ROSEVILLE

REQUEST FOR COUNCIL ACTION

Date: 2/08/10
Item No.: 13.f

Department Approval	City Manager Approval
	W J Malinen

Item Description: Discuss a Recycling Contract Extension

BACKGROUND

Roseville's five-year contract with Eureka Recycling expires at the end of 2010. The contract has been very beneficial to the City both fiscally and environmentally. Eureka Recycling has offered to extend the contract for two years until the end of 2012 under substantially the same terms.

In June 2009 Eureka Recycling approached the City asking to modify the terms of the contract in order to share the burden of plummeting commodity prices. Markets for recycled materials dropped precipitously beginning in October 2008, hit their nadir in January 2009 and have been rising since. Currently prices for most commodities are about 50-65% of their pre-drop levels, some have remained constant and two have risen. However, the sky high pricing was well above long-term pricing trend lines and were clearly unsustainable. Commodity prices continue to trend upward over the past 15 years and current markets appear to be stabilizing.

Roseville reviewed Eureka Recycling's June proposal and asked for additional benefits to the City in exchange for any concessions. Eureka Recycling has offered to extend the contract to provide stability to Roseville, and to formally agree to partner with Roseville on additional environmental programs and initiatives. The current market does not appear to be a good time to be soliciting proposals for recycling service (see Attachment A and Attachment F). In 2009 four metro area cities issued RFPs for recycling services and two signed contract extensions. Prices went up – some dramatically; and the winning bidder's rate was significantly less than any other proposers.

So where do we sit? Our collection rates remain competitive and near the low end for metro area cities with weekly collection (see Attachment B). Our revenue sharing has increased substantially since it hit bottom in January 2009 (see Attachment C). Our 2% annual collection cost increase is the lowest rate of any city in the metro area.

Since June market prices have been more stable, and Eureka Recycling has worked out contract amendments with Arden Hills, Maplewood, St. Louis Park, and St. Paul. These events have provided Eureka Recycling with the fiscal stability it was seeking when it first approached Roseville. As a result Eureka Recycling has dropped most of its requests for contract modifications – modifications that have been accepted by its other contract cities.

So under Eureka Recycling's revised proposal Roseville would continue to enjoy favorable financial terms and environmental benefits not provided by any other recycling service provider. In return Eureka Recycling is asking for the removal of price floors from the revenue share calculation formula, and to switch the indices for aluminum and steel from the Chicago market to local market pricing (note that these practices have also been adopted by Waste Management in its new contracts). Those changes would take place at the beginning of the month following approval.

Staff calculates that those changes would cost the city about $600 a month in decreased revenue share under current market conditions. In the unlikely scenario of price collapses, the loss of the price floor could mean several thousand dollars a month in lost revenue (see Attachment D). However, Roseville will not have to pay out more in the case of market collapse. Staff has proposed a revenue sharing bank. Under the bank proposal, up to $20,000 in revenue would be held back by Eureka Recycling. The bank would be drawn down to cover any short term losses from the sale of recyclables. If we get to the end of the contract and the bank amount is negative, Eureka Recycling would assume that loss (for an example see Exhibit B of Attachment E – the proposed revised contract). A positive balance would be remitted to the City following the expiration of the contract.

Eureka Recycling and staff concur that by 2012 the roiled recycling markets will have calmed and it will be a better time to issue an RFP. The City has informed Eureka Recycling that if a contract extension is agreed to, the City will issue an RFP for recycling services in 2012.

It is worth noting how Roseville's contract with Eureka Recycling has been financially beneficial to the City. Staff estimated Roseville would earn $75,000 a year in revenue sharing or $375,000 over the life of the contract. Through 2009 Roseville has made $373,453.28 – meaning we have nearly met our projection with 12 months to go. This revenue share allowed Roseville to hold off on residential rate increases despite 2% annual collection cost increases and a $.30 per household per month increase for weekly collection. Eureka Recycling also purchases 500 recycling bins that are provided to residents free of charge. This benefit is unique to Roseville. Roseville's processing fees are the lowest in the metro area and would remain the same during the terms of the contract extension.

Also of note are the many ways Roseville's contract with Eureka Recycling has been environmentally beneficial to the City. Eureka Recycling takes more types of material than any other service provider in the metro area. Eureka Recycling has provided unique educational efforts including:

- An award winning Name the Trucks contest
- Public appearances
- Annual Guide to Recycling mailed to residents
- Newspaper ads
- Postcards mailed to residents
- Educational tagging
- Information hotline serviced by environmental educators
- Sponsorship of Zero Waste events
- Partner in Get Caught Recycling initiative

- Annual reports and presentations to the Public Works Environment and Transportation Commission

Eureka Recycling has also worked with Roseville to expand recycling opportunities at city facilities and on joint purchasing of compost bins. Eureka Recycling trucks run on a 20% biodiesel blend that cuts emissions of particulate matter, hydrocarbons and carbon monoxide.

The proposed contact extension has been reviewed by the City Attorney.

BUDGET IMPLICATIONS

Roseville would realize less revenue share under the revised revenue sharing formula. However, Roseville would not have to pay more for recycling service.

STAFF RECOMMENDATION

Approve two-year contract extension with Eureka Recycling.

REQUESTED COUNCIL ACTION

A motion to approve a two-year contract extension with Eureka Recycling.

Prepared by: Tim Pratt, Recycling Coordinator
Attachments:
A: Recycling Bid Comparison
B: Recycling Collection Charge Comparison
C: Roseville Revenue Share
D: Revenue Share Formula Comparison
E: Proposed Revised Contract
F: Results from Cities that Bid in 2009

2009-2010 Recycling Contract Price Changes

Bid Cities		**2009**	**2010**	**Change**	**Hauler**
Brooklyn Park	single	$1.93	$1.93	0%	Incumbent
	multi	$1.20	$1.20	0%	
	new contract includes a fuel surcharge and a revenue sharing formula in which the city could pay more				
Columbia Heights	single	$2.11	$2.70	28%	New
	multi	$1.67	$1.75	4.8%	
Edina	single	$2.50	$2.65	6%	Incumbent
	multi	$2.30	$2.65	15%	
Shorewood	single	$2.50	$4.95	98%	New
Extension Cities					
New Brighton		$1.70	$1.89	11%	
	extension includes a fuel surcharge and a revenue sharing formula in which the city could pay more				
Spring Lake Park		$2.45	$2.52	3%	
	extension includes a fuel surcharge and a revenue sharing formula in which the city could pay more				

Recycling Collection Charge

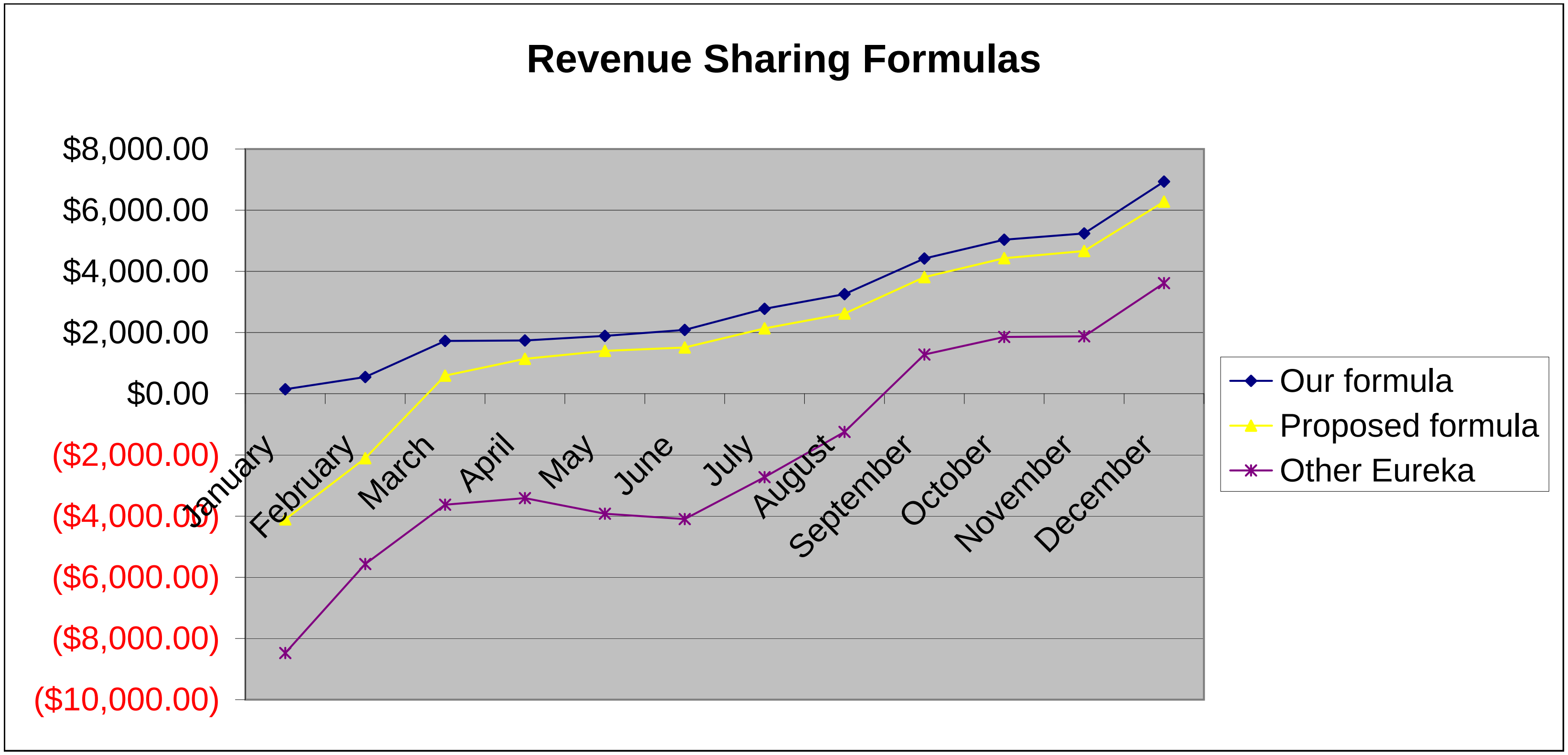
City	Collection Frequency	Rate	Fuel Surcharge
Maplewood	Weekly	$2.10 single and multi	Yes
Lauderdale	Weekly	$2.46 single	Yes
Roseville	Weekly	$2.60 single, $1.64 multi	No
St.Paul	Weekly	$2.60 single, $1.64 multi	Yes
Edina	Weekly	$2.65 single and multi	No
Fridley	Weekly	$2.65 single, $1.85 multi	No
St. Louis Park	Weekly	$2.85 single	No
Champlin	Weekly	$2.86 single	No
Minnetonka	Weekly	$2.88 single	No
Plymouth	Weekly	$2.88 single	No
Arden Hills	Weekly	$3.06 single	No
White Bear Lake	Weekly	$3.14 single	Yes
White Bear Twnsp	Weekly	$5.00 single and multi	No
Brooklyn Park	EOW	$1.93 single, $1.20 multi	Yes
Brooklyn Center	EOW	$2.35 single	No
Blaine	EOW	$2.38 single	Yes
Shoreview	EOW	$2.45 single, $1.35 multi	No
Spring Lake Park	EOW	$2.52 single, $1.34 multi	Yes
Circle Pines	EOW	$2.57 single	No
Robbinsdale	EOW	$2.57 single	Yes
Columbia Heights	EOW	$2.70 single, $1.75 multi	No
Hopkins	EOW	$2.85 single	No
Anoka	EOW	$2.86 single and multi	Yes
Minneapolis	EOW	$2.90 single	No
Corcoran	EOW	$3.48 single and multi	Yes
Centerville	EOW	$3.91 single	Yes
Maple Grove	EOW	$4.20 single, $2.10 multi	No
Little Canada	EOW	$4.30 single	Yes
Shorewood	EOW	$4.95 single	No
Vadnais Heights	EOW	$5.02 single	Yes

Attachment C

Roseville Recycling Revenue Share

	January	February	March	April	May	June	July	August	September	October	November	December	Total
2006	$7,328.07	$6,470.76	$7,366.49	$7,371.29	$8,276.15	$7,756.15	$5,903.35	$7,226.06	$6,354.46	$6,310.02	$8,540.55	$7,810.58	$86,713.93
2007	$7,833.53	$6,635.21	$9,383.84	$9,850.45	$9,224.59	$8,917.43	$10,027.22	$10,471.46	$9,503.32	$11,017.46	$12,655.98	$10,877.64	$116,398.13
2008	$11,027.09	$9,869.71	12,262.35	$12,625.01	$13,752.46	$12,713.37	$15,192.49	$16,251.89	$16,483.87	$10,667.34	$3,503.28	$630.84	$134,979.70
2009	$146.65	$546.04	$1,727.92	$1,740.36	$1,893.08	$2,087.38	$2,777.13	$3,258.05	$4,421.35	$5,035.89	$4,792.94	$6,934.73	$35,361.52
2010													
													$373,453.28

	January	February	March	April	May	June	July	August	September	October	November	December	
Our formula	$146.65	$546.04	$1,727.92	$1,740.36	$1,893.08	$2,087.38	$2,777.13	$3,258.05	$4,421.35	$5,035.89	$5,241.52	$6,934.73	$35,810.10
Proposed formula	($4,106.38)	($2,107.91)	$592.33	$1,140.32	$1,402.21	$1,510.69	$2,136.91	$2,619.89	$3,813.62	$4,431.02	$4,665.49	$6,281.71	$22,379.90
Other Eureka	($8,475.44)	($5,568.33)	($3,628.72)	($3,410.99)	($3,920.99)	($4,095.78)	($2,724.76)	($1,246.57)	$1,279.99	$1,854.37	$1,874.70	$3,614.57	($24,447.95)



CITY OF ROSEVILLE
AGREEMENT FOR RECYCLING COLLECTION

This Agreement is made and entered into by and between the City of Roseville, Minnesota, "City" and Eureka Recycling, "Contractor", a Minnesota Corporation, with its principal place of business at 2828 Kennedy Street Northeast, Minneapolis, Minnesota 55413.

WHEREAS, the City supports curbside collection of recycling materials and desires that it be made available to its residents; and

WHEREAS, the Contractor has submitted a proposal for curbside collection, processing and marketing of recycling materials to the City; and

WHEREAS, the City desires Contractor to pick up recyclables throughout the City's municipal limits, process them and market them in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the parties agree as follows:

I. <u>Definitions</u>

1. <u>Recyclables:</u> means newsprint and inserts, unsorted glass (food and beverage containers), unsorted aluminum, steel, bi-metal, and tin cans (food and beverage containers), corrugated cardboard, magazines, telephone books, catalogs, mixed mail, boxboard, mixed plastic bottles with a neck: Poly-Ethylene Terephthalate (PET) and high-density Poly-Ethylene (HDPE) as defined in Section 4 of the City's RFP. In addition the Contractor will collect wet strength cardboard, textiles, aseptic and gable-top packaging (milk cartons and juice boxes) and any other materials mutually-agreed-upon between the City and Contractor. The City encourages the Contractor to explore markets for additional types of recyclable material. Materials may be added to this list by mutual written agreement between the City and the Contractor.

2. <u>Wet Strength Cardboard</u>: coated boxboard typically used for beer, pop and water container boxes, also called carrier stock. No boxboard containers used for food product storage in refrigerators or freezers are included.

3. <u>Textiles</u>: reusable Linens (towels, sheets, blankets, curtains and

tablecloths) and Clothes (belts, coats, hats, gloves, shoes and boots). Textiles must be dry, clean and free of mold, mildew and excessive stains.

4. Residential Dwelling Unit (RDU): means a single family home and each residential unit in a duplex, triplex, fourplex, or townhouse complex.

5. Multiple Family Dwelling Unit (MDU): means an apartment or condominium in a building with 5 or more units.

6. RFP: The terms "RFP" or "City RFP" refer to the August 26, 2005 City of Roseville Request for Proposal for Comprehensive Recycling Services, together with attachments thereto. A copy of the RFP is attached hereto and incorporated herein by reference.

7. Commodity: An individual category of recyclable material as detailed in definition 1. Recyclables.

II. Preparation

Material shall be clean and free of non-recyclable material. Items shall be placed in paper kraft bags, blue recycling bins or any other container that can reasonably be identified as containing recyclable material to be collected. Contractor shall collect recyclables that have been prepared in the following manner:

Curbside: A 3-sort collection of co-mingled containers, co-mingled fibers and textiles will be used.

Co-mingled Containers to include: Glass Food & Beverage Containers, Metal Food & Beverage Containers, ~~and~~ Mixed Plastic Bottles with a neck: Poly-Ethylene Terephthalate (PET) and high-density Poly-Ethylene (HDPE) and aseptic and gable-top packaging (milk cartons and juice boxes).

Co-mingled Fibers to include: Newspaper, Boxboard, Magazines, Mixed Mail, Catalog, Phone books, Wet Strength Cardboard and Corrugated Cardboard. Corrugated Cardboard will be broken down flat into bundles approximately 3' x 3'. No cardboard that is wax or plastic-coated or contaminated by food or grease shall be accepted.

Textiles to include reusable: Linens – towels, sheets, blankets, curtains and tablecloths; Clothes – belts, coats, hats, gloves, shoes and boots. Textiles must be dry, clean and free of mold, mildew and excessive stains. Residents shall place textiles separately in plastic garbage bags or other bags as determined by the City. Each bag or set of bags will have an identifying marker clearly identifying the materials for collection. Residents will be instructed to avoid the use of paper bags and boxes; however, materials set out in these containers are acceptable provided that the materials have not been exposed to rain or snow. If the textiles are wet the Contractor will not collect those items.

Multi-Unit: All multi-unit recycling collection containers shall be placed in recycling stations as specified in the RFP section 4.23. Containers shall be clearly marked with text and graphics detailing materials accepted and material preparation requirements. A 2-sort system of co-mingled containers, and co-mingled fibers will be used.

III. Recycling Containers

Curbside: Contractor shall annually provide a minimum of 500 blue, plastic recycling bins to the City for distribution to participants in the curbside recycling program. Bins must have a recycling logo stamped on two sides. The artwork for the stamp must be approved by the City. The City and Contractor will mutually agree on the number of bin lids and wheels kits to be ordered each year. Bin purchases will be organized by the Contractor and will include a cooperative purchase of bins made in coordination with other cities to maximize the bulk discount for the City. The City's recycling bins will be stored at the Contractors facility at no additional cost to the City. Upon request of the City a number of recycling bins agreed upon by the City and Contractor will be delivered to a location specified by the City within two weeks of the day the delivery request is made by the City. This delivery will be made at no cost to the City. Recycling containers shall not be a prerequisite to participation in the curbside recycling program. Other container types such as kraft grocery bags, boxes, and bins are acceptable to the extent that route drivers readily recognize recyclables.

Multifamily: Contractors shall provide containers for all Multifamily Dwellings as specified in RFP definition 4.20 in sufficient quantity to adequately contain the materials between collections, to be placed in recycling stations as specified in RFP definition 4.23.

The Driver is required to record and report to Contractor Dispatch the location of any cart that is damaged and that cart shall be repaired or replaced by the Contractor or designated subcontractor within one (1) week of the report of damage.

IV. Collection Requirements

1. Scheduled Collection Day: means the day or days of the week on which recycling collection by the Contractor is to occur. The City is divided into 5 zones as designated in Attachment A of the City's RFP. Collection shall occur in each zone on the day of the week indicated in Attachment A. The City will divide each zone so that collection in one portion of the zone will occur on the first week of the month and biweekly thereafter. Collection in the second portion of the zone will occur in the second week of the month and biweekly thereafter. The zones will be divided as designated in Attachment A to this contract.

   The City may exercise its option to switch to every week collection by notifying the Contractor by November 1. The switch to every week collection would then occur on or about April 22 (Earth Day) of the subsequent year.

2. Collection: Curbside collection shall include all those Certified Dwelling Units referenced in the City's RFP, and shall occur as provided in Section 5 of the RFP.

   Multifamily collection shall include all those Multifamily Dwelling Units referenced in the City's RFP, and shall occur as provided in Section 5 of the RFP. In January and February 2006, Contractor shall assess the frequency of collection service needed for each multifamily complex. Each building shall receive weekly collection unless the City and Contractor mutually agree that a building may receive less frequent collection service.

3. Multifamily Building Contacts: City and Contractor shall develop a list of contacts for each Multifamily Building. The contact shall be a resident, manager, owner or owner's designee. Contacts will voluntarily help distribute recycling information to building residents, monitor carts for contamination and communicate with the City and Contractor questions and concerns regarding the recycling service.

4. Compliance with Driving and Hauling Laws: collection, transportation, and marketing of all recyclables shall be accomplished in accordance with all existing laws, ordinances and specifications in Section 5 of the RFP.

5. Unacceptable Recyclables: If Contractor determines that a resident has set out unacceptable recyclables, the driver shall use the following procedures:

   Curbside: Contractor shall leave the unacceptable recyclables and leave an "education tag" indicating acceptable materials and the proper method of preparation.

   The driver shall record the address on forms acceptable to the City. Contractor shall report the addresses to the City Recycling Coordinator at the end of each month.

   Upon request, the City Recycling Coordinator will undertake efforts to educate the resident or owner regarding proper materials preparation.

   Multi Family: Contaminated carts of material will not be collected and a tag will be left indicating the reason the material is unacceptable. The Contractor shall also notify the City Recycling Coordinator by phone that the material was left and the reason that the material was unacceptable. It will be the responsibility of the Recycling Coordinator to obtain cooperation from the building owner/manager in removal of trash and separation of acceptable materials. The contractor will then be called to return to the site of contamination and collect properly sorted carts.

   The Contractor shall, when applicable, work with the building's designated contact person to resolve contamination issues.

   If the Contractor determines that there is an unavoidable and unacceptable level of contamination in recycling carts or vandalism to carts at a multifamily building, Contractor shall notify the City of its determination. After notifying the City of its determination, the Contractor may suspend service to a multifamily building. The Contractor shall arrange a meeting with the City and the designated contact person for the multifamily building to determine the length of the suspension and the terms under which service may be reinstated to the multifamily building.

6. Utilities: The Contractor shall be obligated to protect all public and private utilities whether occupying street or public or private property. If such utilities are damaged by reason of the Contractor's operations, under the executed contract, he/she shall repair or replace same, or failing to do so promptly, the City shall cause repairs or replacement to be made and the cost of doing so shall be deducted from payment to be made to the Contractor.

7. Street Improvements: This Contract is subject to the right of State of Minnesota, Ramsey County, or the City to improve their highways and streets. The Contractor accepts the risk that such improvements may prevent the Contractor from traveling its accustomed route for the purpose of collecting recyclables. The Contractor agrees not to make any claim for compensations against the City for such interference. The City shall, whenever possible, provide to Contractor information and instructions about how the Contractor may best provide services in the improvement area.

8. Damage to Property: The Contractor shall take all necessary precautions to protect public and private property during the performance of this Agreement. The Contractor shall repair or replace any private or public property, including, but not limited to sod, mailboxes, or recycling bins, which are damaged by the Contractor. Such property damage shall be addressed for repair or replacement, at no charge to the property owner, within forty-eight (48) hours with property of the same or equivalent value at the time of the damage.

   If the Contractor fails to address the repair or replacement of damaged property within forty-eight (48), the City may, but shall not be obligated to, repair or replace such damaged property, and the Contractor shall fully reimburse the City's for any of its reasonably incurred expenses. The Contractor shall reimburse the City for any such expenses within ten (10) days of receipt of the City's invoice.

9. Personnel Requirements: Contractor shall retain sufficient personnel and equipment to fulfill the requirements and specifications of this Agreement as specified in the RFP. Contractor's personnel will be trained both in program operations and in customer service and insure that all personnel maintain a positive attitude with the public and in the work place and shall meet the standards as specified in the RFP Section 5.04.

10. Weighing of Loads and Reporting Requirements: Contractor will track the total tons collected by daily route. Collection vehicles will be weighed empty before collection to obtain a tare weight, and weighed before tipping or at the end of the day, whichever occurs first.

    Weight records shall be maintained on file by Contractor for at least three years in the event of an audit by the City or County.

    Once a year Contractor will do participation and set out analysis for each daily curbside route. This will involve tracking (over a four week period) how many households participate in curbside recycling at least once in that four week period and how many households set out materials on a given week. Contractor shall provide the City with a copy of this analysis.

V. Materials Processing and Marketing

1. Processing Facility: Contractor shall deliver all recyclables collected in City to the Eureka Recycling's Materials Processing Facility (MRF) at 2828 Kennedy Street NE, Minneapolis, Minnesota.

    The Contractor shall insure that adequate recyclable material processing capacity will be provided at the MRF for City material collected. The Contractor shall provide written notice to the City at least 60 days in advance of any substantial change in these or subsequent plans for receiving and processing recyclables collected from the City.

    Contractor shall assure that all recyclables collected in the City are not landfilled or incinerated except for process residuals as designated in RFP Section 4.29. The Contractor shall dispose of no more than 6% of material (by weight) as process residuals as part of recyclable materials processing operations. No recyclables will be landfilled or incinerated by the Contractor without written authorization from the City and the Minnesota Pollution Control Agency.

2. Lack of Adequate Market Demand: If the Contractor determines that there is no market for a particular recyclable or that the market has become economically unfeasible, the Contractor shall immediately give written notice to the City. Said notice shall include information demonstrating the effort the Contractor has made to find market

sources, and the financial information justifying the conclusion that the market is economically unfeasible. Upon receipt of said notice, the Contractor and the City shall have 30 days to attempt to find a feasible market. During this period the Contractor shall continue to pick up the particular recyclable.

If the Contractor or the City is not able to find a market within 30 days, the City has the option to:

a) Require the Contractor to continue to collect the particular recyclable. In such case, the City would pay the Contractor, as additional compensation, the tipping fee at the Newport RDF plant or a mutually agreeable alternative site. The Contractor is required to keep accurate records of said fees and provide the City receipts of payment.

b) Notify the Contractor to cease collection of the particular recyclable until a feasible market is located, either by the Contractor or by the City. The Contractor would then be responsible for the cost of printing and distributing educational materials explaining the market situation to residents.

If the City notifies the Contractor to cease collection of a particular recyclable, the parties shall immediately meet to renegotiate the per unit fee for service.

In the event that the parties disagree on the question of whether there is a market for a particular recyclable or on the economic feasibility of that market, the disagreement shall be submitted to binding arbitration. In this case, each party shall name an arbitrator, and the two shall select a third person to serve as chairperson of the arbitration panel. The arbitration panel shall meet and decide said question within 60 days following agreement by the arbitrators to serve on the panel. The arbitration panel shall operate in accordance with the Rules of the American Arbitration Association to the extent consistent with this section and judgment upon the award by the Arbitrator(s) may be entered in any court with jurisdiction thereof. Meanwhile, collection of said material shall continue pending outcome of arbitration.

3. <u>Performance Monitoring</u>: The City shall have the right, during the term of this Contract, to monitor the performance of the Contractor against goals and performance standards required within this RFP

and in the contract. Substandard performance as determined by the City will constitute non-compliance and subject Contractor to penalties as specified in the RFP Section 8.05 Liquidated Damages. If action to correct such substandard performance is not taken by the Contractor within 60 days after being notified by the City, the City will initiate the contract termination procedures.

The City shall have the right, during the term of the Contract, to have a representative on Contractor's premises to monitor the operation of the Contract. Such representative shall provide reasonable notice to the Contractor, only be allowed on Contractor's premises during normal business hours and follow all the Contractor's safety procedures.

4. Estimating Materials Composition as Collected: The Contractor shall conduct at least one materials composition analysis of the City's recyclables each year to estimate the relative amount by weight of each recyclable commodity by grade. The results of this analysis shall include: (1) percent by weight of each recyclable commodity by grade as collected from the City; (2) relative change compared to the previous year's composition; and (3) a description of the methodology used to calculate the composition, including number of samples, dates weighed, and City route(s) used for sampling. The Contractor shall provide the City with a copy of each analysis.

5. Estimating Process Residuals: The Contractor shall provide the City a written description of the means to estimate process residuals, as defined in the RFP Section 4.29, derived from the City's recyclables. This written description shall be reviewed and approved in writing by the City. This written description shall be updated by the Contractor immediately after any significant changes to the processing facilities used by the Contractor.

VI. Compensation

1. Compensation to Contractor: City agrees to pay Contractor $2.10 per residential dwelling unit per month in 2006 for bi-weekly curbside collection, processing and marketing of recyclables. For 2006 the City certifies that there are 9,366 curbside units that will receive service. The City will notify the Contractor by December 1 of each year what the certified number of curbside units will be for the subsequent year.

The City agrees to pay Contractor $1.55 per certified multi-unit dwelling per month in 2006. City shall determine the number of units that will receive service during a given month by the last Monday of the previous month.

The City retains the right to switch to weekly curbside collection under the timeframe delineated in Section IV. 1. Scheduled Collection Day of this contract. Once weekly service begins the City agrees to pay Contractor a weekly rate. The initial weekly rate will be the current bi-weekly rate plus $0.30 per residential dwelling unit per month.

The City agrees that prices for service will increase each year by two percent or the Consumer Price Index for the Upper Midwest for the previous calendar year as determined by the Federal Reserve Bank of Minneapolis, whichever is less. In the event that the CPI is negative for the previous calendar year the price for service will remain the same for that subsequent year. Each March the City will notify the Contractor ~~by the last week of December~~ what the compensation rate will be for that ~~subsequent~~ calendar year.

2. Method of Payment to Contractor: Contractor shall submit itemized bills on a monthly basis. Bills submitted shall be paid in the same manner as other claims made to the City.

3. Revenue Sharing: Contractor shall, each quarter, pay the City fifty percent of the net revenue from the sale of the recyclable material that is collected and processed.

If Net Revenue is negative, that amount represents processing fees owed to the contractor or shortfall.

3.01 Formula

The Contractor shall rebate an amount to the City based on the following formula:

(a) Published industry end market “index” or verified market price ($ per ton based on specified commodity grades) to provide the “gross end market value” by commodity for each month as specified in Section VI. 3.03;

(b) Less processing fee ($ per ton) by commodity as specified in Section VI. 3.04;

(c) Times commodity tonnage volumes (tons per month by commodity);

(d) Less 50 percent revenue share and;
(e) Equals net revenue share credit back to City as specified in Section VI. 3 and Section VI. 3.02.
(Refer to Exhibit A for hypothetical examples to illustrate and verify this revenue sharing formula.)

3.02 Revenue Bank
The Contractor shall carry forward the calculated monthly revenue share "credit" or "shortfall" in a cumulative fashion and will be applied against the previous months' revenue share balance. This cumulative total revenue share "fund account" shall be managed according to the following requirements:
(a) The running cumulative total shall be carried forward through December 2012. A full and final report of the City's revenue share fund account shall be submitted by the Contractor by January 15, 2013. The City shall then approve this revenue share report.
(b) If the cumulative total balance shown in this final revenue share report is positive, the Contractor shall remit to the City any revenue share credit due as indicated by the cumulative total due the City.
(c) If at the end of December 2012, the cumulative total is at a negative balance, the Contractor will assume the shortfall with no amount due from the City.
(d) Whenever the amount owed the City exceeds $20,000 the Contract shall rebate the excess over the $20,000 to the City quarterly.
(Refer to Exhibit B for hypothetical examples to illustrate and verify this revenue sharing formula.)

Each month the Contractor shall calculate the revenue share for all commodities. Those calculations shall be included as part of the Contractor's report to the City. Contractor shall use the following indices in determining the revenue sharing formula:

A. Paper grades including newsprint and inserts, magazines, catalogs, and mixed mail shall be:
• The Official Board Markets (OBM) Yellow Sheet, Chicago region for Old Newspapers (ONP) # 8, high side of range.

B. Old Corrugated Cardboard shall be:
• The Official Board Markets (OBM) Yellow Sheet, Chicago region for OCC #11, high side of range.

C. Old Boxboard shall be:
• The Official Board Markets (OBM) Yellow Sheet, Chicago region for Mixed Paper #1, high side of range.

D. Telephone books and Wet Strength Cardboard shall be:
• Market price paid by Contractor's designated customer.

E. Aluminum shall be:
• ~~The American Metal Market (AMM), Aluminum (1st issue of the month), high side nonferrous scrap prices: scrap metals, domestic aluminum producers, buying prices for processed used aluminum cans in carload lots, f.o.b. shipping point, used beverage can scrap.~~

Market price paid by Contractor's designated customer.

F. Each: clear glass, brown glass, green/blue glass and mixed glass shall be:
• Market price paid by Anchor Glass Corporation's Shakopee, Minnesota plant. Glass composition of sub-grades shall be determined during the annual composition analysis. ~~Until the initial analysis is performed the composition of subgrades is assumed to be: 41% Clear, 31% Brown, and 28% Green.~~

G. Steel shall be:
• ~~The American Metal Market (AMM) Consumer Buying Prices for Clean Used Densified Cans, Chicago Region (1st issue of the month), high side ferrous scrap prices.~~

Market price paid by Contractor's designated customer.

H. Each plastic: PET, HDPE-natural, HDPE-colored shall be:
• Market price paid by Contractor's designated customer. Plastics composition of sub-grades shall be determined during the annual composition analysis. ~~Until the initial analysis is performed the composition of subgrades is assumed to be: 50% PET, 25% Natural HDPE, 25% Colored HDPE.~~

I. Aseptic and Gable-Top Packaging (milk cartons and juice boxes, etc) shall be:
• The Official Board Markets (OBM) Yellow Sheet Chicago region for Mixed Paper #1, high side of range.

J. Textiles shall be:
• Market price paid by Contractor's designated customer.

The processing fee for all paper grades, aseptic and gable top packaging and textiles shall be $45.00 per ton.

The processing fee for Aluminum, Glass, Plastics and Steel shall be $72.50 per ton.

For commodities where revenue is based on Market pricing the Contractor shall provide copies of Load Verification Forms detailing the amount of material sold, the vendor, and the price paid. The Load Verification Forms shall be included with the Contractor's report to the City.

~~Eureka Recycling will guarantee "floor" pricing on paper grades specified in Section VI.3.A of the contract and aluminum cans. These two commodities account for approximately 90% of the total revenue stream. The city revenue share will be based on whichever is higher, the index price minus processing fees, or the floor price minus processing fees. For aluminum cans, the floor price will be $0.45 per pound for the term of the contract. For newspaper, the floor price will be $50 a ton for the term of the contract.~~

4. Method of Payment to City: Contractor shall submit a check for the ~~City's~~ portion of the revenue share due to the city as per Section VI.3 of the contract on a quarterly basis. The Contractor shall provide, together with the rebate to the City, adequate documentation of the corresponding estimate of tons of all corresponding commodities collected from the City. Also, the Contractor shall provide copies of the referenced market indexes or Load Verification Forms with each statement.

5. Liquidated Damages: The Contractor shall agree, in addition to any other remedies available to the City, that the City may withhold payment from the Contractor in the amounts specified in the RFP

Section 8.05 as liquidated damages for failure of the Contractor to fulfill its obligations.

6. Services Not Provided For: No claim for services furnished by the Contractor not specifically provided for herein shall be honored by the City.

VII. Insurance

1. Insurance: Insurance secured by the Contractor shall be issued by insurance companies acceptable to the City and admitted in Minnesota. The insurance specified may be in a policy or policies of insurance, primary or excess. Such insurance shall be in force on the date of execution of the contract and shall remain continuously in force for the duration of the contract.

   Contractor shall provide a Certificate of Insurance as proof of general liability coverage for bodily injury or death in the amount of $1.5 million for bodily injury or death and in the amount of $200,000 for damages to property. To cover the cost of this increased insurance requirement (compared to the RFP) both parties agreed in March 2009 that the City would pay a maximum of an additional $14,887.04 annually.

   The Certificate of Insurance shall name the City as an additional insured, and state that the Contractor's coverage shall be the primary coverage in the event of a loss.

   The Contractor shall also provide a Certificate of Vehicle Liability Insurance in the amount of at least $1,000,000.

   The Contractor shall further provide a Certificate of Director's & Officers Insurance or Errors & Omissions Insurance providing coverage for 1) the claims that arise from the errors or omissions of the Contractor or its sub-contractors and 2) the negligence or failure to render a professional service by the Contractor or its sub-contractors. The insurance policy should provide coverage in the amount of $1,000,000 each occurrence and $1,000,000 annual aggregate. The insurance policy must provide the protection stated for two years after completion of the work. Acceptance of the insurance by the City shall not relieve, limit or decrease the liability of the Contractor. Any policy deductibles or retention shall be the responsibility of the Contractor. The Contractor shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The City does not represent that the insurance requirements are sufficient to protect the Contractor's interest or provide adequate coverage. Evidence of coverage is to be provided on a City-approved Insurance Certificate.

A thirty- (30) day written notice is required if the policy is canceled, not renewed or materially changed.

The Contractor shall require any of its subcontractors to comply with these provisions.

2. Workers' Compensation Insurance: Contractor shall provide evidence of Workers' Compensation Insurance covering all employees of Contractor engaged in the performance of this Contract in accordance with the Minnesota Workers' Compensation Law.

3. Performance and Payment Bond: Contractor shall execute and deliver to City a Performance and Payment Bond with a corporate surety in the sum of $25,000.00 or equal ("equal" may include a Letter of Credit from a banking institution approved by City). This Contract will not become effective until such a bond, in a form acceptable to City, has been delivered to City and approved by the City Attorney.

   The contract shall be subject to termination by City at any time if said bond shall be canceled or the surety thereon relieved from liability for any reason. The term of such Performance Bond shall be renewed annually during the life of the contract. Extensions or renewals shall require the execution and delivery of a Performance Bond in the above amount to cover the period of extension or renewal.

4. Indemnification: The Contractor agrees to defend, indemnify and hold harmless the City, its officers and employees, from any liabilities, claims, damages, costs, judgments, and expenses, including attorney's fees, resulting directly or indirectly from an act or omission of the Contractor, its employees, its agents, or employees of subcontractors, in the performance of the services provided by this contract or by reason of the failure of the Contractor to fully perform, in any respect, any of its obligations under this contract. If a Contractor is a self-insured agency of the State of Minnesota, the terms and conditions of Minnesota Statute 3.732 et seq. shall apply with respect to liability bonding, insurance and liability limits. The

provisions of Minnesota Statutes Chapter 466 shall apply to other political subdivisions of the State of Minnesota.

VIII. Other Requirements

1. Term: The term for providing recycling collection, processing and marketing shall be December 26, 2005 through December 31, ~~2010~~. 2012.

2. Designated Contact Person/Hotline Phone Number: Contractor designates ~~Alex Danovitch, Director of Business Development~~ Christopher Goodwin, Director of Customer Relations as its primary contact person for questions and concerns relating to the provision of services detailed in the contract, proposal and request for proposals. Contractor designates (651) 222-SORT (7678) as the number for residents to call with questions, concerns and complaints.

3. Reporting: Contractor shall file all monthly and annual reports as designated in RFP section 6. ANNUAL REPORTING AND PROMOTIONAL ACTIVITIES

4. Promotional Activities: The Contractor and the Recycling Coordinator shall work together in the preparation and distribution of educational materials to insure accurate information and program directions.

   The Contractor shall produce and distribute an annual flyer to each residence in the curbside program. The Contractor will also be required to provide annually a multifamily complex recycling flyer to Multifamily Complex owners, landlords or other designated contact person in sufficient number that one copy may be distributed to each tenant. The Contractor will provide a pdf or other mutually agreed upon electronic format version of each flyer for the City.

   The Contractor shall conduct its own promotions and public education to increase participation and improve compliance with City-specified resident preparation instructions. The Contractor shall submit a draft of any public education literature for approval by the City, at least one (1) month before printing and release of any such literature.

   By December 31 of each year the Contractor shall provide the City with a work plan detailing the educational and promotional efforts the

Contractor shall deploy in the subsequent year to improve participation, material quality and the success of the program. These efforts shall include at a minimum, attendance by Contractor staff at one city sponsored event per year to share information on recycling program with residents, sponsorship of four City events in 2010, five in 2011 and six in 2012. Sponsorship to be defined as assisting City staff in reducing waste from the event by supplying equipment for collecting organic material for composting and accepting that compostable material and ensuring that it is composted.

5. Equal Opportunity: During the performance of the executed contract, the Contractor, in compliance with Executive Order 11246, as amended by Executive Order 11375 and Department of Labor Regulations 41CFR, Part 60, shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to insure that applicants for employment are qualified, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.

   Such prohibition against discrimination shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

   In the event of noncompliance with the non-discrimination clauses of this contract, this contract may be canceled, terminated, or suspended, in whole or part, in addition to other remedies as provided by law.

6. Compliance with Laws and Regulations: In providing services hereunder, Contractor shall abide by all statutes, ordinances, rules, and regulations pertaining to the provision of the services to be provided. Any violation shall constitute a material breach of the Contract.

7. Governing Law: The laws of the State of Minnesota shall govern all interpretations of this contract, and the appropriate venue and jurisdiction for any litigation which may arise hereunder will be in those courts located within the County of Ramsey, State of

Minnesota, regardless of the place of business, residence or incorporation of the Contractor.

8. Subcontractor: Contractor shall not enter into subcontracts for any of the services provided for in this Contract without the express written consent of the City.

9. Independent Contractor: Nothing contained in this agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Contractor shall at all times remain an independent Contractor with respect to the services to be performed under this Contract. Any and all employees of Contractor or other persons engaged in the performance of any work or services required by Contractor under this Contract shall be considered employees or sub-contractors of the Contractor only and not of the City; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of Contractor.

10. Transfer of Interest: The Contractor shall not assign any interest in the contract, and shall not transfer any interest in the contract, either by assignment or novation, without the prior written approval of the City. The Contractor shall not subcontract any services under this contract without prior written approval of the City. Failure to obtain such written approval by the City prior to any such assignment or subcontract shall be grounds for immediate contract termination.

11. Inspection of Records and Disclosure: All Contractor records with respect to any matters covered by this agreement shall be made available to the City or its duly authorized agents at any time during normal business hours, as often as the City deems necessary to audit, examine and make excerpts or transcripts of all relevant data.

    Any reports, information, data, etc. given to, prepared, or assembled by the Contractor under a future contract shall not be made available by the Contractor to any other person or party without the City's prior written approval. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and report prepared by the Contractor shall become the property of the City upon termination of the City's contract with the Contractor.

12. Conflict of Interest: Contractor agrees that no member, officer, or employee of the City shall have any interest, direct or indirect, in this Contract or the proceeds thereof. Violation of this provision shall cause this Contract to be null and void and the Contractor will forfeit any payments to be made under the Contract.

13. Entire Contract: This Contract incorporates and includes herein the RFP dated August 6, 2005. To the extent this contract conflicts with the RFP, the terms of this contract control. This Contract and the RFP incorporated supersede all verbal agreements and negotiations between the parties relating to the subject matter hereof, as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Contract shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

14. Waiver: Any waiver by either party of a breach of any provisions of the executed contract shall not affect, in any respect, the validity of the remainder of the executed Contract.

15. Termination: The City may cancel the Contract if the Contractor fails to fulfill its obligations under the Contract in a proper and timely manner, or otherwise violates the terms of the Contract if the default has not been cured after 90 days written notice has been provided. The City shall pay Contractor all compensation earned prior to the date of termination minus any damages and costs incurred by the City as a result of the breach. If the contract is canceled or terminated, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports or other materials prepared by the Contractor under this agreement shall, at the option of the City, become the property of the City, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

16. Severability: The provisions of this Contract are severable. If any portion of the contract is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Contract.

17. Accounting Standards: The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this contract.

18. Retention of Records: The Contractor shall retain all records pertinent to expenditures incurred under this contract for a period of three years after the resolution of all audit findings. Records for non-expendable property acquired with funds under this contract shall be retained for three years after final disposition of such property.

19. Data Practices: The Contractor agrees to comply with the Minnesota Government Data Practices Act and all other applicable state and federal laws relating to data privacy or confidentiality. The Contractor must immediately report to the City any requests from third parties for information relating to this Agreement. The City agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City, its officers, and employees harmless from any claims resulting from the Contractor's unlawful disclosure or use of data protected under state and federal laws. All Proposals shall be treated as non-public information until the proposals are opened for review by the City. At that time the Proposals and their contents become public data under the provisions of the Minnesota Government Data Practices Act, Minn. Stat. C. 13.

20. Non-Assignability and Bankruptcy: The parties hereby agree that Contractor shall have no right to assign or transfer its rights and obligations under said agreement without written approval from the City. In the event Contractor, its successors or assigns files for Bankruptcy as provided by federal law, this agreement shall be immediately deemed null and void relieving all parties of their contract rights and obligations.

IN WITNESS WHEREOF, the parties have executed this agreement on the dates set forth below:

CITY OF ROSEVILLE	EUREKA RECYCLING
By________________________________ Its Mayor	By________________________________ Its___________________________
Dated_____________________________	Dated_____________________________
and	and
By________________________________ Its City Manager	By________________________________ Its___________________________
Dated_____________________________	Dated_____________________________

Exhibit A Hypothetical Examples of One Commodity's Revenue Sharing Formula

The following two hypothetical examples are for illustration purposes only as a means to verify the understanding of the actual revenue share calculation formulae as described in Section VI in this Agreement.

<u>Hypothetical example #</u>1 of how the specified revenue sharing works follows:

Assume:

Published industry market index for old newspaper (ONP) = $70 per ton [from the Official Board Markets (OBM) *"Yellow Sheet",* first issue of the month, #8 News, Chicago; Freight on Board (F.O.B.) the sellers dock];

Processing fee for all paper in 2010 = $45 per ton

Estimated amount of tons of all grades of paper for the month = 285 tons

Revenue share = 50% for all paper grades;

Therefore, the monthly credit for all paper back to the City would be = $3,562.50

Or: ($70 - $45) x 285 x 50%

<u>Hypothetical example #2</u> of how the specified revenue sharing works follows:

Assume:

Published industry market index for old newspaper (ONP) = $30 per ton [from the OBM *"Yellow Sheet",* first issue of the month, #8 News, Chicago; Freight on Board (F.O.B.) the sellers dock];

Proposed processing fee = $45 per ton

Estimated amount of tons of all grades of paper for the month = 285 tons

Proposed revenue share = 50% for all paper grades;

Therefore, the monthly shortfall for all paper charged against the City's revenue share fund account would be = ($2,137.50).

Or: ($30 - $45) x 285 x 50%.

Exhibit B Hypothetical Example of the Cumulative Total Revenue Sharing Fund Account Statement

This is not based on any actual time periods; it is purely for demonstration purposes only.

Month	Processing Fees	Revenue Share	Monthly Net	Cumulative Total
January	$25,000	$20,000	($5,000)	($5,000)
February	$23,000	$21,000	($2,000)	($7,000)
March	$25,000	$27,000	$2,000	($5,000)
April	$26,000	$28,000	$2,000	($3,000)
May	$27,000	$30,000	$3,000	$0
June	$28,000	$32,000	$4,000	$4,000
July	$30,000	$34,000	$4,000	$8,000
August	$32,000	$37,000	$5,000	$13,000
September	$31,000	$39,000	$8,000	$21,000
October	$29,000	$27,000	($2,000)	$19,000
November	$27,000	$23,000	($4,000)	$15,000
December	$23,000	$19,000	($4,000)	$11,000

Attachment F

Results from Cities that Bid in 2009

Brooklyn Park

Company	Bid
Waste	$1.93
Veolia	$2.31
Allied	$3.79

Columbia Heights

Recycling portion of garbage and recycling bid

Company	Bid
Veolia	$2.70
Waste	$2.89
Allied	$3.00
Walters	$3.70

Edina

Company	Bid
Allied	$2.65
Waste	$3.61
Randy’s	$3.95