

**AMENDMENT ONE
BY CITY OF MENLO PARK AND
RECOLOGY SAN MATEO COUNTY
TO THE
AMENDED AND RESTATED FRANCHISE AGREEMENT
BETWEEN CITY OF MENLO PARK AND RECOLOGY SAN MATEO COUNTY
FOR RECYCLABLE MATERIALS, ORGANIC MATERIALS, AND SOLID WASTE
COLLECTION SERVICES**

This first Amendment (“Amendment One”) to the Amended and Restated Franchise Agreement between City of Menlo Park and Recology San Mateo County for Recyclable Materials, Organic Materials, and Solid Waste Collection Services (“Agreement”), effective as of June 1, 2021 (“Effective Date”), is made by and between City of Menlo Park, a Municipal Corporation of the State of California (“Agency”), and RECOLOGY SAN MATEO COUNTY, a California corporation (“Contractor”).

RECITALS

- A. **WHEREAS**, Section 5.05 of the Agreement requires Contractor to provide On-Call Bulky Item Collection Service for residents and specifies that Contractor shall schedule a maximum of one hundred fifty (150) On-Call Curbside Bulky Item Collection Service events per service day for the SBWMA Service Area (“daily limit”), and Section 5.09 of the Agreement requires Contractor to provide abandoned waste cleanup Collection service for a maximum of thirty (30) abandoned waste Collection events per service day for the SBWMA Service Area (“daily limit”); and,
- B. **WHEREAS**, Contractor conducts the On-Call Bulky Item Collection Service and abandoned waste cleanup Collection service using the same Collection routes; and, as a result, the total combined daily limit of On-Call Curbside Bulky Item Collection Service events and abandoned waste cleanup Collection service events (collectively, “On-Call Pick-ups”) is one hundred eighty (180) On-Call Pick-Ups per day; and,
- C. **WHEREAS**, anticipating that the combined daily limit would not be sufficient to handle actual demand for On-Call Pick-Ups, the SBWMA and Contractor met and conferred and negotiated a Model Amendment One to the Agreement, which provides an additional route to address the problem; and,
- D. **WHEREAS**, Parties identified minor items in the Agreement that warranted clarification or revision; and,
- E. **WHEREAS**, the SBWMA presented the Model Amendment One to the SBWMA’s Board of Directors on January 28, 2021; and, the Board took action recommending that each Member Agency enter into Model Amendment One in substantially the form presented to the Board; and,
- F. **WHEREAS**, the Agency and Contractor have agreed to the revisions to the Agreement as stated in this Amendment One.

NOW THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the Agency and Contractor hereby agree to amend the Agreement through this Amendment One as follows:

TERMS OF AMENDMENT ONE

1. DEFINITIONS

1.1 Attachment A, Definitions. The following definitions are hereby added to Attachment A:

- a. **2021 Amendment** means the amendment to the Agreement that the SBWMA Board approved, and recommended that each Member Agency enter into, on January 28, 2021.
- b. **On-call Pick-Up** means an On-Call Curbside Bulky Item Collection Service event or an on-call abandoned waste Collection service event.

2. BULKY ITEM AND ABANDONED WASTE COLLECTION SERVICES

2.1 Residential On-Call Bulky Item Collection Service. Section 5.05.H shall be amended to read as follows:

H. **Maximum Number of Daily Events**. Contractor shall schedule up to a maximum of two hundred (200) On-Call Curbside Bulky Item Collection Service events per service day for the SBWMA Service Area ("daily limit"). The maximum number of daily events includes On-Call Bulky Item Collection Service events provided to both Single-Family and Multi-Family Residential Complexes, and those events provided at no charge and events paid for by the Customer, Owner, or property manager. Contractor shall schedule On-Call Curbside Bulky Item Collection Service events no more than ten (10) Business Days after the Owner's or Occupant's request up to the maximum number of daily events. Upon reaching the maximum number of daily events, requested On-Call Curbside Bulky Item Collection Service event shall be scheduled on the next available regularly scheduled Solid Waste Collection Day.

SBWMA may adopt an allocation system for On-Call Bulky Item Collection Service events, in order to allocate the "daily limit" for such events among Member Agencies. If adopted, Contractor shall comply with the allocation system. The Agency agrees not to assess Liquidated Damages if Contractor does not meet the ten (10) Business Day requirement if the delay has resulted from (i) the volume of On-Call Bulky Item Collection events being in excess of the "daily limit" for the SBWMA Service Area or Agency, or (ii) the Customer's request to schedule the event on a date more than ten (10) Business Days in the future.

Contractor shall notify the SBWMA when the daily average number of On-Call Pick-Up events reaches two hundred twenty-five (225) events, or any subsequently increased number of events mutually agreed by the SBWMA Board and Contractor, combined for Residential On-Call Bulky Item Collection service and abandoned waste Collection service, including On-Call Pick-ups provided at no charge and On-Call Pick-ups paid for by Customers, Owners or property managers) for the SBWMA service area. For the purpose of this Section, where the daily average number of On-Call Pick-ups shall be calculated on a weekly basis as the total number of On-Call Pick-Ups performed Monday through Friday divided by the number of Collection days in the week (e.g., typically five (5) days, except four (4) days for weeks with a Holiday). When this threshold occurs for four (4) consecutive weeks, Contractor shall provide SBWMA with reports documenting these statistics and, upon

confirmation of that fact, SBWMA staff shall notify the SBWMA Board of Directors that the service capacity has been filled and to present options, described in this section. Contractor shall continue to supply monthly reporting of the average service count from the time of the original notice until action is taken by the SBWMA Board of Directors.

Upon a confirmed notice from Contractor, the SBWMA Board may consider options, including, but not limited to: (i) authorizing Contractor to implement and perform on-going operation of an additional Bulky Item and abandoned waste Collection route; (ii) adjustment of the ten (10) Business Day required provision of the On-Call Pick-ups; and/or (iii) reduction in the number of On-Call Bulky Item pick-ups allowed for each Customer each year.

The SBWMA Board is hereby authorized, on behalf of the Agency, to determine if future changes are required for the Residential On-Call Bulky Item Collection services described in Section 5.05 and abandoned waste Collection service described in Section 5.09. Such changes, if any, shall be implemented and incorporated into this Agreement in accordance with Section 15.12, Right of Agency to Make Changes in Services and Service Levels. If the SBWMA elects to implement an additional Bulky Item and abandoned waste Collection route, the route shall include two trucks and two drivers, and the annual cost for the route shall be that specified in Attachment U for Rate Year 2021 (subject to adjustment in accordance with the methodology set forth in Attachment K, if the new route is implemented in a later Rate Year). Each additional route approved by the SBWMA shall provide capacity for sixty (60) additional daily Bulky Item Collection and/or abandoned waste Collection services. In the event that the creation of a new route provides for more capacity than there is demand for the Bulky Item Collection services, Contractor shall permit additional collections of abandoned waste up to the total capacity.

Effective January 1, 2022, Contractor shall operate an additional Bulky Item and abandoned waste Collection route, for a total of four (4). Contractor shall include the additional costs set forth in Attachment U in Contractor's Application to determine Rates for Rate Year Twelve (2022). Such costs (being 2021 costs) shall be adjusted to 2022 costs in accordance with the methodology set forth in Attachment K. Such adjusted costs shall be added to Contractor's Compensation (in addition to any other adjustments required under this Agreement) for purposes of determining Rates for Rate Year Twelve (2022).

2.2 Abandoned Waste Clean-Up Collection Service. Section 5.09.A shall be amended to read as follows:

A. **General.** Contractor shall provide abandoned waste cleanup Collection service to Agency as provided herein. Contractor shall schedule up to a maximum of forty (40) abandoned waste Collection events per service day for the SBWMA Service Area. Contractor shall make every effort to collect abandoned waste within one (1) Business Day of being notified by Agency, SBWMA, Customer, or Contractor's vehicle drivers and route supervisors of the occurrence of abandoned waste or illegal dumping. Upon reaching the forty (40) events, Collection of abandoned waste event shall be scheduled and performed by Contractor on the next available service day. This service shall require Contractor to Collect abandoned or illegally dumped Solid Waste, Recyclable Materials, and Organic Materials. This service does not include Collection of litter or litter abatement activities.

Section 5.05.H describes a process for notification and consideration of program changes when the daily average number of On-Call Pick-Up events reaches two hundred twenty-five (225) events combined for Residential On-Call Bulky Item Collection service and abandoned waste Collection service, including On-Call Pick-ups provided at no charge and On- Call Pick-ups paid for by Customers, Owners, or property managers).

3. OVERAGE TAGS

3.1 Collection of Excess Materials (Overages). Section 8.02.G shall be amended to read as follows:

Contractor shall direct its employees to Collect an Overage on two (2) occasions each Rate Year at no additional cost to Customer. Contractor must provide a notice to Customer documenting the Overage in order to count the Overage Collection towards the (2) per Rate Year for each Customer. Customers that place an Overage for Collection for a third and subsequent events may be assessed an Overage fee by Contractor if Contractor has directly contacted the Customer via a phone call, voice message or other means of communication to notify them of the Overage Collected. Contractor shall bill Customer for a third and subsequent Overage events at Agency-approved Charges specified in Attachment Q. Contractor shall provide Customers the opportunity to request an Overage Collection service in advance. In such case, Contractor shall bill the Customer at the Agency-approved Charge specified in Attachment Q.

Contractor shall provide Customers the opportunity to subscribe to Overage Collection service, in advance, or purchase Overage tag(s) from the Contractor. Each Overage tag permits the Customer to set out one (1) thirty-two (32) gallon garbage bag of Solid Waste next to their Solid Waste Container on the Customer's regularly scheduled collection day, for Collection by Contractor. Contractor shall provide Customers the opportunity to purchase Overage tags through its Customer service department or electronically via Contractor's website. Contractor shall mail or deliver Overage tags to Customers within three (3) Business days of Customer's request. The Charge for Overage tags is specified in Attachment Q and includes all aspects of purchasing the tags, printing, and distribution (i.e., mailing or direct delivery by Contractor). Customers shall also be provided the opportunity to purchase Overage tags at Contractor's local office. The quantity of Overage tags per request from Customer shall be limited to five (5) per request.

If the Agency and/or Contractor receive numerous Complaints (as determined by the Agency) from Customers regarding Customer dissatisfaction with the requirement to purchase Overage tags, the Agency reserves the right to require the Contractor to modify its Overage program to better serve its Customers and/or require the Customer to subscribe to additional Collection service.

4. CLARIFICATION AND ADMINISTRATIVE MODIFICATIONS

4.1 The following changes shall be made to provide clarification and administrative modifications to the Agreement:

4.2 Right of Agency to Make Changes in Services and Service Levels. Section 15.12.A shall be amended to read as follows:

A. Agency may, without amending this Agreement, direct Contractor to cease performing one or more types of service described in Articles 5 or 6, or may direct Contractor to modify the scope of one or more such services, may direct Contractor to perform additional Solid Waste, Targeted Recyclable Materials, Organic Materials, Used Motor Oil, Used Motor Oil Filters, Household Batteries and Cell Phones or Plant Materials handling services, or may otherwise direct Contractor to modify its performance under any other Section of this Agreement. In addition, SBWMA may, without amendment of this Agreement, direct a change: (i) in the number of Waste Zero Specialists as provided in Section 7.04.A, (ii) in Other Services as provided in Section 7.13, (iii) in the Residential On-Call Bulky Item Collection service described in Section 5.05, and/or (iv) in the abandoned waste Collection service described in Section 5.09. In the event of an SBWMA-directed change under items (iii) or (iv), the provisions of Section 11.06 shall apply, but with the SBWMA substituted in the place of Agency. In the event of any conflict between an Agency-directed change and an SBWMA-directed change, the SBWMA-directed change shall govern. Agency hereby authorizes the SBWMA, with the approval of the SBWMA Board, to do the following on behalf of Agency: (a) to establish the terms and conditions of any program or service changes under items (iii) or (iv) above, (b) to include any costs associated with an SBWMA-directed change in Contractor's Compensation and/or Pass-Through Costs, (c) to determine Agency's share of such costs and to allocate such share to Agency, and (d) to amend this Agreement as mutually agreed with Contractor to give effect to the foregoing. An SBWMA-directed change shall be deemed to be an Agency-directed change for purposes of this Agreement. Contractor shall promptly and cooperatively comply with such direction.

5. MISCELLANEOUS PROVISIONS

5.1 Recitals and Headings. The above recitals are incorporated herein by reference and are made a part of this Amendment One. However, headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Amendment One.

5.2 Entire Agreement. This Amendment One contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and commitments with respect thereto. Except as expressly modified by this Amendment One, all other terms and conditions of the Agreement remain in full force and effect, unmodified, and apply to this Amendment One as though fully set forth herein.

5.3 Counterparts. This Amendment One may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument.

5.4 Effectiveness. It shall be a condition precedent to the effectiveness of this Amendment One that at least eight (8) of the SBWMA's Member Agencies enter into Amendment One.

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IN WITNESS WHEREOF, Agency and Contractor have executed this Amendment One as of the day and year first above written.

CITY OF MENLO PARK

DocuSigned by:
Justin Murphy
By: _____
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Justin I.C. Murphy
Interim City Manager

DocuSigned by:
Judi A. Herren
ATTEST: _____
39280A20D0BE491...
Judi A. Herren
City Clerk

RECOLOGY SAN MATEO COUNTY

DocuSigned by:
Salvatore M. Coniglio
By: _____
444C41D60A26433...
Salvatore M. Coniglio
CEO

DocuSigned by:
Cary Chen
By: _____
649380D99376440...
Cary Chen
Secretary

APPROVED AS TO FORM:

DocuSigned by:
Nira Doherty

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Nira F. Doherty
City Attorney

ATTACHMENT U
RESIDENTIAL ON-CALL BULKY ITEM COLLECTION SERVICE
AND ABANDONED WASTE COLLECTION SERVICE ROUTE COST

Bulky Item Collection Costs		Additional BIC Route
		2021 Dollars
Annual Cost of Operations		
Direct Labor-Related Costs		
	Wages for CBAs	\$269,064
	Benefits for CBAs	\$148,795
	Payroll Taxes	\$21,889
	Workers Compensation Insurance	<u>\$27,294</u>
	Total Direct Labor Related-Costs	\$467,042
	Direct Fuel Costs	\$20,748
	Other Direct Costs	\$20,223
	Depreciation	
	- Collection Vehicles	\$51,433
	- Containers	<u>\$0</u>
	Total Depreciation	\$51,433
	Allocated Indirect Costs excluding Depreciation	
	General and Administrative	\$0
	Operations	\$0
	Vehicle Maintenance	\$0
	Container Maintenance	<u>\$0</u>
	Total Allocated Indirect Costs excluding Depreciation	\$0
	Total Allocated Indirect Depreciation Costs	\$0
	Total Annual Cost of Operations	\$559,446
	Profit	\$58,726
	Operating Ratio	90.5%
	Total Operating Costs before Pass-Through Costs	\$618,173
Contractor Pass-Through Costs		
	Interest Expense	\$13,198
	Total Contractor Pass-Through Costs	\$13,198
	TOTAL BASE CONTRACTOR'S COMPENSATION	<u>\$631,371</u>
Note - Collection Vehicle Depreciation and Interest Expense are flat beginning in the year of implementation. Purchase price will inflate until the purchase date.		