

**RESOLUTION NO. 20-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AUTHORIZING A FOURTH AMENDMENT TO THE FRANCHISE  
AGREEMENT WITH RECOLOGY CUPERTINO FOR THE COLLECTION  
AND PROCESSING OF RECYCLABLE AND COMPOSTABLE MATERIAL,  
AND THE COLLECTION AND DISPOSAL OF GARBAGE, TO NEGOTIATE  
A NEW FRANCHISE AGREEMENT AND DEFINE A BRIDGE TERM THAT  
INCLUDES A SPECIAL MAXIMUM RATE ADJUSTMENT**

WHEREAS, the City of Cupertino, with the approval of the City Council, entered into a Franchise Agreement with Recology Cupertino (Recology) for the collection and processing of recyclable and compostable materials, and the collection and disposal of garbage; the agreement has been thrice previously amended (as amended, the "Franchise Agreement"); and

WHEREAS, the term of the Franchise Agreement expires at 11:59 P.M. on January 31, 2021, subject to Article 16 of the Franchise Agreement; and

WHEREAS, pursuant to Section 2.2 of the Franchise Agreement, the City has the option to negotiate a new ten-year agreement that may begin at 12:00 A.M. on January 31, 2021, if certain criteria are satisfied; and

WHEREAS, in accordance with Section 2.2.4 of the Franchise Agreement, Franchisee timely notified the City in writing of Recology's intent to exercise the option to renegotiate the Franchise Agreement; and

WHEREAS, pursuant to Section 2.3 of the Franchise Agreement, the City, at its sole discretion, may choose to extend, or not extend, the term of the Agreement, or negotiate a new agreement; and

WHEREAS, the City Council desires to pursue negotiations of a new agreement with Recology, on certain terms and conditions, including the City preserves its ability to terminate such negotiations if the City determines in its sole discretion that it is in the City's interest to do so, and Recology agrees to continue providing services under the same terms and conditions as the existing Franchise Agreement after any such termination of negotiations to bridge the period of time until the City can engage a new franchisee; and

WHEREAS, the City Council desires to amend the Franchise Agreement a fourth time to modify its terms to define a bridge term of eighteen (18) months ("Bridge Term") to ensure continuation of service in the event that negotiation of a new Franchise Agreement is unsuccessful; and

WHEREAS, the collection of solid waste, which includes garbage, non-organic recyclables, organic waste, is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino; and

WHEREAS, the City Council of the City of Cupertino enacted Municipal Code Chapters 6.24 and 9.16, in part, to meet the City's mandated collection of solid waste and to satisfy applicable California Integrated Waste Management Act AB 939 and Assembly Bill 1826 requirements; and

WHEREAS, pursuant to Municipal Code Section 6.24.120 and applicable statutory authority, the provision of solid waste collection services in Cupertino is provided by a private solid waste collector pursuant to the terms of an exclusive franchise; and

WHEREAS, the City does not provide solid waste collection services, rather it regulates the private solid waste collection industry to protect public health, safety and welfare and ensure compliance with applicable laws; and

WHEREAS, as part of its regulatory role, pursuant to Municipal Code Section 6.24.150, the City reserved the right to establish a schedule of approved maximum rates to avoid an abuse of the franchise rights granted; and

WHEREAS, the solid waste collector is solely responsible for setting and collecting such rates and charges at a level at or below the schedule of approved maximum rates; and

WHEREAS, the Franchise Agreement establishes a process for Recology to request an adjustment to the schedule of approved maximum rates if necessary to cover increased costs; and

WHEREAS, in the event of a termination of negotiations and during the bridge period of time until the City can engage a new franchisee, and pursuant to the terms of the Franchise Agreement, on March 25, 2020 Recology submitted a written request and documentation in support of a special maximum rate adjustment for all categories of Service Recipients during the Bridge Term; and

WHEREAS, an independent auditor has evaluated the requested special maximum rate adjustment and made written findings that the requested adjustment is necessary to cover the cost of providing service during the Bridge Term (if the Bridge Term is required); and

WHEREAS, the City has determined that the amendment to the Franchise Agreement is exempt from environmental review pursuant to the exemption in 14 Cal. Code Regs. § 15601( b)( 3) in that it can be seen with certainty that there is no possibility that this action will have a significant effect on the environment; and

WHEREAS, the City Council, using its independent judgment, before taking action on this Resolution, determines that the action is exempt from CEQA as stated above; and

WHEREAS, all documentation to support this proposed adjustment to the schedule of approved maximum rates during the Bridge Term (if the Bridge Term is required) was placed on file with the City Clerk for public inspection and review; and

WHEREAS, at its regular meeting on April 21, 2020, the City Council held a public hearing to consider the proposed adjustment to the schedule of approved maximum rates during the Bridge Term (if the Bridge Term is required); and

WHEREAS, at the public hearing, interested persons had the opportunity to testify regarding the proposed adjustment to the schedule of approved maximum rates during the Bridge Term (if the Bridge Term is required); and

WHEREAS, the City Council of the City of Cupertino finds and determines as follows:

1. The above recitals are true and correct and material to the adoption of this Resolution.

2. After considering the request and documentation from Recology, the report and findings of the City-directed audit, the public's written comments and testimony received at this public hearing, and the staff report and information presented at the hearing regarding the adjustment to the schedule of approved maximum rates, the City Council determines that the evidence supports that the adjustment is needed to cover the increased costs of providing service during a Bridge Term (if the Bridge Term is required), and therefore, it is appropriate to approve the adjustment to the schedule of approved maximum rates by 5% for all categories of Service Recipients, effective February 1, 2021, and an additional 5% for all categories of Service Recipients, effective February 1, 2022, in the event that negotiation of a new agreement is unsuccessful and the Bridge Term begins.

NOW, THEREFORE, BE IT RESOLVED, that the City Council approves the fourth amendment to the Franchise Agreement in accordance with the terms of this Resolution and staff's recommendations included in the Council report to authorize staff to pursue negotiation of a new franchise agreement with Recology, and, if the City elects to terminate such negotiations, define a Bridge Term, and establish a schedule of approved maximum rates during such Bridge Term; and

BE IT FURTHER RESOLVED, that the City Manager or her designee is authorized to execute the fourth amendment to the Franchise Agreement, and to take all steps necessary to complete negotiations and execute the contract documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 21<sup>st</sup> day of April, 2020, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED:	
---------	--

Resolution No. \_\_\_\_\_

Page 2

<div>_____</div> <div>Steven Scharf, Mayor City of Cupertino</div>	<div>_____</div> <div>Date</div>
<div>ATTEST:</div> <div>_____</div> <div>Kirsten Squarcia, City Clerk</div>	<div>_____</div> <div>Date</div>