

**LOS ALTOS GARBAGE COMPANY
FRANCHISE AGREEMENT**

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FRANCHISE AGREEMENT

This Agreement is entered into to be effective as of December 4, 1995 (the "Commencement Date") by and between the City of Cupertino, a municipal corporation (hereinafter referred to as "City"), and Los Altos Garbage Company, Inc., a California corporation (hereinafter referred to as "Company").

RECITALS

WHEREAS, City regulates the collection and disposal of Solid Waste and Mixed Recyclables so as to protect the physical health and safety of its inhabitants; and

WHEREAS, City is acting under clearly articulated and affirmatively expressed policies of the State of California empowering cities to regulate the collection and disposal of Solid Waste and Mixed Recyclables under powers expressly granted to cities in Article XI, Section 7 of the California Constitution, and also set forth in Section 4250 of the Health and Safety Code of California and Sections 66755 to 66757, inclusive, of the Government Code of California; and

WHEREAS, City has examined and found the performance and services provided by Company to inhabitants of City under the franchise agreement-during the preceding years to have been satisfactory;

WHEREAS, The City Council of City has determined that the public interest and convenience, and the physical health and safety of its inhabitants, require the entering into of the following Franchise Agreement; and

WHEREAS, City and Company desire to enter into a new Franchise Agreement providing continuation by Company of the collection, removal and transportation of Solid Waste and Mixed Recyclables produced, generated or accumulated within City Limits; and

WHEREAS, City and Company desire to extend the term of the existing franchise agreement for an additional ten years commencing from November 1, 2000 and continuing through October 31, 2010.

FRANCHISE AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises, covenants and conditions contained in this Agreement, and for other and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following capitalized names and terms shall have the respective meanings indicated throughout this Agreement:

1.1. **Area-wide Cleanup Service.**

"Area-wide Cleanup Service" means the service that Company may, at City's option, provide at times and dates agreed upon between Company and City sufficient to collect and remove accumulated bulky residential Solid Waste not collected through the regular residential collection services to be provided by Company, and as more particularly described in Section 3.1 of this Agreement.

1.2. **Biomedical Waste.**

"Biomedical Waste" means waste which may be reasonably considered infectious, pathological or biohazardous, originating from hospitals, public or private medical clinics, departments of research laboratories, pharmaceutical industries, blood banks, forensic medical departments, mortuaries, veterinary facilities and other similar facilities and includes (without limitations) equipment, instruments, utensils, fomites, laboratory waste (including pathological specimens and fomites attendant thereto), surgical facilities, equipment, bedding and utensils (including pathological specimens and disposal fomites attendant thereto), sharps (hypodermic needles, syringes, etc.), dialysis unit waste, chemotherapeutic waste, animal carcasses, offal and body parts, biological materials (vaccines, medicines, etc.), and other similar materials, but excluding any such waste which is determined by evidence reasonably satisfactory to Company to have been rendered non-infectious, non-pathological and non-biohazardous.

1.3. City.

"City" means the City of Cupertino, a municipal corporation organized under the laws of the State of California.

1.4. City Council

"City Council" means the elected body of officials who govern the municipal affairs of City pursuant to the laws of the State of California.

1.5. City Limits.

"City Limits" means all of the geographic area lying within the municipal boundaries of City either as of the Commencement Date or as may be annexed or added thereto during the term of this Agreement.

1.6. City Manager.

"City Manager" means the duly appointed City Manager of City.

1.7. City Rules and Regulations.

"City Rules and Regulations" has the meaning set forth in Section 2.7.

1.8. Compactor.

"Compactor" means container in which a mechanical blade is used to compress the contents held by said container.

1.9. Company.

"Company" means Los Altos Garbage Company, Inc., a California corporation, and its successors and assigns.

1.10. Curbside Recycling.

"Curbside Recycling" means the curbside collection, removal and Recycling of Recyclables discarded at residential dwellings, as more particularly described in Section 3.1.

1.11. Customers.

"Customers" means those persons or entities whose residential, commercial, industrial, institutional, municipal, or agricultural premises or activities are located within the City Limits and who either voluntarily or mandatorily subscribe for Solid Waste collection services with Company.

1.12. Debris Box.

"Debris Box" means a roll-off waste container used to collect and / or accumulate, without mechanical compaction, any Solid Waste, including but not limited to any construction and / or demolition site debris and other similar materials.

1.13. Disposal Facilities.

"Disposal Facilities" means one or more sanitary landfills designated by City for the delivery and disposal by Company of Solid Waste collected pursuant Section 3.1 of this Agreement.

1.14. Extraordinary Costs

"Extraordinary Costs" means those costs which increase Company's costs of providing service under this Agreement due to changes in circumstances beyond the control of Company including, without limitation, Regulatory Changes, and the inability of Company to dispose of collected Solid Waste at the Disposal Facilities designated by City pursuant to Section 3.1 of this Agreement.

1.15. Franchise.

"Franchise" means the rights and privileges granted by City to Company under this Agreement, particularly Section 2.1 herein, subject to all of the provisions of this Agreement.

1.16. Franchise Fee.

"Franchise Fee" means the fee payable by Company to City, pursuant to Section 6.3 of this Agreement, for the privilege of being granted the Franchise under this Agreement.

1.17. Government Regulations.

"Government Regulations" means all statutes, laws, ordinances, rules, regulations, orders, decrees or permit requirements enacted, ordained, or promulgated by any governmental entity with jurisdiction over the operations of Company, including judicial or administrative orders and decrees, as are applicable to the accumulation, collection, removal, and hauling of Solid Waste, and Mixed Recyclables, or to the other activities of Company contemplated by this Agreement.

1.18. Hazardous Waste.

"Hazardous Waste" means any of the following:

- (a.) All waste defined or characterized as hazardous waste by the federal Solid Waste Disposal Act (42 U.S.C. Section 3251, et seq.), as amended, including the Resource Conservation and Recovery Act of 19876 (42 U.S.C. Section 6901, et seq.) and all future amendments thereto, or regulations promulgated thereunder;
- (b.) All waste defined or characterized as hazardous waste by the principal agencies of the State of California (including without limitation the Department of Health Services and the California Waste Management Board) having jurisdiction over hazardous waste generated by facilities within such State, and pursuant to any applicable State or local law or ordinance, and all future amendments thereto, or regulations promulgated thereunder;
- (c.) Radioactive wastes;
- (d.) Any sewage sludge or other residue from wastewater treatment facilities;
- (e.) Waste commonly known as cannery waste;
- (f.) Those substances and items which require special or extraordinary handling or disposal due to their hazardous, harmful, toxic or dangerous character or quality; and
- (g.) Those substances and items which are not normally expected to be disposed of by generally accepted sanitary landfill disposal methods.

"Hazardous Waste" shall be construed to have the broader, more encompassing definition where a conflict exists in the definitions employed by two or more governmental agencies having concurrent or overlapping jurisdiction over Hazardous Waste. If any governmental agency or unit having appropriate jurisdiction shall hereafter determine that substances which are not, as of the date thereof, considered harmful, toxic, dangerous or hazardous, then such substances shall be Hazardous Waste for the purposes of this Agreement as of the effective date of such determination. If any governmental agency or unit having appropriate jurisdiction shall hereafter determine that substances which are, as of the date hereof, considered harmful, toxic, dangerous or hazardous, are not harmful, toxic, dangerous or hazardous, then such substances shall not be Hazardous Waste for purposes of this Agreement as of the effective date of such determination.

1.19. Recyclables.

"Recyclables" mean any discarded materials, substances or objects that may be reusable, with or without reprocessing or remanufacturing into new products, or which otherwise may have commercial value, that prior to collection by Company are separated or segregated by their generator from Solid Waste. Without limiting the generality of the foregoing, examples of "Recyclables" include: newspaper, cans, corrugated cardboard, glass, certain types of plastic, metals, wood, construction debris, and automobile oil.

1.19.1. Mixed Recyclables.

"Mixed recyclables" means more than one type of recyclable material commingled in a bin, debris box, compactor or other type of container. This material includes, but not limited to, wood, paper, plastic, metals, glass, and other dry waste. The material must not have more than 10% putrescible or non-recyclable waste.

1.19.2. Single Source Separated Recyclables.

"Single Source Separated Recyclables" means any Recyclables that, prior to collection by Company, are or have been separated or segregated by their generator as to type or category of material and are or have been placed into separate containers according to type or category, i.e., all newspapers are separated from all other Recyclables and are placed together in their own separate container or containers, all cans are separated from all other Recyclables and are placed together in their own separate container or containers, and so on.

1.20. Recycling / Recycle.

"Recycling" and "Recycle" means that process of controlled manual and / or mechanical separation and removal of Recycles from the stream of Solid Waste, and any subsequent activities necessary for the marketing and sale of such Recyclables.

1.21. Regulatory Changes

"Regulatory Changes" means enactment of Government Regulations, revisions to present or future Government Regulations, including the manner of enforcement or interpretation thereof, which materially and adversely affect the ability of Company to provide services and perform its obligations under this Agreement.

1.22. Schedule of Approved Rates.

"Schedule of Approved Rates" means the service rates pursuant to which Company receives compensation for services it performs under this Agreement, as more particularly described in Article IV herein.

1.23. Solid Waste.

"Solid Waste" means all materials, substances or objects that are generally discarded by, or rejected as being spent, useless, worthless or in excess to, the owners at the time of discard or rejection, including, without limitation, materials, substances or objects commonly- referred to as "trash," "garbage," "refuse," and "rubbish" that are produced, generated or accumulated by all residential, commercial, industrial, institutional, municipal, agricultural and other inhabitants, premises and activities within City Limits, the collection of which is regulated by City through license, permit, franchise, contract or other authorization as of the Commencement Date; provided, however, "Solid Waste" does not include (i) Hazardous Waste, (ii) Biomedical Waste, (iii) ash, (iv) sewage (whether combustible or non-combustible) and other highly diluted water-carried materials or substances and those in gaseous form, and (v) Recyclables.

1.24. Special Waste

"Special Waste" shall mean those solid wastes which consist of or contain pollutants which, under ambient environmental conditions at a sanitary landfill or other waste management unit could be released at concentrations in excess of applicable water quality objectives, or which could cause degradation of waters of the State, and which may only be discharged at waste management units that are designated either "Class I" or "Class II" by the California State Waste Management Board, or successor agency.

1.25. Standard Container.

"Standard Container" means a metallic or plastic can with close fitting cover with handle and side bails and which has a maximum capacity of 32 gallons or less in gross capacity.

1.26. Unacceptable Waste.

"Unacceptable Waste" means (i) Hazardous Waste, (ii) Biomedical Waste, (iii) ash, (iv) sewage (whether combustible or non-combustible) and other highly diluted water-carried materials or substances and those in gaseous form, (v) Special Waste and (vi) any Solid Waste the collection, removal, handling, hauling, or disposal of which would in the reasonable judgment of Company either (a) pose a substantial threat to public health or safety, or (b) result in residues which are ash or Hazardous Waste, or (c) cause applicable air quality or water effluent standards to be violated, or (d) otherwise pose a reasonable possibility of adversely affecting the operation of Company in any material respect. Without limiting the generality of the foregoing, examples of "Unacceptable Waste" include: drums or sealed containers; explosives, including dynamite, hand grenades, blasting caps, shotgun shells and fireworks; gasoline; kerosene; turpentine, waste oil; ether; naphtha; acetone; solvents; paints; alcohol; acids; hydraulic oil; petroleum; caustics; sewage or process wastewaters; leachate; burning or smoldering materials; flammable or volatile liquids; any other liquids; asbestos; farm machinery or equipment; batteries; motor vehicles and motor vehicle parts including transmissions, rear ends, springs, fenders, and other large motor vehicle parts.

1.27. Yardwaste.

"Yardwaste" shall mean organic waste materials generated by the care and trimming of lawns, garden plants, trees, shrubbery, other plants used for purposes of landscaping and ornamentation, and other vegetation.

ARTICLE II

GENERAL CONDITIONS AND TERM OF FRANCHISE

2.1. Franchise Granted.

City grants exclusively to Company the right and privilege (the "Franchise") of engaging as a collector in the business of collecting, removing and transporting all Solid Waste and Recyclables produced, generated or accumulated within City Limits, subject to the limitations described in Section 2.5 of this Article II, and the other provisions of this Agreement. The exclusive services to be performed by Company, as granted by this Franchise, are more particularly described in Section 3.1 of this Agreement.

The Franchise herein granted shall be subject to the following:

- (a.) The other provisions of this Agreement;
- (b.) Compliance with all applicable Government Regulations (including City ordinances) as they presently exist or as they may be amended during the term of or extension of this Agreement, and
- (c.) The City Rules and Regulations established by the City Manager pursuant to Section 2.7 of this Article II.

In the event of any conflict between this Agreement and applicable Government Regulations (including City ordinances), the latter shall prevail.

2.2. Franchise Term.

The term of the Franchise granted herein shall begin at 12:01 A.M. on the Commencement Date and shall continue, unless otherwise terminated hereunder, until 11:59 P.M. October 31, 2010.

2.3 Use of City Streets.

City grants to Company, during the term of this Agreement, the right and privilege to use and operate upon City maintained streets and other public rights-of-way, to the extent necessary to perform Company's obligations specified herein.

2.4. Independent Contractor Status.

Company, its employees and agents, are independent contractors and not employees, agents or sub-agents of City. Company shall not use a firm name containing the word "City" or other words implying municipal ownership.

2.5. Exceptions to Exclusivity of Franchise Granted.

The Franchise granted herein by City to Company shall be exclusive except with respect to the following:

- (a.) Collection of Single Source Separated Recyclables from nonresidential premises and residential building of five (5) or more dwelling units.
- (b.) Collection of Recyclables from residential premises, provided however, that no person other than the Company shall be permitted to collect Recyclables from residential premises unless that person meets all of the following four criteria (i) is a not-for-profit organization as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) is an organization that has traditionally engaged in Recycling activities within City Limits, (iii) has received a permit to engage in Recycling activities within City Limits by the City Manager, and (iv) receives no consideration from the person or entity who discarded such Recyclables other than the value of the Recyclables themselves.
- (c.) Non-container hauling services incidental to other services to be performed at the premises of a Customer by businesses such as gardeners, landscapers or tree services.
- (d.) Non-container hauling services provided on an irregular and ad hoc basis by bulky item haulers.
- (e.) Hauling of accumulated and / or stored Solid Waste from building construction and / or demolition sites wherein such Solid Waste has not been accumulated and / or stored in a Debris Box.
- (f.) Collection of Unacceptable Waste, and other materials, substances and objects that are neither Solid Waste nor Recyclables.

2.6. Office Established.

Company shall establish and maintain a local office for the purpose of receiving applications for service and the receipt and handling of Customer complaints. Such office shall be open to the public daily between 8:00 A.M. and 4:30 P.M., excepting Saturday and Sunday and such holidays as are recognized by Company and approved by the City Manager. Company shall provide in said office a qualified person to manage Company's obligations pursuant to the Agreement, and such person shall have the responsibility to assure that all collection operations are effectively performed and all Customer complaints courteously handled and satisfactorily resolved.

2.7. Rules and Regulations of the City Manager.

The City Manager shall have the power to establish reasonable rules and regulations (the "City Rules and Regulations") respecting the collection, removal, accumulation, and transportation of Solid Waste and Mixed Recyclables not inconsistent with the provisions of this Agreement or with the provisions of any applicable Government Regulations, provided such City Rules and Regulations are found to be necessary or convenient by the City Manager for the enforcement of the provisions of this Agreement, the provisions of any and all applicable sanitary laws and ordinances, and the preservation of the public peace, health and safety. Company shall comply with any and all such City Rules and Regulations.

2.8. Enforcement Responsibility.

The administration and enforcement of this Agreement shall be the responsibility of the City Manager, or such representatives as may be designated by the City Manager by notice to Company. All services to be provided by Company pursuant to this Franchise shall be performed in a manner reasonably satisfactory to the City Manager pursuant to City Rules and Regulations.

2.9. Notices.

Any and all notices to be given under this Agreement, or which either party may desire to give to the other, shall be in writing and shall be deemed to be duly and properly given if personally delivered or deposited in the United States Mail as certified mail, return receipt requested, postage prepaid, addressed to the other party at the address designated below, or to such other place or address as may be designated by the other party by written notice delivered pursuant to the provisions of this Section 2.9.

If to Company:

Los Altos Garbage Company
20863 Stevens Creek Boulevard, Suite 100
Cupertino, CA 95014

If to City:

City of Cupertino
10300 Torre Avenue
Cupertino, California 95014

Notwithstanding the foregoing, if either party to this Agreement relocates, notice of such fact, including the new address for notice, shall be given to the other party not less than thirty (30) days in advance of such relocation.

ARTICLE III

COMPANY SERVICES

3.1. Franchised Services.

Company shall provide the following exclusive services under this Franchise:

- (a.) Solid Waste Collection. Company shall furnish the personnel, labor and equipment required for the collection, removal, handling and transportation to Disposal Facilities of all Solid Waste produced, generated or accumulated within the City Limits in accordance with the terms of this Agreement. Subject to the provisions of Section 10.1 of this Agreement, Company shall haul all Solid Waste collected to one or more Disposal Facilities outside of the City Limits, the location of which shall be designated by the City Manager. Refusal by the operators of such Disposal Facilities to accept Company's delivery of Solid Waste shall not remove Company from responsibility under this Agreement.
- (b.) Debris Box Service. Company shall provide Debris Box collection, removal and hauling services on an on-call basis, for the provision of Debris Boxes to both residential dwelling and nonresidential units and to construction sites, and Company shall charge for such services the appropriate charge appearing in the Schedule of Approved Rates as provided for herein.

- (c.) Curbside Recycling. Company shall provide residential Customers with appropriate containers into which such Customers may segregate and discard Recyclables. Company shall collect and remove Recyclables from such containers on alternating weeks, or more often as may be necessary, subject to standards to be mutually agreed upon between the parties. Items included for collection include: aluminum, glass (clear or colored), tin, PET plastic (or other grades of plastic as mutually agreed upon by the parties), newspaper and used motor oil.
- (d.) City's Solid Waste. At no cost to City, Company shall furnish the personnel, labor and equipment required for the collection, removal, hauling and delivery to a Disposal Facility of any Solid Waste generated on parcels of property owned, leased or otherwise occupied by City.
- (e.) Area-wide Cleanup Service. At City's option, and on dates and at times to be mutually agreed upon between Company and City, Company shall provide an annual Area-wide Cleanup Service for residential Customers within the City Limits.
- (f.) Compactor Service. All compactors located within the City shall be hauled by the Company except for special accounts that have been granted a permit by the Director of Public Works.
- (g.) Additional Services. At City's request, and subject to the following, Company may elect to provide any other exclusive services not granted by this Franchise ("New Services") upon receiving a written proposal from City and subject to the establishment of an appropriate rate for such New Services; provided, however, if Company elects not to provide any proposed New Service and so notifies City in writing, City may perform, or contract with other persons or entities to perform, any such New Service.
 - (g.1.) Mixed Recyclable Collection. Company shall provide Mixed Recyclable collection, removal and hauling services for commercial businesses, and Company shall charge for such services the appropriate rate as defined in the "Approved Schedule of Rates". Sorting fees associated with this service shall be the responsibility of Company.

- (g.2.) Commercial Cardboard Collection. Company shall provide commercial cardboard collection, removal and hauling services for commercial businesses. Revenues received from the sale of commercial cardboard collected in City will be remitted by Company on a quarterly basis to City.
- (g.3.) Yardwaste Collection. Company shall provide residential yardwaste collection, utilizing ninety-six (96) gallon wheeled containers to single-family and certain multi-family units, on alternating weeks, or more often as may be necessary, subject to the standards mutually agreed upon between the parties.
- (g.4.) Multi-Family/Hillside Recycling Program. Company shall provide a recycling program similar to that described in Section 3.1 (c, g.3 and g.5) of this Agreement to certain multi-family, hillside and / or "difficult to service" units, subject to standards to be mutually agreed upon between the parties.
- (g.5.) Residential Mixed Paper Collection. Company shall provide residential mixed paper collection, removal and hauling services on alternating weeks, or more often as may be necessary. Any and all revenues received by Company for the sale of residential mixed paper shall be retained by Company, except that those revenues exceeding \$100,000 annually shall be split evenly between the Company and the City, based on rates published and agreed to by both parties.

Nothing in this Agreement shall be construed so as to limit or preclude Company from engaging in any lawful activity or business within City Limits not otherwise granted exclusively herein to Company.

3.2. Place of Residential Collections.

City shall enact and enforce such ordinances as may be necessary to assure that residential Customers situate discarded Solid Waste for collection by Company in the front yard of such Customers' dwelling premises in locations that are free of all enclosures such as gates and fences; provided, however, at the option of City, certain residential Customers may be allowed to situate discarded Solid Waste for collection by Company in alternative locations on such Customers' dwelling premises ("Alternative Collection Services"), and City shall approve reasonable service rate differentials, within the Schedule of Approved Rates, for such Alternative Collection Services to reflect the increased costs to Company thereof.

3.3. Times of Collection.

Company's Solid Waste collection activities in residential areas shall begin after 6:00 A.M. and shall conclude by 5:00 P.M., Monday through Friday, or during such additional times as shall comply with City's noise ordinance, subject to the approval of the City Manager.

Company's Solid Waste collection activities in nonresidential areas shall be performed on weekdays other than Sundays, during such times as shall comply with City's noise ordinance. The times and days for collection in nonresidential areas adjacent to residential areas shall be fixed by mutual agreement of City and Company after due consideration of traffic conditions, noise and accessibility to and from the collection area, and any other appropriate factors and circumstances.

3.4. Holidays

Company shall not provide collection services on holidays on which the designated disposal facility is closed, which may include, but are not limited to the following days: New Year's Day, Thanksgiving Day and Christmas Day.

3.5. Additional Requirements.

Company shall comply with each of the following requirements:

- (a.) Company shall provide, annually for a two-week period following January 1, curbside collection of Christmas trees cut into lengths no more than four (4) feet.
- (b.) All of Company's collection vehicles and equipment shall be so constructed and maintained to prevent leakage, spillage and overflow. Company shall maintain all vehicles, detachable containers and Debris Boxes in a clean and sanitary condition and shall perform such maintenance as may be necessary to assure each vehicle and piece of equipment is capable of performing all functions for which it was designed. All trucks and equipment shall be clearly identified with Company name and a current telephone number. City may refuse to permit the operation within the City Limits of any vehicle not adequately serviced, cleaned, or in need of repair. Removal of vehicles for servicing and repair shall not relieve Company from observing all collection schedules.
- (c.) Company shall collect and remove from any and all premises, within twenty-four (24) hours after demand, notice or request, any and all Solid Waste which Company shall have failed to collect and remove as required at the regularly scheduled time.
- (d.) Company shall not litter Customer premises or City streets in the process of performing its collection and removal services, nor shall Company allow any Solid Waste to blow or fall from any vehicle used for collections. Company shall clean up all spills, including oil and debris, on the streets resulting from its operations.
- (e.) Company shall replace lids or covers on all Customer containers immediately after emptying the same and shall repair or replace, at its expense, any containers damaged as a result of its handling thereof, normal wear and tear excepted. Company shall restore all containers used by Customers in an upright position in approximately the same location found by Company immediately prior to being emptied by Company. Company shall restore all commercial bins to the position where the containers were located immediately prior to being emptied by Company, within any enclosures provided, and shall close the doors or gates provided for screening the bins. Company shall instruct its employees to comply with the foregoing requirements, and shall exercise sufficient supervision of such employees to assure that these instructions are followed.

- (f.) Company shall keep records of all Solid Waste collected and removed and shall maintain these records separately from other Company operations. Route status sheets for each collection route shall be maintained by Company indicating the address of each Customer, type and frequency of service, and such other pertinent information as may be reasonably required by City. City shall be provided such collection records and route status sheets upon request. Company may provide City with quarterly summaries of collection operations within City including number of vehicles and amounts of Solid Waste collected.
- (g.) Company shall extend routes and services promptly upon annexation of new areas to City or upon other increase in the service demand. Company shall provide service upon all dedicated public streets and private roads when and as practicable.
- (h.) Company shall respond on an on-call basis for the pick up of large or bulky items and shall charge the Customer for such service.

3.6. Standard Containers.

The Standard Container for residential and nonresidential service shall not exceed thirty-two (32) gallons and its gross weight shall not exceed seventy (70) pounds.

Company shall also furnish ninety six (96) and sixty four (64) gallon wheeled container carts as an option to Customers. A separate service fee may be charged for the cart, which fee shall be included in calculating the Franchise Fee to be paid to City. These carts, if damaged or lost, except through repeated negligence or intentional conduct by the Customers, will be repaired or replaced by Company, at its option, at no charge. Printing on such carts will be limited to their identification as property of Company, including an identification number, and instructions for use.

Company may refuse to collect and remove Solid Waste from Customers' containers which exceed these volume and weight specifications, provided that Company informs such Customers of the reasons for such refusal.

ARTICLE IV

SERVICE RATES AND ADJUSTMENTS

4.1. Rate Authorization.

Company shall be compensated under this Agreement by billing Customers according to the Schedule of Approved Rates, in effect from time to time as provided hereunder. Company shall not charge Customers any amount in excess of those rates shown on the Schedule of Approved Rates for any services required or permitted to be performed under this Agreement.

4.2. Schedule of Approved Rates; Revisions.

The Schedule of Approved Rates shall be those rates as shall be duly adopted by the City Council by resolution. The initial Schedule of Approved Rates (the "Initial Rates"), to be effective as of the Commencement Date is attached hereto as Exhibit B. Subject to the provisions of Section 4.4 of this Article IV, revisions to the Schedule of Approved Rates, if any, shall become effective on the date specified by resolution of the City Council providing for such revisions, but shall not be retroactive unless expressly made retroactive in the resolution.

4.3. Adjustment for Extraordinary Costs.

The parties agree to adjust the Schedule of Approved Rates to fully reimburse and compensate Company for Extraordinary Costs to the extent and in proportion to Company's increased costs of providing services hereunder, subject to the following limitations:

- (a.) The Schedule of Approved Rates shall not be adjusted as a result of increases in Company's costs which result from Company's failure to conform to existing (as of the Commencement Date), consistently interpreted applicable Government Regulations.
- (b.) For purposes of determining the appropriate increase in the Schedule of Approved Rates, Extraordinary Costs shall be allocated either as current expenses or, if such Costs have a useful life exceeding one year, as capital expenditures ("Extraordinary Capital Costs"), as shall be determined by Company's independent public accounting firm using generally accepted accounting principles.

Extraordinary Capital Costs shall be amortized over the useful life thereof in accordance with generally accepted accounting principles; provided, however, any corresponding increase in the Schedule of Approved Rates resulting from amortization of Extraordinary Capital Costs shall be repealed at the end of such amortization period; provided further that the repeal of any such increase shall not affect other increases resulting from Extraordinary Costs which were not amortized.

4.3.1. Timing Of Additional Review.

Upon receiving the Company's written request for additional review and such information deemed necessary to support such request, the City shall have thirty (30) days to act upon the request; provided that the request is deemed complete by the City. If the request is based upon an increase in any fee, tax or charge mandated or imposed by Federal, State, County, City or other law, the City agrees to take action to remedy costs incurred by Company.

4.4. Differential Rates.

Differential rates for similar services may be established for those areas within City Limits where terrain, topography, density or other factors have a demonstrated effect upon the operational economy and profitability of Company. Rate differentials thus established shall be applied to services only in those geographic or other clearly identifiable circumstances for which they are approved by the City Council. -

4.5. Future Rate Adjustments.

Company and City agree that each of the rates shown on the Schedule of Approved Rates in effect as of June 30 of each year (the "Base Year") shall, commencing on the date of this Agreement, be adjusted (either increased or decreased) effective as of August 1st (the "Rate Adjustment Date"), by the percentage increase or decrease (the "Rate Adjustment") that is calculated pursuant to the following formula, which the parties understand and agree appropriately considers both growth and cost of living factors:

$$\text{Rate Adjustment} = \text{CPI} \left[\frac{\text{BR} (.25\text{L} + .25\text{E} + .50 \text{CPI}) - (.6\text{R} + .7\text{C} + .3\text{D})}{\text{BR} (.25\text{L} + .25\text{E} + .50 \text{CPI})} \right]$$

where the terms of the formula, shall have the following meaning:

- BR = Base Revenue, or revenue anticipated for the Base Year ending on June 30 excluding adjustments granted for cost of living increase or non-scheduled adjustments granted in the previous twelve (12) months.
- L = The net percentage change during the May to May Year in the Employment Cost Index (compensation), as published by the U.S. Department of Labor, Bureau of Labor Statistics. (May statistics)
- E = The net percentage change during the May to May Year in the Gross National Product Implicit Price Deflator for Producer's Durable Equipment (non-residential), as published quarterly by the U.S. Department of Commerce, Bureau of Economic Analysis.
- CPI = The net percentage change during the May to May Year in the Consumer Price Index (All Items) for the San Francisco - Oakland Metropolitan Area, as published by the U.S. Department of Labor, Bureau of Labor Statistics. (May statistics)
- R = The net increase in revenue for residential customer above base revenue (can service).
- C = The net increase in revenue for commercial accounts above base revenue (container type).
- D = The net increase in revenue for roll-off debris box service above base revenue.

Should any of the aforementioned index values not be published for the month of May during the Base Year, the rate adjustment calculations shall be performed using the index values as published for the last month immediately preceding the May in question (or, in the case of a quarterly-published index, the index value for the quarter including the May in question). Should any of the indices named in this section be discontinued, a successor index shall replace the same, provided that any successor index shall be that index which is most closely equivalent to the discontinued index as recommended by the publishing agency.

ARTICLE V

ACCOUNTING PROVISIONS

5.1. **Books and Records.**

Books and records relating to services provided under this Agreement shall be kept and maintained by Company. The City Manager, or his / her designated representative, may audit and inspect such books and records to the extent and for the sole purpose of ascertaining the correct amount of sums due to City. Financial records and operating data required by City for the purposes of any review of the Schedule of Approved Rates shall be furnished by Company at no expense to City and shall be prepared in a manner and form reasonably described by City.

5.2. **Accounting Method and Period.**

The accounting records of Company, for purposes of billing, collections, and payment of Franchise Fees, shall be kept on a "cash basis". The operating year for financial and accounting purposes shall begin October 1 and end September 30.

5.3. **Financial Reporting Requirements.**

Company shall annually provide City with copies of an annual audit prepared by an independent certified public accountant who has annexed his / her opinion thereto. City Manager may reasonably specify the form and detail of the annual audit and may inspect the financial records of Company at all reasonable times for any purpose relevant to the performance or the enforcement of the provisions of this Agreement.

ARTICLE VI

BILLING AND COMPENSATION

6.1. Company Billing and Collection.

Company shall, no less frequently than once per calendar quarter, bill Customers and collect the appropriate sums of money due for all such services performed by Company hereunder, such sums to reflect the Schedule of Approved Rates. Company shall also include on such Customer bills, and shall collect as an agent for City, all additional disposal charges authorized by the City Council, and those monies shall be passed through to City.

6.2. Liability of City.

Neither City, nor any of its officers nor employees shall be liable or in any way be responsible for the payment or collection of any service rates or charges due Company for performing services within the City Limits.

6.3. Franchise Fee.

On or before the twentieth (20th) day of each calendar month during the term of this Agreement, Company shall remit to City a sum of money equal to ten percent (10%) of the gross revenues collected by Company from its Customers within the City Limits during the preceding calendar month, as a Franchise Fee for the privilege of operating the Franchise granted under this Agreement. Each monthly remittance to City shall be accompanied by a statement detailing, for the period covered, gross receipts from operations conducted within the City Limits, pursuant to this Agreement.

6.4 Franchise Surcharge.

Commencing July 1, 1996, Company shall remit on or before the twentieth (20th) day of each calendar month during the term of his Agreement, a sum of money equal to two percent (2%) of the gross revenues collected by Company from its Customers within the City Limits during the preceding calendar month. This Administrative Fee shall be paid in addition to the Franchise Fee set forth in Section 6.3.

ARTICLE VII

INTERRUPTION OF SERVICE BY LABOR DISPUTE

7.1. Temporary Possession by City.

In the event that Company's Solid Waste collection, removal and hauling services are interrupted by a labor dispute and Company's regularly scheduled collection services are discontinued for a period of more than forty-eight (48) hours (a "Service Interruption"), City shall have the right (1) to take temporary possession of all facilities, equipment and / or vehicles of Company for the purposes of continuing those services which Company has agreed to provide hereunder so as to preserve and protect the public health and safety, and (2) to retain possession of said facilities, equipment, and / or vehicles to render the necessary services until Company can demonstrate to the satisfaction of the City Council that such services can be resumed by Company; provided, however, City will indemnify and defend Company and its officers, directors, agents, and employees, and hold such parties harmless against all suits, actions, liabilities, costs, and expenses (including reasonable attorneys' fees and costs of defense) arising out of or related to City's negligence or willful misconduct while in possession or operation of any facilities, equipment, and / or vehicles of Company, or in the performance of Company's services hereunder during any such Service Interruption.-

7.2. Gross Revenue to City.

During any period of Service Interruption while City has temporarily assumed the obligations of Company under this Agreement, City shall be entitled to collect and retain the gross revenue attributable to operations during such period and shall pay therefrom only those costs and expenses applicable or allocable to said period. The excess, if any, of revenue over applicable or allocable costs and expenses during such period shall be deposited in the treasury of City to the credit of the general fund. The loss, if any, during such period shall be charged against Company and shall be paid to City by Company upon demand. Final adjustment and allocation of gross revenues, costs and expenses to the period during which City temporarily assumed the obligation of Company shall be determined by an audit by an independent certified public accountant and prepared in report form with his / her opinion annexed thereto.

7.3. Temporary Employment by City.

City may employ, during a Service Interruption, employees of Company while City temporarily assumes the obligations of Company under this Agreement; provided, however, the rate of compensation to be paid such employees, or any other employees, shall be at the rate or rates in effect at the time of the Service Interruption.

ARTICLE VIII

CANCELLATION OF FRANCHISE BY CITY

8.1. Default, Cure, and Termination.

In the event Company defaults in the performance of any of its material obligations under this Agreement, City shall give Company notice setting forth in reasonable detail the facts of such default (the "Notice of Default"), and if Company fails, neglects or refuses for a period of more than thirty (30) days after receipt of the Notice of Default to cure such default by performing its obligations hereunder, City may, without further notice terminate this Agreement and revoke, cancel and annul the Franchise granted hereunder.

In the event of termination of this Agreement for Company's failure to cure a material default, City shall have the right to take possession of vehicles and other equipment of Company used to perform work under this Agreement. City shall have the right to retain possession of said vehicles and equipment until other suitable vehicles and equipment can be purchased or otherwise acquired by City for said purpose, and City shall pay Company the reasonable rental value of such trucks and equipment during the time the same are used by City for such purpose. City shall also have access to Company's records for the purpose of billing Customer service accounts during the period which City is providing Solid Waste collection and disposal services, and City shall retain all fees collected for providing such services.

ARTICLE IX

OWNERSHIP OF SOLID WASTE

9.1. Property of Company.

Title to Recyclables shall pass to the Company when such Recyclables are collected from Customers at their source of generation. Title to Solid Waste shall remain with the Customer until such Solid Waste is delivered to and accepted at the Disposal Facilities or, as to Solid Waste capable of being recycled, separated by the Company for recycling.

ARTICLE X

DISPOSAL FACILITIES

10.1. Delivery to Designated Disposal Facilities.

Subject to Section 10.2 below, Company shall transport the Solid Waste collected pursuant to this Agreement, and shall deliver the same to the Disposal Facilities designated by City, as provided for in Section 3.1 of this Agreement.

Company is responsible for maintaining records to account for the total amount of Solid Waste disposed of at each of the Disposal Facilities designated by City. Company will keep the Disposal Facilities informed of the total amount of Solid Waste delivered from collection within City Limits pursuant to this Agreement.

Any increased Company costs resulting from delivery of Solid Waste to a Disposal Facility other than Newby Island sanitary landfill, located at 1601 Dixon Landing Road in San Jose, shall be passed through to Customers and shall be treated as an Extraordinary Cost, as provided for in Section 4.3 of this Agreement.

10.2. Recyclables.

Notwithstanding any other provision of this Agreement to the contrary, Company shall have the right to market, sell or otherwise lawfully dispose of all Recyclables collected and removed by Company pursuant to the Franchise granted by this Agreement, including the right to retain the revenues from any such sale; except as provided for under Section 3.1 (g) New Programs, provided, however, that the revenues from the sale of any Recyclables shall not be subject to the Franchise Fee provided for in Section 6.3 of this Agreement.

ARTICLE XI

LEGAL LIABILITY, INSURANCE, BONDS

11.1. Surety Bond.

Within ten (10) days of the executive of this Agreement, Company shall furnish to City and shall file with the City Clerk a corporate surety bond approved by the City Manager, and approved as to form by the City Attorney, and executed by Company as principal, and by a corporate surety as surety in the sum of Fifty-Thousand Dollars (\$50,000.00) conditioned upon the faithful performance by Company and its subcontractors, if any, of this Agreement, In lieu of such bond Company may provide City with such other security for faithful performance as may be approved by the City Manager.

11.2. Insurance.

Company and its subcontractors, if any, shall at their sole costs and expense, obtain and maintain in full force and effect throughout the entire term of this Agreement public liability insurance approved by the City Manager and approved as to form by the City Attorney. Such policy or policies shall insure Company and its subcontractors, and City, its officers, agents and employees, and each of them, against liability for bodily injury or death to, and of, any person or persons and for any property damage arising as a result from the operations of Company or its subcontractors in conducting the business herein and above licensed and authorized. Minimum bodily injury or death coverage provided by said insurance shall be Five-Hundred Thousand Dollars (\$500,000.00) per each person and One Million Dollars (\$1,000,000.00) per occurrence. Property damage coverage shall be at a minimum of Two-Hundred-Fifty Thousand

Dollars (\$250,000.00) per occurrence. This however, will not increase the limits of liability of the insuring company. The above insurance shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only. Policies or certificates of said insurance shall be filed with the City Clerk within twenty (20) days after the execution of this Agreement. Company shall make diligent efforts to obtain a policy of policies of insurance which contain a provision whereby said insurance will not be canceled by the insurer without giving twenty-five (25) days written notice to City of any cancellations so proposed.

Company and its subcontractors, if any, shall obtain and maintain in full force and effect throughout the entire term of this Agreement, full worker's compensation insurance in accordance with the laws of the State of California and other applicable laws. Certificates of such insurance shall be filed with the City Clerk within ten (10) days after the executive of this Agreement. Company shall immediately inform City of any Cancellation, withdrawal and / or change of any such insurance.

11.3. Company to Indemnify City.

Except as otherwise provided by Section 7.1 or Section 13.5 of this Agreement, Company shall protect and save harmless City, its officers, agent and employees, for and from any and all losses, liability, demands, actions or suits, of any and every kind in description.

- (a.) arising or resulting from or in any way connected with the operation of Company or its subcontractors in exercising any license or privilege granted to Company by this Franchise or by any City ordinance, or
- (b.) arising or resulting from the failure of Company, or its subcontractors, to comply in all material respects with the provisions and requirements of this Agreement and with all applicable Government Regulations.

Company shall, upon demand of City, at Company's sole cost and expense, defend, and provide attorneys to defend City, its officers, agents and employees against any and all actions or suits brought against City, its officers, agents and employees arising or resulting from or in any way connected with the aforementioned operations of Company or its subcontractors, or its subcontractor's failure to comply with this Agreement and with applicable Government Regulations.

11.4. Waivers.

The waiver by City of any breach or violation of any term, covenant or condition of this Agreement or of any provision of any applicable Government Regulation shall not be deemed to be a waiver of such term, covenant, condition, ordinance, or law, or of any subsequent breach or violation of the same of any other term, covenant, condition, ordinance, or law, or of any subsequent breach or violation of the same or of any other term, covenant, condition, or Government Regulation. The subsequent acceptance by City of any license fee or of any other monies which may become due hereunder to City shall not be deemed to be a waiver of any preceding breach or violation by Company or of any term, covenant or condition of this Agreement or of any applicable Government Regulation.

11.5. Performance A Condition.

This Agreement and the license and the Franchise herein granted to Company is and are conditioned upon the faithful performance by Company and by each and every one of its subcontractors, if any, of each and all of the material covenants of Company contained herein, including covenants to pay all Franchise Fees and other monies herein agreed to be paid by Company.

ARTICLE XII

ASSIGNMENTS

12.1. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior consent of the other party, which consent the City may not unreasonably withhold; and provided, further, that no assignment shall be valid and binding that endeavors to relieve the assigning party of any obligations to make payments that accrued prior to the date of assignment or of which the assignee has not affirmatively agreed, in writing, to assume all obligations of the assignor thereunder. Any dissolution, merger, consolidation, or other reorganization of Company, or the sale or other transfer of a controlling percentage of the Company, shall be deemed a voluntary assignment. The phrase "controlling percentage" means that ownership of, and the right to vote, stock possessing at least 51% of the total combined voting power of all classes of Company's capital stock issued, outstanding, and entitled to vote for the election of directors.

12.2. Services by Affiliates.

Services under this Agreement may be provided by affiliates or subcontractors of Franchisee, provided that, 1) written permission is given for their use by City, 2) any affiliate or subcontractor will be responsible for the performance of all the terms of the Agreement, 3) the use of affiliates or subcontractors is limited to a temporary period not to exceed thirty (30) days, unless otherwise agreed upon by the parties, and 4) the company shall be responsible for the actions, inactions or omissions of any subcontractor or affiliate under this Agreement.

ARTICLE XIII

DISASTER OPERATIONS

13.1. Company Availability of Personnel and Equipment.

In event of wartime, natural, physical or other disaster in or proximate to the City Limits resulting in the declaration of a State of Emergency by the City Manager or City Council, Company shall make available to City, at no cost to City, all equipment, vehicles, and / or personnel normally performing services under this Agreement, for emergency operations conducted or directed by the City Disaster Operations Chief.

13.2. Temporary Possession and Employment.

City shall have the right to take temporary possession of all such vehicles and equipment made available by Company, and to temporarily employ all such Company personnel as emergency operations forces of City, under the direction and control of the City Disaster Operations Chief.

13.3. Use of Additional Equipment.

Company may make available, in addition to the vehicles, equipment, and personnel provided in Section 13.1 above, equipment, vehicles, and personnel from those Company operations and resources not otherwise serving City pursuant to this Franchise, to the extent necessary to conduct effective Solid Waste collection and removal services during any declared State of Emergency, subject to the direction and control of the City Disaster Operations Chief.

13.4. Reimbursement.

City shall not be required to compensate Company in any manner or form for Company's provision of equipment, vehicles, or personnel normally performing services under this Agreement within the City Limits, when made available during a declared State of Emergency. When additional equipment, vehicles, or personnel are provided during such an emergency, pursuant to Section 13.3 above, City shall compensate Company for actual expenses incurred by Company in providing such equipment, vehicles, and / or personnel upon submission by Company to City of detailed records of costs and expenses actually borne by Company, and upon approval by the appropriate Federal agency of City's reimbursement of expenses incurred by Company during such State of Emergency.

13.5. Indemnity.

In the event of a declared State of Emergency during which City takes possession of and utilizes the equipment, vehicles and / or personnel of Company pursuant to this Article XIII, City agrees to indemnify and defend Company and its officers, directors, agents, and employees, and hold such parties harmless against all actions, suits, liabilities, costs, and expenses (including reasonable attorneys' fees and costs of defense) arising out of or related to City's possession and operation of all Company equipment, vehicles, and facilities utilized by City of render services during any such State of Emergency.

ARTICLE XIV

MISCELLANEOUS TERMS AND CONDITIONS

14.1. Development Review.

Company shall provide City with the specific criteria by which development plans for residential and non-residential units may be reviewed by City concerning the location of Solid Waste disposal containers and appropriate screening thereof.

14.2. Service Inspection by City.

To ensure that Company complies with the all applicable Government Regulations, a representative of City may inspect Company's Franchise operations during the term of this Agreement upon the following conditions. City's representative may make inspections of Company's equipment and facilities at any reasonable hour. At City's request, and upon reasonable advance notice, Company shall make designated personnel available to accompany City Inspectors.

14.3. Subcontractor.

Company shall not subcontract all or any portion of its obligations under this Agreement without the written consent of the City Manager, except as provided in Section 12.2.

14.4. Law to Govern.

It is understood and agreed by the parties that the law of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement.

14.5. Attorney's Fees.

In the event legal action is instituted to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and actual costs incurred in connection with such action.

14.6. Entirety.

The parties agree that this Agreement represents the full and entire agreement between the parties to this Agreement with respect to matters covered herein.

14.7. Venue.

The parties agree that should any action, whether real or asserted, at law or in equity, arise out of the terms and conditions of this Agreement, venue for said action shall be in Santa Clara County, California.

14.8. Savings Clause.

If any non material provisions of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement and this Agreement shall be enforced as if such invalid and unenforceable provision had not been contained herein.

14.9. Section Headings.

The section and paragraph headings contained herein and the table of contents attached hereto are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

14.10. Amendment.

This agreement may be amended only by written agreement duly authorized and executed by the parties hereto.


ARTICLE XV

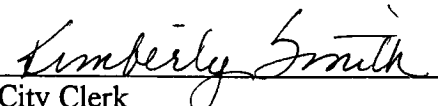
PREVIOUS AGREEMENTS SUPERSEDED

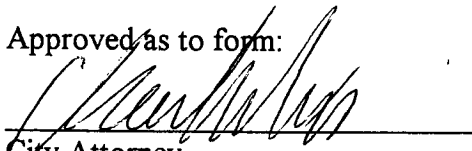
This Agreement supersedes that certain franchise agreement (the "Previous Franchise Agreement") entered into between City and Cupertino Garbage Company, Company's predecessor in interest, for the collection, removal and transportation of Solid Waste produced, generated and accumulated within the City Limits, dated October 21, 1991 and such previous Franchise Agreement shall terminate for all purposes effective as of the Commencement Date of this Agreement.

IN WITNESS WHEREOF, the parties to this Agreement hereby indicate their acknowledgment and acceptance of the terms and conditions stated herein by executing his Agreement this 4th day of December 1995.


CITY OF CUPERTINO
a California municipal corporation

BY: 
Mayor

BY: 
City Clerk

Approved as to form:

City Attorney

LOS ALTOS GARBAGE COMPANY, INC.
a California corporation

BY: 
Its: Regional Manager

LOS ALTOS GARBAGE FRANCHISE AGREEMENT

AMENDMENT

PUBLIC WORKS

SECTION I

JAN 21 2001


Section 1.12 of the Los Altos Garbage Company Franchise Agreement, is hereby amended to read as follows:

Section 1.12 Debris Box

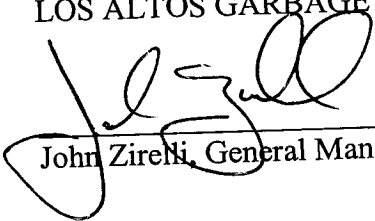
"Debris Box" means any waste container used to collect and/or accumulate, without mechanical compaction, any Solid Waste, including but not limited to any construction and /or demolition site debris and other similar materials.

CITY OF CUPERTINO:

LOS ALTOS GARBAGE CO.

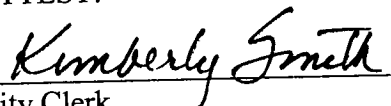


City Manager



John Zirelli, General Manager

ATTEST: .



City Clerk

**LOS ALTOS GARBAGE COMPANY FRANCHISE AGREEMENT
SECOND AMENDMENT**

The following Sections of the Los Altos Garbage Company Franchise Agreement, are hereby amended to read:

ARTICLE 1 - DEFINITIONS

[Insert New]

Section 1.3. Bulky Wastes.

“Bulky Wastes” means individual items that weigh more than 50 pounds, or are too large for one person to manage easily. Bulky wastes include large furniture items (such as couches and cabinets) and appliances (such as washers, dryers and microwave ovens). Bulky wastes also include refrigerators and air conditioners (with Freon), television sets and computer monitors for which a separate charge is applied to collection.

[Renumber subsequent Sections under Definitions]

[Replace]

Section 1.19. Recyclable Materials.

“Recyclable Materials” means those items designated in EXHIBIT C of this Agreement; which are separated by residents and businesses from other discards for the purpose of returning them to economic use, and set out for collection in an approved container.

1.25. Standard Container.

Standard Container means any container provided by Company for storage and collection of solid waste, recyclables or compostables (including yardwaste).

A Residential Standard Container means plastic wheeled cart of approximately 32-gallon, 64-gallon, or 96-gallon capacity, distributed by Company for use by residents.

A Commercial Container means plastic wheeled cart of approximately 32-gallon, 64-gallon, or 96-gallon capacity, or metal bins of from 1 to 6 cubic yard capacity, approved by the City Manager and provided by Company for use by businesses for solid waste collection services.

ARTICLE II - GENERAL CONDITIONS AND TERM OF FRANCHISE

Section 2.9. Notices:

If to Company:

Los Altos Garbage Company
650 Martin Avenue
Santa Clara, CA 95050

ARTICLE III. COMPANY SERVICES

[Replace]

Section 3.1.(c). Curbside Recycling – Company shall provide residential Customers with appropriate Standard Containers into which such Customers may segregate and discard Recyclables. Company shall collect and remove recyclables from such Containers weekly, on the same day as Solid Wastes are collected. Company shall collect extra recyclables set out next to the Standard recycling container, if such recyclables are properly containerized. Recyclable Materials included for collection are listed in Exhibit C.

Company and City shall work together to minimize the contamination of the recyclables set out for collection by residents. The City shall promote recycling and discourage residents from including non-recyclable items in with their recyclables. Company shall instruct drivers to notify residents when the recyclables they set out are contaminated.

Section 3.1.(e). On-Call Disposal Day Services - Two times per year, Franchisee will provide On-call collection services to each Residential Service Recipient, upon request. Franchisee shall provide the services described in EXHIBIT D of this Agreement. Franchisee shall handle all materials received in a manner that will allow the maximum amount to be recycled, or otherwise diverted from landfill.

Section 3.1.(g). Additional Services

- (g.1.) Mixed Recyclable Collection. Company shall provide Mixed Recyclable collection, removal and hauling services to commercial businesses. Company shall charge for such services the rate provided in Exhibit B. Approved Schedule of Rates. Sorting fees associated with this service shall be the responsibility of Company.
- (g.2.) Commercial Cardboard Collection. Company shall provide commercial cardboard collection, removal and hauling services to commercial businesses. Sorting fees associated with this service shall be the responsibility of Company.
- (g.3.) Yardwaste Collection. Company shall provide each residential Customer a 96-gallon wheeled Container into which Customers may segregate and discard Yardwaste. Company shall collect and remove Yardwaste from such Containers weekly, on the same day as Solid Wastes are collected. Acceptable yard wastes materials are listed in Exhibit C.
- (g.4.) Multi-Family/Hillside Recycling Program. Company shall provide a recycling program similar to that described in Section 3.1 (c and g.3) of this Agreement to certain multi-family, hillside and / or “difficult to service” units, subject to standards to be mutually agreed upon between the parties.

Delete (g.5.) Residential Mixed Paper Collection

Section 3.5 (e.) – **[delete first sentence]** ~~Company shall replace lids or covers on all Customer containers immediately after emptying the same and shall repair or replace, at its expense, any containers damaged as a result of its handling thereof, normal wear and tear excepted. Company shall restore~~

[Replace]

Section 3.5 (h.) – Company shall collect large items including:

- a) White goods (appliances) which do not contain Freon
- b) White goods (appliances) which contain Freon (refrigerators and air conditioners)
- c) Computer monitors and television sets
- d) Worn and damaged furniture and household furnishings (such as carpet)
- e) Reusable (undamaged) household goods, toys and textiles to be donated to a non-profit service organization

Company shall collect bulky items within one week of service request by resident. Company shall charge for such services the rate provided in Exhibit B. Approved Schedule of Rates.

[Add]

Section 3.5 (i.) Company shall reduce vehicle exhaust emissions by purchasing or modifying vehicle engines to run on bio-diesel fuel; or otherwise make changes to achieve comparable exhaust emission reductions.

[Replace]

Section 3.6. Standardized Containers.

Standardized Containers for residential service shall be wheeled plastic carts, distributed by Company for use by residents. Company shall distribute one container each for solid wastes, recyclables and yardwaste to each residential Customer.

The solid waste containers shall be approximately 32-gallon, 64-gallon, or 96-gallon capacity. Solid waste carts shall be gray.

Recycling carts shall be 64-gallon capacity. Recycling carts shall be blue.

Yardwaste carts shall be 96-gallon capacity. Yardwaste carts shall be tan/brown.

Standardized Containers for commercial businesses shall be either plastic wheeled carts of approximately 32-gallon, 64-gallon, or 96-gallon capacity, or metal bins of from 1 to 6 cubic yard capacity, distributed by Company.

Company shall maintain, repair and replace, at Company's option, all Standardized Containers at no charge to the Customer.

Company may refuse to collect and remove solid wastes, recyclables or yardwaste from any cart with a total weight of more than 150 pounds for the cart and included materials, or if the cart is overflowing, provided that Company informs Customers of the reasons for such refusal.

ARTICLE IV SERVICE RATES AND ADJUSTMENTS

[Add to end of Section 4.5]

Future Rate Adjustments do not include any compensation adjustment for the provision of Standardized Containers to Customers, or for loss in revenue received from the sale of Recyclable Materials.

ARTICLE XIV MISCELLANEOUS TERMS AND CONDITIONS

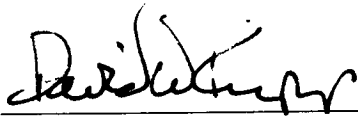
[Add]

Section 14.11. Additional Provisions

Additional agreements and procedures relating to operations and costs are described in Exhibit E and incorporated by reference as part of this agreement.

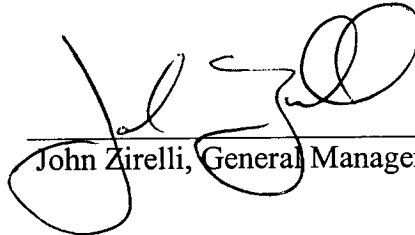
IN WITNESS WHEREOF, the parties to this Agreement hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein by executing this Agreement this 1st day of November 2004.

CITY OF CUPERTINO:



David W. Knapp, City Manager

LOS ALTOS GARBAGE COMPANY:



John Zirelli, General Manager

ATTEST:



Kimberly Smith, City Clerk

[Add]

EXHIBIT A. LIQUIDATED DAMAGES

Adjustments for Damages.

City shall charge the Franchisee any costs City incurs for the Franchisee's failure to: collect wastes, divert materials to be in compliance with State and Federal Regulations, and operate equipment properly; or the costs of responding to complaints and problems; and other costs relating to failure of the Franchisee to comply with all other aspects of this Agreement.

City and Franchisee agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages, including the relationship of the sums to the range of harm to City that reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or inconvenient.

Franchisee agrees to pay liquidated damages (not as a penalty) as set forth below:

- * For each failure over six (6), in any 12 consecutive month period, to commence service to a new Service Recipient within seven (7) days of request.
- * For each failure to provide Recyclables Containers to a new Service Recipient within seven (7) days of request.
- * For each failure over twelve (12), in any 12 consecutive month period, to collect a Solid Waste, Recyclables or Yard Trimmings which had been properly set-out for collection,
- * For each failure over twelve (12), in any 12 consecutive month period, to collect a missed set-out within (1) working day,
- * For each occurrence of collection during unauthorized hours (starting early or finishing late),
- * For each occurrence over twelve (12), in any 12 consecutive month period, of leaving litter from a collection vehicle, in a public street,
- * For each calendar day a Required Report is incomplete, inaccurate or late,
- * For each occurrence of other similar incidents, not corrected within two (2) working days.

Damages will start at \$25.00 per incident, and may increase, at sole discretion of City, in increments of up to \$50, to a maximum of \$500 per incident for repeated failure to perform any one condition as specified in the Agreement. Prior to assessing any liquidated damages, City shall give Franchisee written notice of its intention to do so. The notice will include a brief description of the incidents and issues of non-performance.

Within ten (10) days of notification by City, Franchisee may submit a written appeal of the assessment of liquidated damages to City, with an explanation of why the damages should not be assessed. The decision of the City Manager shall be final. Franchisee shall pay any liquidated damages within thirty (30) calendar days after they are assessed. Payment of liquidated damages will in no way be a waiver of City's authority to terminate this Agreement.

CITY OF CUPERTINO RATES

effective August 1, 2004

Rate**04-05****SINGLE FAMILY (monthly rate):**

Front	1 can	\$ 17.88
Front	2 cans	\$ 35.76
Front	3 cans	\$ 53.64
Front	ea additional can	\$ 17.88
Back	1 can	\$ 27.48
Back	2 cans	\$ 54.96
Back	3 cans	\$ 82.44
Back	ea additional can	\$ 27.48

HILLSIDE (monthly rate):

Roadside	1 can	\$ 29.56
Roadside	2 cans	\$ 59.12
Roadside	3 cans	\$ 88.68
Roadside	ea additional can	\$ 29.56

DUPLEX/MULTIPLE UNITS & YARDWASTE EXEMPT (monthly rate):

Front	1 can	\$ 15.12
Front	2 cans	\$ 30.24
Front	3 cans	\$ 45.36
Front	ea additional can	\$ 15.12
Back	1 can	\$ 23.38
Back	2 cans	\$ 46.76
Back	3 cans	\$ 70.14
Back	ea additional can	\$ 23.38

SENIOR CITIZENS (monthly rate):

Frontyard/Backyard	1 can	\$ 8.94
Exempt (no yardwaste)	1 can	\$ 7.58
Hillside	1 can	\$ 14.79

ADDITIONAL CHARGES:

Extra Bag Tag	\$ 5.20
10 Bag Tags	\$ 49.47
Extra Can (1-time)	\$ 8.96
Waste Wheeler (rental)	\$ 3.00
Additional Yard Waste Toter	\$ 6.16

24 HR CONTAINER SERVICE:

Bin By The Day	4 yd	\$ 115.63
	6 yd	\$ 141.61
	7 yd	\$ 154.60

CITY OF CUPERTINO RATES

effective August 1, 2004

2/4

Rate

04-05

COMPACTOR RATE (per cubic yard): includes hauling

\$ 29.47

COMPACTOR RATE- MIXED RECYCLABLE:

Hauling only

\$ 273.96

Per ton

\$ 43.61

ROLL-OFF SERVICE (DEBRIS BOX):

Rock Box

6 tons

\$ 546.65

7 tons

\$ 611.91

8 tons

\$ 677.17

ea additional ton

\$ 65.26

16 CY Container

3 tons

\$ 350.89

4 tons

\$ 416.15

5 tons

\$ 481.41

ea additional ton

\$ 65.26

26 CY Container

4 tons

\$ 536.94

5 tons

\$ 602.20

6 tons

\$ 667.46

ea additional ton

\$ 65.26

30 CY Container

5 tons

\$ 634.88

6 tons

\$ 700.14

7 tons

\$ 765.40

ea additional ton

\$ 65.26

40 CY Container

6 tons

\$ 677.27

7 tons

\$ 742.53

8 tons

\$ 807.79

ea additional ton

\$ 65.26

Weekly rental fee (beyond normal 7 days):

\$ 106.05

CITY OF CUPERTINO RATES

effective August 1, 2004

(monthly rates)

3/4

Rate

04-05

COMMERCIAL - FRONT LOADER CONTAINERS:

1-1/2 CY Container	1x week service	\$ 104.29
	2x	\$ 208.58
	3x	\$ 312.88
	4x	\$ 417.17
	5x	\$ 521.47
	6x	\$ 625.74
	Extra pickup	\$ 32.78
2 CY Container	1x week service	\$ 125.16
	2x	\$ 250.29
	3x	\$ 375.46
	4x	\$ 500.59
	5x	\$ 625.74
	6x	\$ 750.89
	Extra pickup	\$ 40.94
3 CY Container	1x week service	\$ 166.86
	2x	\$ 333.73
	3x	\$ 500.59
	4x	\$ 667.48
	5x	\$ 834.33
	6x	\$ 1,001.19
	Extra pickup	\$ 44.79
4 CY Container	1x week service	\$ 208.58
	2x	\$ 417.17
	3x	\$ 625.74
	4x	\$ 834.33
	5x	\$ 1,042.92
	6x	\$ 1,251.49
	Extra pickup	\$ 55.84
6 CY Container	1x week service	\$ 292.02
	2x	\$ 584.03
	3x	\$ 876.05
	4x	\$ 1,168.05
	5x	\$ 1,460.09
	6x	\$ 1,752.10
	Extra pickup	\$ 77.72
8 CY Container	1x week service	\$ 375.46
	2x	\$ 750.89
	3x	\$ 1,126.36
	4x	\$ 1,501.79
	5x	\$ 1,877.24
	6x	\$ 2,252.68
	Extra pickup	\$ 100.51

CITY OF CUPERTINO RATES

effective August 1, 2004
(monthly rates)

4/4

Rate
04-05

COMMERCIAL - FRONT LOADER CONTAINERS: continued

Pushout	1x week service	\$ 36.71
	2x	\$ 73.64
	3x	\$ 110.24
	4x	\$ 147.07
	5x	\$ 183.87
	6x	\$ 220.76
Key Service		\$ 40.88

COMMERCIAL CAN RATE:

Per can pickup (32 gal. Can)	\$ 16.57
3x rate for wastewheeler (96 gal)	

SPECIAL SERVICES:

Steam cleaning, re-delivery and/or furnishing chains (one time only)	\$ 70.38
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REAR LOADER SERVICE:

Manure- 1 CY	1x week service	\$ 161.27
	2x	\$ 338.51
	3x	\$ 515.89
	4x	\$ 693.20
	5x	\$ 870.72
	Extra pick-up	\$ 66.21

BULKY GOODS:

First item	\$ 25.00
Each additional item (including TVs and Freon-containing items)	\$ 15.00

LATE CHARGE FEE: 1.2% per month delinquent (not compounded), applies to all rates

[Add]

EXHIBIT C. LIST OF RECYCLABLE MATERIALS

"Recyclable Materials" include but are not limited to the following:

Glass

- Bottles and jars only (empty and rinsed)
- Any color glass is okay
- Lids and caps are okay
 - Bottles
 - Beverage containers
 - Jars

Metal

- Containers: empty and rinsed
- Lids and caps are okay
 - Aluminum foil (clean)
 - Aluminum pie pans
 - Beverage cans
 - Food cans
 - Pet food cans
 - Scrap metal less than 40 pounds
 - Aerosol cans – food related, emptied of gas & liquid
 - Metal pots and pans

Plastic

- Empty and rinse
- Lids and caps are okay
 - Bags (must be bundled together inside another plastic bag)
 - Buckets (without handles)
 - Containers, like soda, water and juice bottles (labeled #1 - #7 only)
 - Foam egg cartons
 - Flower pots (no dirt)
 - Household cleaning containers
 - Milk jugs
 - Large foam blocks (in a clear plastic bag)
 - Shrink wrap

Drink Boxes

- Juice Boxes
- Milk Cartons
- Soy Milk Boxes

Other

Household dry-cell batteries: alkaline (non mercury), nickel cadmium, nickel iron, nickel metal hydride, carbon zinc

Paper

- Clean and dry with no food matter
- Flatten boxes
- Shredded paper must be in a paper or clear plastic bag
- Staples, tape, envelope windows are okay
 - Books (paperback)
 - Boxes, packages
 - Cardboard (cut to fit loosely in cart or cut to 3' x 3' [or smaller] pieces and placed in between carts)
 - Catalogs
 - Cereal boxes, cracker boxes, gift boxes
 - Colored paper
 - Computer paper
 - Coupons
 - Envelopes
 - Gift wrap (non-metallic only)
 - Juice boxes
 - Magazines
 - Milk and cream cartons
 - Newspaper and inserts
 - Office paper
 - Paper bags
 - Shredded paper (in a paper bag or clear plastic bag)
 - Telephone books
 - Tissue paper (gift type)
 - Unsolicited mail

Automotive Products

- Motor Oil
- Oil Filters

Yardwaste [Brown Cart]

- Branches
- Flowers
- Grass clippings
- Holiday trees (tinsel-free)
- Leaves
- Shrubs (small)
- Twigs Weeds

Recyclable Materials do not include:

Glass

- Plate Glass, mirrors, light bulbs, ceramics, dishware

Metal

- Propane tanks and cylinders, clothes hangers, wire, auto parts

Plastic

- Containers not labeled #1-#7, packing peanuts, bubble wrap, plastic wrap, plastic utensils, garden hoses, plastic toys, PVC or other plastic pipe

Paper

- Pizza boxes or other food contaminated paper products (paper plates), napkins, paper towels, or facial tissues

Yard Waste

- Tree trunks or stumps, painted trees, fruits and vegetables, ice plant, cactus, poison ivy, palm fronds, bug, moth or ant-infested material, pressure treated wood, dirt, rock, concrete, sod, ashes, asphalt or building materials, trash or other garbage.

“Recyclable Materials” must fit within the wheeled cart, with the lid closed. Additional recyclables may be placed next to the cart in proper containers.

[Add]

EXHIBIT D: ON-CALL DISPOSAL OR RECYCLING DAYS

Customers may choose either:

- **2 garbage disposal days, or**
- **2 yardwaste/woodwaste recycling days, or**
- **1 garbage disposal day, and 1 yardwaste/woodwaste recycling day**
- This service is provided for Cupertino residents with “can” garbage service.
- There is no separate charge.
- Call for an appointment. We need a minimum of 48 hours notice.
- On-call disposal or recycling days will be scheduled on your normal collection day.
- All items must fit within an 8 ft.-long, 4 ft.-wide, and 4 ft.-high area, placed curbside by 6 a.m.
- Single items (bags, bundles or boxes) can’t weigh more than 50 lbs. each, and must be manageable by one person.
- Unused On-Call disposal or recycling days are not transferable to the next calendar year.

Disposal Pickup Restrictions:

- Loose items must be bagged, boxed, or bundled.
- Small amounts of dirt, rock, concrete, asphalt, brick and tile are OK if boxed. The total amount of this type of material cannot weigh more than 250 lbs. (e.g., 250 lbs. could be contained in five 50-lb. boxes. Tip: concrete weighs 150 lbs./cubic ft.)
- No furniture or appliances over 50 lbs. and manageable by one person.
- No car parts with oil or diesel residue.
- No appliances with Freon, such as refrigerators and air conditioners.
- No hazardous waste.
- No TVs or computer monitors

Yardwaste/Woodwaste Recycling Pickup Restrictions:

Bundled piles must not exceed 6-feet in length, and not weigh more than 50 pounds each. No plastic bags allowed.

Yardwaste restrictions:

- No palm fronds, stumps, ice plant, poison oak, cactus, fruit, vegetables or bug-infested materials.
- Branches can’t be larger than 6” in diameter and 6 ft. long.
- No loose piles—tie branches with string or box trimmings so they can be easily picked up.

Woodwaste restrictions:

- Scrap wood cannot be painted, varnished, stained, or chemically treated.
- Lumber (maximum length 6 ft.) must be stacked neatly. Wood scraps must be boxed or bundled.

[Add]

EXHIBIT E: ADDITIONAL PROVISIONS

1. The City is not responsible for any costs associated with retrofitting single-stream residential recycling trucks to meet ARB rules for diesel particulate emissions.
2. Los Altos Garbage will retain all cardboard revenue to offset annual cart replacement and maintenance. The City had previously agreed to pay half these costs (projected to be \$32,000 annually). Historically, the City has received an approximately equal amount in cardboard revenue annually.
3. Any loss in revenue to LAGCO due to reductions in garbage service levels (can migration) as a result of the expanded recycling program will be adjusted at the end of a 12-month period, commencing the first day of delivery of recycling carts. This is a one time only adjustment. LAGCO will provide to the City accurate service level records on February 1, 2005, August 1, 2005 and February 1, 2006.
4. The City is responsible for costs associated with promoting the program. LAGCO will, at its own expense, prepare and distribute one newsletter per year, in lieu of an annual calendar, to the promotion of the new program.
5. The costs of the carts, delivery and assembly, as shown on the proposal dated Sept. 24, 2003, will be reimbursed to LAGCO by the City within 30 days of completion of delivery of carts to all residents.
6. The City will reimburse LAGCO on a monthly basis for items mutually agreed to in the proposal dated Sept. 24, 2003. The monthly costs will be based on an annual cost of \$292,311. Costs for payroll and truck and garage will be subject to an annual COLA. Cart rental revenue loss and recycling revenue loss are not subject to the COLA.
7. LAGCO will collect, as part of the weekly service from residents, all household dry-cell batteries (including alkaline, nickel cadmium, nickel iron, nickel metal hydride and carbon zinc) placed in clear zip lock bags. The City will pay the cost for recycling of the batteries. City will reimburse LAGCO on a quarterly basis, in an amount not to exceed \$25,000 annually, based on invoices submitted by LAGCO. LAGCO plans to collect batteries on the same truck as the garbage.
8. Bulky item rate – City to set the rate and compensate LAGCO for the difference. The proposed rate is \$25 for the first item and \$15 for each additional item; plus an additional \$15 for each item containing Freon and \$15 for each TV.

**FIRST 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 First 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 ("First Amendment"), for reference dated September 2, 2014, 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. On May 18, 2010, a Franchise Agreement for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage was entered into by and between CITY and Franchisee ("Agreement").
- B. 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, Sections 2.1 and 2.2 are modified and a new Section 2.3 is added to read as follows:

2.1 Term - The term of this Agreement shall be for eight years and three months, from 12:00 A.M. on November 1, 2010 to 11:59 P.M. on January 31, 2019, inclusive, subject to Article 16 of this Agreement.

2.2 Option to Negotiate New Agreement -- Franchisee shall have the option to negotiate a new ten year agreement that may begin as early as 12:00 A.M. on January 31, 2017 and end at 11:59 P.M. on January 31, 2027 if it has:

- 2.2.1 Achieved a sixty percent (60%) commercial and multi-family diversion rate by November 1, 2016 (as calculated in Exhibit H); and achieved a minimum seventy-five percent (75%) diversion rate under the terms of this Agreement for calendar year 2015, based on CalRecycle's diversion rate equivalent (DRE) for both residential and commercial sectors (as calculated in Exhibit H). CalRecycle's calculation of the City's DRE for 2015 should be available by November 1, 2016, after submittal of the City's annual report data in August 2016, and;
- 2.2.2 Cooperatively and proactively worked with City to develop programs to increase diversion, reduce contamination and provide all food service establishments (grocers, restaurants, hotels, high tech companies with large cafeterias etc.) generating four (4) cubic yards or more of total waste per week with bins and collection service for organics composting by January 1, 2016 and;
- 2.2.3 Cooperatively and proactively worked with City in connection with limited rate increase requests for residential and non-residential services so that the cost of organics processing to the City, subject to Article 12 of this Agreement, incorporates efficiencies identified in City directed and paid audits and;
- 2.2.4 Notified City of its intent to exercise this option in writing, on or before September 31, 2016.

2.3 City's Right to Extend or Negotiate New Agreement - In response to Franchisee's exercise of the above option, City, at its sole discretion, may choose to extend, or not extend, the Term of this Agreement, or negotiate a new agreement, and shall notify Franchisee of its intent within sixty (60) days of the Franchisee's request for an option to negotiate an extension or new agreement.

- 2. Article 4 --Collection Services, Sections 4.3.3, 4.4.2, 4.4.3, 4.4.5, 4.4.6., 4.4.7, 4.71, 4.8.1, 4.8.2, 4.8.3, 4.9.1, 4.9.2, 4.9.3, 4.11, and 4.17, are modified, and

new Sections 4.4.4 and 4.5.6 are added to read as follows:

4.3.3 Recyclable Materials Overages (Residential) - Franchisee shall collect all Recyclable Materials properly prepared and set out for collection by the Service Recipient each week. Service Recipient may set flattened and bundled cardboard boxes, which are too large to fit in the Recyclable Materials Container, next to the container, provided they do not exceed 3 feet by 3 feet and are securely tied together.

Franchisee shall collect such cardboard boxes on the day Franchisee collects Recyclable Materials from the Service Recipient. Franchisee shall have no obligation to collect Recyclable Materials Overages where Recyclable Materials are not set out in Recyclable Materials Containers, or if cardboard boxes are not set out as provided above or where the combined weight of the Recyclable Materials and cardboard exceeds sixty (60) pounds.

At no additional charge and pursuant to Section 4.3.2, Franchisee shall provide a sufficient number of additional Recyclable Materials Containers to Service Recipients to accommodate all recyclables regularly generated. If Service Recipients regularly generate more Recyclable Materials than will fit in their Recyclable Materials Containers, Franchisee will contact Service Recipient within two (2) working days of the observation to encourage Service Recipients to request additional containers. Franchisee will contact City within two (2) working days if Service Recipient declines an additional Recyclable Materials Container. Franchisee shall deliver to Service Recipient or City requested additional Recyclable Materials Containers within five (5) Working Days of the request.

4.4.2 Compostable Materials Containers (Residential) – Franchisee shall provide a new or refurbished Compostable Materials Container at no additional charge to each Residential Service Recipient that does not already have one. These Compostable Materials Containers shall be delivered by Franchisee within five (5) working days of Request by the Residential Service Recipient.

Compostable Materials Containers removed by the Franchisee by mistake, for repair and replacement, or cleaning shall be replaced by Franchisee within five (5) working days of their removal.

Franchisee shall provide to all "Yard Waste Exempt" accounts either a 20-gallon or 32-gallon Compostable Materials Container at no additional charge to the Service Recipient. By November 2014, Franchisee will place graphics-based organic/food scrap stickers on all residential organic carts to promote diversion of compostable material.

Compostable Materials Containers provided by Franchisee shall be labeled for "Compost" and "Property of the City of Cupertino" and shall not be marked with the Franchisee's name or logo. All Compostable Materials Containers provided by Franchisee to Residential Service Recipients pursuant to this Agreement shall become the property of the City at the termination of this Agreement.

Compostable Materials shall be collected from Franchisee supplied Compostable Materials Containers. The combined weight of the container and the Compostable Materials shall not exceed one hundred fifty (150) pounds. Compostable Materials Containers must be placed for collection adjacent to the Recyclable or Garbage Containers by the Residential Service Recipient.

To promote maximum diversion, Franchisee shall deliver additional Compostable Materials Containers within five (5) Working Days from the date of the Residential Service Recipient's or the City's request. At no additional charge and pursuant to this Section, 4.4.2, Franchisee shall provide a sufficient number of additional Compostable Materials Containers to accommodate all compostable materials regularly generated.

4.4.3 Non-Collection - Franchisee shall not be required to collect any Compostable Materials that are not set out on a public street or other accessible location, in accordance with the Municipal Code, or in conformance with Section 4.4.2 of this Agreement. If the Compostable Materials are too contaminated to process, Franchisee shall leave a Contamination Notice and collect the material as Garbage. , Loads

collected as Compostable Materials shall not be landfilled or rejected at the processing facility. Only residue from processing Compostable Materials may be landfilled.

4.4.4 Compostable Materials Overages (Residential) - At no additional charge and pursuant to Section 4.4.2, Franchisee shall provide a sufficient number of additional Compostable Materials Containers to residential Service Recipients to accommodate all compostables regularly generated. If residential Service Recipients regularly overflow their Compostable Materials Containers, Franchisee will contact residential Service Recipient within two (2) working days of the observation to encourage residential Service Recipients to request additional containers. Franchisee will contact City within two (2) working days if residential Service Recipient declines an additional Compostable Materials Container. Franchisee shall deliver to residential Service Recipient or City requested additional Compostable Materials Containers within five (5) Working Days of the request.

4.4.5 Christmas Tree Collection - As part of the Compostable Materials Collection Program, Franchisee shall collect, on the normal Compostable Materials Collection schedule, all unornamented Christmas trees which are set out next to the Compostable Materials Containers in the first twenty-eight (28) calendar days following December 26 of each year for the term of this Agreement. Franchisee shall not be required to collect ornamented trees, nor shall Franchisee be required to collect trees, or parts of trees, which are over six (6) feet in length.

4.4.6 Home Compost Bins -- To reduce the amount of Compostable Materials requiring collection and processing, Franchisee shall offer four (4) 1-hour back-yard composting classes per year for Cupertino residents, at dates and locations selected by City. Franchisee shall offer a free SOILSAVER backyard composter to each household that attends a composting class. Residents who attend the class may have the composter delivered to their house free of charge by Franchisee within five (5) Working Days of the class.

Franchisee shall, during the term of this Agreement, be entitled to reimbursement from City for the actual cost of each bin delivered to households (not to exceed \$100 per bin).

4.4.7 Yard Waste Exempt Properties – Property owners that can demonstrate that they have no yard waste to dispose of may request an exemption from the fees related to the collection of compostable materials, as listed in EXHIBIT B. Per Section 4.4.2, Franchisee shall provide to all “Yard Waste Exempt” accounts either a 20-gallon or 32-gallon Compostable Materials Container at no additional charge to the Service Recipient.

4.5.6 – Litter Prevention–Franchisee will partner with the City in the Zero Litter Initiative (ZLI) and assist the City as provided herein in preventing violations of the City’s Litter Prevention and Enforcement ordinance (Cupertino Municipal Code Section 9.18.215). Franchisee will report any Garbage Container, Recyclable Materials Container, or Compostable Materials Container overflows to the City within one (1) Working Day of the observation to ensure a timely response by City to a litter discharge. If Service Recipients regularly overflow their Garbage, Recyclable Materials, or Compostable Materials Container, Franchisee will contact Service Recipient within two (2) working days of the observation to encourage increased service and to provide education and proper use of provided Containers. City staff will contact the Residential Service Recipient to inform them about the City’s Municipal Code requirement to contain Garbage, Recyclable Materials and Compostable Materials in the designated Container with the lid closed to prevent litter.

4.7.1 Frequency of Collection -- Franchisee shall provide appropriate Garbage Containers to each Non-Residential Service Recipient based on the level of service for which the Non-Residential Service Recipient has subscribed. Franchisee shall collect Garbage from each Non-Residential Garbage Container at least once-per-week and as often as subscribed for by the Non-Residential Service Recipient. Collection shall be made from Non-Residential Garbage Containers placed at an accessible point of service selected by the Service Recipient.

If a Non-Residential Service Recipient has not subscribed for sufficient service to prevent overages on a normal basis, Franchisee shall notify the

Non-Residential Service Recipient within two (2) Working Days to encourage them to increase service. If the Non-Residential Service Recipient does not increase service to provide sufficient service to prevent overages on a normal basis, Franchisee shall notify the City's Representative within two (2) Working Days, and provide details of the contact to request the Service Recipient to increase service.

Franchisee will partner with the City in the Zero Litter Initiative (ZLI) and assist the City in preventing violations of the City's Litter Prevention and Enforcement ordinance (Cupertino Municipal Code 9.18.215). Franchisee will report any Non-Residential Garbage Container, Recycling Materials Container or Compostable Materials Container overflows to the City within one (1) Working Day of the observation to ensure a timely response by City to a litter discharge.

4.8.1 Frequency of Collection (Non-Residential Recyclable) -- Franchisee shall provide Recyclable Materials collection services at no additional cost to all Service Recipients that subscribe for Non-Residential Garbage service. Franchisee shall collect all Recyclable Materials listed in EXHIBIT A from each Non-Residential Service Recipient as often as necessary to minimize overages. To encourage diversion, Franchisee shall match or exceed volume and frequency of Recyclable Materials collection service to each Non-Residential Service Recipient as compared to Garbage collection service subscribed for by such Non-Residential Service Recipient.

If Service Recipients decline Recyclable Materials Collection service, Franchisee will notify City within two (2) Working Days.

Franchisee shall add collection routes and days, including weekends, if necessary to adequately provide collection service to all Service Recipients in accordance with this Agreement.

4.8.2 Non-Residential Recyclable Materials Overages - In the event a Non-Residential Service Recipient has a greater quantity of Recyclable Materials than can normally be contained in the appropriate containers provided by Franchisee, Franchisee shall provide the Service Recipient, at Franchisee's own cost and expense, additional containers or more

frequent collection service from among the range of service options listed on EXHIBIT B.

At no additional charge and pursuant to Section 4.3.2, Franchisee shall provide a sufficient number of additional Recyclable Materials Containers to Service Recipients to accommodate all recyclables regularly generated. If Service Recipients regularly overflow their Recyclable Materials Containers, Franchisee will contact Service Recipient within two (2) working days of the observation to encourage Service Recipients to request additional containers. Franchisee will contact City within two (2) working days if Service Recipient declines an additional Recyclable Materials Container. Franchisee shall deliver Service Recipient or City requested additional Recyclable Materials Containers within five (5) Working Days of the request.

4.8.3 Non-Collection - Franchisee shall not be required to collect any Recyclable Materials that are not placed in Recyclable Materials Containers by Non-Residential Service Recipients. Franchisee shall report to the City all loads of contaminated recyclable materials generated by a Non-Residential Service Recipient within two (2) working days of the driver observing the contaminated load. The City will contact the Service Recipient and work with the Service Recipient to prevent further contaminated loads by providing education and assistance to the Non-Residential Service Recipient. Significantly contaminated loads may be processed as Garbage.

4.9.1 Frequency of Collection (Non-Residential Compostable Materials) - Franchisee shall provide Compostable Materials collection services to all Non-Residential Service Recipients that do not decline this service. Franchisee will notify City within two (2) Working Days if a Non-Residential Service Recipient declines Compostable Materials service. Franchisee shall be entitled to charge Non-Residential Service Recipients that subscribe for Compostable Materials collection services not more than the rate charged for an equivalent level of Garbage service, as set forth in EXHIBIT B.

Franchisee shall contact Non-Residential Service Recipients that subscribe for Garbage service and discard significant quantities of Compostable

Materials (including, but not limited to, restaurants, businesses with large employee cafeterias, markets and grocery stores, delis and sandwich shops, and florists) and enroll them in the Compostable Materials collection program by providing them an appropriate collection container and reducing their Garbage service level. Franchisee shall ensure that the total cost to such Service Recipients of Garbage service and Compostable Materials service combined will not increase due to the substitution of Compostable Materials capacity for Garbage capacity, so long as the Service Recipient does not increase the total amount of materials discarded.

Franchisee will assist the Service Recipient in subscribing for appropriate container volumes and frequency of collection so that the Service Recipient is adequately served given the space available. Franchisee shall add collection routes and days, including weekends, to adequately provide collection service to all Service Recipients impacted by lack of space for additional containers.

Franchisee shall provide Compostable Materials Containers to each Non-Residential Service Recipient in accordance with the service level subscribed for by the Non-Residential Service Recipient. Franchisee shall collect Compostable Materials from each Non-Residential Compostable Materials Container as often as subscribed for by the Non-Residential Service Recipient.

4.9.2 Compostable Materials Overages - If a Non-Residential Service Recipient has not subscribed for sufficient service to prevent overages on a normal basis, Franchisee shall notify the Non-Residential Service Recipient and the City.

At no additional charge, Franchisee shall provide a sufficient number of additional Compostable Materials Containers to Service Recipients to accommodate all compostables regularly generated. If Service Recipients regularly overflow their Compostable Materials Containers, Franchisee will contact Service Recipient within two (2) working days of the observation to encourage Service Recipients to request additional containers. Franchisee will contact City within two (2) working days if

Service Recipient declines an additional Compostable Materials Container. Franchisee shall deliver Service Recipient or City requested additional Compostable Materials Containers within five (5) Working Days of the request. Franchisee shall ensure that the total cost to such Service Recipients of Garbage service and Compostable Materials service combined will not increase due to the substitution of Compostable Materials capacity for Garbage capacity, so long as the Service Recipient does not increase the total amount of materials discarded.

4.9.3 Non-Collection - Franchisee shall not be required to collect any Compostable Materials that are not placed in Compostable Materials Containers. Franchisee shall report to the City all loads of contaminated compostable materials generated by a Non-Residential Service Recipient within two (2) working days of the driver or processor observing the contaminated load. The City will contact the Service Recipient and work with the Franchisee and the Service Recipient to prevent further contaminated loads by providing education and assistance to the Service Recipient. Contaminated loads may be processed as Garbage.

4.11 City-Wide Recycling Events – Four (4) times each year, on a schedule and at locations mutually agreed upon by Franchisee and City, Franchisee will provide a city-wide recycling event for residents of City. Franchisee shall provide sufficient equipment to collect and remove from the agreed-upon locations all acceptable wastes delivered by residents.

Franchisee shall handle all materials received in a manner that will ensure the maximum amount practicable of materials will be recycled, composted or otherwise diverted from landfill. Franchisee shall provide such city-wide recycling events in accordance with EXHIBIT D of this Agreement.

4.17 Household Hazardous Waste Collection – On behalf of City, Franchisee shall continue the existing agreement with a third party (the "Household Hazardous Waste Collector") to provide a Household Hazardous Waste Program. The HHW Collector shall be responsible for all aspects of the HHW Program. Under no circumstances shall Franchisee be required to collect household hazardous waste, except as specifically provided elsewhere in this Agreement.

The HHW Collector shall be Waste Management (f/k/a Curbside Inc.). The specifications of the HHW Program offered by Waste Management are set forth in EXHIBIT I.

The City may terminate the HHW Program at any time upon ninety (90) days prior written notice to Franchisee. Franchisee may replace the HHW Collector at any time with a new HHW Collector reasonably acceptable to City.

The HHW Program shall be funded by means of the Household Hazardous Waste Fee, which shall be approved by City, collected from Residential Service Recipients by Franchisee, and remitted to the HHW Collector. Franchisee may terminate the HHW Program and its agreement with the HHW Collector if at any time City does not approve the Household Hazardous Waste Fee required to fund the HHW Program.

3. Article 6 – Collection Equipment Section 6.1.1, is modified to read as follows:

6.1.1 General Provisions - All collection equipment used by Franchisee in the performance of this Agreement shall be of high quality. The vehicles shall be designed and operated so as to prevent Recyclable Materials, Compostable Materials, Garbage, Litter and any other materials from escaping from the vehicles. The vehicles shall be designed and operated to minimize any negative environmental impacts caused by their operation, especially air quality impacts. Franchisee shall replace at least one (1) diesel powered collection vehicle in the first month of each calendar year with a new compressed natural gas (CNG) collection vehicle. The first replacement CNG vehicle shall be utilized beginning January 2015.

All new collection vehicles shall include the best available shielding technology to prevent litter during normal collection and transportation operations.

4. Article 12 – Franchisee’s Compensation Collection Equipment, Section 12.4, is modified to read as follows:

12.4 Rate Request for Compostable Materials Processing – Franchisee may propose a rate adjustment for Non-Residential Service Recipients if necessary to cover any increased cost of processing collected commercial Compostable Materials. However, the City retains the right to approve, disapprove or modify any such rate proposal. Franchisee’s report will include revenue collected as a result of this exclusive Franchise Agreement and all costs associated with processing of Compostable Materials at the South Valley Organics facility. Franchisee’s report will include revenue collected as a result of this exclusive Franchise Agreement and all costs associated with processing of Compostable Materials at the South Valley Organics facility.

Increases in revenues to Franchisee from sale of Recyclable Materials (above the revenues from the first year of this Agreement) and from sale of products produced from Compostable Materials Processing shall be used to partially offset the increases in Compostable Materials Processing costs identified in subsequent years.

To evaluate any such changes in cost, the City will direct and pay for an audit to establish year 2010 and year 2014 Franchisee’s cost and revenue. The audit will include, but will not necessarily be limited to, quantifying increased cost of processing commercial organics, if any; quantifying revenue collected as a result of this exclusive Franchise Agreement; and itemizing costs associated with processing of Compostable Materials at the South Valley Organics facility.

Franchisee will provide the City with annual reports (by March 2 each year, for the period of January 1 through December 31 of that year) using the same metrics as used in the City’s audit, and showing Franchisee’s actual costs to process Compostable Materials. Franchisee will assist and accommodate City directed and paid audits as necessary to determine any incremental rate increases that may be necessary to fund the Compostable Materials processing services. After providing actual costs and projections, Franchisee may prepare a written request for a rate increase for the City Council’s consideration. Increases in revenues to Franchisee

from sale of Recyclable Materials and from sale of products produced from Compostable Materials shall be used to offset the increases in Compostable Materials Processing costs.

If Franchisee does not request a rate increase within ninety (90) calendar days of the contract year, in any given year of this Agreement, Franchisee waives any claim for compensation for that year in subsequent years. The City retains the right to approve, disapprove or modify any rate increase proposal.

Franchisee waives any claim for any additional compensation or other damages, known or unknown, under the Agreement for services performed prior to November 1, 2014. Franchisee waives the provisions of Civil Code section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

5. Article 17 – General Provisions, Section 17.22, is modified to read as follows:

17.22 Entirety: Agreement and Exhibits – The Agreement dated May 18, 2010 and this First Amendment represent the entire Agreement of City and Franchisee with respect to the services to be provided under the Agreement and supersedes and merges all prior written and oral statements, proposals, representations and agreements between the parties. The May 18, 2010 Exhibits A, C, D, E, F, I, J & K and amended September 2, 2014 Exhibits B, G & H are hereby incorporated into this Agreement and made a part of this Agreement as though fully set forth herein.

6. Exhibits – Exhibits B, G, and H, amended dated September 2, 2014 (attached) hereby replace Exhibits B, G, and H to the Agreement. Any reference to the following Exhibits in the Agreement or Amendment refers to the Exhibit amended dated September 2, 2014:

Exhibit B – Schedule of Approved Maximum Rates

Exhibit G – Reporting Requirements

Exhibit H – Diversion Goals

7. 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.

IN WITNESS WHEREOF, the parties hereto have caused this amendment of Agreement to be executed.

Recology Cupertino

By

Title General Manager

Date

9/24/14

CITY OF CUPERTINO

A Municipal Corporation

By

City Manager, David Brandt

APPROVED AS TO FORM:

By

City Attorney, Carol Korade

ATTEST:

By

City Clerk, Grace Schmidt

9-29-14

EXHIBIT B: Amended September 2, 2014
SCHEDULE OF APPROVED MAXIMUM RATES
Recology Maximum Rates for the City of Cupertino
Effective November 1, 2014

B.1. RESIDENTIAL SERVICE

Service Description		Maximum Rate
SINGLE FAMILY (Monthly Rate):		
Curbside	1 32-gallon cart	\$ 23.40
Curbside	1 64-gallon cart	\$ 46.81
Curbside	1 96-gallon cart	\$ 70.21
Curbside	Each Additional Cart	\$ 23.40
Walk-up	1 32-gallon cart	\$ 35.97
Walk-up	1 64-gallon cart	\$ 71.93
Walk-up	1 96-gallon cart	\$ 107.90
Walk-up	Each Additional Cart	\$ 35.97
	Additional Organics/YW Cart	No Charge
HILLSIDE (Monthly Rate):		
Roadside	1 32-gallon cart	\$ 38.71
Roadside	1 64-gallon cart	\$ 77.42
Roadside	1 96-gallon cart	\$ 116.13
Roadside	Each Additional Cart	\$ 38.71
DUPLEX/MULTIPLE UNITS & YARDWASTE EXEMPT (Monthly Rate)		
Front	1 32-gallon cart	\$ 19.79
Front	1 64-gallon cart	\$ 39.59
Front	1 96-gallon cart	\$ 59.38
Front	Each Additional Cart	\$ 19.79
Back	1 32-gallon cart	\$ 30.61
Back	1 64-gallon cart	\$ 61.22
Back	1 96-gallon cart	\$ 91.84
SENIOR CITIZENS (Monthly Rate):		
Frontyard/Backyard	1 32-gallon cart	\$ 11.10
Exempt (No Yardwaste)	1 32-gallon cart	\$ 9.40
Hillside	1 32-gallon cart	\$ 18.37
ADDITIONAL CHARGES:		
Extra Bag Tag		\$ 6.81
10 Bag Tags		\$ 64.75
Extra Can (1-Time)		\$ 11.73
24HR CONTAINER SERVICE:		
Bin By The Day	4 Yard	\$ 151.34

B.1. RESIDENTIAL SERVICE

Service Description		Maximum Rate
Bin By The Day	6 Yard	\$ 185.35
Bin By The Day	7 Yard	\$ 202.36
MANURE SERVICE (Monthly Rate):		
Manure - 1 CY	1X Week Service	\$ 201.88
Manure - 1 CY	2X Week Service	\$ 423.74
Manure - 1 CY	3X Week Service	\$ 645.76
Manure - 1 CY	4X Week Service	\$ 867.74
Manure - 1 CY	5X Week Service	\$ 1089.94
Manure - 1 CY	Extra Pick-up	\$ 77.21
HOUSEHOLD HAZARDOUS WASTE FEE (Monthly Rate):		
Single-Family Residence (including units in Multi-Family Residences that subscribe for individual MSW cart service)		\$ 0.50
Multi-Family Residence (Per unit, for units that do not subscribe for individual MSW cart service)		\$ 0.38
LATE CHARGE FEE: 1.2% Per Month Delinquent (Not Compounded)		

**B.2. NON RESIDENTIAL AND MULTI-FAMILY GARBAGE SERVICE AND
NON RESIDENTIAL AND MULTI-FAMILY COMPOSTABLE MATERIALS
SERVICE ***

** Non-Residential & Multi-Family Garbage service and Non-Residential & Multi-Family
Compostable Materials service shall never cost more than the rates for Commercial Garbage
service for the same quantity of material*

Service Description	Frequency	Maximum Rate
FRONT LOADER CONTAINERS (Monthly Rate):		
1.5 CY Container	1X Week Service	\$ 136.49
1.5 CY Container	2X Week Service	\$ 273.02
1.5 CY Container	3X Week Service	\$ 409.51
1.5 CY Container	4X Week Service	\$ 546.02
1.5 CY Container	5X Week Service	\$ 682.53
1.5 CY Container	6X Week Service	\$ 819.00
1.5 CY Container	Extra Pick-up	\$ 42.33
2 CY Container	1X Week Service	\$ 163.82
2 CY Container	2X Week Service	\$ 327.59
2 CY Container	3X Week Service	\$ 491.43
2 CY Container	4X Week Service	\$ 655.19
2 CY Container	5X Week Service	\$ 819.00
2 CY Container	6X Week Service	\$ 982.80
2 CY Container	Extra Pick-up	\$ 52.90
3 CY Container	1X Week Service	\$ 218.40
3 CY Container	2X Week Service	\$ 436.81
3 CY Container	3X Week Service	\$ 655.19
3 CY Container	4X Week Service	\$ 873.63
3 CY Container	5X Week Service	\$ 1,092.02
3 CY Container	6X Week Service	\$ 1,310.42
3 CY Container	Extra Pick-up	\$ 57.85
4 CY Container	1X Week Service	\$ 273.02
4 CY Container	2X Week Service	\$ 546.02
4 CY Container	3X Week Service	\$ 819.00
4 CY Container	4X Week Service	\$ 1,092.02
4 CY Container	5X Week Service	\$ 1,365.05
4 CY Container	6X Week Service	\$ 1,638.02
4 CY Container	Extra Pick-up	\$ 72.14
6 CY Container	1X Week Service	\$ 382.20
6 CY Container	2X Week Service	\$ 764.41
6 CY Container	3X Week Service	\$ 1,146.61
6 CY Container	4X Week Service	\$ 1,528.81
6 CY Container	5X Week Service	\$ 1,911.03
6 CY Container	6X Week Service	\$ 2,293.25

**B.2. NON RESIDENTIAL AND MULTI-FAMILY GARBAGE SERVICE AND
NON RESIDENTIAL AND MULTI-FAMILY COMPOSTABLE MATERIALS
SERVICE ***

** Non-Residential & Multi-Family Garbage service and Non-Residential & Multi-Family
Compostable Materials service shall never cost more than the rates for Commercial Garbage
service for the same quantity of material*

Service Description	Frequency	Maximum Rate
6 CY Container	Extra Pick-up	\$ 100.39
8 CY Container	1X Week Service	\$ 491.43
8 CY Container	2X Week Service	\$ 982.80
8 CY Container	3X Week Service	\$ 1,474.24
8 CY Container	4X Week Service	\$ 1,965.05
8 CY Container	5X Week Service	\$ 2,457.03
8 CY Container	6X Week Service	\$ 2,948.43
8 CY Container	Extra Pick-up	\$ 129.84
*Pushout Container	1X Week Service	\$ 48.06
Pushout Container	2X Week Service	\$ 96.38
Pushout Container	3X Week Service	\$ 144.29
Pushout Container	4X Week Service	\$ 192.50
Pushout Container	5X Week Service	\$ 240.67
Pushout Container	6X Week Service	\$ 288.95

* Container Pushout charges shall only apply to containers moved more than 25-feet to get them to the truck.

Key Service (service includes unlocking and locking receptacle)	\$ 53.52
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COMMERCIAL CART RATE:	
Per Cart Pickup	\$ 21.69

SPECIAL SERVICES:

Steam cleaning and re-delivery of bin [shall be provided once each year without charge], Furnishing Chains (One Time Only)	
Commercial	\$ 83.95
Multi-Family	\$ 92.11

LATE CHARGE FEE: 1.2% Per Month Delinquent (Not Compounded)

B.3. COMPACTOR SERVICE

Service Description	Maximum Rate
GARBAGE COMPACTOR RATE (Per Cubic Yard) (Monthly Rate):	\$ 38.56
COMPACTOR RATE-MIXED RECYCLABLE:	
Hauling Only	\$ 353.94
Per Ton	\$ 56.35

GARBAGE AND RECYCLING COMPACTOR RATES

Description	Amount	Processor	Dirty
Garbage Compactor Rates Per Yard Per Pull	\$ 38.06	Newby	N/A
Mixed Recycling Compactor Rates Per Pull	\$ 353.94	BFI	\$ 468.09
Mixed Recycling Compactor Rates Per Ton	\$ 56.35	BFI	\$ 82.41

B.4. DEBRIS-BOX SERVICE

DEBRIS-BOX (UNCOMPACTED) SERVICE (Monthly Rate):

8 Yard Rock Box	6 Tons	\$ 700.96
8 Yard Rock Box	Each Additional Ton	\$ 73.84
16 Yard Debris Box	3 Tons	\$ 397.01
16 Yard Debris Box	Each Additional Ton	\$ 73.84
20 Yard Debris Box	4 Tons	\$ 467.32
20 Yard Debris Box	Each Additional Ton	\$ 73.84
26 Yard Debris Box	4 Tons	\$ 607.52
26 Yard Debris Box	Each Additional Ton	\$ 73.84
30 Yard Debris Box	5 Tons	\$ 718.34
30 Yard Debris Box	Each Additional Ton	\$ 73.84
40 Yard Debris Box	6 Tons	\$ 766.30
40 Yard Debris Box	Each Additional Ton	\$ 73.84

WEEKLY RENTAL FEE (Beyond Normal 7 Days): \$ 138.81

LATE CHARGE FEE: 1.2% Per Month Delinquent (Not Compounded)

SOURCE SEPARATED RECYCLING*:

	08DOR	08DOR	16-40DOR	16-40DOR
	Clean	Clean		
	Dirt	Concrete		
		Asphalt	Clean Wood	Sheet Rock
Haul Rate	\$ 411.45	\$ 411.45	\$ 411.45	\$ 411.45
Recycling Rate per ton	\$ 29.62	\$ 20.85	\$ 39.50	\$ 41.69

*Note: Source Separated Recycling Loads will be charged the regular box rate if contaminated or mixed

OTHER MISCELLANEOUS RATES

Description	Code	Amount
Daily Rental Rate For Boxes Beyond 7 Days	RENT	\$ 21.94
Weekly Rental Rate For Boxes Beyond 7 Days	RENT	\$ 138.81
Trip Charge For Empty Debris Box/Compactor (No Dump)	TRIP	\$ 82.29
Dry Run, Scheduled Service Bin Empty	TRIP	\$ 164.58
Relocate Container After Initial Delivery	RELOC	\$ 82.29
Same Day Cancelation (No Dump)	CANCL	\$ 54.86
Steam Clean after exchange bring back to yard	TRIP	164.58

EXHIBIT B SHALL BE REVISED TO REFLECT ANNUAL RATE ADJUSTMENTS PER THE CPI FORMULA SPECIFIED IN THIS AGREEMENT

EXHIBIT G: REPORTING REQUIREMENTS
(Amended September 2, 2014)

1. Monthly Reports.

Franchisee shall submit, within twenty (20) calendar days following the end of each month, a Monthly Report on the amount of Recyclable Materials collected, Compostable Materials collected, Garbage collected and disposed, and materials collected at City-wide recycling events. To support the City's participation in the U.S. EPA Food Recovery Challenge, the data on Compostable Materials diverted from landfill shall include a breakdown between food waste and yard waste in both tonnage and cubic yards (by weight and volume). Franchisee will provide a separate monthly report for Multi-Family Dwelling Units and Non-Residential Services, describing the levels of service for recyclables and compostables subscribed for and the number of tons and cubic yards that were diverted from landfill as a result of Composted Materials and Recyclable Materials collected by Franchisee. This information shall meet the reporting requirements of the California Integrated Waste Management Act, as such Act may from time to time be amended. In addition to the information required by the California Integrated Waste Management Act, each Monthly Report shall include the information described in Section 2 of this EXHIBIT G. Franchisee shall provide these reports electronically only, in an editable format approved by City, such as Excel or Word.

1.1 Monthly Summary.

The Monthly Report shall contain a summary of the information reported pursuant to Section 1 of this EXHIBIT G. Reports shall also contain a description of milestones achieved; changes in staffing levels; a listing of special occurrences such as any drop in tons diverted from the previous month due to contamination; and any other relevant information, including details of any City-wide Recycling Days which occurred during that month.

1.2 Monthly Report on Debris Box and Compactor Revenue and Disposal Cost.

The Monthly Report shall detail separately the monthly tonnage and revenue collected from both Debris Boxes and Compactors (this revenue is excluded from Eligible Revenue). In addition the Monthly Report shall set forth separately for Debris Boxes and Compactors, the landfill disposal costs for all loads excluded from the Eligible Revenue and for which Franchisee reimburses the City.

1.3 Sales of Recyclable Materials and Compostable Materials.

The Monthly Report shall contain a Monthly Recyclable Materials and Compostable Materials sales statement showing: type of material, the name of each buyer, date of sale, terms of sale, quantity sold (in tons or cubic yards), and net sales (net sales means gross sales minus both sales returns and sales

allowances). Tonnages sold at different prices during the month must be reported separately. Adjustments to previous months' sales (such as for contaminants) shall be reported on the current statement as a reduction in sales and referenced to the statement for the prior month in which the original sale was actually reported.

Franchisee shall provide City, in each Monthly Report, a list of addresses for all households that have received a backyard Compost Bin during the month covered by such Monthly Report.

1.4 Contaminants.

The Monthly Report shall include a statement of the weight (in tons) of contaminants in the Recyclable Materials and Compostable Materials collected during the month, the weight of the contaminants expressed as a percentage of the Recyclable Materials and Compostable Materials collected, and a description of the disposal methods for the contaminants.

Franchisee shall provide, in each Monthly Report, a list of the Service Recipients' business name, account holder's name and contact information, and the address where a driver has observed a contaminated load of Recyclable Materials or Compostable Materials. The Monthly Report shall also provide the size of the contaminated load in cubic yards and the contaminants observed.

1.5 Problems Encountered.

The Monthly Report shall include a narrative account of problems encountered during the reporting period in connection with Recyclable Materials and Compostable Materials collection (including scavenging), processing and/or marketing, a list of Non-Residential Service Recipients that declined to accept Compostable Materials or Recyclable Materials collection, the reasons Non-Residential Service Recipients gave when asked why they declined to accept Compostable Materials or Recyclable Materials service, and the actions taken by Franchisee in response. The narrative shall include a description of problems relating to non-collection because of contamination in the Recyclable Materials Containers and Compostable Materials Containers or because of blocked access. The narrative shall also include a description of Recyclable Materials and Compostable Materials rejected for sale after processing (by type of material and tonnages), reason(s) for rejection, and Franchisee's disposal method for the rejected load.

1.6 Public Education Activities.

The Monthly Report shall include a description of the public education and community relations activities performed by Franchisee during the month and Franchisee's evaluation of the success of such activities in promoting the Programs or in addressing problems encountered by Franchisee.

1.7 Service Log.

The Monthly Report shall contain a copy of Franchisee's telephone and complaint log, and include the name and address of each caller, the reason for the call, details on each complaint and a description of how each complaint was resolved.

The Monthly Report shall contain a list of all pickups missed during the reporting period, with a description of the response to each call.

1.8 New Service Recipients.

The Monthly Report shall contain a listing of all new Service Recipients, including their name, address and level of service.

1.9 Non-Residential Compostable Materials Service Recipients.

The Monthly Report shall include a list of all Non-Residential Service Recipients that subscribe to Compostable Materials collection service, the date the Franchisee first visited the Non-Residential Service Recipient to ask them to subscribe to this service, the date Compostable Materials collection service started, the size of Compostable Materials Container(s) and the frequency of collection. If a Non-Residential Service Recipient has declined to subscribe to Compostable Materials service, Franchisee will provide the date the service was declined.

1.10 Loads Rejected by the Processor

The Monthly Report shall include a list of Non-Residential loads of (compostable materials, recyclable materials or garbage) that are rejected by the processor, the date that the load was rejected, the Service Recipient's name and address, the type of material collected and the reason that the material was rejected.

1.11 Monthly Tonnage for Re-TRAC to support City's participation in U.S. EPA's Food Recovery Challenge.

Franchisee will enter in the Re-TRAC database, monthly tonnage for materials landfilled, materials recycled, yard waste composted and food waste composted.

2. Compost Quality Reports.

On April 1 and October 1 of each year of this Agreement, Franchisee shall provide City with copies of Laboratory reports on the quality of the Compost Materials produced from the Compostable Materials collected in City sometime in the prior three months, and on the compost materials provided to City as required in Section 8.1 of this Agreement.

3. Annual Reports.

3.1 Annual Report Submitted By Franchisee.

To be consistent with CalRecycle's Annual Report periods, Franchisee shall provide its annual report to the City for the calendar year. Within 60 days following the end of each calendar year, Franchisee shall provide City with an Annual Report containing: a summary report of the Monthly Reports for the year, including information on the total annual quantities of Garbage collected and disposed, Recyclable Materials collected, and Compostable Materials collected. The Annual Report shall detail the Compostable Materials collected broken down by the tonnage and cubic yards of food waste collected and the tonnage and cubic yards of yard waste collected.

The Annual Report shall also contain a discussion of public awareness activities and their impact on recycling participation and recovered amounts, and a discussion of highlights and other noteworthy program experiences, along with measures taken to resolve problems, increase efficiency, and increase participation.

The Annual Report shall also contain a detailed discussion of the progress made during the year toward meeting a sixty-five percent (65%) diversion rate for Non Residential Service Recipients and for multi-family sectors as calculated in Exhibit H.2.

3.2 Vehicle Fleet Information.

Each year of the term of this Agreement, Franchisee shall submit to City, as an attachment to the Annual Report, all information required by Section 6.1.6 of this Agreement.

3.3 Audited Financials.

After the end of each fiscal year of Franchisee, Franchisee shall submit to City a copy of its audited financial statements for such year. Such audited financials shall include all of Franchisee's revenues under this Agreement during such fiscal year.

4. End of Agreement Reports.

Reports covering the last period of this Agreement will be due following the end of collection services, on the schedule stated in this EXHIBIT G.

EXHIBIT H: DIVERSION
(Amended September 2, 2014)

H.1 Calculation to determine the City's diversion rate for 2015 for residential (population) and commercial (employment) sectors.

For purposes of determining if the requirements of the Agreement, including those under Paragraph 2.2.1 are met, the following CalRecycle Disposal Reporting System (DRS) "Diversion Equivalent Rate" (DRE) formula shall be used:

$$DRE = [1 - (\frac{Annual\ Per\ Capita\ Rate}{2 \times Target\ Rate})] \times 100$$

As an example, for Cupertino's Population (Residential) Diversion Rate Equivalent (DRE) for 2012, using the 2012 CalRecycle pounds per person per day target with 2012 annual actual (as shown in the below table), is as follows:

CalRecycle Disposal Rate Target for Cupertino for 2012		
	TARGET	2012 ANNUAL(actual)
Population (Pounds/Person/Day)	4.3	2.6
Employment (PPD)	8.1	4.3

$$\begin{aligned} DRE &= [1 - (\frac{2.6}{2 \times 4.3})] \times 100 \\ &= [1 - (\frac{2.6}{8.6})] \times 100 \\ &= [1 - 0.302] \times 100 \\ &= 69.8 \% \text{ (approximately)} \end{aligned}$$

And, for Cupertino's Employment (Commercial) Diversion Rate Equivalent (DRE) for 2012, the equation is:

$$\begin{aligned} DRE &= [1 - (\frac{4.3}{2 \times 8.1})] \times 100 \\ &= [1 - (\frac{4.3}{16.2})] \times 100 \\ &= [1 - 0.265] \times 100 \\ &= 73.3 \% \text{ (approximately)} \end{aligned}$$

Actual calculations for subsequent years shall be based upon CalRecycle's annual municipal data collected in August of each year for the preceding calendar year (for example, data for 2013 is collected in August 2014).

H.2 Calculation to determine the City's diversion rate for 2015 for Commercial and Multi-Family collection services.

Diversion shall be calculated using the following formula:

$$(A + B) / (A + B + C) = \text{Diversion percentage for Commercial and Multi-Family}$$

A = Tons of recycled Commercial and Multi-Family materials

B = Tons of composted Commercial and Multi-Family materials

C = Tons of Commercial and Multi-Family material landfilled

Residue from processing recyclables and compostables that are landfilled shall be counted in the tons of commercial and multi-family material landfilled, not as tonnage recycled or composted.

H3. Expanded Diversion Program Features

Single-Family Residential Services:

- Provide each residential customer with a dishwasher- safe, container having a seal-tight lid. These containers can be used for the in-home storage of compostable organic materials. The seal-tight lid will prevent odors and the dishwasher compatible container will be convenient for residents to clean and maintain.
- Single-stream collection of commodities listed below at "Recyclable Commodities"
- Curbside collection of CFL bulbs in clear zip lock bags
- Curbside collection of dry cell batteries and cell phones in clear zip lock bags
- Curbside collection of used motor oil in 1-gallon containers and used oil filters in clear zip lock bags
- Curbside collection of E-waste and U-Waste through on-call collection programs
- On-call collection of material and diversion of all recyclable and reusable materials
- Curbside collection of cooking oil, in 1-gallon containers marked as "Cooking Oil"
- Curbside collection of "Coats for Kids" every fall
- Provide up to 400 Bio-Stack composting bins in Year 1 of the contract extension
- Provide a twice-per-year "Environmental Day" for the collection of recyclable commodities listed below at "Recyclable Commodities"
- Distribute public outreach material highlighting the new and expanded recyclables and organics collection programs

- By October 1, 2015, develop a three-minute "How to Utilize Your Organics and Recycling Cart" video for viewing on the City of Cupertino Cable access channel and for schools

Multi-Family Residential Services:

- Conversion to single-stream collection of commodities listed below at "Recyclable Commodities"
- Contact management of every MFD complex in the first year of the contract extension to initiate or expand recycling services
- Provide to each MFD unit whose complex participates in the organics collection service, a dishwasher- safe, pitcher having a seal-tight lid, for the in-home storage of compostable organic materials
- Provide each MFD unit with a "Recycling Tote Bag" for the in-home storage of single-stream recyclables
- Collection of E-waste and U-Waste through on-call collection programs
- Provide drop-off containers at MFD management offices for dry cell batteries and cell phone recycling
- Arrange HOA presentations on the new and expanded recyclables and organics collection programs
- Distribute public outreach material highlighting the new and expanded recyclables and organics collection programs
- By December 31, 2014, conduct a Recycling Blitz at large multi-family developments. Recology Zero Waste Coordinators and Management will visit buildings on Saturdays to distribute "Buddy Bags" to help residents sort recyclables, along with a brochure guide
- By October 1, 2015, develop a three-minute "How to Utilize Your Organics and Recycling Cart" video for viewing on the City of Cupertino Cable access channel and for schools

Commercial Services:

- Conversion to single-stream collection of commodities listed below at "Recyclable Commodities"
- Contact every commercial customer in the first year of the contract extension to initiate or expand recyclables and organics collection services
- Provide each commercial customer that participates in the organics collection program with an optional "Slim Jim" container for the indoor accumulation of organics materials
- Arrange presentations of expanded recycling programs at civic groups, schools, community functions, city events, City and Recology websites, and the City access channel
- Distribute public outreach material highlighting the new and expanded recyclables and organics collection programs

**SECOND 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 Second 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 ("First Amendment"), for reference dated December 19, 2017, 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. The effective and orderly handling of solid waste is an essential component of public safety and health. Balanced regional waste management and planning must be maintained and developed so as to safeguard public health, optimize the use of limited natural resources and insure the efficient and orderly collection and processing of Recyclable and Compostable Materials and proper collection and disposal of Garbage.
- B. It is desirable that the public recognize its ultimate responsibility to reduce, recycle and dispose of all wastes in an environmentally sound manner and that collection and disposal rates must be established at levels which are commensurate with the cost of carrying out that responsibility.
- C. On May 18, 2010, a Franchise Agreement for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage was entered into by and between CITY OF CUPERTINO and RECOLOGY CUPERTINO ("Franchisee") ("Agreement") for a term of five years, from 12:00 A.M. on November 1, 2010 to 11:59 P.M. on October 31, 2015.
- D. On September 2, 2014 a First Amendment was entered into by and between CITY and Franchisee ("First Amendment") extending the term to eight years and 3 months from 12:00 A.M. on November 1, 2010 to 11:59 P.M. on January 31, 2019.
- E. The City and Franchisee desire to amend the Agreement a second time extending the First Amendment term an additional two years to 11:59 P.M. on January 31, 2021, commencing 12:00 A.M. on December 20, 2017.
- F. The City and Franchisee have agreed to a goal of 75% diversion for calendar year 2018 to be calculated by the CalRecycle formula for Diversion Rate Equivalent, by population (residential) and by employment (commercial).

- G. Pursuant to powers expressly granted to cities and counties in Article XI, Section 7 of the California Constitution, and also set forth in California Public Resource Code Sections 40059 and 49300, City has the authority within its jurisdiction to regulate the handling of Garbage. City accordingly entered into this Agreement pursuant to the above authority and pursuant to City Municipal Code, Title 6, Chapter 6.24, section 6.24.010.
- H. 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 1 –Definitions, Sections 1.7, 1.29, 1.31, 1.32 and 1.33 are modified and 1.42 and 1.43 are added to read as follows:

1.7. Compostable Materials – “Compostable Materials” means organic materials generated from tree trimming, shrubbery pruning, vegetative garden wastes, dead plants, weeds, leaves, grass clippings, food and non-food vegetative matter, soiled paper, and cardboard and waxed cardboard that decompose biologically, which are separated by the Service Recipient from other materials with less than an estimated ten percent (10%) by weight of materials other than those listed as “Compostable Materials” in EXHIBIT A.

1.29 Non-Residential Garbage Containers – “Non-Residential Garbage Containers” means 32-gallon, 64-gallon, or 96-gallon carts, and metal or plastic bins from 1 to 8 cubic yard capacity, provided by Franchisee for use by Non-Residential Service Recipients for Garbage collection services under this Agreement.

1.31 Recyclable Materials - “Recyclable Materials” means those materials that can be returned to economic use as raw material for new, reused, or reconstituted products, which are separated by the Service Recipient from other materials with less than an estimated ten percent (10%) contamination, for the purpose of returning them to economic use and includes without limitation those materials listed as “Recyclable Materials” in EXHIBIT A.

1.32. Recyclable Materials Containers - “Recyclable Materials Containers” means the wheeled carts provided to Service Recipients by the Franchisee or City for the collection of Recyclable Materials. Residential Recyclable Materials overages may be placed in any additional durable container which is provided by a Service Recipient for collection of Recyclable Materials; and any wheeled cart, metal or plastic bin of from 1 to 8 cubic yard capacity, provided by Franchisee for

use by Non-Residential Service Recipients for collection services under this Agreement which is clearly labeled as a recycling container.

1.33. Residential Service Recipient - "Residential Service Recipient" means all residences within the Franchise Area (including all multifamily dwellings. "Multi-family" is defined as any premises, excluding a hotel, motel, or lodging house, used for residential purposes containing five (5) dwelling units or more, irrespective of whether the residency is transient, temporary or permanent), and all businesses within the Franchise Area which generate a combined total of less than 96-gallons of Garbage and Compostable Materials per week and which subscribe for service as Residential Service Recipients.

1.42 Decal - "Decal" means a permanently affixed weather-resistant label identifying with words and colored pictures, the type of material to be placed within a wheeled cart container.

1.43 Wheeled Cart Containers - "Wheeled Cart Containers" means 32, 64, 96 gallon or other similarly sized push carts used for residential, multi-family, and commercial waste services.

2. Article 2 – Term of Agreement, Sections 2.1, 2.2, 2.2.1, 2.2.2, 2.2.3, 2.2.4 are modified to read as follows:

2.1 Term - The term of this Agreement, which commenced 12:00 A.M. on November 1, 2010 and continued to 11:59 P.M. on October 31, 2015 and was extended on September 2, 2014 to 11:59 on January 31, 2019, is hereby extended for a second time from 12:00 A.M. on December 20, 2017 to 11:59 P.M. on January 31, 2021, inclusive, subject to Article 16 of this Agreement.

2.2 Option to Negotiate New Agreement -- City shall have the option to negotiate a new ten year agreement that may begin at 12:00 A.M. on January 31, 2021 and end at 11:59 P.M. on January 31, 2031 if Franchisee has:

2.2.1 Diversion – To the maximum extent possible¹, achieved fifty 50%) commercial and multi-family diversion rate by January 1, 2020 (as calculated in Exhibit H); and achieved a minimum seventy-five percent (75%) diversion rate under the terms of this Agreement for calendar year 2018 based on CalRecycle's diversion rate equivalent (DRE) for both residential (per capita by population) and commercial (per capita by employment) sectors (as calculated in Exhibit H). This calculation will not include disposal volumes attributed to the City of Cupertino

¹ The City's 75% diversion goal, set in 2010, is subject to available markets for recyclable materials (e.g. mixed paper, old newspaper, plastics, etc.). Of particular concern in Fall 2017 is that China notified the World Trade Organization in July 2017 that by end of 2017 it would ban imports of 24 kinds of solid waste, including unsorted waste paper, waste plastics, most scrap plastics including PET, PVC polyethylene, polystyrene, mixed paper, slag from steelmaking, and waste textiles.

that are reported to CalRecycle on the Disposal Reporting System (DRS) and which are not in any way handled by or associated with Recology Cupertino collection programs. CalRecycle's calculation of the City's DRE for 2018 should be available by November 30, 2019, after submittal of the City's annual report data in August 2019, and;

2.2.2 Program Development - Cooperatively and proactively worked with City to develop programs to increase diversion, reduce contamination and provide all food service establishments (grocers, restaurants, hotels, high tech companies with large cafeterias etc.) and multi-family establishments that appear based on subscribed volume to be generating four (4) cubic yards or more of total waste per week with bins, signage, educational outreach and materials, and collection service for organics composting by July 1, 2018 and;

2.2.3 Limited Cost Adjustments - Cooperatively and proactively worked with City in connection with limited cost adjustment requests for residential and non-residential services so that the cost of organics processing to the City incorporates efficiencies identified in any City directed and paid audits and;

2.2.4 Intent to Exercise Option to Renegotiate Agreement - Notified City of its intent to exercise this option to renegotiate the Agreement in writing, on or before January 31, 2020. If mutually agreeable to the City and the Franchisee and if CalRecycle has not provided sufficient data to verify the City's accurate 2018 diversion rate equivalent by January 5, 2020, this Agreement may be extended for eleven (11) months to January 1, 2022.

3. Article 4 – Collection Services, Sections 4.1.1., 4.1.2., 4.1.5., 4.1.7., 4.3.2., 4.3.3., 4.3.4., 4.4, 4.4.1., 4.4.2., 4.4.3., 4.4.4., 4.8.1., 4.8.3., 4.9, 4.9.1., 4.9.3. and 4.10, are modified and 4.1.7 added to read as follows:

4.1.1. Beginning November 1, 2010 and continuing through the term of this Agreement, Franchisee shall perform collection services as provided in this Article 4. All such services shall be performed in a thorough and professional manner regardless of weather conditions and difficulty of collection. Commercial collection services shall occur only between the hours of 6:00 AM and 5:00 PM, unless specifically approved in advance in writing by City Representative. Residential collection services shall comply with the City's noise ordinance and occur only between the hours of 7:00 AM and 5:00 PM, unless specifically approved in advance in writing by the City Representative. In all areas where residential properties are adjacent to commercial properties or close enough that the collection vehicle noise disrupts sleeping residents, collection shall not start

before 8:00 AM on Monday through Friday, and not before 9:00 AM on Saturday, Sunday, and Holidays.

4.1.2. All Residential Recyclable Materials, and Compostable Materials and Garbage collected pursuant to this Agreement shall be and become the property of the Franchisee at the time these materials are placed in the City or Franchisee supplied collection containers. All Non-Residential Recyclable Materials and Compostable Materials and Garbage collected pursuant to this Agreement shall be and become the property of the Franchisee at the time these materials are placed in the collection containers. The City reserves the right to approve or disapprove the destination facility and the method of processing for all solid waste and other materials collected for disposal by the Franchisee from within the City's jurisdictional boundaries, provided, however, that if City revokes approval of any such facility, Franchisee shall be entitled to an adjustment in compensation in an amount sufficient to cover Franchisee's increased costs of using an alternative facility, and shall not be required to use an alternative facility until such adjustment has been implemented. The facilities to which Franchisee delivers material as of November 1, 2017 shall be deemed approved by City and for cost purposes shall represent the baseline cost. Franchisee shall notify the City at least four weeks in advance of any planned changes to the collection and processing of materials collected in City, including residential day of service collection, and processing facilities to which recyclables or organics will be delivered. City will not authorize any change to collection and/or processing, or any additional requests in compensation, that reduces the ability of the Franchisee to achieve the 75% diversion goal.

Franchisee shall, to the maximum extent practicable, ensure that collected loads of Recyclable Materials and Compostable Materials are not redirected to the landfill by the driver due to contamination. Franchisee shall, to the extent practicable, remove or have the Service Recipient remove, contaminants that are not listed as acceptable recyclable materials in Exhibit A. Franchisee may leave a Non-Collection Notice (NCN) and not service Recyclable Materials Containers or Compostable Materials Containers that contain an estimated > 10% non-recyclable or non-compostable materials as defined in Exhibit A, thereby making the commercial customer responsible for removing contaminants prior to collection. Franchisee may charge the commercial customer a return fee as listed in Exhibit B. Franchisee shall conduct collection in a manner which will ensure that Recyclable and Compostable Materials listed in Exhibit A will not be landfilled, and that City will receive the maximum credit toward the State diversion mandates.

4.1.5 All collection vehicles and equipment shall be constructed and maintained to prevent leakage or spillage. Except when material is being loaded or unloaded, or when the vehicle is in the process of collection, Franchisee shall at all times keep Recyclable Materials, Compostable Materials, and Garbage loads completely

covered so as to prevent litter, leakage or spillage from the collection vehicle. Franchisee shall immediately clean up any litter, leakage or spillage (in the manner described in the last sentence of Section 15.4, if applicable) which occurs during collection and transport.

In addition to the liquidated damages specified in Section 12.5 of this Agreement, Franchisee shall reimburse City for all reasonable costs incurred by City in the cleanup of all litter created by Franchisee in the performance of this Agreement and not cleaned up by Franchisee within eight (8) business hours after notice by City, and liquid spillage created by Franchisee in the performance of this Agreement and not cleaned up by Franchisee within two (2) business hours after notice by City.

Prior to the purchase of new Collection Vehicles during the term of this Agreement, Franchisee shall certify to the City that the selected vehicles include hopper shielding to minimize litter while the contents of individual carts or bins are being unloaded and while the vehicle is traveling along City streets. If Franchisee continues to use existing equipment for more than one year from the date of the Second Amendment to this Agreement, Franchisee shall retrofit all Collection Vehicles with hopper shielding to prevent the scattering of litter during collection and transport of Recyclable Materials, Compostable Materials, or Garbage. Retrofits shall be completed before November 1, 2018.

4.1.7 All carts emptied on public streets shall be placed with the wheels against the curb in a location that does not block access to driveways.

4.3.2. Provision of Recyclable Materials Containers - Franchisee shall provide new or refurbished Recyclable Materials Containers, as described below, at no additional charge to each Residential Service Recipient that does not already have one. These Recyclable Materials Containers shall be delivered by Franchisee within five (5) Working Days of Request for initial service or replacement by the Residential Service Recipient. Recyclable Materials Containers removed by the Franchisee shall also be replaced by Franchisee within five (5) Working Days of their removal.

Recyclable Materials Containers provided by Franchisee shall be labeled with description of contents, such as "Recycling" or "Yard Waste/Organics" and "Property of the City of Cupertino" and shall not be marked with the Franchisee's name or logo. To ensure consistency in container markings and colors, new and replacement containers shall be labeled and marked to the satisfaction of the City, the color of container for Recyclable Materials Containers shall be approved by the City before new or replacement Recyclable Materials Containers are purchased for customers. Decals specifying acceptable and unacceptable material for each container shall be applied as specified by City before containers are delivered to start new service and to new containers when damaged or mismarked containers are replaced. Replacement of decals as needed is the responsibility of the

Franchisee. All Recyclable Materials Containers provided by Franchisee to Residential Service Recipients pursuant to this Agreement shall become the property of the City at the termination of this Agreement. Franchisee is required to keep accurate count/inventory of containers used, date of purchase, and date of replacement.

4.3.3 Recyclable Materials Overages (Residential) - Franchisee shall collect all Recyclable Materials properly prepared and set out for collection by the Service Recipient each week. Service Recipient may set flattened and bundled cardboard boxes, which are too large to fit in the Recyclable Materials Container, next to the container, provided they do not exceed 3 feet by 3 feet and are securely tied together.

Franchisee shall collect such cardboard boxes on the day Franchisee collects Recyclable Materials from the Service Recipient. Franchisee shall have no obligation to collect Recyclable Materials Overages where Recyclable Materials are not set out in Recyclable Materials Containers, except that Franchisee must notify the City Representative within two (2) Working Days of the uncontained materials and provide the address and contact for any Service Recipient that has been responsible for overflowing or uncontained Recyclable Materials more than once in a year. Franchisee shall have no obligation to collect cardboard boxes if they are not set out as provided above or where the combined weight of the Recyclable Materials and cardboard exceeds sixty (60) pounds.

At no additional charge and pursuant to Section 4.3.2, Franchisee shall provide a sufficient number of additional Recyclable Materials Containers to Service Recipients to accommodate all recyclables regularly generated. If Service Recipients regularly generate more Recyclable Materials than will fit in their Recyclable Materials Containers, Franchisee will contact Service Recipient within two (2) Working Days of the determination to notify Service Recipient that an additional cart will be delivered. Franchisee will notify the City Representative by email of the address and contact information for the account that generated the overage and received an additional recycling cart within two (2) Working Days of the additional cart delivery. Franchisee shall notify the City Representative and deliver to Service Recipient all requested additional Recyclable Materials Containers within five (5) Working Days of the request.

4.3.4 Non-Collection - Franchisee shall not be required to collect any Recyclable Materials that are not set out on a public street or other accessible location subscribed for; that are not set out in accordance with the Municipal Code, and that are not set out in conformance with Section 4.3.3 of this Agreement. If the Recyclable Materials are too contaminated to process (i.e. if the container appears to contain more than ten percent (10%) non-Recyclable Materials), Franchisee shall leave a Non-Collection Notice (NCN) and contact the account holder by phone to inform the Service Recipient that the cart was not serviced due to contamination.

Franchisee will by email provide the City with the account name and address associated with the contaminated Recyclable Materials within two (2) Working Days of the incident. Drivers shall not make the determination that material collected as Recyclable Materials shall be landfilled without notifying the City within one (1) Working Day. Only residue from the processing facility and loads rejected by the processor for contamination may be landfilled.

4.4 Residential Compostable Materials Collection - Franchisee shall, by no later than of June 30, 2018, provide one-half to one gallon capacity pitcher-style or pail containers for in-home storage of Compostable Materials to each unit whose complex is required by City ordinance to subscribe to Compostable Materials Collection service. Franchisee shall provide these pitchers or pails for each single-family household that sets up new service, and for existing Residential Service Recipients that have not received one, upon request by the Service Recipient or the City. The one-half to one gallon capacity pitchers or pails for in-home storage of Compostable Materials shall be of a type approved by City Representative and shall meet the requirements for such pitchers or pails specified in EXHIBIT H. Upon request, pitchers or pails shall be delivered within five (5) Working Days. City may keep a supply of in-home Compostable Materials storage pitchers or pails, purchased by Franchisee, to assist in delivery to Service Recipients.

Franchisee shall collect all Compostable Materials listed in EXHIBIT A. Franchisee shall process all collected Compostable Materials at their affiliate facility, South Valley Organics, located near Gilroy, or Blossom Valley Organics North (BVON), unless an alternate site is approved by City Representative in writing, which may be communicated by email.

4.4.1. Frequency of Collection - Franchisee shall provide regular, scheduled collection of Compostable Materials from each Residential Service Recipient every week for single family homes. Compostable Materials Containers at multi-family establishments shall be serviced at a minimum weekly or more frequently if necessary to prevent offensive odors and pest infestations. Compostable Materials shall be collected from Compostable Materials Containers adjacent to the Recyclables or Garbage Containers.

4.4.2. Compostable Materials Containers (Residential) - Franchisee shall provide, upon request by the City Representative, a new or refurbished 24-gallon or 32-gallon Compostable Materials Container at no additional charge to each "Yard Waste Exempt" Residential Service Recipient that does not already have one. These Compostable Materials Containers shall be delivered by Franchisee within five (5) Working Days of Request.

Compostable Materials Containers removed by the Franchisee by mistake, for repair and replacement, or cleaning shall be replaced by Franchisee within five (5) Working Days of their removal.

Compostable Materials Containers provided by Franchisee shall be labeled for "Compost" or "Yard Waste/Organics", and "Property of the City of Cupertino" and shall not be marked with the Franchisee's name or logo. To ensure consistency in container markings and colors, new and replacement containers shall be labeled and marked to the satisfaction of the City, the color of container for Compostable Materials Containers shall be approved by the City before new or replacement Compostable Materials Containers are purchased for customers. Decals specifying acceptable and unacceptable material for each container shall be applied as specified by City before containers are delivered to start new service and to new containers when damaged or mismarked containers are replaced. Replacement of decals as needed is the responsibility of the Franchisee. All Compostable Materials Containers provided by Franchisee to Residential Service Recipients pursuant to this Agreement shall become the property of the City at the termination of this Agreement.

Compostable Materials shall be collected from Franchisee-supplied Compostable Materials Containers. The combined weight of the container and the Compostable Materials shall not exceed one hundred fifty (150) pounds. Compostable Materials Containers must be placed at the curb or another accessible designated collection area selected by Service Recipient and approved by City, or by Walk-Up as subscribed for by the Service Recipient.

To promote maximum diversion at single-family residences, Franchisee shall deliver additional Compostable Materials Containers within five (5) Working Days from the date of the single-family Residential Service Recipient's or the City's request. At no additional charge and pursuant to this Section, 4.4.2, Franchisee shall provide a sufficient number of additional Compostable Materials Containers to accommodate all Compostable Materials regularly generated at single-family residences

To promote maximum diversion at multi-family residences, by March 1, 2018, Franchisee shall notify property managers of all multi-family residences of the City's ordinance requiring the collection of Compostable Materials. Franchisee shall work with the City Representative to provide educational materials and one-half to one gallon capacity containers for in-home storage of Compostable Materials to the establishment, and deliver appropriately sized and located Compostable Materials Containers on or before May 31, 2018.

4.4.3. Non-Collection - Franchisee shall not be required to collect any Compostable Materials that are not set out on a public street or other accessible location, in accordance with the Municipal Code, or in conformance with Section 4.4.2 of this Agreement. If the Compostable Materials are too contaminated to process (i.e. if the container appears to contain more than ten percent (10%) non-Compostable Materials), Franchisee shall leave a Non-Collection Notice (NCN) and contact the account holder by phone to inform them that the cart was not serviced due to contamination. Franchisee will email the City with the account

name and address associated with the contamination within two (2) Working Days. Loads collected as Compostable Materials shall not be landfilled or rejected at the processing facility. Only residue from processing Compostable Materials may be landfilled.

4.4.4 Compostable Materials Overages (Residential) - At no additional charge and pursuant to Section 4.4.2, Franchisee shall provide a sufficient number of additional Compostable Materials Containers to Residential Service Recipients to accommodate all Compostable Materials regularly generated. If Residential Service Recipients regularly overflow their Compostable Materials Containers, Franchisee will contact Residential Service Recipient within two (2) Working Days of the observation to encourage Residential Service Recipients to request additional containers. Franchisee will contact City within two (2) Working Days to notify City Representative of such customer and will provide the City account contact information. Franchisee shall deliver Residential Service Recipient additional Compostable Materials Containers within five (5) Working Days of the request.

4.8.1 Frequency of Collection (Non-Residential Recyclable) - Franchisee shall provide Recyclable Materials collection services at no additional cost to all Service Recipients that subscribe for Non-Residential Garbage service. Franchisee shall collect all Recyclable Materials listed in EXHIBIT A from each Non-Residential Service Recipient as often as necessary to prevent overages. To encourage diversion, Franchisee shall provide a volume of Recyclable Materials collection services equal to or in excess of the amount of Garbage collection service subscribed for by each Non-Residential Service Recipient, except where there are space or access constraints, or where the characteristics of the waste stream do not justify an additional container.

Service Recipients may not decline Recyclable Materials Collection service that is required by State law (AB 341), and Cupertino Municipal Code Chapter 6.24 unless they can demonstrate to the City that they do not generate any Recyclable Materials, or can document to the satisfaction of City that they have made other arrangements for handling their Recyclable Materials. If Service Recipients decline Recyclable Materials Collection service, Franchisee will notify City by email within two (2) Working Days.

Franchisee shall add collection routes and days, including weekends, if necessary to adequately provide collection service to all Service Recipients in accordance with this Agreement.

4.8.3 Non-Collection - Franchisee shall not be required to collect any Recyclable Materials that are not placed in Recyclable Materials Containers by Non-Residential Service Recipients. In the event of a non-collection, Franchisee shall

leave a Non-Collection Notice (NCN). Franchisee shall notify the City by email within two (2) Working Days of the driver observing an estimated 10% or more contamination of materials generated by a Non-Residential Service Recipient and where the Non-Residential Service Recipient has been responsible for contamination more than once in a calendar year. The City will contact and work with the Service Recipient to prevent further contamination by providing education and assistance. Significantly contaminated loads may be processed as Garbage only as directed by the processor after the materials have been evaluated and rejected by the processor at the processing facility. The Franchisee's monthly report shall contain information on all loads that are rejected at the processing facility as specified in Exhibit G.

4.9 Non-Residential Compostable Materials Collection - Franchisee shall not impede the City's implementation or expansion of edible food placement networks in the City of Cupertino (e.g. the City's participation in the Food Rescue Initiative for Santa Clara County). When edible food that would otherwise have been landfilled, is diverted to feed people, a commensurate diversion credit will be applied to the City's and Recology's diversion progress.

Consistent with Cupertino Municipal Code Section 6.24.37 and AB 1826, Franchisee shall provide all applicable non-residential customers with bins and collection service for organics composting along with appropriate outreach and education about use of said service by the following dates, as specified in the municipal code:

- July 1, 2018: Per Cupertino Municipal Code, businesses or business structures generating 4 cubic yards or more of solid waste per week
- By Jan 1, 2019: Per State law, businesses or business structures generating 4 cubic yards or more of solid waste per week.

Franchisee shall produce and maintain a list of all businesses and business structures (enrolled and non-enrolled) that are required by the municipal code and by AB 1826 to subscribe to organics collection service. The list shall be updated monthly and changes to the list shall be included in the monthly report to the City per Exhibit G.

As required by municipal code, Franchisee shall ensure that commercial properties that are affected by the following earlier implementation dates continue to receive organics service:

- September 1, 2016: business or business structure generating 8 cubic yards or more of organic waste per week
- January 20, 2016: business or business structure generating 3 cubic yards or more of organic waste per week or generating a solid waste stream that is comprised of 25% or more organic food waste material

For purposes of determining whether a customer generates a specified volume and/or type of material or is required under the Cupertino Municipal Code or AB 1826 to subscribe for organics collection service, Franchisee shall be entitled to rely on the customer's subscribed-for container volume.

4.9.1 Frequency of Collection (Non-Residential Compostable Materials) - Franchisee shall provide Compostable Materials Collection services to all Non-Residential Service Recipients that are required by Municipal Code to subscribe to this service. Franchisee will notify City within two (2) Working Days if a Non-Residential Service Recipient declines Compostable Materials service. Franchisee shall be entitled to charge Non-Residential Service Recipients that subscribe for Compostable Materials Collection services not more than the unit price rate charged for an equivalent level of Garbage service, as set forth in EXHIBIT B, and not more than the Service Recipient was paying for Garbage service before the Compostable Materials Collection program was implemented, so long as the Service Recipient does not increase the total amount of materials discarded.

Franchisee shall contact Non-Residential Service Recipients (including, but not limited to, restaurants, corporate employee cafeterias, markets, grocery stores, delis, sandwich shops, and florists) that subscribe for at least 4 cubic yards of Garbage service and no Compostable Materials service, and enroll them in the Compostable Materials Collection program. Franchisee shall offer to provide them an appropriate City-approved Compostable Materials Collection container and whenever possible reduce their Garbage service level. Franchisee shall notify the City within five (5) Working Days if said offer is rejected by the Service Recipient. Franchisee shall ensure that the total cost to such Service Recipients of Garbage service and Compostable Materials service combined will not increase due to the substitution of Compostable Materials capacity for Garbage capacity, so long as the Service Recipient does not expand the business or increase the total amount of materials discarded.

Franchisee will assist the Service Recipient in subscribing for appropriate container volumes and frequency of collection so that the Service Recipient is adequately served given the space available. Franchisee shall add collection routes and days, including Saturday Garbage, Recyclables, and Compostable Materials service to adequately provide collection service to all Service Recipients impacted by lack of space for additional containers. If Sunday collection service is needed to accommodate Service Recipient needs, Franchisee shall propose a Sunday service rate schedule to the City for consideration per Section 12.3 Special Maximum Rate Adjustments.

Franchisee shall provide Compostable Materials Containers to each Non-Residential Service Recipient in accordance with the service level subscribed for by the Non-Residential Service Recipient. Franchisee shall collect Compostable Materials from each Non-Residential Compostable Materials Container as often as subscribed for by the Non-Residential Service Recipient.

4.9.3 Non-Collection - Franchisee shall not be required to collect any Compostable Materials that are not placed in Compostable Materials Containers. In the event of a non-collection, Franchisee shall leave a Non-Collection Notice (NCN). Franchisee shall notify the City, by email within two (2) Working Days of the driver observing an estimated 10% or more contamination of Compostable Materials generated by a Non-Residential Service Recipient and where the Non-Residential Service Recipient has been responsible for contamination more than once in a calendar year. The City will contact and work with the Service Recipient to prevent further contamination by providing education and assistance to the Service Recipient. Residual from Compostable Materials, but not a full load, may be landfilled as Garbage only after the load has been screened (sorted) at the processing facility. The Franchisee's monthly report shall contain information on all NCNs and contaminated loads as specified in Exhibit G.

4.10 Debris Box, Compactor and Bin-by-the-Day Services - In addition to the Extra Services provided for in Sections 4.5.4 and 4.7.2 of this Agreement, Franchisee shall collect Recyclable Materials or Compostable Materials and Garbage in Debris Boxes, Compactors and Bin-by-the-Day Services on the schedule subscribed for by the Service Recipient. Debris Boxes shall be available in at least five (5) approximately evenly spaced sizes; 8 cubic yards, 16 cubic yards, 20 cubic yards, and larger. Debris Boxes must, at a minimum, have the capacity of the size listed on EXHIBIT B, or must be charged for at the next, lower maximum service rate.

Franchisee shall provide Compactor Services to Service Recipients who wish to use them. Franchisee shall assist Service Recipients with selection of compactors that are compatible with Franchisee's equipment. Bin-by-the-Day Services and Debris Box Services may be used by Residential and Non-Residential Service Recipients to dispose of Bulky Goods and oversized Compostable Materials which would not fit into a normal Garbage Container, or for volumes of Garbage that exceed the normal service provided. In the event of a compactor failure, Franchisee shall provide immediately and within one (1) business day, a sufficient number of containers to satisfactorily accommodate the solid waste generated.

For billing and compensation purposes, all Debris Box and Compactor Services and Bin-by-the-Day Services are classified as Extra Services under this Agreement. Maximum charges to the Service Recipients for these services shall be the rates listed in EXHIBIT B.

4. Article 9 – Additional Services, Sections 9.1.2, 9.1.3, 9.1.4, and 9.3 are modified and 9.1.5, 9.1.6, 9.3.1, 9.2.1, 9.2.2, and 9.2.3 are added to read as follows:

9.1.2 Phone and Email Service - A Customer Service Representative shall be available at all times at the Franchisee's principal office, and shall be accessible by a local toll-free telephone number to City and Service Recipients at least during the hours of 7:30 AM to 4:30 PM, Monday through Friday, except for Holidays. The Franchisee shall maintain an email address for customers to use. All customer service representatives shall be knowledgeable about all services offered under this Agreement, including the availability to multi-family Residential Service Recipients of On-Call Collection Services as detailed in Exhibit E, and able to assist on any matters which relate to the Franchisee's performance of services. The Franchisee shall respond to all calls, emails, and walk-in requests regarding missed service, damaged or leaking bins, leaking collection vehicles or collection bins that have been placed by Franchisee in driveways or in the middle of the street, within one (1) Working Day of Service Recipient's request for assistance. A telephone answering machine shall be available for customers to leave a message at all times. The telephone numbers shall be listed on the Franchisee's website for Cupertino Service Recipients. Franchisee shall maintain an emergency telephone number for use when the listed telephone number is not attended. The emergency telephone number shall be available only to City Representative and designees.

9.1.3 Website - A webpage shall be maintained by the Franchisee which will represent all of the Franchisee's unique services available in the City of Cupertino and will provide easy access to information, as well as instruction on how to maximize and correctly utilize services, especially to help prevent contamination of Recyclable and Compostable Materials that are intended for processing or further use. The website should include a detailed breakdown of debris box and compactor rates. Franchisee shall provide a dedicated email address for customer service and list it on the website. Changes to Recology's website shall be pre-approved by the City.

9.1.4 Service Recipient Inquiries and Complaints - All incoming calls shall be answered within a maximum of four (4) rings. No call shall be "on-hold" in excess of one (1) minute. If City receives more than two (2) complaints a month regarding the amount of time Franchisee placed a caller on hold or if Franchisee did not respond to a caller within four (4) rings, liquidated damages covered under Section 12.5 may be applied.

Franchisee shall make return calls to customers from messages received. Franchisee shall make three (3) attempts to return the call within one (1) Working Day of the receipt of the call. If Franchisee is unable to reach the caller in three attempts, Franchisee shall send a postcard to the caller on the second Working Day after the call was received, indicating that the Franchisee has attempted to return the call. All attempts to contact the caller shall be recorded on the log kept by Franchisee.

Franchisee shall record all complaints in a log which includes the date, time, nature of the complaint, complainant's name and address (if the complainant is willing to give this information), and nature and date and manner of resolution of complaint. This log shall be in a format approved by City, and shall be available for inspection by City during Franchisee's office hours upon City's request.

Franchisee shall maintain a computer link that allows the City to access and view the customer service and complaint database at any time from a computer located at the Cupertino City Hall, but the City shall not have the ability to make any changes to the database.

9.1.5 Building Plan Review: Franchisee shall provide assistance to City by reviewing and providing comments on applications for City permits to construct new buildings or to remodel existing buildings. Franchisee shall review building plans for adequate space to accommodate the number and size of containers specified by the applicant for Garbage, Recyclable Materials, and Compostable Materials for adequate collection vehicle access and turnaround. Franchisee shall provide City, within ten (10) business days of receiving the plans, its comments on the plans including any recommendations regarding such matters. Notwithstanding any other provision of this Agreement, Franchisee shall have no liability to City or others with respect to such comments. City understands and agrees that such comments will not represent the opinion of a design, engineering or construction professional.

9.1.6 Waste Characterization (Generation) Studies – To collect greenhouse gas reduction (GHG) data and landfill reduction data required by the City's Climate Action Plan (CAP) to be included in annual updates to City Council, Franchisee shall assist a City-hired consultant to conduct a waste characterization study at all locations where Cupertino materials are comingled or processed with other agencies' materials. The main purpose of the studies is to determine a reasonably methodology which is reasonably accurate for determining the City's percentage of residual that is landfilled as a result of Compostable Materials processing. A secondary purpose of the studies is to gather information regarding the City's Recyclable, Compostable organic, and landfill materials being delivered to processing facilities or landfills from multiple routes and/ or vehicles for the commercial, single-family residential, multi-family, and municipal sectors. City shall pay the consultant directly and Franchisee shall work with the consultant to provide a waste characterization plan for City approval which details methods, proposes material types to study, dates and times of studies, and number of sites to study in each sector. City staff shall be allowed to observe all studies.

9.2 Public Education & Outreach - Franchisee shall participate in all of the activities designated in the Public Education and Outreach Plan attached to this Agreement as EXHIBIT C. The Franchisee shall implement all of the elements of

the Franchisee's On-Going Public Education & Outreach Plan described in EXHIBIT C. Any changes to the Plan by Franchisee must be approved in advance by the City.

9.2.1 Outreach Materials - All printed and digital outreach materials (other than bills) produced by Franchisee relating to services provided under this Agreement, and sent to Service Recipients or distributed publicly as part of Franchisee's public education and outreach activities, shall be approved by City prior to being printed for distribution (such approval not to be unreasonably withheld, conditioned or delayed by City). A draft of all text and illustrations shall be provided to the City at least two weeks in advance of production of the final document. All reasonable comments provided by the City Representative shall be incorporated, and the final version of the text and illustrations shall be acceptable to both City and Franchisee.

9.2.2 Pilot Programs - Franchisee shall support City-paid pilot programs that may be developed by City staff to expand use of available services and pursue highest and best use of materials.

- (a) Split cart collection of garbage and food scraps and/or split cart recyclables
- (b) Multi-family valet service - transport waste materials from residents' doors to trash enclosures,
- (b) Waste leader program - train and engage a network of community recycling and composting waste leaders, and
- (c) Early collection - additional routes to enhance bicycle safety similar to previous pilots conducted in the tri-school area.

9.2.3 Support of City, County, State, and Federal Policy - Franchisee will support the City's Extended Producer Responsibility Policy and will write letters in support of Legislation promoting extended producer responsibility objectives, philosophies and programs. Franchisee will develop and adopt an extended producer responsibility policy to cover its operations in Cupertino.

9.3 Change in Recyclable or Compostable Materials Collected

9.3.1 Change in Recyclable Materials Collected

A. Subject to changing markets for recyclable materials, Franchisee shall timely recommend to City update of Exhibit A to prevent contamination that could cause the Recyclable or Compostable Materials to be rejected at a recycling or composting facility. In the event City or Franchisee, during the term of this Agreement, proposes to add or remove materials to the list of Recyclable Materials to be collected, processed, and marketed by Franchisee, such materials shall be added to or omitted from the list in EXHIBIT A of this Agreement, if mutually agreed to in writing by City and Franchisee.

B. If Franchisee proposes the addition or omission of a material, the proposal shall be in writing, and include the extent to which the addition or omission of the proposed material will assist or hinder achieving a 75% diversion rate and would require a modification of the current Recyclable Materials collection vehicles, the use of an additional Recyclable Materials Container, and the use of additional collection vehicles, and shall notify City of the estimated costs of adding the proposed material.

C. If City proposes such addition or omission in writing, Franchisee shall submit a written proposal detailing how the materials would be handled and the cost of adding or omitting the materials within thirty (30) calendar days of City's request. City shall respond in writing to Franchisee's description of changes and costs of implementation within thirty (30) calendar days of Franchisee's notification to City.

D. Both parties shall negotiate in good faith for the purpose of reaching an Agreement for the addition or omission of the proposed material and a schedule for the implementation of the revised collection of such material. The City Representative is authorized to negotiate on behalf of City and to approve the additional material and implementation schedule, but any agreement which would result in additional compensation to Franchisee, shall not become effective unless approved by the City Council.

E. Franchisee shall notify all Service Recipients, and include notification on the Franchisee's Cupertino Services webpage, of the changes in materials being recovered before any changes in the program are implemented.

F. During the course of this Agreement, City may approve a ban on landfilling selected material types. This ban will likely take the form of a requirement that the Franchisee not collect Garbage Containers that contain visible quantities of the banned materials. Franchisee agrees that if City does enact such a ban, Franchisee will support this ban by complying with City's request to not collect contaminated loads. In the event of non - collection, Franchisee shall leave a Non - Collection Notice (NCN).

5. Article 11 – Payments to City, Section 11.6 is modified to read as follows:

11.6 Payments to City - Franchisee shall remit to City, within forty (40) days of the end of each month, a Franchise Fee in the amount of twelve percent (12.0%) of all Revenues from all sources relating to this Agreement collected in the prior month, except for the revenues from the sale of recyclable materials and from the Household Hazardous Waste Fee (as defined below).

Franchisee shall also remit to City, together with the Franchise Fee, a Solid Waste Fund Operations Fee in the amount of seventeen percent (17.0%) of all Eligible Revenues.

Payment of the Franchise Fee and Solid Waste Fund Operations Fee to City shall be accompanied by sufficient documentation to identify the source of all revenues. This documentation shall include, at a minimum, specifics for each account, the amount billed, the amount collected, a listing of accounts which received Excess Services and the amount of Extra Services provided, and a listing of accounts which are delinquent.

All fees from the Newby Island landfill for disposal of debris box and compactor loads generated under this Agreement shall be invoiced by Republic Services (Newby Island landfill) to Franchisee, and paid directly to Republic Services by Franchisee, except that fees for disposal of debris box and compactor loads collected by Franchisee from City facilities shall be reimbursed by City to Franchisee as a credit toward the Franchisee's monthly remittance to the City for Solid Waste Fund Operations Fees. Franchisee's payments to Republic Services and requests to the City for reimbursement of City debris box and compactor disposal fees shall be sufficiently itemized and documented in the Franchisee's monthly remittance report to the City. Such reports shall track the debris box and compactor tonnage collected by Franchisee from within the jurisdictional boundaries of the City, the types of materials disposed or recycled, and all disposal fees paid to Republic Services for debris box and compactor loads disposed or processed at the Newby Island landfill.

Franchise Fees are due on all revenues and Solid Waste Fund Operations Fees are due on all Eligible Revenues collected from the performance of this Agreement following the termination of this Agreement.

6. Article 12 – Franchisee's Compensation, Section 12.4 is modified to read as follows:

12.4 Cost Adjustment Request for Compostable Materials Processing – Franchisee may propose a cost adjustment for Non-Residential Service if necessary to cover the additional cost of processing collected commercial Compostable Materials above the agreed 2015 baseline amounts². However, the City retains the right to approve, disapprove or modify any such request for additional compensation. Franchisee's request shall include a report of revenue collected as a result of this exclusive Franchise Agreement and all costs associated with the processing of additional Compostable Materials at a City approved facility.

Increases in revenues to Franchisee from sale of Recyclable Materials (above the revenues from the first year of this Agreement) and from sale of products produced from Compostable Materials Processing shall be used to partially offset the increases in Compostable Materials Processing costs identified

² The 2015 baseline amounts are 5,879 tons organic materials processed at a cost of \$64.29/ton and hauling/loading cost of \$16.31/ton which amounts were included in the 5.28% commercial & multi-family rate increase effective July 1, 2016.

in subsequent years.

To evaluate any such changes in cost, the City may direct and pay for an audit to establish Franchisee's cost and revenue. The audit may include, but will not necessarily be limited to, quantifying increased cost of processing commercial organics, if any; quantifying revenue collected as a result of this exclusive Franchise Agreement; and itemizing costs associated with processing of Compostable Materials at a City approved facility.

Franchisee will provide the City with annual reports (by March 2 each year, for the period of January 1 through December 31 of previous year) using the same metrics as used in the City's 2016 audit, and showing Franchisee's actual costs to process Compostable Materials. Franchisee will assist and accommodate any City directed and paid audits as necessary to determine any cost adjustments that may be necessary to fund the Compostable Materials Processing services.

If Franchisee does not request a cost adjustment within ninety (90) calendar days of the of the calendar year, in any given year of this Agreement, the cost adjustment claim for that year shall be deemed waived for all purposes, and Franchisee will not be entitled to additional compensation. For cost adjustment proposals timely received by City, City retains the right to approve, disapprove or modify them. As used herein, "cost adjustment" means an increase in maximum rates and/or a payment by City to Franchisee, if necessary to cover the additional cost of processing Non-Residential Compostable Materials collected above the agreed 2015 baseline amounts³.

7. Article 17 – General Provisions, Section 17.22 is modified to read as follows:

17.22 Entirety: Agreement and Exhibits - The Agreement dated May 18, 2010 and the First Amendment dated September 2, 2014 and this Second Amendment dated December 19, 2017 represent the entire Agreement of City and Franchisee with respect to the services to be provided under the Agreement and supersedes and merges all prior written and oral statements, proposals, representations and agreements between the parties. The May 18, 2010 Exhibits D and E and amended December 19, 2017 Exhibits A, B, C, F, G, and H are hereby incorporated into this Agreement and made a part of this Agreement as though fully set forth herein.

8. Exhibits – Exhibits A, B, C, F, G, and H, amended dated December 19, 2017 (attached) hereby replace Exhibits A, B, C, F, G, and H to the Agreement. Any reference to the following Exhibits in the Agreement or Amendment refers to the Exhibit amended dated December 19, 2017:

Exhibit A – Recyclable and Compostable Materials

Exhibit B – Schedule of Approved Maximum Rates

³ The 2015 baseline amounts are (5,879 tons organic materials processed at a cost of \$64.29/ton and hauling/loading cost of \$16.31/ton which amounts were included in the 5.28% commercial & multi-family rate increase effective July 1, 2016.

Exhibit C – Public Education and Outreach Plan
Exhibit F – City Facilities Services
Exhibit G – Access to Records and Reporting Requirements
Exhibit H – Diversion Goals

9. 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

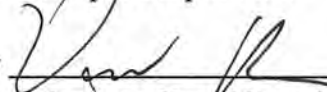
IN WITNESS WHEREOF, the parties hereto have caused this amendment of Agreement to be executed.

Recology Cupertino

By 
President & CEO, Michael J. Sangiacomo

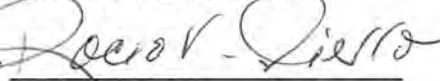
Date 1/16/18

CITY OF CUPERTINO
A Municipal Corporation

By 
City Manager, David Brandt

Recology
Reviewed by:
RG
Legal

APPROVED AS TO FORM:

By 
City Attorney, Randolph Hom

ATTEST:

By 
City Clerk, Grace Schmidt 2-5-18

EXHIBIT A: RECYCLABLE AND COMPOSTABLE MATERIALS
(Amended December 19, 2017)

“Recyclable Materials” include:

- Aluminum cans
- Aseptic containers (like those used for milk and juice)
- Glass bottles and jars of all colors
- Paper including newspaper and advertising inserts, magazines, catalogs, envelopes, junk mail and post-it notes, paperboard, flattened cereal and cracker boxes, shoe boxes, gift boxes, paper egg cartons, construction paper, white and colored paper, telephone books, paperback books, hardback books, wrapping paper, flattened corrugated cardboard boxes [boxes need not to be bundled], and brown paper grocery bags; and other similar materials)
- Plastic bags (like those used for dry cleaning, newspapers, groceries or shopping)
- Plastic bottles, jars, tubs and containers (#1-#7)
- Rigid Plastic household items and toys
- Scrap and cast aluminum foil and pans (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item)
- Scrap metal (including car parts that are drained of all fluids) pieces not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item
- Small kitchen appliances (such as toasters, blenders, hand mixers, handheld or other small electric fans)
- Steel cans including “tin” cans, empty aerosol cans, and bimetal containers;
- Used motor oil (in plastic containers with a screw on lid only)
- Used motor oil filters (in sealed plastic bags only)
- Used cooking oil (in plastic containers with a screw on lid only)
- Small dry-cell batteries (in sealed plastic bags only)
- Compact fluorescent bulbs (one or more contained in a sealed plastic bag)
- Any other materials mutually agreed to by City and Franchisee, which are separated by the generator from other discards for the purpose of returning them to economic use.

For the purposes of calculating tonnages and diversion, “Recyclable Materials” does not include residue. “Residue” is the material that cannot be recycled or composted or otherwise diverted from landfill that is separated out from Recyclable Materials or Compostable Materials and sent to a landfill. “Contamination” refers to materials that do not belong in one waste stream appearing in that waste stream in excess of 10% by visual inspection. A “contaminated load” is a load of collected material that has extraneous material in a volume deemed to be greater than 10% by visual inspection.

Franchisee will run its “Coats and Blankets for Kids” program in the fall or winter of every year and expand the program to include blankets. Franchisee will promote this program through its residential newsletter, website, quarterly utility bill inserts, newspaper ads, and the City’s website and access channel. Franchisee will launder the coats and blankets and donate them to local non-profit organizations to keep children and adults in need warm through the winter months.

“Compostable Materials” include:

- organic materials generated from tree trimming, shrubbery pruning, vegetative garden wastes, dead plants, weeds, leaves, grass clippings, and non-food vegetative matter

- all food soiled paper, such as napkins, towels, plates, tissue, cups, and take-out containers, and including pizza boxes and waxed cardboard boxes
- All food products and bones, such as chicken, turkey, fish, beef, and pork
- Coffee grounds, tea bags and filters
- Dairy products
- Pasta, bread and dough products
- All fruit and vegetables
- Paperboard milk cartons

All Compostable Materials must fit entirely within the Compostable Materials Container(s) provided.

For the purposes of calculating tonnages and diversion, “Compostable Materials” does not include residue. “Residue” is the material that cannot be recycled or composted or otherwise diverted from landfill that is separated out from Recyclable Materials or Compostable Materials and sent to a landfill. “Contamination” refers to materials that do not belong in one waste stream appearing in that waste stream in excess of an estimated 10% by visual inspection. A “contaminated load” is a load of collected material that has extraneous material in a volume deemed to be greater than 10% by visual inspection.

Collection of E-Waste and U-Waste

Franchisee will collect used motor oil, filters, compact fluorescent lamps (CFLs) and dry cell batteries from single-family (not commercial or multi-family) Service Recipients on regular collection days. Motor oil will be placed in the original retail container or other sealed, clear, plastic, or one-gallon containers approved by Franchisee, oil filters in clear zip lock bags, batteries in separate clear zip lock bags, and CFLs in separate clear zip lock bags. These materials will be placed on the ground at the curb, next to the Garbage or Recyclable Materials Containers by the Service Recipient.

All Electronicwaste and Universalwaste will be collected through the on-call collection services program, as set forth in Section 4.12 and EXHIBIT E. All collected E-Waste and U-Waste material will be brought back to the Recology yard, located at 650 Martin Avenue, and segregated into separate containers.

All collected batteries, CFLs, E-Waste and U-Waste will be recycled through AERC, Franchisee’s permitted processor. All collected used oil and filters will be recycled through Evergreen Environmental, Franchisee’s permitted processor. Franchisee will not separately charge the City for disposal of any E-Waste or U-Waste collected from residents.

EXHIBIT B: Amended December 19, 2017
SCHEDULE OF APPROVED MAXIMUM RATES
Recology Maximum Rates for the City of Cupertino
Effective November 1, 2017

B.1. RESIDENTIAL SERVICE

Service Description		<u>Maximum Rate</u>
SINGLE FAMILY (Monthly Rate):		
Curbside	1 32-gallon cart	\$ 25.49
Curbside	1 64-gallon cart	\$ 50.99
Curbside	1 96-gallon cart	\$ 76.49
Curbside	Each Additional Cart	\$ 25.49
Walk-up	1 32-gallon cart	\$ 39.18
Walk-up	1 64-gallon cart	\$ 78.37
Walk-up	1 96-gallon cart	\$ 117.55
Walk-up	Each Additional Cart	\$ 39.18
	Additional Organics/YW Cart	No Charge
HILLSIDE (Monthly Rate):		
Roadside	1 32-gallon cart	\$ 42.18
Roadside	1 64-gallon cart	\$ 84.34
Roadside	1 96-gallon cart	\$ 126.53
Roadside	Each Additional Cart	\$ 42.18
DUPLEX/MULTIPLE UNITS & YARDWASTE EXEMPT (Monthly Rate)		
Front	1 32-gallon cart	\$ 21.57
Front	1 64-gallon cart	\$ 43.13
Front	1 96-gallon cart	\$ 64.70
Front	Each Additional Cart	\$ 21.57
Back	1 32-gallon cart	\$ 33.35
Back	1 64-gallon cart	\$ 66.70
Back	1 96-gallon cart	\$ 100.05
SENIOR LOW-INCOME (Monthly Rate):		
Frontyard/Backyard	1 32-gallon cart	\$ 12.10
Exempt (No Yardwaste)	1 32-gallon cart	\$ 10.24
Hillside	1 32-gallon cart	\$ 20.01
ADDITIONAL CHARGES:		
Extra Bag Tag		\$ 7.43
10 Bag Tags		\$ 70.54
Extra Can (1-Time)		\$ 12.77

B.1. RESIDENTIAL SERVICE

Service Description		<u>Maximum Rate</u>
24HR CONTAINER SERVICE:		
Bin By The Day	4 Yard	\$ 164.88
Bin By The Day	6 Yard	\$ 201.95
Bin By The Day	7 Yard	\$ 220.47

HOUSEHOLD HAZARDOUS WASTE FEE (Monthly Rate):

Single-Family Residence (including units in Multi-Family Residences that subscribe for individual MSW cart service)	\$0.54
Multi-Family Residence (Per unit, for units that do not subscribe for individual MSW cart service)	\$0.41

LATE CHARGE FEE: 1.2% Per Month Delinquent (Not Compounded)

**B.2. NON RESIDENTIAL AND MULTI-FAMILY GARBAGE SERVICE AND
NON RESIDENTIAL AND MULTI-FAMILY COMPOSTABLE MATERIALS
SERVICE ***

** Non-Residential & Multi-Family Garbage service and Non-Residential & Multi-Family
Compostable Materials service shall never cost more than the rates for Commercial Garbage
service for the same quantity of material*

<u>Service Description</u>	<u>Frequency</u>	<u>Maximum Rate</u>
FRONT LOADER CONTAINERS (Monthly Rate):		
1.5 CY Container	1X Week Service	\$ 156.56
1.5 CY Container	2X Week Service	\$ 313.16
1.5 CY Container	3X Week Service	\$ 469.72
1.5 CY Container	4X Week Service	\$ 626.30
1.5 CY Container	5X Week Service	\$ 782.88
1.5 CY Container	6X Week Service	\$ 939.42
1.5 CY Container	Extra Pick-up	\$ 48.56
2 CY Container	1X Week Service	\$ 187.92
2 CY Container	2X Week Service	\$ 375.75
2 CY Container	3X Week Service	\$ 563.69
2 CY Container	4X Week Service	\$ 751.52
2 CY Container	5X Week Service	\$ 939.42
2 CY Container	6X Week Service	\$ 1,127.30
2 CY Container	Extra Pick-up	\$ 60.68
3 CY Container	1X Week Service	\$ 250.51
3 CY Container	2X Week Service	\$ 501.03
3 CY Container	3X Week Service	\$ 751.52
3 CY Container	4X Week Service	\$ 1,002.08
3 CY Container	5X Week Service	\$ 1,252.58
3 CY Container	6X Week Service	\$ 1,503.09
3 CY Container	Extra Pick-up	\$ 66.36
4 CY Container	1X Week Service	\$ 313.16
4 CY Container	2X Week Service	\$ 626.30
4 CY Container	3X Week Service	\$ 939.42
4 CY Container	4X Week Service	\$ 1,252.58
4 CY Container	5X Week Service	\$ 1,565.75
4 CY Container	6X Week Service	\$ 1,878.86
4 CY Container	Extra Pick-up	\$ 82.74
6 CY Container	1X Week Service	\$ 438.40
6 CY Container	2X Week Service	\$ 876.81
6 CY Container	3X Week Service	\$ 1,315.20
6 CY Container	4X Week Service	\$ 1,753.60
6 CY Container	5X Week Service	\$ 2,192.02
6 CY Container	6X Week Service	\$ 2,630.43

**B.2. NON RESIDENTIAL AND MULTI-FAMILY GARBAGE SERVICE AND
NON RESIDENTIAL AND MULTI-FAMILY COMPOSTABLE MATERIALS
SERVICE ***

** Non-Residential & Multi-Family Garbage service and Non-Residential & Multi-Family Compostable Materials service shall never cost more than the rates for Commercial Garbage service for the same quantity of material*

<u>Service Description</u>	<u>Frequency</u>	<u>Maximum Rate</u>
6 CY Container	Extra Pick-up	\$ 115.15
8 CY Container	1X Week Service	\$ 563.69
8 CY Container	2X Week Service	\$ 1,127.30
8 CY Container	3X Week Service	\$ 1,691.00
8 CY Container	4X Week Service	\$ 2,254.63
8 CY Container	5X Week Service	\$ 2,818.29
8 CY Container	6X Week Service	\$ 3,381.96
8 CY Container	Extra Pick-up	\$ 148.93
*Pushout Container	1X Week Service	\$ 55.12
Pushout Container	2X Week Service	\$ 110.55
Pushout Container	3X Week Service	\$ 165.52
Pushout Container	4X Week Service	\$ 220.80
Pushout Container	5X Week Service	\$ 276.06
Pushout Container	6X Week Service	\$ 331.43

* Container Pushout charges shall only apply to containers moved more than 25-feet to get them to the truck.

Key Service (service includes unlocking and locking receptacle) \$ 61.39

COMMERCIAL CART RATE:

Per Cart Pickup \$ 25.49

SPECIAL SERVICES:

Steam cleaning and re-delivery of bin
[shall be provided once each year without charge],
Furnishing Chains (One Time Only)

Commercial	\$ 96.29
Multi-Family	\$ 105.65

LATE CHARGE FEE: 1.2% Per Month Delinquent (Not Compounded)

B.3. COMPACTOR SERVICE

<u>Service</u> <u>Description</u>	<u>Maximum</u> <u>Rate</u>
GARBAGE COMPACTOR RATE (Per Cubic Yard) (Monthly Rate):	\$ 44.22
COMPACTOR RATE-MIXED RECYCLABLE:	
Hauling Only	\$ 405.97
Per Ton	\$ 62.85

GARBAGE, ORGANICS, AND RECYCLING COMPACTOR RATES

Description	Amount	Processor	Dirty
Garbage Compactor Rates Per Yard Per Pull	\$ 41.46	Newby	N/A
Mixed Recycling Compactor Rates Per Pull	\$ 405.97	BFI	\$ 509.99
Mixed Recycling Compactor Rates Per Ton	\$ 62.85	BFI	\$ 89.78

B.4. DEBRIS-BOX SERVICE

DEBRIS-BOX (UNCOMPACTED) SERVICE (Monthly Rate):

8 Yard Rock Box	6 Tons	\$ 448.28
8 Yard Rock Box	Each Additional Ton	\$ 43.43
16 Yard Debris Box	3 Tons	\$ 500.37
16 Yard Debris Box	Each Additional Ton	\$ 93.06
20 Yard Debris Box	4 Tons	\$ 558.64
20 Yard Debris Box	Each Additional Ton	\$ 93.06
26 Yard Debris Box	4 Tons	\$ 765.68
26 Yard Debris Box	Each Additional Ton	\$ 93.06
30 Yard Debris Box	5 Tons	\$ 905.35
30 Yard Debris Box	Each Additional Ton	\$ 93.06
40 Yard Debris Box	6 Tons	\$ 965.79
40 Yard Debris Box	Each Additional Ton	\$ 93.06

WEEKLY RENTAL FEE (Beyond Normal 7 Days): \$ 151.22

LATE CHARGE FEE: 1.2% Per Month Delinquent (Not Compounded)

SOURCE SEPARATED RECYCLING*:

	08DOR	08DOR	16-40DOR	16-40DOR
	Clean	Clean		
	Dirt	Concrete	Clean Wood	Sheet Rock
Haul Rate	\$ 448.28	\$ 448.28	\$ 448.28	\$ 448.28
Recycling Rate per ton	\$ 43.43	\$ 43.43	\$ 43.43	\$ 43.43

OTHER MISCELLANEOUS RATES

Description	Code	Amount
Daily Rental Rate For Boxes Beyond 7 Days	RENT	\$ 23.80
Weekly Rental Rate For Boxes Beyond 7 Days	RENT	\$ 151.22
Trip Charge For Empty Debris Box/Compactor (No Dump)	TRIP	\$ 89.66
Dry Run, Scheduled Service Bin Empty	TRIP	\$ 179.31
Relocate Container After Initial Delivery	RELOC	\$ 89.66
Same Day Cancellation (No Dump)	CANCL	\$ 59.77
Steam Clean after exchange bring back to yard	TRIP	\$ 179.31

EXHIBIT B SHALL BE REVISED TO REFLECT ANNUAL RATE ADJUSTMENTS PER THE CPI FORMULA SPECIFIED IN THIS AGREEMENT

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH PLAN
(Amended December 19, 2017)

Franchisee's outreach and education goal will be to supplement the City's efforts to create visibility, awareness and support for both new and ongoing diversion programs..

The City may develop pilot programs in pursuit of diversion goals. Franchisee will support pilot programs per Section 9.3.2 through accommodations such as, but not limited to, temporary adjustments to collection routes, changes in type or size of collection carts and bins, and changes in signage or labels.

Franchisee's focus will be:

Proactive Communications: Franchisee will complement the City's communications efforts. Franchisee will:

- Comply with all City communications requirements.
- Create a clear and compelling direct mail piece that articulates changes, enhancements, schedules, and simple instructions to make participating in the recycling programs easy.
- Maintain a website for customer use, with links to additional resources.
- Place program advertisements in local newspaper.
- Produce and distribute service brochures for single-family and commercial service units. Poster will be provided to commercial service customers also.
- Support and participate in the City's events.

Being Visible and Accessible during ongoing public education: There will be many opportunities to be visible and accessible as the City continues to roll out its expanded program. Franchisee will:

- Support, participate and join all City-sponsored events, and festivals as well as community and neighborhood meetings, organized for the purpose of promoting and educating residents relative to the City's program.
- Support, participate and join all City-sponsored media initiatives (including the preparation of press kits).
- Hold informational meetings at City hall to answer questions and pass out informational brochures.

• .

Franchisee Facilities as a Resource: Franchisee will make their facilities, including the processing facilities to be utilized during the term of the contract, available for the public education process:

- With the City's approval and in tandem with its efforts, Franchisee will work to generate and grow media interest by offering facility tours and encouraging them to promote the City's program using these facilities as a focal point.

Youth Engagement:

- Franchisee will increase efforts to promote recycling in the community and particularly in local schools, recognizing that waste generated by schools in Cupertino affects the City's diversion.

Being a Good Neighbor: Franchisee will focus on building a partnership and enrolling the rich expertise that resides within the community to ensure the recycling program is successful. Franchisee will:

- Look for and enroll community partners to help conduct public education and community outreach services with particular emphasis on communication with its many constituencies.
- Enlist the creativity, support and partnership of community organizations to help promote the City's program. (They will have great ideas!)

Proactive Communications: To complement the City's on-going communications efforts, Franchisee will:

- Comply with all City communications requirements.
- Notify City a month in advance about noticeable operational changes (route audits, website changes).
- Attend meetings with the City, monthly for the first year of the amended contract, then quarterly or as needed. Franchisee's management shall convene an internal meeting with drivers and other staff at least once a year to review requirements and provide training.
- Produce an annual *Public Education & Outreach Plan* each year and submit it to the City no later than September 1st each year for the term of the contract
- Create annually at least one clear and compelling direct mail piece (multi-lingual) for all residents. This piece will be professionally created and will articulate changes, enhancements, schedules, and simple instructions to make participating in the residential

collection easy for the City's residents. The piece will be made available in Mandarin on Franchisee's website.

- Create at least four distinct City-approved public education outreach campaigns per year focusing on increasing diversion. These campaigns will correspond to the seasons of the calendar year and/or program elements that prove to be challenging for residents to understand (because the hauler sees problems in the field that can be corrected through public education). Campaigns could include distribution of tools to aid program implementation, door to door outreach, neighborhood workshops, school assemblies, creek cleanups & associated education, website, and social media. The themes of these campaigns may be as follows:
 - **FALL** - Reinforce procedures for participating in the program correctly. Special attention will be paid to educating residents to reduce the most common problems seen during the year. Franchisee will conduct a coat and blanket drive in the fall or winter.
 - **WINTER** - Holiday tree recycling - critical information people need to know in order to participate in the program correctly.
 - **SPRING** - Review of the basics and remind people what's okay and what's not:
 - Timeframe in which to set out carts for service: Avoid placing carts out too early (more than 24hrs in advance or more than 12 hours in advance in a bike lane).
 - Incorporate bike friendly messaging that aligns with the City of Cupertino 2016 Bicycle Transportation Plan. Franchisee shall curb carts to help keep the bike lane clear.
 - Correct placement of carts for service.
 - Avoiding contamination: What's acceptable and what's not in Compostable and Recyclable Materials Containers.
 - **SUMMER** - Reinforce messages emphasized in the spring campaign, and focus on areas where non-compliance has become a problem that public education can correct.

Franchisee will:

- Develop supplementary simple informational pieces to support the above periodically conducted campaigns.
- Maintain an active website for customer use with links to the City's website.
- Create a YOUTH campaign to engage and educate children about this program.
- Place promotional ads on all residential collection trucks to promote collecting food scraps in Compostable Containers or proper disposal of household hazardous waste provided

the City pays Franchisee for the cost of ad signs and brackets. Recology would invoice the City for truck ads.

- Attend meetings with the City to ensure consistency and coordination in all public education and outreach messages and campaigns.

Franchisee Facilities as a Community Resource: Franchisee's facilities, including processing facilities, will be made available for City staff and public education purposes.

Youth Engagement: Children will be an integral part of our on-going public education efforts. Franchisee will:

- Comply with all City requirements relative to engaging youth. In particular, Franchisee will create and implement on an annual basis, a customized Youth Community Outreach Campaign.
- Continually promote recycling in the community and particularly in local schools.
- Make contact with school leaders to determine the best ways to involve teachers, students and schools as a whole, to engage this special constituency in ways that work for them.
- Ensure all Franchisee displays are geared to and easily understood by kids.

Promote Community Health and Safety: Franchisee will strive to do this every day in every neighborhood they serve with the goal of expanding the good neighbor efforts that have been successful up to this point. Franchisee will:

- Expand the use of community partnerships to gain help in conducting on-going public education and community outreach services.
- Enlist the creativity, support and partnership of community organizations to help promote the City's on-going program.
- Continue and expand efforts to support worthy community organizations through an on-going charitable cash and in-kind contributions program.
- Continue and expand efforts to support community safety and crime prevention programs. This is natural since the trucks are ever-present in the neighborhoods and communities.

EXHIBIT F: CITY FACILITIES SERVICES
(Amended December 19, 2017)

Franchisee shall provide collection and processing of Recyclable and Compostable Materials and collection and disposal of Garbage, at no charge, to the following City facilities:

City Hall & community center

Library

Quinlan Community Center

Senior Center

Sports Center

All City Parks (to be determined)

Public Works Service Center

Traffic Operations Center (Franco Ct.)

McClellan Ranch Preserve

Monta Vista Recreation Center

Compost Site

Special event service at creek cleanups, Fall Festival, Diwali, Lunar New Year, Independence Day, Earth Day, and other events, all as mutually agreed.

EXHIBIT G: ACCESS TO RECORDS AND REPORTING REQUIREMENTS
(Amended December 19, 2017)

City, its employees and agents shall have access to records and files which are generated or created in connection with Franchisee's performance of this contract and the delivery of services. Franchisee shall be required and hereby agrees to provide access to these documents/files to City, its employees and agents during regular business hours and after receiving reasonable notice from City.

The information required for the monthly and annual reports in sections 1 through 3 of this Exhibit G, shall meet the reporting requirements of the California Integrated Waste Management Act, as such Act may from time to time be amended. In addition, each Monthly Report shall include the information described in Sections 1 through 3 of this EXHIBIT G. Franchisee shall provide these reports electronically only, in an editable format approved by City, such as Excel or Word.

Franchisee shall produce and maintain a list of businesses and business structures that are required by the municipal code and by AB 1826 to subscribe to organics collection service as referenced in Article 4.9. Franchisee shall provide this list to the City at least 6 months prior to the implementation dates specified in Article 4.9. On request, the complete list of businesses and business structures that are required by the municipal code and by AB 1826 to subscribe to organics collection service shall be made available to City within 10 Working Days (up to five times during the Agreement).

1. Monthly Reports.

Franchisee shall provide sufficient staff to meet reporting requirements and shall submit, within forty (40) calendar days following the end of each month, a Monthly Report on the amount of Recyclable Materials collected, Compostable Materials collected, Garbage collected and disposed, and materials collected at City-wide recycling events. In such Monthly Reports, Franchisee shall: (i) Report total number of businesses without recycling service and without organics service that reasonably appear, based on subscribed level of service (and, for MFDs, number of units), to be required to recycle or compost per the municipal code, AB 341, or AB 1826; and (ii) List commercial and multi-family accounts that do not subscribe to Recyclable Materials collection service or Compostable Materials Collection service due to a backhaul program utilized by the Service Recipient where Franchisee is aware of such backhauling.

To support the City's participation in the U.S. EPA Food Recovery Challenge, the data on Compostable Materials diverted from landfill shall include a breakdown between food waste and yard waste in tonnage rounded to two decimal points..

1.1 Monthly Summary.

The Monthly Report shall contain a summary of the information reported

pursuant to Section 1 of this EXHIBIT G. Reports shall also contain a description of milestones achieved; changes in staffing levels; a listing of special occurrences such as any drop in tons diverted from the previous month due to contamination; and any other relevant information, including details of any City-wide Recycling Days which occurred during that month.

1.2 Monthly Report on Debris Box and Compactor Revenue and Disposal Cost.

The Monthly Report shall detail separately the monthly tonnage and revenue collected from both debris boxes and compactors (this revenue is excluded from Eligible Revenue). In addition the Monthly Report shall set forth separately for debris boxes and compactors, the landfill disposal costs for all loads excluded from the Eligible Revenue and for which Franchisee pays Newby Island Landfill (Republic Services) directly.

1.3 Sales of Recyclable Materials and Compostable Materials.

The Monthly Report shall contain a Monthly Recyclable Materials and Compostable Materials sales statement showing: type of material, the name of each buyer, date of sale, terms of sale, quantity sold (in tons or cubic yards), and net sales (net sales means gross sales minus both sales returns and sales allowances). Tonnages sold at different prices during the month must be reported separately. Adjustments to previous months' sales (such as for contaminants) shall be reported on the current statement as a reduction in sales and referenced to the statement for the prior month in which the original sale was actually reported.

Franchisee shall provide City, in each Monthly Report, a list of addresses for all households that have received a backyard Compost Bin during the month covered by such Monthly Report.

1.4 Contaminants.

The Monthly Report shall include a statement of the weight (in tons) of contaminants in the Recyclable Materials and Compostable Materials collected during the month, the weight of the contaminants expressed as a percentage of the Recyclable Materials and Compostable Materials collected, and a description of the disposal methods for the contaminants.

On a quarterly basis, Franchisee's monthly report shall include the tonnage⁴ attributed to Cupertino which was taken to landfills other than Newby Island as residual from organics screening or processing at any Recology facility. The monthly report shall include the Franchisee's methodology for estimating what percentage of jurisdictionally commingled non-compostable tonnage that was landfilled is attributable to Cupertino and reported to CalRecycle through the Disposal Reporting System (DRS).

⁴ Tonnage rounded to two decimal points
December 2017

The Franchisee's monthly report shall contain information on all loads of Recyclable Materials and Compostable Materials that are rejected at the Recyclable Materials processing facility or Compostable Materials processing facility respectively, including the date and time the load was rejected at the processing facility, the Franchisee truck number, and the materials in the load that required the load to be landfilled.

Franchisee shall provide, in each Monthly Report, a list of the Service Recipients' with more than an estimated 10% observed contamination of Recyclable Materials or Compostable Materials that were reported to City under Sections 4.8.3 and 4.9.3. The list of Service Recipients' accounts shall include the business name, account holder's name and contact information, address, the date and time the contaminated load was observed by the driver, the Franchisee truck route, truck number, and the contaminants observed in the load that required non collection, or the load to be landfilled.

1.5 Problems Encountered.

The Monthly Report shall include an account of problems encountered during the reporting period in connection with Recyclable Materials and Compostable Materials Collection (including scavenging), processing and/or marketing, a list of Non-Residential Service Recipients that declined to accept Compostable Materials or Recyclable Materials collection, the date the service was declined, the date the City was notified, reasons Non-Residential Service Recipients gave when asked why they declined to accept Compostable Materials or Recyclable Materials service, and the actions taken by Franchisee in response. The report shall include a description of problems relating to non-collection because of contamination in the Recyclable Materials Containers and Compostable Materials Containers or because of blocked access. The report shall also include a description of Recyclable Materials and Compostable Materials rejected at the processing facility (by type of material and tonnages), reason(s) for rejection, and Franchisee's disposal method and final destination for the rejected load.

1.6 Public Education Activities.

The Monthly Report shall include a description of the public education and community relations activities performed by Franchisee during the month and Franchisee's evaluation of the success of such activities in promoting the Programs or in addressing problems encountered by Franchisee.

1.7 Service Log.

The Monthly Report shall contain a copy of Franchisee's telephone, e-mail, and voice message complaint log, and include the name and address of each caller, the reason for the call, details on each complaint and a description of how each complaint was resolved.

The Monthly Report shall contain a list of all known occurrences of service

deficiencies listed in section 12.5 Liquidated Damages including but not limited to all pickups missed, too-early collections, and vehicle fluid leaks that occurred during the reporting period, with the date, the truck route, the truck number, the driver's initials or employee identification number, and a description of the response to each call.

1.8 New Service Recipients.

The Monthly Report shall contain a listing of all new Service Recipients, including their name, address and level of service.

1.9 Non-Residential Compostable Materials Service Recipients.

The Monthly Report shall include a list of all changes to Non-Residential Service Recipient accounts (e.g. new accounts, changed accounts) that subscribe to Compostable Materials Collection service. This list of changes shall inform the City of the level of service provided (frequency and container size), collection days, the address of the collection location, the address of the account holder if it is different, and if a Non-Collection Notice (NCN) has been left by the Franchisee for such Service Recipient.

1.10 Loads Rejected by the Processor

The Monthly Report shall include a list of any Non-Residential loads of (Compostable Materials, Recyclable Materials or Garbage) that are rejected by the processor, the date that the load was rejected, the Service Recipient's name and address, the type of material collected and the reason that the material was rejected.

1.11 Tonnage for Re-TRAC to support City's participation in U.S. EPA's Food Recovery Challenge.

Franchisee will enter in the Re-TRAC database, Franchisee's good faith estimates of annual tonnage for Residential and Non-Residential food waste composted (excluding residual).

2. Compost Quality Reports.

On April 1 and October 1 of each year of this Agreement, Franchisee shall provide City with copies of Laboratory reports on the quality of the Compost Materials produced from the Compostable Materials collected in City sometime in the prior three months, and on the compost materials provided to City as required in Section 8.1 of this Agreement.

3. Annual Reports.

3.1 Annual Report Submitted By Franchisee.

To be consistent with CalRecycle's Annual Report periods, Franchisee shall provide its annual report to the City for the calendar year. Within 60 days

following the end of each calendar year, Franchisee shall provide City with an Annual Report containing: a summary report of the Monthly Reports for the year, including information on the total annual quantities of Garbage collected and disposed, Recyclable Materials collected, and Compostable Materials collected. The Annual Report shall detail the Compostable Materials collected broken down by the tonnage and cubic yards of food waste collected and the tonnage and cubic yards of yard waste collected.

The Annual Report shall contain a discussion of public awareness activities and their impact on recycling participation and recovered amounts, and a discussion of highlights and other noteworthy program experiences, along with measures taken to resolve problems, increase efficiency, and increase participation.

The Annual Report shall also contain a detailed discussion of the progress made during the year toward meeting a fifty percent (50%) diversion rate for Non Residential Service Recipients and for multi-family sectors as calculated in Exhibit H.2.

Franchisee shall annually provide, in a Microsoft Excel format, or other electronic format acceptable to City a Residential and Non-Residential report that summarizes container sizes and service levels. City and Franchisee shall meet to discuss incorporating the changes requested and possibly streamlining current reporting items in the monthly report.

3.2 Vehicle Fleet Information.

Each year of the term of this Agreement, Franchisee shall submit to City, as an attachment to the Annual Report, all information required by Section 6.1.6 of this Agreement.

3.3 Audited Financials.

After the end of each fiscal year of Franchisee, Franchisee shall submit to City a copy of its audited financial statements for such year. Such audited financials shall include all of Franchisee's revenues under this Agreement during such fiscal year.

4. End of Agreement Reports.

Reports covering the last period of this Agreement will be due following the end of collection services, on the schedule stated in this EXHIBIT G.

EXHIBIT H: DIVERSION
(Amended December 19, 2017)

H. Calculation to determine the City's diversion rate for 2018 for residential (population) and commercial (employment) sectors.

For purposes of determining if the requirements of the Agreement, including those under Paragraph 2.2.1 are met, the following CalRecycle Disposal Reporting System (DRS) "Diversion Equivalent Rate" (DRE) formula shall be used:

$$DRE = [1 - (\frac{Annual\ Per\ Capita\ Rate}{2 \times Target\ Rate})] \times 100$$

As an example, for Cupertino's Population (Residential) Diversion Rate Equivalent (DRE) for 2012 , using the 2012 CalRecycle pounds per person per day target with 2012 annual actual (as shown in the below table), is as follows:

CalRecycle Disposal Rate Target for Cupertino for 2012		
	TARGET	2012 ANNUAL(actual)
Population (Pounds/Person/Day)	4.3	2.6
Employment (PPD)	8.1	4.3

$$\begin{aligned}
 DRE &= [1 - (\frac{2.6}{2 \times 4.3})] \times 100 \\
 &= [1 - (\frac{2.6}{8.6})] \times 100 \\
 &= [1 - 0.302] \times 100 \\
 &= 69.8 \% \text{ (approximately)}
 \end{aligned}$$

And, for Cupertino's Employment (Commercial) Diversion Rate Equivalent (DRE) for 2012, the equation is:

$$\begin{aligned}
 DRE &= [1 - (\frac{4.3}{2 \times 8.1})] \times 100 \\
 &= [1 - (\frac{4.3}{16.2})] \times 100 \\
 &= [1 - 0.265] \times 100 \\
 &= 73.3 \% \text{ (approximately)}
 \end{aligned}$$

Actual calculations for subsequent years shall be based upon CalRecycle's annual municipal data collected in August of each year for the preceding calendar year (for example, data for 2016 is collected in August 2017).

Diversion calculations may exclude C&D tonnages from the Apple Park project due to the project's uniquely large size.

H.2 Calculation to determine the City's diversion rate for 2019 for Commercial and Multi-Family Franchisee collection services.

Diversion shall be calculated using the following formula:

$$(A + B) / (A + B + C) = \text{Diversion percentage for Commercial and Multi-Family}$$

A = Tons of recycled Commercial and Multi-Family materials

B = Tons of composted Commercial and Multi-Family materials

C = Tons of Commercial and Multi-Family material landfilled

Residue from processing recyclables and compostables that are landfilled shall be counted in the tons of commercial and multi-family material landfilled, not as tonnage recycled or composted.

Diversion Program Features

Single-Family Residential Services:

- Provide each residential customer with a dishwasher- safe, pitcher or pail. These pitchers or pails can be used for the in-home storage of compostable organic materials. The dishwasher compatible pitcher or pail will be convenient for residents to clean and maintain.
- Single-stream collection of commodities listed below at "Recyclable Commodities"
- Curbside collection of CFL bulbs in clear zip lock bags
- Curbside collection of dry cell batteries and cell phones in clear zip lock bags
- Curbside collection of used motor oil in 1-gallon containers and used oil filters in clear zip lock bags
- Curbside collection of E-Waste and U-Waste through on-call collection programs

- On-call collection of material and diversion of all recyclable and reusable materials
- Curbside collection of cooking oil, in 1-gallon containers marked as "Cooking Oil"
- Curbside collection of "Coats and Blankets for Kids" every fall
- Provide a four times-per-year "Environmental Day" for the collection of recyclable commodities listed below at "Recyclable Commodities"
- Distribute public outreach material highlighting the recyclables and organics collection programs
- By May 1, 2018, develop a three-minute "How to Utilize Your Organics and Recycling Cart" video for viewing on the City of Cupertino Cable access channel and for schools

Multi-Family Residential Services:

- Two On-Call collections for each resident per year at no charge per EXHIBIT E. Each multi-family complex shall be entitled to up to two on-call collections times the number of units in the complex, per year.
- Conversion to single-stream collection of commodities listed below at "Recyclable Commodities"
- Contact management of every MFD complex to initiate or expand recycling services
- Provide to each MFD unit whose complex participates in the organics collection service, a dishwasher- safe, one-half to one gallon capacity container, for the in-home storage of Compostable Materials.
- Provide each MFD unit with a "Recycling Tote Bag" for the in-home storage of single-stream recyclables
- Collection of E-Waste and U-Waste through on-call collection programs
- Provide drop-off containers at MFD management offices for dry cell batteries and cell phone recycling
- Arrange HOA presentations on the recyclables and organics collection programs
- Distribute public outreach material highlighting the recyclables and organics collection programs

- By May 1, 2018, conduct a Recycling Blitz at large multi-family developments. Recology Zero Waste Coordinators and Management will visit buildings on Saturdays to distribute "Buddy Bags" to help residents sort recyclables, along with a brochure guide
- By May 1, 2018, develop a three-minute "How to Utilize Your Organics and Recycling Cart" video for viewing on the City of Cupertino Cable access channel and for schools

Commercial Services:

- Conversion to single-stream collection of commodities listed below at "Recyclable Commodities"
- Contact every new commercial customer to initiate or expand recyclables and organics collection services
- Upon request, provide each commercial customer with a "Slim Jim" container for the indoor accumulation of organics materials
- Arrange presentations of recycling programs at civic groups, schools, community functions, City events, City and Recology websites, and the City access channel
- Distribute public outreach material highlighting the recyclables and organics collection programs
- Lend Clear Stream stands upon request for large Cupertino school events such as football games. Especially to divert food and compostable material.

**THIRD 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 Third 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 February 4, 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 and a Second Amendment dated December 19, 2017 (such agreement as so amended, the "Agreement").
- B. Pursuant to the Agreement, Franchisee contracted with the Household Hazardous Waste Collector to provide the Household Hazardous Waste Program ("HHW Program") (all capitalized terms not otherwise defined herein are as defined in the Agreement). The HHW Program generally consists of on-call curbside collection of household hazardous waste ("HHW") from single-family and multi-family residences within City. The HHW Program was funded by a Household Hazardous Waste Fee ("HHW Fee") collected by Franchisee from Residential Service Recipients.
- C. Beginning in late December 2018, Household Hazardous Waste Collector stopped providing HHW Collection services within City, citing permitting issues with its Hayward facility. Franchisee indicates it is unable to identify a replacement Household Hazardous Waste Collector or otherwise provide the HHW Program.
- D. Santa Clara County offers drop off disposal of HHW ("County HHW Program") for residents of participating cities. While not as convenient for City residents as a curbside program, the County HHW Program provides an option for residents to safely dispose of HHW.
- E. City and Franchisee have determined that the best course of action is to delete the HHW Program from the Agreement and refund to customers the HHW Fee amounts collected since January 1, 2019, as provided herein.
- F. Due to the termination of the HHW Program, the City expects increased participation in the County HHW Program to result in the City incurring unanticipated and otherwise

unreimbursed expenses and reductions in program funding for the term of the Agreement.

- G. Consistent with the Agreement at Section 12.6, City and Franchisee agree that for the period beginning January 1, 2019 and through the duration of the Agreement, Franchisee shall compensate the City for the city losses associated with termination of the HHW Program, as provided herein.
- H. In addition, City and Franchisee wish to adjust the schedule of approved maximum rates that may be charged by Franchisee to fund additional costs of recyclables processing resulting from changes in the recyclables marketplace as a consequence of China's National Sword policy.
- I. 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. Effective January 1, 2019, Article 4 – Collections Services, Section 4.17, is hereby modified to read as follows:

"4.17 Household Hazardous Waste Collection – The Household Hazardous Waste Program previously provided under this Agreement is terminated effective January 1, 2019."

- 2. Effective January 1, 2019, Article 12 – Franchisee's Compensation, Section 12.7 is hereby modified to read in its entirety as follows:

"12.7 Household Hazardous Waste Fee – Franchisee shall cease collecting the Household Hazardous Waste Fee previously established under this Agreement. To the extent Franchisee billed Residential Service Recipients for such fee on or after January 1, 2019, Franchisee shall issue a one-time credit to such affected customers in the amount so billed and shall note such credit as a line item on the customer's bill. The foregoing actions shall be taken, with respect to each affected Residential Service Recipient, on the next regular billing cycle for that customer that begins at least one (1) week after the effective date of this Third Amendment to this Agreement.

Franchisee shall pay City the amounts specified in this paragraph to compensate the City for losses associated with termination of the HHW Program (such losses, "City Losses," and such payment, the "City Payment"). The City Payment for a given calendar year shall equal (i) the number of car loads actually dropped off by Cupertino residents at County HHW events and at the Las Plumas facility during the year (together, the "County HHW Program"), multiplied by the then-

applicable cost per car charged by the County to the City for each such drop-off, all as reported by the County to the City, plus (ii) a fixed sum of \$48,611 per year, provided, however, that the total City Payment for a given calendar year shall not exceed \$93,535. The City Payment shall be payable for calendar years 2019 and 2020, and for the month of January 2021, it being understood that the City may invoice the Franchisee for partial years (e.g. quarterly, or for the month of January 2021), in which case the numbers in the preceding sentence shall be prorated. The City will invoice Franchisee for the amount of the City Payment promptly after receipt of the County's invoice to the City for the County HHW Program, which City shall provide to Franchisee with City's invoice. Within thirty (30) calendar days after the City bills Franchisee, Franchisee shall remit to the City the full amount invoiced, provided the same is consistent with this paragraph. Payment by the Franchisee of the amounts specified in this paragraph shall constitute full and complete compensation for and satisfaction of any and all claims the City may have against the Franchisee relating to termination of the HHW Program.

Example of City Payment Calculation:

If for a given 6-month period the County reports the following:

Cupertino residential dropoffs at County HHW events: 399 car loads

Cupertino residential dropoffs at Las Plumas facility: 300 car loads

\$/car at County HHW events: \$38.65

\$/car at Las Plumas facility: \$6.25

then the City Payment for that 6-month period would be calculated as follows:

$$\begin{aligned}\text{City Payment} &= (399 * \$38.65) + (300 * \$6.25) + \$24,305.50 \text{ prorated fixed sum} \\ &= \$15,421.35 + \$1,875.00 + \$24,305.50 \\ &= \$41,601.85\end{aligned}$$

3. Effective January 1, 2019, the following sections and exhibits are hereby deleted in their entirety:
 - Sections 1.24 ("Household Hazardous Waste Collector" definition)
 - Section 1.25 ("Household Hazardous Waste Program" definition)
 - Exhibit I (Household Hazardous Waste Collection)
 - Exhibit K (Proposal, Door-to-Door Household Hazardous Waste Management Program, City of Cupertino, April 21, 2009)
4. Effective January 1, 2019, the references to the "Household Hazardous Waste Fee" in Sections 1.14 (Eligible Revenue), 11.6 (Payments to City) and 12.8 (Change in City Fees), and the entire sentence referencing the "HHW Collector" in Section 14.5 (Subcontractors), are hereby deleted.
5. Effective January 1, 2020, Exhibit B -- Schedule of Approved Maximum Rates, attached hereto, replaces Exhibit B to the Agreement. The maximum rates in Exhibit B, attached

hereto, reflect removal of the Household Hazardous Waste Fee, and inclusion of an amount to cover the higher cost of recyclables processing (\$2.24/month for single-family Service Recipients, and 3.93% for all other categories of Service Recipients).

6. 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 Third Amendment as of the date first written above.

Recology Cupertino,
A California Corporation

By 
President & CEO, Michael J. Sangiacomo


Recology
Reviewed by:

Legal

CITY OF CUPERTINO,
A Municipal Corporation

By 
City Manager, Deborah L. Feng

APPROVED AS TO FORM:

By 
City Attorney, Heather Minner

ATTEST:

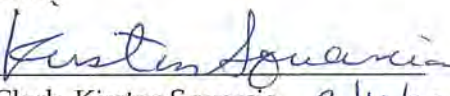
By 
City Clerk, Kirsten Squarcia 2/16/20

EXHIBIT B:

SCHEDULE OF APPROVED MAXIMUM RATES (effective January 1, 2020)

[attached]

EXHIBIT B: Amended February 4, 2020

SCHEDULE OF APPROVED MAXIMUM RATES Recology Maximum Rates for the City of Cupertino Effective January 1, 2020

B.1. RESIDENTIAL RATE SCHEDULE City of Cupertino Effective January 1, 2020

Single Family Dwelling

Curbside	32 gallon	\$29.60
Curbside	64 gallon	\$56.97
Curbside	96 gallon	\$84.34
Curbside	Add'l Cart	\$27.36
Walk-up	32 gallon	\$44.30
Walk-up	64 gallon	\$86.36
Walk-up	96 gallon	\$128.41
Walk-up	Add'l Cart	\$42.06

Additional Organics/YW Toter: No Charge

YW Exempt Residents Are Entitled To A 32g Organics cart: No Charge

Hillside

Roadside	32 gallon	\$47.52
Roadside	64 gallon	\$92.76
Roadside	96 gallon	\$138.05
Roadside	Add'l Cart	\$45.28

Duplex/Multiple Units & Yardwaste Exempt

Curbside	32 gallon	\$25.39
Curbside	64 gallon	\$48.53
Curbside	96 gallon	\$71.69
Curbside	Add'l Cart	\$23.15
Rear	32 gallon	\$38.03
Rear	64 gallon	\$73.83
Rear	96 gallon	\$109.62

Senior Low Income Rates

Front/Back Yard	32 gallon	\$15.22
Yard Waste Exempt	32 gallon	\$13.23
Hillside	32 gallon	\$23.72

Additional Charges

Extra Bag Tag	\$7.96
10 Bag Tags	\$75.72
Extra Can (1-Time)	\$13.71

24 HR Container Service

Bin By The Day	4 Yard	\$176.98
Bin By The Day	6 Yard	\$216.75
Bin By The Day	7 Yard	\$236.64

Late Charge Fee

1.2% Per Month Delinquent
(Not compounded)

B.2. MULTI-FAMILY RATE SCHEDULE
City of Cupertino Effective January 1, 2020

Front Loader Containers						
1.5 CY	1XWK	\$174.64	1.5 CY	4XWK	\$698.63	FTL1
1.5 CY	2XWK	\$349.33	1.5 CY	5XWK	\$873.30	
1.5 CY	3XWK	\$523.97	1.5 CY	6XWK	\$1,047.93	
Extra P/U = 54.17						
2 CY	1XWK	\$209.63	2 CY	4XWK	\$838.32	FTL2
2 CY	2XWK	\$419.14	2 CY	5XWK	\$1,047.93	
2 CY	3XWK	\$628.79	2 CY	6XWK	\$1,257.49	
Extra P/U = 67.69						
3 CY	1XWK	\$279.45	3 CY	4XWK	\$1,117.82	FTL3
3 CY	2XWK	\$558.89	3 CY	5XWK	\$1,397.25	
3 CY	3XWK	\$838.32	3 CY	6XWK	\$1,676.69	
Extra P/U = 74.03						
4 CY	1XWK	\$349.33	4 CY	4XWK	\$1,397.25	FTL4
4 CY	2XWK	\$698.63	4 CY	5XWK	\$1,746.59	
4 CY	3XWK	\$1,047.93	4 CY	6XWK	\$2,095.86	
Extra P/U = 92.3						
6 CY	1XWK	\$489.03	6 CY	4XWK	\$1,956.14	FTL6
6 CY	2XWK	\$978.07	6 CY	5XWK	\$2,445.18	
6 CY	3XWK	\$1,467.10	6 CY	6XWK	\$2,934.23	
Extra P/U = 128.45						
8 CY	1XWK	\$628.81	8 CY	4XWK	\$2,515.03	FTL8
8 CY	2XWK	\$1,257.49	8 CY	5XWK	\$3,143.79	
8CY	3XWK	\$1,886.31	8CY	6XWK	\$3,772.57	
Extra P/U = 166.13						

Pushout Service				Code
1XWK	\$61.50	4XWK	\$246.29	FTLPO
2XWK	\$123.31	5XWK	\$307.42	
3XWK	\$184.63	6XWK	\$369.76	

* Pushout service only applies if containers are moved more than 25ft.

Key Service	Code	Special Services	\$114.16
\$68.48	FTLK	Steam Clean and Re-Delivery of Bin (Shall be provided once per year w/o charge) Furnishing Chains (One Time Only)	

Compactor Per Cubic Yard
 \$49.33

Mixed Recy Compactor
 Hauling Only \$452.85
 Per Ton \$70.09

B.3. COMMERCIAL RATE SCHEDULE
City of Cupertino Effective January 1, 2020

<u>Front Loader Containers</u>						<u>Codes</u>
1.5 CY	1XWK	\$174.64	1.5 CY	4XWK	\$698.63	FTL1
1.5 CY	2XWK	\$349.33	1.5 CY	5XWK	\$873.30	
1.5 CY	3XWK	\$523.97	1.5 CY	6XWK	\$1,047.93	
Extra P/U = 54.17						
2 CY	1XWK	\$209.63	2 CY	4XWK	\$838.32	FTL2
2 CY	2XWK	\$419.14	2 CY	5XWK	\$1,047.93	
2 CY	3XWK	\$628.79	2 CY	6XWK	\$1,257.49	
Extra P/U = 67.69						
3 CY	1XWK	\$279.45	3 CY	4XWK	\$1,117.82	FTL3
3 CY	2XWK	\$558.89	3 CY	5XWK	\$1,397.25	
3 CY	3XWK	\$838.32	3 CY	6XWK	\$1,676.69	
Extra P/U = 74.03						
4 CY	1XWK	\$349.33	4 CY	4XWK	\$1,397.25	FTL4
4 CY	2XWK	\$698.63	4 CY	5XWK	\$1,746.59	
4 CY	3XWK	\$1,047.93	4 CY	6XWK	\$2,095.86	
Extra P/U = 92.3						
6 CY	1XWK	\$489.03	6 CY	4XWK	\$1,956.14	FTL6
6 CY	2XWK	\$978.07	6 CY	5XWK	\$2,445.18	
6 CY	3XWK	\$1,467.10	6 CY	6XWK	\$2,934.23	
Extra P/U = 128.45						
8 CY	1XWK	\$628.81	8 CY	4XWK	\$2,515.03	FTL8
8 CY	2XWK	\$1,257.49	8 CY	5XWK	\$3,143.79	
8CY	3XWK	\$1,886.31	8CY	6XWK	\$3,772.57	
Extra P/U = 166.13						

<u>Pushout Service</u>				<u>Code</u>
1XWK	\$61.50	4XWK	\$246.29	FTLPO
2XWK	\$123.31	5XWK	\$307.42	
3XWK	\$184.63	6XWK	\$369.76	

* Pushout service only applies if containers are moved more than 25ft.

<u>Commercial Garbage Cart</u>		<u>Key Service</u>	<u>Code</u>
32g Increments	\$27.76	\$68.48	FTLK

Special Services \$117.85
 Steam Clean and Re-Delivery of Bin
 (Shall be provided once per year w/o charge)
 Furnishing Chains (One Time Only)

Return Trip Fee \$15.00

Compactor Per Cubic Yard

\$49.33

Mixed Recy Compactor

Hauling Only \$452.85
 Per Ton \$70.09

B.4. DEBRIS BOX RATE SCHEDULE

City of Cupertino

Effective January 1, 2020

Description	16DO	20DO	26DO	30DO	40DO
Allowed Tons	3	4	4	5	6
Base Rates	\$558.16	\$623.16	\$854.12	\$1,009.91	\$1,077.33
Add'l Tons	\$103.82	\$103.82	\$103.82	\$103.82	\$103.82
Processor	Newby	Newby	Newby	Newby	Newby

Source Separated Recycling	08DOR	08DOR	08DO	16DOR-40DOR	16DOR-40DOR
Price Code 8	Clean Dirt	Clean Concrete Asphalt	Mix rock, dirt & concrete	Clean Wood	Sheet Rock
Allowed Tons			6		
Haul Rate	\$500.05	\$500.05	\$869.57	\$500.05	\$500.05
Recycling Process Rate per ton	\$48.45	\$48.45	\$48.45	\$48.45	\$48.45

Note: Source Separated Recycling Loads will be charged the regular box rate if contaminated or mixed

Other Miscellaneous Rates

Description	Code	Amount
Daily Rental Rate For Boxes Beyond 7 Days	RENT	\$26.54
Weekly Rental Rate For Boxes Beyond 7 Days	RENT	\$168.69
Trip Charge For Empty Debris Box/Compactor (No Dump)	TRIP	\$100.01
Dry Run, Scheduled Service Bin Empty	TRIP	\$200.02
Relocate Container After Initial Delivery	RELOC	\$100.01
Same Day Cancellation (No Dump)	CANCL	\$66.68
Steam Clean after exchange bring back to yard	TRIP	\$200.02

Garbage, Organics, and Recycling Compactor Rates

Description	Amount	Processor	Dirty
Garbage/Organics Compactor Rates Per Yard Per Pull	\$47.06	Newby	N/A
Mixed Recycling Compactor Rates Per Pull	\$452.86	BFI	\$568.89
Mixed Recycling Compactor Rates Per Ton	\$70.11	BFI	\$100.13