

File No. 111201

Committee Item No. 7
Board Item No. 30

COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: December 7, 2011

Board of Supervisors Meeting

Date 12/13/11

Cmte Board

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Completed by: Victor Young

Date: December 2, 2011

Completed by: Victor Young

Date: 12-8-11

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

1 [City Refuse Collection – Recology - Not to Exceed \$29,337,527]

2
3 **Resolution approving the Second Amendment to the Refuse Collection Agreement**
4 **between the City and Recology San Francisco, Recology Golden Gate, and**
5 **Recology Sunset Scavenger (Contractor), increasing the total not-to-exceed**
6 **amount of the Agreement from \$23,537,527 to \$29,337,527, under Charter Section**
7 **9.118(b).**

8
9 WHEREAS, The Board of Supervisors approved Resolution No. 147-07 on March
10 21, 2007, waiving a competitive solicitation process and authorizing a refuse collection
11 agreement for \$23,037,527 with Recology San Francisco, Recology Golden Gate, and
12 Recology Sunset Scavenger with an initial term of 4 years and 3 months, with two one-
13 year options to renew at the Purchaser's discretion; and,

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

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

20 WHEREAS, The Agreement is approaching the contract amount of \$23,537,527;
21 and,

22 WHEREAS, The Contractor has agreed to waive its right to a COLA increase
23 during the First Option Period, The Office of Contract Administration and Contractor
24 propose to enter into a Second Amendment to increase the contract's not-to-exceed
25 amount from \$23,537,527 to \$29,337,527; and,

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

5 WHEREAS, The Agreement and the proposed Second Amendment are on file
6 with the Clerk of the Board of Supervisors in File No. 111201 which are hereby declared
7 to be a part of this resolution as if set forth fully herein; now, therefore be it,

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

11 FURTHER RESOLVED, That the Board of Supervisors authorizes the Office of
12 Contract Administration to increase the contract amount from \$23,537,527 to
13 \$29,337,527.
14
15



Edwin M. Lee
Mayor

Jaci Fong
Acting Director

To: Angela Calvillo, Clerk of the Board of Supervisors
From: Jaci Fong, Acting Director of the Office of Contract Administration *JAF*
Date: November 1, 2011
Re: Contract Amount Increase for Refuse Collection Services at City Facilities

The Office of Contract Administration requests Board approval to increase the contract amount for Refuse Collection at City Facilities with Recology San Francisco, Recology Golden Gate and Recology Sunset Scavenger (Contractor) from \$23,537,527 to \$29,337,527. The increased amount reflects the Contractor's waiver of their rights to a COLA increase for Fiscal Year 2011-2012, representing approximately \$250k in savings to the City.

Approval of this resolution will provide OCA the purchasing authority in order for the City to continue to secure this essential service. Funding has already been approved in the Fiscal Year 2011-2012 City budget.

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

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**CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS
BUDGET AND LEGISLATIVE ANALYST**

1390 Market Street, Suite 1150, San Francisco, CA 94102
(415) 552-9292 FAX (415) 252-0461

To: Each Member of the Board of Supervisors
From: Budget and Legislative Analyst
Date: December 12, 2011
Subject: Second Amendment to Agreement with Recology

Item 30
File 11-1201

Departments:
Department of the Environment (DOE)
Office of Contract Administration (OCA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve the Second Amendment to the Refuse Collection Agreement between the City and Recology San Francisco, Recology Golden Gate and Recology Sunset Scavenger (Recology) to increase the total not-to-exceed amount of the Agreement by \$5,800,000 from the existing not-to-exceed \$23,537,527 to the proposed not-to-exceed \$29,337,527 covering the period from April 1, 2007 through June 30, 2012, related to refuse collection and recycling services provided by Recology to departments of the City and County of San Francisco.

Key Points

- On March 21, 2007, the Board of Supervisors approved a not-to-exceed \$23,037,527 Memorandum of Understanding (MOU) between the City and Recology for Recology to provide refuse collection and recycling services for City departments (Resolution No. 147-07) for the period from April 1, 2007 through June 30, 2011. The MOU, which was awarded without conducting a competitive procurement process, included two additional one-year options to extend, or through June 30, 2013, at the sole discretion of the Purchaser, after notification to the Board of Supervisors.
- On June 28, 2011, the Office of Contract Administration sent a notification letter to the Board of Supervisors that the Purchaser intended to exercise the first one year option to extend the MOU with Recology, from July 1, 2011 through June 30, 2012. Although not specifically mentioned in this letter to the Board, that first amendment to the MOU with Recology also increased the authorization by \$500,000 from \$23,037,527 to \$23,537,527. Because this increase did not exceed \$500,000, this first amendment was not subject to Board of Supervisors approval.
- The base rates charged by Recology to the City are Recology's standard commercial rate schedules, with annual cost increases indexed to (a) residential rate increases approved by the City's Rate Board on May 22, 2006, (b) annual cost of living increases based on a specified allocation of costs (e.g., fixed and variable labor, materials, capital, fuel), and (c) Diversion

Incentive Rebates. In addition, the City receives a (a) 17 percent reduction off the standard commercial rates for all City departments, except for the Recreation and Park Department, (b) 29 percent reduction off the standard commercial rates for the Recreation and Park Department, (c) Recycling and Composting Incentives, and (d) Cap Credits, to limit General Fund departments costs during the initial years of the MOU.

Fiscal Impacts

- Over the four year period from FY 2006-07 through FY 2010-11, the City expended a total of \$21,016,992, or an average of \$5,254,248 per year for refuse collection and recycling services provided to City departments.
- Under the proposed Second Amendment, Recology would waive their right to a cost of living increase in FY 2011-12, such that the proposed Second Amendment to extend the existing MOU through June 30, 2012, should result in total estimated costs of \$26,717,059. Even providing for an additional five percent contingency, or an additional \$285,003, the total estimated cost would be \$27,002,062 which is \$2,335,465 less than the requested amount of \$29,337,527.

Policy Considerations

- The existing MOU does not specify or detail all of the discount provisions, as reported by the Department of the Environment. Rather, the existing MOU provides for a 25 percent discount for the Recreation and Park Department; rather than the Department of the Environment's reported discount of 29 percent, and then provides general language describing the City's and Recology's desire to encourage recycling and increased diversion of waste generated by City departments, and referencing the 2006 Rate Order.

Recommendations

- Amend the proposed resolution to reduce the total authorized amount by \$2,335,465 from \$29,337,527 to \$27,002,062, based on the actual projected need of \$26,717,059 plus an additional five percent contingency of \$285,003.
- Approve the proposed resolution, as amended.
- The Office of Contract Administration should work with the Department of the Environment to identify all of the specific discounts provided to City departments; and prior to requesting a future amendment for any additional authorization of time extension or needed funding, the MOU should be amended to clearly specify each of the individual discount provisions. Such amendments would be subject to future Board of Supervisors approval.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

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

Background

On March 21, 2007, the Board of Supervisors approved a not-to-exceed \$23,037,527 Memorandum of Understanding (MOU) between the City and County of San Francisco, through the Office of Contract Administration, and Sunset Scavenger Company, Golden Gate Disposal & Recycling Company and SF Recycling & Disposal Company, Inc., now known as Recology.¹ The MOU, which was not subject to a competitive procurement process, is for Recology to provide refuse collection and recycling services for departments and facilities of the City and County of San Francisco (City) (Resolution No. 147-07)². The initial four-year and three-month MOU was for the period from April 1, 2007 through June 30, 2011, and included two additional one-year options to extend, or through June 30, 2013, at the sole discretion of the Purchaser. Under the existing MOU, if the Purchaser exercises these options, the Purchaser is required to notify the Board of Supervisors of such extension of the MOU.

According to Ms. Juliana Bryant, the City's Zero Waste Coordinator in the Department of the Environment, the MOU was awarded to Recology, without conducting a competitive procurement process, due to the following reasons:

- Recology is the only permitted hauler for refuse collection in San Francisco. No other companies have been approved for residential or commercial refuse collection services since 1932.
- Recology is the only vendor with a fleet of trucks, transfer station and recycling sorting facility in San Francisco. Past residential and commercial customer payments to the only permitted refuse collection provider have resulted in substantial investments in Recology's infrastructure in San Francisco.
- The City was able to negotiate substantial discounts below commercial customer rates, with annual changes tied to the same annual rate as residential customers. The process for

¹ When this initial MOU was approved in 2007, Sunset Scavenger Company, Golden Gate Disposal & Recycling Company and SF Recycling & Disposal Company, Inc. were subsidiaries of Norcal Solid Waste Systems. On April 27, 2009, Norcal Waste Systems formally changed its name to Recology Inc., such that Recology's three new subsidiaries under contract with the City, through the existing MOU are (a) Recology Sunset Scavenger, (b) Recology Golden Gate, and (c) Recology San Francisco.

² According to Ms. Juliana Bryant of the Department of the Environment, between 2004 and 2007, the City, through the Department of Public Works had an agreement with Norcal Waste Systems to provide refuse collection and recycling services for City departments. Prior to 2004, the City did not have a written agreement with any provider for refuse collection services pertaining to City and County departments. Rather, the City's Rate Board negotiated directly with Norcal for refuse collection services during the rate setting process for approving residential rates in the City and then the Purchaser entered into a series of annual purchase orders with Norcal to secure such services.

Memo to Each Member of the Board of Supervisors
December 12, 2011

determining residential rates is a rate review process between the permitted hauler, Recology, and the City.

- Recology has a history of environmental stewardship that is consistent with the City's policies and goals to move towards zero waste, such that, San Francisco has achieved a 78 percent landfill diversion rate, the highest of any city in the country, and composted over 1,000,000 tons of organic material since the inception of the food scraps composting program in 1996.

As shown in Attachment I, on June 28, 2011, Ms. Jaci Fong, the Acting Director of the Office of Contract Administration sent a letter to the Board of Supervisors notifying the Board that the Purchaser intended to exercise the first one year option to extend the MOU with Recology. On July 1, 2011, the Purchaser approved the first amendment to the MOU with Recology, by executing the first option to extend the existing MOU by one year, from July 1, 2011 through June 30, 2012.

Although not specifically mentioned in the June 28, 2011 letter to the Board of Supervisors, the Budget and Legislative Analyst notes that this first amendment to the MOU with Recology also increased the authorization by \$500,000 from \$23,037,527 to \$23,537,527, the maximum amount to be modified by a City department, and updated language in the MOU to be consistent with current City provisions. Because this increase did not exceed \$500,000, this first amendment was not subject to Board of Supervisors approval.

Under the existing MOU, Recology is required to consolidate, collect, and transport, for recycle and/or disposal all refuse generated by City departments on a specified schedule. In accordance with the existing MOU, the base refuse collection and recycling services rates were established using Recology's standard commercial rate schedules. Over the term of the MOU, cost increases were then indexed to approve increases for residential customers as set forth in the Rate Order and approved by the City's Refuse Collection and Disposal Rate Board on May 22, 2006³.

In addition to the residential rate increases, the existing MOU to provide refuse collection and recycling services for City departments also provided for annual cost of living increases for Recology, effective July 1 of each year, according to a specified allocation of costs (e.g., fixed and variable labor, materials, capital, fuel). In accordance with the 2006 Rate Board order and the existing MOU, a recycling incentive, or Diversion Incentive Rebate was also included, which provided additional funds by formula to Recology if Recology met certain landfill diversion goals each year, and alternatively returned these funds to ratepayers if Recology did not meet the landfill diversion goals each year. According to Ms. Bryant, the proposed MOU also provided specified discounts, including: (a) 17 percent reduction off the standard commercial rates for all City departments, except for the Recreation and Park Department, (b) 29 percent reduction off the standard commercial rates for the Recreation and Park Department⁴, (c) Recycling and

³ Residential refuse collection rates charged to San Francisco residents must be approved by the Director of Public Works, or if such approved rates are appealed by a member of the public, approval must be granted by the City's Rate Board, which is composed of the Director of the Department of Public Works, the Controller, and the Director of the Public Utilities Commission.

⁴ Acknowledging that the Recreation and Park Department (RPD) is the highest user of refuse services, the MOU provides the largest discount to the RPD.

Memo to Each Member of the Board of Supervisors
December 12, 2011

Composting Incentives for all City departments, which provided discounts based on 95 percent of the subscribed services at each location determined according to the scheduled amount of refuse that was recycled and composted, or otherwise diverted from the City's landfill, and (d) Cap Credits, which limited the General Fund departments total monthly costs to \$398,302, such that monthly credits of up to \$50,971 would be allocated among the various General Fund departments during the initial years of the MOU. According to Ms. Bryant, these discounts are applied to each City department, based on their scheduled type and level of services.

As provided in the existing MOU, Table 1 below, based on data provided by Ms. Bryant, shows the actual base rates for once a week service for a one yard container that was charged to City departments in San Francisco in FY 2006-07, and the subsequent annual and cumulative rate increases, base rates as annually approved for residential customers, as well as the annual cost of living adjustments and the Diversion Incentive Rebates from FY 2007-08 through FY 2010-11.

Table 1: Residential Refuse Approved Rates, Including Annual Changes, Cost of Living (COLA) Adjustments, and Diversion Incentive Rebates from FY 200506 Through FY 2010-11

	FY2006-07	FY2007-08	FY2008-09	FY2009-10	FY2010-11
BASE RATE per 1 yard Container/Week					
Base Rate	\$185.73	\$190.78	\$194.72	\$198.30	\$202.71
Percent Change from Previous Year	--	2.74%	2.05%	1.84%	2.23%
Cumulative Percent Change from 2006	--	2.74%	4.85%	6.77%	9.15%
COLA ADJUSTMENT					
Annual COLA (%)	--	2.987%	4.429%	0.673%	4.583%
Cumulative COLA (%)	--	2.987%	7.548%	8.272%	13.234%
COLA (\$)	--	\$5.70	\$14.70	\$16.40	\$26.83
Base Rate + COLA	\$185.73	\$196.48	\$209.42	\$214.70	\$229.54
Percent Change from Previous Year	--	5.79%	6.59%	2.52%	6.91%
Cumulative Percent Change from 2006	--	5.79%	12.76%	15.60%	23.59%
Diversion Incentive Rebated to Rate Payers					
Diversion Incentive Rebate (%)	--	--	1.489%	1.120%	0.000%
Diversion Incentive Rebate (\$)	--	--	(\$3.12)	(\$2.40)	\$0.00
Total Rate	\$185.73	\$196.48	\$206.30	\$212.30	\$229.54
Percent Change from Previous Year		5.79%	5.00%	2.91%	8.12%
Cumulative Percent Change from 2006	--	5.79%	11.08%	14.31%	23.59%

Notes:

1. Base rates are from the DPW Order No. 176100.
2. The current rate order covers FY 2007-08 through FY 2010-11. The previous rate is shown for FY 2006-07.
3. The cumulative COLA is multiplicative. $(1 + \text{Annual COLA1}) \times (1 + \text{Annual COLA2})$, etc.

Memo to Each Member of the Board of Supervisors
December 12, 2011

Based on the data shown in Table 1 above, refuse collection rates charged by Recology to City departments increased by a cumulative total of 23.59 percent over the four year period from FY 2006-07 through FY 2010-11.

On July 26, 2011, the Board of Supervisors approved a resolution (File 10-1225) authorizing the Department of the Environment (DOE) to execute a new landfill disposal agreement with Recology, based on a competitive bid process, for a period of up to ten years, commencing in 2015 to allow for the deposit of up to 5,000,000 tons of solid waste collected in San Francisco into Recology's Ostrom Road Landfill in Yuba County, California. That resolution also amended an existing Facilitation Agreement between the DOE and Recology, which governs the consolidation of all refuse collected in the City and transportation of that refuse to the City's designated landfill.

Refuse collection in the City is governed by the City's Refuse Collection and Disposal Ordinance of 1932, as previously approved by the voters of San Francisco, which requires that only permitted refuse haulers collect and transport refuse "through the streets of the City and County of San Francisco." The 1932 Ordinance created 97 permanent permits, which, due to a number of acquisitions since the ordinance was approved, are currently all owned by Recology. Therefore, the Refuse Collection and Disposal Ordinance of 1932 has resulted in Recology becoming the exclusive and permanent refuse collector in San Francisco, without Recology ever having gone through the City's normal competitive bidding process.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the Second Amendment to the Refuse Collection MOU between the City and Recology San Francisco, Recology Golden Gate and Recology Sunset Scavenger (Recology) to increase the total not-to-exceed amount of the Agreement by \$5,800,000 from \$23,537,527 to \$29,337,527 to provide refuse collection and recycling services for departments of the City and County of San Francisco.

The not-to-exceed total amount of \$29,337,527 would cover the period from April 1, 2007, when the MOU was awarded to Recology, through June 30, 2012. As noted above, on July 1, 2011, the Purchaser approved the first amendment to the MOU with Recology, by executing the first option to extend the existing MOU by one year, from July 1, 2011 through June 30, 2012. The existing MOU contains one additional option to extend the existing agreement by one additional year, from July 1, 2012 through June 30, 2013.

Under the proposed amended agreement, Recology would waive their right to a cost of living increase during this first option year from July 1, 2011 through June 30, 2012.

FISCAL IMPACTS

As noted above, based on the first amendment approved by the OCA, the existing MOU contains a total not-to-exceed \$23,537,527 authorization for the period through June 30, 2012. Ms. Jennifer Browne, the Assistant Director of the Office of Contract Administration advises that as of November 16, 2011, the entire not-to-exceed authorized amount of \$23,537,527 has been encumbered by City departments, such that the Office of Contract Administration is seeking

Memo to Each Member of the Board of Supervisors
December 12, 2011

approval of the proposed resolution to increase the subject MOU by \$5,800,000 from \$23,537,527 to \$29,337,527 in order to enable Recology to continue to provide refuse collection and recycling services for City departments through June 30, 2012.

As shown in Table 2 below, based on data provided by Ms. Browne, from July 1, 2007⁵ through June 30, 2011, or a period of four years, the City expended a total of \$21,016,992 for such refuse collection and recycling services, or an average of \$5,254,248 per year.

Table 2: Payments Made by the City to Recology for Refuse Collection and Recycling Services to City Departments During the Past Four Fiscal Years, from July 1, 2007 through June 30, 2011

Fiscal Year	Payments
FY 2007-08	\$ 4,653,550
FY 2008-09	5,310,668
FY 2009-10	5,352,707
FY 2010-11	5,700,067
TOTAL	\$ 21,016,992

Based on the already discounted charges by Recology to the City during the three-month period of May, June and July 2011, as shown in Attachment II to this report, provided by Ms. Browne, the five City departments that incurred the highest costs are: (1) the Recreation and Park Department at \$320,401 or 23 percent of the total \$1,382,835 charges during this three-month period, (2) Municipal Railway at \$164,774 or 12 percent, (3) Laguna Honda Hospital at \$133,693 or ten percent, (4) San Francisco General Hospital at \$122,435 or nine percent, and (5) the Real Estate Department, which is responsible for maintaining City buildings such as City Hall, at \$100,597 or seven percent⁶.

As shown in Table 1 above, the existing MOU between Recology and the City for refuse and recycling services to City departments provides for both annual increases based on the residential rate increases previously approved by the City's Rate Board and cost of living increases, effective July 1 of each year, according to a specified allocation of costs (e.g., fixed and variable labor, materials, capital, fuel). According to Ms. Bryant, in 2006, the City's Rate Board approved residential rate increases for five years, such that those five years of increases have already occurred and there are no further residential rate increases approved for FY 2011-12.

Therefore, under the proposed Second Amendment to the MOU, Recology would waive their cost of living increase for FY 2011-12, such that there would be no cost of living increase in the rates charged by Recology to City departments. According to Ms. Browne, based on the formulas included in the existing MOU, the cost of living increase for FY 2011-2012 would otherwise be 3.25 percent. Based on the proposed waiver of the cost of living increase under the proposed amendment to the MOU, the City will therefore save an estimated \$185,252 (\$5,700,067 total annual cost for FY 2010-11 x 3.25%) in FY 2011-2012.

⁵ Although the existing MOU commenced on April 1, 2007, according to Ms. Browne, there were no City charges incurred against the existing MOU's blanket purchase order for the months of April, May or June, 2007.

⁶ Attachment II includes charges ranging from \$3,879 to \$4,144 per month, for May, June and July, 2011, or one percent of the City's total charges for the State of California. According to Ms. Bryant, these charges are paid by the Superior Court directly to Recology for refuse collection and recycling services at 400 MacAllister Street.

Memo to Each Member of the Board of Supervisors
December 12, 2011

Given that there are no projected increases in the rates to be charged by Recology to the City under the proposed MOU for FY 2011-12, the actual total costs of \$5,700,067 incurred by the City in FY 2010-11 (see Table 2 above), should remain approximately the same in FY 2011-12 (see Table 3 below). Therefore, the proposed Second Amendment to extend the existing MOU through June 30, 2012, should result in total estimated costs of \$26,717,059 to the City, as shown in Table 3 below.

Table 3: Payments Projected to be Made by the City to Recology Under the Proposed Amended Agreement

Fiscal Year	Payments
Subtotal	\$ 21,016,992*
FY 2011-12	5,700,067*
TOTAL	\$ 26,717,059
*see Table 2 above	

The Budget and Legislative Analyst notes that the projected \$26,717,059 total costs shown in Table 3 above is \$2,620,468 less than the requested \$29,337,527 in the proposed resolution.

In order to provide sufficient additional flexibility for City departments in FY 2011-12, given that the volume of refuse collected from City departments varies slightly each year, the Budget and Legislative Analyst recommends providing for an additional five percent contingency to the FY 2011-12 projected cost of \$5,700,067, or an additional \$285,003. Based on the total initial projected cost of \$26,717,059 shown in Table 3 above, plus an additional five percent contingency or \$285,003 for FY 2011-12, the total authorized not-to-exceed expenditure should be \$27,002,062. Even with this additional five percent contingency, the total projected not-to-exceed expenditure of \$27,002,062 is \$2,335,465 less than the requested \$29,337,527. Therefore, the Budget and Legislative Analyst recommends that the proposed resolution be amended to reduce the requested amount by \$2,335,465, resulting in a total not-to-exceed authorization of \$27,002,062.

The revenues to pay for the subject MOU are funded through the individual City departments' annual FY 2011-12 operating budgets.

POLICY CONSIDERATIONS

As discussed in the Background Section of this report above, according to Ms. Bryant, the proposed MOU provides specified discounts to various City departments, including: (a) 17 percent reduction off the standard commercial rates for all City departments, except for the Recreation and Park Department, (b) 29 percent reduction off the standard commercial rates for the Recreation and Park Department, (c) Recycling and Composting Incentives for all City departments, which provided discounts based on 95 percent of the subscribed services at each location determined according to the scheduled amount of refuse that is recycled and composted, or otherwise diverted from the City's landfill, and (d) Cap Credits, which limited the General Fund departments total monthly costs to \$398,302, such that monthly credits of up to \$50,971 were allocated among the various General Fund departments during the initial years of the MOU.

However, the Budget and Legislative Analyst notes that the existing MOU does not specify or detail these discount provisions. Rather, the existing MOU provides for a 25 percent discount for

Memo to Each Member of the Board of Supervisors
December 12, 2011

the Recreation and Park Department, rather than the Department of the Environment's reported discount of 29 percent, and then provides general language describing the City's and Recology's desire to encourage recycling and increased diversion of waste generated by City departments. The existing MOU references the 2006 Rate Order and states that

"Upon ratification of this Agreement, the Companies shall implement the Uniform Commercial Rate Structure, based upon the rates set forth in Appendix A1. In addition to the Uniform Commercial Rate Structure, the Recycling Incentive Program will also be implemented for all City Departments. The Companies, in accordance with its current practices relating to the Recycling Incentive Program, will provide, where appropriate, Recycling Incentive Program discounts and additionally, where appropriate, the Companies will apply service fee caps to allow time for the City departments to transition to the Uniform Commercial Rate Structures. The Companies shall, in good faith, determine the amount of any Diversion and the amounts to be charged to the City Departments as a result of the Recycling Incentive Program."

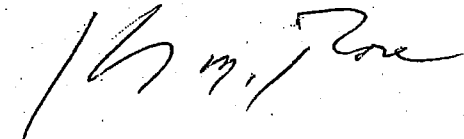
By only providing such general language, without specifying the actual amount of the discounts to be granted under the existing MOU, the Budget and Legislative Analyst questions the ability of individual City departments to determine whether the correct discounts are being provided by Recology. At the same time, the Budget and Legislative Analyst acknowledges that the City has fully encumbered the existing authorized funds and requires additional spending authorization under the existing MOU to enable Recology to continue to provide refuse and recycling services for all City departments. Therefore, the Budget and Legislative Analyst recommends that the proposed resolution be approved to authorize the City to expend a not-to-exceed \$27,002,062. The Budget and Legislative Analyst also recommends that the Office of Contract Administration (OCA) work with the Department of the Environment (DOE) to identify all of the specific discounts provided to City departments. Prior to requesting an amendment for (a) any extensions for additional time, or (b) authorization for additional authorized funding, the MOU should be amended to clearly specify each of the individual discount provisions. Such amendment would be subject to Board of Supervisors approval.

As noted above in the Fiscal Impacts Section of this report, the Budget and Legislative Analyst has recommended that the proposed MOU be amended to provide for a total authorized amount of \$27,002,062 through June 30, 2012. Ms. Browne advises that OCA will work with DOE during the coming months to negotiate with Recology for refuse collection and recycling services for City departments to extend the existing MOU for the one remaining and final option year from July 1, 2012 through June 30, 2013. In order to provide sufficient time and authorization of funds for City departments, OCA, working together with DOE, should seek Board of Supervisors approval for the last option year in April or May of 2012, before the expiration of the existing agreement on June 30, 2012.

At its meeting of December 7, 2011, the Budget and Finance Committee considered the subject resolution and sent it forward to the full Board of Supervisors, without recommendation, for hearing at the Board of Supervisors meeting of December 13, 2011.

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the total authorized amount by \$2,335,465 from \$29,337,527 to \$27,002,062, based on the actual projected need of \$26,717,059, plus an additional five percent contingency of \$285,003.
2. Approve the proposed resolution, as amended.
3. The Office of Contract Administration should work with the Department of the Environment to identify all of the specific discounts provided to City departments, and prior to requesting any additional authorization of time extensions or needed funding, the MOU should be amended to clearly specify each of the individual discount provisions. Such amendments would be subject to future Board of Supervisors approval.



Harvey M. Rose

cc: President Chiu
Supervisor Avalos
Supervisor Campos
Supervisor Chu
Supervisor Cohen
Supervisor Elsbernd
Supervisor Farrell
Supervisor Kim
Supervisor Mar
Supervisor Mirkarimi
Supervisor Wiener
Clerk of the Board
Cheryl Adams
Controller
Rick Wilson

City and County of San Francisco

Office of Contract Administration



Edwin M. Lee
Mayor

Jaci Fong
Acting Director
Purchasing

June 28, 2011

To: Honorable Members of the Board of Supervisors

Through: Amy Brown, Acting City Administrator; Naomi Kelly, Acting Deputy City Administrator

From: Jaci Fong, Acting Director *JF*

Subject: MOU with Recology Golden Gate for Refuse Collection

The Office of Contract Administration (OCA) intends to extend the Memorandum of Understanding (MOU) between the City and County of San Francisco and Sunset Scavenger Company and Golden Gate Disposal Company (both now known as Recology Golden Gate) dated April 1, 2007 and authorized by Board of Supervisor's Resolution #147-07 dated March 21, 2007 for the first of two available Option Periods. This will extend the MOU term from June 30, 2011 until June 30, 2012.

According to Section 2 of the MOU:

"the Purchaser may, in its sole discretion extend this Agreement for two (2) additional one (1) year periods (the "Option Periods" and each an "Option Period"); provided that the compensation rates for any services provided during any Option Period be set forth in Section 5. The Purchaser may exercise this option by providing written notice to the Companies at least six months prior to any applicable termination date for the Initial Term or the first Option Period, as applicable, and shall notify the City's Board of Supervisors of such extension."

Please consider this memo as formal notification of OCA's intent to extend this MOU for one (1) Option Period. I can be contacted directly at 415-554-6701 with any questions.

Billings for May, June & July 2011 for City Departments

Attachment II

Recology Sunset Scavenger Company								
Recology Golden Gate Disposal & Recycling Company								
City Accounts By Departments								
Department	May	June	July	May	June	July	May - July '11 Aggregate	Dept %
Department Of Health	\$ 17,533	4%	\$ 17,842	4%	\$ 17,457	4%	\$ 52,831	4%
Dept of Emergency Management	\$ 2,042	0.4%	\$ 2,042	0.4%	\$ 2,042	0.4%	\$ 6,126	0%
Dept Of Human Services	\$ 11,760	3%	\$ 12,633	3%	\$ 12,444	3%	\$ 36,836	3%
Dept Of Parking & Traffic	\$ 847	0.2%	\$ 847	0.2%	\$ 1,204	0.3%	\$ 2,898	0%
Dept Of Telecommunications	\$ 1,787	0.4%	\$ 1,787	0.4%	\$ 1,787	0.4%	\$ 5,360	0%
District Attorney	\$ 434	0.1%	\$ 434	0.1%	\$ 434	0.1%	\$ 1,301	0%
Dpw - Bureau Of Building Repair	\$ 3,012	1%	\$ 2,920	1%	\$ 2,900	1%	\$ 8,833	1%
Fine Arts Museum	\$ 10,484	2%	\$ 10,484	2%	\$ 10,484	2%	\$ 31,452	2%
GSA-Central Shops	\$ 215	0.05%	\$ 215	0.05%	\$ 215	0.05%	\$ 644	0%
Laguna Honda Hospital	\$ 45,457	10%	\$ 40,149	9%	\$ 48,087	10%	\$ 133,693	10%
Municipal Railway /Structures	\$ 53,459	11%	\$ 52,849	12%	\$ 58,466	13%	\$ 164,774	12%
Public Defender's Office	\$ 83	0.02%	\$ 83	0.02%	\$ 83	0.02%	\$ 250	0%
Public Utilities Commission	\$ 438	0.1%	\$ 438	0.1%	\$ 438	0.1%	\$ 1,315	0%
Public Utilities Commission PUC	\$ 9,339	2%	\$ 10,212	2%	\$ 8,508	2%	\$ 28,059	2%
Real Estate Department	\$ 20,438	4%	\$ 18,030	4%	\$ 17,480	4%	\$ 55,947	4%
Real Estate Department (GF)	\$ 35,157	8%	\$ 33,876	7%	\$ 31,564	7%	\$ 100,597	7%
S F Sheriffs Dept	\$ 2,711	1%	\$ 2,391	1%	\$ 2,196	0.5%	\$ 7,298	1%
San Francisco Film Commission	\$ -	0%	\$ -	0%	\$ 34	0.01%	\$ 34	0%
SF Animal Care & Control	\$ 3,575	1%	\$ 3,575	1%	\$ 3,575	1%	\$ 10,724	1%
SF Fire Department	\$ 14,429	3%	\$ 15,752	3%	\$ 16,878	4%	\$ 47,058	3%
SF General Hospital	\$ 42,447	9%	\$ 39,883	9%	\$ 40,105	9%	\$ 122,435	9%
SF Library	\$ 7,539	2%	\$ 7,519	2%	\$ 7,504	2%	\$ 22,562	2%
SF Police Department	\$ 16,614	4%	\$ 16,614	4%	\$ 16,614	4%	\$ 49,841	4%
SF Port Commission	\$ 22,796	5%	\$ 27,252	6%	\$ 23,750	5%	\$ 73,797	5%
SF Rec & Park	\$ 111,014	24%	\$ 105,196	23%	\$ 104,192	23%	\$ 320,401	23%
SF Water Department	\$ 6,270	1%	\$ 5,055	1%	\$ 4,882	1%	\$ 16,208	1%
State of California - AOC	\$ 4,144	1%	\$ 3,881	1%	\$ 3,879	1%	\$ 11,905	1%
War Memorial	\$ 20,673	4%	\$ 20,673	5%	\$ 20,673	4%	\$ 62,019	4%
Youth Guidance Center	\$ 2,994	1%	\$ 2,322	1%	\$ 2,322	1%	\$ 7,637	1%
Total							\$ 1,382,835	

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

Second MOU Amendment

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

RECITALS

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

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to **increase the total contract amount from \$23,537,527 to \$29,337,527 with no application of COLA price increases for Fiscal Year 2011/2012;**

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

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

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

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

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

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

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

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

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

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

- a. **Timing of Payments Limit.** Compensation shall be made in monthly payments on or before the last day of each month for Services, as set forth in Section 4 of this Agreement, that have been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement for the Amended Term exceed twenty-nine million three hundred thirty-seven thousand five hundred twenty-seven dollars and no cents (\$29,337,527).

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

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

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

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

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

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Zero Inflation	Existing Capital Costs and Fixed Disposal Costs	12.1%
EIA CA Diesel	Fuel Cost Adjustment Factor	3.0 %
Total		100%

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

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

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

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Zero Inflation	Existing Capital Costs and Fixed Disposal Costs	12.1%
EIA CA Diesel	Fuel Cost Adjustment Factor	3.0 %
Total		100%

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

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

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

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

CITY

Recommended by:

Amy Brown
Acting City Administrator

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Rob Maerz
Deputy City Attorney

Approved:

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

CONTRACTOR

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

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

City vendor number: **08401**

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

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Director of the Office of Contract
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CONTRACTOR

**Recology Golden Gate, Recology Sunset
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City vendor number: **08401**

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Purchasing Division
City Hall Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4685**

First MOU Amendment

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

RECITALS

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

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

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

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

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

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

First Amendment dated **July 1, 2011**

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

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

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

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

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

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

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

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

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

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

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

 Submitting False Claims; Monetary Penalties.

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

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

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

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

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

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

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

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

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

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

PREVAILING RATE OF WAGES REQUIRED

For Solid Waste Hauling Services:

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

Enforcement

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

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

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

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

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

Requiring Health Benefits for Covered Employees.

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

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

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

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

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

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

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

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

PREVAILING RATE OF WAGES REQUIRED

For Solid Waste Hauling Services:

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

Enforcement

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

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

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

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

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

Requiring Health Benefits for Covered Employees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

First Source Hiring Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

First Source Hiring Program

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

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

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

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

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

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

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

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

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

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

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

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

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

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

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

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
 - A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 - B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CITY

Recommended by:

Amy Brown
Acting City Administrator

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Rob Maerz
Deputy City Attorney

Approved:

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

CONTRACTOR

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

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

City vendor number: **08401**

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

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

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

Recitals

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

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

NOW, THEREFORE, the Parties agree as follows:

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

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

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

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

CITY

Recommended by:

Amy Brown
Acting City Administrator

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Rob Maerz
Deputy City Attorney

Approved:

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

CONTRACTOR

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

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

City vendor number: **08401**

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

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

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

Recitals

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