

**FOURTH AMENDMENT TO FRANCHISE AGREEMENT BETWEEN THE CITY OF
CUPERTINO AND RECOLOGY CUPERTINO FOR COLLECTION AND PROCESSING OF
RECYCLABLE AND COMPOSTABLE MATERIALS, AND THE COLLECTION AND
DISPOSAL OF GARBAGE**

This Fourth Amendment to the Franchise Agreement between the City of Cupertino and Recology Cupertino for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage, for reference dated April 21, 2020 is by and between the CITY OF CUPERTINO, a municipal corporation ("CITY"), and Recology Cupertino, a California corporation ("Franchisee"), and is made with reference to the following:

RECITALS:

- A. City and Franchisee are parties to a Franchise Agreement for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage dated May 18, 2010, as amended by a First Amendment dated September 2, 2014, a Second Amendment dated December 19, 2017, and a Third Amendment dated February 4, 2020 (such agreement as so amended, the "Agreement").
- B. The term of the Agreement expires at 11:59 P.M. on January 31, 2021, subject to Article 16 of the Agreement.
- C. Pursuant to Section 2.2 of the Agreement, 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.
- D. In accordance with Section 2.2.4 of the Agreement, Franchisee timely notified City in writing of Franchisee's intent to exercise the option to renegotiate the Agreement.
- E. Pursuant to Section 2.3 of the Agreement, City, at its sole discretion, may choose to extend, or not extend, the term of the Agreement, or negotiate a new agreement. In response to Franchisee's written request for an option, City is willing to pursue such negotiations with Franchisee so long as, among other things, City preserves its ability to terminate such negotiations if City determines in its sole discretion that it is in City's interest to do so, and Franchisee agrees to continue providing services under the same terms and conditions as the existing Agreement for a specified period of time after any such termination of negotiations to bridge the period of time until the City can engage a new franchisee.
- F. Pursuant to Section 12.3 of the Agreement, in the event of a termination of negotiations and during the bridge period of time until City can engage a new franchisee, Franchisee has requested a special maximum rate adjustment. City and Franchisee wish to adjust the schedule of approved maximum rates that may be charged by Franchisee during such bridge period, if any.

G. City and Franchisee desire to modify the Agreement as set forth in detail below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

1. Article 2 – Term of Agreement, new Sections 2.4, 2.4.1, 2.4.2, 2.4.3, 2.4.4, and 2.4.5 are hereby added to read as follows:

“2.4 City’s Conditions on Option to Negotiate an Extended or New Agreement. In response to Franchisee’s written notice of exercise of the above option, City is willing to pursue such negotiations with Franchisee for a new agreement (“Option Negotiations”) on the following terms and conditions:

2.4.1 During the period of Option Negotiations, City will not solicit proposals from or negotiate with other potential services providers. City and Franchisee agree to conduct the Option Negotiations in good faith. Franchisee acknowledges that City will require Franchisee to make available records to support and substantiate its proposals in the negotiations. Recognizing that time is of the essence, the parties will complete the negotiations (or City will issue its notice of termination as specified in Section 2.4.4 below) by no later than January 31, 2021 (“Negotiations Outside Date”). The parties’ participation in the Option Negotiations is not a pre-commitment by either party to approve any such new agreement, and each party reserves sole discretion whether to make such approval. City staff shall have no obligation to submit a new agreement to the City Council, or to recommend approval of a new agreement to the City Council.

2.4.2 Franchisee agrees to adhere to applicable state and local law, including City municipal code, and any specific procurement procedures the City develops to govern the Option Negotiations.

2.4.3 The City Council of the City, or Franchisee, each at its sole discretion, may terminate the Option Negotiations if it determines, at its sole discretion, that it is in its interest to do so, at any time during the period of Option Negotiations by giving ten (10) days’ prior written notice to the other Party in the manner specified in the Agreement (“Negotiations Termination”).

2.4.4 In recognition that the City will require a bridge period of time for services to continue in the event that the Option Negotiations do not result in a new agreement, the term specified in Section 2.1 of the Agreement shall be automatically extended until the end of an eighteen (18) month period (“Bridge Term”) if either (a) the City or Franchisee issues a written notice of Negotiations Termination, in which case the Bridge Term would begin as of 12:01 A.M. on the day immediately following the effective date of such termination, or (b) the parties have not approved a new agreement, each in their sole discretion, on or before the Negotiations Outside Date, in which case the Bridge Term would begin at 12:01 A.M. on the day immediately following the Negotiations

Outside Date. Notwithstanding the foregoing, City may terminate such Bridge Term on ninety (90) days' advance written notice to Franchisee, in which case the term of the Agreement shall end effective as of the date specified in the notice, but no earlier than January 31, 2021. Such Bridge Term is subject to Article 16 of the Agreement. During such Bridge Term, Franchisee shall continue providing the collection and other services specified in the Agreement under all of the same terms and conditions as specified in the existing Agreement.

2.4.5 In the event that the Bridge Term is exercised, Franchisee has requested and City has approved a special maximum rate adjustment of 5% for all rates for all categories of Service Recipients, which shall go into effect on February 1, 2021. In the event that the Bridge Term is still in effect on February 1, 2022, Franchisee has requested and City has approved an additional special maximum rate adjustment of 5% for all rates for all categories of Service Recipients, which shall go into effect on February 1, 2022 through the end of such Bridge Term.

For the avoidance of doubt, (a) the maximum rate adjustment procedures described elsewhere in the Agreement shall continue to apply during any such Bridge Term in addition to the special maximum rate adjustments provided for in the previous paragraph, and (b) the City Payment under Section 12.7, relating to termination of the HHW Program, will not be extended beyond January 2021. In addition, notwithstanding Section 6.1.1, Contractor shall not be required to replace any diesel collection vehicles with CNG vehicles in either 2021 or 2022."

2. Except as expressly modified herein, all other terms and covenants set forth in the Agreement shall remain the same and shall be in full force and effect. References herein to sections and exhibits refer to sections and exhibits of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment as of the date first written above.

Recology Cupertino,
A California Corporation

CITY OF CUPERTINO,
A Municipal Corporation

By Michael J. Sangiacomo
President & CEO, Michael J. Sangiacomo

By _____
City Manager, Deborah L. Feng

APPROVED AS TO FORM:

By _____
City Attorney, Heather Minner

ATTEST:

By _____
City Clerk, Kirsten Squarcia