

**Attachment C – Second Amendment to Franchise Agreement between the City of Cupertino and Recology Cupertino - Clean Version**

**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 possible<sup>1</sup>, 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

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<sup>1</sup> 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 amounts<sup>2</sup>. 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

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<sup>2</sup> 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 amounts<sup>3</sup>.

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

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<sup>3</sup> 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

CITY OF CUPERTINO  
A Municipal Corporation

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

By \_\_\_\_\_  
City Manager, David Brandt

Date \_\_\_\_\_

APPROVED AS TO FORM:

By \_\_\_\_\_  
City Attorney, Randolph Hom

ATTEST:

By \_\_\_\_\_  
City Clerk, Grace Schmidt

**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**

<b>Service Description</b>	<b><u>Maximum Rate</u></b>
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**

<b>Service Description</b>		<b><u>Maximum Rate</u></b>
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*

<b><u>Service Description</u></b>	<b><u>Frequency</u></b>	<b><u>Maximum Rate</u></b>
FRONT LOADER CONTAINERS <u>(Monthly Rate):</u>		
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
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**COMMERCIAL CART RATE:**

Per Cart Pickup	\$ 25.49
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**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**

<b><u>Service Description</u></b>	<b><u>Maximum Rate</u></b>
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

<b>Description</b>	<b>Amount</b>	<b>Processor</b>	<b>Dirty</b>
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	<b>Each Additional Ton</b>	\$ 43.43
16 Yard Debris Box	3 Tons	\$ 500.37
16 Yard Debris Box	<b>Each Additional Ton</b>	\$ 93.06
20 Yard Debris Box	4 Tons	\$ 558.64
20 Yard Debris Box	<b>Each Additional Ton</b>	\$ 93.06
26 Yard Debris Box	4 Tons	\$ 765.68
26 Yard Debris Box	<b>Each Additional Ton</b>	\$ 93.06
30 Yard Debris Box	5 Tons	\$ 905.35
30 Yard Debris Box	<b>Each Additional Ton</b>	\$ 93.06
40 Yard Debris Box	6 Tons	\$ 965.79
40 Yard Debris Box	<b>Each Additional Ton</b>	\$ 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
	<b>Clean</b>	<b>Clean</b>		
	<b>Dirt</b>	<b>Concrete</b>	<b>Clean Wood</b>	<b>Sheet Rock</b>
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**

<b>Description</b>	<b>Code</b>	<b>Amount</b>
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 Cancelation (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 tonnage<sup>4</sup> 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).

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<sup>4</sup> 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.