

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

**Agreement for Refuse Collection
between the City and County of San Francisco and
Sunset Scavenger Company (d/b/a Recology Sunset Scavenger), Golden Gate Disposal &
Recycling Company (d/b/a Recology Golden Gate), and Recology San Francisco
Term Contract # 83150**

This Agreement is made this _____ day of _____, 2020, in the City and County of San Francisco (“City”), State of California, by and between **Sunset Scavenger Company (d/b/a Recology Sunset Scavenger), Golden Gate Disposal & Recycling Company (d/b/a Recology Golden Gate) and Recology San Francisco**, hereinafter referred to collectively as the “Contractors” and each a “Contractor” (“Contractor”) and City.

Recitals

WHEREAS, the City (“Department”) wishes to obtain refuse collection services for the City Departments and,

WHEREAS, this Agreement was obtained in accordance with the Sole Source Waiver issued on _____; and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, the Contractors jointly and severally represent and warrant that they are qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, the City’s Civil Service Commission approved Contract number _____ on _____;

WHEREAS, the City’s Board of Supervisors approved this Agreement by _____ on _____;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Agreement” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and City.

1.3 “CMD” means the Contract Monitoring Division of the City.

1.4 “Confidential Information” means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.5 “Contractor,” or “Consultant” means Recology Sunset Scavenger, Recology Golden Gate, and Recology San Francisco.

1.6 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.7 “Effective Date” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.8 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.9 “Party” and “Parties” mean the City and Contractor either collectively or individually.

1.10 “Services” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on **December 1, 2020** and expire on **November 30, 2026**, unless earlier terminated as otherwise provided herein.

2.2 The City has four options to renew the Agreement for a period of one year each for a total contract term not to exceed ten years. The City may extend this Agreement beyond the

expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 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 Controller, and the amount of 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 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. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. Nothing in Sections 3.1, 3.2 or 3.3.1 shall be deemed to require any Contractor to provide Services for no compensation or for less than the compensation described in Appendix B.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the City, in its sole but reasonable discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists, in which case City shall pay the undisputed amount of the invoice. In no event shall the amount of this Agreement exceed **sixty-two million five hundred thousand dollars and no cents (\$62,500,000.00)**. The breakdown of charges associated with this Agreement is described in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both Parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City except to the extent City approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement, such approval not to be unreasonably withheld. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold payments due Contractor for the unsatisfactory Services until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by each Contractor under this Agreement must be in a form acceptable to the Controller and must include a unique invoice number. If feasible, a single blanket Purchase Order will be used for all of the Services and the Contractors will bill Services to the individual City Departments (e.g. Department of Public Works, Public Utilities Commission, Parks and Recreation, Port of San Francisco) under the blanket Purchase Order. The Contractors shall invoice individual City Departments, and the City Departments shall pay such invoices separately. Invoices and past due notices shall be sent to the Department Designees and the Department Accounts Payable Managers. The Department Accounts Payable Managers shall be responsible for obtaining the appropriate payment approval. Invoices shall include the following information in a manner specified by this Agreement:

- i) Frequency of collection (collection day(s))
- ii) Size of each collection bin
- iii) Type (recyclables, compostable or trash)
- iv) Quantity of each collection bin type
- v) Charges associated with bin service each
- vi) Any premium services (e.g. key, elevation, distance) and associated charges
- vii) The individual service volume of recyclables, compostables, and trash and the resulting volumetric recovery rate and Recovery Discount
- viii) For roll-off bins (compactors and debris boxes), the Contractors shall include the number of times each roll-off bin was collected in the reporting period (pulled) and associated charges.
- xi.) Analysis of month over month charges for each location

3.3.5 Reserved. (LBE Payment and Utilization Tracking System)

3.3.6 Getting paid by the City for goods and/or services.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated

Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their Company's authorized financial representative, (ii) the Company's legal name, main telephone number and all physical and remittance addresses used by the Company, (iii) the Company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the Company's bank account information, including routing and account numbers.

3.4 Audit and Inspection of Records.

3.4.1 All amounts paid by City to Contractors shall be subject to audit by the City. The City is exempt from Federal taxes except for articles for resale. The Contractor will enter State and local sales or use taxes and other excise taxes, if applicable, on invoices; provided that, the City shall pay no more than the guaranteed maximum cost set forth in Section 3.2 and provided further that any such taxes charged to the City shall be included in the guaranteed maximum cost under Section 3.2. Payment shall be made by City to each Contractor at the address specified in Section 11.1 or to such other addresses as shall be specified by the applicable Contractor upon written notice to the City.

3.4.2 Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 Payment of Prevailing Wages

3.6.1 Covered Services. Solid Waste Hauling Services (Administrative Code 21.C.5). Services to be performed by Contractor under this Agreement involve the performance of trade work covered by the provisions of Section 21C [Miscellaneous Prevailing Wage Requirements] of the Administrative Code (collectively, “Covered Services”). The provisions of Section 21C of the Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

(a) 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 operation 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. If a contract for solid waste (or grit) hauling conflicts with an existing Collective Bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail.

(b) **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 of 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.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform.

4.1.1 The Contractors jointly and severally agree to perform the Services stated in Appendix A, “Scope of Services” attached hereto and incorporated by reference as though fully set forth herein and to comply with all terms and conditions contained herein.

Notwithstanding any other provision of this Agreement, the Contractors shall not be required to perform any Services unless the City has appropriated funds for the provision of such Services. Except as specifically provided in this Agreement, the Contractors shall secure, provide, supply and maintain all labor, materials, supplies and equipment necessary to perform the Services, including without limitation, bins and trucks. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.1.2 **Other Agreements.** This Agreement shall supersede all other outstanding contracts between the Contractors and any City Department with regard to the provision of the Services, except for the 2015 Landfill Disposal Agreement between the City and County of San Francisco and Recology San Francisco.

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from

City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 **Reserved. (Liquidated Damages)**

4.8 **Reserved. (Bonding Requirements)**

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$5,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(d) Environmental Pollution Liability Insurance applicable to the work being performed, with a limit of no less than \$1,000,000 per claim or occurrence and \$2,000,000 aggregate per policy period of one year, and this coverage shall be endorsed to include Non-Owned Disposal Site coverage.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

5.1.3 Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.4 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

"Contractor shall provide thirty (30) days' advance written notice to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than

ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled "Notices to the Parties."

5.1.5 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.6 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.7 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.8 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.9 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.10 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 **Indemnification.** Each Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from such Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims

against the City. In addition to each Contractor's obligation to indemnify City, each Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to such Contractor by City and continues at all times thereafter. Each Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Each Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from such Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

6.4 Liability of the Contractors. EACH CONTRACTOR SHALL ONLY HAVE THE LIABILITIES UNDER THIS AGREEMENT FOR THE SERVICES PROVIDED BY SUCH CONTRACTOR AND SHALL NOT BE OBLIGATED FOR A VIOLATION OF THIS AGREEMENT BY ANY OTHER CONTRACTOR; PROVIDED THAT, A TERMINATION OF THE ENTIRE AGREEMENT WITH REGARD TO ONE CONTRACTOR SHALL BE A TERMINATION OF THE AGREEMENT WITH REGARD TO EACH CONTRACTOR. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL AMOUNT OF DAMAGES PAYABLE BY EACH CONTRACTOR PURSUANT TO THIS AGREEMENT, SHALL NOT EXCEED THE TOTAL AMOUNT OF COMPENSATION RECEIVED OR TO BE RECEIVED BY SUCH CONTRACTOR FOR THE PROVISION OF SERVICES UNDER THE TERMS OF THIS AGREEMENT. CONTRACTOR'S LIABILITY LIMIT SET FORTH HEREIN SHALL NOT APPLY TO (1) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE, RECKLESS CONDUCT OR WILLFUL ACTS OR OMISSIONS, (2) LIMIT CLAIMS OR GENERAL DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT, (3) STATUTORY DAMAGES,

INCLUDING THOSE SPECIFIED IN THIS AGREEMENT, (4) CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION CLAUSE AND FOR INTELLECTUAL PROPERTY INFRINGEMENT, (5) CONTRACTOR'S WARRANTIES UNDER THIS AGREEMENT, (6) WRONGFUL DEATH CAUSED BY CONTRACTOR, (7) INCIDENTAL AND CONSEQUENTIAL DAMAGES, (8) PUNITIVE DAMAGES, (9) DAMAGES CAUSED BY CONTRACTOR'S DEFAULT OR BREACH OF THE AGREEMENT.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to

Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to

the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment		
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within

ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.4 Rights and Duties upon Termination or Expiration.

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
		9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's

copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.'

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements.

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to

comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (“LBE Ordinance”). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. 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. Information about and the text of the Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for

which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions.

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor’s or Subcontractor’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

10.16 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 **Reserved. (Distribution of Beverages and Water)**

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved. (Preservative Treated Wood Products)**

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or preferably e-mail, and shall be addressed as follows:

To City: Purchaser
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
oca@sfgov.org

And

Soko Made
Department of the Environment
1455 Market St. Ste 1200
San Francisco, CA 94103
Soko.Made@sfgov.org

To Contractor: Recology Inc.
50 California Street, 24th Floor
San Francisco, CA 94111
Attention: Legal Department

with a copy to:
John F. Porter
jporter@recology.com

Contract Administrator: For the purposes of this Agreement, the authorized representative for the Contractors is:

John F. Porter
Vice President and Group Manager
Recology Sunset Scavenger
Recology Golden Gate
Recology San Francisco
250 Executive Park Blvd., Suite 2100
San Francisco, CA 94134

Any notice of default must be sent by registered mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its

obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the

requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.15 Execution by Counterpart. This Agreement may be executed in counterparts which taken together shall be deemed to constitute one and the same Agreement.

Article 12 Department Specific Terms

12.1 Reserved.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information. In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved. (Payment Card Industry ("PCI") Requirements)

13.3 Reserved. (Business Associate Agreement)

13.4 Management of City Data and Confidential Information

13.4.1 Access to City Data. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

13.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or

Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.4.3 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

Article 14 MacBride And Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

Recommended by:

Kenneth Bukowski
Deputy City Administrator

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Rosa M. Sánchez
Deputy City Attorney

Approved:
Sailaja Kurella
Acting Director of the Office of Contract
Administration, and Purchaser

By: _____
Sailaja Kurella

CONTRACTORS

**Recology Sunset Scavenger (d/b/a Recology
Sunset Scavenger)**

Michael J. Sangiacomo, President & CEO

City Supplier ID number: 0000012408

**Golden Gate Disposal & Recycling
Company (d/b/a Recology Golden Gate)**

Michael J. Sangiacomo, President & CEO

City Supplier ID number: 0000012413

Recology San Francisco

Michael J. Sangiacomo, President & CEO

City Supplier ID number: 0000012409

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Contamination & Overages Management
- D: Uniform Commercial Rates

Appendix A Scope of Services

Scope of Refuse (Recycling, Composting, and Trash) Collection Services for City Departments

This Appendix A is attached to and a part of the Agreement for Refuse Collection between the City and County of San Francisco and Sunset Scavenger Company, Golden Gate Disposal & Recycling Company and Recology San Francisco (the “Agreement”). Terms not otherwise defined in this Appendix shall have the meanings set forth in the Agreement.

Scope

1. **Definitions.** For the purpose of this Agreement, the following terms shall apply:

- a. “Administrator” means the City Administrator or his or her designee; provided that, the Contractors have been notified in writing concerning such designee.
- b. “Bin” means any cart, dumpster, debris box, compactor, or other container of any type serviced by Contractors, excluding internal bins.
- c. “Composting” means processing compostable materials into a product through controlled biological decomposition.
- d. “Compostables” means any material that is offered for collection that is capable of being composted in San Francisco’s programs, including, but not limited to: food scraps, soiled paper, plant trimmings and clean wood.
- e. “Contamination” means any material other than recyclables in a bin designated for recyclables, any material other than compostables in a bin designated for compostables, and recyclables or compostables in a bin designated for trash.
- f. “Department Accounts Payable Manager” means a person delegated within each department that has authority for receiving invoices and obtaining payment approval for collection locations under the jurisdiction of one or more Department Designees. The Office of Contract Administration shall maintain a working list of Department Accounts Payable Managers and shall periodically update the list as necessary and provide a copy to the Contractors and notify them of any changes.
- g. “Department Designee” means a person delegated within each department or location that has authority for collection locations under her or his jurisdiction. The Department of the Environment shall maintain a working list of Department Designees and shall periodically update the list as necessary and provide a copy to the Contractors and notify them of any changes.
- h. “Disposal” means the deposition of material to landfill or incineration. Disposal does not include beneficial reuse or other use of material at a landfill in a manner that qualifies as diversion under applicable CalRecycle regulations.

- i. “License” means a refuse vehicle license as defined by the San Francisco Refuse Collection and Disposal Ordinance, as amended from time to time (the “Refuse Ordinance”).
- j. “Overages” means a bin that is overfilled such that its lid will not close; materials placed outside the bin; or other excess material that exceeds the capacity of the customer’s subscribed-for bin volume.
- k. “Prohibited Waste” means hazardous waste, universal waste, designated waste, medical waste or sewage sludge as those terms are defined under State law and the 2015 Landfill Disposal Agreement between The City and County of San Francisco and Recology San Francisco (or any successor agreement).
- l. “Rate Order” means the 2017 San Francisco Rate Order applicable to the Contractors or any subsequent San Francisco Rate Order applicable to the Contractors.
- m. “Recovery” means activities that reduce the disposal of material in landfill or incineration.
- n. “Recycling” means sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of, and returning them to the economic mainstream in the form of raw materials for new or reconstituted products which meet the quality standards necessary for use in the marketplace. Recycling does not include incineration, pyrolysis, distillation, gasification or other high-temperature processes. The Department of the Environment determines if technologies (e.g., “chemical” or “advanced” recycling) qualify as recycling in San Francisco. “Recyclables” means any material offered for collection that is capable of being recycled in San Francisco’s programs, including but not limited to paper, bottles and cans.
- o. “Refuse” means all discarded materials (recyclables, compostables, and trash) collected from all facilities, office buildings, institutions, parks, etc., excluding Prohibited Waste and Construction and Demolition Debris.
- p. “Trash” means refuse other than recyclables or compostables.

2. Scope

- a. The Contractors shall collect, transport and handle (i.e., recycle, compost, or dispose) all Refuse generated by the City Departments on a scheduled or on-call basis, as subscribed for by the Department Designee or Department of the Environment. Additional locations may be added or deleted, and the service level at any location changed, by the Department Designee or Department of the Environment.
- b. Consistent with the 2015 Landfill Disposal Agreement between The City and County of San Francisco and Recology San Francisco, the Contractors shall use

reasonable efforts to prohibit and prevent the collection and Disposal of Prohibited Waste in any manner inconsistent with applicable laws. At the Department of the Environment's request, the Contractors will provide a copy of the Contractors' program for identifying Prohibited Waste and complying with federal, state and local laws and regulations dealing with Prohibited Waste.

3. Equipment and Bins

- a. Except for compactors, balers, pallet jacks and other specialized refuse equipment which are purchased, rented or leased by the City through separate agreements, the Contractors shall provide to the collection locations, no later than the effective date of this Agreement, at no cost to the City beyond the applicable rate for the service, properly color-coded and labeled, exterior collection bins for recyclables, compostables, and trash. The bins shall be of sufficient sizes to contain recyclables, compostables, and trash generated between collections. The Contractors shall provide to the designated location, at no cost to the City beyond the applicable rate for the service, additional requested exterior collection bins as requested by the Department Designee, or the Department of the Environment, within three (3) calendar days of written notice.
- b. At the direction of the Department Designee or the Department of the Environment, the Contractors, without cost to the City, shall purchase, store and deliver on an as needed basis color-coded recycling and composting bins for internal use (e.g., Rubbermaid Slim Jims, Toter Slimlines) with corresponding stickers and posters. The number of bins and other items to be provided by the Contractors shall be limited to the number that the Contractors reasonably determine are necessary in accordance with previous experience. City Departments will purchase their own internal trash bins. If a City Department wants to purchase external bins for internal use, the Contractors will provide them at the then-applicable Uniform Rate for bin replacement.
- c. All bins shall be appropriate for the intended use as specified by Department Designee, or the Department of the Environment. All bins provided by the Contractors shall be non-absorbent and leak-resistant and must be constructed to prevent loss during collection or transportation. If the Contractors fail to provide sufficient and/or adequate bins, the City may purchase and place into service the necessary bins and deduct the cost of such bins from any amounts owed to the Contractors.
- d. The Contractors shall deliver the bins and other items specified in Sections 3(a) and 3(b) of this Appendix A throughout the term of the Agreement. Unless originally owned or purchased by the City or a third party and such purchase price is not directly or indirectly reimbursed by the Contractors, all bins and other equipment delivered by the Contractors remain the Contractors' property. Any bins or other necessary items that are purchased by the City or a third party, but that the Contractors directly or indirectly pay for, including by deducting the costs

of such items from amounts owed to the Contractors, shall be the property of the Contractors.

- e. All exterior collection bins shall be marked by the Contractors with the name Recology.

4. Cleanliness and Serviceability

- a. The bins delivered by the Contractors shall be clean and graffiti free. The City agrees to reasonably maintain all exterior bins for cleanliness and appearance. The Contractors agree to exchange broken or uncleanable bins as requested by the City at no cost to the City.
- b. The Contractors shall be responsible for leaving all bins, equipment, collection locations and the City facilities served in a safe condition, reasonably clear of fluid or debris and reasonably free from residue resulting from spillage. All releases or spillage from exterior bins, equipment or vehicles will be cleaned up by the Contractors in accordance with the Contractors' ordinary course of business.

5. Time and Manner of Collection

- a. Recyclables, compostables, and trash shall be removed from the collection locations, Monday through Sunday, other than those holidays on which the Contractors do not generally provide service, in a systematic and timely manner. Changes to collection frequency, day(s) or location(s) may be made by phone and confirmed in writing by the Department Designee, or the Department of the Environment, or by the Contractors only with the prior written approval of the Department Designee or the Department of the Environment; provided, however, that the Contractors must approve any such changes, including all changes to collection frequency, that would affect the cost of providing any Services.
- b. Title to all refuse passes to the Contractors when it is loaded into the Contractors' bins and/or vehicles.
- c. The Contractors shall collect all bins containing refuse that are subject to putrefaction at least once per week. The Contractors shall collect all other bins at least once per month.
- d. Locations not receiving a regularly scheduled collection are designated as on-call. When collection is required, the Department Designee for these locations shall contact the Contractors for service by phone and confirm in writing, and the Contractors shall provide collection within twenty-four (24) hours of such notice.
- e. The Contractors shall implement a system of notices and charges aimed at incentivizing City locations to minimize contamination and recover the maximum amount of materials for marketable commodities. The system shall be the same as

Contractors provide to commercial customers in San Francisco. The current system is set forth in Appendix C.

- f. Upon notice by phone, with written confirmation, by the Department Designee or the Department of the Environment, of a partial or missed collection of recyclables, compostables, or trash, the Contractors shall complete the collection on the day or following day notification was made at no additional cost. If the Contractors do not complete the partial or missed collection of the recyclables, compostables, or trash within 24 hours of the notification, the cost of the partial or missed collection shall be deducted from any amounts the City owes the Contractors for the month when the missed or partial collection occurred. In the case of missed collection of recyclables, compostables, or trash, the volume will be deducted from the invoice for that period as if it were trash.
- g. The Department Designee for the site, or the Department of the Environment, may initiate emergency, off-hour and additional on-call collections by phone, and confirmed in writing, to the Contractors. Such additional collections will be billed at the regular collection rates applicable for the day that the emergency service is provided (e.g., if a Service is provided on a Sunday, Sunday rates will apply).
- h. In the event of a holiday occurring on a scheduled collection date, collection shall be made on the next business day.

6. Vehicles

- a. The Contractors shall utilize only licensed vehicles when required by the Refuse Ordinance in the performance of services and shall maintain a sufficient number of vehicles to perform the work required herein. All vehicles used in the performance of this Agreement shall have the name of the collection Company and the license prominently displayed. All vehicles and equipment used in the performance of this Agreement shall meet applicable state and local standards and shall be operated and maintained in a safe and sanitary condition. All vehicles and equipment used in the performance of this Agreement shall be the property and sole responsibility of the Contractors.
- b. The Contractors shall make a reasonable effort to use environmentally preferable fuels, such as renewable diesel or biomethane from source separated anaerobic digestion, in a manner consistent with the Rate Order.

7. Delivery and Processing

- a. Disposal of trash by Contractor is governed by the 2015 Landfill Disposal Agreement between the City and County of San Francisco and Recology San Francisco.
- b. The Contractors shall deliver recyclables and compostables to permitted recycling or composting facilities.

- c. The Contractors shall make a reasonable effort to maximize the use of alternative power, such as solar and wind power, in a manner consistent with the Rate Order.

8. Zero Waste Requirements

- a. The Contractors shall work with the City to identify opportunities to reduce the level of refuse service and eliminate secondary charges (e.g., distance and elevation) to decrease costs to departments and improve collection efficiency. These opportunities may include, but are not limited to, increasing recycling and composting bin sizes, and reducing the number of trash bins or the frequency of trash collection when excess capacity is noted.
- b. The Contractors shall work with the City Departments to maximize recovery of material by offering the full range of recycling and composting collection services. The Department Designee can increase recycling and composting and decrease trash collection services on his or her own. The Department Designee can only decrease recycling and composting and increase trash collection services with prior written approval from the Department of the Environment. The Contractors should notify Department Designees and the Department of the Environment when they have identified opportunities to increase recycling and composting, or decrease trash, so that the Department of the Environment can work with Department Designees to maintain high recovery rates and identify ways for departments to save money on refuse collection.
- c. The Contractors shall use their reasonable efforts to recycle or compost the maximum amount of material collected pursuant to this Agreement that is recyclable or compostable. Trash collected by the Contractors that contains compostables or recyclables may be processed by the Contractors to recover these materials. The Contractors shall work with the City to encourage compliance with the Mandatory Recycling and Composting Ordinance and other relevant zero waste policies.
- d. The Department Designee, or the Department of the Environment, may request to purchase from Contractors specific additional equipment to facilitate recycling and composting, such as compactors and related equipment. If Contractors are then offering such equipment for sale, the Contractors shall charge these materials to respective City Departments, as a separate line pass-through item in the invoice.

9. Duty to Maintain Records; Right to Examine Records

- a. On a monthly basis, the Contractors shall provide, electronically, a City-wide billing report with applicable service charges and discounts, structured in accordance with the Rate Order for services provided, at every collection location for all City departments to the Office of Contract Administration and the Department of the Environment. The City-wide billing report shall be a

compilation of the monthly invoices sent to individual departments pursuant to the Section 3.3.4. The City reserves the right to inspect the Contractors' records to verify the information provided in the reports.

- i. Detailed weight information for roll-off bins will be provided as requested by the Department Designee or the Department of the Environment.
- b. The timely and complete submission of all reports is a necessary and material term and obligation of this Agreement.
- c. The Contractors shall maintain a proper set of books and records in accordance with the Generally Accepted Accounting Principles, except that any unaudited financial statements need not contain the notes required by Generally Accepted Accounting Principles, accurately reflecting the business done by it under this Agreement.

Appendix B Calculation of Charges

1. Description of Charges.

- a. City Departments must comply with the Mandatory Recycling and Composting Ordinance which requires the proper separation of recyclables, compostables, and trash.
- b. The Uniform Commercial Rates charged for refuse collection services are based on a set of rate tables that do not differentiate between the types of collection bins (recycling, composting, and trash). The Parties understand and agree that the rates referred to in this Agreement are subject to change, and generally increase, typically on July 1st of each year. The Uniform Commercial Rates as of execution of this Agreement are attached as Appendix D.
- c. Subject to the discount provided for in Section 4 below, charges by Contractors for the Services covered by this contract will be the then-applicable rates for such Services charged by Contractors generally to commercial customers in San Francisco. Current practice is that such rates are published by San Francisco Department of Public Works on their website <http://sfpublicworks.org/refuserates>. Following are the main categories of charges:
 - i. Uniform Commercial Rates
 1. Uniform Commercial Rates for refuse (i.e., trash, recyclables and compostables) have been implemented by the Contractors to reflect the City's planned migration to zero waste and incentivize customers to help San Francisco reach its generation and disposal reduction targets.
 2. The Uniform Commercial Rates are published by San Francisco Department of Public Works on their website <http://sfpublicworks.org/refuserates>.
 - ii. Compactors
 1. Uniform Compactor Rates for refuse are published by San Francisco Department of Public Works on their website <http://sfpublicworks.org/refuserates>.
 2. Rental of Compactor Units are not through this Agreement. Rental rates are based on the rental agreement between the Contractor and City Department.
 3. The Contractor is responsible for covering any repair costs to a rented Compactor Unit per the rental agreement between the Contractor and City Department.

iii. Debris Boxes

1. Uniform Debris Box Rates are published by San Francisco Department of Public Works on their website <http://sfpublicworks.org/refuserates>.
2. Allowed uses of debris boxes under this contract include:
 - a. Abandoned materials;
 - b. Bulky items;
 - c. Recyclable and compostable materials; and
 - d. Alternative collection service when compactors are being repaired.
3. Use of debris boxes for trash collection is only allowed if pre-approved in writing by the Department of the Environment.

iv. Ancillary Services

1. Rates for premium services for commercial customers are those specified in the rate table for Commercial customers. Rates for other ancillary services are specified in the rate table for Extra Services. Both categories of rates are published by San Francisco Department of Public Works on their website: <http://sfpublicworks.org/refuserates>.

v. Contamination Charges

1. Contractors implement a system of City-approved charges for contamination and overages designed to encourage recycling and composting, ensure that each customer is subscribed to the correct service level, and cover the extra costs that Contractors incur due to contamination and overages. The current charges are set forth in Appendix C.
- d. Each City location shall receive the same recovery discount that Contractors offer generally to commercial customers in San Francisco (the "Recovery Discount"). The current Recovery Discount for commercial customers in San Francisco is based on the following:

Recovery Rate (subscribed recycling and composting bin monthly volume divided by total subscribed refuse bin monthly volume) less a Recovery Floor.

Recovery Floor is currently 25%.

The amount of the Recovery Floor is subject to change consistent with subsequent Rate Orders. Changes will be published on the SF Public Works website:
<https://sfpublicworks.org/refuserates>

To reflect the fact that City locations reuse, recycle, and compost organic material using their own facilities and resources, the Contractor agrees to apply a Composting Credit (described in Section 3) to the Recovery Floor. With the Composting Credit, the City's Recovery Discount will be calculated as follows:

$$\text{Recovery Discount} = \text{Recovery Rate} - (\text{Recovery Floor} - \text{Composting Credit})$$

By way of example, assume a City Location is subscribed for the following service level:

Service Level:	Subscribed-For Monthly Bin Volume
1 96g Trash bins, 4 days/wk.	$= 1 * (96/201.9) * 4 * 4.33 = 8.23$
3 64g Recyclables bins, 4 days/wk.	$= 3 * (64/201.9) * 4 * 4.33 = 16.47$
1 64g Compostables bin, 4 days/wk.	$= 1 * (64/201.9) * 4 * 4.33 = 5.49$

Note: 201.9 converts gallons to cubic yards. 4.33 converts weeks to months.

Based on the Composting Credit allowed per Section 3, below, the Recovery Discount for the above City Location, and the amounts charged, would be calculated as follows:

$$\text{Recovery Rate} = (\text{Recycling} + \text{Composting Volume}) / (\text{Recycling} + \text{Composting} + \text{Trash Volume})$$

$$(5.49 + 16.47) / (5.49 + 16.47 + 8.23) = .727 = 73\%$$

$$\text{Recovery Discount} = \text{Recovery Rate} - (\text{Recovery Floor} - \text{Composting Credit})$$

$$73\% - (25\% - 20\%) = 68\%$$

$$\text{Recovery Discount} = 68\%$$

City Department Location	Subscribed Cubic Yards/ Month	Service Charges before Recovery Discount	Service Charges after Recovery Discount
Composting	5.49	\$ 395.96	\$ 395.96
Recycling	16.47	\$ 1,187.88	\$ 1,187.88
Trash	8.23	\$ 558.00	\$ 558.00
Recovery Discount 68%			\$ (1,456.45)
TOTAL	30.19	\$ 2,141.84	\$ 685.39

Note: The example uses the Uniform Commercial Rates effective July 1, 2019.

The Recovery Discount incentivizes City Locations to recover more recyclables and compostables. Therefore, City Locations that have a Recovery Rate of 5% or below will not be eligible for the Recovery Discount.

Charges for ancillary services (e.g., access, distance, and elevation) are per the Uniform Commercial Rates and are not subject to the discount.

e. Self-Haul

- i. Refuse, except loads of source separated single commodities (e.g. loads of cardboard only or metal only), self-hauled to Recology San Francisco's facilities is subject to the tipping charge established through the refuse rate process, except to the extent the costs of disposing of such material are included in the cost base used to set rates under the Refuse Ordinance. Under the current Rate Order, the only costs so included are those for disposal of street sweeping and abandoned material collected and self-hauled by the Department of Public Works.
- ii. The tipping charge is published by San Francisco Department of Public Works on their website <http://sfpublicworks.org/refuserates>.

2. **Provision of Services.** No charges shall be incurred under this Agreement nor shall any payments become due to any Contractor until the services to which such payments relate are received from such Contractor and the related billings are approved by the City Department head as being in accordance with this Agreement. Upon prior written notice to the applicable Company setting forth the nature of Company's failure under this Agreement, a City Department may withhold payment to Contractor in any instance in which such Contractor has failed or refused to satisfy any material obligation provided for under this Agreement in connection with such City Department.

3. **Composting Credit.**

- a. In calculating the Recovery Discount, Contractors have agreed to reduce the standard 25% Recovery Floor for the benefit of City to reflect the fact that City locations compost organic material, grind wood into wood chips, and repurpose forestry products on-site for their own use, using their own facilities and resources (such activities collectively, "City Organics Recovery Activities"). These activities mean that the City orders fewer Compostables bins from Contractors than it otherwise would, which in turn means that City's Recovery Discount is less than it would otherwise be.
- b. As a result, Contractors agree that there will be a reduction in the Recovery Floor for all City locations that receive the Recovery Discount. The reduction (the "Composting Credit" or "Compost Credit") shall be 20%. The Compost Credit was determined by utilizing the following formula: dividing (i) average total tonnage of organic material recovered by City locations through the City Organics Recovery Activities during the three (3) year period ending on the July 1 preceding the July 1 adjustment date, by (ii) average total tonnage of refuse of all types generated by City

locations during the same three (3) year period. The total tonnage (i.e., the denominator in clause (ii)) includes, but is not limited to, all refuse collected by Contractors (e.g., Trash, Recyclables, Compostables), whether disposed or recovered. Notwithstanding any other provision, the Composting Credit shall not exceed 20% (i.e. the Recovery Floor after application of the Composting Credit shall not be reduced below 5%).

- c. Contractors' analysis based on City and Contractors' data indicates that as of the date hereof, the City Organics Recovery Activities recover an amount of organic material significantly in excess of the amount required to achieve the maximum Composting Credit of 20%. If City modifies the City Organics Recovery Activities in a way that is reasonably likely to decrease the tonnage of organic material recovered from such activities by over 5%, then City shall notify Contractor in writing of the same, so that the Parties can recalculate the Composting Credit.
- d. Should the City implement other categories of recovery activities that recover organic material, the City and Contractor agree to mutually consider in good faith whether and how to include the recovery attained through those activities as part of the Composting Credit in an equitable and reasonable manner.

Appendix C Contamination & Overages Management

Contractors shall implement a system of notices and charges for Contamination and Overages designed to encourage recycling and composting, ensure that each customer is subscribed to the correct service level, and cover the extra costs that Contractors incur due to Contamination and Overages. This system is designed so that, if each City department location properly separates Recyclables and Compostables from Trash and has a subscription for sufficient Bin volume to handle all their material, no charges will be assessed. The current system and associated charges are as follows:

1. If a Recyclables or Compostables Bin appears to contain more than 10% or 5% respectively by volume of non-Recyclables or non-Compostables, then the Bin is considered “contaminated.” Contractors will follow the following protocol for contaminated Bins:
 - a. Contamination will be communicated to the Department Designee through a series of letters: Warning Letter, Notice Letter, Escalation Letter and Good Job Letter.
 - i. Warning letters occur when 4 or more instances of contaminated Bins are found at a City Department location.
 - ii. Notice letters inform the city department designee of the intent to charge for contamination on the next billing cycle.
 - iii. Escalation letters occur when continued contamination remains at a City location for greater than six months.
 - iv. Good Job letters are sent whenever charges are removed as a result of a passing quality assurance inspection.
 - b. On the 1st, 2nd and 3rd instances of a contaminated Bin at a City location, Contractors will collect the Bin at no charge to the City.
 - c. On the fourth or more instance of a contaminated Bin at the location, Contractors will collect the Bin at no charge to the City and will send a warning letter to the Department Designee, to inform him/her of the Contamination at the location. SF Environment staff will work with the City Department Designee to address the contamination. The city department has 30 days from the issuance of the warning letter to have a quality assurance inspection conducted by the contractors.
 - d. The warning letter will remain in effect for 6 months. If a 5th instance of a contaminated Bin at the location does not occur within 6 months of the date of the warning letter, then the warning letter will lapse, and any subsequent instance of a contaminated Bin at the location will be treated as if it were the 1st instance.
 - e. A Quality Assurance Inspection will result in a determination of the quality of the material discarded in one or more of the location’s Bins (Recyclables, Compostables, and/or Trash). The City Department Designee will receive photos and an assessment of pass or fail on the bins inspected. If a failure is determined, the City Department Designee will receive a notice letter, informing the department that a recurring contamination charge will be

initiated at the next billing cycle. If all Bins pass the quality assurance inspection, then the Department Designee will receive a Good Job Letter.

- f. If a notice letter is issued, then Contractors will begin charging a recurring Contamination Charge equal to 50% of the Trash rate for the same-size Bin collected at the same frequency, with no Recovery Discount. The charge will be added to the bill for each subsequent collection of that Bin until removed in accordance with paragraph (6) below. If not removed, the charge may be increased to 75% of the applicable Trash rate after 6 months, and 100% of the applicable Trash rate after 12 months. If the charge is removed, and a subsequent instance of a contaminated Bin at the location occurs while the warning letter remains in effect, then the charge will be reinstated (with a notice letter to the City Department Designee) until removed in accordance with paragraph (6) below.
2. If a Recyclables or Compostables Bin is so contaminated that it must be collected as Trash, or if a Compostables Bin contains pervasive glass (regardless of volume), then the Bin will be collected as Trash, and a per-occurrence charge equal to the Trash “extra” rate per the Uniform Commercial Rates for the same-size Bin will be charged. This charge is separate from and in addition to the Contamination Charge described in paragraph (1).
3. Contractors’ practice is not to collect any Bin that contains any amount of Hazardous Material, Medical Waste, Electronic Waste, or other material that is prohibited from being disposed of in the refuse stream. However, if a Bin is inadvertently collected that contains prohibited material, a charge equal to the Trash “extra” rate for the same-size Bin will be charged.
4. If a Trash Bin is contaminated with an excessive amount of Recyclables or Compostables (usually over 25%), Contractors will begin charging a recurring charge equal to 50% of the Trash rate for the same-size Bin collected at the same frequency, with no Recovery Discount. Before assessing this charge, Contractors will give the Department Designee at least 30 days written notice and an opportunity to correct the problem. If the problem is not corrected within that period, the charge will be added to the bill for each subsequent collection of that Bin until removed in accordance with paragraph (6) below.
5. Consistent with Contractors’ standard practice for commercial customers in San Francisco, Contractors may adjust or suspend the Recovery Discount for a City location if it displays a consistent pattern of violating the City’s Mandatory Recycling and Composting Ordinance. Before suspending the discount, Contractors will give the Department Designee at least 30 days written notice and an opportunity to correct the problem. If the problem is not corrected within that period, the Recovery Discount will be suspended or the service modified for the service address until resolved in accordance with paragraph (6) below.
6. The procedure for removing the recurring charges described in paragraphs (1) and (4) above, and the Recovery Discount suspension described in paragraph (5) above, is as follows:
 - a. The Department Designee will complete and submit to SF Environment a self-assessment form for the City location in question. SF Environment will review the form and submit it

- to Contractors' customer service department, together with a request to have the recurring charge (or Recovery Discount suspension) removed.
- b. Contractor will confirm receipt and schedule a quality assurance inspection within thirty (30) days of receipt of SF Environment's request. The results of the inspection will be sent to SF Environment and the Department Designee.
 - c. If the City location passes the inspection, then the recurring charge (or Recovery Discount suspension) will be removed on the next billing cycle.
 - d. If the City location fails the inspection, then the recurring charge (or Recovery Discount suspension) will continue for another two (2) monthly billing cycles, at which time another quality assurance inspection may be requested.
 - e. In the case of the Contamination charge under paragraph (1) above, if the inspection shows improvement but not enough to meet the thresholds, the Contamination charge may be decreased (e.g. from 50% to 25% of the Trash rate) upon mutual agreement between the Contractor and the City.
 - f. Notwithstanding the foregoing, recurring charges (and Recovery Discount suspensions) will continue for a minimum of two (2) monthly billing cycles.
7. Contractors may either refuse to collect an Overage or may collect it and charge the then-applicable Trash "extra" rate per the Uniform Commercial Rates for the same-size Bin.
 8. City locations exhibiting contaminated refuse streams will be identified by the Contractors through a variety of methods, including:
 - a. Refuse collection staff may flag the account within the Contractors' customer database following observations made during regular collection service.
 - b. The Contractors' waste zero team may identify contaminated bins while performing random inspections throughout the community.

**Appendix D:
Uniform Commercial Rates
Effective July 1, 2020**

Size \ Frequency	Collections per week								
	1 per week	2 per week	3 per week	4 per week	5 per week	6 per week	7 per week	Saturday	Sunday
32 - gal cart	\$ 51.05	\$ 102.10	\$ 153.15	\$ 204.20	\$ 255.25	\$ 313.96	\$ 380.33	\$ 58.71	\$ 66.37
64 - gal cart	\$ 102.10	\$ 204.20	\$ 306.30	\$ 408.40	\$ 510.50	\$ 627.92	\$ 760.65	\$ 117.42	\$ 132.73
96 - gal cart	\$ 153.15	\$ 306.30	\$ 459.45	\$ 612.60	\$ 765.75	\$ 941.87	\$ 1,140.97	\$ 176.12	\$ 199.10
1.0 - yd bin	\$ 298.58	\$ 597.16	\$ 895.74	\$ 1,194.32	\$ 1,492.90	\$ 1,895.98	\$ 2,433.43	\$ 403.08	\$ 537.44
1.5 - yd bin	\$ 447.87	\$ 895.74	\$ 1,343.61	\$ 1,791.48	\$ 2,239.35	\$ 2,843.97	\$ 3,650.14	\$ 604.62	\$ 806.17
2.0 - yd bin	\$ 531.64	\$ 1,063.28	\$ 1,594.92	\$ 2,126.56	\$ 2,658.20	\$ 3,375.91	\$ 4,332.87	\$ 717.71	\$ 956.95
2.5 - yd bin	\$ 664.88	\$ 1,329.76	\$ 1,994.64	\$ 2,659.52	\$ 3,324.40	\$ 4,221.99	\$ 5,418.77	\$ 897.59	\$ 1,196.78
3.0 - yd bin	\$ 741.52	\$ 1,483.04	\$ 2,224.56	\$ 2,966.08	\$ 3,707.60	\$ 4,708.65	\$ 6,043.39	\$ 1,001.05	\$ 1,334.74
4.0 - yd bin	\$ 927.02	\$ 1,854.04	\$ 2,781.06	\$ 3,708.08	\$ 4,635.10	\$ 5,886.58	\$ 7,555.21	\$ 1,251.48	\$ 1,668.64
6.0 - yd bin	\$ 1,316.54	\$ 2,633.08	\$ 3,949.62	\$ 5,266.16	\$ 6,582.70	\$ 8,360.03	\$ 10,729.80	\$ 1,777.33	\$ 2,369.77
7.0 - yd bin	\$ 1,535.69	\$ 3,071.38	\$ 4,607.07	\$ 6,142.76	\$ 7,678.45	\$ 9,751.63	\$ 12,515.87	\$ 2,073.18	\$ 2,764.24

Front-Load Compactor

Size \ Frequency	Collections per week		
	Weekday	Saturday	Sunday
0.50 yds	\$ 236.62	\$ 260.28	\$ 286.31
0.75 yds	\$ 354.93	\$ 390.42	\$ 429.47
1.00 yds	\$ 473.24	\$ 520.56	\$ 572.62
1.50 yds	\$ 709.86	\$ 780.84	\$ 858.93
2.00 yds	\$ 946.48	\$ 1,041.12	\$ 1,145.24
2.50 yds	\$ 1,183.10	\$ 1,301.40	\$ 1,431.55
3.00 yds	\$ 1,419.72	\$ 1,561.68	\$ 1,717.86
4.00 yds	\$ 1,892.96	\$ 2,082.24	\$ 2,290.48
4.50 yds	\$ 2,129.58	\$ 2,342.52	\$ 2,576.79
5.00 yds	\$ 2,366.20	\$ 2,602.80	\$ 2,863.10
6.00 yds	\$ 2,839.44	\$ 3,123.36	\$ 3,435.72

Cardboard

Based on the below requirements, the charge for cardboard pickup is \$15.91 per pickup.

This charge only applies to materials not complying with setout requirements for the cardboard collection program.

Cardboard Setout Requirements

- You must have an active refuse collection account to receive cardboard or any other recycling service.
- Cardboard must be placed in a recycling bin (with the lid closed), cardboard box, or paper bags not exceeding 2 feet in any dimension (8 cubic feet) on your service day.
- Customers with excess cardboard placed beside a bin will be charged \$15.91 per 8 cubic feet of materials.

Provisions and Requirements

- The Commercial rates are effective July 1, 2020 through June 30, 2021. Actual rates charged to any individual customer is a function of the specific composition of services.
- The below rates apply to carts located outside.
- For carts located inside:
 - Less than 100 feet from the curb will be charged 10% more.
 - More than 100 feet from the curb will be charged 25% more.
- Carts located 4 feet or more above or below ground level will be charged 25% more.
- An access charge in the amount of \$14.99 will be applied for every pickup in a week, except for Front Loader Compactors.
- Commercial rates include the following components:
 - Discount equals volumetric diversion rate ((Recycling + Composting)/Total Volume) less 25% (75% Diversion - 25% = 50% Discount)
 - Charges for premium services, such as key, distance and elevation charges are not subject to discounts
- Rates listed above are for 32 gallon carts up to 45 pounds. Any weight exceeding 45 pounds will be charged an additional \$0.1002 per pound.
- Rates listed above are for 64 gallon carts up to 90 pounds. Any weight exceeding 90 pounds will be charged an additional \$0.1002 per pound.
- Rates listed above are for 96 gallon carts up to 135 pounds. Any weight exceeding 135 pounds will be charged an additional \$0.1002 per pound.
- Uncompacted weight: 300 pounds per yard, plus \$9.73 per 100 pounds (\$0.1002 per pound) over 300 pounds.
- Compacted weight: 450 pounds per yard, plus \$9.73 per 100 pounds (\$0.1002 per pound) over 450 pounds.

Appendix D Compactor Rates

Uniform Compactor Rates

Effective July 1, 2020

Notes

- The Compactor Rates are effective July 1, 2020 through June 30, 2021. Actual rates charged to any individual customer is a function of the specific composition of services.

Disposal Charges

- \$200.51 per ton
- \$0.10 per pound
- \$200.51 per ton overweight charge
- \$0.10 per pound overweight charge

Transportation Charges

Zone 1	\$ 516.82	
Communities		Zip Codes
Hunters Pt. & Bayview		94124
Mission District/Bernal Heights		94110
Potrero Hill (South of 20th St.)		94107
Visitacion Valley/Portola		94134
Ingleside/Excelsior		94112

Zone 3	\$ 904.45	
Communities		Zip Codes
Marina/Cow Hollow		94123
Fishermans Wharf/North Beach/Russian Hill		94109 & 94133
Financial District/SOMA		94103, 94104, 94105 & 94111
Downtown/Civic Center		94102 & 94108

Zone 2	\$ 775.24	
Communities		Zip Codes
Noe Valley/Eureka Valley		94114 & 94115
Sunset Dist. (East of Sunset Blvd.)		94122
Diamond Heights/Glen Park		94131
Parkside/Forest Hill		94416 & 94118
West Portal/Westwood Park		94127
Lakeside/Stonestown		94132
Potrero Hill (North of 20th St.)		94107

Zone 4	\$ 1,033.65	
Communities		Zip Codes
Haight Ashbury		94117
UC Med. Center		94143
Presidio/Laurel Heights		94118 & 94129
Richmond/Seacliff		94121
Sunset Dist. (West of Sunset Blvd.)		94122
Treasure Island		94130

^ additional fees may be applied for excess wait time, etc.

Container Rotation Charge

299.68

Rate Calculation

Transportation Chg. + Avg. Disposal Chg. + Rotation Chg.* = Compactor Rate

* If applicable

Appendix D
Debris Box Rates
Uniform Debris Box Rates
Effective July 1, 2020

Notes

- Debris box Rates are effective July 1, 2020 through June 30, 2021. Actual rates charged to any individual customer is a function of the specific composition of services.
- Debris boxes used for regular ongoing trash, recycling, or composting service qualify toward the volumetric diversion discount.

Regulated Debris Box Rates

Size	Frequency	Weekends &	
		Weekdays	Holidays
14 yd		\$ 944.30	add 15%
20 yd		\$ 1,097.59	add 15%
30 yd		\$ 1,184.11	add 15%

Appendix D
 Recology Golden Gate
 Recology Sunset Scavenger
 Extra Services Price Sheet July 1, 2020

<u>Description</u>				<u>Price</u>		
<u>Cardboard</u>				<u>Commercial Cardboard</u>		
				<u>Mon-Fri</u>	<u>Saturday</u>	<u>Sunday</u>
Resi	\$5.29	Apt	\$5.29	\$15.91	\$17.92	\$20.26
<u>Residential - extra bag/cart</u>				<u>Mon-Fri</u>	<u>Saturday</u>	<u>Sunday</u>
<u>all commodities</u>						
Less than 32-gallons				\$2.37	n/a	n/a
32-gallons				\$4.74	n/a	n/a
64-gallons				\$9.48	n/a	n/a
96-gallons				\$14.22	n/a	n/a
<u>Apartment - extra bag/cart</u>						
<u>all commodities</u>						
Less than 32-gallons				\$4.55	\$7.96	\$12.50
32-gallons				\$9.09	\$15.91	\$25.01
64-gallons				\$18.19	\$31.83	\$50.01
96-gallons				\$27.28	\$47.74	\$75.02
per yard				\$172.18	\$129.14	\$301.32
<u>Commercial - extra bag or cart</u>						
<u>all commodities</u>						
32-gallons				\$16.75	\$22.61	\$30.15
64-gallons				\$31.94	\$43.12	\$57.49
96-gallons				\$45.02	\$60.78	\$81.04
per yard				\$68.96	\$93.10	\$124.13
per compacted yard				\$109.29	\$120.22	\$132.24
<u>Maintenance/Cart Replacement</u>						
Cart replacement				\$121.00	n/a	n/a
Container exchange				\$248.00	n/a	n/a
Compactor wash out				\$370.00	n/a	n/a
				\$148.00	per hour with 2.5 hour minimum	

Appendix D
Recology San Francisco
Schedule A
Tipping Fee
Effective July 1, 2020

Description of Monthly Charge	Charge
Tipping Fee	
Per ton delivered to RSF facilities	\$200.51