recommendation

Attachment A of the *Memorandum* from staff to the Mayor and Council dated August 1, 2006, only represents option numbers 1 through 6 and option 29. GCS would like to see the complete listing of options, and in particular the combination of GCS and CWS with respect to solid waste and recycling services for both districts. Staff did not present all relevant information to the Mayor and Council in this *Attachment*. GCS believes based on its estimates gleaned from *Tab 5* of the *Study Session/Council Report* binder, *Table 5*, that total pricing for this combination would be $32,303,186, ranking the combination GCS/CWS third. *Attachment A* is included in this packet. GCS believes its strong technical ranking—which should be highest overall (see *Issue No. 1*, above) warrants disclosure of this information.

Issue Number 4: Best and Final Offer

On page 18 of staff's *Memorandum* to the Mayor and Council dated August 1, 2006, the introductory paragraph states:

> ***"Staff recommends accepting Norcal's two-year proposal submitted during the Best and Final Offer phase of the RFP process, at an estimated first-year annual cost of $30,168,000. Reasons for this include:..."***

Then, under that, in the fourth bullet point, staff states:

> ***"Neighborhood clean-up services are included in Norcal's proposal at no additional cost. Staff had intended to issue an RFP for neighborhood clean-up services, but this will no longer be needed. Annual savings from this stand-alone service are estimated to be between $350,000 and $500,000."***

Not only did staff intend to issue a separate RFP for neighborhood clean-ups, it states in the *RFP* page 3-2, the following:

> ***"Note to Proposers: Neighborhood Clean-Up Services which were previously included in the Collection Service Agreements Are Not included in this RFP for Service Districts A and C. The City will issue a separate RFP for Neighborhood Clean-up Services."*** See attached page from RFP.

Furthermore, in the *Study Session Materials/Council Session* binder, behind *Tab 5*, on page 7, under the subhead *Phase III – Best and Final Offer (BAFO)*, the following statement is made:

> ***"...The City cannot issue an additional requirement through a BAFO, which would have reasonably resulted in receiving additional proposals."*** See attached page.

By considering Neighborhood Clean-Up Services, which were specifically excluded from the RFP, staff provides an unfair advantage to Norcal's proposal.

In closing, I am providing a list of verbatim highlights of city staff's Overall Assessment of our ability to deliver quality garbage collection services to the residents of San Jose:

- **Garden City Sanitation submitted the most complete and comprehensive proposal and received the highest technical ranking for a solid waste proposal.**
- **Garden City proposed the best Diversion Plan.**
- **Garden City's collection plan is comprehensive.**
- **They (GCS) offered the best analysis of route requirements for garbage collection, and showed the basis of their calculations. It showed a company that has a handle on how to calculate costs and offer a well-composed proposal.**
- **They have excellent reference with regard to transition operations.**

Staff's comments, in this case, speak for themselves. Thank you for your time and consideration of our formal protest of the staff analysis and recommendation and if you have any additional need for information please do not hesitate to phone me at (650) 814-9532.

Sincerely,

Louie Pellegrini, President
Garden City Sanitation, Inc.

Cc: TEC Members

FORM K
LOCAL AND SMALL BUSINESS APPLICATION

City of San Jose
Request for Contracting Preference for Local and Small Businesses

Chapter 4.06 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise* or Small Business Enterprise** and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a non-local vendor submits a quote of $200 per item and a LBE submits a quote of $204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately $5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as $199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional** 5% to 10% **points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

Type of Procurement	☐ Bid	☐ Request for Quote	☒ Request for Proposal
Type of Preference	☐ Price is Determinative	☒ Price is Not Determinative	
Amount of Preference	LBE preference = 2.5% of **Cost**	LBE preference = 5% of **Points**	
	SBE preference = 2.5% of **Cost**	SBE preference = 5% of **Points**	

In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.

Business Name	GARDEN CITY SANITATION, INC.		
Business Address	1060 RICHARD AVE, SANTA CLARA, CA 95050		
Telephone No.	408 727-5365		
Type of Business	☒ Corporation	☐ LLC	☐ LLP
	☐ General Partnership	☐ Sole proprietorship	☐ Other (explain)

***LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**
In order to qualify as an LBE you must provide the following information:

Current San Jose Business Tax Certificate Number **	SEE SWORN STMT PG 11
Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:	1060 RICHARD AVE SANTA CLARA CA 95050

****SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**
In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business –NOT just local employees, or employees working in the office address given above.

Please state the number of employees that your Business has: 0 *

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*):
☐ Local Business Enterprise
☐ Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: SANTA CLARA, CA , California
Date: 4/11/06
Signature: [signature]
Print name: LOUIE PELLEGRINI

* AT THIS TIME, GARDEN CITY SANITATION HAS Ø EMPLOYEES. BASED ON CONTRACT AWARD, THE COMPANY MAY HAVE 41+ EMPLOYEES WHO WILL COME ON LINE BETWEEN CONTRACT AWARD & JULY 1, 2007. 8-27

** AFFILIATE COMPANY RECYCLE WEST HAS A SJ BUSINESS TAX CERTIFICATE: NO. 0973402006

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

EXPIRES: **06/30/2007**

CITY OF SAN JOSE

BUSINESS TAX CERTIFICATE

No. 097340207

This is a receipt for payment, NOT an invoice. No remittance is required.

BUSINESS NAME	NATURE OF BUSINESS	NO. OF EMPLOYEES/ UNITS/ SQ. FT.	EXPIRATION DATE
RECYCLE WEST	**REFUSE & RECYCLABLES**	**1**	**06/30/2007**
BUSINESS ADDRESS	**RECEIPT ISSUE DATE**	**TAX DISTRICT NO.**	**TOTAL BUSINESS TAX PAID**
1060 RICHARD AV A	**07/01/2006**	**99**	**$150.00**

This certificate evidences that the person(s), firm, or corporation named hereon has paid the tax required by Chapter 4.76 of the San José Municipal Code for the type of business and the business address and for the period indicated hereon. The certificate is issued without verification that the taxpayer is subject to or exempted from licensing by the state. Issuance of the certificate is not an endorsement, nor certificate of compliance with other ordinances or laws, nor an assurance that the proposed use is in conformance with the city building/fire/zoning regulations. This certificate does not allow any special parking privileges. Expiration date shown. **ANNUAL TAX PAYMENT DUE ONE DAY AFTER EXPIRATION DATE.**

BUSINESS NAME	**RECYCLE WEST**
OWNER	**MISSION TRAIL WASTE SYS INC**
MAIL ADDRESS	**1060 RICHARD AVE**
CITY & ADDRESS	**SANTA CLARA, CA 95050-2816**

FORM 141-42 REV.3/2002

NOTE

- Treasury must be notified of any change in ownership or location or of closure. Call 535-7055 or visit us on our web site.
- Post in a conspicuous place in plain public view

(Must be presented upon request)

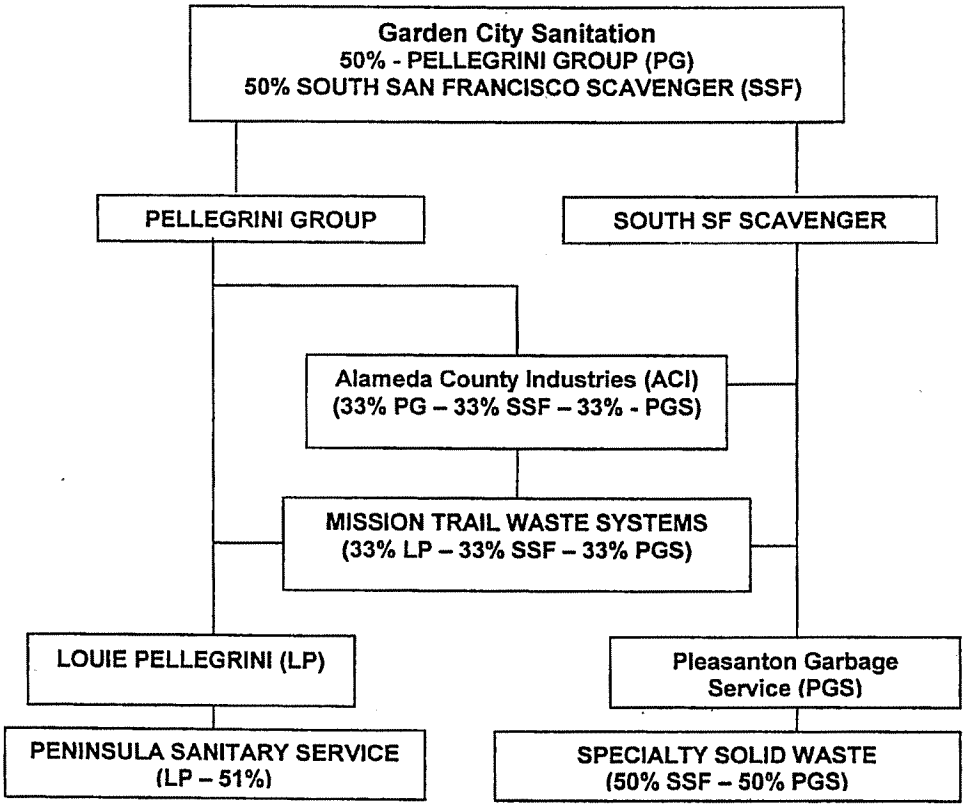
- Not transferable or assignable
- Renewal notice not required

Questions?

Call 535-7055 or visit us on our web site. www.csjfinance.org

2.1b
Relevant Business Relationships
RFP p 4-12

A variety of business relationships—primarily overlapping ownership interests—exists among GCS shareholders and other similar business entities. The chart below depicts those relationships.



Because these are small, local companies, they have found it advantageous to form partnerships amongst themselves to acquire similar local companies and bid on municipal collection contracts. Since the owners of these companies prefer to have management roles in their companies, all business partners genuinely understand the solid waste and recycling industry, and therefore add much more than a funding mechanism for new endeavors.

- Cost-effective processing and marketing of recyclable materials with demonstrated success in attaining highest and best uses for such materials.

- Additional evaluation criteria for YT & RSS Services:
  - Implementation and administration of complex street sweeping and yard trimming materials collection systems, including equipment selection and route design;
  - Successful operation of yard trimmings programs that achieve high participation levels and diversion rates; and
  - Cost-effective processing and marketing of yard trimmings with demonstrated success in attaining highest and best uses for such materials.

5.5.4 CUSTOMER SERVICE – 10%

Each proposal will be evaluated to assess the Proposers' approach to:

- Implementing customer service programs;
- The plans as required in accordance with Section 4.4.9 of this RFP;
- Continuity and timeliness of service;
- Performance measures; and
- Measurements of outreach effectiveness.

5.5.5 FINANCIAL CAPACITY – 5%

Each proposal will be evaluated to assess the relative financial capacity and strength of the Proposer. This will include without limitation:

- An evaluation of financial statements;
- A financial review of each Proposer, including a review of key financial ratios; and
- Proposer's capacity and plans for responding to fluctuations in recyclable material markets and for making needed start-up investments in equipment, both of which should be specifically addressed in the Proposals.

5.5.6 LOCAL BUSINESS PREFERENCE – 5%

Businesses with a legitimate presence in Santa Clara County in accordance with the ordinance titled "Contracting Preferences for Local and Small Business."

5.5.7 SMALL BUSINESS PREFERENCE – 5%

Local Business that has thirty-five (35) or fewer employees in accordance with the ordinance titled "Contracting Preferences for Local and Small Business."

Responses to written inquiries will be made available to all Proposers. Any supplements, amendments, or Addenda to this RFP will be made in writing and will be issued by the City through the DemandStar system.

4.1.3 OBJECTIONS TO THIS RFP

Any objections as to the structure, content or distribution of this RFP (except the Agreements) must be submitted in writing to the purchasing contact by the deadline listed in Section 4.2.17. Objections must be as specific as possible, and identify the RFP section number and title, as well as a description and rationale for the objection.

4.1.4 LATE PROPOSALS

Late proposals shall be rejected and returned to the Proposer. This deadline is absolute and proposals received after the due date and time shall not be considered. Proposers must select a method of delivery that ensures proposals will be delivered to the correct location by the due date and time.

4.1.5 LOCAL AND SMALL BUSINESS PREFERENCE

It is the policy of the City of San José to encourage local and small business activity. Effective June 18, 2004, the City adopted San José Municipal Code 4.06, which established a Local and Small Business Preference Policy for the procurement of supplies, materials, equipment, general services and consulting services. In order for your company to be eligible for local and/or small business preference, you must complete Form K, Request for Contracting Preference for Local and Small Businesses. If you fail to complete this form and submit it with your proposal, your company will be denied consideration for local/small business preference. This information cannot be submitted later.

4.1.6 CITY BUSINESS TAX

The Proposer(s) shall be required to comply with the San José Municipal Code ("SJMC") Chapter 4.76 with respect to payment of the City Business Tax prior to any commencement of work. Contact Finance Department/Treasury at (408) 535-7055 to determine the applicable tax costs.

4.2 PROPOSAL SUBMISSION

4.2.1 EXPENSES OF PROPOSAL PREPARATION

All responses to this RFP shall be prepared at the cost and expense of the Proposer making the response to the RFP, with the express understanding that there shall be no claims whatsoever for reimbursement to any Proposer from the City for the cost or expense of such preparation for any reason including the cancellation of the RFP.

MEMORANDUM OF UNDERSTANDING

BETWEEN

GARDEN CITY SANITATION

AND

SANITARY TRUCK DRIVERS AND HELPERS

LOCAL UNION NO. 350

This Memorandum of Understanding is entered into between SANITARY TRUCK DRIVERS and HELPERS LOCAL 350, hereinafter called the "Union" and GARDEN CITY SANITATION, hereinafter called the "Company", in anticipation of the award of any or all SERVICE CONTRACTS IN THE SOLID WASTE/RECYCLE, INCLUDING WORK INCIDENTAL THERETO, to be given to the Company by the City of San Jose. It is understood and acknowledged that the Union is presently the collective bargaining representative for employees of the firms which currently are under contract with the City of San Jose for its work.

WHEREFORE, it is agreed as follows:

1. The Company agrees to offer employment to the employees presently covered by the Agreement between NORCAL WASTE SYSTEMS (San Jose), and the Union to the extent required to perform all the services to be provided for under the Solid Waste Management contract, subject only to discharge for just cause in accordance with the terms of said Agreements. Such offers of employment shall be made to each individual on or before March 1, 2007. No individual shall be hired from any other source prior to July 1, 2008 for work with in the Union's contract classifications, until all persons holding seniority under the Agreement shall have been offered employment.

2. (a) The Company agrees to recognize the Union as the sole and exclusive collective bargaining representative of all the employees performing the services under any of the Solid Waste Management contracts; provided that the Union presents evidence to the Company that it continues to enjoy majority support. Such evidence may be presented on or after March 1, 2006. In the event that the Company assumes the obligations under any and all of the Solid Waste Management contracts prior to July 1, 2007, then the Union shall be recognized at that time subject to a showing of a majority support.

   (b) The evidence of majority support referred to in subparagraph 2 (a) above, may be in any reasonable form, including records of then current membership in the Union. In the event there is good faith doubt as to the Union's majority status then the proffered evidence shall be reviewed by the State Conciliation Service whose determination shall be conclusive.

3. Immediately upon recognition of the Union, pursuant to paragraph (2) above, the Company agrees to adopt and continue without interruption or modification all of the terms and

conditions contained in the collective bargaining agreement between the Union and predecessor employer covering the employees hired by the Company pursuant to this Memorandum of Agreement. The Company and the Union agree to make the necessary technical and/or editorial changes necessary to conform said agreement to the understandings contained herein. In the event the most recent collective bargaining agreement covering such employees has expired, the Company shall initially apply and be bound by the terms and conditions of the expired Agreement, but shall concurrently meet with the Union for the purpose of negotiating in good faith to agree upon a successor agreement shall be retroactive for wages and economic benefits to the date on which the Company begins operations under its franchise. In the event of the failure of the parties to reach agreement upon successor collective bargaining agreement, either party may have recourse to economic action in support of its bargaining position.

4. It is expressly understood that notwithstanding Article 8, Section 1 of the Agreement, employees hired pursuant to paragraph (1) above shall be treated immediately as seniority employees, and the seniority date shall be determined by the employee's original date of hire as a garbage collector in the City of San Jose, without regard to the particular contractor or contractors providing such services to the City.

IN WITNESS WHEREOF the duly authorized representative of the parties hereto have executed this Agreement at San Francisco, California, this 10 day of May 200 6.

For and on behalf of
GARDEN CITY SANITATION

Louie Pellegrini – President

Dated: 5-15-2006

For and on behalf of
SANITARY TRUCK DRIVERS & HELPERS, LOCAL UNION NO. 350

Robert Morales Secretary-Treasurer

Dated: 5-15-06

The Company will pay prevailing wages. The Company provides excellent benefits—as is reflected in *Form L, Section 10*. GCS does not ask employees to pay a portion of their premiums as is standard practice today. Instead, the company pays 100 percent of the premium for the employee and family members. Also, GCS will ensure employees have the right equipment and tools with which to perform their jobs optimally and safely. In turn, the company expects that its equipment and tools are treated with respect at all times, and only used in the manner intended.

Furthermore, the company respects the privacy of its employees, using employee information only for valid purposes and as the law permits. Company employees with access to confidential or proprietary information must prohibit such information from improper disclosure, which will be treated as the serious abuse that it is. By the same token, GCS expects reciprocity in that employees will not misuse the proprietary nature of certain Company information—such as business systems and processes, cost data, or customer data—inappropriately or for personal gain.

Labor Peace

While the concept of "labor peace" is still emerging in California and nationwide, GCS believes the spirit of labor peace—especially as it may apply to this *Recycle Plus* contract—is to provide for a neutral work environment with for organized employees by forbidding anti-union comments or campaigning by company management. Traditionally, such an agreement has two parts, with an agreement by the union not to use disruptive and economically damaging tactics—such as labor strikes—to accomplish union objectives.

GCS wants to reassure the City again that a Memorandum of Understanding (included as *Exhibit 3* of the *Appendix*) has been signed by the Company and the union, and the Company accepts and is fully prepared to employ displaced unionized workers. Several GCS affiliate company employees have union representation, and in each situation there exists *Collective Bargaining Agreement* between the union and the Company recognizing the union. Extensive resources go into managing union relations, and the companies take interactions seriously.

Based on the experience of GCS affiliate companies that manage union-related processes, prevailing wages, and benefits, below is a list of commitments the Company is willing to make that it believes will achieve labor peace and protect against labor

discord (which are essentially one and the same and are achieved through following the same set of guidelines):

- GCS will honor its Memorandum of Understanding with the union and will begin to conduct negotiations in good faith and for the good of all parties once staff recommendation has been made by staff to the San José City Council.
- The Company will pursue adoption of a *Collective Bargaining Agreement* inclusive of the entire term of the Company's *Agreement* with the City such that all parties are aware of wage increases throughout the six-year period. The Company would ask the City to allow negotiated reasonable labor and benefit increases as agreed to and guaranteed by the union as per a schedule included as part of the *Collective Bargaining Agreement* to be categorized as pass-through costs. In return the union would agree to include language in the *Collective Bargaining Agreement* that it will not use or threaten to use disruptive or economically devastating tactics such as labor strikes, walk-outs, or work slow-downs during the term of the Agreement. This fair approach leaves nothing to chance and gives to each party—the union, the employees, the City, and GCS—exactly what is needed to conduct business productively and without disruption in San José.
- The Company will respect, at all times, the employee's right to union representation by forbidding anti-union remarks or campaigning of any sort.
- To the greatest extent possible, GCS will ensure the processes documented in the *Collective Bargaining Agreement* to be adopted will be strictly, objectively, and uniformly adhered to.

The Company believes its plan for labor peace; its commitment to providing a positive work environment, safety, quality performance; and its core values as expressed through its mission and ethics statements provide the best possible scenario for displaced workers.

RECYCLE PLUS RFP QUESTIONS FOR GARDEN CITY

6/6/06

Garden City Sanitation

Responses 6/12/06

1. Please provide a Collection Equipment supply schedule and Contingency Plan assuming a possible two month delay in the RFP previously anticipated date of contract award, including equipment sources, type vehicles, days/hours of availability, etc.

Response: In the event of a delay in award the production of chassis will be delayed by 30 days. As a result, as of July 1, 2007 GCS will have available thirty-two new automated trucks with an additional twenty-one spare vehicles provided by related parties to cover routes. In addition, another thirty-five vehicles are available on an as needed basis. (Please see Available Equipment Schedule). GCS has several options at its disposal for handling the interim new equipment shortage. First of all, the remaining new trucks will be coming in at a rate of four trucks per week thus reaching route requirement levels of forty-five by July 25, 2007 with an additional five vehicles on line by August 7th 2007 for a total of fifty trucks. In order to meet the shortfall for the first three to four weeks of operation GCS has the ability to use the new equipment to cover thirty-two routes with the spares covering the remaining seventeen routes. The spares will be relocated from the source company to our San Jose yard for ease of use. In addition, new rolling stock can be used to run a second route. This can be accomplished by having trucks run the initial route at the regular start time then upon completion of the initial route the truck would be used by a second driver to complete an additional route. Between the new equipment and the available spare equipment GCS has more than an adequate amount of vehicles to cover the forty-five routes. In the event even more equipment is necessary GCS has the ability to rent additional rolling stock from Specialty Solid Waste, Mission Trails Waste Systems, South San Francisco Scavenger, Alameda County Industries and Peninsula Sanitary Service, Inc., as outlined in the Available Equipment Schedule section B Second shift. Please note: in the event of a delay additional costs will be incurred.

2. Please provide a copy of the MOU signed with Teamsters Local 350 and discuss the implications of the terms of the agreement, effect of the 'Rule of 45', and other pertinent comments concerning your proposal.

Response: Please find a copy of the signed Memorandum of Understanding with local 350 attached. In regards to the 45-hour rule our productivity statistics were specifically developed with the goal of an 8-hour day or 40 hour workweek per employee. As a result, GCS anticipates that the additional employee pool accounted for in our statistics coupled with the forty hour work week approach will be more

than adequate to keep overtime to a minimum and avoid having employees exceed forty five hours in a week. In addition because or goal is an eight hour day we believe the additional five hours a week of overtime available per employee provides a cushion and creates flexibility in the event overtime is required. The Garden City Sanitation proposal has an approach that is clearly driver friendly and will insure that drivers will be available to work a five-day workweek. The routes are designed for 1 productive load per 8-hour day and if there is an issue that requires overtime by a driver on any given day we will still have the ability to have each driver working the 5th day and still comply with the rule. Benefits of a 40 hour work week will include; a steady 5 day work schedule, more free time to be with family and friends, and more rest for the drivers. This should result in a more alert driver, a safer driver, and a clear thinking driver. We should all benefit from fewer injuries, accidents and incidents on the route and on the road. A rested driver should also be a friendlier service provider to the residents. A rested driver should translate to a better company employee behind the wheel, which is better for the residents of San Jose and for those that interact with any of our drivers after work.

The company has budgeted for a total of fifty drivers to cover forty-five routes thus creating a relief pool, which will also help alleviate potential issues with the forty-five hour rule.

3. Please provide a proposed layout and sizing for the proposed operations yard, schedule for development, and list of any potential sites investigated.

Response: We have identified a total of five potential sites, which can meet our requirements, two properties in San Jose, two in Santa Clara and one property in Milpitas. Below is the estimated sizing required if both sectors awarded. Layout will depend upon the final site chosen.

	Width ft	Length ft	Count	Total sq ft	Acres
Truck Parking	14	60	55	46200	1.06
Employee Parking	10	30	80	24000	0.55
Shop	14	60	10	8400	0.19
Cart Storage	100	100	1	10000	0.23
Truck Washing	20	40	1	800	0.02
Cart Washing	20	40	1	800	0.02
Office	100	100	1	10000	0.23
Misc.	100	100	1	10000	0.23
Total				110200	2.53

4. In providing service to the City of Sunnyvale, Garden City states on Page 38, that their was an "unanticipated cart shortage". I would ask for further elaboration as to why a shortage occurred? Did Garden City simply not order enough carts, was their a delay at the manufacturing plant?

Response: The shortage was a result of a delay in cart delivery by the manufacturer.

5. Garden City is a "new entity", as stated on Page 123, please advise whether claims, settlements, arbitrations, litigation proceedings, and civil actions involving $100,000 or more in the last five years have been experienced by "affiliates" such as Alameda County Industries? If so, describe?

Response: Please see attached letters from our legal counsel; Cohen and Ostler regarding South San Francisco Scavenger, Mission Trails Waste Systems and Alameda County Industries and legal counsel Reynolds, Casas and Riley regarding Peninsula Sanitary Service, Inc., as well as, Lou Pellegrini's personal interests.

6. Please describe contingency plan for *Acquiring/Prepare Operations Yard* (Pg. 130)

Response: Upon award of the contract GCS will secure appropriate faculties with adequate parking, maintenance facilities and administrative offices. Any leasehold improvements necessary will then be contracted and completed prior to implementation of solid waste collection service. Currently, GCS has identified five available sites in and around San Jose as mentioned in question two.

7. Will outreach and/or program materials be in multiple languages, i.e. English, Spanish and Vietnamese. (Pg. 145)

Response: Yes. Outreach materials will be produced in English, Spanish and Vietnamese. We think we should work with the City staff on specific materials if a language other than these three needs to be generated to reach a significant portion of the residents we should work collaboratively to enhance the message delivery.

8. On Pg. 171, Garden City uses the term "related" companies, are these Garden City affiliates?

Response: As mentioned in the proposal each entity is a separate corporation. The common thread between these companies and Garden City Sanitation is the common management and ownership. The partners in Garden City Sanitation also have ownership and management responsibilities in South San Francisco Scavenger, Mission Trails Waste Systems, Specialty Solid Waste, Alameda County Industries and Peninsula Sanitary Service. As a result, the partners in Garden City Sanitation represent years of experience in the solid waste industry. In addition, these companies have resources available to GCS such as spare equipment, processing capability and most importantly management expertise.

9. Confirm the use of rubber tires in the carts.

Response: Yes all carts will have rubber tires

10. Provide 2007 diesel engine emission numbers.

Response: The Engines will be built during 2006. The emissions are stated in form F. CO 3.0 g/bhp/hr. , HC (total Hydrocarbons) & NOx 2.4 g/bhp/hr. , Particulate Matter .07 g/bhp/hr.

11. Need to clarify data on CNG vehicles. Form F had increased payload capacity for CNG than diesel.

Response: The answer to this question is "Yes, this is correct." The reason why the CNG unit had a larger payload is due to the following: when changing from a diesel powered unit to a CNG powered unit, we need to have ample space to mount the CNG tanks. In this case, there would be 4 tanks that are approximately 16" in diameter by 80" long. These are housed in a horizontal rack that is mounted above the frame rail, behind the back of the cab, and in front of the packer body. These are neck-mounted tanks and they are enclosed with a cocoon or shell with an entry door for maintenance. Due to this approximately 20" that the body will be moved rearward on the chassis frame rails to allow for the mounting of the tanks and their racking, this does not allow for as good of a weight transfer onto the front axle of the payload of the commodity that gets entered into the body. Due to this lack of transfer to the front axle because the body's been moved rearward, we find it necessary to add a steerable tag axle mounted behind the tandem drive axles. This allows for greater carrying capacity on the combination of the rear 3 axles, in this case, where with a diesel application there would only be 2 axles there. In the state of California, with 2 rear axles, we are allowed 34,000 lbs. of payload. When we add the tag axle for this application, the combination of axles 2, 3, and 4 allow us a carrying capacity of 43,500 lbs. if the axles are spaced at a distance of 10' 6" from the centerline of axle 2 to the centerline of axle 4. With this additional carrying capacity allowed due to the extra axle being installed, this raises the payload capacity. It should be noted, that when adding the 4th axle, the wheelbase actually shortens up rather than getting lengthened. This will make the 4-axle unit more maneuverable than the 3 axle units.

12. What method/equipment will be used to clean vehicles to achieve BMPs?

Response: Garden City Sanitation will employ a wash rack with a high-powered hose with water run off collection system. Here is a description of how the run off system works.

The wastewater from the vehicle wash bay is first collected into a 3-part sand clarifier interceptor where the solids are allowed to settle. As the solids settle, the water rises in the first tank and flows into the second. The same process occurs in the second tank and the water flows into the third tank. Once all of the tanks are full, the sledge, solids, debris, and thin layer of oil and grease along the top

are pumped out by a licensed waste hauler. The remaining filtered water then flows to the sanitary sewer.

The wash bay does not have any pollutant discharge since all water flows to the sanitary sewer.

The washing pad is graded so to prevent any run-on of storm waters and directs wash and rinse water into the sand interceptor or clarifier located in the center of the wash bay. There are no activities that will be harmful to the storm drain since all material flows into the sanitary sewer.

13. Restate transition plan for hiring current drivers.

Response: Per the memorandum of understanding with local 350 GCS is obligated to work with the union to insure a seamless transition from the current hauler to the new contractor. As stated in the MOU offers of employment will be offered to existing union employees in March of 2007. Our past experience with local 350 has been good and we expect local 350 will be reasonable in its approach to the hiring process. As mentioned in our interview, during the 1992 transition to two haulers the union set up a process by which each contractor picked employees on an alternating basis. In the event there are not enough existing drivers available GCS will hire and train additional drivers as has been done in other transitions.. In addition, we believe all parties will work cooperatively with the City of San Jose to insure a smooth transition and a fair and equitable approach to the rehiring of union employees.

14. Elaborate about the GPS system on vehicles.

Response: GPS is employed in several of the related companies with good results. GCS will have the ability to track length of stops per truck, location and will set electronic triggers to measure time at landfill in yard etc. GPS data can be archived for use in statistical analysis and will be made available to the city. On an every day basis GPS will be employed for route monitoring, generating route maps and for potential disciplinary purposes. Each supervisor and dispatch person will be trained in the use and operation of all software and data use pertaining to GPS.

15. State availability of staff for community events to boost visibility of company and promote Recycle Plus.

Response: The partners such as Lou Pellegrini, Doug Button and Steve Jones as well as staff will be part of the Garden City Community, San Jose will be home to some staff and as the service provider we will promote the company and the City at every opportunity and we will be the type of community advocates that will make people comfortable. The General Manager, Steven Jones will be involved in all manner of community events from an attendee to a participant to someone on the clean up crew. Jones and staff will be

available to speak and we will have members of our staff participate on an as needed basis depending on function or role. We will have a speakers list and we will have the capability to man a table top display at functions, promoting the City of San Jose programs, the Garden City programs and services. We can also promote a generic recycling and buying recycled message. We will be a resource for information on City Programs, recycling in general and proper disposal. We will commit to the City that Garden City Sanitation staff will be available to promote Recycle Plus, the City and our operation. We will work with Recycle Plus staff to get events on the calendars and find opportunities to participate in events; we need the city's help to identify those events and opportunities.

16. Explain the auto call system.

Response: The auto call system will normally work off the company customer database. The other way would be to use the City of San Jose database identifying the residential addresses and phone numbers. A voice message is recorded and the computer will search for all homes serviced in an area, or by a specific truck, on a certain day or on a certain street and we would request a run and the system calls each number and either runs the message for a live body or an answering machine.
The opportunities are endless. The system charges the generator based on the time it took to call and deliver the message. In the case of a road closure or fire , we could quickly record a message that said" due to the closure of road XXX please leave your cart out we will be dumping your area later today or tonight, Thank you ,Garden City Sanitation.
Please note: it is our understanding the city does not have a database complete with phone numbers. As a result, the phone list would have to be developed in order to insure an effective system. GCS intends to collect this information via customer contact and possibly mailer.

17. Detail contingency plan if yard facility is not available by July 1, 2007.

Response: In the event the GCS yard is not available at the commencement of the contract GCS will park trucks at Mission Trails Waste Systems in Santa Clara and Specialty Solid Waste in Sunnyvale with additional parking available at a yard in Milpitas owned by MTWS. In addition, Maintenance and dispatch will be located at the MTWS facility while administrative and customer service has the ability to operate either out of rented office space or MTWS. The facilities at MTWS have more than enough capacity to handle maintenance, dispatch and administration. For administrative and customer service purposes our general administrative software is web based thus making it possible to work out of temporary facilities with minimum preparation. In addition, the phone system can be installed in one facility and moved to our permanent location over a weekend.

18. Will develop drop off capability at yard facility if permitted?

Response: Yes. GCS can make arrangements for the drop off of Household batteries, latex paint, fluorescent tubes and other permitted universal waste.

Garden City Sanitation
Available Equpment Schedule

EQUIPMENT SOURCE AND COUNT FOR START UP

SPARES	SIDE LOADER	REAR LOADER	AUTOMATED	SPLIT	TOTAL		COMMITMENT	TOTAL	Available
Alameda County Industries		5			5		100%	5	All Day
Mission Trails waste Systems		6			6		100%	6	All Day
Peninsula Sanitary service, Inc.		1			1		100%	1	All Day
South San Francisco Scavenger					0		100%	0	All Day
Specialty Solid Waste		3	3	3	9		100%	9	All Day
TOTAL		15	3	3		21	100%	21	
SECOND SHIFT (a)									
Alameda County Industries			6		6		25%	2	1:00pm
Mission Trails waste Systems			8		8		25%	2	1:00pm
Peninsula Sanitary service, Inc.									
South San Francisco Scavenger			8		8		25%	2	1:00pm
Specialty Solid Waste			13		13		25%	3	1:00pm
TOTAL		0	35	0	35		25%	9	
GARDEN CITY									
OVERTIME (b)			28		28		20%	6	2:00pm
ON HAND FLEET			32		32		100%	32	
GRAND TOTAL		15	98	3		116		67	

Note: All spares will be relocated to Garden City Yard

(a) Driver and equipment from affilate companies to work in San Jose after completion of normal day in respective city

(b) Garden City on hand fleet schedule to complete routes in 8 hours thru overtime up to 12 hours available

(c) Garden City on Hand fleet as of July 1, 2007. An addtion 4 truck a week will arrive each week

[redacted]

Attachment A
Service Options for Alternative #3 and Cost/Rate Comparison to the Recommendation

Overall Rank	District A			District C			Annual Cost	Cost Difference From Recommended Action	Estimated FY 07-08 Rate Increase
	Garbage Services	Recycling Services	Combined GB & RY Services	Garbage Services	Recycling Services	Combined GB & RY Services			
1 Recom-mended			Norcal			Norcal	$30,167,631	na	25%
2			Norcal	Norcal	CWS		$36,284,257	$6,116,626	36%
3			Norcal	Garden City	Norcal		$41,468,409	$11,300,778	45%
4	Norcal	CWS				Norcal	$36,767,877	$6,600,246	37%
5			Norcal	Garden City	CWS		$35,966,466	$5,798,835	36%
6	Norcal	CWS		Norcal	CWS		$32,606,553	$2,438,922	30%
29			CWS			CWS	$27,999,308	($2,168,323)	21%

The City of San José is divided geographically into the following S ervice Districts:

- Three (3) Service Districts for SFD Services;
- Two (2) Service Districts for MFD Services; and
- Three (3) Service Districts, corresponding to the three (3) SFD Service Districts, for the Yard Trimmings and Residential Street Sweeping Services.

3.3 RFP Service Districts and Service Types

The City wishes to provide more opportunity for qualified companies to propose on one or more Service Types in Districts A and C, as well as Yard Trimmings and Residential Street Sweeping Services in District C. Under the terms of this RFP, the City is grouping requested services into the following **Service Types.**

- SFD Solid Waste Services:
  - SFD Solid Waste Services in Service District A;
  - SFD Solid Waste Services in Service District C; or
  - SFD Solid Waste Services in Service Districts A and C.
- SFD Recycling Collection Services:
  - SFD Recycling Services in Service District A;
  - SFD Recycling Services in Service District C; or
  - SFD Recycling Services in Service Districts A and C.
- Yard Trimmings and Residential Street Sweeping Services (YT & RSS).
  - Yard Trimmings and Residential Street Sweeping Services in District C.

NOTE TO PROPOSERS:

Neighborhood Clean-Up Services which were previously included in the Collection Service Agreements Are Not included in this RFP for Service Districts A and C. The City will issue a separate RFP for Neighborhood Clean-Up Services.

Each Proposer may propose to provide any or all of the requested services in either or both of the Service Districts. However, Proposers that wish to provide **both** Solid Waste Collection Services and Recycling Collection Services in one or both Service Districts **must submit 1)** a separate cost proposal for Solid Waste Services, **2)** a separate cost proposal for Recycling Services, and **3)** a separate cost proposal for combined Solid Waste and Recycling Services.

In developing their responses to the RFP, Proposers should consider that the City seeks to minimize customer impacts resulting from a change in service agreements. As a result, the

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Finance Department
PURCHASING DIVISION

August 17, 2006

Louie Pellegrini, President
Garden City Sanitation, Inc.
1060 Richard Avenue
Santa Clara, CA 95050

Dear Mr. Pellegrini,

Subject: Letter from Garden City Sanitation, Inc., dated August 10, 2006
Reference: City of San Jose Request for Proposal (RFP) #05-06-09, Recycle Plus

The City has reviewed your letter dated August 11, 2006 and entitled "Letter of Protest: RFP 05-06-09 Recycle Plus 2006, Protest of Staff Analysis and Recommendation." In your letter you raised the following issues:

1. A protest of the City's determination that Garden City Sanitation is not entitled to the available points for Local Business Preference
2. Garden City's request that the City make two corrections the signed MOU between Garden City and Teamsters Local No. 350
3. Garden City's request that all award combinations resulting from the price and technical evaluation, and
4. A protest of the City's inclusion of Norcal's offer of Neighborhood Clean-up Services in the evaluation process.

In accordance with section 5.7 of the RFP, the City responds to the issues as follows:

Issue Number 1: Local Business Preference

Chapter 4.06 of the City's Municipal Code defines a "local business enterprise" as

> a business which has a legitimate business presence in the County of Santa Clara demonstrated by (A) having a current San José business tax certificate; and (B) having either of the following types of offices operating legally within the County of Santa Clara: (1) the contractor's principal business office; or (2) the contractor's regional, branch, or satellite office with at least one full-time employee located in the county of Santa Clara.

Garden City claimed this preference on the basis of the payment of the business tax by Mission Trail Waste Systems. The ordinance requires that the company which is claiming the preference have a current San Jose business tax certificate. Therefore, Garden City Sanitation, Inc did not qualify for the Local Business Preference because it did not have a San Jose business tax certificate.

Issue Number 2: Labor Union MOU

The City agrees that the Technical Evaluation Committee received the MOU between Garden City Sanitation and Teamsters Local No. 350, dated May 15, 2006. After receipt of the MOU, the Technical Evaluation Committee adjusted the scores accordingly.

Further, the City notes Garden City's clarification regarding the pass-through of negotiated reasonable labor and benefit increases and confirms that Garden City did not take any exceptions to the agreement included in the Request for Proposal.

Staff will inform Council about both matters.

Issue Number 3: Cost/Rate Comparison to the Recommendation

As requested, attached to this correspondence, please find a Supplemental Memorandum issued to the City Council on August 16, 2006. Attachment A of this memorandum depicts all award combinations resulting from the price and technical evaluation.

Issue Number 4: Norcal's inclusion of Neighborhood Clean-up Services

It is correct that the subject RFP stated on page 3-2 that the requirements for Neighborhood Clean-up Services were not included in the Recycle Plus RFP. In general, the Request for Proposal process encourages that companies submit proposals which companies believe will be beneficial to the City. Specifically, paragraph 3.4 (Minimum Level of Services) of the RFP states in part, "If the Proposer wishes to offer additional services, that can be done and clearly marked as 'Additional Contractor-Provided Services.'" Therefore, staff's inclusion of Norcal's offer was proper. In any event staff had the duty of reporting the offer of the additional services to the City Council. Council is free to decline the offer of the additional services if it believes that the statements in the RFP made it unfair with respect to the other proposers. Please note, that the offer of the additional services was made in Norcal's original proposal, and not first offered in the Best and Final Offer (BAFO) process.

I appreciate your interest in doing business with the City of San José.

Sincerely,

Walter C. Rossmann, C.P.M.
Chief Purchasing Officer
Ph: (408) 535-7051
walter.rossmann@sanjoseca.gov

c: Mayor and City Council Members
Rick Doyle, City Attorney
Les White, City Manager
Jerry Silva, City Auditor

CWS PROTEST
August 10, 2006

California Waste Solutions, Inc. ("CWS") offers this Protest in accordance with its rights as a bidder under Section 5.7 of the Recycle Plus – RFP 05-06-09.

CWS respectfully submits its protest concerning the current state of the bidding process relating to the RFP for waste management services for the City of San Jose (the "City"). CWS believes that the process and current proposed award of the contract to Norcal is inherently unfair and not in accordance with the requirements of California's Public Resource Code, nor other relevant statutes.

The City is not fully informed as to the criminal indictments against Norcal and specific grand jury testimony forming the evidentiary basis for such criminal allegations arising from Norcal's current contract. CWS has been deprived of due process and the required fair and unbiased evaluation process affirmatively required to be conducted by the City.

There are many provisions of the RFP, including sections 4.2.18, 4.4.2.2 and 4.4.6, requiring affirmative disclosures by Proposers relating to conflicts of interest, current, past and future litigation and criminal issues, and related matters.

There are five (5) criminal indictments against Norcal related to its current City contract. The criminal indictments are for: one count of conspiracy to cheat and defraud; one count of bribery; one count of conspiracy to commit the crime of misappropriating public money; and one count of misappropriating public money.

The Evaluation Process and Conflict of Interest Provisions of the RFP require that the City acknowledge these criminal indictments and their potential impact on the services to be provided and explain the rationale behind the awarding of any contract to Norcal or even permitting Norcal to bid while these criminal indictments are pending.

California's Public Contract Code Section 100 states in pertinent part: "[I]t is the intent of the Legislature in enacting this code to achieve the following objectives: (a) To clarify the law with respect to competitive bidding requirements. (b) To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds. (c) To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices. (d) To eliminate favoritism, fraud, and corruption in the awarding of public contracts." Case law is in accord: The importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict

compliance with bidding requirements." MCM Construction, Inc. v. City and County of San Francisco, 66 Cal. App. 4th 359, 369 (1998)

By considering Norcal's bid for future services to the City, CWS contends that it has been deprived of due process and the fair and unbiased evaluation process by the City. Although Norcal has represented that its RFP responses are truthful and complete, the specific Norcal grand jury testimony that led to the 5 criminal indictments has been sealed by the Court at the specific and continued request of Norcal.

CWS protests the timing and manner of implementation of the City's engagement of Macias Consulting to consider CWS's disqualification. The City delayed action on the allegations upon which the Macias engagement is allegedly based for nearly two months, the City acting through its Purchasing Department and in the RFP process coordinated its investigation with CWS's competitor, Norcal, who actually arranged for the initial conference between CWS and Macias. The unauthorized contact between Macias and Norcal regarding the efforts to disqualify CWS is fundamentally unfair. The City's actions effectively deny CWS due process and violate the terms of the RFP.

CWS protests the fact that Norcal inserted a foot note on its pricing sheet creating ambiguity as to the price offered by Norcal for garbage and recycling for both Districts A and C. The City's acceptance of Norcal's hedged bid violates the terms of the RFP and denies CWS its right to due process under the law.

CWS protests the City's action in soliciting bids for a two-year term. The City knew or should have known that, as a practical matter, only Norcal was able to respond to the City's offer. The short duration of the City's two-year proposal makes acquisition of a fleet of trucks to serve the City a practical impossibility. The City's action violated the terms of the RFP and the due process rights of CWS.

CWS protests the fact that the City failed to take into account the excessive contamination in the material delivered by Norcal to CWS under the existing Recycle Plus Agreement in judging the performance of CWS. The City's refusal to acknowledge that the City expected contamination in the recyclables to be collected by Norcal and processed by CWS to be under 10% and the City's refusal to acknowledge the impact of excessive contamination on the processing of said materials violates the terms of the RFP and denies CWS its right to due process.

CWS protests the fact that, even though the City knows or should know that the level of contamination for incoming recyclables for Districts A and C is in excess of 20%, the City did not require the parties bidding for recycling to have or develop a facility with a solid waste facility permit.

The City's failure to insist that bidders have or promise a permitted solid waste processing facility for the material to be collected in Districts A and C violates the RFOPRFP and denies CWS is right to due process.

CWS protests the City's determination regarding its technical ranking as being unsupported by the evidence. CWS has been evaluated as "excellent" by the Director of Public Works of the City of Oakland, where CWS collects carts from 70,000 residences per week – 3,500,000 carts picked up per year. The failure of the City to account for the recommendation of the Oakland Director of Public Works violates the RFP and denies CWS its due process rights.

CWS protests the fact that, among the persons judging CWS in the RFP procedure, were employees of the City who were complicit in failing to truthfully inform the City Council of the fact that the proceeds from the 2003 rate increase were to be paid to Norcal. The placement of City employees in a role of judging CWS in the RFP proceeding after such individuals disregarded the truth and demonstrated support for Norcal by affirmatively misleading the City Council is fundamentally unfair, denies CWS due process and violates the RFP.

CWS protests the fact that the City issued the RFP reflecting a 10-month implementation period and, after the process was underway and bids were received, back tracked on the efficacy of the amount of time necessary for implementation. In fact, 10 months is adequate and the backtracking of the City is fundamentally unfair, violates the terms of the RFP, and denies CWS due process under the law.

CWS protests the fact that the City did not disqualify Norcal based on the fines pending against Norcal which have, in each instance, resulted from the failure of Norcal to perform adequately under the Recycle Plus Agreement and based on the indictments pending against Norcal. The City's assertion that some of the fines assessed against Norcal are the fault of CWS is false. Norcal sought reimbursement of fines imposed by the City from CWS and lost its claim in arbitration because the cause of the fines was found to be Norcal's failure to reduce the contamination in the material delivered to CWS. The failure of the City to disqualify Norcal is a violation of the RFP and denies CWS its right to due process.

Each of the foregoing acts and omissions by the City constitutes a denial to CWS of a fair and unbiased evaluation process by the City and is also a violation of applicable City ordinances and administrative regulations as well as applicable State and Federal statutes and regulations, including the Constitution of the United States and the Constitution of the State of California. CWS has endeavored to provide the grounds, factual basis and supporting information for its Protest. This Protest was prepared within the ten days following the issuance of the announcement of the successful bidder as required under the RFP. CWS would be pleased to provide further information to the City regarding each matter that is the subject of its Protest.

CALIFORNIA WASTE SOLUTIONS, INC.

1005 Timothy Drive, San Jose, CA 95133
Office 408.292.0830 • Fax 408.292.0833 • www.usacws.com

CWS thanks the City for its attention to these matters and notes that the City could remedy the matters which are the subject of CWS's protest, proceed to recommend a bidder other than Norcal and, and complete the selection of a new contractor in time for an orderly implementation of the program.

Dated: 8/10/06

CALIFORNIA WASTE SOLUTIONS, INC.

By: David Bruce

Its: President

CALIFORNIA WASTE SOLUTIONS, INC.

1005 Timothy Drive, San Jose, CA 95133

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CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Finance Department
PURCHASING DIVISION

August 17, 2006

David Duong, President
California Waste Solutions, Inc.
1005 Timothy Drive
San Jose, CA 95133

Dear Mr. Duong,

Subject: Letter from California Waste Solutions, Inc., dated August 10, 2006
Reference: City of San Jose Request for Proposal (RFP) #05-06-09, Recycle Plus

The City has reviewed your letter dated August 10, 2006 entitled "CWS Protest." Your letter addresses a variety of issues. Some of these issues involve factual corrections or attempts to correct statements by the City. Other issues argue why the City should not select Norcal. Further, repeatedly throughout the letter, you allege that CWS has been denied its due process under the law.

You correctly point out that the City has an obligation to follow the requirements of the subject RFP. As discussed below, I have determined that the City has followed the RFP process. Therefore, CWS' due process rights have not been violated. In addition, CWS' participation in this protest procedure as well as its participation at Council hearings, its direct communication with City Council members and correspondence have given CWS ample opportunity to provide input into the process of determining which of the proposals is most advantageous to the City. In short, all requirements of procedural due process rights have been met.

Having responded to your general allegations regarding due process, I will now address the following issues raised in your letter.

1. The effect of the status of the criminal indictments against Norcal on the selection process.
2. The City's engagement of Macias Consulting
3. Norcal's footnote on submitted Pricing Pages
4. Best and Final Offer Process and request for two-year pricing
5. Contamination Level of Recyclables collected by CWS
6. Inclusion of Reference from the Director of Public Works, City of Oakland
7. Involvement of members of the Technical Evaluation Panel in the 2004 Norcal Amendment to the current Recycle Plus contract
8. RFP Schedule and Implementation

Issue Number 1: Norcal Indictments

On the first page of your letter you make numerous statements which appear to argue that CWS is deprived of due process, because CWS did not have earlier access to the Norcal Grand Jury transcripts. Throughout this process staff has endeavored to keep City Council fully informed of all of the facts that might be relevant to the Council's award decision. Much of what is relevant in the transcripts, the bulk of which has now been released, was already known to CWS and the City Council. If there is some new information in the transcripts which CWS believes is relevant to Council's decision, CWS is free to point that out to Council. Therefore, none of CWS' potential due process rights are being violated.

Issue Number 2: Engagement of Macias Consulting

On June 2 and June 7, 2006, the City received letters from Teamsters Local 350 alleging that California Waste Solutions removed unprocessed materials collected under the current 2002 Recycle Plus Agreement between the City and Norcal. In response to this allegation, the City sent a letter on June 7 to Norcal requesting CWS' outbound shipping and sales documents for the period in question. Norcal forwarded the City's letter on June 8 to Paul Rottenberg, Foothill Resources, Consultant to CWS. On June 13, the City received the requested documents, which indicated that a significant amount of unprocessed material (approximately 350 tons, which equates to one day of recyclable materials to be processed by CWS) was removed from CWS' MRF prior to the site visit by the Technical Evaluation Committee.

Therefore, on June 29, City staff discussed the potential impact of the transfer of unprocessed material and the validity of the reasons stated by CWS in its June 9 response to the Technical Evaluation Committee. In order to provide the City Council with as complete a statement of facts as possible, the City Manager's Office requested that the City Auditor look into the Teamsters' allegations. At a meeting on July 13, the City Manager, City Attorney, and City Auditor instead decided to engage Macias Consulting to conduct the investigation, in order to preserve the City Auditor's ability to perform his independent audit functions. On July 21, the City signed the engagement letter with Macias Consulting. Due to the short timeframe, Macias agreed to provide a draft report by August 9. After a quick review, the City released the report on August 10 to Council, CWS, and the Mercury News.

In order to gather appropriate documentation, Macias Consulting had to have discussions with Norcal, the current contractor for the 2002 Recycle Plus contract. At every stage of the process staff endeavored to provide City Council with as thorough and independent investigation of the allegations as the time would allow. We believe that this in no way deprived CWS of any of its potential due process rights. In addition, by the deferral of Council's consideration of this matter, CWS has been afforded greater opportunity to respond to the contents of the Macias Report.

Issue Number 3: Norcal's footnote on submitted Pricing Pages

In general, the Request for Proposal process encourages that companies submit proposals which companies believe will be beneficial to the City. Specifically, paragraph 3.4 (Minimum Level of Services) of the RFP states in part, "If the Proposer wishes to offer additional services, that can

be done and clearly marked as 'Additional Contractor-Provided Services.'" Therefore, staff's inclusion of Norcal's offer was proper. In any event, staff had the duty of reporting the offer of the additional services to the City Council. Council is free to decline the offer of the additional services, if it believes that the statements in the RFP made it unfair with respect to the other proposers.

Issue Number 4: Best and Final Offer Process and request for two-year pricing

In the June 27 letter from the City, the City requested a Best and Final Offer submission from CWS. The letter stated that, "In accordance with 4.2.4 of the subject Request for Proposal, the City reserved the right to execute an agreement or agreements with one or more Proposers on the sole basis of the original proposal or any additions to proposal submissions and to accept all or any part of any proposal. Therefore, the City requests that your company submit a cost proposal for a contract with a two-year term (with all other terms and conditions of the subject RFP unchanged) using the attached forms and clearly marking the forms with "Two-Year Costs"."

The City cannot presume to know the proposers abilities and business relationships to provide a two-year contract to the City. Additionally, the City encouraged that CWS include as part of CWS' submittal any additional conditions CWS would have required in order to accept a two-year contract.

The City's ultimate goal in soliciting the two-year proposals was to provide the City Council with the opportunity to conduct another RFP process that would garner more competitive proposals and increase the possibility of cost savings to the rate payers.

Issue Number 5: Contamination Level of Recyclables

When issuing a Request for Proposal the City reserves the right to determine what specifications are appropriate, including whether a solid waste facility permit should be required. Prior to proposal submission, CWS cited nothing for the proposition that failure to include an exclusionary RFP specification in any way deprives CWS of due process of law.

Issue Number 6: Inclusion of Reference from the Director of Public Works, City of Oakland

Early June, the City started to check references for all proposals including the reference with the Director of Public Works at the City of Oakland. Mr. Godinez was contacted repeatedly to provide a reference and informed of the June 12 due date. On June 14, the Technical Evaluation Committee concluded its evaluation to present the results of the evaluation process to the Executive Governance Committee on June 16. Finally, on June 19, the City received a faxed copy of the reference form from Mr. Godinez. Although the reference form was not evaluated by the Technical Evaluation Committee, the City considered the reference from the Director of Public Works at the City of Oakland.

Issue Number 7: Involvement of members of the Technical Evaluation Panel in the 2004 Norcal Amendment to the current Recycle Plus contract

In the referenced letter, it states that, "..., among the persons judging CWS in the RFP procedure were employees of the City who were complicit in failing to truthfully inform the City Council of the fact that the proceeds from the 2003 rate increase were to be paid to Norcal."

This statement is incorrect. On December 5, 2005, Dechert LLP, published the report titled "Initial Report of the Independent Investigator" addressing questions raised by Council about the 2004 Norcal Amendment. In this report, Dechert LLP did not mention any involvement in this matter by any Technical Evaluation Committee members of the 2007 Recycle Plus RFP.

Issue Number 8: RFP Schedule and Implementation Period

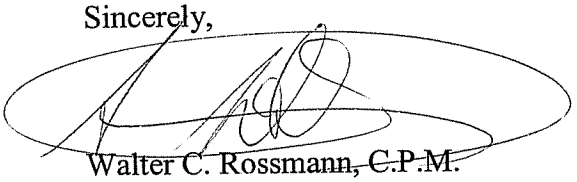
Attachment A, titled "Source Selection Plan," of the Council Memorandum, approved by Council on January 24, 2006 outlines the proposed schedule for the issuance, evaluation, and award of the Recycle Plus 2007 RFP. Per the proposed schedule, staff anticipated a contract award by June 2006, affording selected contractors a 12 month mobilization period. However, due to modifications of the RFP, as directed by Council, and approved requests from two companies, including a request from CWS, to extend the proposal submission due date, the schedule for award of contract was impacted by one month. Due to Council recess in July, staff scheduled the award recommendation for the August 15 Council meeting.

In a report to Council on October 4, 2005, staff expressed concern for the short period for RFP issuance, evaluation, and award and contractor mobilization. Therefore, staff was quite aware of the short mobilization period and still contends that even 12 months are not sufficient to ensure a smooth transition of services without potential impacts to public health.

In any event, if it is CWS' belief that even with this timeframe, it is still capable of adequately mobilizing so that that it can perform its proposed contract with the City, it is free to make that case to the City Council. Therefore, CWS has not been deprived of due process.

I believe the foregoing addresses the issues raised in your letter of protests.

Sincerely,



Walter C. Rossmann, C.P.M.
Chief Purchasing Officer
Ph: (408) 535-7051
walter.rossmann@sanjoseca.gov

c: Mayor and City Council Members
Richard Doyle, City Attorney
Les White, City Manager
Jerry Silva, City Auditor

Pustelnik, Greg

From: CHAMBERSE@aol.com
Sent: Friday, August 11, 2006 5:10 PM
To: greg.pustelnik@sanjoseca.gov
Subject: RFP

Greg,

I realize that the time limit for Eagle Recycling to file a protest has expired, however I feel new information was released in today's meeting that should warrant an exemption. The RFP was released on Feb. 17, 2006, the proposals were due to the city on April 23, 2006 and the city council was to vote on the contract on Aug. 8, 2006. The new contract was to begin on July 1, 2007.

There was two main concerns the city staff had regarding my companies proposal and those were our ability to permit a plant and our routing experience.

In todays meeting the city staff conceded that it will take a minimum amount of time of 18 months to have a plant permitted and operational, If that is the case, why did the FRP only alot 10 months. That seems like it was intended that we will not be able to be operational in time.

The other reason was that we did not have the experience to route the trucks, after seeing the presentation today, we did in our opinion have the experience and it shows in the comparison below.

	Trucks		Routes	
	Garbage	Recycling	Garbage	Recycling
Eagle Recycling	0.0	41.0	0.0	37.0
CWS	40.5	40.5	36.0	36.0
Nor-Cal	39.5	39.5	36.5	36.5

As you can see Eagle Recycling is well within the range of the other two companies the city allowed to proceed.

It is now our firm belief, and it seems to me, the city concilemembers, and the rest of the guests today that this RFP was indeed written and timeline so that Nor-Cal would be the only qualified proposer.

I'm looking forward to your response.

Ernie Chambers
Eagle Recycling, Inc.

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Finance Department
PURCHASING DIVISION

August 17, 2006

Mr. Ernie Chambers
President
Eagle Recycling Incorporated
2400 Hollister, CA 95023

Dear Mr. Chambers:

Subject: Email from Eagle Recycling, Inc., dated August 11, 2006
Reference: City of San Jose Request for Proposal (RFP) #05-06-09, Recycle Plus

This letter serves to confirm our conversation today pertaining to your email of August 11.

On July 2, Mr. Greg Pustelnik, Procurement Manager, informed you in a meeting that Eagle Recycling would not be included in the Best and Final Offer (BAFO) process. This was based on the overall technical evaluation as determined by the Technical Evaluation Committee for the Recycle Plus RFP. Mr. Pustelnik followed up with a letter dated July 3 (attachment), which afforded you the opportunity to protest this decision to my attention within ten days. I did not receive a protest from your company.

In your August 11th email, you stated that City staff eliminated Eagle Recycling from further consideration on July 3, because of Eagle Recycling's lack of ability to permit a plant and lack of routing experience.

Eagle Recycling was disqualified from further consideration, since the Technical Evaluation Committee, after completion of oral interviews, concluded that Eagle Recycling's proposal was technically not sufficient to reasonably achieve award of contract. Specifically, the technical rankings for the Recycling Services after completion of Oral Interviews were as follows:

Proposer	Norcal	CWS	Eagle Recycling
Technical Score	51.95	40.61	19.61

The Technical Evaluation Committee scored your company's proposal lowest including, but not limited to, the following factors: insufficient managerial experience, insufficient description of operations and collection plans, lack of residential collection experience, lack of references.

I appreciated the opportunity to meet with you today and to discuss your concerns with you.

Sincerely,

Walter C. Rossmann, C.P.M.
Chief Purchasing Officer
Ph: (408) 535-7051
walter.rossmann@sanjoseca.gov

c: Mayor and City Council Members
Richard Doyle, City Attorney
Les White, City Manager
Jerry Silva, City Auditor

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Finance Department
PURCHASING DIVISION

July 3, 2006

Mr. Ernie Chambers
President
Eagle Recycling Incorporated
2400 Hollister, CA 95023

Subject: RFP 05-06-09, Recycle Plus 2006

Dear Ernie:

This letter serves to confirm our conversation yesterday. The City of San Jose extends its appreciation to Eagle Recycling Incorporated for their participation in the subject RFP process.

As I indicated in our meeting, after a thorough review of all proposals received, the City has decided not to include Eagle Recycle as a finalist in the Best and Final Offer (BAFO) process. This was based on the overall technical evaluation as determined by the Technical Evaluation Committee. Additionally, I returned to you Eagles Recycling Incorporated Bid Security.

If you disagree with the City's decision to not include your company's proposal in the BAFO process, you may protest this decision, in writing, to Walter C. Rossmann, Chief Purchasing Officer, 200 E. Santa Clara Street, 13th Floor, San José, CA 95113, by Thursday July 13, 5 p.m. detailing the grounds, factual basis and providing all supporting information. Failure to submit a timely and complete written protest to the Chief Purchasing Officer will bar consideration of the protest.

Finally, the City anticipates announcing an award recommendation pertaining to the Recycle Plus RFP to all participants in the procurement in the next several weeks.

Best Regards,

Greg Pustelnik
Procurement Manager

c: Walter C. Rossmann, C.P.M., Chief Purchasing Officer
Solicitation File