File No. 120658

Committee Item No. 11
Board Item No. 30

# COMMITTEE/BOARD OF SUPERVISORS

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**Committee:** Budget and Finance Sub-Committee **Date** 7/25/12

**Board of Supervisors Meeting** **Date** 7/31/12

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**Completed by:** Victor Young **Date** July 19, 2012
**Completed by:** Victor Young **Date** 7-26-12

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Agreement Amendment - Recology - Refuse Collection - Not to Exceed ~~$33,142,175~~ $33,120,262]

**Resolution approving the Fourth Amendment to the Refuse Collection Agreement between the City and County of San Francisco, Recology San Francisco, Recology Golden Gate, and Recology Sunset Scavenger, increasing the total not-to-exceed amount of the Agreement from $28,059,629 to ~~$33,142,175~~ $33,120,262, under Charter Section 9.118(b).**

WHEREAS, The Board of Supervisors approved Resolution No. 147-07 on March 21, 2007, waiving a competitive solicitation process and authorizing a refuse collection agreement for $23,037,527 with Recology San Francisco, Recology Golden Gate, and Recology Sunset Scavenger with an initial term of 4 years and 3 months, with two one-year options to renew at the Purchaser's discretion; and,

WHEREAS, The Office of Contract Administration entered into an Agreement with the Contractor for $23,037,527, dated April 1, 2007 through June 30, 2011, for refuse collection from City Departments; and,

WHEREAS, The Purchaser executed the First Amendment, which did not require Board of Supervisors approval, to the Agreement on July 1, 2011, to exercise the first one-year option period and increase the contract amount by $500,000; and,

WHEREAS, The Board of Supervisors approved Resolution No. 523-11 and Second Amendment on December 13, 2011 increasing the contract not-to-exceed amount to $27,621,479; and,

WHEREAS, the Purchaser executed the Third Amendment, which did not require Board of Supervisors approval, to the Agreement on July 1, 2012, to extend the term by one month until July 31, 2012 and increase the contract amount by $438,150; and,

WHEREAS, The Agreement is approaching the contract amount of $28,059,629; and,

WHEREAS, The Contractor has agreed to waive its right to a COLA increase during the Second Option Period, The Office of Contract Administration and Contractor propose to enter into a Fourth Amendment increasing the contract's not-to-exceed amount from $28,059,629 to ~~$33,142,175~~ $33,120,262; and,

WHEREAS, The San Francisco Charter Section 9.118(b) provides that when agreements of $10 million or more are amended to increase the not-to-exceed amount by $500,000 or more, then such amendment shall be subject to approval of the Board of Supervisors by resolution; and,

WHEREAS, The Agreement and the proposed Fourth Amendment are on file with the Clerk of the Board of Supervisors in File No. 120658, which are hereby declared to be a part of this resolution as if set forth fully herein; now, therefore be it,

RESOLVED, That the Board of Supervisors approves the Fourth Amendment to the contract with Recology San Francisco, Recology Golden Gate, and Recology Sunset Scavenger as described above; and be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the Office of Contract Administration to increase the contract amount from $28,059,629 to ~~$33,142,175~~ $33,120,262.

City and County of San Fra isco

Offi of Contract Administration

Edwin M. Lee
Mayor

Jaci Fong
Acting Director

**To:** Angela Calvillo, Clerk of the Board of Supervisors

**From:** Jaci Fong, Purchaser and Director of the Office of Contract Administration

**Date:** May 31, 2012

**Re:** Contract Amount Increase for Refuse Collection Services at City Facilities

---

The Office of Contract Administration requests Board approval to increase the contract amount for Refuse Collection at City Facilities with Recology San Francisco, Recology Golden Gate and Recology Sunset Scavenger (Contractor) from $28,059,629 to $33,142,175. The increased amount reflects the Contractor's waiver of their rights to a COLA increase for Fiscal Year 2012-2013.

Approval of this resolution will provide OCA the purchasing authority in order for the City to continue to secure this essential service. Funding has already been approved in the Fiscal Year 2012-2013 City budget.

If you have any questions, please contact Jennifer Browne on my staff at 415-554-4751. Thank you for your time and consideration.

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120658



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| Item 11<br>File 12-0658 | Departments:<br>Department of the Environment (DOE)<br>Office of Contract Administration (OCA) |
|---|---|

## EXECUTIVE SUMMARY

### Legislative Objectives

- The proposed resolution would approve the Fourth Amendment to the Refuse Collection Memorandum of Understanding (MOU) between the City and Recology San Francisco, Recology Golden Gate and Recology Sunset Scavenger (Recology) by authorizing an increase in the total not-to-exceed amount of the MOU by $5,082,546 from the existing not-to-exceed $28,059,629 to the proposed not-to-exceed $33,142,175.

### Key Points

- On March 21, 2007, the Board of Supervisors authorized a not-to-exceed $23,037,527 MOU between the City and Recology for Recology to provide refuse collection and recycling services for City departments (Resolution No. 147-07) for the period from April 1, 2007 through June 30, 2011. The agreement included two additional one-year options to extend, or through June 30, 2013, at the sole discretion of the Purchaser, after notification to the Board of Supervisors.
- The agreement has been modified three times. The First Amendment exercised the first one-year option to extend, from July 1, 2011 to June 30, 2012, and increased the not-to-exceed amount by $500,000, from $23,037,527 to $23,537,527. The Second Amendment increased the not-to-exceed amount by $4,083,952, from $23,537,527 to $27,621,479 (File 11-1201). The Third Amendment extended the expiration from June 30, 2012 to July 31, 2012, and increased the not-to-exceed amount by $438,150, from $27,621,479 to $28,059,629.
- The Office of Contract Administration (OCA) notified the Board of Supervisors in a letter dated May 31, 2012 that it is exercising the second and final one-year option to extend the existing MOU. Because the Third Amendment extended the existing MOU from June 30, 2012 through July 31, 2012, the final one-year option to extend would take the form of an 11-month extension from August 1, 2012 through June 30, 2013.
- The proposed Fourth Amendment would provide the authorization needed to fund the final option under the MOU by increasing the amount by $5,082,546 from the existing not-to-exceed amount of $28,059,629 to the proposed not-to-exceed amount of $33,142,175.
- The proposed Fourth Amendment is the second and final agreement extension option under the existing MOU. Any future agreement between the City and Recology for Recology to provide refuse collection and recycling services for City departments beyond June 30, 2013 would require a new agreement, subject to approval by the Board of Supervisors.

### Fiscal Impacts

- The proposed Fourth Amendment would provide funding authorization under the existing agreement through June 30, 2013 at a total increased cost to the City of $5,082,546, which reflects a projected cost of $438,150 per month, for 11 months, or $4,819,650, plus a requested 5% contingency of $262,896.

### Recommendations

- Amend the proposed resolution by reducing the requested amount by $21,913, from $33,142,175 to $33,120,262, in order to correctly to reflect the request of the OCA for a 5% contingency amount, instead of the included 5.45% contingency amount.
- Approve the proposed resolution, as amended.

## MANDATE STATEMENT AND BACKGROUND

### Mandate Statement

In accordance with City Charter Section 9.118(b), any contract or agreement (in this case a Memorandum of Understanding) that has a term in excess of ten years, or has $10,000,000 or more in anticipated expenditures, or the modification of such agreement exceeds $500,000, is subject to Board of Supervisors approval.

### Background

On March 21, 2007, the Board of Supervisors approved a not-to-exceed $23,037,527 Memorandum of Understanding (MOU) between the City and County of San Francisco, through the Office of Contract Administration (OCA), and Sunset Scavenger Company, Golden Gate Disposal & Recycling Company and SF Recycling & Disposal Company, Inc., now known as Recology. The subject MOU is for Recology to provide refuse collection and recycling services for departments and facilities of the City and County of San Francisco (City) (Resolution No. 147-07). The initial four-year and three-month MOU was for the period from April 1, 2007 through June 30, 2011, and included two additional one-year options to extend, or through June 30, 2013, at the sole discretion of the Purchaser. Under the existing MOU, if the Purchaser exercises these options, the Purchaser is required to notify the Board of Supervisors of such extension.

The existing MOU was awarded to Recology, without conducting a competitive procurement process. Since 1932, Recology has been the only permitted hauler for refuse collection in San Francisco. Recology is the only vendor with a fleet of trucks, transfer station and recycling sorting facility in San Francisco. Past residential and commercial customer payments to the only permitted refuse collection provider have resulted in substantial investments by Recology for the needed infrastructure in San Francisco.

In negotiating the subject 2007 agreement, the City was able to secure discounts for City departments that were below commercial customer rates, with annual changes tied to the same annual rate as residential customers.

The agreement has been modified three times:

- The First Amendment exercised the first one-year option to extend, from July 1, 2011 to June 30, 2012, and increased the not-to-exceed amount by $500,000, from $23,037,527 to $23,537,527. Because this increase did not exceed $500,000, this First Amendment was not subject to Board of Supervisors approval.
- The Second Amendment increased the not-to-exceed amount by $4,083,952, from $23,537,527 to $27,621,479. The Second Amendment was approved by the Board of Supervisors on December 13, 2011 (File 11-1201).
- The Third Amendment extended the expiration from June 30, 2012 to July 31, 2012, and increased the not-to-exceed amount by $438,150, from $27,621,479 to $28,059,629. Because this increase did not exceed $500,000, this Third Amendment was not subject to Board of Supervisors approval.

The Attachment, provided by OCA, shows a breakdown of the departmental expenditures for FY 2011-12, through May 8, 2012. According to OCA Assistant Director Ms. Jennifer Browne, no appropriation authority under the existing MOU will remain after July 31, 2012.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Fourth Amendment to the existing Refuse Collection MOU between the City and Recology San Francisco, Recology Golden Gate and Recology Sunset Scavenger (Recology) by authorizing an increase under the existing MOU by $5,082,546 from a not-to-exceed amount of $28,059,629 to a not-to-exceed amount of $33,142,175.

The total not-to-exceed amount of $33,142,175 would cover the period from April 1, 2007, when the existing MOU with Recology was first approved by the Board of Supervisors, through June 30, 2013, the expiration date of the final one-year option under the existing MOU.

Under the proposed amended agreement, Recology would waive their right to a cost of living increase during this last option year (11 months) from August 1, 2012 through June 30, 2013.

## FISCAL IMPACTS

As noted above, based on the Third Amendment as previously approved by the OCA, the existing MOU includes a total not-to-exceed $28,059,629 authorization. The proposed Fourth Amendment to the existing MOU between the City and Recology would increase the not-to-exceed amount by $5,082,546 from the existing not-to-exceed amount of $28,059,629 to the proposed not-to-exceed amount of $33,142,175. This $5,082,546 requested increase reflects the estimated costs for Recology to provide refuse collection and recycling services to City Departments and facilities, at a cost of $438,150 per month, for 11 months, from August 1, 2012 through June 30, 2013, or a total of $4,819,650, plus a contingency of $262,896, which is a 5.45% contingency amount. According to Ms. Browne, the requested $438,150 per month was based on the average actual monthly expenditures paid by City Departments to Recology for Fiscal Years 2009-10, 2010-11, and July 1, 2011 through May 8, 2012.

The revenues to pay for the subject MOU are funded through the individual City departments' annual FY 2012-13 operating budgets, as previously approved by the Board of Supervisors.

The OCA requested 11 months of MOU funding, or a total of $4,819,650, plus a 5% contingency. As is stated in the Fiscal Impacts section above, the requested contingency of $262,891 is 5.45% of the 11 months of MOU funding of $4,819,650, for a total request of $5,082,546 ($4,819,650 plus $262,896). A 5.00% contingency amount, which was requested by the OCA, is $240,983, or $21,913 less than the requested $262,896 included contingency amount. A reduction of $21,913 would allow for a 5.00% contingency amount as requested, instead of the included 5.45% contingency amount, from August 1, 2012 through June 13, 2013, which would be consistent with the request of OCA.

## RECOMMENDATIONS

1. Amend the proposed resolution by reducing the requested not-to-exceed amount by $21,913, from a not-to-exceed amount of $33,142,175 to a not-to-exceed amount of $33,120,262, in order to correctly reflect the request of the OCA for a 5.00% contingency amount, instead of the included 5.45% contingency amount.

2. Approve the proposed resolution, as amended.

**FY11/12 Vouchered Amounts as of 5/08/12** *(data source: EIS Reporting Tool)*

| Fiscal Year | Post Date | Purchasing Dep | Department Title | July | Aug | Sep | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May | Jun | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 2012 | 08/30/2010 | ANC | GENERAL SERVICES AGENCY - CITY ADMIN | 3,044 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3,044 |
| 2012 | 01/10/2012 | ANC | GENERAL SERVICES AGENCY - CITY ADMIN | 3,575 | 0 | 3,575 | 3,575 | 0 | 7,149 | 3,676 | 3,575 | 3,575 | 3,575 | 0 | 0 | 32,274 |
| 2012 | 01/04/2012 | DPT1 | MUNICIPAL TRANSPORTATION AGENCY | 0 | 0 | 111,806 | 0 | 0 | 0 | 107,233 | 115,361 | 59,737 | 108,157 | 0 | 0 | 502,294 |
| 2012 | 07/01/2010 | PRT | PORT | 5,444 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 5,444 |
| 2012 | 01/31/2012 | PRT | PORT | 0 | 5,444 | 5,444 | 5,760 | 10,888 | 5,545 | 5,444 | 5,444 | 5,545 | 5,444 | 0 | 0 | 54,957 |
| 2012 | 07/01/2010 | PRT | PORT | 21,807 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 21,807 |
| 2012 | 03/21/2012 | PRT | PORT | 0 | 18,306 | 16,719 | 0 | 31,118 | 13,182 | 14,373 | 14,711 | 20,722 | 16,498 | 0 | 0 | 145,629 |
| 2012 | 07/01/2010 | PTC | MUNICIPAL TRANSPORTATION AGENCY | 0 | 0 | 241 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 241 |
| 2012 | 03/21/2012 | MTA | MUNICIPAL TRANSPORTATION AGENCY | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 863 | 0 | 0 | 863 |
| 2012 | 05/04/2012 | HLH | PUBLIC HEALTH | 0 | 48,087 | 0 | 0 | 0 | 173,184 | 37,391 | 39,731 | 37,990 | 36,144 | 0 | 0 | 372,528 |
| 2012 | 07/06/2010 | CWP | WASTEWATER ENTERPRISE | 0 | 10,212 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10,212 |
| 2012 | 01/06/2012 | CWPA | WASTEWATER ENTERPRISE | 0 | 0 | 11,160 | 19,261 | 0 | 0 | 19,366 | 10,405 | 19,638 | 0 | 1,136 | 0 | 80,030 |
| 2012 | 06/30/2011 | DSS | HUMAN SERVICES | 0 | 6,023 | 0 | 3,865 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9,888 |
| 2012 | 11/16/2011 | DSS | HUMAN SERVICES | 0 | 0 | 0 | 0 | 19,776 | 6,023 | 0 | 0 | 0 | 0 | 0 | 0 | 25,799 |
| 2012 | 01/09/2012 | DSS | HUMAN SERVICES | 0 | 0 | 0 | 0 | 0 | 0 | 76,220 | 19,959 | 30,399 | 20,970 | 9,888 | 0 | 147,548 |
| 2012 | 07/01/2011 | DPWGA | GENERAL SERVICES AGENCY - PUBLIC WORKS | 0 | 0 | 2,901 | 2,921 | 2,904 | 2,915 | 2,890 | 2,888 | 5,810 | 0 | 0 | 0 | 23,228 |
| 2012 | 01/27/2012 | SHF | SHERIFF | 0 | 2,196 | 2,196 | 0 | 4,546 | 2,297 | 2,301 | 2,301 | 2,301 | 2,301 | 0 | 0 | 20,439 |
| 2012 | 07/01/2011 | WTR | WATER DEPARTMENT | 0 | 0 | 4,883 | 0 | 0 | 17,933 | 4,375 | 4,516 | 6,294 | 0 | 10,613 | 0 | 38,001 |
| 2012 | 07/05/2011 | CWP | WASTEWATER ENTERPRISE | 0 | 1,523 | 1,523 | 1,523 | 1,523 | 1,523 | 1,759 | 1,405 | 0 | 3,144 | 0 | 0 | 13,923 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 3,657 | 0 | 3,808 | 8,350 | 0 | 3,706 | 3,735 | 3,766 | 4,628 | 3,853 | 0 | 31,649 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 24,619 | 0 | 29,607 | 69,964 | 0 | 27,409 | 24,180 | 26,769 | 37,233 | 40,885 | 0 | 239,781 |
| 2012 | 02/27/2012 | JUV | JUVENILE PROBATION | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2,322 | 0 | 2,322 | 0 | 0 | 4,643 |
| 2012 | 01/27/2012 | HGH | PUBLIC HEALTH | 0 | 0 | 0 | 15,053 | 7,528 | 7,528 | 7,470 | 7,811 | 7,730 | 0 | 0 | 0 | 53,119 |
| 2012 | 07/01/2011 | ECD | DEPARTMENT OF EMERGENCY MANAGEMENT | 0 | 2,042 | 2,042 | 2,042 | 2,042 | 0 | 4,084 | 2,042 | 0 | 3,869 | 0 | 0 | 18,162 |
| 2012 | 07/06/2011 | HCH | PUBLIC HEALTH | 0 | 0 | 932 | 0 | 932 | 0 | 471 | 939 | 469 | 0 | 469 | 0 | 3,745 |
| 2012 | 02/27/2012 | HCH | PUBLIC HEALTH | 0 | 0 | 11,203 | 5,602 | 5,602 | 0 | 5,602 | 11,203 | 5,602 | 0 | 0 | 0 | 44,812 |
| 2012 | 01/05/2012 | HMH | PUBLIC HEALTH | 0 | 0 | 7,645 | 0 | 3,790 | 0 | 7,627 | 7,607 | 3,784 | 3,765 | 0 | 0 | 34,217 |
| 2012 | 02/06/2012 | POL | POLICE | 0 | 0 | 33,227 | 16,614 | 15,553 | 0 | 15,553 | 31,107 | 0 | 15,553 | 15,553 | 0 | 127,607 |
| 2012 | 01/11/2012 | REC | RECREATION AND PARK COMMISSION | 0 | 0 | 0 | 0 | 0 | 0 | 972,785 | 0 | 210,428 | 0 | 109,645 | 0 | 1,183,213 |
| 2012 | 01/25/2010 | TIS02 | GENERAL SERVICES AGENCY - TECHNOLOGY | 0 | 0 | 0 | 1,787 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,787 |
| 2012 | 02/02/2012 | TIS02 | GENERAL SERVICES AGENCY - TECHNOLOGY | 0 | 1,787 | 2,355 | 0 | 2,259 | 0 | 1,787 | 4,141 | 1,134 | 1,126 | 0 | 0 | 15,189 |
| 2012 | 08/29/2011 | JUV | JUVENILE PROBATION | 0 | 2,322 | 2,322 | 0 | 2,322 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6,965 |
| 2012 | 12/02/2011 | JUV | JUVENILE PROBATION | 0 | 0 | 0 | 0 | 0 | 4,643 | 2,322 | 0 | 0 | 0 | 0 | 0 | 6,965 |
| 2012 | 07/05/2011 | FIR | FIRE DEPARTMENT | 0 | 16,878 | 14,469 | 14,214 | 14,090 | 0 | 28,770 | 14,135 | 15,283 | 15,284 | 0 | 0 | 133,122 |
| 2012 | 02/01/2012 | HHP | HETCH HETCHY | 0 | 0 | 877 | 0 | 438 | 0 | 438 | 877 | 438 | 438 | 0 | 0 | 3,506 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 988 | 0 | 967 | 1,003 | 0 | 939 | 929 | 976 | 0 | 942 | 0 | 5,801 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 3,593 | 0 | 3,751 | 7,031 | 0 | 3,672 | 3,672 | 3,672 | 3,593 | 3,438 | 0 | 28,984 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 3,625 | 0 | 3,625 | 3,625 | 0 | 3,625 | 3,625 | 3,625 | 3,625 | 3,625 | 0 | 25,376 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 1,365 | 0 | 1,365 | 2,729 | 0 | 1,365 | 1,365 | 1,365 | 1,365 | 1,365 | 0 | 10,917 |
| 2012 | 07/06/2010 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 502 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 502 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 2,981 | 0 | 2,981 | 5,961 | 0 | 4,116 | 2,981 | 2,981 | 3,591 | 2,261 | 0 | 25,592 |
| 2012 | 07/06/2010 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 0 | 7,143 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7,143 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 3,063 | 0 | 3,179 | 6,289 | 0 | 3,115 | 3,115 | 3,115 | 3,232 | 3,145 | 0 | 25,109 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 1,209 | 0 | 1,209 | 2,418 | 0 | 1,209 | 1,209 | 1,209 | 1,209 | 1,209 | 0 | 9,671 |
| 2012 | 07/01/2011 | RES | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 774 | 0 | 774 | 1,639 | 0 | 774 | 684 | 0 | 1,549 | 0 | 0 | 6,195 |
| 2012 | 08/31/2011 | PDR | PUBLIC DEFENDER | 0 | 3,171 | 0 | 3,171 | 6,342 | 0 | 3,171 | 3,171 | 3,171 | 3,171 | 3,171 | 0 | 25,369 |
| 2012 | 07/15/2011 | PUR02 | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 0 | 83 | 0 | 166 | 83 | 83 | 83 | 83 | 83 | 0 | 0 | 666 |
| 2012 | 01/06/2012 | CWPA | WASTEWATER ENTERPRISE | 0 | 215 | 215 | 215 | 215 | 0 | 429 | 215 | 0 | 429 | 0 | 0 | 1,932 |
| 2012 | 02/07/2012 | HGH | PUBLIC HEALTH | 0 | 0 | 19,700 | 9,850 | 16,257 | 0 | 33,580 | 12,748 | 0 | 25,496 | 0 | 0 | 117,630 |
| 2012 | 04/06/2012 | CAOCA | GENERAL SERVICES AGENCY - CITY ADMIN | 0 | 0 | 40,105 | 0 | 88,347 | 42,146 | 0 | 40,297 | 87,547 | 0 | 41,333 | 0 | 298,463 |
| 2012 | 07/07/2010 | LIB | PUBLIC LIBRARY | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1,389 | 0 | 0 | 0 | 1,389 |
| 2012 | 02/15/2012 | LIB | PUBLIC LIBRARY | 0 | 7,519 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7,519 |
| | | | | 0 | 7,504 | 7,365 | 0 | 7,609 | 7,070 | 0 | 22,145 | 6,777 | 0 | 7,136 | 0 | 58,401 |
| | | | | 33,871 | 229,601 | 310,128 | 156,717 | 353,258 | 291,221 | 1,409,137 | 476,824 | 584,024 | 326,857 | 259,867 | 0 | 4,073,292 |



ATTACHMENT

**City and County of San Francisco**
**Office of Contract Administration**
**Purchasing Division**
**City Hall Room 430**
**1 Dr. Carlton B. Goodlett Place**
**San Francisco, CA 94102-4685**

# Fourth MOU Amendment

THIS AMENDMENT (this "Amendment") is made as of **August 1, 2012** in San Francisco, California, by and between **Recology Golden Gate** ("Contractor"), **Recology Sunset Scavenger**("Contractor"), and **Recology San Francisco** ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

## RECITALS

WHEREAS, City and Contractor have entered into an MOU for refuse collection and recycling services for the City Departments; and

WHEREAS, approval for this MOU was obtained when the **Board of Supervisors** approved **Resolution No. 147-07** on **March 21, 2007**;

WHEREAS, the Board of Supervisors approved **Resolution No. 523-11** on **December 13, 2011** modifying the Agreement to increase the not-to-exceed amount to **$27,621,479 with no application of COLA price increases for Fiscal Year 2011/2012**;

WHEREAS, the Purchaser exercised authority to extend the contract until **July 31, 2012 and increase the not-to-exceed amount to $28,059,629;**

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to **increase the total contract amount from $28,059,629 to $33,142,175 with no application of COLA price increases for Fiscal Year 2012/2013 and exercise the remainder of the Second Option Period**;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**1a. Agreement.** The term "Agreement" shall mean the Agreement dated **April 1, 2007** between Contractor and City, as amended by the:

**First Amendment** dated **July 1, 2011;**

**Second Amendment** dated **December 15, 2011; and**
**Third Amendment** dated **June 30, 2012.**

**1b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**2a. Term of the Agreement. Section 2 of the Agreement "Term of the Agreement" currently reads as follows:**

> **Subject to Section 1, the term of this Agreement shall be from April 1, 2007 to July 31, 2012.**

**Such section is hereby amended in its entirety to read as follows:**

> **Subject to Section 1, the term of this Agreement shall be from April 1, 2007 to June 30, 2013.**

**2b. Compensation. Section 5. Section 5a of the Agreement "Compensation" currently reads as follows:**

> **a. Timing of Payments Limit. Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed twenty-eight million fifty-nine thousand six hundred twenty-nine dollars and no cents ($28,059,629).**

**Such section is hereby amended in its entirety to read as follows:**

> **a. Timing of Payments Limit. Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed thirty-three million one-hundred-forty-two thousand one hundred and seventy five dollars and no cents ($33,142,175).**

**2c. Compensation. Section 5. Section 5c of the Agreement "Compensation", currently reads as follows:**

> **c. Cost of Living Adjustments ("COLA"). Exclusive of any rate adjustments set forth in Section 5(d), the rates in Appendix A1 shall increase annually by a COLA as provided in this Section 5(c). No later than May 20 of each year of the**

**term of this Agreement, the Companies shall notify the Purchaser of the amount of the COLA increase and the Purchaser shall verify such amount. The COLA increase for Appendix A1 will become effective July 1 of each year. The COLA will be determined using the following formula:**

| Index | Cost Adjustment Factors | |
|---|---|---|
| CBA Wage Incr. | Fixed COLA Adjustment Factor (Fixed Labor) | 65.3% |
| CPI-SF | Variable COLA Adjustment Factor (Variable Labor) | 4.5% |
| PPI Less Fuels | Variable COLA Adjustment Factor (Variable Materials) | 15.2% |
| Zero Inflation | Existing Capital Costs and Fixed Disposal Costs | 12.1% |
| EIA CA Diesel | Fuel Cost Adjustment Factor | 3.0 % |
| Total | | 100% |

**The adjustments as set for in this Section 5(c) shall apply to both the Initial Term and the Second Option Period only. COLA increases have been waived by the Contractor for the First Option Period of this contract.**

**Such section is hereby amended in its entirety to read as follows:**

**c. Cost of Living Adjustments ("COLA"). Exclusive of any rate adjustments set forth in Section 5(d), the rates in Appendix A1 shall increase annually by a COLA as provided in this Section 5(c). No later than May 20 of each year of the term of this Agreement, the Companies shall notify the Purchaser of the amount of the COLA increase and the Purchaser shall verify such amount. The COLA increase for Appendix A1 will become effective July 1 of each year. The COLA will be determined using the following formula:**

| Index | Cost Adjustment Factors | |
|---|---|---|
| CBA Wage Incr. | Fixed COLA Adjustment Factor (Fixed Labor) | 65.3% |
| CPI-SF | Variable COLA Adjustment Factor (Variable Labor) | 4.5% |
| PPI Less Fuels | Variable COLA Adjustment Factor (Variable Materials) | 15.2% |
| Zero Inflation | Existing Capital Costs and Fixed Disposal Costs | 12.1% |
| EIA CA Diesel | Fuel Cost Adjustment Factor | 3.0 % |
| Total | | 100% |

**The adjustments as set for in this Section 5(c) shall apply to the Initial Contract Term only. COLA increases have been waived by the Contractor for the First and Second Option Periods of this contract.**

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective upon approval and signature of Board of Supervisors and Mayor.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

Recommended by:

**Naomi Kelly**
**City Administrator**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Rosa M. Sánchez
Deputy City Attorney

Approved:

**Jaci Fong**
Purchaser and Director of the Office of Contract Administration

**CONTRACTOR**

**Recology Golden Gate, Recology Sunset Scavenger, and Recology San Francisco**

**John Legnitto**
Vice President and Group Manager
Recology Golden Gate
250 Executive Park Blvd. Suite 2100
San Francisco CA 94134

City vendor number: **08401**

**City and County of San Francisco**
**Office of Contract Administration**
**Purchasing Division**
**City Hall Room 430**
**1 Dr. Carlton B. Goodlett Place**
**San Francisco, CA 94102-4685**

## First MOU Amendment

THIS AMENDMENT (this "Amendment") is made as of **July 1, 2011** in San Francisco, California, by and between **Recology Golden Gate** ("Contractor"), **Recology Sunset Scavenger**("Contractor"), and **Recology San Francisco** ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

## RECITALS

WHEREAS, City and Contractor have entered into an MOU for refuse collection and recycling services for the City Departments; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to **execute the first option to extend the MOU by one (1) year, from July 1, 2011 until June 30, 2012**;

WHEREAS, approval for this MOU was obtained when the **Board of Supervisors** approved **Resolution No. 147-07** on **March 21, 2007**;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**a. Agreement.** The term "Agreement" shall mean the Agreement dated **April 1, 2007** between Contractor and City, as amended by the:

**First Amendment** dated **July 1, 2011**

**b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Section 2. Section 2 ("Term of the Agreement") of the Agreement currently reads as follows:

> **Subject to Section 1, the term of this Agreement shall be from April 1, 2007 to June 30, 2011.**

Such section is hereby amended in its entirety to read as follows:

> **Subject to Section 1, the term of this Agreement shall be from April 1, 2007 to June 30, 2012.**

2b. Section 5. Section 5 Compensation of the Agreement currently reads as follows:

a. **Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Initial Term exceed twenty-three million thirty-seven thousand five hundred twenty-seven dollars and no cents ($23,037,527).**

Such section is hereby amended in its entirety to read as follows:

a. **Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed twenty-three million five hundred thirty-seven thousand five hundred twenty-seven dollars and no cents ($23,537,527).**

**2c. Submitting False Claims; Monetary Penalties.** Section 8 is hereby replaced in its entirety to read as follows:

_____ **Submitting False Claims; Monetary Penalties.**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or

transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**2d. Requiring Minimum Compensation for Covered Employees.** Section 43 is hereby deleted in its entirety.

**2e. Prevailing Rate of Wages Required** Section 60 is hereby added to the MOU:

**PREVAILING RATE OF WAGES REQUIRED**

For Solid Waste Hauling Services:

**Every contract issued by the City and County of San Francisco for the hauling of solid waste (or grit) generated by the City in the course of City operations must require that any employee engaged in the hauling of solid waste (or grit) shall be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalent thereof, paid in private employment for similar work in the area which the contract is being performed. The term "employee" as used in this section shall mean any individual engaged in the hauling of solid waste (or grit) for a Prime Contractor or Subcontractor. Prime Contractors must require Subcontractors to comply with the prevailing wage rate required in this section. The Board of Supervisors shall determine the Prevailing Wage Rate at least once each year. <u>If a contract for solid waste (or grit) hauling conflicts with an existing Collective Bargaining agreement to which the contractor is a party, the collective bargaining agreement shall prevail.</u>**

Enforcement

**If a Contracting Officer determines that the Contractor or a Subcontractor may have violated the Prevailing Wage requirements of this section, the Contracting Officer shall send written notification to the Contractor or Subcontractor of the possible violation. In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled to any additional payment unless within 30 days of receipt of the violation notice the Contractor has either (1) cured the violation or (2) established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which shall be attested to by affidavit, proof of compliance with the provisions of this section.**

**Where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to employees, the Contractor shall have "cured" the violation once the Contractor or Subcontractor reimburses employees by paying each individual the**

**balance of what he or she should have earned in accordance with the requirements of this section.**

**In addition to, or instead of terminating the Contract, where the Contracting Officer finds that the Contractor willfully violated the requirements of this section, the Contracting Officer or the Labor Standards Enforcement Officer may assess a penalty (a "willful violation penalty") of not more than 10 percent of the dollar amount of the Contract. The Contracting Officer or Labor Standards Enforcement Officer may impose such willful violation penalty regardless of whether the Contractor has cured the violation.**

**2f. Requiring Health Benefits for Covered Employees.** Section 44 is hereby replaced in its entirety to read as follows:

**Requiring Health Benefits for Covered Employees.**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify

to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

l. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

**2g. First Source Hiring Program.** Section 45 is hereby replaced in its entirety to read as follows:

___ **First Source Hiring Program**

**a. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**b. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment

needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter,

(9) Require the developer to include notice of the requirements of this Chapter in leases,
subleases, and other occupancy contracts.

c. **Hiring Decisions.** Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages.** Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantity; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

**f. Subcontracts.** Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**2h. Limitations on Contributions.** This is hereby added to the Agreement, as follows:

____.**Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**2i. Cooperative Drafting.** This is hereby added to the Agreement, as follows:

___ **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **July 1, 2011.**

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

Recommended by:

**Amy Brown**
**Acting City Administrator**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: **Rob Maerz** BY CATHARINE BARNES
Deputy City Attorney

Approved:

**Naomi Kelly**
Director of the Office of Contract Administration, and Purchaser

**CONTRACTOR**

**Recology Golden Gate, Recology Sunset Scavenger, and Recology San Francisco**

**John Legnitto**
Vice President and Group Manager
Recology Golden Gate
250 Executive Park Blvd. Suite 2100
San Francisco CA 94134

City vendor number: **08401**

**City and County of San Francisco**
**Office of Contract Administration**
**Purchasing Division**
**City Hall Room 430**
**1 Dr. Carlton B. Goodlett Place**
**San Francisco, CA 94102-4685**

# Second MOU Amendment

THIS AMENDMENT (this "Amendment") is made as of **Dec 15, 2011** in San Francisco, California, by and between **Recology Golden Gate** ("Contractor"), **Recology Sunset Scavenger**("Contractor"), and **Recology San Francisco** ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

## RECITALS

WHEREAS, City and Contractor have entered into an MOU for refuse collection and recycling services for the City Departments; and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to **increase the total contract amount from $23,537,527 to $27,621,479 with no application of COLA price increases for Fiscal Year 2011/2012**;

WHEREAS, approval for this MOU was obtained when the **Board of Supervisors** approved **Resolution No. 147-07** on **March 21, 2007**;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**a. Agreement.** The term "Agreement" shall mean the Agreement dated **April 1, 2007** between Contractor and City, as amended by the:

| | |
|---|---|
| **First Amendment** | dated **July 1, 2011** |
| **Second Amendment** | dated **December 15, 2011** |

**b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. **Compensation. Section 5. Section 5a of the Agreement "Compensation", currently reads as follows:**

a. **Timing of Payments Limit. Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Initial Term exceed twenty-three million five hundred thirty-seven thousand five hundred twenty-seven dollars and no cents ($23,537,527).**

**Such section is hereby amended in its entirety to read as follows:**

a. **Timing of Payments Limit. Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed twenty-seven million six hundred twenty-one thousand four hundred seventy-nine dollars and no cents ($27,621,479).**

2b. **Compensation. Section 5. Section 5c of the Agreement "Compensation", currently reads as follows:**

c. **Cost of Living Adjustments ("COLA"). In addition to any rate adjustments set forth in Section 5(d), the rates in Appendix A1 shall increase annually by a COLA as provided in this Section 5(c). No later than May 20 of each year of the term of this Agreement, the Companies shall notify the Purchaser of the amount of the COLA increase and the Purchaser shall verify such amount. The COLA increase for Appendix A1 will become effective July 1 of each year. The COLA will be determined using the following formula:**

| Index | Cost Adjustment Factors | |
|---|---|---|
| CBA Wage Incr. | Fixed COLA Adjustment Factor (Fixed Labor) | 65.3% |
| CPI-SF | Variable COLA Adjustment Factor (Variable Labor) | 4.5% |
| PPI Less Fuels | Variable COLA Adjustment Factor (Variable Materials) | 15.2% |
| Zero Inflation | Existing Capital Costs and Fixed Disposal Costs | 12.1% |
| EIA CA Diesel | Fuel Cost Adjustment Factor | 3.0 % |
| Total | | 100% |

**The adjustments as set forth in this Section 5(c) shall apply to both the Initial Term and Option Periods.**

**Such section is hereby amended in its entirety to read as follows:**

**c. Cost of Living Adjustments ("COLA"). Exclusive of any rate adjustments set forth in Section 5(d), the rates in Appendix A1 shall increase annually by a COLA as provided in this Section 5(c). No later than May 20 of each year of the term of this Agreement, the Companies shall notify the Purchaser of the amount of the COLA increase and the Purchaser shall verify such amount. The COLA increase for Appendix A1 will become effective July 1 of each year. The COLA will be determined using the following formula:**

| Index | Cost Adjustment Factors | |
|---|---|---|
| CBA Wage Incr. | Fixed COLA Adjustment Factor (Fixed Labor) | 65.3% |
| CPI-SF | Variable COLA Adjustment Factor (Variable Labor) | 4.5% |
| PPI Less Fuels | Variable COLA Adjustment Factor (Variable Materials) | 15.2% |
| Zero Inflation | Existing Capital Costs and Fixed Disposal Costs | 12.1% |
| EIA CA Diesel | Fuel Cost Adjustment Factor | 3.0 % |
| Total | | 100% |

**The adjustments as set for in this Section 5(c) shall apply to both the Initial Term and the Second Option Period only. COLA increases have been waived by the Contractor for the First Option Period of this contract.**

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective upon approval and signature of Board of Supervisors and Mayor.

4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

Recommended by:

Naomi Kelly

**Acting City Administrator**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____

Deputy City Attorney

Approved:

**Jaci Fong**
Acting Director of the Office of Contract Administration

**CONTRACTOR**

**Recology Golden Gate, Recology Sunset Scavenger, and Recology San Francisco**

**John Legnitto**
Vice President and Group Manager
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**City Hall Room 430**
**1 Dr. Carlton B. Goodlett Place**
**San Francisco, CA 94102-4685**

**Third MOU Amendment**

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THIS AMENDMENT (this "Amendment") is made as of **June 30, 2012** in San Francisco, California, by and between **Recology Golden Gate** ("Contractor"), **Recology Sunset Scavenger**("Contractor"), and **Recology San Francisco** ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

**RECITALS**

WHEREAS, City and Contractor have entered into an MOU for refuse collection and recycling services for the City Departments; and

WHEREAS, approval for this MOU was obtained when the **Board of Supervisors** approved **Resolution No. 147-07** on **March 21, 2007**;

WHEREAS, the Board of Supervisors approved **Resolution No. 523-11** on **December 13, 2011** modifying the Agreement to increase the not-to-exceed amount to **$27,621,479 with no application of COLA price increases for Fiscal Year 2011/2012**;

NOW, THEREFORE, Contractor and the City agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

**1a. Agreement.** The term "Agreement" shall mean the Agreement dated **April 1, 2007** between Contractor and City, as amended by the:

| | |
|---|---|
| **First Amendment** | dated **July 1, 2011; and** |
| **Second Amendment** | dated **December 15, 2011.** |

**1b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. **Modifications to the Agreement.** The Agreement is hereby modified as follows:

2a. Term of the Agreement. Section 2 of the Agreement "Term of the Agreement" currently reads as follows:

> Subject to Section 1, the term of this Agreement shall be from April 1, 2007 to June 30, 2012.

Such section is hereby amended in its entirety to read as follows:

> Subject to Section 1, the term of this Agreement shall be from April 1, 2007 to July 31, 2012.

2b. Compensation. Section 5. Section 5a of the Agreement "Compensation" currently reads as follows:

a. Timing of Payments Limit. Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed twenty-seven million six hundred twenty-one thousand four hundred seventy-nine dollars and no cents ($27,621,479).

Such section is hereby amended in its entirety to read as follows:

a. Timing of Payments Limit. Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed twenty-eight million fifty-nine thousand six hundred and twenty-nine dollars and no cents ($28,059,629).

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after June 30, 2012.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

Recommended by:

**Naomi Kelly**
**City Administrator**

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Rosa M. Sánchez
Deputy City Attorney

Approved:

**Jaci Fong**
Purchaser and Director of the Office of Contract Administration

**CONTRACTOR**

**Recology Golden Gate, Recology Sunset Scavenger, and Recology San Francisco**

**John Legnitto**
Vice President and Group Manager
Recology Golden Gate
250 Executive Park Blvd, Suite 2100
San Francisco CA 94134

City vendor number: **08401**

Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685

# Memorandum of Understanding
# For Refuse Collection
# between the City and County of San Francisco and Sunset Scavenger Company, Golden Gate Disposal & Recycling Company and SF Recycling & Disposal Company, Inc.

This Agreement is made effective the 1st day of April, 2007, in the City and County of San Francisco, State of California, by and among Sunset Scavenger Company, Golden Gate Disposal & Recycling Company and SF Recycling & Disposal Company, Inc., hereinafter collectively referred to as the "Companies" or the "Contractors" and each a "Company" or "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as the "City" or the "Purchaser," acting by and through its Director of the Office of Contract Administration (the "Director") or the Director's designated agent, hereinafter referred to as "Purchasing." The City and the Companies are collectively referred to herein as the "Parties" and each a "Party."

## Recitals

WHEREAS, the City wishes to obtain refuse collection and recycling services for the City Departments; and,

WHEREAS, the Companies jointly and severally represent and warrant that they are qualified to perform the services required by the City as set forth under this Contract; and,

NOW, THEREFORE, the Parties agree as follows:

## 1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City Controller (the "Controller"), and the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. The City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Each Contractors' assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Notwithstanding the provisions of this paragraph, following the termination of this Agreement pursuant to the provisions of this Section 1, the City shall remain obligated to pay the Companies for any Services performed by the Companies or other liabilities incurred by the City prior to

** Complete copy of document is located in

File No. 120658

File No. 120658

# FORM SFEC-126:
# NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

| **City Elective Officer Information** *(Please print clearly.)* | |
|---|---|
| Name of City elective officer(s):<br>Members, Board of Supervisors | City elective office(s) held:<br>Members, Board of Supervisors |

| **Contractor Information** *(Please print clearly.)* | |
|---|---|
| Name of contractor: Recology Gate and Recology Sunset | |
| *Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor.* ***Use additional pages as necessary.***<br>(1) Blake Murillo, Mike Sangiacomo, Ron Ludwig, Gale Kaufman, Lee Bloom, Sylvia Kwan, Dennis Wu<br>(2) Mike Sangiacomo, Mark Lomele, George McGrath<br>(3) None<br>(4) None<br>(5) None | |
| Contractor address: 50 California Street 24th Floor | |
| Date that contract was approved:<br>*(By the SF Board of Supervisors)* | Amount of contract: $32,759,429 (pending Board approval) |
| Describe the nature of the contract that was approved:Refuse collection for City departments | |
| Comments: MOU was originally approved by Board of Supervisors Resolution # 147-07 on March 21, 2007 for $23,037,527. Administrative approval for an additional $500,000 and the extension of the first option period was granted at OCA's discretion on July 1, 2011. Board approved increased contract amount on Dec 13, 2011 with Resolution No 529-11 increasing the not to exceed amount to $27,621,479. Additional one year extension and increased not-to-exceed amount of $33,142,175 pending Board approval. | |

This contract was approved by (check applicable):

☐ the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

| **Filer Information** *(Please print clearly.)* | |
|---|---|
| Name of filer:<br>Angela Calvillo, Clerk of the Board | Contact telephone number:<br>( 415 ) 554-5184 |
| Address:<br>City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102 | E-mail:<br>Board.of.Supervisors@sfgov.org |

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed