

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

This Third Amendment to the Franchise Agreement between the City of Cupertino and Recology Cupertino for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage, for reference dated February 4, 2020 is by and between the CITY OF CUPERTINO, a municipal corporation ("CITY"), and Recology Cupertino, a California corporation ("Franchisee"), and is made with reference to the following:

RECITALS:

- A. City and Franchisee are parties to a Franchise Agreement for Collection and Processing of Recyclable and Compostable Materials, and the Collection and Disposal of Garbage dated May 18, 2010, as amended by a First Amendment dated September 2, 2014 and a Second Amendment dated December 19, 2017 (such agreement as so amended, the "Agreement").
- B. Pursuant to the Agreement, Franchisee contracted with the Household Hazardous Waste Collector to provide the Household Hazardous Waste Program ("HHW Program") (all capitalized terms not otherwise defined herein are as defined in the Agreement). The HHW Program generally consists of on-call curbside collection of household hazardous waste ("HHW") from single-family and multi-family residences within City. The HHW Program was funded by a Household Hazardous Waste Fee ("HHW Fee") collected by Franchisee from Residential Service Recipients.
- C. Beginning in late December 2018, Household Hazardous Waste Collector stopped providing HHW Collection services within City, citing permitting issues with its Hayward facility. Franchisee indicates it is unable to identify a replacement Household Hazardous Waste Collector or otherwise provide the HHW Program.
- D. Santa Clara County offers drop off disposal of HHW ("County HHW Program") for residents of participating cities. While not as convenient for City residents as a curbside program, the County HHW Program provides an option for residents to safely dispose of HHW.
- E. City and Franchisee have determined that the best course of action is to delete the HHW Program from the Agreement and refund to customers the HHW Fee amounts collected since January 1, 2019, as provided herein.
- F. Due to the termination of the HHW Program, the City expects increased participation in the County HHW Program to result in the City incurring unanticipated and otherwise

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

- G. Consistent with the Agreement at Section 12.6, City and Franchisee agree that for the period beginning January 1, 2019 and through the duration of the Agreement, Franchisee shall compensate the City for the city losses associated with termination of the HHW Program, as provided herein.
- H. In addition, City and Franchisee wish to adjust the schedule of approved maximum rates that may be charged by Franchisee to fund additional costs of recyclables processing resulting from changes in the recyclables marketplace as a consequence of China's National Sword policy.
- I. City and Franchisee desire to modify the Agreement as set forth in detail below.

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

- 1. Effective January 1, 2019, Article 4 – Collections Services, Section 4.17, is hereby modified to read as follows:

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

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

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

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

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

Example of City Payment Calculation:

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

Cupertino residential dropoffs at County HHW events: 399 car loads

Cupertino residential dropoffs at Las Plumas facility: 300 car loads

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

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

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

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

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

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

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

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

Recology Cupertino,
A California Corporation

CITY OF CUPERTINO,
A Municipal Corporation

By _____
President & CEO, Michael J. Sangiacomo

By _____
City Manager, Deborah L. Feng

APPROVED AS TO FORM:

By _____
City Attorney, Heather Minner

ATTEST:

By _____
City Clerk, Kirsten Squarcia

EXHIBIT B:

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

[attached]

EXHIBIT B: Amended February 4, 2020

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

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

Single Family Dwelling

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

Additional Organics/YW Toter: No Charge

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

Hillside

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

Duplex/Multiple Units & Yardwaste Exempt

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

Senior Low Income Rates

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

Additional Charges

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

24 HR Container Service

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

Late Charge Fee

1.2% Per Month Delinquent
(Not compounded)

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

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

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

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

Key Service	Code	Special Services	\$114.16
\$68.48	FTLK	Steam Clean and Re-Delivery of Bin (Shall be provided once per year w/o charge) Furnishing Chains (One Time Only)	
Compactor Per Cubic Yard		Mixed Recy Compactor	
\$49.33		Hauling Only	\$452.85
		Per Ton	\$70.09

B.3. COMMERCIAL RATE SCHEDULE

City of Cupertino Effective January 1, 2020

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

<u>Pushout Service</u>		<u>Code</u>
1XWK	\$61.50	4XWK \$246.29
2XWK	\$123.31	5XWK \$307.42
3XWK	\$184.63	6XWK \$369.76
* Pushout service only applies if containers are moved more than 25ft.		
<u>Commercial Garbage Cart</u>		<u>Key Service</u> <u>Code</u>
32g Increments	\$27.76	\$68.48 FTLK
<u>Special Services</u>	\$117.85	<u>Compactor Per Cubic Yard</u>
Steam Clean and Re-Delivery of Bin		\$49.33
(Shall be provided once per year w/o charge)		<u>Mixed Recy Compactor</u>
Furnishing Chains (One Time Only)		Hauling Only \$452.85
		Per Ton \$70.09
Return Trip Fee \$15.00		

B.4. DEBRIS BOX RATE SCHEDULE**City of Cupertino****Effective January 1, 2020**

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

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

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

Other Miscellaneous Rates

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

Garbage, Organics, and Recycling Compactor Rates

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