

Late Backup

Item #44

4/21/11

Revised Exhibit G
Schedule 22.2 (Liquidated Damages)

**Schedule 22.2 with respect to Exhibit "A" (Service Schedule for SFR
Recyclable Materials Processing)
Formula for Liquidated Damages
pursuant to Paragraph 22.2.3 of the Master Recycling, Processing
and Marketing Services Agreement (the "Master Agreement")**

The following formula is to apply only in the event that the Master Agreement is terminated under circumstances that pursuant to either the Master Agreement or Service Schedule "A" (SFR Recycling Services) the City is expressly responsible to pay the Vendor liquidated damages. Such liquidated damages are not a penalty, the Parties agreeing that actual damages would be difficult to calculate, and liquidated damages are in lieu of any other damages to which Vendor would otherwise be entitled with respect to the termination of the Services under Service Schedule "A," even if such damages were capable of calculation or estimation at the time of termination.

Additional Definitions:

As used in this Schedule, "**Relevant Equipment**" means recycling processing equipment (not to include building systems equipment or life safety equipment such as motorized loading bay doors, HVAC, sprinkler systems or the like) used regularly at the Designated Facility to perform the Services set forth in Service Schedule "A" for the provision of SFR Recycling Services to Collected Material delivered by or for the benefit of the City to the Designated Facility.

Scenario 1: Termination by the City in a manner that triggers a right for the Vendor to be paid liquidated damages, or termination by Vendor for cause other than pursuant to Section 6.6 of the Master Agreement (Appropriations)

Item	Formula
Mobilization and demobilization costs (including costs related to termination of third party agreements)	None
Recovery of unamortized or unrecovered investment (" RI ")	Until the 15 th anniversary after the Cutover Date for SFR Recycling Services, the aggregate amount for all Relevant Equipment calculated on an equipment by equipment basis as (i) the actual cost of the Relevant Equipment in question if purchased by Vendor in the ten (10) years immediately prior to the termination of Agreement (including costs directly and uniquely incurred for the delivery and installation of the Relevant Equipment into the Designated Facility)

	<p>that is used in a regular and systematic basis in the provision of services to the City of Austin ("C") x [total tons process for the benefit of the City in the provision of SFR Recycling Services at the Designated Facility during the most recent 3-year period ("TC") divided by the total tons processed at the Designated Facility ("TT"), each of TC and TD to be calculated by reference to the most recent 3 year period of SFR Recycling Services under the Service Schedule (or actual history if the Agreement is terminated sooner than the 3rd anniversary of the Cutover Date)] x an amortization factor equal to 1 minus [the number of years since the particular piece of equipment was installed at any facility of Vendor ("y") divided by ten (10)]. There is no credit for equipment purchased by Vendor more than ten (10) years prior to the date of termination. After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule.</p> <p>In notation format: $RI = \sum C_n * (TC/TT) * (1 - (y_n/10))$; where n refers to a specific piece of equipment</p>
Opportunity and lost opportunity costs	none
Employee-related costs	<p>For terminated Direct Employees whose job responsibility regularly and systematically requires such Direct Employee to perform SFR Recycling Services for the benefit of the City:</p> <ul style="list-style-type: none"> • the amount of termination compensation actually paid by Vendor for which Vendor is contractually or by operation of law required to pay, plus • reasonable re-training costs for Direct Employees not terminated by Vendor but reassigned into positions requiring reasonably comparable educational levels, plus • additional unemployment insurance costs assessed as a result of unemployment claims directly arising out of and proportionate to the termination of the

	<p>Master Agreement.</p> <p>In no event shall the City be responsible for any of the foregoing employee related costs for the termination of the Master Agreement for officers of the Vendor, persons that provide SFR Recycling Services for the benefit of the City less than twenty percent (20%) of their time, or persons whose functions are primarily to perform overhead activities for Vendor (such as accounting, clerical, finance and design activities for the Vendor).</p>
A portion of anticipated profits from the Master Agreement	<p>Until the 15th anniversary after the Cutover Date for SFR Recycling Services, 5 years of net margin on COA tons calculated by the following method:</p> <p>Average of last 5 years (3 years if actual history is less than 5 years) of sales revenue earned from the sale of Recyclable Materials on behalf of the City less the following direct costs that Vendor incurred in providing the SFR Recycling Services for the City: labor, residual disposal, equipment operating and maintenance, and other direct costs including uniforms, materials and supplies, equipment rental, small tools and welding supplies.</p> <p>After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule.</p>

Scenario 2: Termination by Vendor for cause pursuant to Section 6.6 of the Master Agreement (Appropriations).

Item	Formula
Mobilization and demobilization costs (including costs related to termination of third party agreements).	Actual costs incurred by Vendor for the processing of Collected Materials for the City for the 60 days subsequent to such termination times 1.2, and Vendor shall be entitled to retain all revenues earned from the sale of Recyclable Materials obtained from the Collected Materials delivered by or for the benefit of the City during such 60 day period (but not for Recyclable Materials obtained from Collected Materials delivered prior to such termination).
Recovery of unamortized	Until the 15 th anniversary after the Cutover Date

or unrecovered investment (" RI ")	<p>for SFR Recycling Services, the aggregate amount for all Relevant Equipment calculated on an equipment by equipment basis as (i) the actual cost of the Relevant Equipment in question if purchased by Vendor in the ten (10) years immediately prior to the termination of Agreement (including costs directly and uniquely incurred for the delivery and installation of the Relevant Equipment into the Designated Facility) that is used in a regular and systematic basis in the provision of services to the City of Austin ("C") x [total tons process for the benefit of the City in the provision of SFR Recycling Services at the Designated Facility during the most recent 3-year period ("TC") divided by the total tons processed at the Designated Facility ("TT"), each of TC and TD to be calculated by reference to the most recent 3 year period of SFR Recycling Services under the Service Schedule (or actual history if the Agreement is terminated sooner than the 3rd anniversary of the Cutover Date)] x an amortization factor equal to 1 minus [the number of years since the particular piece of equipment was installed at any facility of Vendor ("y") divided by ten (10)]. There is no credit for equipment purchased by Vendor more than ten (10) years prior to the date of termination. After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule.</p> <p>In notation format: $RI = \sum C_n * (TC/TT) * (1 - (y_n/10))$; where n refers to a specific piece of equipment</p>
Opportunity and lost opportunity costs	none
Employee-related costs	<p>For terminated Direct Employees whose job responsibility regularly and systematically requires such Direct Employee to perform SFR Recycling Services for the benefit of the City:</p> <ul style="list-style-type: none"> the amount of termination compensation actually paid by Vendor for which Vendor is contractually or by operation of law required to pay, plus

	<ul style="list-style-type: none"> • reasonable re-training costs for Direct Employees not terminated by Vendor but reassigned into positions requiring reasonably comparable educational levels, plus • additional unemployment insurance costs assessed as a result of unemployment claims directly arising out of and proportionate to the termination of the Master Agreement. <p>In no event shall the City be responsible for any of the foregoing employee related costs for the termination of the Master Agreement for officers of the Vendor, persons that provide SFR Recycling Services for the benefit of the City less than twenty percent (20%) of their time, or persons whose functions are primarily to perform overhead activities for Vendor (such as accounting, clerical, finance and design activities for the Vendor).</p>
A portion of anticipated profits from the Master Agreement	<p>Until the 15th anniversary after the Cutover Date for SFR Recycling Services, 5 years of net margin on COA tons calculated by the following method:</p> <p>Average of last 5 years (3 years if actual history is less than 5 years) of sales revenue earned from the sale of Recyclable Materials on behalf of the City less the following direct costs that Vendor incurred in providing the SFR Recycling Services for the City: labor, residual disposal, equipment operating and maintenance, and other direct costs including uniforms, materials and supplies, equipment rental, small tools and welding supplies.</p> <p>After the 15th anniversary, no liquidated damages shall be available for anticipated profits under the Service Schedule.</p>