

**AGREEMENT FOR SERVICES
BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA,
AND
RECOLOGY SOUTH BAY, DBA RECOLOGY SANTA CLARA**

PREAMBLE

This Agreement is entered into on ____, 2019 (the “Effective Date”) between the City of Santa Clara, California, a chartered California municipal corporation (City) and Recology South Bay dba Recology Santa Clara, a California corporation, (Collector). City and Collector may be referred to individually as a “Party” or collectively as the “Parties” or the “Parties to this Agreement.”

RECITALS

- A. WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 *et. seq.*) (“AB 939”), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions to meet the goals and requirements of AB 939;
- B. WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), City has determined that in order to protect the public health and safety of the residents and business within the City of Santa Clara, it is appropriate to provide for recycling collection and disposal by a private waste hauler as an alternative to providing such services through public resources; and to that end has determined that an exclusive franchise be awarded to a qualified company for the handling of recyclable materials and other services to meet the goals and requirements of AB 939; which franchise can be appropriately integrated into and function as part of the solid waste system provided by City;
- C. WHEREAS, City has determined pursuant to California Public Resources Code Section 40059 that as a matter of local concern it has separate exclusive franchises for Solid Waste (as defined herein) and Recyclable Materials, and this Agreement is for the exclusive franchise for the City’s residential recycling program and collection;
- D. WHEREAS, Public Resources Code Section 40059 permits City to impose terms and conditions on the award of a solid waste and/or recycling franchise if, in the opinion of the governing body, the public health, safety and well-being require the imposition of those terms and conditions;
- E. WHEREAS, Collector has represented and warranted to City that it has the qualifications, expertise, necessary licenses, and desire to provide Recyclable

Materials handling services, as defined in Public Resources Code Section 49505 and as described herein;

- F. WHEREAS, the City Council of City has determined that Collector, by demonstrated experience, reputation and capacity is qualified to exclusively provide for the collection of recyclable materials within the residential areas of the corporate limits of City and to transport such recyclable materials to places of processing and disposal, which may be designated in accordance with this Agreement, and City and Collector desire that Collector be engaged to perform such services on the terms and conditions set forth in this Agreement;
- G. WHEREAS, the City Council of City has determined that the public health, safety and wellbeing of its residents require that recyclable materials collection, processing and disposal, including but not limited to the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such services be governed by and provided under an exclusive recyclable materials franchise agreement;
- H. WHEREAS, the City Council of City has selected Collector to provide to City a residential recycling program for such term, on such conditions and for the consideration as set forth in this Agreement;
- I. WHEREAS, Collector desires to provide to City such a residential recycling program and Collector further represents that it has the expertise and resources necessary to provide such a Program to City; and
- J. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Collector shall consist of these Terms and Conditions and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Definitions

Exhibit C – Schedule of Compensation

Exhibit D – Insurance Requirements

Exhibit E – [Reserved]

Exhibit F-1 – Ethical Standards

Exhibit F-2 – Affidavit of Compliance with Ethical Standards

Exhibit G – Solid Waste Collection Vehicle Replacement Schedule

This Agreement, including the Exhibits set forth above, contains all the agreements, representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written provided, however, that this Agreement shall not relieve Collector of any financial obligations that may have existed under any former agreement with City. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions, the Terms and Conditions shall govern and control.

2. TERM OF AGREEMENT

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on July 1, 2021 and terminate on June 30, 2036.

3. FIVE (5) YEAR EXTENSION

Collector may request one five (5) year term extension to the original fifteen (15) year term, and if mutually agreeable, City may grant Collector's request to extend the term. Under no circumstances will the City be obligated to extend the term.

4. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Collector shall perform those Services specified in Exhibit A within the time stated in Exhibit A.

5. WARRANTY

Collector expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions upon which this Agreement is based. Collector agrees to promptly replace or correct any incomplete, inaccurate or defective Services at no further cost to City when defects are due to the negligence, errors or omissions of Collector. If Collector fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Collector for the cost incurred by City.

6. QUALIFICATIONS OF COLLECTOR - STANDARD OF CARE

Collector represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Collector's representations regarding its skills and knowledge. Collector shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

7. NOTICE OF FAILURE TO PERFORM, PENALTIES, LIQUIDATED DAMAGES, AND REMEDIES

- A. Notice of Failure to Perform. In addition to any other remedies available to City or provided under this Agreement or by law, City may give written notice to Collector for failure to perform any services and terms of this Agreement. In the notice, City shall also identify allowable Collector period of compliance.
- B. General. City finds, and Collector agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Collector of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that franchised services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

C. Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Recyclable Material Collection service is of utmost importance to City and that City has considered and relied on Collector's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Collector fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Section, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, 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 impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Collector _____ City
 Initial Here _____ Initial Here _____

Collector agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

| LIQUIDATED DAMAGES | | |
|--------------------|---|------------------------|
| Item | | Amount |
| a. | Each failure to commence service to a new customer account within seven (7) days after order | \$ 500.00 per incident |
| b. | Each occurrence of damage to private property if not resolved | \$ 500.00 per incident |
| c. | Each failure to remove graffiti from a Front-Loading Bin or Container within four (4) days of notification by City or customer | \$ 500.00 per incident |
| d. | Each occurrence of beginning collection at property zoned for residential use before 7:00 a.m. or after 6:00 p.m. after first notification of violation | \$ 500.00 per incident |

| LIQUIDATED DAMAGES | | |
|---------------------------|--|------------------------------------|
| Item | | Amount |
| e. | Each occurrence of discourteous behavior to a Customer | \$ 500.00 per incident |
| f. | Each failure to clean up spill or leakage of oil, hydraulic fluid, coolant, or other fluid from any collection vehicle used by Collector, which causes a stain of 0.5 square feet or greater | \$ 500.00 per incident or location |
| g. | Each failure to initially respond to a Customer complaint within one (1) business day | \$ 300.00 per incident |
| h. | Each failure to remedy missed collections within one (1) business day of compliant | \$ 125.00 per incident |
| i. | Each failure to collect Recyclable Material, which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within the period described in this Agreement | \$ 125.00 per incident |
| j. | Each failure to collect Recyclable Material, which has been properly set out for collection, from an established customer account on the scheduled collection day and not collected within the period described in this Agreement, two (2) or more times at the same customer address during a Quarter | \$ 500.00 per incident |
| k. | Each failure to properly return empty Containers to proper set-out location that avoids pedestrian or vehicular traffic impediments | \$ 125.00 per incident |
| l. | Each failure to clean up Collector spills from Recyclable Material Containers | \$ 125.00 per incident |
| m. | Failure to renew Performance Bond or renew Insurance and submit Certificate of Insurance prior to expiration date | \$ 125.00 per calendar day |
| n. | Failure to submit monthly or annual report(s), as required. If City determines report is not complete, the Collector shall be given ten (10) business days to complete report. Report shall be considered late until such time as a correct and complete report is received by City. | \$ 125.00 per calendar day |
| o. | Failure to maintain collection vehicle and equipment in condition specified by City | \$ 125.00 per calendar day |

| LIQUIDATED DAMAGES | | |
|--------------------|--|---|
| Item | | Amount |
| p. | Failure to provide Alternative Fueled Collection and/or any other supervisory vehicles specified in Section 5.e | \$ 125.00 per calendar day |
| q. | Failure to collect and deliver all Collector Containers to point of reuse or recycling processing location after cessation of collection and handling services at the end of the Agreement term, per Collector's schedule, submitted to and approved by City | \$ 500.00 per calendar day |
| r. | Disposal of Recyclable Materials that has been separately collected by Collector at a disposal area without first obtaining the required permission of City | \$ 1,000 per day 1 st and 2 nd instance, \$5,000 per day subsequent instances |

D. Procedure for Assessment of Liquidated Damages. City may assess liquidated damages for each calendar day or event, as appropriate, that Collector is determined to be liable in accordance with this Agreement. Prior to assessing liquidated damages, City shall give Collector notice of its intention to do so. The notice will include a brief description of the violation or incident of non-performance. Collector may review (and make copies at its own expense) all information in the possession of City relating to the violation or incident of non-performance. Collector may, within ten (10) days after receiving the notice, request a meeting with City. Collector may present evidence in writing and through testimony of its employees and others relevant to the violation or incident of non-performance. City will provide Collector with a written explanation of its determination as to each violation or incident of non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final.

E. Timing of Payment. City will deduct liquidated damages from monthly payment(s) to Collector until outstanding damages are fully paid. A summary explanation of the damages that have been deducted will be provided along with the payment.

8. COMPENSATION AND PAYMENT

A. Annual Compensation.

City will pay to Collector the amounts set forth in Exhibit "C", titled "Collector Compensation". Collector compensation shall be adjusted annually in accordance with the provisions set forth in Exhibit C of this Agreement. No additional payments shall be sought and/or accepted by Collector either from City or any other person for any of Collector's services in carrying out

the terms of this agreement. City shall be responsible for billing and collection of the charges to Customers for the residential recycling program (other than certain Special Services not billed by City).

B. Time of Payment and Disputes.

During the full term of this Agreement, all amounts due hereunder shall be paid monthly by City to Collector on or before the twenty-fifth (25th) day of each month and shall cover services rendered during the preceding month. The monthly payment amount shall be equal to the sum of the following: (1) the annual Collector compensation for the then current compensation year, divided by twelve (12), (ii) the monthly compensation for Special Services provided in the previous month, and (iii) the monthly reimbursement of the net cost (if any) of Recyclable Materials processing for the previous month. Collector shall review monthly payment and all monthly service charges included in Exhibit C received from City and shall respond in writing to City of any disputed payment amounts within 60 days of receiving payment, after which payment will be considered full and complete for said services and Collector will have waived all right to contest. Without limiting City's obligation to timely pay Collector's invoices, late payments by City shall accrue interest at 1.5% per month.

9. CHANGE IN LAW / CHANGE IN SCOPE

A. Change in Law. If a change in Applicable Law occurs after the date hereof (a "Change in Law") that increases Collector's reasonable and necessary costs of performing its obligations under this Agreement, Collector's compensation shall be adjusted in an amount sufficient to cover such increased costs. Collector shall bear the burden of justifying any such adjustment, and shall be deemed to have satisfied such burden upon providing substantial evidence that (a) a Change in Law has occurred or will occur, (b) such Change in Law has caused or will cause Collector to incur increased costs, and (c) the amount of such increased costs is reasonable. Collector shall provide City with such additional information as City may reasonably request in order to evaluate Collector's application. City shall not unreasonably withhold approval of an adjustment requested by Collector under this subsection. City shall use its best efforts to cause the compensation adjustment to be heard by the City Council within 90 days of Collector's application. Change in Law includes without limitation any increase in (or any new) governmental or regulatory fees.

B. Change in Scope. City may from time to time request that Collector provide additional services, that Collector change existing services, or that Collector's obligations under this Agreement be otherwise modified (each, a "Change in Scope"). In the event of a Change in Scope requested by the City, the Parties shall for a period of ninety (90) days negotiate in good faith an appropriate adjustment to Collector's compensation resulting from such

Change in Scope and any modifications to this Agreement that may be necessary or desirable to reflect such Change in Scope. If requested by City, Collector shall provide a proposal for the implementation of the Change in Scope. Collector shall not be required to implement a Change in Scope unless and until the terms thereof and any adjustment to Collector's compensation have been mutually agreed and reflected in an amendment to this Agreement. A Change in Scope includes without limitation any City-directed change in the Processing Facility.

- C. Change in Processing Facility. It is contemplated that Collector shall deliver all Recyclable Materials collected under this Agreement to the Processing Facility located at 1500 Berger Avenue in San Jose, currently owned and operated by GreenWaste Recovery Inc. If such facility (or any successor Processing Facility selected in accordance with this Agreement) is destroyed, is shut down, goes out of business, refuses to deal, or for any other reason is not available to Collector for the delivery of Recyclable Materials collected by Collector hereunder, then Collector may utilize a different Processing Facility, so long as it is properly permitted. In that event, Collector's compensation shall be adjusted in an equitable manner in an amount sufficient to cover the increased (or decreased) costs of transportation to such facility (and transfer, if applicable), as compared to the facility previously being used. It is understood that any increased (or decreased) processing costs (or revenues) at such new facility, as compared to the facility previously being used, will be captured in the monthly reimbursement of net Recyclable Materials processing costs provided for in Exhibit C.

- D. Labor Code. City and Collector acknowledge and agree that the Services provided under this Agreement are not subject to the Prevailing Wage requirements of California Labor Code section 1720. If the Services provided hereunder become subject to Labor Code Section 1720 by some future action, that action shall be deemed a Change in Law and paragraph A of this Section 9 shall apply.

10. TERMINATION

- A. Termination for Breach. City may, by written notice to Collector, terminate the whole or any part of this Agreement at any time as a result of an uncured violation of this Agreement by Collector by giving written notice to Collector of such termination and the violation, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon receipt of a notice of termination, Collector shall have sixty (60) days to cure or correct the violation of this Agreement noted by City (provided that, if the violation is such that it is not capable of being cured within sixty (60) days, the cure period shall be reasonably extended provided that Collector diligently pursues a cure). During the 60-day cure period, Collector shall have the right to a hearing before the City Council to

discuss the violation and proposed termination, provided that the request for a hearing is made in sufficient time to schedule a hearing at a regular meeting of the City Council falling within the 60-day cure period. If the violation has not been cured or corrected within the 60-day cure period, City may proceed with the termination of this Agreement on the noticed date. Upon termination, Collector shall be compensated only for those Services which have been adequately rendered to City, and Collector shall be entitled to no further compensation. Upon termination, City shall be entitled to damages caused by such violation and the resulting termination, including, but not limited to the liquidated damages provided for in this Agreement. Notwithstanding the 90-day pre-termination notice requirement described above, if, in City's determination (which determination may be made in the sole and absolute discretion of City), the violation endangers public health, safety or welfare, termination may be effective immediately.

- B. Remedies Not Exclusive. The rights and remedies of City under this Agreement, including the right to make a claim under the Performance Bond deposited with City by Collector for reimbursement of any costs borne or damages incurred by City as a result of a default by Collector under this Agreement and the right to perform during an emergency, shall be in addition to any and all other rights and privileges City may have, and shall not be deemed to limit any such other rights or privileges of City under this Agreement or by virtue of any law.
- C. Procurement of Services Following Termination. In the event this Agreement is terminated in whole or in part as provided in this Section, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

11. ASSIGNMENT AND SUBCONTRACTING

- A. City and Collector bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Collector shall not hire subcontractors without express written permission from City.

Collector shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Collector is for the acts and omissions of persons directly employed by it.

- B. Assignment and Transferability; Subcontracting

Except as provided herein, this Agreement is not assignable or transferable in whole or in part by Collector, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. In addition, the services to be performed by Collector pursuant

to this Agreement shall not be subcontracted to any third party without the written consent of City.

The sale, transfer, assignment or hypothecation of a majority ownership interest in Collector after the Effective Date of this Agreement, including a cumulative sale, transfer, assignment or hypothecation, shall be deemed an assignment within the meaning of this Section and is prohibited in the absence of a written amendment to this Agreement. Placement of an ownership interest in a living trust shall not be deemed an assignment within the meaning of this Section, but distribution of the ownership interest from the living trust shall be deemed an assignment.

Any dispute between the City and the Collector with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in Collector has occurred or will occur shall be subject to reference pursuant to Code of Civil Procedure Section 638, et seq. with the presiding judge of the Santa Clara County Superior Court.

In the event that the City agrees to an assignment of this Agreement to a qualified service provider, Collector shall make payment to the City in an amount to be determined by the City for the right to any such assignment and to reimburse the City's costs of reviewing the assignment, such amount not to exceed Five Hundred Thousand Dollars (\$500,000). Payment will be made within thirty (30) days of City's consent to assignment, and if full payment is not made then any such assignment shall be null and void.

12. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

13. INDEPENDENT COLLECTOR

Collector and all person(s) employed by or contracted with Collector to furnish labor and/or materials under this Agreement are independent Collectors and do not act as agent(s) or employee(s) of City. Collector has full rights to manage its employees in their performance of Services under this Agreement.

14. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Collector and all other written information submitted by City to Collector in connection with the performance of this Agreement and designated as confidential by City shall be held confidential by Collector and shall not, without the prior written consent of City, be used for any purposes other than the performance

of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Collector which is otherwise known to Collector or becomes generally known to the related industry or is or becomes generally available to the public or is required to be disclosed by law shall be deemed confidential.

All customer information developed or received by or for Collector in connection with the performance of this Agreement shall be held confidential by Collector and shall not, without the prior written consent of City, be used for any purposes other than the performance of this Agreement, nor be disclosed or sold to any entity not connected with performance of this Agreement. Nothing furnished to Collector which is otherwise known to Collector or becomes generally known to the related industry or is or becomes generally available to the public or is required to be disclosed by law shall be deemed confidential.

15. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Collector agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from the Services performed by Collector pursuant to this Agreement – including claims of any kind by Collector's employees or persons contracting with Collector to perform any portion of the Scope of Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Collector's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, Collectors, subcontractors or other agents of Collector, against City (either alone, or jointly with Collector), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Collector is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Collector warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Collector's responsibilities under the Act.

16. INSURANCE REQUIREMENTS

During the term of this Agreement, and for any time period set forth in Exhibit D, Collector shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit D.

17. WAIVER

Collector agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

18. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Deputy Director of Public Works
1500 Warburton Avenue
Santa Clara, CA 95050

and by e-mail at Environment@santaclaraca.gov, and
manager@santaclaraca.gov

And to Collector addressed as follows and sent by nationally recognized overnight courier, with notice deemed to have been given upon confirmed delivery:

Recology South Bay
Attn: Legal Department
50 California Street, 24th Floor
San Francisco, CA 94111

and with a copy (which shall not constitute notice) sent by e-mail to
jzirelli@recology.com

The workday the e-mail was sent shall control the date notice was deemed given to City. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

19. COMPLIANCE WITH LAWS

Collector shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa

Clara, California” (“SCCC”). In particular, Collector’s attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC Section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Collector has read and agrees to comply with City’s Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

20. CONFLICTS OF INTEREST

Collector certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Collector and that no person associated with Collector has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Collector is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Collector will advise City if a conflict arises.

21. FAIR EMPLOYMENT

Collector shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin, ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

22. NO USE OF CITY NAME OR EMBLEM

Collector shall not use City’s name, insignia, or emblem, or distribute any information related to services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

23. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

24. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

25. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties to this Agreement.

26. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

27. SIGNATURE CLAUSE

The signatures of City’s duly authorized representatives confirm City’s offer of the franchise to Collector as set forth in the terms and conditions of this Agreement. The signature of the Collector’s duly authorized representative confirms Collector’s acceptance of the franchise as set forth in the terms and conditions of this Agreement. Acceptance of this Agreement operates as an abandonment of any prior Residential Recyclable Materials franchise agreement between City and Collector and the rights and privileges granted therein. This Agreement is deemed to be effective on the Effective Date, as defined above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

BRIAN DOYLE
City Attorney

DEANNA J. SANTANA
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

“CITY”

Recology South Bay dba Recology Santa Clara
a California corporation

Dated: _____
By (Signature): _____
Name: Michael J. Sangiacomo
Title: President & CEO
Principal Place of Business Address: 1675 Rogers Avenue
San Jose, CA 95112
Email Address: jzirelli@recology.com
Telephone: (408) 368-1776

“COLLECTOR”

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EXHIBIT A
SCOPE OF SERVICES

The Services to be performed for the City by the Collector under this Agreement are set forth below.

1. GRANT OF EXCLUSIVE CONTRACT

City grants to Collector during the term of this Agreement the exclusive right and privilege to collect and transport Recyclable Material generated from areas in the City limit that are zoned for residential use. Recyclable Material from Residential areas that is donated to a 501(c)(3) non-profit or sold is exempt from this Agreement.

2. COLLECTOR RESPONSIBILITY

Collector agrees to perform all of its obligations under this Agreement for the term of this Agreement. Collector shall furnish all of the labor and equipment necessary for the collection, processing and recycling of all Recyclable Material subject to the terms, conditions and provisions of this Agreement. Collector represents that it has the professional and technical personnel required to perform the services in conformance with such terms, conditions and provisions of this Agreement. Collector shall perform all services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

3. SCOPE OF SERVICE

A. General

i. Collector shall provide Single-Stream Recycling Containers, collection, transportation, processing and disposal services within City in accordance with the terms of this Agreement. Collector shall not be required to provide such collection, transportation, processing and disposal services for any other type of waste under this Agreement, except to the extent provided herein. Unless otherwise approved by City, only Containers and Front-Loading Bins are authorized to be used by Customers for the deposit of Residential Recyclable Material.

a. City shall retain the right to direct Collector to deliver Residential Recyclable material to a different Processing Facility selected by the City. Such direction shall be a Change in Scope. However, if the new facility is within ten (10) miles of 1500 Warburton Avenue (City Hall) and Collector can direct-haul Residential Recyclable material there (as is the case with the current Processing Facility), then it is agreed

that there will be no adjustment to Collector's compensation for increased or decreased transport costs in connection with the change.

- ii. While engaged in activities authorized or required by this Agreement, Collector's employees and agents shall be attired in suitable and acceptable uniforms mutually approved by City and Collector. All Collector's employees shall make collections as reasonably quiet as possible and shall avoid unnecessary disturbance. Collector and its employees shall not trespass or loiter on Customers' property and shall use due care in entering and exiting such property, using paved walks or surfaces where practicable. Collector shall exercise due care when handling Containers and shall not cause the Containers to be damaged or dropped during collection services. Collector's employees shall replace Containers upright once emptied and shall clean up any contents spilled during the collection process, including Recyclable Material spilled prior to the arrival of Collector's employees.
- iii. Collector shall be responsible for any damage to any property if proven to be the result of the Collector's vehicles exceeding the legal maximum weight limits of the State of California or the Collector's negligent operation of the vehicles. Collector shall be responsible for damage to public and private utilities, and shall repair or replace such damaged utilities, if proven, to the satisfaction of the City, to be caused by the inattention, carelessness or negligence of Collector.
- iv. City shall provide Collector with a copy of collection routes that detail the boundaries of each collection route by September 30, 2021. City reserves the right to change assigned collection day boundaries at its discretion. Any route changes proposed by Collector shall be submitted, in writing, for City approval at least sixty (60) days prior to the proposed date of implementation. City reserves the right to construct any improvement or to permit construction in any street or alley which may have the incidental effect of preventing Collector from driving an established collection route, in which event Collector will adjust its route without cost adjustment therefor. City reserves the right to conduct audits of Collector's collection routes. Upon request, Collector shall provide City with route maps detailing all collection routes.

B. Residential Service

- i. Single-Family Unit Residential. Collector shall collect Single-Stream Recyclable Material placed in Collector-provided Containers placed out at the Curbside for collection once a week on the same collection

day as Garbage, Clean Green, and Organic Waste service, regardless of weather conditions.

The default size Containers provided by Collector shall be 64 gallons in size unless an alternate (96-gallon) or (32-gallon) size is requested by a Customer. Collector is required to keep a stock of containers on hand and provide Customers the size container desired upon request. Customers requesting a different size Container shall not receive a discount, reduction, or increase in rates for service. Upon request, Collector shall provide City a list, monthly, of names and addresses of those residents who received different size containers than 64 gallons in size.

Containers to be used shall be standard configuration wheeled automated loading containers having a design, color (blue), sizes, and specifications reasonably acceptable to the City. The recycling Containers shall display the name of Collector, the type of Recyclable Material to be placed therein, and such other information as is agreeable to City and Collector.

All Recyclable Materials shall be placed in Containers except for motor oil, motor oil filters, large cardboard, and compact fluorescent bulbs. Customers shall be directed to set out motor oil in one-gallon, screw-top containers that they provide for a maximum of three-gallons per pick up. Customers shall be directed to place drained motor oil filters and compact fluorescent light bulbs into separate slide-locking, clear Ziploc-type plastic bags on top of their Container. Customers shall be directed to break down cardboard containers to no larger than 4'x4' and stack them adjacent to their Container. The driver of the collection vehicle will need to manually load these Recyclable Materials onto the vehicle. Collector shall not charge City or Customer any additional fee for this service.

Containers shall be placed by Customers at or near the Curbside prior to Collector's normal weekly collection time. Collector shall only be required to collect Collector-provided Containers which are set out in conformity to the provisions of this Agreement. To reduce contamination and increase recycling education, Collector must leave Customer a Notice of Violation on their Container that documents the reason service was not provided if Container was not collected.

Collector shall not receive compensation, including sign-up or similar charges, from Single-Family Unit Residential Customers in addition to the rates set forth in Exhibit "A", except for Special Services involving Push/Pull, requested Multi-Family bin cleaning services, customer requested extra driver time call-outs, lock jam bin

installations, contamination charges, and other Special Services permitted under this Agreement.

- ii. Multi-Family Unit Residential. Collector shall collect Single Stream Recyclable Materials which have been placed, kept or accumulated in Front-Loading Bins or Containers at Multi-Family Unit Residential Premises. Participation in the Multi-Family Unit Residential Recycling Program is currently by subscription only, and it is the responsibility of Collector to help expand the program to those Multi-Family complexes that can be reasonably served economically as determined by Collector and City. Multi-Family Unit Residential Customers or owners may arrange with Collector for Container service in lieu of Front-Loading Bin service. If Collector disagrees with a Customer regarding the Customer's preference for Container service, Collector shall promptly notify the City in writing of such disagreement. If the City determines that Container service would be appropriate, the City may authorize Container service in lieu of Front-Loading Bin service.

Front-Loading Bins to be used shall be standard configuration having a design, color, and specifications reasonably acceptable to City. The recycling containers shall display the name, address and phone number of Collector, the type of Recyclable Material to be placed therein, and such other information as is agreeable to City and Collector.

Front-Loading Bins and Containers shall be placed by Customers at or near the Curbside, or in a bin enclosure prior to collection. Collection shall be once a week on the same day as garbage collection service unless otherwise requested by the customer or Recology.

Collector is required to manually move Front-Loading Bins and Containers up to ten (10) feet in order to empty it into the truck without charging the Customer. Collector and Customer may mutually agree to establish a Push/Pull service at the rates set forth in Exhibit "A". Collector shall not be required to collect Containers which are not set out in conformity to the provisions of this Agreement. Collector must leave Customer a Notice of Violation on their Container that documents the reason service was not provided.

Collector is responsible for maintaining a reasonable business effort in the marketing of the recycling program for Multi-Family Unit Residential Customers. Any agreements for recycling services must be signed by the property owner or agent for the complex. Collector must provide City a monthly report of all complexes that began service in the preceding month that includes the following information

for each: name of complex, address of complex, complex contact number, and number of units in complex as described in Section 8.B.ii.

Collector is not required to provide used motor oil, oil filter, or compact fluorescent light bulb collection and recycling service at Multi-Family Unit Residential Premises.

- iii. Hours of Collection. Collection service at Residential Premises shall be Monday through Fridays, and not start before 7:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the City Council. Collection services to Residential Premises shall not take place on Sundays, but may be on Saturdays due to observed Holidays, as herein defined, and collections thereafter occurring one day late that week.
- iv. Customer Obligation. City shall, by ordinance, resolution or otherwise, require that all Customers receiving Recycling Containers from Collector for the purpose of the residential curbside recycling program shall be used only for such purposes and that said Customer shall be responsible for any damage, destruction or loss of such recycling containers.

City shall, by ordinance, resolution or otherwise, require that all Customers receiving services pursuant to this Agreement store and set out such Recyclable materials to be collected by Collector in the following manner:

- a. The Recycling Containers containing Recyclable Materials shall be placed in gutter at the curb in front of the Customer's residence, or other location as directed by City, on the regular collection day by 7:00 a.m.
- b. Recycling Containers shall not be stored upon public streets at any time except for the date during which Collector is to make collections from such premises.

- C. Container Purchase and Distribution. Collector shall purchase and deliver at Collector's sole cost and expense all Containers and Front-Loading Bins necessary to provide residential recycling services to Customers in the City. The ownership of the Recycling Containers shall be and remain with Collector. Single-Family Unit Residences shall be provided a Container, approximately 64 gallons in size, as the default container. After initial issue of Containers, Customers may request to switch to a larger (96-gallon) or smaller (32-gallon) Container instead at no additional charge. Collector shall make reasonable efforts to exchange Container sizes within ten (10) business days of receiving requests. If request cannot be fulfilled, Collector

to notify City of Plan to complete requests within reasonable period acceptable to City.

Collector shall repair and maintain in a reasonable and serviceable condition to City all provided Containers and Front-Loading Bins for the duration of the Agreement. Containers which, due to normal use, normal exposure, or manufacturing defects, become unusable shall be replaced at no charge. In the event that recycling Containers need to be replaced because of loss, theft, damage or destruction, Collector shall replace such recycling containers at no cost to City or customer. With City's approval, Collector may seek reimbursement from parties who may have stolen, vandalized, or destroyed said Containers or Front-Loading Bins.

At the end of the collection and handling services term of the Agreement, Collector shall be responsible for the disposition and removal of all Containers. Removed Containers shall be reused or recycled per plan submitted, and approval by City at least ninety days prior to end of cessation of collection and handling services term. Completion of this Plan is necessary prior to City issuing Notice of Termination of Agreement.

D. Marketing of Recyclable Materials

- i. Discretion of Marketing. Collector shall take ownership of all Recyclable Material stored in Containers or Front-Loading Bins.
- ii. Processing
 - a. Facility Selection. Collector shall transport and deliver all Recyclable Materials collected within the City to a Processing Facility permitted by all applicable regulating agencies of the State of California or Federal Government to collect, store, process and re-transport for sale such Recyclable Materials. City shall retain the right to direct Collector to transport and deliver all Recyclable Materials to a Processing Facility of its choosing. Absent City's selection of a Processing Facility for Recyclable Materials, Collector shall make contractual arrangements for processing of Recyclable Materials.
 - b. Weighing and Record Requirements. Collector shall use reasonable efforts to ensure that, at a minimum, all materials shall be weighed upon delivery to a Processing Facility, and all weight and related delivery information recorded. Collector shall use reasonable efforts to make arrangements with the Processor to allow the City to review during such facility's normal operating hours any recordings or video of tipping. Collector shall use reasonable efforts to ensure that all scales shall maintained in compliance with Applicable Law and

regularly maintained to ensure reliability and continued functioning.

- c. Recyclable Materials Specifications. City is not responsible for the quality of Recyclable Materials delivered to or rejected by the Processing Facility. City makes no warranty, either express or implied, with respect to the Recyclable Materials, including but not limited to warranties of merchantability and fitness for a particular purpose.
 - d. Disposal of Residue. Collector shall use reasonable efforts to ensure that disposal of any and all residue remaining from the processing of Recyclable Materials and any non-processable materials is in accordance with Applicable Law.
- iii. Indemnification. To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by Collector's breach of or noncompliance with a provision of this Agreement, Collector agrees to protect and defend City, with counsel selected by City, and to indemnify and hold harmless City from and against all fines or penalties imposed by the California Integrated Waste Management Board if the diversion goals specified in the California Public Resources Code are not met by the City with respect to the Recyclable Material collected by Collector under this Agreement. Upon receipt from the California Integrated Waste Management Board of a stipulated order of noncompliance with the diversion goals, which is at least partially caused by Collector's breach of or noncompliance with a provision of this Agreement, the City may require Collector to provide a performance bond in the amount of Six Hundred Thousand Dollars (\$600,000) until such time as compliance is attained.
 - iv. Anti-Scavenging Laws. Collector shall cooperate with City in enforcing anti-scavenging laws (i.e. laws prohibiting theft of recyclables from the authorized collector's containers).
- E. Collection on Holidays. If the day of collection on any given route falls on a Holiday or a day on which the Processing Facility utilized by Collector is closed, Collector may provide collection service for such route on the next workday following such holiday (including Saturdays for regularly scheduled Friday collections) or Processing Facility closure day or shall provide such collection service on such Holiday or Disposal Facility closure day, except that Collector shall never provide collection service (unless in case of emergency where such pickup is authorized by City) on New Year's Day, Thanksgiving Day or Christmas Day.

- F. Provision and Replacement of Containers and Bins. Collector shall replace existing Containers and Front-Loading Bins with clean and freshly painted replacements as often as deemed necessary by City and requested by City, but in no event more often than once per Contract Year at no cost to City or any Customer. All cleaning of Front-Loading Bins and Containers shall be completed in full compliance with all Applicable Laws, including any requirements of the National Pollution Discharge Elimination System.

Upon request of any Customer for a replacement Container, Collector shall provide such Container without cost to the Customer or to City. Collector must attach a tag to the Container or Front Load Container for purposes of notice to the Customer one (1) full week in advance if removal is directed by City.

- G. Graffiti Removal. Collector must remove graffiti vandalism from Containers and Front-Loading Bins within four (4) business days of notification.

4. **ADDITIONAL SERVICES PROVIDED BY COLLECTOR**

- A. Special Services. Collector shall offer to its Customers the following Special Services for additional service fees. The services detailed in this Section shall be billed to Customer by City except when otherwise noted. Collector must notify City Finance Department when these Special Services are rendered so Customer can be billed. City shall pay Collector for Special Services rendered on a monthly basis. The rates to provide Special Services are detailed in Exhibit C, and shall be eligible for annual adjustment, as described in Exhibit C.

- i. Manual "push-pull" service for Front-Loading Bins, including opening and closing of enclosure doors. Push-Pull service may be charged on a price per foot moved basis if the driver must move it more than ten (10) feet to service it.
- ii. One-time charge for front-loading bin cleaning service.
- iii. Driver-time reimbursement for delays lasting over fifteen (15) minutes caused by blocked access ways on the property or to level and/or manually reload containers or front-loading bins.
- iv. Lock-jam bin installations.
- v. Contaminated Container Collection Charge.

In addition to the exclusions set forth in Section 2 to the exclusive rights and privileges granted to Collector in this Agreement, nothing in this Section 6.b shall prohibit a Customer from calling upon a third party to render a specific Special Service in the event that Collector, following that Customer's

request for Collector to perform a specific Special Service, is either unwilling or unable to perform that Special Service.

Collector may offer Special Services besides those listed above, which shall not be billed by City. For Special Services not billed by City, Collector shall bill and receive fees for performance of Special Services as agreed upon in separate arrangements between Collector and each Customer requesting such Special Service. Such Special Services may include, without limitation, Compactor services.

- B. Hazardous Waste. Collector shall use reasonable business efforts to ensure the delivery of Hazardous Waste to a Hazardous Waste Facility, and to screen, identify and prevent against the disposal of Hazardous Wastes at any Processing Facility or Disposal Facility used by Collector under this Agreement. If Collector inadvertently delivers materials to any Processing Facility or Disposal Facility which comprise Hazardous Waste and Collector cannot or fails to remove it, Collector shall arrange for its proper disposal in accordance with Applicable Law. Collector shall use reasonable business efforts to recover the costs of such disposal from the Customer which generated such Hazardous Waste and failed to identify it for collection as part of the Household Hazardous Waste pickup program (if one is in operation pursuant to this Agreement, as it may be amended), if the Customer can be identified, and charge such cost to such Customer. If Collector delivers reportable quantities of Hazardous Waste to any Processing Facility or Disposal Facility, Collector shall to the extent required by law promptly notify the City, the local fire department, and the Santa Clara County Health Department, providing the name, address, and telephone number of the collector and the facility or premises from which the Hazardous Waste was collected, the type and quantity of the Hazardous Waste, and the location and method of final disposition of Hazardous Waste.
- C. Indemnification. Collector shall indemnify, defend with counsel approved by City, protect and hold harmless the City from and against all claims, actions, damages or liabilities paid, incurred or suffered by, or asserted against, the City 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 Waste at any place where Collector delivers, stores, processes, recycles, composts or disposes of materials or wastes to the extent that such liabilities are caused by Collector's negligence or willful misconduct. Nothing in this subsection shall be construed to require Collector to indemnify the City for liabilities caused by the sole negligence of the City.
- D. AB 341 Multi-Family Unit Recycling Outreach. Collector shall contact the property owner or manager for every Multi-Family Unit residential complex

that does not have recycling services at least once a year to inquire why they are not receiving recycling services. Collector must document the contact with each property owner or manager and submit a summary report to City in the Annual Report that covers each calendar year as described in Section 8.D.ii. This report shall contain the following information for each complex: name of complex, address of complex, name of contact person, contact person title, contact person phone number, and reason why complex is not participating in the recycling program, and recommendations on making complex serviceable.

- E. Multi-Family Unit Recycling Bags. At the beginning of the contract term, Collector shall purchase and distribute recycling bags to all Multi-Family Unit Residential Premises it services for the purpose of better recycling practices. The style and design of the bags shall be approved by the City prior to purchasing. Collector shall contact all existing Multi-Family Unit Residential Premises by September 30, 2021 and confirm the quantity of Multi-Family Unit Recycling Bags desired by each Multi-Family Unit Residential Premises (no more than one (1) bag per dwelling unit). Collector will deliver Multi-Family Unit Recycling Bags to Multi-Family Unit Residential Premises and include total amount of Multi-Family Unit Recycling Bags distributed in the Collector's monthly report to the City. After the initial distribution, Collector shall also provide Multi-Family Unit Recycling Bags (no more than one (1) bag per dwelling unit) as new Multi-Family Unit Residential Premises are developed and occupied. Collector shall make available up to 500 Multi-Family Unit Recycling Bags for the City to distribute as needed.
- F. Community Relations Plan. Collector shall use reasonable business efforts to outreach and educate the public on the importance of recycling and separating Garbage from Recycling order to achieve maximum waste diversion. Collector shall develop a recycling brochure that describes the recycling program and mail it out to all Customers. The recycling brochure must be approved by City prior to printing and shall be available in English, Spanish, and Mandarin. Brochure must note that it is available in Spanish and Mandarin upon request and online. Collector shall be responsible for all costs associated with the design, printing, and delivery of the recycling brochure. Collector must submit the recycling brochure to the City for review by July 1, 2021. Collector must deliver brochure to Customers by September 30, 2021. Collector's recycling brochure shall be updated and reprinted as necessary to maintain reasonable supply for community-related purposes. Collector shall supply City with brochures for activities and customer requests. Collector shall link the brochure to the Collector's website.
- G. Inspection of Containers. Collector shall assign an employee(s) to inspect Containers reported as contaminated for contamination. Collector must submit an annual report, titled "Container Inspection Report" detailing the

routes that were inspected and addresses where a Notice of Violation were left. Collector will spot check one rotating route day per year leaving Notice of Violations when necessary (routes with single family and multi-family units are preferred). Collector is required maintain a database of Notices of Violation issued that goes back at least one full year. Collector shall notify City of customers that have had multiple violations in the last one-year period so appropriate enforcement action can be taken. City may also inspect Container contents at any time and issue its own notice of violations and/or citations. A separate collection charge which shall be billed and collected by Collector may be assessed to Customer to service a contaminated Container.

- H. Review of City's Solid Waste Enclosure Guidelines. City shall retain the right to direct Collector to review and provide comments on solid waste enclosure plans on an as needed basis. Collector shall review guidelines and provide recommendations to the City within two (2) weeks.
- I. Electric Vehicle Pilot Project. Should electric and/or hybrid solid waste vehicles become a viable technology during the term of this Agreement, the Collector and the City shall meet and confer to discuss the implementation of a pilot project for the purposes of operating electric and/or hybrid vehicles in the City.
- J. Customer Service Phone Line. Collector shall staff a telephone information and complaint service. All calls received must be documented and kept on file. The dedicated customer support telephone service must be staffed with an employee(s) from 7:30 a.m. to 4:30 p.m. on all business days.
- K. Accommodation for Disabled Customers. Collector shall provide accommodation for customers with affirmed and qualified disabilities pursuant to the Americans with Disabilities Act of 1990, which may include Collector transporting Containers to and from the street adjacent to the Customer's residence.
- L. Environmental Day Events. Collector shall provide all necessary equipment and staffing to conduct two Environmental Day events for City of Santa Clara residents at its facility located at 1675 Rogers Avenue in San Jose. There shall be no charge to City or Santa Clara residents to utilize these events. Environmental Days will be held on the first Saturday in March and third Saturday in October each year and shall be open for no less than 8:00 a.m. to 12:00 p.m. or four (4) hours. Collector shall be responsible for obtaining any and all necessary permits to conduct Environmental Days. Collector may, at its discretion, require attendees to make an appointment to utilize an Environmental Day event.

Each Environmental Day shall include a document destruction component for Santa Clara residents to destroy all types of paper documents and have

them recycled. Computer disks, magnetic disks, magnetic tapes, transparencies, and video cassettes will be accepted but not recycled. Universal waste and electronic waste may be dropped off for recycling at each Environmental Day event. Other items which shall be accepted for drop-off for recycling and reuse shall include clothing in reusable condition as determined by the Collector's non-profit partner. Upon the completion of each Environmental Day, Collector shall submit to City a report that summarizes the number of Santa Clara residents that utilized the service, and the weights of materials dropped off by category.

Language and logos created by the Collector may be used to promote the Environmental Day events on the City's website, cable channel, calendar, or other written publications.

- M. Coats for Kids Program. On an annual basis, Collector shall sponsor a Coats For Kids program in the City of Santa of Clara. Program shall collect coats at designated locations throughout the City. Coats will be given to local schools and/or non-profit agencies for sorting and distribution.

5. COLLECTION EQUIPMENT AND PRACTICES

A. Number and Maintenance of Vehicle

- i. Collector shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which Collector is responsible under this Agreement. After phasing in new vehicles as described in Exhibit G, Collector shall ensure that primary collection vehicles are not over fifteen (15) years of age for this Agreement and no back-up collection vehicle will ever be more than fifteen (15) years of age. If a breakdown or unforeseen circumstance requires Collector to use a vehicle that is greater than fifteen (15) years of age to adequately service the day's collection routes, Collector must notify City verbally and receive approval to send the vehicle on a collection route. For purposes of this paragraph, a vehicle's "age" shall consist of the age of the older of its chassis and body. All vehicles shall be registered with the Department of Motor Vehicles of the State of California, shall be kept clean, safe, in good body condition, and in good repair. Collector shall keep all collected materials covered during transportation and shall be regularly inspected and certified by the Santa Clara County Health Department at the sole expense of Collector. Such vehicles shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid.
- ii. All collection vehicles operated by Collector shall be newly painted and detailed in a uniform color to enhance the visibility of the vehicle

and distinguish them from other authorized collectors. Such vehicles shall be numbered and shall have the Collector's name, in-service telephone number, place of business, and the number of the vehicle painted in letters of contrasting color on each side and rear of each vehicle. Collector's name, phone number and vehicle number shall be visibly displayed on its vehicles in letters and figures no less than four inches (4") high. Said rear number, and any cautionary message or device shall be readable from a distance of one hundred (100) feet. Vehicles shall be cleaned and repainted as necessary to maintain a reasonable, acceptable condition to City.

- B. Compliance With Applicable Air Pollution Control Laws. Collector shall maintain all equipment and conduct all business activities in accordance with all applicable air pollution control laws. Upon request from City, Collector shall provide records of all collection vehicles in service in the City, including fuel source and engine and chassis numbers. In addition to any indemnification obligations set forth elsewhere in this Agreement, Collector shall defend, indemnify, and hold harmless City against any fines, penalties, losses, or claims arising out of Collector's failure to comply with this paragraph.
- C. Clean Collection Practices. Collector shall not cause or permit private property or City streets or property to be littered with debris because of Collector's activities under this Agreement. Collector shall clean up any debris in the immediate vicinity of any Container, Front Loading-Bin, and/or storage area that results from collection services under this Agreement. In the event of repeated litter not caused by Collector directly, Collector shall first notify the Customer and, if litter continues, Collector may request the City's assistance to rectify the situation.
- D. Communication System. Collector shall equip each vehicle and central dispatch office with a radio communication system or cellular phone equipment to provide communication ability. Collector shall instruct collection route supervisors and drivers to be aware of and report scavenging, suspicious activity, fires, and other serious occurrences to Collector's dispatch office, or 911.
- E. Alternative Fuel Collection Vehicles. Collector shall use only Alternative Fuel Collection and supervisor vehicles for all work associated with Agreement. Collector shall fuel collection vehicles with renewable diesel and supervisor vehicles will be hybrid or renewable diesel vehicles. Collector must obtain City approval to use any other type of Alternative Fuel Vehicle for this Agreement. Collector will be subject to liquidated damages set forth in Section 7.C for failure to use alternative fuel for collection vehicles and supervisor vehicles used specifically for this Agreement.

6. PUBLIC ACCESS TO COLLECTOR

- A. Local Office and Regular Hours. Collector's office hours shall be, at a minimum, from 7:30 a.m. to 4:30 p.m. Monday through Friday, except federal holidays. A representative of Collector shall be available during office hours for communication with the public at Collector's principal office. The representative shall, at a minimum, provide service information to the public. Collector shall also maintain a telephone number for off hour message and voice recording when the local office is closed. Collector shall have a representative or answering service available for emergency contact by City during all hours other than normal office hours.
- B. Service Complaints and Dispute Resolution. All service complaints received by City from Customers shall be directed to Collector. Collector shall record all complaints received (including date, name, address, phone number, and nature of complaint), and action taken, or other disposition. Collector shall make all such records available for inspection by the City during normal business hours, upon demand by the City. Collector agrees to use its best efforts to resolve all such complaints within the business day next following the date on which such complaint is received.

If Collector misses a scheduled pickup, it shall provide a special pickup within twenty-four (24) hours (Sundays and Holidays excepted) of notice thereof to Collector at no charge to Customer or City.

Collector shall provide a monthly summary report in writing to the City of types and numbers of missed service, complaints, and disputes.

In the event that the City determines that Collector has failed to render performance in accordance with the requirements of this Agreement, City may assess damages against Collector and reduce payment otherwise due to Collector accordingly. Collector shall in all cases be given a reasonable opportunity to remedy the defect in performance prior to such assessment of damages.

- C. Customer Information. Collector shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless authorized or required by Applicable Law, the City or a court of competent jurisdiction.

7. GENERAL PROVISIONS

- A. Force Majeure. Collector shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of Collector are temporarily interrupted or discontinued for any of the following reasons: riots, wars, civil disturbances, insurrections,

epidemics, hurricanes, earthquakes, floods, acts of God, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of Collector. It is specifically understood that "other catastrophic events" include strikes, lockouts and other labor disturbances. When any of these events interrupt collection, transportation, processing of Recyclable Material by Collector as required under this Agreement, City may elect to exercise its rights under Section 7.E.

- B. Annexation. In the event that any community, neighborhood or other territory is hereafter annexed to City, recycling services shall, if requested by City, be immediately provided to such area by Collector pursuant to this Agreement. City agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.
- C. Fees and Gratuities. Collector shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of Recyclable Material otherwise required to be collected under this Agreement. Collector shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the collection of Recyclable Material otherwise required to be collected under this Agreement.
- D. Rights of City to Perform During Emergency. Should Collector, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 7.A, fail, refuse or be unable to collect, transport, process and dispose of any or all of the Recyclable Material for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than seventy-two (72) hours, and if as a result thereof Recyclable Material should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hour prior written notice to Collector, or without such notice should the City determine that a further delay would endanger the health, safety, and welfare of City residents during the period of such emergency, to take possession of any or all equipment of Collector previously used in the collection, transportation, processing and disposal of Recyclable Material or which Collector would otherwise be obligated to collect and transport pursuant to this Agreement. Collector agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use. Collector agrees that, in such event, City may take possession of and use all of said equipment and facilities without paying Collector any rental or other charge, provided that City agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

Collector further agrees that, in such event, it shall reimburse City for any and all costs and expenses, including the cost of City employees and/or third party laborers in the performance of emergency services pursuant to this Section, incurred by City in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of Collector under the terms of this Agreement. City shall first subtract such reimbursement costs from compensation otherwise due Collector under this Agreement, and to the extent such costs exceed those due Collector, an itemized statement of costs and expenses shall be submitted for reimbursement to Collector. To facilitate reimbursement of costs and expenses to City, Collector agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by City and further agrees to allow City to collect such payments directly from the Customers. City agrees that it shall relinquish possession of all of the above-mentioned property to Collector upon written notice from Collector to the effect that it is able to resume its responsibilities under this Agreement. It is agreed that City's exercise of its rights under this Section shall not affect Section 9 of this Agreement.

8. REPORTING, ACCOUNTING AND AUDITING

- A. Daily. Collector shall maintain and make available to the City, upon request, records of the number of tons of Recyclable Material collected from Residential premises and the route number, the vehicle number and Collector's weight ticket for each load disposed or processed. The records shall also reflect amounts received by Collector from the sale of Recyclable Materials.
- B. Monthly. Collector shall submit a report due within thirty (30) calendar days after the end of the reporting period of:
- i. The number of all households serviced by the Collector;
 - ii. All MFD complexes serviced including the following information for each: name of complex, address of complex, number of units in complex, and contact number for the complex;
 - iii. The number of compactors serviced by the Collector;
 - iv. Number of Multi-Family Unit Recycling Bags distributed and addresses of Multi-Family Unit Residential Premises where Multi-Family Unit Recycling Bags are distributed;
 - v. Collector shall submit a summary of all customer service calls and complaints with resolutions, including the address and contact information of caller; and

- C. Quarterly. Collector shall submit written quarterly reports to the City totaling the information contained in the monthly reports. Reports are due within thirty (30) calendar days after the end of the reporting period.
- D. Annual. Collector shall submit annual reports that cover a calendar year's activity (January 1 – December 31) to the City on or before March 1 of each year totaling the information contained in the quarterly reports for the year. For the first year of this Agreement, Collector will include any additional reporting as described in Section 8, for the entire calendar year (i.e., January 2021 – December 31 2021). Collector shall cooperate fully with City's AB 939 and AB 341 reporting requirements by providing City with information reasonably requested by City regarding Collector's operations and services hereunder, within a reasonable time of Collector's receipt of City's request, but in no event longer than fifteen (15) days after such receipt. Upon request, Collector shall make an oral presentation of the annual report to the City Council of the City at the City Council meeting specified by the City. In addition, Collector must submit:
- i. Beverage Container Recycling reporting specifying the percentage of California Refund Value (CRV) items collected by the Collector in the City's Recyclable Materials stream (i.e., the CRV audit performed by the Processing Facility);
 - ii. Annual Community Relations Plan for the upcoming year; and
 - iii. Container Inspection Report containing the results of contamination and Notice of Violation issued as described in Section 4.G.
- E. Additional Information. Collector shall use reasonable business efforts to incorporate into the reports required by this Section any additional information requested by the City. Collector shall incorporate into such reports any new reporting information required by Applicable Law.

EXHIBIT B

DEFINITIONS

For the purpose of this Agreement, certain words and terms shall be constructed as herein set forth unless it is apparent from the context that a different meaning is intended.

- A. **Applicable Law.** All law, statutes, rules, regulations, guidelines, permits, actions, determinations, orders, or requirements of the United States, State of California, County of Santa Clara, CITY, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, including AB 939, AB 341, SB 1383, SB 1016 and all amendments and related subsequent legislation, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, and the Santa Clara County Integrated Waste Management Plan. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise specifically limited.
- B. **Alley.** A dedicated public or private way giving access to the rear of lots or buildings.
- C. **Commercial.** The designated zoning for commercial, professional office (OA), or general office (OG) development as shown on the official Zoning Map of the City of Santa Clara.
- D. **Compactor.** Any roll-off container or bin which has a compaction mechanism, whether stationary or mobile.
- E. **Container.** A wheeled automated cart receptacle designed specifically for the storage and collection of Recyclable Material from Single-Family and Multi-Family Units, and which has a tight-fitting lid. Containers also include one to eight cubic yard bin receptacles, where the lid of the container is entirely blue in color provided by Collector to Customers for the storage and collection of Multi-Family Recyclable Material.
- F. **Curbside.** At or near the curb and gutter in front of Residential properties.
- G. **Customer.** Any person, owner or occupant, who receives Recyclable Materials collection service from Collector.
- H. **Disposal.** "Disposal" means the final disposition of refuse at a landfill or other permitted disposal facility, as defined in California Public Resources Code Section [40192](#).

- I. Drop Body Debris Bin. An open top metal refuse container, ten (10) to forty (40) cubic yards in capacity, that is serviced by a roll-off truck.
- J. Electronic Waste (E-Waste). Appliances, devices, and other objects containing electronic components, and includes (but is not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR's, televisions, printers, microwaves, and toasters.
- K. Exempt Waste. Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, dead animals, and those wastes under the control of the Nuclear Regulatory Commission.
- L. Fluorescent Bulbs. Light bulbs that utilize fluorescent as opposed to incandescent technology.
- M. Front-Load Bin. Industrial standard metal bins that are provided by Collector for recycling at Multi-Family Unit Residential Premises, are one to eight cubic yards in capacity, and are serviced by front-load apparatus-equipped vehicles.
- N. Garbage. All classes of refuse, including but not limited to, putrescible or decomposable animal or vegetable matter and disposable food containers. Garbage does not include Organic Waste, Recyclable Materials, or Exempt Waste.
- O. Hazardous Waste. Any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.
- P. Industrial. A parcel of real property designated as being located in an industrial zoning district, (MP), (ML) or (MH), as shown on the Official Zoning Map of the City of Santa Clara. A map of the industrial-zoned areas of the city is available at the following web address: <https://map.santaclaraca.gov/public/index.html?viewer=regional>
- Q. Institutional. The designated zoning for public or quasi-public development as shown on the official Zoning Map of the City of Santa Clara.
- R. Holiday. Limited to:
 - i. January 1st – New Year's Day
 - ii. The date set aside in November for Thanksgiving Day
 - iii. December 25th – Christmas

- S. Multi-Family Unit Residential Premises. Any building and/or structure, or portion thereof, in City which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having five (5) or more self-contained living units.
- T. Notice of Violation. A notice, as approved by City, issued by Collector to a customer on a container or front-loading bin that documents non-compliance with a particular set-out rule specified in this Agreement, and includes the address and date.
- U. Processing Facility. A facility or facilities for sorting and/or processing commingled or source separated Recyclable Materials.
- V. Push/Pull Service. The driver of the collection vehicle pushes a Container or Front-Loading Bin to the service point, empties it, and then pulls it back to its original location. This service is charged to Customer on a price per foot moved basis, with the first ten (10) feet being complimentary.
- W. Recyclable Material. Materials which have been discarded, thrown away or abandoned by the generator or owner thereof, and have been source-separated by the generator from other Refuse, and are of the type commonly collected in recycling programs in California, which as of the date hereof consist of the following:
 - i. newspaper
 - ii. corrugated cardboard
 - iii. mixed paper
 - iv. glass bottles and jars
 - v. beverage containers
 - vi. aluminum cans
 - vii. tin cans, and discharged metal spray paint cans
 - viii. steel and other types of kitchen scrap metals
 - ix. any plastic container or bag marked with a #1, #2, #3, #4, #5, #6 or #7 inside of three arrows
 - x. compact fluorescent light bulbs
 - xi. used motor oil
 - xii. used motor oil filters

This list may be expanded or revised to include other materials as may be mutually agreed upon by City and Collector. The term "Recyclable Material" may be used interchangeably with the terms "Recycling" and "Recyclables".

- X. Refuse. All classes of solid wastes generated in the City, including all waste matter and materials, putrescible or non-putrescible, solid or liquid wastes, except sewage, whether combustible or non-combustible, including

garbage and recoverable material, and excluding hazardous wastes. The term “refuse” may be used interchangeably with the term “solid waste”.

- Y. Residential. The designated zoning for residential development as shown on the official zoning map of the City, or other property used for single-family or multifamily residential purposes, regardless of zoning designation.
- Z. Single-Family Unit Residential Premises. Any building, and/or structure, or portion thereof, in City which is used for residential housing purposes, irrespective of whether residents are transient, temporary or permanent, and having four (4) or less self-contained living units.
- AA. Single-Stream Recycling. All acceptable Recyclable Materials consisting of paper, plastics, metals, and glass that are co-mingled in the same Container or Front-Loading Bin for collection by Collector. Motor oil, bagged motor oil filters, and large cardboard may also be set-out for collection outside of the approved Front-Loading Bin or Container.
- BB. Street. A dedicated public or private way used for public travel.

EXHIBIT C
COLLECTOR COMPENSATION

1. **Annual Compensation:** City shall pay to Collector, for services rendered via this agreement, the following annual compensation amounts:
 - A. July 1, 2021 through June 30, 2022 - \$3,194,000 total annual compensation.
 - B. July 1, 2022 through June 30, 2023 - \$3,635,000 total annual compensation.
 - C. **Annual WST Adjustment:** Annual compensation for the year starting July 1, 2023 through June 30, 2024, and annually thereafter, shall be adjusted by the same percentage as the percentage of increase, if any, in the Water and Sewer and Trash Index. The “Water and Sewer and Trash Index” (WST Index) means the “Water and sewer and trash collection services in U.S. city average” published by the Bureau of Labor Statistics, series identification number CUSR0000SEHG. The percentage increase or decrease, if any, shall be determined by the percentage increase or decrease in the index for the most recent month of December over the same index for the month of December of the previous year, rounded to the nearest hundredth of a percent. For example, Collector’s compensation for the year starting July 1, 2023 through June 30, 2024 shall equal \$3,635,000 times 100% plus the percentage increase in the WST Index, as described above, rounded to the nearest whole dollar. Still as an example, if the percentage increase in the WST Index calculated per the above is 2.50%, then the Collector’s compensation for the year starting July 1, 2023 would be \$3,635,000 times 102.50% yielding \$3,725,875 in compensation.
 - i. **Cap on Annual Adjustment:** The actual annual WST Index compensation adjustment percentage may not exceed five percent (5%) in any year or be below two percent (2%) in any year. In the event the annual WST compensation adjustment is less than two percent (2%), Collector compensation shall be adjusted by two percent (2%). In the event the annual WST Index rate adjustment is more than five percent (5%), the annual compensation shall be adjusted by five percent (5%). This cap applies only to the WST annual adjustment and is applied prior to the growth adjustment described below.
 - D. **Annual Growth Adjustment:** Annual compensation for the year starting July 1, 2023 through June 30, 2024, and for each year thereafter, shall also be adjusted by the percentage change in the total number of weekly container service lifts performed by the Collector, effective January 1 of the

current year, compared to January 1 of the prior year. For example, Collector compensation for the year starting July 1, 2023 through June 30, 2024 shall be adjusted first by the annual WST Index compensation adjustment described in Sections 1.C above, and then shall be further adjusted based on the percentage change, if any, in the total number of weekly container service lifts as of January 1, 2023 compared to the total number of weekly container service lifts as of January 1, 2022 (rounded to the nearest hundredth of a percent).

On October 8, 2019, the total number of weekly container service lifts performed by the Collector was 28,521 as shown in the information contained in the table on the following page. The Collector shall pull an identical report of the total number of weekly container service lifts on January 1, 2022 and then again on January 1, 2023, and annually thereafter. As example of the growth adjustment calculation, if the total number of service lifts is 29,000 on January 1, 2022 and 30,000 on January 1, 2023, then the percentage adjustment for growth in the number of lifts that would take effect July 1, 2023 would be 30,000 divided by 29,000, yielding a percentage increase of 103.45%, rounded to the nearest whole dollar.

Using the prior example from Section C, above, the growth adjustment would be applied to the result of the annual adjustment using the WST Index. In the prior example this yielded a resulting annual compensation starting July 1, 2023 of \$3,725,875, which, using the container lift numbers shown above, would further increase by 103.45%, yielding total annual compensation of \$3,854,418.

| TYPE | CODE | TM | UNITS | LIFTS |
|------|------|----|--------------------|---------------|
| A | MIX1 | 1 | 45 | 45 |
| A | MIX1 | 2 | 8 | 16 |
| A | MIX2 | 1 | 25 | 25 |
| A | MIX2 | 2 | 4 | 8 |
| A | MIX2 | 3 | 6 | 18 |
| A | MIX3 | 1 | 53 | 53 |
| A | MIX3 | 2 | 43 | 86 |
| A | MIX3 | 3 | 4 | 12 |
| A | MIX4 | 1 | 49 | 49 |
| A | MIX4 | 2 | 5 | 10 |
| A | MIX4 | 3 | 6 | 18 |
| A | MIX6 | 1 | 2 | 2 |
| A | R32 | 1 | 9 | 9 |
| A | R64 | 1 | 355 | 355 |
| A | R64 | 2 | 79 | 158 |
| A | R64 | 3 | 24 | 72 |
| A | R96 | 1 | 1126 | 1,126 |
| A | R96 | 2 | 237 | 474 |
| A | R96 | 3 | 88 | 264 |
| R | R32 | 1 | 673 | 673 |
| R | R64 | 1 | 24169 | 24,169 |
| R | R64 | 2 | 12 | 24 |
| R | R96 | 1 | 855 | 855 |
| | | | Total Lifts | 28,521 |

2. **Monthly Compensation:** In addition to the total annual Collector compensation described in Section 1 of this Exhibit, Collector shall be due compensation from the City for the following, which shall be calculated and invoiced by the Collector to the City and paid by City on a monthly basis:

A. Special Services Charges

- (i) Manual “Push/Pull Charges”: \$1.00 per foot moved
- (ii) Front-Loading Bin Cleaning Service Charge: \$125.00 flat fee cleaning charge
- (iii) Driver-time reimbursement for delays lasting over fifteen (15) minutes caused by blocked access ways on the property or to level and/or manually reload containers or front-loading bins: \$95.00 per hour
- (iv) Lock-Jam Bin Installations: \$75.00 flat fee

- (v) Fee to Service Contaminated Recycle Containers:
 - a. Toters: \$25.00 flat fee
 - b. Front-Loading Bins: \$125.00 flat fee

Effective July 1, 2023, and each July 1 thereafter, each of the above Special Services Charges shall be adjusted by the same percentage as the annual WST Index adjustment under Section 1.C of this Exhibit.

B. Recycling Costs Reimbursement

Any net costs (or revenues) associated with the processing of Recyclable Materials starting July 1, 2021 shall be passed through without profit or markup to the City. Collector shall remit a monthly statement to the City documenting all net costs (or revenues) for processing of Recyclable Materials for the prior month. The City shall reimburse the Collector for the monthly net cost of processing Recyclable Materials, if applicable, and the Collector shall pay the City the amount of the monthly net revenues from processing Recyclable Materials (if applicable). The City shall retain the right to audit the Collector's net Recyclable Materials processing costs (or revenues) for accuracy annually.

- 3. **Other Special Services:** In addition to the total annual and monthly Collector compensation described in Sections 1 and 2 of this Exhibit, Collector shall be entitled to directly bill and collect compensation from customers, at pricing set by Collector, for Special Services not billed by City, provided, however, that Collector shall not charge more than \$512.00 per haul for Compactor Service (minimum service frequency of 1 time per week). Effective July 1, 2023, and each July 1 thereafter, such maximum shall be adjusted by the same percentage as the annual WST Index adjustment under Section 1.C of this Exhibit.

EXHIBIT D
INSURANCE REQUIREMENTS

Without limiting the Collector's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Collector shall purchase and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

1. COMMERCIAL GENERAL LIABILITY INSURANCE

- A. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - i. \$5,000,000 Each occurrence
 - ii. \$5,000,000 General Aggregate
 - iii. \$5,000,000 Products/Completed Operations Aggregate
 - iv. \$5,000,000 Personal Injury
- B. Exact structure and layering of the coverage shall be left to the discretion of Collector; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
- C. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Collector to comply with the insurance requirements of this Agreement:
 - i. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - ii. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - iii. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than five million dollars (\$5,000,000) each accident using, or providing coverage at least as

broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Collector and/or its subcontractors involved in such activities shall provide coverage with a limit of five million dollars (\$5,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

3. WORKERS' COMPENSATION

- A. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
- B. The indemnification and hold harmless obligations of Collector included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Collector or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
- C. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

4. POLLUTION LIABILITY

In the event that this contract involves hazardous or regulated wastes and/or hazardous or regulated materials, Collector and/or its subcontractors shall provide a Collector's Pollution Legal Liability Insurance policy with coverage limits not less than five million dollars (\$5,000,000) each claim in connection with the Work performed under this Contract. All activities contemplated in this agreement shall be specifically scheduled on the policy as "covered operations." Any self-insured retention must be declared to and approved by City. Such policy shall cover, at a minimum, liability for bodily injury, damage to and loss of use of property, and clean-up costs arising from sudden, accidental and gradual pollution and remediation in connection with the Work under this Agreement. Collector will use its best efforts to have the City, Council, officers, employees and volunteers added as additional insureds under this policy. The following provisions shall apply:

- A. The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.
- B. Products/completed operations coverage shall extend a minimum of 3 years after project completion.
- C. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent Collectors.
- D. If the insured is using subcontractors, the Policy must include work performed “by or on behalf” of the insured.

5. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

- A. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Collector’s work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
- B. Primary and non-contributing. Each insurance policy provided by Collector shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnitied may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Collector’s insurance.
- C. Cancellation.
 - i. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - ii. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation.

In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

- D. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections 2 through 4 of this Exhibit D, above.

6. **ADDITIONAL INSURANCE RELATED PROVISIONS**

Collector and City agree as follows:

- A. Requirements of specific insurance coverage features described in this Agreement shall not be construed to be a limitation of liability on the part of Collector or any of its subcontractors, nor to relieve any of them of any liability or responsibility under the Contract Documents, as a matter of law or otherwise. Such requirements are not intended by any Party to be limited to providing coverage for the vicarious liability of the City or to the supervisory role, if any, of City. All insurance coverage provided pursuant to this Agreement in any way relating to City is intended to apply to the full extent of the policies involved.
- B. Collector shall maintain all required insurance policies in full force and effect during entire period of performance of the Services under this Agreement of Contract Documents. Collector shall also keep such insurance in force during warranty and guarantee periods. At time of making application for extension of time, Collector shall submit evidence that insurance policies will be in effect during requested additional period of time.
- C. City reserves the right, at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Collector thirty (30) days advance written notice of such change. If such change results in substantial additional cost to the Collector, the City will negotiate in good faith additional compensation proportional to the increased benefit to City.
- D. Any type of insurance or any increase of limits of liability not described in this Exhibit which Collector requires for its own protection or in compliance with applicable statutes or regulations, shall be Collectors' responsibility and at its own expense.
- E. No liability insurance coverage provided by Collector to comply with the terms of this Agreement shall prohibit Collector, or Collector's employees, or agents, from waiving the right of subrogation prior to a loss. Collector waives its right of subrogation against Indemnitees. Any property insurance policies affected by Collector shall be endorsed to delete the subrogation

condition as to indemnitees or shall specifically allow Collector to waive subrogation prior to a loss. Collector hereby waives any right of recovery against the indemnitees and agrees to require any subcontractor to do so.

- F. Collector agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Collector, provide the same minimum insurance coverage required of Collector, except as with respect to limits. Collector agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Collector agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
- G. Collector shall cooperate fully with City and Collector's insurance companies in any safety and accident prevention program and claims handling procedures as established for the performance of Services under this Agreement.
- H. All coverage types and limits required under this Agreement are subject to approval, modification and additional requirements by the City, as the need arises. Collector shall not make any reductions in scope of coverage which may affect City's protection without City's prior written consent.
- I. For purposes of applying insurance coverage only, all contracts pertaining to the performance of services will be deemed to be executed when finalized and any activity commences in furtherance of performance under this agreement.
- J. Collector acknowledges and agrees that any actual or alleged failure on the part of City to inform Collector of non-compliance with any of the insurance requirements set forth in this Agreement in no way imposes any additional obligations on City nor does it waive any of the City's rights under this Agreement or any other regard.
- K. Any provision in this Agreement dealing with the insurance coverage provided pursuant to these requirements, is subordinate to and superseded by the requirements contained herein. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the Parties here to be interpreted as such.
- L. Collector agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Collector for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It

is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

- M. The City acknowledges that some insurance requirements contained in this Agreement may be fulfilled by self-insurance on the part of the Collector. The Collector's insurance obligations under this Agreement under may be satisfied in whole or in part by adequately funded self-insurance retention, but only after approval from the City Attorney's Office upon satisfactory evidence of financial capacity.
- N. The City reserves the right to withhold payments from the Collector in the event of material noncompliance with the insurance requirements set forth in this Agreement.

7. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Collector, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Collector shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

8. EVIDENCE OF COMPLIANCE

Collector or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

Email to Email address: ctsantaclara@ebix.com
Or by U.S. Mail to:

EBIX Inc.
City of Santa Clara Public Works Department (Streets Division)
P.O. Box 100085-S2
Deluth, GA 30096

9. QUALIFYING INSURERS

All of the insurance companies providing insurance for Collector shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.

**EXHIBIT E
[RESERVED]**

EXHIBIT F-1
ETHICAL STANDARDS FOR COLLECTORS SEEKING TO ENTER INTO AN
AGREEMENT WITH THE CITY OF SANTA CLARA, CALIFORNIA

1. TERMINATION OF AGREEMENT FOR CERTAIN ACTS

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
- i. If a Collector¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty³;
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or, (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of Collector in the performance of this Agreement; and/or,
 - e. Makes any false statement(s) or representation(s) with respect to this Agreement.
 - ii. If fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with the Collector can be imputed to the Collector when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Collector, with the Collector's knowledge, approval or acquiescence, the Collector's acceptance of

¹ For purposes of this Agreement, the word "Collector" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
- i. If City determines that Collector no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or,
 - ii. If City determines that the Collector fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, Collector's failure to maintain a required State issued license, failure to obtain a City business license (if applicable) or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
 - iii. Provided, however, that the City shall not exercise its rights pursuant to this Section B unless the City gives written notice to Collector of its determination, including the factual basis for making its determination, and Collector fails to eliminate the cause for the determination within forty-five (45) days on those matters which may be cured within forty-five (45) days and is taking reasonable action to eliminate those matters which cannot be cured within a forty-five (45) day period.
- C. In the event the Agreement is terminated pursuant to these provisions, Collector may appeal the City's action to the City Council by filing a written request with the City Clerk within ten (10) days of the notice given by City to have the matter heard. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Collector will have the burden of proof on the appeal. The Collector shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Collector becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code (11 U.S.C.), as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Collector.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Collector to the City.

EXHIBIT F-2
AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS
[CITY OF SANTA CLARA]

I, Michael J. Sangiacomo, being first duly sworn, depose and state I am President & CEO of Recology South Bay dba Recology Santa Clara and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit F-1. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Collector" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Collector" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

RECOLOGY SOUTH BAY
a California corporation

Michael J. Sangiacomo
President & CEO

Cary Chen
Secretary

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above.

EXHIBIT G
SOLID WASTE COLLECTION VEHICLE REPLACEMENT SCHEDULE

| 7 | Total quantity of new vehicles to be purchased to service customer routes | | | | |
|----------|---|--------------|------------------------|---------------------|---|
| # | Make | Model | Year of Chassis | Year of Body | Delivery Date / Proposed First Day of Service To Occur In: |
| 2 | Automated Side Loader | Heil | 2022 | 2022 | Q4-2022** |
| 2 | Automated Side Loader | Heil | 2023 | 2023 | Q4-2023** |
| 2 | Automated Side Loader | Heil | 2024 | 2024 | Q4-2024** |
| 1 | Front Loader | Heil | 2025 | 2025 | Q4-2025** |

**Q4 of calendar year