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

May 18, 2010

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RESOLUTION NO. 10-097

A RESOLUTION OF THE CITY OF CUPERTINO APPROVING AND AUTHORIZING EXECUTION OF A FRANCHISE AGREEMENT BETWEEN THE CITY OF CUPERTINO AND RECOLOGY CUPERTINO

WHEREAS, the City Council of the City of Cupertino is committed to recycling and diversion and regulates the collection, reuse and disposal of recyclables, compostable materials, demolition and construction debris and garbage to protect the physical health and safety of its inhabitants; and,

WHEREAS, the City is acting under clearly expressed policies of the State of California empowering Cities to regulate the collection, reuse and disposal of recyclables, compostable materials and garbage; and,

WHEREAS, the City and Franchisee desire to enter into a Franchise Agreement for the collection and processing of recyclable and compostable materials, and the collection and disposal of garbage generated in City:

NOW, THEREFORE, the City Council of the City of Cupertino resolves as follows:

1. Public interest and the physical health and safety of its inhabitants require City to enter into the Agreement described above.

2. The City Council hereby approves the Franchise Agreement between the City of Cupertino and Recology Cupertino for the Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage and the Mayor is hereby authorized on behalf of the City to execute the Agreement between City and Recology Cupertino.

PASSED AND ADOPTED at the regular meeting of the City Council of the City of Cupertino this 18th day of May 2010, by the following vote:

Vote	Members of the City Council
AYES:	Wang, Wong, Chang, Mahoney, Santoro
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

City Clerk Deputy

APPROVED:

Mayor, City of Cupertino

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 Franchise Agreement ("Agreement") for **Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage** is made and entered into this _____ day of May, 2010 by and between the City of Cupertino, a municipal corporation of the State of California ("City") and Recology Cupertino, a California corporation ("Franchisee").

RECITALS

A. The effective and orderly handling of Garbage 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. 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 enters into this Agreement pursuant to the above authority and pursuant to City Municipal Code, Title 6, Chapter 6.24, section 6.24.010.

D. The City and Franchisee have agreed to a goal of 75% diversion of all materials collected by Franchisee within four years under the terms of this Agreement.

E. Franchisee is the current exclusive franchisee in City for solid waste and residential recyclable materials collection pursuant to the LOS ALTOS GARBAGE COMPANY FRANCHISE AGREEMENT dated December 4, 1995, as amended (the "Prior Franchise Agreement").

F. The parties have met and agreed to modify various provisions of the Prior Franchise Agreement and now desire to enter into this new Agreement to incorporate such modifications into this Agreement. As of November 1, 2010, this Agreement shall supersede and replace in its entirety the Prior Franchise Agreement.

AGREEMENT

In consideration of the mutual covenants, agreements and conditions contained herein, the parties agree as follows:

ARTICLE 1 DEFINITIONS

The definitions set forth in this Article 1 shall govern the interpretation of this Agreement.

1.1. Agreement - "Agreement" shall mean this Franchise Agreement between the City of Cupertino and Franchisee for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage, as amended from time to time.

1.2. Bin-by-the-Day Service - "Bin-by-the-Day Service" means container service between one (1) and eight (8) cubic yards in size, for a period not to exceed seven (7) days, for the Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage. Bin-by-the-Day Services would be used by Service Recipients to dispose of Bulky Goods and oversized Recyclable Materials or Compostable Materials that do not fit into a Recyclable Materials Container or a Compostable Materials Container. For billing and compensation purposes, all Bin-by-the-Day Services are classified as Extra Services under this Agreement.

1.3. Bulky Goods - "Bulky Goods" means items that weigh more than 50 pounds, are too large to fit into the appropriate wheeled cart or are difficult for one person to manage. Bulky Goods includes discarded furniture; carpets; mattresses; household appliances including refrigerators, ranges, washers, dryers, water heaters, and dishwashers and other similar items (commonly known as "white goods"); electronic equipment such as stereos, televisions, computers, VCRs and other similar items (commonly known as "brown goods"); and tires. Bulky Goods does not include any motor vehicle or any subassembly, component, or part thereof (except tires), and does not include Hazardous Material.

1.4. City - "City" means the City of Cupertino.

1.5. City Representative - "City Representative" means the City Manager, or such City employee as the City Manager may designate.

1.6. Compactor Service - "Compactor Service" means collection service in containers that compact recyclable and compostable materials, and garbage. Compactor Services would generally be used by Service Recipients to dispose of materials that can easily be densified to increase the handling efficiencies; including wastes from apartments, fast food restaurants and large businesses.

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 for the purpose of Composting, and includes without limitation those materials listed as "Compostable Materials" in EXHIBIT A.

1.8. Compostable Materials Collection - "Compostable Materials Collection" means the collection of Compostable Materials from Service Recipients as set forth in Section 4.4.

1.9. Compostable Materials Containers - "Compostable Materials Containers" means wheeled carts, and metal or plastic containers from one (1) to six (6) cubic yards in size, provided to Service Recipients by the Franchisee for collection of Compostable Materials.

1.10. Compostable Materials Processing – "Compostable Materials Processing" means the processing of Compostable Materials into compost, mulch, wood chips, or other beneficial reusable material; and excludes incinerating the material or causing the material to be landfilled.

1.11. Composting - "Composting" means the controlled decomposition of organic materials, and the production of a salable product from these materials.

1.12. Construction and Demolition Debris - "Construction and Demolition Debris" includes mixed debris and other materials resulting from the construction, remodeling or demolition of buildings and other structures; and includes concrete, asphalt, rock, dirt, wood, metal, roofing, drywall and other materials.

1.13. Debris Box Service - "Debris Box Service" means collection service in containers without compaction that are larger than eight (8) cubic yards. Debris boxes may be used for the collection of recyclable and compostable materials, or garbage. Debris Box Services would generally be used by Service Recipients to dispose of Bulky Goods, oversized Compostable Materials and Construction and Demolition Debris that would not fit into normal Recyclable and Compostable Materials, and Garbage Containers.

1.14. Eligible Revenue – "Eligible Revenue" means all revenues collected by Franchisee relating to the performance of this Agreement, including but not limited to regular service fees, Excess Service and Extra Service fees; but excluding revenues from Roll-Off Debris Box and Compactor Services, the sale of Recyclable Materials and Compostable Materials, and from the Household Hazardous Waste Fee. Eligible Revenue is the revenue upon which the Franchisee pays the City a Solid Waste Fund Operations Fee to fund the operations and administration of the City's solid waste management, public education, hazardous waste disposal, landfill diversion, and recycling programs.

1.15. Excess Service - "Excess Service" means services which are requested by the Service Recipient above the normal services, and which are provided at additional charge to the Service Recipient. Excess Service is provided to collect excess Garbage, as provided for in Section 4.5.3.

1.16. Extra Services - "Extra Services" means services which are requested by the Service Recipient above the normal services, and which are provided at additional charge to the Service Recipient. Extra Service consists of service to collect Garbage on a day other than the normal day of service as provided in Sections 4.5.4 and 4.7.2, and Debris Box Service, Compactor Service and Bin-by-the-Day Service.

1.17. E-Waste – "E-Waste" means consumer and business electronic equipment that is near or at the end of its useful life or no longer wanted by its owner. Examples of e-waste include computers, entertainment device electronics, mobile phones and items such as television sets. E-waste does not include appliances that contain Freon, such as refrigerators, freezers or air conditioners.

1.18. Force Majeure - "Force Majeure" means acts of God, fire, landslides, storms, floods, earthquakes, epidemics, civil disturbances, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, blockades, public riots, accidents to equipment that are not the fault of Franchisee through lack of maintenance, negligence or otherwise, governmental restraint, unavailability of a disposal site, and any other event which could not with reasonable diligence be controlled or prevented by the party affected by the event.

1.19. Franchise Area - "Franchise Area" means the entire area within the city limits of City at the time of execution of the Agreement, and any areas that may be annexed to City during the term of this Agreement.

1.20. Franchisee - "Franchisee" means Recology Cupertino, a California corporation.

1.21. Garbage - "Garbage" means all materials, substances and objects that are discarded, including but not restricted to, materials, substances and objects commonly referred to as "trash," "garbage," "refuse" and "rubbish" that are produced, generated or accumulated by l residential, commercial, industrial, institutional, municipal, agricultural or other inhabitants, premises or activities within the City; provided, however, that "Garbage" does not include (a) Hazardous Material, (b) Recyclable Materials (c) Compostable Materials, (d) Construction and Demolition Debris, (e) biomedical waste, (f) ash, and (g) sewage and other highly diluted water-carried materials or substances and those in gaseous form.

1.22. Garbage Containers - "Residential Garbage Containers" means wheeled carts provided by Franchisee or City for collection of Garbage from Residential Service Recipients. Franchisee shall not be required to collect Garbage from an approved Residential Garbage Container when the volume of Garbage exceeds the capacity of the Residential Garbage Container when the lid is closed. Residential Garbage Containers shall be available to Residential Service Recipients in 30-35 gallon, 60-65 gallon and 90-96 gallon capacities.

1.23. Hazardous Material - "Hazardous Material" means any material or combination of materials which because of its quantity, concentration, or physical, chemical or infectious characteristics may either: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous Material includes, but is not limited to, hazardous wastes as defined under California or United States law or any regulations promulgated pursuant to such laws, as such laws or regulations may from time to time be amended.

1.24. Household Hazardous Waste Collector – "Household Hazardous Waste Collector" means a company hired by Franchisee, and acceptable to City, to provide on-call collection of household hazardous wastes from Residential Service Recipients.

1.25. Household Hazardous Waste Program – "Household Hazardous Waste Program" means the collection of household hazardous wastes from Residential Service Recipients (including Multi-Family Residential Service Recipients, the initial specifications of which are described in EXHIBIT I.

1.26. Holidays - "Holidays" shall mean January 1, Thanksgiving Day, and December 25.

1.27. Municipal Code – "Municipal Code" means the Municipal Code of the City of Cupertino.

1.28. Non-Collection Notice - "Non-Collection Notice" means a two-part form used to notify a Service Recipient of the reasons for the non-collection of Recyclable and Compostable Materials, or Garbage, set out by the Service Recipient for collection by Franchisee pursuant to this Agreement.

1.29. Non-Residential Garbage Containers – "Non-Residential Garbage Containers" means metal or plastic bins of from 1 to 8 cubic yard capacity, provided by Franchisee for use by Non-Residential Service Recipients for garbage collection services under this Agreement.

1.30. Non-Residential Service Recipient - "Non-Residential Service Recipient" means a business, school, church or other commercial enterprise, which subscribes for service by Franchisee. Non-Residential Service Recipients generating less than 96-gallons (up to three cans) of Garbage and Compostable Materials per week may subscribe for service as Residential Service Recipients.

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 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, and any additional durable container or cardboard box approved for such purpose by City which is provided by a Service Recipient for collection of Recyclable Materials and is clearly labeled as a recycling container.

1.33. Residential Service Recipient - "Residential Service Recipient" means all residences within the Franchise Area (including all multi-family dwellings), 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.

1.34. Roll-Off Service - "Roll-Off Service" means collection of debris boxes and compactors using a roll-off truck, and includes Debris Box Service, and Compactor Service.

1.35. Schedule of Approved Maximum Rates - "Schedule of Approved Maximum Rates" means the schedule of the maximum rates that may be charged to a Service Recipient for services provided by Franchisee pursuant to this Agreement.

1.36. Service Recipient - "Service Recipient" means any residence or business located in City which subscribes to collection services by Franchisee pursuant to Article 4 of this Agreement.

1.37. Solid Waste Fund Operations Fee – "Solid Waste Fund Operations Fee" means a fee paid by the Franchisee in the amount of seventeen percent (17.0%) of all Eligible Revenues to fund the City's Solid Waste Management landfill disposal, staffing, public education materials and events, recycling programs, County household hazardous waste collection, street sweeping to clean streets after curbside collection of debris, recyclables and yard waste and any other programs that the City implements to facilitate the safe disposal or reuse and recycling of used material..

1.38. Source-Separated – "Source-Separated" Recyclable Materials means Recyclable Materials which have been segregated and placed in separate containers by materials type (e.g., cardboard, wood, scrap metal, sheetrock) by the generator for purposes of collection.

1.39. Universal Wastes – "Universal Wastes" means hazardous wastes that are generated by a wide variety of people that contain mercury, lead, cadmium, copper and other substances hazardous to human and environmental health. In general, universal waste may not be discarded in solid waste landfills. Examples of these wastes are batteries, fluorescent tubes, and some electronic devices

1.40. Walk-Up Service - "Walk-Up Service" means service provided to Residential Service Recipients wherein Franchisee's drivers will walk up into the side yard or back yard of a residence, roll out collection containers for Garbage, Recyclable and Compostable Materials, dump the contents of the containers into the truck, and return the collection containers to the location at the residence where they were when the driver arrived.

1.41. Working Day - "Working Day" means Monday through Friday (except Holidays) for single family residential services, including Saturdays following Holidays; Monday through Saturday (except Holidays) for services to multi-family dwellings and Non-Residential accounts; and Monday through Friday (except Holidays) for all other purposes under this Agreement.

ARTICLE 2 TERM OF AGREEMENT

2.1 Term - The term of this Agreement shall be for five years, from 12:00 A.M. on November 1, 2010 to 11:59 P.M. on October 31, 2015, inclusive, subject to Article 16 of this Agreement.

2.2 Option to Extend Term – Franchisee shall have the option to request an extension of this Agreement for one five-year period if it has achieved a seventy-five percent (75%) diversion rate for all materials collected by Franchisee under the terms of this Agreement before November 1, 2014. City, at its sole discretion, may choose to extend, or not extend, the Term of this Agreement, and shall notify Franchisee of its intent within sixty (60) days of notice from Franchisee. The basis for this diversion rate projection is provided as EXHIBIT H.

ARTICLE 3 EXCLUSIVE PRIVILEGE

3.1 Grant of Exclusive Franchise to Franchisee - Pursuant to California Public Resources Code Section 40059 and 49300, and except as set forth in Section 3.2, City hereby grants to Franchisee the exclusive franchise to perform the following services for all residences, multi-family dwellings, businesses and other commercial enterprises in the Franchise Area for the term of this Agreement.

A. Collection and processing of all Recyclable Materials generated in the Franchise Area; and
B. Collection and processing of all Compostable Materials generated in the Franchise Area; and
C. Collection and transportation of all mixed Construction and Demolition Debris generated in the Franchise Area; and
D. Collection and transportation of all Garbage generated in the Franchise Area.

The foregoing grant of exclusive franchise includes collection of garbage and construction and

demolition materials from Debris Boxes, Compactors and Bin-by-the-Day Service. Franchisee shall perform all of the services referred to in this Section 3.1 in accordance with the conditions, restrictions and covenants of this Agreement. Franchisee shall have the right to pursue any and all civil remedies against any person or entity it finds infringing upon its exclusive franchise rights.

3.2 Exceptions - The exclusive franchise granted to Franchisee to perform collection services does not extend to any of the following, and City expressly reserves the right to allow other service providers, by contract or otherwise, to perform any or all of the following in City on a non-exclusive basis:

A. Collection of Recyclable Materials which have been Source Separated from other solid wastes by the generator, and which the waste generator sells or donates to any other person or organization.
B. Collection of any recyclable materials not specifically included in the definition of Recyclable Materials, which have value equal to or more than the cost of collection, (including scrap wood and individual pieces of scrap metal weighing more than forty (40) pounds).
C. Removal of construction, remodeling or demolition debris by a licensed construction or demolition contractor as part of a total service offered by that contractor, when removal is performed by an employee of the contractor, using equipment owned by the contractor, rather than as a hauling service.
D. Removal of Green Waste or Plant Trimmings by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor, rather than as a hauling service.
E. Collection of grease wastes from grease traps or grease interceptors.
F. Collection of horse manure from residences or non-residential properties.
G. Collection of Hazardous Materials.
H. Collection of non-Hazardous Material that is greater than fifty percent (50%) liquid (including septic tank pumpings, and other liquid wastes).

3.3 Recycling Options of Service Recipients - Nothing in this Agreement shall be construed as requiring Service Recipients to set out Recyclable Materials or Compostable Materials, or Bulky Goods for collection by Franchisee. Service Recipients may dispose of Recyclable Materials and Bulky Goods through other appropriate means including, but not limited to, taking Recyclable Materials or Bulky Goods to drop-off facilities, and donating or selling Recyclable Materials or Bulky Goods to private or public entities.

3.4 Commingling of Garbage, Recyclable Materials and Compostable Materials.

3.4.1 Commingling of City Materials – Except as set forth in Section 3.4.2, Franchisee shall keep separate, in the collection vehicles and at the processing facility, or otherwise, any group of materials collected pursuant to this Agreement from any other group of materials, unless specifically approved in advance in writing by the City Representative.

3.4.2 Commingling of Non-City Recyclable Materials and Compostable Materials - Franchisee may commingle, in the collection vehicles and at the processing facility, or otherwise, Garbage, Recyclable Materials or Compostable Materials collected pursuant to this Agreement with any materials collected by Franchisee from any place outside City, only if Franchisee can provide, accurate and complete data (based on waste allocation studies approved by City) of the types and amounts of Garbage, Recyclable Materials and Compostable Materials collected from within and outside the City.

3.5 Use of Recycled Products - Franchisee will, wherever reasonably feasible in the performance of services under this Agreement, use products or materials which contain recycled materials content. Franchisee shall report their use of recycled content products to City, as required in EXHIBIT G.

ARTICLE 4 COLLECTION SERVICES

4.1 General Provisions

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 are 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.

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 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.

Franchisee shall, to the maximum extent reasonably practicable, ensure that Recyclable Materials and Compostable Materials are collected and processed in a manner which will ensure that these materials will not be landfilled or used for other purposes at a landfill, and that City will receive credit toward the State diversion mandates.

4.1.3 Franchisee shall provide Walk-Up Service to collect Recyclable Materials and Compostable Materials and Garbage adjacent to the home of all residents who request and subscribe for this service.

Franchisee shall provide Walk-Up Service to single-family dwellings if all adults residing therein have disabilities that prevent them from setting the Recyclables, Compostables and Garbage carts at the curb for collection, and if a request for non-subscription Walk-Up Service has been made to, and approved by, the City Representative in the manner required by City. No additional payment shall be due to Franchisee for the provision of non-subscription Walk-Up Service.

4.1.4 Non-Collection Notices for Recyclable Materials and Compostable Materials and Garbage shall indicate the date and time the notice was prepared, the driver's initials, the complete address of the premises, the reason why the collection was not made, and the manner in which materials should be prepared for future collection. Franchisee shall leave a card stock copy of the notice affixed to the handle or outside of the lid of the container holding the materials not collected, and shall retain one copy for their records and reports to the City. The form of this notice will be mutually agreed to by City Representative and Franchisee.

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 and 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 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.

If the purchase of new Collection Vehicles occurs during the term of this Agreement, Franchisee shall select vehicles with hopper shielding to minimize litter while the contents of individual carts or bins are being unloaded. If existing equipment is used, Franchisee shall retrofit all Collection Vehicles with hopper shielding to prevent the scattering of litter during collection and transport of recyclables, compostables or garbage. Retrofits shall be completed before November 1, 2011.

4.1.6 In the event that the provision of services to any Service Recipient would require Franchisee to operate its equipment on private roads which Franchisee reasonably believes present an unsafe condition for such operation, Franchisee shall give written notice to City and shall cooperate with the City and the Service Recipient to find a solution to the problem. Franchisee shall not be required to collect Garbage, Recyclable Materials and Compostable Materials from that Service Recipient until the materials can be safely collected.

4.2. Holiday Service - Franchisee shall not be required to perform any services under this Agreement on Holidays. Collection services that would be performed under this Article 4, were it not for the Holiday, shall be rescheduled one (1) day later for the remainder of the week following the Holiday, unless otherwise specifically approved in advance in writing by the City Representative. Franchisee shall publicize the rescheduling of any services affected by Holidays at least thirty (30) days in advance of the rescheduled service.

4.3. Residential Recyclable Materials Collection - Franchisee shall collect all Recyclable Materials listed in EXHIBIT A.

4.3.1. Frequency of Collection - Franchisee shall provide regular, scheduled collection of Recyclable Materials from each Residential Service Recipient every week. Recyclable Materials shall be collected from Recyclable Materials Containers adjacent to Compostables or Garbage Containers, at an accessible place at the curb or by walk-up as subscribed for by the resident.

4.3.2. Provision of Recycling Containers - Franchisee shall provide a new or refurbished Recyclable Materials Container at no additional charge to each Residential Service Recipient that does not already have one at the beginning of this Agreement. These Recyclable Materials Containers shall be delivered by Franchisee within seven (7) working days of Request for initial service by the Residential Service Recipient and five (5) working days for replacements.

Recyclable Materials Containers removed by the Franchisee shall 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. 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.

4.3.3. Recyclable Materials Overages – Franchisee shall collect all Recyclable Materials properly prepared and set out for collection by the Service Recipient each week. In the event a Service Recipient has a greater quantity of Recyclable Materials than can be set out in the Recyclable Materials Containers provided pursuant to this Agreement, the Service Recipient may set out such Recyclable Materials overages in durable containers supplied by the Service Recipient which are labeled for recycling and placed next to the Recyclable Materials Containers. Service Recipient may set flattened cardboard boxes, which are too large to fit in the Recyclable Materials Container, next to the container.

Franchisee shall collect such Recyclable Materials Overages on the same 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, cardboard boxes or other durable containers, or where the combined weight of the Recyclable Materials and container exceeds sixty (60) pounds.

Service Recipients who regularly generate more materials than will fit in their current Container may request additional containers. Franchisee shall deliver additional Recyclable Materials Containers within five (5) Working Days from the date of the request, unless Franchisee believes that the Service Recipient does not regularly generate Recyclable Materials Overages, in which case Franchisee shall notify the City and Service Recipient that the additional container delivery will be delayed, and record the amount of Recyclable Materials set out by such Service Recipient each week for the next month. Franchisee shall only be required to deliver an additional Recyclable Materials Container to such Service Recipient if such record indicates that the Service Recipient requires it. Franchisee shall provide (pursuant to Section 4.3.2) a sufficient number of additional Recyclable Materials Containers to accommodate all recyclables regularly generated, at no additional charge.

4.3.4 Non-Collection - Franchisee shall not be required to collect any Recyclable Materials that are contaminated by non-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; that are not set out in conformance with Section 4.3.3 of this Agreement. If the Recyclable Materials are too contaminated to process, Franchisee shall leave a Non-Collection Notice (NCN), and not collect the Recyclable Materials. No collected loads may be rejected at the recyclables processing facility because of contamination. Loads collected as Recyclable Materials shall not be landfilled. Only residue from processing Recyclable Materials may be landfilled.

4.4. Residential Compostable Materials Collection - Franchisee shall, before the end of November 2010, provide one-half to one gallon capacity pitcher-style containers for in-home storage of Compostable Materials to each SFD household, and to each MFD unit whose complex subscribes for Compostable Materials collection service. The pitchers shall be of a type approved by City Representative and shall meet the requirements for such pitchers specified in EXHIBIT H

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, unless an alternate site is approved by City Representative.

4.4.1. Frequency of Collection - Franchisee shall provide regular, scheduled collection of Compostable Materials from each Residential Service Recipient, every week. Compostable Materials shall be collected from Compostable Materials Containers adjacent to the Recyclables or Garbage Containers, at an accessible place selected by the resident.

4.4.2. Compostable Materials Containers – Franchisee shall provide a new or refurbished Compostable Materials Container at no additional charge to each Residential Service Recipient that does do not already have one at the beginning of this Agreement. These Compostable Materials Containers shall be delivered by Franchisee within seven (7) working days of Request by the Residential Service Recipient.

Compostable Materials Containers removed by the Franchisee shall be replaced by Franchisee within five (5) working days of their removal.

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

Compostable Materials shall be collected from Franchisee supplied Compostable Materials Containers, or other durable containers provided by the Residential Service Recipient. If other containers are used, the combined weight of the container and the Compostable Materials shall not exceed sixty (60) pounds. Compostable Materials Containers must be placed for collection adjacent to the Recyclable or Garbage Containers by the Residential Service Recipient.

To promote maximum diversion, Franchisee shall deliver additional Compostable Materials Containers within five (5) Working Days from the date of the request, unless Franchisee believes that the Service Recipient does not regularly generate Compostable Materials Overages, in which case Franchisee shall notify the City and the Service Recipient that the additional container delivery will be delayed, and record the amount of Compostable Materials set out by such Service Recipient each week for the next month, and shall only be required to deliver an additional Compostable Materials Container to such Service Recipient if such record indicates that the Service Recipient requires it. Franchisee shall provide (pursuant to Section 4.3.2) a sufficient number of additional Compostable Materials Containers to accommodate all recyclables regularly generated, at no additional charge.

4.4.3. Non-Collection - Franchisee shall not be required to collect any Compostable Materials that are contaminated by non-Compostable Materials; not set out on a public street or other accessible location subscribed for; not set out in accordance with the Municipal Code; or are not set out in conformance with Section 4.4.2 of this Agreement. If the Compostable Materials are too contaminated to process, Franchisee shall leave a Non-Collection Notice (NCN), and not collect the Compostable Materials. No collected Compostable Materials loads may be rejected at the compost processing facility because of contamination. Loads collected as Compostable Materials shall not be landfilled. Only residue from processing Compostable Materials may be landfilled.

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

4.4.5 Providing Home Compost Bins – To reduce the amount of Compostable Materials requiring collection and processing, Franchisee shall offer two 1-hour back-yard composting classes per year for Cupertino residents, at dates and locations selected by City. Franchisee shall offer a free Biostack compost bin to each household that attends a composting class. Residents who attend the class may, at their own choice, claim their bin at the end of the class or have it delivered to their house by Franchisee within five (5) Working Days of the class. Residents who do not attend the class can purchase a compost bin (from a website listed by Franchisee) and submit a copy of their receipt to Franchisee for a full credit of the cost of the bin and delivery. These costs shall be subtracted from their next garbage bill.

Franchisee shall, during the term of this Agreement, provide a free Biostack compost bin (or credit for a household-purchased Biostack compost bin) to each of the first 400 households that attend a class or purchase a bin and request credit. Franchisee shall keep City informed as to the number of bins remaining. At City's request, Franchisee shall provide additional Biostack compost bins (above the 400 referred to above) to households in accordance with this Section 4.4.5, and shall be entitled to reimbursement from City for the cost of each additional bin (not to exceed $100 per bin).

4.4.6 Yard Waste Exempt Properties – Property owners that can demonstrate that they have no yard waste to dispose of may request an exemption from the fees covering that portion of the collection of compostable materials, as listed in EXHIBIT B.

4.5. Residential Garbage Collection - Materials not collected by Franchisee as Recyclable (Section 4.3) or Compostable (Section 4.4) Materials shall be collected as Garbage (unless such materials are among the types of material that Franchisee is not required to collect as Garbage, such as Hazardous Materials).

4.5.1. Frequency of Collection - Franchisee shall provide regular, scheduled collection of all Garbage generated from each Residential Service Recipient every week. Garbage shall be collected from Garbage Containers placed adjacent to the Recyclables or Compostables Containers, at an accessible location selected by the Service Recipient.

4.5.2. Provision of Garbage Containers - Franchisee shall provide a new or refurbished Garbage Container to each Residential Service Recipient based on the level of service for which they subscribe. These Garbage Containers shall be delivered by Franchisee shall, within seven (7) working days of Request for initial service by the Residential Service Recipient and five (5) working days for replacements. Garbage Containers removed by the Franchisee shall be replaced by Franchisee within five (5) working days of their removal.

All Garbage 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. Garbage Containers provided by Franchisee shall be labeled for "Garbage" and "Property of the City of Cupertino" and shall not be marked with the Franchisee's name or logo.

4.5.3. Excess Garbage - Franchisee shall collect Garbage in excess of the normal level of service on the normal day of collection when the Service Recipient has made arrangements with Franchisee at least one day in advance of the regular collection day, to schedule the collection and make the appropriate payment. Excess Garbage must be placed in an approved Garbage Container, and not exceed the weight limitations listed in Section 4.5.5.

4.5.4. Extra Garbage Service - Franchisee shall collect Garbage from Residential Service Recipients on other than the normal day of service after the Service Recipient has called and made arrangements with Franchisee at least two Working Days in advance of the regularly scheduled collection and arranged to made the appropriate payment.

4.5.5. Non-Collection - Franchisee shall not be required to collect any Garbage that is contaminated with hazardous materials or biomedical waste, that is not placed in an approved Residential Garbage Container; that is not set out on a public street (except for Walk-Up Service) in an accessible location; that is not set out in accordance with the Municipal Code; when the contents of plastic bags exceed 30 pounds in weight; or when the volume of the Garbage exceeds the capacity of the Garbage Container when its lid is closed (unless the Residential Service Recipient has arranged for pickup of excess Garbage pursuant to Section 4.5.3). In the event of non-collection, Franchisee shall leave a Non-Collection Notice (NCN).

4.6. Missed Pick-Ups - The failure of Franchisee to pick up Recyclable or Compostable Materials or Garbage which have been properly set out on time and in an approved container by a Service Recipient shall be considered a "Missed Pick-Up." Franchisee's failure to collect a container for any reason that entitles Franchisee to leave a Non-Collection Notice, and for which a NCN is issued, shall not be considered a Missed Pick-up). If Franchisee is notified of a Missed Pick-up by 9:00 AM on any Working Day, Franchisee shall collect the Missed Pick-up on the day of notification. If the Franchisee is notified of a Missed Pick-up after 9:00 AM on any Working Day, Franchisee shall collect those materials from the Service Recipient within one Working Day of Franchisee being notified of the Missed Pick-up.

Franchisee shall maintain a written record of all contacts (e.g., calls and email messages) relating to Missed Pick-ups and the response provided by Franchisee. The record shall be maintained in accordance with the reporting and monitoring requirements of Article 10 of this Agreement.

If after notification Franchisee fails to collect a Missed Pick-up within the times set forth in this Section, City or its agents may collect and transport the material. City shall notify Franchisee in writing whenever City or its agent collects a Missed Pick-up. City may require Franchisee to pay liquidated damages for any Missed Pick-up and any costs incurred by City in collecting a Missed Pick-up, as provided in Section 12.5 of this Agreement.

4.7 Non-Residential Garbage Bin Service.

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

If a Non-Residential Service Recipient has not subscribed for sufficient service to prevent overages on a normal basis, Franchisee shall notify the Non-Residential Service Recipient and encourage them to increase service. If the Non-Residential Service Recipient does not increase service to provide sufficient service, Franchisee shall notify the City's Representative, and provide details of the contact to request the Service Recipient to increase service.

4.7.2 Extra Garbage Service - Franchisee shall collect Garbage from Non-Residential Service Recipients on other than a normal service day when the Service Recipient has called and made

arrangements with Franchisee in advance to schedule the collection and make the appropriate payment.

4.7.3 Non-Collection - Franchisee shall not be required to collect any Garbage that is contaminated by (a) hazardous waste, (b) biomedical waste, (c) ash, and (d) sewage and other highly diluted water-carried materials; that is not placed in an approved Non-Residential Garbage Container; that is not set out in an accessible location; that is not set out in accordance with the Municipal Code; when the combined weight of the Garbage Container and its contents exceeds the limit set by the Franchisee for that size of container; or when the volume of the Garbage exceeds the capacity of the Garbage Container when its lid is closed. If a business is open at the time of collection, then prior to leaving the Garbage uncollected, the driver shall make at least one attempt to contact the business to get them to correct the situation. In the event of non-collection, Franchisee shall leave a Non-Collection Notice (NCN).

4.8 Non-Residential Recyclable Materials Collection.

4.8.1 Frequency of Collection – Franchisee shall provide Recyclable Materials collection services to all Service Recipients that subscribe for Non-Residential Garbage service, at no additional cost above the rate paid by such Service Recipients for such Garbage service. Franchisee shall collect all Recyclable Materials listed in EXHIBIT A from each Non-Residential Service Recipient as often as necessary to minimize overages based on the volume of the containers provided by the Franchisee. To encourage diversion, Franchisee shall provide at least equal volume of Recyclable Materials collection service to each Non-Residential Service Recipient as the volume of Garbage collection service subscribed for by such Non-Residential Service Recipient.

4.8.2 Non-Residential Recyclable Materials Overages - In the event a Non-Residential Service Recipient has a greater quantity of Recyclable Materials than can normally be contained in the appropriate containers provided by Franchisee, Franchisee shall provide the Service Recipient, at Franchisee's own cost and expense, additional containers or more frequent collection service, from among the range of service options listed on EXHIBIT B.

4.8.3 Non-Collection - Franchisee shall not be required to collect any Recyclable Materials that are not placed in Recyclable Materials Containers. Franchisee shall not be required to collect any Recyclable Materials that are contaminated by non- recyclable materials. In the event of a non-collection, Franchisee shall leave a Non-Collection Notice (NCN).

4.9 Non-Residential Compostable Materials Collection.

4.9.1 Frequency of Collection - Franchisee shall provide Compostable Materials collection services to all Non-Residential Service Recipients that subscribe for this service. Franchisee shall be entitled to charge Non-Residential Service Recipients that subscribe for Compostable Materials collection services the same rates as the rate charged for an equivalent level of Garbage service, as set forth on EXHIBIT B.

Franchisee shall contact Non-Residential Service Recipients that subscribe for Garbage service and discard significant quantities of Compostable Materials (including, but not limited to, restaurants, markets and grocery stores, delis and sandwich shops, and florists) and invite them to participate in the Compostable Materials program by subscribing for Compostable Materials service and reducing their Garbage service level. Franchisee shall ensure that the total cost to such Service Recipients of Garbage service and Compostable Materials service combined will

not increase due to the substitution of Compostable Materials capacity for Garbage capacity, so long as the Service Recipient does not increase the total amount of materials discarded.

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

4.9.2 Compostable Materials Overages - If a Non-Residential Service Recipient has not subscribed for sufficient service to prevent overages on a normal basis, Franchisee shall notify the Non-Residential Service Recipient and encourage them to increase service. If the Non-Residential Service Recipient does not increase service to provide sufficient service, Franchisee shall notify the City's Representative, and provide details of the contact to request the Service Recipient to increase service.

4.9.3 Non-Collection - Franchisee shall not be required to collect any Compostable Materials that are not placed in Compostable Materials Containers. Franchisee shall not be required to collect any Compostable Materials that are contaminated by non-compostable materials. In the event of a non-collection, Franchisee shall leave a Non-Collection Notice (NCN).

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 Compactors to Service Recipients who wish to use them. Franchisee shall assist Service Recipients with selection of Compactors that are compatible with Franchisee's equipment. Franchisee shall service the Compactors at the maximum rates listed in EXHIBIT B.

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.

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.

4.10.1 Frequency of Collection - Franchisee shall provide containers for Extra Services to Residential and Non-Residential Service Recipients as requested, within two Working Days of request. Franchisee shall collect Garbage, Recyclable Materials or Compostable Materials from each Bin-by-the-Day or Debris Box, on the schedule requested by the Service Recipient, but not less often than once a week if they contain Garbage.

4.10.2 Non-Collection - Franchisee shall not be required to collect any Bin-by-the-Day Container, Compactor or Debris Box where the weight exceeds the legal limit for that size container, or the weight limit set by the Franchisee and clearly marked on the container; or where the volume exceeds the capacity of the container, or that contain Hazardous Materials. In the event of non-collection, Franchisee shall contact the Service Recipient by telephone if possible, leave a Non-Collection Notice (NCN).

4.11 City-Wide Recycling Events – Two (2) times each year, on a schedule and at locations mutually agreed upon by Franchisee and City, Franchisee will provide a city-wide recycling event for residents of City. Franchisee shall provide sufficient equipment to collect and remove from the agreed-upon locations all acceptable wastes delivered by residents to such locations.

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

4.12 On-Call Collection Services - Two (2) times per year, upon request, Franchisee will provide On-Call Collection Services to each Residential Service Recipient. Franchisee shall provide the services described in EXHIBIT E of this Agreement.

Franchisee shall handle all materials received in a manner that will allow the maximum amount to be recycled, composted or otherwise diverted from landfill.

4.13 Services to City – Recyclable Materials and Compostable Materials and Garbage collection services described in Article 4 of this Agreement shall be provided to City facilities at no charge to City. The service level for each City facility shall be selected by City Representative from the service levels available to Non-Residential Service Recipients as set forth on EXHIBIT B of this Agreement. City shall select the locations, and Franchisee shall provide appropriate containers, and service them on a mutually agreed schedule that will prevent over-flow of the containers. At the beginning of this agreement, Franchisee shall provide the services to the locations and facilities described in EXHIBIT F of this Agreement.

4.14 Service Recipient Changes - City and Franchisee acknowledge that during the term of this Agreement the Service Recipients for whom Franchisee will provide collection services under this Agreement may change as a result of changes in the Franchise Area (e.g., due to annexation by the City of unincorporated areas of Santa Clara County and new construction or demolition activity).

4.15 Subcontractors – No Subcontractors shall be used to provide the services required under this Agreement, without prior written approval of the City Representative.

4.16 Time of Collection – Franchisee shall make a good faith effort to provide collection services at a consistent time of day for each Residential Service Recipient, and not to change the time of service more often than necessary, to maintain an efficient collection system.

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

The initial HHW Collector shall be Curbside Inc. The specifications of the HHW Program proposed by Curbside Inc. are set forth in EXHIBIT I.

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

The HHW Program shall be funded by means of the Household Hazardous Waste Fee, which shall be approved by City, collected from Residential Service Recipients by Franchisee, and remitted to the HHW Collector. Franchisee may terminate the HHW Program and its agreement with the HHW

Collector if at any time City does not approve the Household Hazardous Waste Fee required to fund the HHW Program.

ARTICLE 5 COLLECTION ROUTES

5.1 Collection Route Information - Franchisee shall maintain, and provide to City within sixty (60) days of the effective date of this Agreement, and on request (up to two times a year), within fifteen (15) Working Days of request, current and accurate maps indicating:

A. Areas of collection including route numbers and truck numbers.
B. Day of the week collection service is provided.
C. Approximate time of collection (early or late AM, or early or late PM).
D. Start point, end point, and the actual street-by-street course the collection vehicles follow on routes.
E. Boundary of each individual route. Each adjoining route on the map shall be in a distinct color or pattern so that adjoining routes are clearly delineated. Franchisee shall provide the maps to City both in hard copy and PDF format.
F. A listing of the name, address and level of service for each Service Recipient.

5.2 Collection Route Changes - For any route changes proposed by Franchisee, Franchisee shall submit to City, in writing, the proposed change to routes (including by not limited to boundaries and addresses affected) not less than sixty (60) calendar days prior to the proposed date of implementation. Within thirty (30) calendar days of receipt of Franchisee's proposed change, City shall provide written notice to Franchisee as to whether the proposed change is acceptable or not. Franchisee shall not implement any route changes without the prior written authorization of the City Representative, which shall not be unreasonably withheld, conditioned or delayed. Franchisee shall notify all affected Service Recipients of any authorized route change affecting day of service at least two (2) weeks in advance of the service change.

5.3 Route Audits - City may, at City's sole expense, perform a route audit. City may hire a third party to conduct the route audit. Franchisee shall fully cooperate in the audit and supply all requested information to City's Consultant in a timely manner at no cost to City.

ARTICLE 6 COLLECTION EQUIPMENT

6.1 Equipment Specifications

6.1.1 General Provisions - All collection equipment used by Franchisee in the performance of this Agreement shall be of high quality at the start of this Agreement. The vehicles shall be designed and operated so as to prevent Recyclable Materials, Compostable Materials, Garbage, Litter or any other materials from escaping from the vehicles. The vehicles shall be designed and operated to minimize any negative environmental impacts caused by their operation, especially air quality impacts.

6.1.2 Registration - All vehicles used by Franchisee in providing services under this Agreement, except those vehicles used solely on Franchisee's premises, shall be registered with the California Department of Motor Vehicles.

6.1.3 Safety Markings - All collection equipment used by Franchisee shall have appropriate safety markings including, but not limited to, highway lighting, flashing and warning lights, clearance lights, and reflective tape striping. All such safety markings shall be in accordance with the requirements of the California Vehicle Code.

6.1.4 Vehicle Signage - Franchisee's name, telephone number and vehicle number shall be visibly displayed on both sides of all collection vehicles in letters and figures not less than four (4) inches high.

6.1.5 Collection Vehicle Noise Level - The noise level generated by collection vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the collection vehicle measured at an elevation of five (5) feet from above ground level using the "A" scale of a standard sound level meter at slow response. Franchisee shall cause the collection vehicles to be tested annually by an independent testing authority, and shall submit to the City Representative a certificate of testing showing that the vehicles meet the requirements of this Section as of the most recent testing date.

6.1.6 Vehicle Certifications - For each collection vehicle used in the performance of services under this Agreement, Franchisee shall comply with all applicable federal, state, and local laws governing the operation of such vehicles. Franchisee shall maintain copies of such certificates and reports and shall make such certificates and reports available for inspection upon request by the City Representative.

Franchisee shall submit each of Franchisee's collection vehicles for inspection by the California Department of Motor Vehicles as required by State law. Franchisee shall not use any vehicle which does not pass such inspection, or fully comply with all applicable federal, state, and local laws.

6.1.7 Equipment Maintenance - Franchisee shall maintain collection equipment in a clean condition and in good repair at all times. All parts and systems of the collection equipment shall operate properly and be maintained in a condition reasonably satisfactory to City. Franchisee shall repaint all collection vehicles (including vehicle striping) during the term of this Agreement on a frequency necessary to maintain a positive public image as reasonably determined by the City Representative. Franchisee shall wash all collection vehicles on a frequency necessary to maintain a positive public image. All signage or displays on the collection vehicles, beyond the Company name phone number and logo, must be agreed to in advance by the City.

Franchisee shall maintain all bins and debris boxes in clean condition and in good repair at all times. Franchisee shall repair wheels, casters, and lids or replace damaged front-loader bins within five (5) Working Days, and replace all leaking front-loader bins within one (1) Working Day of notification of damage. The Franchisee shall not transport full and leaking compactor or front-loader bins through public or private streets where the seepage has the potential to enter a storm drain system.

6.1.8 Maintenance Log - Franchisee shall maintain a maintenance log for all collection vehicles. The maintenance log shall at all times be accessible to City upon the request of the City Representative, and shall show, at a minimum, each vehicle's identification number, date of purchase or initial lease, dates of performance of routine maintenance, dates of performance of additional maintenance, and description of additional maintenance performed.

6.1.9 Back-Up Equipment - Franchisee shall maintain sufficient back-up equipment to ensure uninterrupted collection service during the term of this Agreement.

ARTICLE 7 GARBAGE DISPOSAL

7.1 Franchisee's Responsibility

7.1.1 Delivery of Materials - Franchisee shall transport all Garbage collected from Service Recipients by Franchisee to the Newby Island Landfill. In the event that collected materials are commingled with materials from other jurisdictions during collection, Franchisee shall deliver an amount equal to the total amount of Garbage collected under this Franchise to the Newby Island Landfill.

7.1.2 Landfill Access – City shall arrange for Newby Island Landfill to be available to Franchisee at all times during normal operating hours for disposal of all Garbage and processing of all debris boxes collected under this Agreement. City shall timely pay all fees associated with such disposal and processing, which shall be at no cost to Franchisee (except that Franchisee shall reimburse City for all debris box and compactor disposal fees pursuant to Section 11.6.) If the Newby Island Landfill becomes unavailable to Franchisee (during normal operating hours) at any time during the term of this Agreement, City will work with Franchisee to identify an alternative location at which to dispose of garbage from the City. Franchisee shall provide City details on any changes in operating costs incurred by having to use an alternate disposal site, and City will compensate Franchisee for any additional operating costs associated with having to use an alternate disposal facility.

ARTICLE 8 RETURN OF COMPOST TO CITY

8.1 Return of Compost – Franchisee shall make available to City, at no charge to City, high quality compost from South Valley Organics in the amount of up to fifteen percent (15%) of the tonnage of Compostable Materials collected by Franchisee under this Agreement. Half of this amount shall be available during each half year of this Agreement (i.e., beginning November 1 and May 1). Compost not collected during any half year period may not be carried over to a subsequent period.

Franchisee shall load the compost onto vehicles engaged by City, at any time during Franchisee's normal business hours during such Contract period, upon ten (10) days prior notice to Franchisee of the date of pickup and the amount to be collected.

ARTICLE 9 ADDITIONAL SERVICES

9.1 Customer Relations Services

9.1.1 Franchisee's Office - Franchisee shall maintain an office within thirty (30) miles of City Hall. Franchisee shall be available for communication with City Representative, other City representatives, and the public during normal business hours.

9.1.2 Local Telephone Number - 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. All customer service representatives shall be knowledgeable about all services offered under this Agreement, and able to assist on any matters which relate to the Franchisee's performance of services. The Franchisee shall respond to all calls 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 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 number shall be listed under Franchisee's name in the local telephone directory, and on their website. A webpage shall be maintained by the Franchisee which will be available to Service Recipients via a link from the City's website. This webpage will represent some of the City's services and will provide easy access to information, as well as instruction on how to maximize and correctly utilize new services, especially to help prevent contamination of Recyclable Materials that are intended for processing or further use.

9.1.3 Emergency Telephone Number - 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's Representative.

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 (and such caller was in fact on hold in excess of one (1) minute), 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.

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.

All printed 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.

Franchisee will support the City's Extended Producer Responsibility Policy and will write letters in support of State and Federal 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 Additional Recyclable Materials

A. In the event City or Franchisee, during the term of this Agreement, proposes to add other materials to the list of Recyclable Materials to be collected, processed and marketed by

Franchisee, such additional material shall be added to the list in EXHIBIT A of this Agreement, if mutually agreed to in writing by City and Franchisee.

B. If Franchisee proposes the addition of the material, the proposal shall be in writing, and include the extent to which the addition of the proposed material 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 in writing, Franchisee shall submit a written proposal detailing how the materials would be handled and the cost of adding 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 of the proposed material and a schedule for the implementation of the 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).

9.4 Emergency Services - Franchisee shall begin providing emergency services as directed by City within 24-hours of notification by City. Emergency services are services beyond the services specified in this Agreement, which result from emergency conditions such as earthquake, fire, flood, or other natural calamity, riot, insurrection public disobedience, labor controversy, labor strike, or similar condition which threaten the public health, safety and welfare, and which are reasonably related to the services provided by Franchisee under this Agreement. City shall pay Franchisee for emergency services performed pursuant to this Section 9.4 at the rate of One Hundred Fifty Dollars ($150) per hour of service by truck and driver. Emergency conditions do not include the results of failure of Franchisee to comply with the standards and procedures set forth in this Agreement.

If Franchisee is not able to provide emergency services within the 24-hour period set forth in the preceding paragraph, City, or its agents, may assume and carry out such emergency services for the duration of the emergency or until such time as Franchisee is able to provide such emergency services, whichever occurs first. Franchisee shall make available to City all of Franchisee's operable equipment and other facilities necessary for providing such emergency services, and City shall pay Franchisee the reasonable rental value of the equipment and facilities used.

While City, or its agents, provides emergency services under this Section 9.4, City, or its agents, shall operate, maintain and repair, without cost to Franchisee, Franchisee's equipment and other facilities used. Upon cessation of such services, the right to use such equipment and facilities shall expire and City shall return said equipment and facilities to Franchisee in a condition substantially the same as that which existed upon taking possession of said equipment and facilities, ordinary wear and tear excepted.

If City directs Franchisee to provide emergency services, or to make available Franchisee's equipment or facilities so that City, or its agents, can provide emergency services, Franchisee shall not be liable for any breach of this Agreement that results from complying with such directions.

9.5 Disruption of Services

9.5.1 Substitute Collection - If, at any time during the term of this Agreement, for a period of three (3) consecutive Working Days or more, Franchisee fails for any reason to collect and remove Garbage, Recyclable Materials and Compostable Materials from all or a substantial portion of Service Recipients as required in this Agreement, City may immediately, upon prior written notice to Franchisee, cause such Garbage, Recyclable Materials and Compostable Materials to be collected and removed by whatever means available to City, until such time, not to exceed one-hundred-twenty (120) days, as Franchisee is able to resume service. For so long as Franchisee continues to collect fees from Service Recipients pursuant to Section 11.4 of this Agreement, Franchisee shall pay any and all reasonable costs incurred by City for the provision of such substitute services.

9.5.2 Use of Equipment - For the purpose of providing such substitute services, and upon prior written notice to Franchisee, City may (but shall not be required to) take possession of and operate through its employees or any other properly licensed persons, any and all trucks and other equipment used by the Franchisee for the collection and removal of Garbage, Recyclable Materials and Compostable Materials in the Franchise Area. In this event, Franchisee shall provide City with driver route listings and necessary operational records, and City shall pay Franchisee the reasonable rental value of the equipment used. While City, or its agents, uses Franchisee's equipment under this Section 9.5.2 to provide substitute services, City, or its agents, shall operate, maintain and repair such equipment without cost to Franchisee. Upon cessation of such substitute services, the right to use such equipment shall expire and City shall return said equipment to Franchisee in a condition substantially the same as that which existed upon taking possession of said equipment and facilities, ordinary wear and tear excepted. City shall indemnify and hold harmless Franchisee from and against any damage to such equipment or liability to any third person injured or damaged as a result of City's use or possession of such equipment to the extent such damage or liability is not covered by insurance. Employees of Franchisee, including management employees, may be employed by City during any period in which City temporarily assumes the obligations of Franchisee under this Agreement.

9.5.3 Strike or Labor Dispute - The parties hereby agree that in the event a strike or labor dispute occurs, this Agreement shall not terminate for the duration of the strike or labor dispute, provided that Franchisee uses its best efforts to insure that its obligations under this Agreement do not go unperformed for a period greater than three (3) Working Days (it being understood that this Agreement may only be terminated in accordance with Article 16). In order to insure that its obligations under this Agreement are adequately performed, Franchisee may subcontract the performance of services required under this Agreement with entities not affiliated with Franchisee. In the event that City assumes responsibility for Garbage, Recyclable Materials and Compostable Materials handling services in City, Franchisee shall maintain an unobstructed entrance at its place of business which is not regularly used but which will be primarily reserved for use by City while City or its designated representative is collecting Garbage, Recyclable Materials and Compostable Materials. If the labor dispute or picketing blocks access to Franchisee's place of business, Franchisee shall receive no compensation (other than the reasonable rental value of equipment used) to the extent that such labor dispute or picketing

caused Franchisee to fail to collect and remove Garbage, Recyclable Materials and Compostable Materials in accordance with the provisions of this Agreement.

ARTICLE 10 REPORTING REQUIREMENTS

10.1 General Reporting Requirements - Franchisee shall provide Monthly and Annual Reports containing all information required in EXHIBIT G of this Agreement, at no cost to City. Reports shall be in a format approved by City Representative. Revenue and Tonnage information shall be provided in a Microsoft Excel spreadsheet, with totals calculated by formulas where appropriate.

10.2 Service Recipient Database - Franchisee shall at all times maintain a computerized database containing a complete file of Service Recipients coded by category, number of Garbage Containers, and set-back distance charges. The file shall include the address of the collection location and the address of the Service Recipient if it is different, and a record of any Non-Collection Notices (NCNs) left by Franchisee for such Service Recipient. The database shall at all times be remotely accessible to the City by means of an internet connection. Franchisee shall cooperate with City with respect to providing information relevant to this Agreement which is not specified in this Article 10. Franchisee shall not use the Service Recipient database for any purpose other than to provide services specified in this Agreement. The database may not be distributed to any party other than to provide services specified in this Agreement. The database shall be turned over to City upon termination of this Agreement.

10.3 Transfer of Data – During the Term of this Agreement, the customer billing database shall be considered to be jointly owned by both City and the Franchisee, and shall be made available to City on request. Six (6) months prior to the termination date of this Agreement, and within ten (10) Working Days of a request by City (up to five times during the term of the Agreement), the Franchisee shall provide City a complete listing of all billing accounts, level of service information and route maps. The listing of billing accounts and level of service information shall be provided on a computer disk in software mutually agreed upon by both City and Franchisee.

ARTICLE 11. SERVICE RATES & PAYMENTS

11.1 Rates to Service Recipients – Franchisee shall bill Service Recipients for services at the rates set by the City Council, and listed in EXHIBIT B, [needs to be updated for August 2010 rate adjustments] Schedule of Approved Rates, of this Agreement. The initial maximum rates chargeable by Franchisee to Service Recipients shall be for the period from November 1, 2010 through October 31, 2011. EXHIBIT B shall be further amended from time to time as set forth in Article 12.

11.2 Non-Subscription On-Premises Service. Notwithstanding any term or condition set forth in this Agreement, Franchisee shall provide on -premises collection of Residential Collection Services to a single-family dwelling ("SFD") Service Unit if all adult Service Recipients residing therein have disabilities that prevent them from setting the Recyclables, Compostables and Garbage carts at the curb for collection, and if a request for non-subscription on-premises service has been made to, and approved by, the City Representative in the manner required by City. No additional monies shall be due to Franchisee for the provision of non-subscription on-premises service.

Franchisee may at any time, but not more often than twice in any Contract Year, request that the City Representative verify the eligibility of a SFD for non-subscription on-premises service. Upon receipt of Franchisee's request, the City Representative shall make a determination as to whether the SFD meets the eligibility requirements and shall notify Franchisee of such determination within sixty (60) calendar days of Franchisee's request. At the time Franchisee makes the request for verification of eligibility,

Franchisee may submit to the City Representative any information relevant to the City Representative's determination.

11.3 Maximum Rate Adjustments to Service Recipients – The maximum rates chargeable by Franchisee to Service Recipients for services provided pursuant to this Agreement shall be adjusted annually based on the formula provided in Section 12.2 of this Agreement, and as otherwise set forth in this Agreement.

11.4 Billing - Franchisee shall mail bills to, or communicate electronically with service recipients that select that option, all Residential Service Recipients not earlier than one (1) month, nor later than two (2) months, into each quarterly billing cycle. Non-Residential Service Recipients shall be billed monthly in arrears. Payment shall be due before the Service Recipient's next billing date. Residential Service Recipients will be considered delinquent after 90 days from their billing date; Non-Residential Service Recipients will be considered delinquent after 30 days from their billing date.

Franchisee shall undertake reasonable efforts to obtain payment of delinquent amounts from Service Recipients, including, but not limited to, sending three (3) written notices and demand letters, and making weekly telephone calls to all Service Recipients who have not paid their bill by the due date. The "second notice" billing should be mailed not later than ten (10) working days after the original due date.

Annually, on a schedule determined by the City, Franchisee shall provide City with the names, addresses and amount owed for all Service Recipients who are more than ninety (90) days delinquent in making payments for services provided.

If a bill remains unpaid for thirty (30) days after such notice is mailed, Franchisee shall provide the City a listing of delinquent properties and amounts due for collection through the initiation of lien and special assessment proceedings in accordance with the City's municipal code.

11.5 Payments by Service Recipients – Franchisee shall provide a mechanism for Service Recipients to make payment electronically.

11.6 Payments to City - Franchisee shall remit to City, within twenty (20) 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 reimbursed to the City monthly by Franchisee and documented in the Franchisee's monthly remittance report. The costs from debris boxes and compactors disposed at Newby Island landfill which are reimbursed to City shall be sufficiently documented to identify the source of this reimbursement to the City.

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.

ARTICLE 12 FRANCHISEE'S COMPENSATION

12.1 Franchisee's Compensation - Franchisee shall retain all revenues collected from this Agreement, except the twelve percent (12.0%) Franchise Fee and the seventeen percent (17.0%) Solid Waste Fund Operations Fee, which shall be remitted to City, except as provided in Section 9.5.1.

12.2 Annual Maximum Rate Adjustments – The maximum rates chargeable by Franchisee, as set forth on EXHIBIT B, will be increased or decreased annually by 100% of the change in the Consumer Price Index (U) for All Items for the San Francisco Bay Area (series ID: cuura422sa0) ("CPI-U"), to adjust for changes in Franchisee's cost of doing business.

The adjustment in maximum rates that will apply to each subsequent Contract Year (November 1 to October 31) will be obtained by multiplying each maximum rate for the current Contract Year by one (1) plus the Annual Percentage Change in CPI-U. The "Annual Percentage Change" in CPI-U is calculated as the Average Index Value of CPI-U for the 12-month period ending on March 31 of the current Contract Year, minus the Average Index Value of CPI-U for the 12-month period ending on March 31 of the prior Contract Year, and dividing the result by the Average Index Value of CPI-U for the 12-month period ending on March 31 of such prior Contract Year. The "Average Index Value" of CPI-U for a 12-month period means the sum of the published bi-monthly values of CPI-U for such period divided by 6.

On or before August 15 of each calendar year (beginning in 2011), Franchisee shall submit to the City documentation evidencing the change in the index and a revised EXHIBIT B reflecting the index-adjusted maximum rates. City Representative shall review Franchisee's calculations based on the formula and example shown in Exhibit J, and shall notify Franchisee of any errors within thirty (30) days of Franchisee's submission. Before October 1, following Franchisee's submission, the City shall take action to adjust the rates and fees to maintain the required revenues to Franchisee.

12.3 Special Maximum Rate Adjustments – Regulatory changes and other changes which cannot be foreseen, or events outside of Franchisee's control, may be the basis for a special adjustment of the maximum rates that may be charged by Franchisee. Franchisee may request a special adjustment at any time. Special adjustments will be solely at the reasonable discretion of City, based on the written request and documentation provided by the Franchisee, except that, upon providing reasonable justification to City, Franchisee shall be entitled to a special maximum rate increase in an amount sufficient to cover the following:

12.3.1 Franchisee's reasonable additional costs arising out of or relating to any change in law (including without limitation case law, statutes, rules and regulations and the interpretation or application thereof by any court or governmental body) occurring after the date hereof.

12.3.2 Franchisee's reasonable additional costs arising out of or relating to the use of an alternative location for disposal of Garbage if Newby Island Landfill for any reason becomes unavailable for use by Franchisee in the manner contemplated by this Agreement.

Any request by Franchisee for a special maximum rate adjustment shall be submitted to City Representative and shall specify the event or circumstance giving rise to the request, Franchisee's additional or excess costs arising out of or relating to such event or circumstance, and the change in the maximum rate structure that Franchisee proposes to cover such costs. If Franchisee is entitled to a special maximum rate adjustment under this Section 12.3 with respect to a particular event or circumstance, such adjustment shall be established in such a manner as to allow Franchisee to recover all reasonable additional or excess costs incurred by Franchisee with respect to such event or circumstance,

including without limitation costs incurred before the effective date of such adjustment. City Representative shall review Franchisee's request and notify Franchisee, within thirty (30) days of Franchisee's submission, of City's response to Franchisee's request and any questions City may have regarding such request. City shall use reasonable best efforts to cause Franchisee's request to be heard by the City Council within ninety (90) days of Franchisee's submission.

12.4 Rate Request for Compostable Materials Processing – The parties acknowledge that the cost of processing the Non-Residential Compostable Materials collected is relatively uncertain. As such, Franchisee, at the end of the first Contract Year, will evaluate and report to City any fluctuations in the cost of that expanded service. On the basis of that evaluation, Franchisee may propose a rate adjustment for Non-Residential Service Recipients if necessary to cover any increased cost. However, the City retains the right to approve, disapprove or modify any such rate proposal. Franchisee's report will include revenue collected as a result of this exclusive Franchise Agreement and all costs associated with processing of Compostable Materials at the South Valley Organics facility.

After the first Contract Year, Franchisee will provide the City with annual reports (by December 31 each year, for the period of November 1 through October 31) showing Franchisee's actual costs to process Compostable Materials. These reports will help Franchisee to determine any incremental rate increases that will be necessary to fund the Compostable Materials processing services. After providing actual costs and projections, Franchisee may prepare a request for a rate increase for the City Council's consideration. Rate increases would not be applied until the second year of implementing the expanded programs. Lower Compostable Materials processing costs are expected during the first two years while customer participation has not yet reached the maximum.

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 after the first Contract Year.

12.5 Liquidated Damages - City and Franchisee agree that the liquidated damages amounts set forth below represent a reasonable estimate of the amounts of such damages, including the relationship of the sums to the range of harm to City that reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or inconvenient. Franchisee agrees to pay such amount as liquidated damages (not as a penalty) for the following incidents:

- For each failure over six (6), in any twelve (12) consecutive month period, to commence service to a new Service Recipient within seven (7) days of the Service Recipient's request for service.
- For each failure over six (6), in any twelve (12) consecutive month period, to provide Recyclable Materials Containers, Compostable Materials Containers, or Garbage Containers to a new Service Recipient within seven (7) days of the Service Recipient's request for such Containers.
- For each failure over six (6), in any twelve (12) consecutive month period, to provide Containers for Extra Services to any Service Recipient within seven (7) days of the Service Recipient's request for such Containers.
- For each failure over twelve (12) in any twelve (12) consecutive month period, to collect Garbage, Recyclable Materials or Compostable Materials which were properly prepared and set-out for collection.
- For each failure over twelve (12), in any twelve (12) consecutive month period, of the collection containers not being left by Franchisee at the same location after collection that they were placed for collection by the Service Recipient.
- For each failure over twelve (12), in any twelve (12) consecutive month period, to collect a missed set-out within 1 Working Day after the Service Recipient notifies Franchisee of the Missed Pick-up and requests collection.

- For each occurrence of collection during unauthorized hours (starting early or finishing late).
- For each occurrence over twelve (12), in any twelve (12) consecutive month period, of failing to clean up any litter spilled by Franchisee on any public street within two (2) hours of the occurrence.
- For each time the bills are sent out early or payment due dates are earlier than provided for in Section 11.4 of this Agreement.
- For each Working Day that a Monthly Report or Annual Report is incomplete or late.
- For each Working Day over two (2) that a Monthly Report or Annual Report remains materially inaccurate or materially incomplete after City has notified Franchisee of the inaccuracy or incompleteness.
- For each complaint over two (2) in any month regarding the amount of time a customer was left on hold on a call for more than one (1) minute by Franchisee.
- For transporting a leaking compactor or front-loader bin on any vehicle through public or private streets where the seepage has the potential to enter a storm drain system.
- For each occurrence of other similar incidents.

Damages will start at $50.00 per incident, and may increase, at sole discretion of City, in increments of up to $50 per incident, to a maximum of $500 per incident for repeated failure to perform any one condition for the same type of infraction as specified in the Agreement. In order for an incident to be used as the basis for the assessment of any liquidated damages, or to be used as an incident preceding an incident that is the basis for the assessment of any liquidated damages, City shall provide Franchisee written notice of the incident within 30 days of learning of its occurrence. The notice will include a brief description of the incident and the expected time allowance for resolution. The Parties agree to meet to discuss, in good faith, a resolution prior to City assessing incremental increases.

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

Within ten (10) days of notification by City, Franchisee may submit a written appeal to the City Representative challenging the occurrence of the incident, stating why the incident is not a proper basis for the assessment of liquidated damages, or is not a proper incident preceding an incident that for the basis for the assessment of liquidated damages, or explaining why the liquidated damages should not be assessed. The decision of the City Representative shall be final.

Franchisee shall pay any liquidated damages within thirty (30) calendar days after they are assessed. Payment of liquidated damages will in no way be a waiver of City's authority to terminate this Agreement

12.7 Household Hazardous Waste Fee - Franchisee will contract with Curbside, Inc. to provide a Household Hazardous Waste Program to City residents. On behalf of City, Franchisee agrees to include in its quarterly billing statements to Residential Service Recipients (monthly billing statements for Multi-Family that do not subscribe to individual cart service) the fee for such service that has been approved by the City Council (the "Household Hazardous Waste Fee"). The Household Hazardous Waste Fee for the first Contract Year (November 1, 2010 through October 31, 2011) shall be the rate set forth on EXHIBIT B, and shall thereafter be adjusted by the same percentage that is applied to other rates pursuant to Section 12.2. The parties acknowledge that the Household Hazardous Waste Fee and the adjustment mechanism may change if the Household Hazardous Waste Collector is replaced.

12.8 Change in City Fees - City may change the percentage of the Franchise Fee or the Solid Waste Fund Operations Fee, or the amount of the Household Hazardous Waste Fee, so long as, before any such change takes effect, the maximum rates chargeable by Franchisee are adjusted so that such change does not reduce Franchisee's compensation after taking into account payment to City of all such fees. City shall give Franchisee at least ninety (90) days written notice of its intent to change any such fee.

ARTICLE 13 PERFORMANCE BOND

13.1 Faithful Performance Bond - Within ten (10) calendar days from the date the City Council approves this Agreement and by October 10 of each year of this Agreement, Franchisee shall procure and provide City with a fully prepaid surety bond, or the letter of credit, for at least the duration of such Contract Year, to guarantee and assure the prompt and faithful performance of Franchisee's obligations under this Agreement. Such bond shall be executed by a surety licensed and in good standing with the Department of Insurance in the State of California, and have a Best Company rating of A-10 or better. The bond shall name City of Cupertino as obligee, shall provide at least thirty (30) calendar day's prior notice of any cancellation, and shall be in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00). The bond will continue in effect for three (3) months beyond the term of the Agreement, or until all Franchise Fee Payments to City and the End of Agreement Reports specified in EXHIBIT G are provided to City.

The form of the bond and the surety are subject to the reasonable approval of the City Representative and the City Attorney. The bond will be executed as surety by a corporation authorized to issue surety bonds in the State of California, with a financial condition and record of service reasonably satisfactory to City. City reserves the right to reduce or waive this requirement at any time.

The condition of the performance bond shall be such that if Franchisee shall well and truly perform the covenants, promises, undertakings and obligations contracted by Franchisee to be performed under this Agreement (other than inchoate indemnity obligations), then the obligation of the bond shall be void; otherwise it shall remain in full force and effect. Said bond shall terminate and be canceled upon the completion of all of Franchisee's obligations under this Agreement (other than inchoate indemnity obligations). City shall execute and deliver to Franchisee or Franchisee's surety company promptly upon Franchisee's completion of all of Franchisee's obligations under this Agreement (other than inchoate indemnity obligations) such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling such performance bond.

13.2 City's Rights - City shall have the right to draw against the faithful performance bond or the letter of credit in the event of a breach or default of Franchisee or the failure of Franchisee to perform fully any obligation under this Agreement, only upon one (1) Working Day's prior written notice to Franchisee, to reimburse City's reasonable, and necessary costs incurred as a result of an Event of Default, and not as a penalty. Within five (5) Working Days of receipt of such notice from City, Franchisee shall renew or replace such sums of money as needed to bring the faithful performance bond or letter of credit to the full amount specified in Section 13.1 of this Agreement.

ARTICLE 14 INSURANCE REQUIREMENTS

14.1 Insurance Policies – Franchisee shall procure and maintain throughout the term of this Agreement insurance on the terms and conditions set forth in this Article 14 against claims for injuries to persons or damages to property which may arise from or in connection with Franchisee's performance of work or services under this Agreement. Franchisee's performance of work or services shall include performance by Franchisee's employees, agents, representatives and subcontractors.

14.1.1 Minimum Limits of Insurance - Franchisee shall maintain insurance limits no less than:

A. Comprehensive General Liability: $4,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.

B. Automobile Liability: $4,000,000 per accident, bodily injury and property damage combined.

C. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability.

D. Hazardous Waste and Environmental Impairment Liability: $4,000,000 per claim.

14.1.2 Deductibles and Self-Insured Retentions - Any deductibles or self-insured retentions must be declared to, and approved by, the City Representative. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and Franchisees; or Franchisee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City Representative.

14.2 Endorsements - The policies are to contain, or be endorsed to contain, the following provisions:

General Liability and Automobile Liability Coverage

1. City, its officers, insureds, employees, agents and Franchisees are to be covered and named as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, Franchisee; products and completed operation of Franchisee; premises owned, leased or used by Franchisee; and automobiles owned, leased, hired or borrowed by Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and Franchisees.

2. Franchisee's insurance coverage shall be primary insurance as respects City, its officers, employees, agents, and Franchisees. Any insurance or self-insurance maintained by City, its officers, employees, agents or Franchisees shall be excess of Franchisee's insurance and shall not contribute with it.

3. Coverage shall state that Franchisee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City.

14.3 Acceptability of Insurers - Insurance is to be placed with insurers acceptable to the City Representative, who shall be reasonable in evaluation of the insurers. Such insurance shall be executed by a surety licensed and in good standing with the Department of Insurance in the State of California, and have a Best Company rating of A-10 or better. All insurers must be identified by full name; rating, according to the latest edition of Best's Key Rating Guide; and status as insurers admitted in California. If the company is not rated, current financial information should accompany the quotation.

14.4 Verification of Coverage - Franchisee shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Franchisee shall furnish City with a new certificate of insurance and endorsements upon each

renewal of coverage or change of insurers. Proof of insurance shall be provided in writing to the City Representative.

14.5 Subcontractors – Franchisee's insurance shall include coverage for work performed in connection with this Agreement by its subcontractors, and Franchisee shall obtain separate certificates and endorsements for each subcontractor evidencing the same coverage and limits as required of Franchisee. The coverage and limits required by the initial HHW Collector are as set forth in the agreement between Franchisee and Curbside Inc. attached hereto as Exhibit K.

14.6 Modification of Insurance Requirements - The insurance requirements provided in this Agreement may be modified or waived by the City Representative, in writing, upon the request of Franchisee if the City Representative determines such modification or waiver is in the best interests of City considering all relevant factors, including exposure to City.

14.7 Insurance Reimbursement - In the event Franchisee fails to maintain in full force and effect any insurance policy required to be maintained by Franchisee under this Article 14, City may, in addition to any other remedies under this Agreement, pay the premiums for such insurance policy on Franchisee's behalf, and Franchisee agrees to pay the cost of said insurance.

ARTICLE 15 INDEMNIFICATION

15.1 Indemnification and Hold Harmless - Franchisee, for and on behalf of itself and its agents, subcontractors, directors, officers, employees and representatives (collectively, and including Franchisee, the "Franchisee Parties") shall indemnify, defend and hold harmless City, its officers, agents and employees (collectively, and including City, the "City Parties") from and against any and all losses, liabilities, penalties, claims, demands, judgments, damages, actions or suits, of any and every kind and description (collectively, "Losses"), arising or resulting from (i) any breach by Franchisee Parties of this Agreement, (ii) any noncompliance by any Franchisee Party in the performance of this Agreement with any laws respecting the collection, transportation, processing or disposal of Recyclable and Compostable Materials, or (iii) any negligence or willful misconduct of any Franchisee Party. The acceptance by City of any work or services under this Agreement shall not operate as a waiver of such indemnification or hold harmless.

15.2 Defense - Upon the demand of City, Franchisee shall defend City, its officers and/or employees against any matter described in Section 15.1 of this Agreement with attorneys selected by Franchisee and reasonably acceptable to City.

15.3 Exception - Notwithstanding Sections 15.1 and 15.2, Franchisee's obligation to indemnify, hold harmless and defend City, its officers, agents and employees shall not extend to any Losses to the extent arising from acts or omissions constituting negligence or willful misconduct on the part of City, its officers, agents or employees, or their subcontractors.

15.4 Damage by Franchisee - If Franchisee's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs (excluding normal wear and tear, and leakage or spillage of fluids described in the last sentence of this Section 15.4), Franchisee shall reimburse City for City's reasonable costs of repairing such injury, damage or loss. Such right to reimbursement is not in derogation of any right of City to be indemnified by Franchisee for any such injury, damage or loss. With the prior written approval of City Representative, Franchisee may repair such injury, damage or loss at Franchisee's sole cost and expense. If Franchisee's vehicles leak or spill

hydraulic fluid, motor oil, or similar fluids on City streets or curbs, Franchisee shall, within two (2) hours of the spill, apply absorbents to mitigate the effects of the spill, but shall not be required to remove (or be responsible for the cost of removing) any stain remaining after such absorbents have been applied.

ARTICLE 16 TERMINATION

16.1 Franchisee's Default - City may terminate this Agreement immediately upon written notice to Franchisee upon the occurrence of any of the following (each, an "Event of Default"):

16.1.1 Failure to Perform - Franchisee's default of any material duty or obligation of Franchisee under this Agreement and Franchisee's failure to cure such default within thirty (30) calendar days of City's written notice to Franchisee of such default, provided, however, that if the default is not capable of cure within said thirty (30) calendar days, Franchisee shall provide written notice to City together with a schedule of cure within fifteen (15) calendar days of City's notice of default, shall begin actions to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default, and so long as such conditions are fulfilled, the cure period shall be extended for such additional period as may be required to cure the default.

16.1.2 Failure to Maintain Performance Bond or Insurance - Franchisee's acts or omissions result in failure to provide and maintain the performance bond as required by this Agreement or failure to obtain or maintain the insurance policies and endorsements as required by this Agreement.

16.1.3 Failure to Indemnify for AB 939 Penalties - Franchisee fails to indemnify City within thirty (30) days after demand by City against state penalties imposed on City under AB 939 (California Integrated Waste Management Act of 1989) by reason of Franchisee's failure to perform its obligations under this Agreement.

16.1.4 Bankruptcy or Insolvency of Franchisee - The occurrence of any of the following and Franchisee's failure to provide adequate assurance that the same can be cured within thirty (30) calendar days of City's demand for such assurance: (1) the appointment of a receiver or trustee to take possession of all or substantially all of the assets of Franchisee; (2) Franchisee's general assignment if its assets for the benefit of Franchisee's creditors; (3) a court entry of any decree or order adjudging Franchisee to be insolvent or bankrupt; (4) a court entry of any decree or order approving as properly filed a petition seeking reorganization of Franchisee or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State; or (5) a reasonable determination by the City Representative, based upon a statement prepared by an independent certified public accountant mutually agreed upon by Franchisee and the City Representative, that there is a substantial probability that Franchisee's financial capability to perform this Agreement is impaired.

16.2 Authority to Terminate - The City Council of City is the sole party authorized to terminate this Agreement on behalf of City. Any termination of this Agreement under this Article 16 shall not relieve Franchisee of the obligation to pay any fees, taxes, or other charges then due to City nor relieve Franchisee of the obligation to file any Monthly Reports or Annual Reports covering the period to termination nor relieve Franchisee from any claim for damages previously accrued or then accruing against Franchisee. City shall pay to Franchisee, and Franchisee shall be entitled to collect from Service Recipients, any amounts due to Franchisee for the performance of services under this Agreement through the effective date of termination.

16.3 Termination Cumulative - City's right to terminate this Agreement is cumulative to any other rights and remedies provided by law or by this Agreement.

16.4 City's Default - Franchisee may terminate this Agreement if City defaults by (i) failing to set rates as required by this Agreement, (ii) failing to pay fees and provide access to Newby Island Landfill as provided in Section 7.1.2 (unless City makes available an alternative site on substantially the same terms to Franchisee), or (iii) violating the exclusivity provisions of this Agreement, and in each case City fails to cure such default within thirty (30) calendar days of Franchisee's written notice to City of such default. If the default is not capable of cure within said thirty (30) calendar days, City shall provide written notice to Franchisee together with a schedule of cure within fifteen (15) calendar days of Franchisee's notice of default, shall begin actions to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default, and so long as such conditions are fulfilled the cure period shall be extended for such additional period as may be required to cure the default.

16.5 Force Majeure - Neither party shall be in default of its obligations under this Agreement in the event that, and for so long as, it is impossible or extremely impracticable for such party to perform its obligations due to a Force Majeure event or the effect thereof. A party claiming excuse under this Section 16.2 shall promptly give notice thereof to the other party together with a description of the Force Majeure event, and shall use reasonable best efforts to remedy its inability to perform as quickly as possible.

ARTICLE 17 GENERAL PROVISIONS

17.1 Service Standards - Franchisee shall perform all services under this Agreement in a thorough, courteous and professional manner. Collection services described in Article 4 of this Agreement shall be performed regardless of weather conditions and regardless of difficulty of collection (subject to Sections 4.1.6 and 16.2).

17.2 Labor and Equipment - Franchisee shall provide and maintain all labor, equipment, tools, facilities, and personnel supervision required for the performance of Franchisee's obligations under this Agreement. Franchisee shall at all times have sufficient back up equipment and labor to fulfill Franchisee's obligations under this Agreement. No compensation for Franchisee's services or for Franchisee's supply of labor, equipment, tools, facilities or supervision shall be provided or paid to Franchisee by City or by any Service Recipient except as expressly provided by this Agreement.

17.3 Assignment - The experience and expertise of Franchisee are material considerations for this Agreement. Franchisee shall not assign any of Franchisee's rights nor delegate any of Franchisee's duties under this Agreement without the prior written consent of City. Any attempt to so assign Franchisee's rights or delegate Franchisee's duties shall be void and of no force or effect.

Should the Franchisee wish to assign any of Franchisee's duties under this Agreement, Franchisee must submit their request in writing, and proposal must be approved by City Council prior to implementation. Any attempted assignment shall be null and void and of no effect without prior City Council approval.

17.4 Successors and Assigns - This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided that no party hereto may assign this Agreement without the prior consent of the other party, which consent the City may withhold at its sole discretion; and provided, further, that no assignment shall be valid and binding that endeavors to relieve the

assigning party of any obligations to make payments that accrued prior to the date of assignment or of which the assignee has not affirmatively agreed, in writing, to assume all obligations of the assignor thereunder. Any dissolution, merger, consolidation or other reorganization of Franchisee, or sale or other transfer of the capital stock of Franchisee, which results in any party other than Recology, Inc., a California corporation, or its affiliates holding a controlling percentage of the capital stock of Franchisee, shall be deemed a voluntary assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Franchisee's capital stock issued, outstanding, and entitled to vote for the election of directors.

17.5 Independent Contractor - In the performance of services pursuant to this Agreement, Franchisee shall be an independent contractor and not an officer, agent, servant or employee of City. Franchisee shall have exclusive control over the details of the services and work performed and over all persons performing such services and work. Franchisee shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Franchisee nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to City employees and Franchisee expressly waives any claim it may have or acquire to such benefits.

17.6 Name - Franchisee shall not use a firm name containing the word "City" or other words implying municipal ownership without prior written approval of City.

17.7 Law to Govern - The law of the State of California shall govern this Agreement.

17.8 Venue - Any litigation between City and Franchisee concerning or arising out of this Agreement shall be filed and maintained exclusively in the Superior Court of Santa Clara County, State of California, to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

17.9 Compliance with Law - In the performance of this Agreement, Franchisee shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the Municipal Code of City.

City shall provide written notice to Franchisee of any planned amendment to the Municipal Code which would substantially affect the performance of Franchisee's services pursuant to this Agreement. Such notice shall be provided at least thirty (30) days prior to the City Council's consideration of such an amendment.

17.10 Permits and Licenses - Franchisee shall obtain, and shall maintain throughout the term of this Agreement, all necessary permits, licenses and approvals required for Franchisee to perform the work and services agreed to be performed by Franchisee pursuant to this Agreement. Franchisee shall show proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the City Representative, including without limitations, a business license.

17.11 Ownership of Written Materials - All reports, documents, brochures, public education materials, and other written, printed or photographic materials developed by City or Franchisee in connection with the services to be performed under this Agreement, whether developed directly or indirectly by City or Franchisee, may be used by City without limitation or restriction on the use of such materials by City. City shall not provide materials developed by Franchisee directly to Franchisee's competitors. Franchisee

shall not use any such materials specific to City in connection with any project not connected with this Agreement without the prior written consent of the City Representative.

17.12 Waiver - The waiver by City or Franchisee of any breach or violation of any term, covenant or condition of this Agreement shall not be deemed to be a waiver of any other term, covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by City of any fee, tax, or any other moneys which may become due from Franchisee to City shall not be deemed to be a waiver by City of any breach or violation of any term, covenant or condition of this Agreement.

17.13 Notices - All notices and other communications required or which may be given under this Agreement shall be in writing and shall be deemed effectively given (i) three (3) Working Days after having been deposited in the United States first class mail, postage prepaid, (ii) when personally delivered to the party to be notified, (iii) when sent by facsimile with written confirmation of receipt if sent during the normal business hours of the recipient, or if not, then on the next Working Day, (iv) one (1) Working Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, or (v) if sent by email, upon confirmation of receipt by the party to be notified, or upon receipt by the party to be notified if a copy of the communication is also sent by one of the methods set forth in clauses (i)-(iv) within one (1) Working Day of the transmittal of the email. All notices or other communications shall be sent to the address, fax number or email address specified below:

To City: Environmental Programs Manager (Public Works Department)
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Fax Number: 408-777-3333
Email Address: environmental@cupertino.org

City Representative can be reached by phone at Environmental@cupertino.org, 408.777.3354.

To Franchisee: General Manager
Recology Cupertino
650 Martin Avenue
Santa Clara, CA 95050
Fax Number: 408-588-1102
Email Address: JZirelli@Recology.com

General Manager can be reached by phone at 408-725-4020.

Either party may designate different contact information by providing notice to the other party as provided in this Section 17.12.

17.14 Transition to Next Franchisee - In the event Franchisee is not awarded an Agreement to continue to provide services following the expiration or earlier termination of this Agreement, Franchisee shall cooperate fully with City and any subsequent Franchisee to assure a smooth transition of services described in this Agreement. Such cooperation shall include, but not be limited to, transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and lists of Service Recipients and account information. During the last twelve (12) months of this Agreement, these materials shall be provided to City within five (5) Working Days of the request by City.

17.15 City Representative - Except as otherwise provided in this Agreement, the City Representative shall be authorized to act on behalf of the Public Works Director in the administration of this Agreement.

17.16 Franchisee's Records - Franchisee shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, computer files, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

Franchisee shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during Franchisee's regular business hours, upon reasonable notice and prior written request by the City Representative, City Attorney, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Franchisee's address indicated for receipt of notices in this Agreement.

17.17 Use of Recycled Products - Franchisee is requested to use, wherever commercially reasonable, in the performance of services under this Agreement, products or materials which contain recycled materials content. This would include such items as reports on recycled content paper, recycling Containers with recycled plastic content; and use of re-refined oil in collection vehicles.

17.18 Amendment - This Agreement may be amended or modified only by written Agreement duly authorized by Franchisee and City and executed by their authorized representatives.

17.19 Paragraph Headings - The subject headings of the paragraphs and subparagraphs of this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.

17.20 Drafting - This Agreement, and each of the provisions hereof, have been reached as a result of negotiations between the parties and their respective attorneys. Each of the parties hereto expressly acknowledges and agrees that this Agreement shall not be deemed to have been prepared by or drafted by any particular party and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party or parties, shall not be employed in the interpretation of this Agreement.

17.21 Severability - Should one or more of the provisions of this Agreement be held by any court to be invalid, void or unenforceable, the remaining provisions shall nevertheless remain and continue in full force and effect, and the parties shall promptly meet and negotiate a substitute for such invalid provisions and modifications to any remaining provisions so as to effect the original intent of the parties to the extent legally permissible, provided that the substitute and remaining provisions as so negotiated do not materially change the rights, duties or obligations of either party from those rights, duties or obligations originally contemplated by this Agreement.

17.22 Entirety: Agreement and Exhibits - This Agreement represents the entire Agreement of City and Franchisee with respect to the services to be provided under this Agreement and supersedes and merges all prior written and oral statements, proposals, representations and agreements between the parties, including without limitation the Prior Franchise Agreement (as of November 1, 2010). The Exhibits to

this Agreement are hereby incorporated into and made a part of this Agreement as though fully set forth herein.

17.23 Nondiscrimination - In performing the collection services hereunder, Franchisee shall not discriminate against any person on the ground of race, sex, age, creed, color, religion or national origin.

17.24 Attorney's Fees - In any legal action or proceeding brought for enforcement of this Agreement, the successful party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.

17.25 Dispute Resolution

17.25.1 Call for Mediation - If the parties are unable to resolve a dispute arising under this Agreement in a cooperative manner, either party may call for mediation, as hereafter described. The party calling for mediation shall serve notice in writing upon the other party setting forth the question or questions to be mediated. The costs of the mediation shall be borne equally by the parties.

17.25.2 Mediation - Within ten (10) days after delivery of the notice called for under Section 17.25.1, the parties shall select a mutually acceptable mediator from the Judicial Arbitration and Mediation Service ("JAMS") or other mutually agreeable organization. In the event the parties are unable to agree on a mediator, a mediator shall be selected for them at random by the San Francisco office of JAMS. However, either side may reject the proposed mediator and JAMS will select another. Within ten (10) days thereafter, subject to the mediator's schedule, the parties shall meet with the mediator in a good faith attempt to resolve their dispute. The parties shall continue to meet with the mediator until their dispute is resolved or the mediator indicates that he or she does not believe that further efforts are likely to result in a successful resolution or the dispute is not resolved within thirty (30) days after the first mediation session, whichever occurs first.

The remainder of this page intentionally left blank. Signatures on the following page.

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WITNESS the execution of this Agreement on the dates set forth below.

City of Cupertino
A Municipal Corporation

By: _____
Mayor, City of Cupertino

Date: _____

Approved as to Form:

_____
City Attorney

Recology Cupertino
A California Corporation

By: _____
General Manager

Date: 6/11/10

Attest: _____
City Clerk

Date: 6/12/10

EXHIBIT A: RECYCLABLE AND COMPOSTABLE MATERIALS

"**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, 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)
- 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.

Franchisee will run its "Coats for Kids" program in the fall 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.

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 Dwelling (not commercial or MFD) Service Recipients on regular collection days. Motor oil will be placed in sealed, clear, plastic, 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 Recycling Containers by the Service Recipient.

All Electronic-waste and Universal-waste 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: SCHEDULE OF APPROVED MAXIMUM RATES

Initial Recology Cupertino Maximum Rates for the City of Cupertino on November 1, 2010 Must Reflect Rates Effective August 1, 2010

B.1. RESIDENTIAL SERVICE

Service Description		Maximum Rate
SINGLE FAMILY (Monthly Rate):		
Curbside	1 32-gallon cart	$ 20.23
Curbside	1 64-gallon cart	$ 40.46
Curbside	1 96-gallon cart	$ 60.69
Curbside	Each Additional Cart	$ 20.23
Walk-up	1 32-gallon cart	$ 31.09
Walk-up	1 64-gallon cart	$ 62.18
Walk-up	1 96-gallon cart	$ 93.27
Walk-up	Each Additional Cart	$ 31.09
HILLSIDE (Monthly Rate):		
Roadside	1 32-gallon cart	$ 33.46
Roadside	1 64-gallon cart	$ 66.92
Roadside	1 96-gallon cart	$ 100.38
Roadside	Each Additional Cart	$ 33.46
DUPLEX/MULTIPLE UNITS & YARDWASTE EXEMPT (Monthly Rate) Any customer that uses the organics (food waste) collection service is not eligible for the exempt rate:		
Front	1 32-gallon cart	$ 17.11
Front	1 64-gallon cart	$ 34.22
Front	1 96-gallon cart	$ 51.33
Front	Each Additional Cart	$ 17.11
Back	1 32-gallon cart	$ 26.46
Back	1 64-gallon cart	$ 52.92
Back	1 96-gallon cart	$ 79.38
Back	Each Additional Cart	$ 26.46
SENIOR CITIZENS (Monthly Rate):		
Frontyard/Backyard	1 32-gallon cart	$ 10.12
Exempt (No Yardwaste)	1 32-gallon cart	$ 8.57
Hillside	1 32-gallon cart	$ 16.74
ADDITIONAL CHARGES:		
Extra Bag Tag		$ 5.89
10 Bag Tags		$ 55.97
Extra Can (1-Time)		$ 10.14

B.1. RESIDENTIAL SERVICE

Service Description		Maximum Rate
24HR CONTAINER SERVICE:		
Bin By The Day	4 Yard	$ 130.83
Bin By The Day	6 Yard	$ 160.23
Bin By The Day	7 Yard	$ 174.93
MANURE SERVICE (Monthly Rate):		
Manure - 1 CY	1X Week Service	$ 182.47
Manure - 1 CY	2X Week Service	$ 383.01
Manure - 1 CY	3X Week Service	$ 583.70
Manure - 1 CY	4X Week Service	$ 784.34
Manure - 1 CY	5X Week Service	$ 985.18
Manure - 1 CY	Extra Pick-up	$ 74.91
HOUSEHOLD HAZARDOUS WASTE FEE (Monthly Rate):		
Single-Family Residence (including units in Multi-Family Residences that subscribe for individual MSW cart service)		$ 0.45
Multi-Family Residence (Per unit, for units that do not subscribe for individual MSW cart service)		$ 0.35

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

B.2. NON RESIDENTIAL GARBAGE SERVICE AND NON RESIDENTIAL COMPOSTABLE MATERIALS SERVICE *

** Non-Residential Garbage service & Non-Residential Compostable Materials service are two separate services rates for Commercial Compostable Materials service are never more than the rates for Commercial Garbage service for the same quantity of material*

Service Description	Frequency	Maximum Rate
FRONT LOADER CONTAINERS (Monthly Rate):		
1.5 CY Container	1X Week Service	$ 117.99
1.5 CY Container	2X Week Service	$ 236.01
1.5 CY Container	3X Week Service	$ 354.01
1.5 CY Container	4X Week Service	$ 472.02
1.5 CY Container	5X Week Service	$ 590.02
1.5 CY Container	6X Week Service	$ 708.00
1.5 CY Container	Extra Pick-up	$ 37.08
2 CY Container	1X Week Service	$ 141.62
2 CY Container	2X Week Service	$ 283.19
2 CY Container	3X Week Service	$ 424.82
2 CY Container	4X Week Service	$ 566.39
2 CY Container	5X Week Service	$ 708.00
2 CY Container	6X Week Service	$ 849.60
2 CY Container	Extra Pick-up	$ 46.33
3 CY Container	1X Week Service	$ 188.80
3 CY Container	2X Week Service	$ 377.61
3 CY Container	3X Week Service	$ 566.39
3 CY Container	4X Week Service	$ 755.22
3 CY Container	5X Week Service	$ 944.01
3 CY Container	6X Week Service	$ 1,132.81
3 CY Container	Extra Pick-up	$ 50.67
4 CY Container	1X Week Service	$ 236.01
4 CY Container	2X Week Service	$ 472.02
4 CY Container	3X Week Service	$ 708.00
4 CY Container	4X Week Service	$ 944.01
4 CY Container	5X Week Service	$ 1,180.03
4 CY Container	6X Week Service	$ 1,416.01
4 CY Container	Extra Pick-up	$ 63.18
6 CY Container	1X Week Service	$ 330.40
6 CY Container	2X Week Service	$ 660.81
6 CY Container	3X Week Service	$ 991.21
6 CY Container	4X Week Service	$ 1,321.61
6 CY Container	5X Week Service	$ 1,652.02
6 CY Container	6X Week Service	$ 1,982.43
6 CY Container	Extra Pick-up	$ 87.93

B.2. NON RESIDENTIAL GARBAGE SERVICE AND NON RESIDENTIAL COMPOSTABLE MATERIALS SERVICE *

** Non-Residential Garbage service & Non-Residential Compostable Materials service are two separate services rates for Commercial Compostable Materials service are never more than the rates for Commercial Garbage service for the same quantity of material*

Service Description	Frequency	Maximum Rate
8 CY Container	1X Week Service	$ 424.82
8 CY Container	2X Week Service	$ 849.60
8 CY Container	3X Week Service	$ 1,274.43
8 CY Container	4X Week Service	$ 1,699.21
8 CY Container	5X Week Service	$ 2,124.02
8 CY Container	6X Week Service	$ 2,548.82
8 CY Container	Extra Pick-up	$ 113.72
*Pushout Container	1X Week Service	$ 41.54
Pushout Container	2X Week Service	$ 83.32
Pushout Container	3X Week Service	$ 124.74
Pushout Container	4X Week Service	$ 166.41
Pushout Container	5X Week Service	$ 208.05
Pushout Container	6X Week Service	$ 249.79

* 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)	$ 46.27

COMMERCIAL GARBAGE CART RATE:

Per Cart Pickup	$ 18.75

SPECIAL SERVICES:

Steam cleaning and re-delivery of bin [shall be provided once each year without charge], Furnishing Chains (One Time Only)	$ 79.63

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

B.3. COMPACTOR SERVICE

Service Description	Maximum Rate
COMPACTOR RATE (Per Cubic Yard) (Monthly Rate):	$ 33.33
COMPACTOR RATE-MIXED RECYCLABLE:	
Hauling Only	$ 309.98
Per Ton	$ 49.35

B.4. DEBRIS-BOX SERVICE

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

8 Yard Rock Box	6 Tons	$ 618.52
8 Yard Rock Box	7 Tons	$ 692.36
8 Yard Rock Box	8 Tons	$ 766.20
8 Yard Rock Box	Each Additional Ton	$ 73.84
16 Yard Debris Box	3 Tons	$ 397.01
16 Yard Debris Box	4 Tons	$ 470.86
16 Yard Debris Box	5 Tons	$ 544.70
16 Yard Debris Box	Each Additional Ton	$ 73.84
20 Yard Debris Box	4 Tons	$ 467.32
20 Yard Debris Box	5 Tons	$ 541.16
20 Yard Debris Box	6 Tons	$ 615.00
20 Yard Debris Box	Each Additional Ton	$ 73.84
26 Yard Debris Box	4 Tons	$ 607.52
26 Yard Debris Box	5 Tons	$ 681.37
26 Yard Debris Box	6 Tons	$ 755.21
26 Yard Debris Box	Each Additional Ton	$ 73.84
30 Yard Debris Box	5 Tons	$ 718.34
30 Yard Debris Box	6 Tons	$ 792.18
30 Yard Debris Box	7 Tons	$ 866.02
30 Yard Debris Box	Each Additional Ton	$ 73.84
40 Yard Debris Box	6 Tons	$ 766.30
40 Yard Debris Box	7 Tons	$ 840.14
40 Yard Debris Box	8 Tons	$ 913.99
40 Yard Debris Box	Each Additional Ton	$ 73.84

WEEKLY RENTAL FEE (Beyond Normal 7 Days): $ 119.99

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

EXHIBIT B SHALL BE REVISED TO REFLECT RATES AS OF AUGUST 1, 2010 AND THAT REVISED EXHIBIT B SHALL REPLACE THE APRIL 2010 VERSIONS SO THAT THE AUGUST 2010 RATES WILL BE IN EFFECT AT THE TIME OF THE NOVEMBER 1, 2010 IMPLEMENTATION OF THIS FRANCHISE.

EXHIBIT C: PUBLIC EDUCATION AND OUTREACH PLAN

Transition Strategy

Franchisee is prepared to deliver a smooth and successful transition to the City's expanded solid waste, recyclable materials and organic waste collection program. Ensuring residents are informed, motivated, and "ready to go" by the start date is a critical part of the process. Accordingly, Franchisee will supplement the City's efforts with an outreach program that they have found to be successful. Franchisee's goal will be to create program visibility, awareness and support, leading up to the critical start-up period. Franchisee's focus will be:

Proactive Start-Up Communications: Franchisee will compliment 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 expanded 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 upcoming events:

Being Visible and Accessible during Start-Up: There will be many opportunities to be visible and accessible as the City prepares and rolls out its expanded program. In order to be as visible as possible, Franchisee will:

- Support, participate and join all City-sponsored events, as well as community and neighborhood meetings, organized for the purpose of promoting and educating residents relative to the City's program. Franchisee will buy 1,000 reusable grocery bags each year and distribute them at no charge to residents at City-sponsored events.
- 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.
- Ensure Franchisee's website is on-line with accurate and timely information and links to the City's website, well before the start date.

Franchisee Facilities as a Resource: Franchisee will make their facilities, including the processing facilities to be utilized during the term of the contract, available during the start-up promotional and 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 to them and encouraging them to promote the City's program using these facilities as a focal point.

Youth Engagement during Transition: Children will be an important focus of our public education efforts:

- In the months and weeks preceding the start date and during the critical transition period, Franchisee will increase efforts to promote recycling in the community and particularly in local schools.

Being a Good Neighbor during Transition: To fulfill this important role during transition, Franchisee will focus on building a partnership and enrolling the rich expertise that resides within the community to ensure the expanded recycling program get off to the right start. Franchisee will:

- Look for and enroll community partners to help us 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!)

On-Going Public Education & Outreach

Franchisee will conduct a year around public education program that will focus on:

- Proactive Communications

- Being Visible and Accessible to Our Community

- Facilities as a Community Resource

- Educating Our Youth

- A Commitment to Being a Good Neighbor

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

- Comply with all City communications requirements.

- Attend meetings with the City.

- 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.

- Create at least four distinct 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). 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.

  - **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:

    - Set outs placed too early (more than 24hrs) - NOT okay

    - Set out locations

    - What's acceptable and what's not (issue: contamination)

  - **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 signs on our trucks to help promote the City's program.

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

Being Visible and Accessible to the Community: In order to be as visible as possible, Franchisee will:

- Comply with all City outreach requirements.

- Support, participate and join all City-sponsored events, as well as community and neighborhood meetings, to continuously promote the program.

- Participate in community festivals and special events that provide a good opportunity to promote our program, and make effective use of displays, City and Franchisee collateral materials, and promotional giveaways.

  - Support, participate and join all City-sponsored media initiatives (including any and all preparation of press kits and participation in press conferences).

- Two clean–up events will be held for single family residents in the spring and the fall. Franchisee will develop and distribute outreach materials which may include advertisements in the local newspaper or notices in the customer billing statements.

- Provide on-going supplies of print materials to community facilities that people turn to for information - e.g. libraries, Quinlan Community Center, the Senior Center and City Hall, etc.

- Ensure Franchisee's website is well maintained and contains accurate and timely information, with direct links to the City's website.

Franchisee Facilities as a Community Resource: Franchisee's facilities, including processing facilities, will be made available for promotional 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.

Consistently Being a Good Neighbor: Franchisee is committed to being a good corporate citizen and good neighbor. 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 with particular emphasis on communication with many constituencies.

- 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 D: CITY-WIDE RECYCLING EVENTS

1. Materials Included in City-wide Recycling Events:

A. Franchisee shall accept at least three (3) 12”x12”x16” boxes (or equivalent volume) per household of sensitive documents for destruction and shredding on site at the event. Franchisee shall provide, or contract with another firm to provide, a modern, high-volume mobile shredder for this service.

B. Franchisee shall accept from residents of City, and keep separate for recycling, the following materials:

a) E-waste, such as computer monitors, TVs, computers, VCRs, and other computer related electronics
b) U-waste, such as compact fluorescent bulbs, fluorescent tube bulbs, batteries and mercury thermometers,
c) clean (unpainted and untreated) dimensional lumber
d) scrap metal items that do not exceed forty (40) pounds in weight and are not more than three (3) feet long in any dimension
e) white goods that do not contain Freon
f) up to one covered pickup truck full of residential Construction and Demolition Debris per household
g) up to 30-gallons per household of concrete, asphalt, rock and dirt
h) undamaged play structures or toys (to be donated to a non-profit service organization)
i) usable textiles (to be donated to a non-profit service organization)
j) all other Recyclable Materials

C. Franchisee shall accept from residents of City, and keep separate for composting, the following materials:

a) unpainted and untreated wood
b) all other Compostable Materials

2. Materials Excluded from City-wide Recycling Events:

Franchisee shall not be required to accept the following materials during City-wide cleanups:

a) tree trimmings which are more than 6” in diameter
b) more than 30-gallons per household of concrete, asphalt, rock, and dirt.
c) more than one pickup truck full of residential Construction and Demolition Debris per household
d) tires
e) Hazardous Materials, including used motor oil
f) Any other materials not included in 1A, 1B or 1C above

EXHIBIT E: ON-CALL COLLECTION SERVICES

Only Residential Service Recipients with garbage service are eligible to use the On-Call Collection Services program. Residential Service Recipients can schedule up to two collection days per year at no additional charge. Residential Service Recipients must call at least two business days in advance to schedule on-call collection services.

Each on-call collection allows the Residential Service Recipient to schedule pickup of one of the following:

1) Garbage
2) Construction and Demolition Debris
3) Bulky Goods
4) Compostable Materials and clean wood waste

1. Garbage and Construction and Demolition Debris

a) Loose items must be bagged, bundled or boxed. The total pile size must not exceed 4-feet, by 4-feet, by 8-feet.
b) Construction and Demolition Debris must be containerized, with individual boxes not weighing more than 40 pounds, and with a total weight not to exceed 250 pounds.

2. Bulky Goods including:

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

3. Compostable Materials and Wood Waste

a) Compostable Materials and clean (unpainted and untreated) wood must be bundled, boxed or in a trash can.
b) Branches must be less than 6-inches in diameter
c) Bundled piles must not exceed 6-feet in length, and not weigh more than 50 pounds each. The total pile size must not exceed 4-feet, by 4-feet, by 8-feet.

No stumps, poison oak, or bug-infested material will be accepted.
No loose piles or plastic bags will be collected.

Restricted/Hazardous Items

No car parts with oil or other fluid residues will be accepted.
No Hazardous Materials, including used motor oil, will be collected.

Unused on-call collection days are not transferable from one calendar year to the next.

EXHIBIT F: CITY FACILITIES SERVICES

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.)

EXHIBIT G: REPORTING REQUIREMENTS

1. Monthly Reports.

Franchisee shall submit, within twenty (20) calendar days following the end of each month, a Monthly Report on the amount of Recyclable Materials collected, Compostable Materials collected, City-wide recycling events, and Garbage collected and disposed. Franchisee will provide a separate monthly report for Multi-Family Dwelling Units and Non-Residential Services, describing the levels of service for recyclables and compostables, for which they are subscribing. This information shall meet the reporting requirements of the California Integrated Waste Management Act, as such Act may from time to time be amended. In addition to the information required by the California Integrated Waste Management Act, each Monthly Report shall include the information described in Section 2 of this EXHIBIT G. Franchisee shall provide these reports electronically, in a format approved by City, to reduce waste generation.

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; and any other relevant information, including details of any City-wide Recycling Days which occurred during that month.

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

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

1.3 Sales of Recyclable Materials and Compostable Materials.

The Monthly Report shall contain a Monthly Recyclable Materials and Compostable Materials sales statement showing: type of material, the name of each buyer, date of sale, terms of sale, quantity sold (in tons), 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 or been given a credit for a Biostack 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.

1.5 Problems Encountered.

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

1.6 Public Education Activities.

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

1.7 Service Log.

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

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

1.8 New Service Recipients.

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

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.

Within 30 days following the end of each Contract 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 also contain a discussion of public awareness activities and their impact on recycling participation and recovered amounts, and a discussion of highlights and other noteworthy program experiences, along with measures taken to resolve problems, increase efficiency, and increase participation.

The Annual Report shall also contain a detailed discussion of the progress made during the year toward meeting the City's 75% diversion goal.

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 GOALS

Franchisee has projected achieving a 75% diversion rate based on the following calculations. These projections are listed as an example of the possibilities, not as a fixed requirement.

	Recyclables Diversion Tons	Organics Diversion Tons	Overall Diversion Rate	MSW Disposal Tons
Current SFD Diversion	6,256	7,516	62%	9,000
Expanded SFD Diversion	**6,256**	**11,592***	**78%**	**4,916**
Current MFD/Commercial Diversion	2,234	1,500	20%	15,000
Expanded MFD/Commercial Diversion	**3,024**	**10,200**	**70%**	**5,600**
Total Current Diversion	8,490	9,016	60%	24,000
Total Expanded Diversion by 2015	**9,280**	**21,792**	**75%**	**10,516**

* Franchisee may add 0.25 tons (500 pounds) per year to the quantity of organics shown as diverted for each household that is provided a Biostack Compost bin at one of Franchisee's home composting classes, as specified in Section 4.4.5 of this Agreement.

Expanded Diversion Program Features

Single-Family Residential Services:

- Provide each residential customer with a dishwasher- safe, pitcher having a seal-tight lid. These containers can be used for the in-home storage of compostable organic materials. The seal-tight lid will prevent odors and the dishwasher compatible pitcher will be convenient for residents to clean and maintain.
- Single-stream collection of commodities listed below at "Recyclable Commodities"
- Curbside collection of CFL bulbs in clear zip lock bags
- Curbside collection of dry cell batteries and cell phones in clear zip lock bags
- Curbside collection of used motor oil in 1-gallon containers and used oil filters in clear zip lock bags
- Curbside collection of E-waste and U-Waste through on-call collection programs
- On-call collection of material and diversion of all recyclable and reusable materials
- Curbside collection of cooking oil, in 1-gallon containers marked as "Cooking Oil"
- Curbside collection of "Coats for Kids" every fall

- Provide up to 400 Bio-Stack composting bins in Year 1 of the contract extension
- Provide a twice-per-year “Environmental Day” for the collection of recyclable commodities listed below at “Recyclable Commodities”
- Distribute public outreach material highlighting the new and expanded recyclables and organics collection programs

Multi-Family Residential Services:

- Conversion to single-stream collection of commodities listed below at “Recyclable Commodities”
- Contact management of every MFD complex in the first year of the contract extension to initiate or expand recycling services
- Provide to each MFD unit whose complex participates in the organics collection service, a dishwasher- safe, pitcher having a seal-tight lid, for the in-home storage of compostable organic materials
- Provide each MFD unit with a “Recycling Tote Bag” for the in-home storage of single-stream recyclables
- Collection of E-waste and U-Waste through on-call collection programs
- Provide drop-off containers at MFD management offices for dry cell batteries and cell phone recycling
- Arrange HOA presentations on the new and expanded recyclables and organics collection programs
- Distribute public outreach material highlighting the new and expanded recyclables and organics collection programs

Commercial Services:

- Conversion to single-stream collection of commodities listed below at “Recyclable Commodities”
- Contact every commercial customer in the first year of the contract extension to initiate or expand recyclables and organics collection services
- Provide each commercial customer that participates in the organics collection program with an optional “Slim Jim’ container for the indoor accumulation of organics materials

- Arrange presentations of expanded recycling programs at civic groups, schools, community functions, city events, City and Recology websites, and the City access channel

- Distribute public outreach material highlighting the new and expanded recyclables and organics collection programs

Single Stream Recyclable Commodities

In the following table are first listed the recyclable commodities that are currently collected in Cupertino, followed by the list of additional recyclable commodities that will be collected within the expanded Cupertino diversion program beginning November 1, 2010.

Current Recyclable Commodities
Aseptic containers – sterile cardboard containers, which are used to preserve food
Glass – All glass food, beverage jars and bottles
Metal – All metal food and beverage containers including those made of aluminum, tin, steel and bi-metal.
Corrugated Cardboard
Plastic – Containers marked #1 - #7
Paper – Most clean and dry household paper, including: • Cardboard • Food boxes (cereal, crackers, remove liners) • Junk mail & envelopes • Magazines & catalogs • Newspaper • Paper (colored, computer, white, wrapping) • Paper bags • Paper egg cartons • Paper towel rolls • Phone books
Used motor oil and oil filters (SFD only)
Dry cell batteries
Expanded Recyclable Commodities
Aerosol cans (empty)
Car parts (fluid removed)
Aluminum foil, trays and pans
Frozen food packaging (paper base)
All plastics with or without a number
Flower pots (except black)
Film plastic (bagged)
Empty pizza boxes
Cell phones
Compact fluorescent light bulbs (SFD only)

Organic and Compostable Commodities

In the following table are the organic and compostable commodities that will be collected within the expanded Cupertino diversion program beginning November 1, 2010.

Organic Commodities
Yard Waste-includes grass trimmings, leaves, small branches -3' or less, weeds and plants
All food products and bones, such as chicken, turkey, fish, beef and pork
Coffee grounds, tea bags and filters
Dairy & Soy Products
Pasta, bread and dough products
All fruit and vegetables
Food Soiled pizza and paper products
Compostable Commodities
Yard Waste-includes grass trimmings, leaves, small branches -3' or less, weeds and plants
All food products and bones, such as chicken, turkey, fish, beef and pork
Coffee grounds, tea bags and filters
Dairy & Soy Products
Pasta, bread and dough products
All fruit and vegetables
Food Soiled pizza and paper products
All soiled paper products such as napkins, towels, plates, tissue, cups and paper take-out containers
Waxed cardboard
Non-Compostable Commodities
Plastics
Cornstarch Material
Bio-Degradable Plastics
Styrofoam
Glass
Ceramics
Metal
Liquids
Garbage
Pet Waste
Treated wood or painted wood
Household Hazardous Waste or chemicals

EXHIBIT I

HOUSEHOLD HAZARDOUS WASTES COLLECTION

The Door-to-Door program is designed to collect more waste from those who need it the most. It is simply a more convenient way for most people regardless of their physical limitations to dispose of their unwanted chemicals and other hazardous waste.

The program is simple to use. Residents call the Curbside call center open from 8:00 AM Eastern until 5:00 PM Pacific time. They explain what types and quantities of waste they have. Our operators communicate the program parameters to the caller including the fact that a "kit" will be sent to them. The kit includes an instruction sheet, 4 mil plastic bag for waste, labels for common items that are not labeled and a one-way tie for the bag.

The participant places the bag near the door or garage by 7:00 AM on the designated day and it is collected during the day by our customer service representative.

In addition to the fact that this service benefits the participant, the data collected can be used by the sponsoring agency to improve the program. Every item collected is recorded on a proprietary collection document and this data is entered into a database of our own design for use in preparing reports.

Programs are extremely *flexible*. In addition to typical chemicals, programs can be designed to collect sharps, pharmaceuticals, electronics and/or universal waste.

Your program will essentially become a recycling effort since about 90% of what is collected is recycled. With green initiatives being implemented nationwide, this program fits right in.

The Door-to-Door program can be your only HHW effort accommodating everyone or it can be a supplement to a permanent facility reaching out to those who cannot drive. Curbside has designed programs for communities in many states and virtually every one is custom designed to meet the needs and budget of that community.

A copy of Curbside Inc's proposal to the City of Cupertino dated April 21, 2009 and Recology's Agreement with Curbside Inc. are attached as Exhibit K.

EXHIBIT J

FORMULA FOR DETERMINING ANNUAL RATE ADJUSTMENT BASED ON CPI CHANGE

Annual change for index CPI - U, series id. cuur422sa0

Example:

	July	August	September	October	November	December	January	February	March		May	June	**Average Change**
2007-2008		216.240		217.949		218.485		219.612		222.074		225.181	**219.924**
2008-2009		225.411		225.824		218.528		222.166		223.854		225.692	**223.579**
													1.662%

223.579-219.924 =3.655/219.924=.01662

Would result in a 1.662% annual rate increase based on the CPI calculation

EXHIBIT K

PROPOSAL
Door-to-Door
Household Hazardous Waste Management Program
City of Cupertino
April 21, 2009

Door-to-Door Household Hazardous Waste Management Program City of Cupertino

April 21, 2009

PROPOSAL
Door-to-Door
Household Hazardous Waste Management Program

City of Cupertino
April 21, 2009

PROGRAM SUMMARY:

Curbside Inc is pleased to provide this proposal to the City of Cupertino . The intent of this proposal is to provide a City-wide residential, Door-to-Door Household Hazardous Waste Collection Program to be made available to all Cupertino City residents on a call in basis. Curbside Inc., proposes to collect the full range of household hazardous waste (HHW), electronics and universal waste plus sharps and non-controlled medicines (pills and capsules only but no pill bottles) directly from residents' homes. This proposed program will meet or exceed the City's goals of offering it's City residents the opportunity to properly dispose of HHW. Additional satellite locations for the collection of household batteries, sharps, non-controlled medicines and fluorescent bulbs will also be established at convenient locations throughout the City.

The City will launch a public education effort to inform residents that the program will remove their household chemicals, e-waste and other items directly from their homes if they call Curbside's hotline 1-800-449-7587 and schedule a collection. The residents will be required simply to place their material by the entrance door, garage door or yard gate in the morning for removal by the end of the work day (5:00 pm).

The Door-to-Door program allows residents to participate when it is convenient for them, year-around, with the least risk to their health and the health of others. Seniors and disabled persons will be offered assistance when they cannot gather and remove the items from their garages and homes. The program will be based upon a fixed fee, per month, per residential unit. All single family dwellings and multi-unit complexes will have the opportunity to use the program. Several pricing options are included within the proposal based upon the amount of times residents may schedule appointments.

As much as 90% of the waste collected through this program will be recycled. The proposed program includes the collection of all HHW (chemical products) non-controlled medicines (pills and capsules only), sharps, electronic waste and universal waste. The proposed program includes but is not limited to the following:

- Collect the contents of the HHW Kit (provided via U.S. Mail)
  Collect E and U-waste, sharps and non-controlled medicines (pills and capsules; no containers or pill bottles)
- Install and service drop-boxes and containers for sharps, non-controlled medicines (with an expanded list of medicine delivery formats and containers such as bottles, liquids and foil), CFL's and household batteries
- Render assistance to seniors and disabled persons (upon request)
- Properly dispose of all waste (recycling about 90%)
- Provide postage-paid survey cards (mailed back directly to the City)
- Create monthly reports
  Complete yearly 303 forms

DOOR-TO-DOOR HOUSEHOLD HAZARDOUS WASTE OPERATIONAL PLAN

Basic operation of the program:

1. Resident calls the toll-free hotline to schedule an appointment. At this time the operator and resident will determine mutually, a safe and convenient location on their property for placement of the collection bag and or e-waste/universal waste for pickup.
2. An HHW Kit will be provided to each participant who has HHW materials for collection by Curbside prior to the collection day. No kit for universal or e-waste collections only.
3. On the scheduled day, the resident places the kit bag and or universal/e-waste in the previously agreed upon location on their property for collection.
4. On the scheduled day, a highly trained customer service person arrives and inspects the contents of the bag.
5. Acceptable materials are carried to the vehicle.
6. The materials are then sorted by hazard class and placed into proper containers (lab/loose packed).
7. If participants leave unacceptable materials, the unacceptable materials will be carefully re-packaged (when safe to do so) inside a new bag. An information card will be placed in the bag (or on the door) informing the participant to call for instructions. No resident will be left without a solution.
8. The waste material is shipped to final recycling/disposal facilities.
9. Complete reporting will be provided to The City . This is based upon the individual receipt used at the home. Reports will show what was collected, from whom, and when.

Collection "Kit":

The "Kit" was designed to ensure that residents set out for collection only acceptable waste gathered in one location, safe from the weather. The kit is mailed to every participant requesting a full service HHW collection . The kit will usually arrive about three days or more in advance of a collection. The kit contains the following:

- 4-mil bag (approximately 16 gallon capacity) clearly labeled for household hazardous waste.
- One-way secure tie and label for bag – used to secure bag and keep moisture out.
- Pre-printed and blank labels – residents use for items not in original containers

- Instruction Sheet – complete program instructions and use of packaging materials
- Survey card – postage-paid card, participants mail directly to the City.

The bag is used to insure that all of the most hazardous waste streams are set out for collection are contained. Waste secured inside this very heavy, industrial bag will not be exposed to the elements. Although leaking containers are not to be placed inside the bag, should an oil or paint can leak, all material would be contained. With the exception of auto batteries, fluorescent tubes and E/U-waste, all other material collected per stop must be contained within the bag. No limits will be placed on e-waste collection. The kit bag will not be used for e-waste or u-waste only stops

Special service will be provided on an limited as needed basis for senior/disabled participants. Often senior/disabled residents are not able to lift and assemble their material for collection. Curbside will assemble and package material for these individuals at no additional cost to The City . Most if not all assistance that would be required has typically been completed within a 15 minute time frame. If the residents requires more than 15 min a decision will be made as to weather or not to re-schedule this resident. It is important that all scheduled residents are served during that day.

For those residents who inform us that they have non-controlled medicines we will provide a separate bag labeled appropriately for non-controlled medicines in pill or capsule form only. For privacy reasons, we will not accept medicines provided in their original prescription bottles at the home. Special instructions will be given as how to pack them properly.

Residents will be able to place any size or type of rigid sealed container holding sharps into the bag for collection.

All waste collected will be recorded on an inventory form. Each item collected will be listed along with the name and address of the participant. A copy of the form is left with the participant. Data from the collection is entered into a database to calculate the approximate weight of the waste collected. This information is included in reports.

Household hazardous waste is co-mingled as it is collected. Waste from one community is often co-mingled with waste from other communities. Curbside prepares shipping documents when we ship waste for recycling or disposal. We retain copies of these documents.

Management of Waste:

Curbside participates in the Homeland Security Pilot program to determine if employees are legally allowed to work in the U.S. The screening takes place via computer within three days of employment. In addition, anyone operating a vehicle in residential neighborhoods must undergo a separate Homeland Security screening to ensure that they have no criminal background. These programs help to reduce the possibility that a Curbside employee would be a threat to members of your community.

Sharps must be collected by a registered medical waste transporter which Curbside is. Curbside is a registered hazardous waste transporter as well.

HOUSEHOLD HAZARDOUS WASTE MATERIALS

ACCEPTABLE WASTE:

Garden Chemicals
- Insect sprays
- Weed killers
- Other poisons
- Fertilizer

Swimming Pool Chemicals
- Pool acid
- Chlorine: tablets, liquid

Automotive Waste
- Motor oil
- Antifreeze
- Waxes
- Polishes
- Cleaners
- Brake fluid
- Gasoline
- Used oil filters
- Oily rags
- Transmission fluid
- Windshield washer fluid
- Hydraulic fluid
- Automotive batteries

Paint Products
- Oil based paint
- Latex paint
- Spray paint
- Stripper
- Stains
- Caulking
- Wood preservative
- Glue
- Thinner

Household Cleaners
- Bleach
- Cleaning compounds
- Floor stripper
- Drain cleaner
- Tile remover
- Tile cleaners
- Rust remover

Misc. Household / U-Waste
- Household batteries
- Electronics, TV, CRT, consumer items
- Fluorescent tubes
- Thermometers
- Hobby glue
- Sharps
- Non-controlled medicines
- Pressurized cylinders (propane tanks)

UNACCEPTABLE WASTE:

Biological waste

Radioactive materials

Smoke detectors

Ammunition

Explosives

Leaking containers

Unknowns (must be tested)

Fire extinguishers

Tires

Appliances (larger than microwave)

Waste in 6 gallon or larger container

Commercial chemicals (for business use)

Asbestos

Trash

Construction materials

Liquid mercury, commercial quantities

NOTE:

Some of the above items can be accepted upon approval at additional cost to resident. Residents will be told to contact their local fire department for explosives and ammunition.

Leaking containers can be collected after the resident has repackaged them. Unknowns that can be identified by the resident will be taken. There is a fee to the resident to identify unknowns.

PUBLIC EDUCATION

Public Education

Curbside Inc . will provide assistance to City Staff for the development and implementation of a successful public education program. Curbside's marketing professionals will make their services available to review and edit communications materials prepared by the City. Camera-ready art from Curbside, Inc. can be provided, including modest customization for additional fees.

Curbside's Marketing Staff is available to assist the City with media planning, copy writing and with the production of printed material. Curbside will track how callers have learned about the program. The results will help the City determine the relative effectiveness of its public education activities.

Summary of included services:

- Review and edit communications material prepared by City
- Use of Curbside's existing camera-ready art (customization and or changes extra)
- Limited assistance with media scheduling
- Introductory press-release copy
- Tracking of how callers heard about the program

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HOUSEHOLD HAZARDOUS WASTE MANAGEMENT PROGRAM DEFINITION OF COLLECTION STOPS

4

Door-to-Door Collections

HHW STOP

An HHW stop consists of the collection of toxic material including motor oil, filters, paints, pesticides, herbicides, cleaners, solvents, acids, sharps and medicines. (See page 7 for complete listing of acceptable waste). Residents will be allowed to place the contents of the bag along with auto batteries, unlimited universal waste and unlimited e-waste outside the bag.

In order to keep prices at their lowest level possible residents with only used motor oil, filters auto batteries, small amounts of household batteries, universal waste items , sharps will be encouraged to consolidate their waste with that of a neighbor.

If the residents is unable to find a neighbor or friend to consolidate waste, the resident will be encouraged to utilize local drop off opportunities if they exist. If none of these options are feasible the resident will be scheduled for a door-to-door collection.

A major focus of this program is to collect as much waste as possible at each stop and eliminate the stock pile of waste residents have in their homes.

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HOUSEHOLD HAZARDOUS WASTE MANAGEMENT PROGRAM COST PROPOSAL

5

Curbside Inc proposes to provide a fixed cost per home per month for all Household Hazardous waste services indicated and proposed in this proposal. We are confident the contents of this proposal meets or exceed the expectation of the City in offering the most comprehensive Household Hazardous Waste Collection program in the nation.

Monthly pricing is as follows:

Provide all City residents the opportunity to call and schedule unlimited collections per calendar year.

Cost per home per month for single family residences $0.45
Cost per home per month for multi-family residences $0.35

Total monthly cost for service to 14,000 residential units would be $6,300.00 or $75,600.00 per year

Curbside Inc is the premier Door-to-Door Household Hazardous Waste Collection provider in the nation. We have been operating Door-to-Door programs nation wide for over 14 years and have accomplished to date over 210,000 Door-to-Door collections.

All of the above prices may be subject to any and all existing or future State, Local and Federal sales tax or taxes in general..

500 S. Jefferson St.
Placentia, CA 92870
888-449-3733
panderson@curbsideinc.com
www.curbsideinc.com

Friday, April 16, 2010

John Zirelli
Recology Cupertino
650 Martian Avenue
Santa Clara, CA 95050

Re: Household Hazardous Waste Agreement

Dear John,

Please find attached two (2) signed copies of the Agreement between Recology Cupertino and Curbside Inc to provide Door-to-Door Household Hazardous Waste Services to the City of Cupertino.

Please forward one fully executed copy back to my office to the attention of Socorro Fierro.

Sincerely,

Patrick F. Anderson
Vice President- Sales

SERVICES AGREEMENT FOR HOUSEHOLD HAZARDOUS WASTE COLLECTION

This Services Agreement for Household Hazardous Waste Collection (this "Agreement") is made and entered into as of April ___, 2010, by and between the Recology Cupertino, a California corporation ("Recology"), and Curbside Inc., a California corporation ("Curbside").

WHEREAS, Recology and the City of Cupertino, California ("City") have negotiated and intend to enter into a Franchise Agreement for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage (such agreement, as entered into and amended from time to time, the "Franchise Agreement");

WHEREAS, the Franchise Agreement requires Recology to enter into an agreement with a third party to establish, manage and operate a door-to-door household hazardous waste program in City, and Recology wishes to utilize the services of Curbside for such purpose; and

WHEREAS, Curbside is qualified, ready, willing and able to furnish such services.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. PROVISION OF SERVICES

(a) Curbside agrees to provide a door-to-door household hazardous waste, universal waste, e-waste and sharps collection, recycling and disposal program in City in accordance with the terms and conditions of this Agreement and Curbside's proposal dated April 21, 2009, attached hereto as Exhibit A and incorporated herein by this reference (such program, the "Program").

(b) Each household within the city limits of City as of the date hereof, and any areas that may be annexed to City during the term of this Agreement, whether such households are single- or multi-family residences (the residents of such households, "Residents"), shall be entitled to an unlimited number of collections under the Program.

(c) Curbside shall be solely responsible for disposal and processing (and the cost thereof) of all waste collected by it under this Agreement, and shall handle all such waste in a manner that maximizes diversion of the same.

(d) Curbside shall be solely responsible for all customer service and handling of all customer questions and complaints regarding the Program. Curbside shall maintain a customer service department to provide such services.

(e) Curbside shall at all times perform its obligations under this Agreement (the "Services") in a competent and professional manner using best industry practice for comparable operations in the State of California.

(f) Curbside shall furnish all labor, equipment, supplies and other goods and services necessary to perform the Services, and shall pay all costs and expenses (including without limitation taxes, insurance, and governmental fees) relating to the performance of the Services.

2. TERM AND SCHEDULE

(a) Term. The term of this Agreement (the "Term") shall begin on the date hereof and shall continue throughout the term of the Franchise Agreement (including any extension thereof), unless earlier terminated pursuant to Section 2(b). Curbside shall provide all services to Residents in connection with the Program commencing on November 1, 2010 and continuing throughout the remainder of the Term.

(b) Early Termination. Notwithstanding Section 2(a), this Agreement may be terminated as follows:

(1) By either party, immediately upon notice to the other party, in the event of a breach of this Agreement not cured within twenty (20) days after notice of such breach by the non-breaching party;

(2) By Recology, immediately upon notice to Curbside, if for any reason (i) City determines that the Program should not be offered in City, (ii) City fails to approve the Household Hazardous Waste Fee (as defined below) or any increase thereto, or (iii) Recology is legally precluded from charging or collecting the Household Hazardous Waste Fee.

(3) By Recology, immediately upon notice to Curbside, if Curbside is acquired by or becomes controlled by any person or entity that competes with Recology or its affiliates in northern California.

(4) By either party, immediately upon notice to the other party, if the other party ceases doing business, is the subject of a voluntary bankruptcy, insolvency, receivership, reorganization, liquidation, arrangement or other similar proceeding ("Proceeding"), is the subject of an involuntary Proceeding that is not dismissed within sixty (60) calendar days of filing, makes an assignment for the benefit of creditors, becomes unable to pay its debts when due, or enters into an agreement with its creditors providing for relief of debt.

(c) Condition Precedent. Notwithstanding any other provision of this Agreement, it is a condition precedent to the effectiveness of this Agreement that City and Recology enter into the definitive Franchise Agreement on or before June 30, 2010, and that by such date City consents to the terms of this Agreement (whether by inclusion of this Agreement as an exhibit to the definitive Franchise Agreement or otherwise). If such condition precedent is not satisfied, this Agreement shall be null and void and of no force or effect.

3. COMPENSATION

(a) Household Hazardous Waste Fee. Subject to approval by City, Recology shall include in its quarterly bills to its residential customers under the Franchise Agreement a fee (the "Household Hazardous Waste Fee") to compensate Curbside for the Services. Curbside shall not be entitled to directly bill any Resident, or charge any fee to any Resident for any reason whatsoever, unless such fee is approved in advance by Recology.

(b) Adjustment of Fee. The Household Hazardous Waste Fee shall be $0.45 per household per month for single-family residences, and $0.35 per household per month for multi-

family residences (unless the household subscribes for individual MSW cart service, in which case such household shall be billed at the single-family rate), for the first year of the Program (November 1, 2010 through October 31, 2011). Subject to approval by City, the Household Hazardous Waste Fee shall thereafter be subject to the same CPI adjustments that Recology's rates are subject to under Section 12.2 of the Franchise Agreement, to be applied at the same time that such CPI adjustments are applied to Recology's rates.

(c) Payment of Curbside. Curbside shall invoice Recology monthly for the aggregate amount payable by Residents for the preceding calendar month in respect of the Household Hazardous Waste Fee (the "Invoiced Amount"). Recology shall pay such invoices in full (subject to Section 3(d)) within thirty (30) days of receipt. Such payments to Curbside shall constitute Curbside's sole compensation for the Services, including without limitation all labor, materials, taxes, insurance, subcontractor costs, overhead and profit, and all other costs and expenses.

(d) Collection. Recology shall not be obligated to undertake any collection action or other remedial measure if a Resident fails to pay the Household Hazardous Waste Fee. If a Resident fails to pay the Household Hazardous Waste Fee for any reason, Recology shall be entitled to deduct the unpaid amount from the amount payable to Curbside under Section 3(c), provided that the aggregate amount of such deductions with respect to any month shall not exceed 5% of the Invoiced Amount for such month. Recology shall not be liable to Curbside for any amounts so deducted (except that if any such amount is subsequently paid to Recology, Recology shall reimburse Curbside accordingly). As security for Curbside's performance, Recology may withhold payment in the event of Curbside's breach of this Agreement. Recology will provide notice and an opportunity to cure such breach as described in Section 2(b).

4. REPORTS

On or before the 20th day of each calendar month, Curbside shall submit a monthly report, in a form acceptable to Recology, detailing the services performed under this Agreement during the previous calendar month, including:

(a) A list of all completed stops (showing for each the address of the stop, the date of the stop, and the type and amount of materials collected at such stop);

(b) A list of all stops requested by Residents but not completed for any reason other than that the scheduled pickup time has not yet occurred, with a description of the reason for non-completion; and

(c) A cumulative collection report indicating the total weight and volume of waste of each materials type collected during the month, and the total weight and volume of waste of each materials type delivered to each of the facilities Curbside utilizes for waste recycling and disposal, including the ultimate disposal destination.

5. COMMUNICATIONS

Except with Recology's prior written consent, Curbside shall not communicate directly with City or any employee, agent or representative thereof in connection with the Services. All

communications by Curbside to City shall be made through Recology. Except as authorized by Recology, Curbside shall not conduct any advertising, marketing, solicitation, promotional or outreach activities in City or to Residents. Curbside shall provide Recology (as well as City) with all the services described in Attachment 3 of the Proposal at no additional cost to Recology or City, but shall not otherwise be responsible for the cost of any public education or outreach activities in City.

6. ASSIGNMENT

Curbside shall not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Recology. Any purported assignment in violation of the preceding sentence shall be null and void.

7. USE OF SUBCONTRACTORS

Curbside shall not subcontract any of the Services without the prior written approval of Recology, except for copying, printing and graphic design services. Curbside shall be solely responsible for reimbursing any subcontractors and Recology shall have no obligation to them.

8. INDEMNIFICATION

Curbside shall, indemnify, defend and hold harmless Recology and its directors, officers, employees and agents (collectively the "Indemnitees") from and against (1) any and all liability, penalty, forfeiture, claim, demand, action, proceeding or suit, of any and every kind and description (including attorney's fees), whether judicial, quasi judicial or administrative in nature, (2) any and all loss including but not limited to injury to and death of any person and damage to property, and (3) claims for contribution or indemnity claimed by third parties (collectively, the "Claims"), arising out of or occasioned in any way by, directly or indirectly, Curbside's performance of, or its failure to perform, its obligations under this Agreement. The foregoing indemnity shall not apply to the extent that the Claim is caused solely by the active negligence or intentional misconduct of any Indemnitee, but shall apply if the Claim is caused by the joint negligence of Curbside or other persons, including any of the Indemnitees. Upon the occurrence of any Claim, Curbside, at Curbside's sole cost and expense, shall defend (with attorneys reasonably acceptable to Recology) the Indemnitees. Curbside's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

9. HAZARDOUS WASTE INDEMNIFICATION.

Curbside shall indemnify, defend, protect and hold harmless the Indemnitees against all claims, of any kind whatsoever paid, incurred or suffered by, or asserted against Indemnitees arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Wastes at any place where Curbside transports, processes, stores or disposes of Hazardous Wastes resulting from activities undertaken pursuant to this Agreement. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) and any other applicable sections of the Comprehensive Environmental Response, Compensation and Liability Act, ("CERCLA"), 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, to defend, protect, hold harmless

and indemnify Indemnitees from liability. Curbside's duty to indemnify and defend shall survive the expiration or earlier termination of this Agreement.

10. INSURANCE.

(a) Types and Amounts of Coverage.

Curbside shall procure from an insurance company or companies licensed to do business in the State of California and shall maintain in force at all times during the Term the following types and amounts of insurance:

(1) Workers' Compensation and Employer's Liability.

Curbside shall maintain workers' compensation insurance covering its employees in statutory amounts and otherwise in compliance with the laws of the State of California. Curbside shall maintain employer's liability insurance in an amount not less than One Million Dollars ($1,000,000) per accident or disease. Curbside shall not be obligated to carry workers compensation insurance if it (i) qualifies under California law and continuously complies with all statutory obligations to self insure against such risks; (ii) furnishes a certificate of Permission to Self-Insure issued by the Department of Industrial Relations; (iii) maintains the employer's liability insurance required by this subsection, and (iv) furnishes updated certificates of Permission to Self Insure periodically to evidence continuous self insurance, at least ten (10) days before the expiration of the previous certificate.

(2) Commercial General Liability.

Curbside shall maintain comprehensive general liability insurance with a combined single limit of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Curbside's performance of, or its failure to perform, work or services under this Agreement.

The insurance required by this subsection shall include:

- Products and Completed Operations;
- Personal Injury Liability with employment exclusion deleted;
- Broad Form Blanket Contractual (including coverage for the indemnity obligations contained herein);

The comprehensive general liability insurance shall be written on an "occurrence" basis (rather than a "claims made" basis) in a form at least as broad as the most current version of the Insurance Service Office commercial general liability occurrence policy form (CG0001). If occurrence coverage is not obtainable, Curbside must arrange for "tail coverage" on claims made to protect Recology from claims filed within four years after the expiration or termination of this

Agreement relating to incidents that occurred prior to such expiration or termination. Any excess or umbrella policies shall be on a "following form" basis.

(3) Automobile Liability.

Curbside shall maintain automobile liability insurance covering all vehicles, including Owned, Non-Owned, and Hired Motor Vehicles used in performing service under this Agreement with a combined single limit of not less than One Million Dollars ($1,000,000) per accident, bodily injury and property damage combined, covering all claims and all legal liability for personal injury, bodily injury, death, and property damage, including the loss of use thereof, arising out of, or occasioned in any way by, directly or indirectly, Curbside's performance of, or its failure to perform, work or services under this Agreement. The insurance required by this subsection shall include the MCS-90 endorsement, required for hazardous waste transporters; ISO endorsement CA-9948 for Pollution Liability-Broadened Coverage for Covered Autos; and an endorsement in form reasonably acceptable to Recology for environmental impairment caused by the transport of hazardous materials.

(4) Pollution and Hazardous Materials Liability.

Curbside shall maintain pollution and hazardous materials liability insurance with limits in an amount of not less than One Million Dollars ($1,000,000) per occurrence and annual aggregate covering claims for personal injury, bodily injury, pollution and clean-up costs, and property damage as a result of pollution conditions arising out of Curbside's operations under this Agreement or the sudden and accidental release of any hazardous materials or wastes during storage at facilities owned or operated by Curbside. Curbside will provide Recology evidence (in the form of certificates of insurance) of Site Pollution and Hazardous Materials Liability coverage for all the sites to which Curbside delivers materials collected within City. The certificates shall show that Recology is named as an additional insured on the policies.

(5) Physical Damage.

Curbside shall maintain comprehensive (fire, theft and collision) physical damage insurance covering the vehicles and equipment used in providing services under this Agreement, with a deductible or self-insured retention not greater than One Hundred Thousand Dollars ($100,000). Notwithstanding the foregoing, Curbside shall be allowed to self-insure for physical damage to its vehicles provided Curbside provides adequate audited financial information to Recology and Recology is reasonably satisfied that Curbside has the financial net worth to cover any losses.

(b) Acceptability of Insurers.

The insurance policies required by this section shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner, and with a rating in the most recent edition of Best's Insurance Reports of size category IX or larger and a rating classification of A+ or better.

(c) Required Endorsements.

Without limiting the generality of Sections 10(a) and 10(b), the policies shall contain endorsements in substantially the following form:

(1) Workers' Compensation and Employers' Liability Policy.

- "Insurer waives all right of subrogation against Recology and its directors, officers and employees for injuries or illnesses arising from work performed for Recology."

(2) Commercial General Liability Policy; Automobile Liability Policy; Pollution Liability Policy.

- "Thirty (30) days' prior written notice shall be given to Recology in the event of cancellation, reduction of coverage, or non-renewal of this policy. Such notice shall be sent to:

  Recology Cupertino
  650 Martin Avenue
  Santa Clara, CA 95050
  Attention: General Manager"

- "Recology and its directors, officers, employees and agents are additional insureds on this policy."

- "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by Recology, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

- "Inclusion of Recology as insured shall not affect their rights as respects any claim, demand, suit or judgment brought or recovered against Curbside. This policy shall protect Curbside and Recology in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the company's liability as set forth in the policy beyond the amount shown or to which the company would have been liable if only one party had been named as an insured."

(3) Physical Damage Policy.

- Waiver of subrogation against Recology.

(d) Delivery of Proof of Coverage.

No later than ten (10) days after the commencement of the Term and before beginning collection within City, Curbside shall furnish Recology one or more certificates of insurance on a

standard ACORD form substantiating that each of the coverage's required hereunder are in force, in form and substance satisfactory to Recology. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies and shall be accompanied by all required endorsements. If Recology requests, copies of each policy, together with all endorsements, shall also be promptly delivered to Recology. Curbside shall furnish renewal certificates to Recology to demonstrate maintenance of the required coverage's throughout the Term.

(e) Other Insurance Requirements.

(1) In the event performance of any services is delegated to a subcontractor, Curbside shall require such subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the subcontractor's employees engaged in the services. The liability insurance required by Section 10(a) shall cover all subcontractors or the subcontractor must furnish evidence of insurance provided by it meeting all of the requirements of this Section 10.

(2) Curbside shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Curbside from any obligation under this Agreement, including those imposed by Sections 8 and 9. If any claim is made by any third person against Curbside or any subcontractor on account of any occurrence related to this Agreement, Curbside shall promptly report the facts in writing to the insurance carrier and to Recology.

11. INDEPENDENT CONTRACTOR

Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, or principal and agent, or employer and employee, and neither party shall have the power to obligate or bind the other party in any manner whatsoever. The relationship between the parties hereunder is one of independent contractors. Each party shall have exclusive control over the details of the work to be performed by it hereunder and all persons performing such work, and shall be solely responsible for the actions and omissions of its officers, employees, independent contractors, and agents, if any. Curbside's employees and agents shall not have employee status with Recology or City, or be entitled to participate in any plans, arrangements, or distributions by Recology or City pertaining to or in connection with any retirement, health, or other benefits that Recology or City may offer their respective employees.

12. LICENSES, COMPLIANCE WITH LAWS AND REGULATIONS

Curbside, and any subcontractors performing any Services, shall hold such licenses, bonds and certifications as may be required by the State of California or any local jurisdiction for the performance of the Services. Prior to commencement of services, Curbside shall provide copies of valid hazardous waste transporters license, including MCS 90 hazardous waste transporter insurance coverage. Curbside further shall provide any and all employee certification and training documents as required by Applicable Law. Furthermore, prior to commencement of services, Curbside shall provide copies of licenses for all facilities that will accept all the waste collected from this program. Curbside will provide a monthly update to Recology of the list of

facilities it utilizes, including the ultimate disposal destination, along with the reports required in Section 4.

In the performance of the Services, Curbside shall fully comply with all applicable federal, state, and local laws, statutes, rules, regulations, codes, ordinances, judgments, writs, decrees, orders, decisions, interpretations, permits, licenses, certificates, approvals, requirements, guidelines and determinations, including without limitation those of City, and including without limitation those pertaining to the collection, transportation and disposal of hazardous waste (collectively, "Applicable Law").

All required notices shall be given by Curbside to the appropriate local, state and federal agencies. Curbside shall make all reports as required by regulatory agencies, and shall furnish reports to Recology to enable Recology to evaluate the effectiveness of the services provided. Further, Curbside shall notify Recology of any actual or potential violations of any term, condition, law, ordinance, code or regulation immediately upon becoming aware of such violation or potential violation.

13. NOTICES

All notices required or permitted hereunder shall be in writing and shall be deemed effectively given (i) upon personal delivery to the party to be notified, (ii) when sent by facsimile with written confirmation of receipt if sent during the normal business hours of the recipient, or if not, then on the next business day, (iii) five business days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All such notices shall be sent to the party to be notified at the address or facsimile number set forth below or at such other address as such party may designate by 10 days advance written notice.

If to Recology:
General Manager
Recology Cupertino
650 Martin Avenue
Santa Clara, CA 95050
Fax Number: 408-969-0340

If to Curbside:
Curbside, Inc.
500 South Jefferson Street
Placentia, CA 92870
Attn: Patrick F. Anderson

14. DUTY NOT TO DISCRIMINATE

In the performance of this Agreement, Curbside shall not discriminate, nor permit any subcontractor to discriminate, against any employee, applicant for employment, or customer on account of race, color, national origin, ancestry, religion, sex, age, physical disability, medical

condition, sexual orientation, marital status, or other characteristic, in violation of any applicable federal or state law.

15. RIGHT TO INSPECT CONTRACTOR'S PERFORMANCE

Recology shall have the right, but not the obligation, to observe and inspect Curbside's performance under this Agreement. In connection therewith, Recology shall have the right to follow Curbside during door-to-door collection stops, enter facilities used by Curbside during operating hours, speak to any of Curbside's employees and receive cooperation from such employees in response to inquiries. In addition, upon reasonable notice and without interference with Curbside's operations, Recology may review and copy any of Curbside's operational and business records related to this Agreement.

16. OWNERSHIP OF WORK

All reports, analyses, charts, tables, schedules and all other materials prepared, or in the process of being prepared, for the services to be performed by Curbside shall be and are the property of Recology. Recology shall be entitled to access to and copies of these materials during the progress of the work. Any such materials remaining in the hands of Curbside or in the hands of any subcontractor upon completion or termination of the work shall be immediately delivered to Recology. If any materials are lost, damaged or destroyed before final delivery to Recology, Curbside shall replace them at its own expense and Curbside assumes all risks of loss, damage or destruction of or to such materials. Curbside may retain a copy of all material produced under this Agreement for its use in its general business activities. Curbside will not be liable for Recology or third party misuse of any documents, reports, records, plans, or materials prepared, procured, or produced in the rendition of services under this Agreement.

17. MAINTENANCE AUDIT AND INSPECTION OF RECORDS

Curbside will permit the authorized representatives of Recology to inspect, audit, make copies and transcriptions of books and all data and records of Curbside relating to its performance under this Agreement, including information required to verify the number of completed household hazardous waste collection stops.

18. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed under the laws of the State of California, without regard to its choice of law or conflicts of law provisions. For purposes of any legal action or proceeding arising out of this Agreement, each party hereby submits and consents to the exclusive jurisdiction and venue of the federal and state courts of competent jurisdiction sitting in Santa Clara County, California, and waives all defenses of lack of personal jurisdiction and inconvenient forum.

19. AUTHORITY

Each party hereby represents and warrants to the other that it has full power and authority to enter into this Agreement, that this Agreement has been duly authorized, executed and delivered by, and constitutes a valid, binding and legally enforceable agreement of, such party,

and that by entering into and performing its obligations under this Agreement, such party will not be in breach of its obligations to any third party.

20. INVESTIGATION

Curbside has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by Curbside under this Agreement. Curbside has taken such matters into consideration in agreeing to provide the services required by, for the compensation to be provided under, this Agreement.

21. BINDING ON SUCCESSORS

All of the terms, provisions and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22. WAIVER

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision.

23. ENTIRE AGREEMENT

This Agreement, including the Exhibit(s), represents the full and entire agreement between the parties with respect to the matters covered herein and supersedes all prior negotiations, representations and agreements, either written or oral.

24. AMENDMENT

This Agreement may not be modified or amended in any respect except by a writing signed by the parties.

25. SEVERABILITY

Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.

26. COSTS AND ATTORNEY'S FEES

In any legal proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and out-of-pocket costs, in addition to any other relief to which such party may be entitled.

27. REFERENCES TO LAWS

All references in this Agreement to laws and regulations shall be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise

specifically provided. In addition, references to specific governmental agencies shall be understood to include agencies that succeed to or assume the functions they are currently performing.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Services Agreement for Household Hazardous Waste Collection by their duly authorized representatives as of the date first above written.

Recology:

RECOLOGY CUPERTINO

By: _____
Name: John Gurelli.
Its: _____

Curbside:

CURBSIDE, INC.

By: _____
Name: Patrick F. Anderson
Its: Vice President